DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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Condominiums and Mobile Homes
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REGULAR FINAL ORDER INDEX SUPPLEMENT

September 2007

Note: This interim supplement contains summaries of final orders entered by division arbitrators in the arbitration program described by Section 718.1255, Florida Statutes, from July 1, 2006 through September 13, 2007. The final order summaries are organized by subject matter. Indexes of earlier final orders are available online at the above web address.

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Age-Restrictions (See Fair Housing Act)

Alienation (See Unit-Restraints on alienation)

Annual Meeting (See Meetings-Unit owner meetings)

Arbitration

Affirmative defenses

Gary Griffith v. Punta Rassa Condominium Association, Inc.,
Case No. 2007-02-9651 (Campbell / Summary Final Order / September 26, 2007)

- Association ordered to pay petitioner $500, as minimum damages pursuant to s. 718.111(12)(c), F.S., Association failed to make available records, including statutorily required financial reports, for more than a month after written request. No evidence to rebut statute's presumption that such failure was willful. Arbitration is not improper merely because petitioner had filed complaints with compliance section of DBPR and in small claims court. Compliance is a separate independent mechanism. Small claims action, abated to require arbitration, is sufficient written pre-arbitration notice.

Banyan Point Condominium Association, Inc. v. Richard P. Dickman and Debbie J. Dickman,
Case No. 2007-00-4315 (Chavis / Order Striking Respondent's Supplement Affirmative Defense of Laches / November 1, 2007)

- Respondents filed a Supplemental Affirmative Defense alleging laches. Respondents make a general claim that the Association "had knowledge or notice of the respondents conduct and had the opportunity to object to the conduct in excess of seven (7) years." Respondents' supplemental pleading fails to identify all facts upon which the respondents' defense is based. Because respondents failed to comply with the requirements of rule 61B-045.019(3), Florida Administrative Code, the affirmative defense of laches was stricken.

Chateaux Du Lac Condominium Association, Inc. v. William Brock, III,
Case No. 2007-03-6483 (Chavis / Summary Final Order / December 14, 2007)

- Respondent alleged that the petitioner failed to provide the requisite pre-arbitration notice to provide respondent the opportunity to cure the violation. Petitioner sent the respondent pre-arbitration notice by both U.S. Certified and First Class Mail. The certified letter was returned to petitioner marked, "unclaimed." The letter sent by regular mail was not returned. Accordingly, as the address was clearly able to receive mail at that time, as evidenced by the "unclaimed" certified letter at that address, and respondent did not offer any proof of inability to receive mail at that location during that timeframe, it is presumed that the pre-arbitration notice sent by First Class mail was

delivered in accordance with the pre-arbitration notice requirements of section 718.1255(4)(b), Florida Statutes.

Mediterreanea on Hillsboro Mile Condominium Assn. v. Verdino,
Case No. 2006-06-1482 (Lang / Summary Final Order / Jan. 17, 2008)

- Respondents alleged they lived with their dog at the unit since it was purchased in January 2002. Petition was filed in November 2006. Respondents asserted applicable statute of limitations was one year for specific performance. Held that five-year statute of limitations for action on a contract was applicable because where there is reasonable question as to which limitation period applies, resolution should be in favor of longer limitation period.

- Respondents alleged their dog was a service animal. Respondents must produce evidence in support of the assertion that their dog is a service animal and thereby entitled to exemption from the weight restriction in the condominium documents. Respondents asserted that they had health issues that would be exacerbated if the dog no longer resided with them because the dog provides relief for their condition. Dog found not to be a service animal because respondents did not allege or show that respondents have a condition for which a service animal is a medical necessity.

Evidence

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Visconti Condominium Association, Inc. v. Frontiers Mortgage Solutions, I, LLC,
Case No. 2007-03-7232 (Chavis / Order Denying Respondent's Motion For Contempt, Order Denying Respondent's Motion to Dismiss, Order Denying Respondent's Motion for Sanctions, and Order to Amend Request for Attorney's Fees and Costs / November 20, 2007)

- Respondent seeks an award of attorney's fees and costs prior to the entering of a final order. While section 718.1255(4)(k), Florida Statutes, authorizes the award of attorney's fees and costs to the prevailing party, rule 61B-45.048, Florida Administrative Code, establishes the timing for such a motion and provides the requirements for such a motion, including the necessary affidavits and documentation.

Visconti Condominium Association, Inc. v. Frontiers Mortgage Solutions I, LLC,
Case No. 2007-03-7232 (Chavis / Order Denying Petitioner's Motion for Rehearing / December 10, 2007)

- Petitioner's motion for rehearing failed to state any point of law or fact relating to the final order which was overlooked or misapprehended by the arbitrator, and therefore was denied.

Gubernik v. Mayfair Condo. Ass'n, Inc.,
Case No. 2008-03-3139, (Grubbs / Final Order Dismissing Petition / June 12, 2008)

- A petitioner must allege all of the facts relevant to the case in numbered paragraphs in the petition, as well as any rule or law relied upon, for the arbitrator to determine whether the petition states a cause of action. It is not sufficient to attach documents to a "petition" when the petition itself fails to allege the facts and law upon which the petitioner relies. Petitioner has the burden of proving his case, and must set forth allegations in the petition that establish he is entitled to the relief sought.

Preston v. Spanish Isles Property Owners Assn, Inc.,
Case No. 2007-06-4581 (Lang / Order on Motion for Recusal of Arbitrator and Vacating Final Hearing / June 20, 2008)

- Underlying case involved "reverse recall" in a homeowners' association. Respondent Association sought arbitrator to recuse himself alleging: 1) Association and its president had a well-founded fear that fair final hearing could not be had before arbitrator; 2) Section 38.10, Florida Statutes, requires a judge to proceed no further once a party to a proceeding files an affidavit stating the affiant fears that he or she will not receive a fair trial in the court where the suit is pending due to the prejudice of the judge; 3) Respondent Association has a reasonable fear arbitrator will not conduct a fair hearing because arbitrator has provided to the parties a copy of a "petition" which was filed with the arbitrator, unbeknownst to the Association, and signed by a number of homeowners seeking to have Petitioner cease "harassing" and filing claims against the Association and by sending a copy of the "petition" to Petitioner, the arbitrator has allowed Petitioner to gain access to the names of the signatories, and Petitioner is threatening them with litigation; 4) Respondent Association should not be required to provide citations when Respondent raised and arbitrator struck the same affirmative defenses that were raised and struck in Respondent's earlier motion to dismiss; and 5) Arbitrator is applying a personal standard for retention of records by a homeowners' association because no such standard is found in section 718.303(4), Florida Statutes.

- Section 38.10, Florida Statutes, and Florida Rule of Judicial Administration 2.330 apply only to judges under Article V of the Florida Constitution and therefore, a section 718.1255 arbitrator is not bound by that statute or rule, but the arbitrator may look to the statute and the rule for guidance, in the arbitrator's discretion.

- Arbitrator wrote in the order on recusal that he was bound by Rule 61B-45.007, Florida Administrative Code, to enter a Notice of Communication and strike same and send to both parties a copy of the notice and a copy of the "petition" that had been signed by a number of homeowners. Under the relevant case law, the arbitrator recused himself because the order went beyond addressing the mere legal sufficiency of the motion.

Unit Owners Voting for Recall and Frank Cipolla v. Pearl Condominium Ass'n, Inc.,
Case No. 2008-03-0146, (Grubbs / Summary Final Order (July 25, 2008)

- When the Unit Owners Voting for Recall file a "reverse recall" pursuant to section 718.1255(1)(b), Florida Statutes, a unit owner must be named as a petitioner. Attorney's fees may be awarded to the association against the named petitioner should the association prevail. However, in this type of proceeding, even if the recall is not certified for some reason, the association would not prevail if the association was properly served, it failed to hold a recall meeting as required by statute, and it appears from the face of the agreement that majority of the unit owners signed the recall agreement.

Widerman v. Harbor Beach Resort Condominium Ass'n,
Case No. 2008-04-1689, (Grubbs / Order Dismissing Petition with Leave to Amend / July 28, 2008)

- The instructions on DBPR form ARB 6000-001, the form for a petition for arbitration, are rule requirements and must be followed. The purpose of the form is to advise a petitioner of the information that must be included in a petition for arbitration and the documents required to be attached to the petition as exhibits. A petitioner need not include in its petition the instructions contained in the form; however, following the instructions is essential.

Versailles Hotel Condo. Ass'n, Inc. v. Perez-Roura,
Case No. 2008-03-7429, (Grubbs / Final Order Dismissing Petition / September 5, 2008)

- The attorney of record remains the attorney for the party until he files an appropriate motion for leave to withdraw. In this case, the original attorney did not withdraw, the show cause order was sent to him as the petitioner's counsel, and he was still attorney of record when the time for responding to the show cause order expired. The inability of the second counsel of record to timely respond does not mean that the petitioner could not have filed a timely response through the original counsel.

Holiday Springs Village Condo.,Inc. v. Ghering,
Case No. 2007-05-8880 (Earl / Order on Motion to Vacate Final Order of Dismissal or for Reconsideration and To Remand to State Court, or Alternativley that Late Response to Order to Show Cause be Accepted / September 18, 2008)

- In its motion, the association asserted for the first time that the condominium is a housing for older persons community (HOP) and that the occupant of the unit is underage in violation of the HOP provisions of the governing documents. Since this violation was not raised in the petition or addressed any pre-arbitration letters it was not properly before the arbitrator.

Jurisdiction (See Dispute)

Widerman v. Harbor Beach Resort Condominium Ass'n,
Case No. 2008-04-1689, (Grubbs / Order Dismissing Petition with Leave to Amend / July 28, 2008)

- The only disputes authorized to be brought in arbitration that allege a failure of the board to take proper action are those listed in subsection (b) of section 718.1255(1), Florida Statutes, and do not include the failure to properly maintain the common elements. As a defense to a charge that the association, without authority, altered a common element, a respondent may assert that a particular alteration was necessary to properly maintain the property, and thus raise the issue. However, a petitioner cannot challenge the failure of the association to properly maintain the common elements in an arbitration proceeding.

Wanda Dipaola Stephen Rinko General Partnership v. Beach Terrace Ass'n, Inc.,
Case No. 2008-04-5089, (Grubbs / Order Denying Motion to Dismiss / September 29, 2008)

- Under rule 61B-45.013(7) and case law, a controversy involving the alleged failure of the association to maintain the common elements falls within the arbitrator's jurisdiction under section 718.1255(1)(a), Fla. Stat., when that failure has a disparate impact on the petitioner's unit.

Misarbitration

Parties (See also Dispute-Standing)

The Towers Condo. Ass'n, Inc. v. Baxter,
Case No. 2008-04-6660 (Earl / Final Order of Dismissal / September 22, 2008)

- Where association failed to name a necessary party and had not provided that person with pre-arbitration notice, the case was dismissed.

Prevailing party (see separate index on attorney's fees cases)

Sanction

Visconti Condominium Association, Inc. v. Frontiers Mortgage Solutions, I, LLC,
Case No. 2007-03-7232 (Chavis / Order Denying Respondent's Motion For Contempt, Order Denying Respondent's Motion to Dismiss, Order Denying Respondent's Motion for Sanctions, and Order to Amend Request for Attorney's Fees and Costs / November 20, 2007)

- Respondent sought an order of contempt against the petitioner. Contempt is not a form of relief that is available in arbitration pursuant to section 718.1255(4)(j), Florida Statutes.

- Respondent sought an order for sanctions upon petitioner for failure to respond to Order to Show Cause. As stated in the order, failure of the Petitioner to comply with the order would result in an order dismissing the case. Such an order was entered and no further sanctions will be imposed upon the Petitioner.

Assessments for Common Expenses (See Common Expenses)

Associations, Generally (For association records, See Official Records)

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Board of Administration

Stern v. Playa Del Mar Ass'n, Inc.,
Case No. 2007-06-6957, (Earl / Order / May 5, 2008)

- The trustee of the trust that owns a unit is eligible to serve on the Association's board of directors.

Business judgment rule

Ratification (See Meetings-Board meetings-Ratification)

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Interpretation

Cable Television

Common Elements/Common Areas

Generally

Vezolles v. Sunshine Bay Condominium Association, Inc.,
Case No. 2007-04-9865 (Golen / Summary Final Order / October 2, 2007)

- Petitioner proposes that she be allowed to install piping through the common area walls as well as install an air handler on the common element roof. This is a material or

substantial alteration to the common elements which, according to Section 11(c) of the Declaration, requires the authorization of the board as well as the vote of the members of the association.

Hurricane shutters (See Hurricane Shutters)

Limited common elements

Maintenance and protection

One Island Place Condominium Association, Inc., v. Moshe Engel and Gila Engel,
Case No. 2007-04-5535 (Campbell / Summary Final Order / April 25, 2008)

- Association sought to make penthouse owners responsible for replacement of roof of 30-story condominium. Declaration declared everything above roof over penthouse floor to be limited common element for use of penthouse owners, and implies a bare roof to which the penthouse owner could add amenities. Survey with schematic drawings of units, recorded with the declaration and incorporated in declaration, shows a second floor for the penthouse units built by the developer. If the responsibility of the association to maintain components of the Exterior Wall Envelope of a multi-story building is to be shifted to the unit owner, the declaration must do so with language that is direct, documents does not shift responsibility for maintenance of building envelope by association required by section 718.113, F.S.

Material alteration or addition (See also Fair Housing Act)

Sweeny v. Golden Horn Assn, Inc.
Case No. 2006-06-7026 (Bembry / Final Order / June 12, 2008)

- Repairs to 36-year old building began after membership approval in 2005. Building sustained additional damage from hurricanes in 2006. Petitioners dispute certain repairs and improvements were within board's authority to complete without 75% unit owner approval for material alterations as required by condominium documents. However, unit owner approval is not necessary where changes or alterations must be done to preserve common elements. Work done to elevator, sundeck, pool and pool railings, community room kitchen, lobby flooring due to uneven slab, boat dock, and community room and hallway flooring found to be necessary to preserve common elements. However, alterations to lobby walls, and paint color changes to hallway walls and exterior of building were material alterations.

Emerald Beach Apartments Condo., Inc. v. Jean,
Case No. 2008-00-7053 (Earl / Final Order / July 16, 2008)

- Where association objected to the respondent's balcony enclosure, association found to have arbitrarily and selectively applied its policy of maintaining uniform building appearance because the balconies on the same side of the building as the respondent's unit demonstrated five different treatments, including one very similar to respondent's

balcony enclosure. Additionally, the balcony enclosure rules envisioned a lack of uniformity to some extent permitting various types of hurricane shutters and enclosures.

- Where association's balcony enclosure rules permitted installation of glass panels such as installed by the unit owner, such installation must be done in accordance with the Florida Building Code. Therefore, the rule must be read to allow installation that would comply with the code.

Ocean Winds, Inc. v. Ashburn,
Case No. 2008-02-8123, (Grubbs / Summary Final Order / August 4, 2008)

- Respondent's installation of a window air conditioner violated the declaration of condominium and also constituted a material alteration of the common elements. When a window air conditioner is placed in the window, the window, whether it is a common element or a part of the unit, is altered and the appearance of the building is changed.

Townhouses at Bonnie Bay Condo. Ass'n, Inc. v. Mason,
Case No. 2007-06-8168 (Earl / Final Order / September 24, 2008)

- Where the association had permitted other owners to alter the common elements by the addition of sun rooms, screen rooms, and enclosing balconies with glass panels or screens, association was estopped from objecting to respondent's modifications to her balcony consisting of removal of privacy partition and removing sliding glass door and walling in the threshold.

Right to use

Sunrise of Palm Beach Condominium Association, Inc. 1, v. Carlson,
Case No. 2006-02-9202 (Bembry / Final Order / March 4, 2008).

- Respondent was required to remove personal property from a common element room that had been designed originally as a utility meter room, but had been used for years for storage of personal property by respondent and other unit owners. The room had also been used as a workshop by condominium maintenance personnel. Fact that unit owner had been allowed to use the space over an extended period of time did not create a limited common element right to continue to use it. Only declaration can create a limited common element appurtenant to a unit. Fact that individual board member gave permission to unit owner for storage of personal property does not bind board of directors. Defenses of waiver and estoppel do not apply because evidence established respondent shared space with other unit owners and maintenance personnel.

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Declaration

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Interpretation

One Island Place Condominium Association, Inc., v. Moshe Engel and Gila Engel,
Case No. 2007-04-5535 (Campbell / Summary Final Order / April 25, 2008)

- Association sought to make penthouse owners responsible for replacement of roof of 30-story condominium. Declaration declared everything above roof over penthouse floor to be limited common element for use of penthouse owners, and implies a bare roof to which the penthouse owner could add amenities. Survey with schematic drawings of units, recorded with the Declaration and incorporated in Declaration, shows a second floor for the penthouse units built by the developer. If the responsibility of the association to maintain components of the Exterior Wall Envelope of a multi-story building is to be shifted to the unit owner, the declaration must do so with language that is direct, clear, unambiguous and subject to no other interpretation. Inconsistency within the Declaration documents does not shift responsibility for maintenance of building envelope by association required by section 718.113, F.S.

Validity

The Admiral Owners Ass'n, Inc. v. Walker,
Case Nos. 2007-02-9645 and 2007-02-9649 (Earl / Final Order / April 8, 2008)

- Provision of declaration requiring only penthouse owners to install hurricane screens was valid as it was not wholly arbitrary in its application, in violation of public policy, or an abrogation some fundamental constitutional right.

Default

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Sanctions (See Arbitration-Sanctions)

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Exemptions (See also Declaration-Exemptions)

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Montecito Palm Beach Condominium Association, Inc., v. D'Amico,
Case No. 2006-05-4182 (Campbell / Summary Final Order / September 17, 2007)

- Respondents installed marble floor with approval of developer and with active cooperation by the developer during condo conversion. After turnover of board to unit owner control, association estopped to enforce requirement of written approval for such alteration of unit.

Transfer of control (See also Elections/Vacancies)

Disability, Person with (See Fair Housing Act)

Discovery

Attorney-client privilege (See Attorney-Client Privilege)

Generally

Banyan Point Condominium Association, Inc. v. Dickman,
Case No. 2007-00-4315 (Chavis / Order Quashing Respondent's Notice of Deposition Duces Tecum and Requiring Petitioner to Reply to Affirmative Defense / August 10, 2007)

- Respondent's Notice of Deposition *duces tecum* is quashed because respondent's have failed to obtain the approval of the arbitrator prior to seeking the deposition *duces tecum* of the petitioner and failed to allege the inability to acquire the information and documentation through other means such as the owner's access to the official records, as provided by section 718.111(12), F.S.

Dispute

Considered dispute

Vizcaya of Bradenton Condominium Association, Inc., v. Ruth Allendoerfer-Fernandez,
Case No. 2008-01-5333 (Campbell / Final Order / March 24, 2008)

- Where only disputes between condominium association and unit owner involve claims for money damages, section 718.1255, F.S., does not provide for arbitration jurisdiction. Such claims must be pursued in a jurisdiction appropriate for contract, tort, or insurance claims.

Generally

Viewpoint of Margate Condominium Association, Inc. v. Moreno,
Case No. 2007-00-4771 (Chavis / Order Denying Respondents' Motions to Dismiss / August 1, 2007)

- Respondent's Motion to Dismiss was untimely filed. Rule 61B-45.44, F.A.C., requires that a motion for rehearing be filed within 15 days after the date of the entry of the final order.

Holiday Springs Village Condo., Inc. v. Ghering,
Case No. 2007-05-8880 (Earl / Final Order Dismissal / August 12, 2008)

- Association alleged that the respondents had violated association's governing documents by permitting an unauthorized occupant to reside in their unit. During the proceeding it became apparent that the occupant was daughter of one the unit owners. Therefore, the governing documents did not require association's approval of the occupant and the case was dismissed.

Judith L. Richard v. Somerset Condominium Townhouse Association, Inc.
Case No. 2006-02-1573 (Chavis / Final Order Dismissing Case as Moot and Order Denying Prejudgment Interest / October 23, 2007)

- The jurisdiction of the arbitrator is limited to a determination of actual or statutory damages and under section 718.1255, Florida Statutes, and rule 61B-50.1405, Florida Administrative Code, a determination of arbitration costs and attorney's fees. As petitioner had accepted the payment of statutory damages from respondent, there remained no allegation of actual damages or pecuniary losses to support an award of prejudgment interest.

Jurisdiction

Bachow v. Atlantic I at the Point Condominium Assn., Inc.,
Case No. 2007-04-3404 (Lang / Final Order Dismissing Petition for Lack of Jurisdiction / October 4, 2007)

- Petitioner alleged owner of unit above him installed ceramic tile throughout most of the unit and association failed to obtain documentation that the soundproofing material and system installed met the soundproofing requirements of the condominium documents thereby resulting in a noise nuisance for petitioner. Petitioner sought proof of compliance, and failing that, removal of the tile flooring and replacement with a system that met the association's current tile flooring soundproofing requirements. The controversy is not a dispute under the statute because it is not one of the four specified

failures of the ssociation that provide jurisdiction, nor is petitioner challenging the authority of the association to require a unit owner to take any action, or not to take any action, involving that owner's unit. It is a dispute between two unit owners and not within the jurisdiction of the arbitrator.

Addeo v. The Strand Condo. Ass'n, Inc.,
Case No. 2007-04-7806 (Earl / Final Order of Dismissal / October 16, 2007)

- Petitioner's argument that the condominium's documents expanded the scope of mandatory arbitration as contemplated by section 718.1255, F.S., was rejected since the arbitrator's jurisdiction is established by the Florida Legislature and cannot be expanded by agreement of the parties.

Hillsboro Mile Tower, Inc. v. Wine,
Case No. 2007-02-6548 (Lang / Order on Respondent's Motion to Dismiss, Requiring Supplemental Information, and Denying Petitioner's Emergency Motion for Injunctive Relief / Oct. 22, 2007)

- Respondent asserted arbitrator lacked subject matter jurisdiction over a dispute relating to respondent's alleged agreement to obtain liability insurance to cover the association against claims arising from respondent's boatlift, which was alleged to be attached to the association's common element seawall. Respondent claimed the dispute did not involve an alteration or addition to a common area or element. Issue was whether arbitrator had jurisdiction to enforce the alleged agreement. Such a dispute is not excluded under the exceptions to the governing statute and is a dispute between the association and the shareowner and involves the board's authority to require a shareowner to take an action involving the appurtenances to the share. Therefore, arbitrator had jurisdiction over the dispute.

- Respondent asserted petitioner failed to state a cause of action, because respondent never agreed to obtain a liability insurance policy covering the association. No document in the record signed by respondent wherein he agreed to obtain a liability insurance policy covering the Association. Case law holds that where there is an inconsistency in the general allegations of the complaint and the specific facts of the accompanying exhibit, the pleading fails to state a cause of action. However, petitioner given leave to amend.

Forrest Heistermann and Janet R. Heistermann v. Surf Dweller Owners Ass'n, Inc.,
Case No. 2007-06-5970 (Chavis / Order Regarding Petition / January 31, 2008)

- Petitioner alleges a "vested right" to "developer installed privacy fences." Subsection 718.1255(1), Florida Statutes, excludes from the definition of "dispute" a "disagreement that primarily involves…title to any unit or common element." Therefore, disputes related to "vested rights" are not within the jurisdiction of this forum.

Palmetto Place at Mizner Park Condominium Assn v. Yurkin,

Case No. 2007-05-9739 (Lang / Order Taking Jurisdiction / March 3, 2008)

- Where petitioner sought reimbursement for its cost in hiring a company to dry out respondent's unit because respondent allegedly was negligent in setting off fire sprinkler in his unit, arbitrator initially lacked jurisdiction as there was no allegation that dry out was necessary to repair or maintain common elements, but arbitrator took jurisdiction after petitioner filed amended petition alleging damage to common elements. Under section 718.113(3), Florida Statutes, a unit owner is prohibited from doing anything in the unit that would adversely affect the safety or soundness of the common elements. Under section 718.111(5), Florida Statutes, the Association has a right of access to each unit to prevent damage to the common elements or to a unit or units. Under these statutes, the association has a right of access, in part, to prevent damage to the common elements or to a unit or units, and this means that in order to prevent damage, the association must be able to take action necessary to prevent damage after gaining access.

Burgundy O Ass'n., Inc. v. Libman,
Case No. 2007-05-1864 (Lang / Final Order of Dismissal / March 3, 2008)

- Petitioner was nclear whether person residing in unit was brother of unit owner, but alleged person was residing in unit alone, and therefore, was a "guest" residing in violation of condominium documents. Petitioner sought an order directing that unit owner not permit person to reside in unit when unit owner not in residence. Respondent alleged that person is brother of unit owner who has resided in unit since unit owner purchased unit and that unit owner splits her time between unit and Massachusetts. Ultimately, relief sought by Petitioner is eviction or removal, therefore no jurisdiction under section 718.1255 (1), Florida Statutes, where "tenant" has been broadly defined to include friends, family members, and other occupants whose rights to occupy a unit exist in absence of a formal lease or rental agreement.

Juno Beach Condo. Assn. v. Abood,
Case No. 2007-02-9469 (Lang / Order on Respondents' Motion to Dismiss and for Limited Discovery and Order Requiring Final Hearing Dates/ April 4, 2008)

- Arbitrator has jurisdiction in a dispute in 55 and older community where Petitioner alleges owner of unit does not meet age restriction and condominium documents require at least one person occupying unit must be 55 or older. Owner is not a tenant and issue is not one of title to unit, therefore dispute not barred from arbitration under section 718.1255(1), Florida Statutes.

Tomlinson v. The Meridan (Miami Beach) Condo. Ass'n, Inc.,
Case No. 2008-02-8245, (Grubbs / Final Order Dismissing Petition for Lack of Jurisdiction / July 31, 2008)

- Where the petitioner was not challenging the "authority of the board of directors" to "alter or add to a common area or element," but challenging the failure of the board to

alter or add to the common elements to eliminate noise in his unit, the petition for arbitration would be dismissed. Arbitration cases alleging that the association is failing to take proper action must fall within subsection 718.1255(1)(b), Florida Statutes, for the arbitrator to have jurisdiction. Under that subsection, cases alleging that the association failed to properly conduct elections, failed to give proper notice, failed to properly conduct meetings, or failed to allow inspection of official records are considered "disputes" that require a party to petition for non-binding arbitration prior to the institution of court litigation. The failure of the association to properly maintain the common elements or the association's failure to alter or add to the common elements are not "disputes" that come within the jurisdiction of the arbitrator.

Moot

Barrera v. Arlen House East Condo. Ass'n, Inc. and Gustavo Mire, President,
Case No. 2008-03-4515 (Earl / Final Order of Dismissal / July 7, 2008)

- Petitioner's claim that he was improperly removed from the board was rendered moot by his subsequent reelection to the board.

Not considered dispute

Pebble Springs Condominium Association of Bradenton, Inc. v. Alcorn,
Case No. 2007-04-7007 (Earl / Order on Request for Expedited Determination of Jurisdiction / August 30, 2007)

- Arbitrator lacked jurisdiction over action seeking the removal of a tenant.

Daytona Beach Club Condo. Ass'n, Inc. v. Miller,
Case No. 2007-03-6407 (Earl / Final Order of Dismissal / September 19, 2007).

- Where the condominium was operated as a hotel by a hotel firm and met the definition of a condominium resort as defined by chapter 509 of the Florida Statutes, the condominium was found to be a form of public lodging and not a residential condominium. Therefore, any disputes involving the condominium are not eligible for arbitration.

Masington v. Sunset Condor Condo. Ass'n, Inc. and Mendez,
Case No. 2007-05-2593 (Earl / Final Order of Dismissal / October 2, 2007)

- Petitioning unit owner sought to compel her upstairs neighbor (respondent) to install floor soundproofing insulation in accordance with the governing documents and also sought an order compelling the association to require neighbor to install soundproofing in accordance with the governing documents. Dispute dismissed for lack of jurisdiction since disputes alleging that the association has failed to enforce the governing documents and disputes between unit owners are not eligible for arbitration.

Stempien v. Melbourne Ocean Club Condo. Ass'n, Inc.,
Case No. 2007-03-3436 (Earl / Final Order of Dismissal / October 2, 2007)

- Where the condominium was operated as a hotel by a private hotel company, the condominium was not a residential condominium, and, therefore controversies involving the condominium were not eligible for arbitration.

Addeo v. The Strand Condo. Ass'n, Inc.,
Case No. 2007-04-7806 (Earl / Final Order of Dismissal / October 16, 2007)

- Where petitioner unit owners sought to recover damages for repairs to their unit and personal property alleging that their unit had suffered damage due to water intrusion as the result of the association's failure to maintain a common element planter and door, dispute was not eligible for arbitration since it primarily involved a claim for damages to a unit based upon the alleged failure of association to maintain the common elements or condominium property.

McGuiness v. 736 Island Way, Inc.,
Case No. 2007-04-4880 (Earl / Order on Request for Expedited Determination of Jurisdiction / October 18, 2007).

- Individuals filed a petition against a condominium association responsible for management of a neighboring condominium at which petitioners claimed to have an interest in a boat slip, but did not own a unit. The condominium in which petitioners owned a unit and the neighboring condominium had in the past been managed by a single association. However, since the respondent association no longer managed petitioners' condominium and since membership in the respondent association required ownership of unit in the condominium it managed, petitioners were found not to be members of the respondent association. The dispute was dismissed due to lack of jurisdiction because it did not involve an association and a current member of the association.

Majestic Gardens Condominium G Association, Inc., v. Motley,
Case No. 2007-05-1873 (Golen / Summary Final Order / October 25, 2007)

- The arbitrator found that the respondent, being bound by the association's governing documents as a unit owner, failed to submit an application and an application fee for the association's approval of the tenant prior to the association's initiation of this proceeding, and is therefore in violation of the association's governing documents. However, the arbitrator had no jurisdiction to order the removal of any tenant/occupant in respondent's unit.

Foxglove, Inc. and Wachtel v. Martinez,
Case No. 2007-06-2801(Earl / Final Order of Dismissal / November 21, 2007)

- Where the association and a unit owner filed a petition against another unit owner alleging that the respondent unit owner's air conditioning unit was leaking into the

condominium's common elements and petitioner unit owner's unit, case was dismissed because the arbitrator lacked jurisdiction over disputes between association members.

Anunziato v. Sebastian Lakes Condo. Ass'n, Inc.,
Case No. 2007-05-8879 (Earl / Order on Request for Expedited Determination of Jurisdiction / December 19, 2007)

- Unit owner alleged that the association had breached its fiduciary duty by failing to properly repair her unit's roof and by hiring an unlicensed contractor. Unit owner also sought reimbursement from association for damages to her unit caused by association's failure to repair the roof. Pursuant to section 718.1255(1), Fla. Stat., disputes involving breach of fiduciary duty by one or more members of the ssociation's board of directors and disputes primarily involving claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property are not eligible for arbitration.

Gimenez v. Pine Grove Condo. Ass'n,
Case No. 2008-00-9614 (Earl / Final Order of Dismissal / February 26, 2008)

- Arbitrator lacked jurisdiction over dispute alleging that unit owner's upstairs neighbor had installed tile in her unit in violation of the association's governing documents and that the association had failed to take action regarding the violation since allegations that the association had failed to enforce the condominium documents and disputes between or among unit owners were not eligible for arbitration.

Condominium Owners Ass'n of Morningside, Inc. v. Sisko,
Case No. 2007-06-2213 (Earl / Final Order of Dismissal / March 17, 2008).

- Where it became apparent that the only practical relief that would resolve the dispute would require the removal of the tenants, case was dismissed due to lack of jurisdiction.

Pine Ridge at Ft. Myers Village I Condo. Ass'n, Inc. v. McCullough,
Case No. 2008-02-0218 (Earl / Final Order of Dismissal / April 15, 2008)

- Dispute not eligible for arbitration where the association sought an order compelling respondent to remove underage occupants from his unit.

Barrera v. Arlen House East Condo. Ass'n, Inc. and Gustavo Mire, President,
Case No. 2008-03-4515 (Earl / Final Order of Dismissal / July 7, 2008)

- Only disputes between association and the members of the association are eligible for arbitration.

- Disputes alleging that association's president approved use of funds to pay for replacement and alteration of non-common element windows and to repair the inside of

units were not eligible for arbitration as the disputes necessarily involved a breach of fiduciary duty.

- Disputes alleging that association's president waived the association's reserves without proper approval and failed to pay association's annual fee with the Division were not within the arbitrator's jurisdiction.

- Allegation that the board's treasurer was also association's accountant was not eligible for arbitration to the extent that the allegation relies on a breach of fiduciary duty.

Cypress Palms Condo. Ass'n, Inc. v. Wyndham Vacation Resorts, Inc.,
Case No. 2008-02-6258 (Earl / Final Order of Dismissal / July 25, 2008)

- Case dismissed where the association attempted to challenge the manner in which it conducted its own election.

Conaghan v. Corinthian Gardens, Inc.,
Case No. 2008-04-1248 (Earl / Final Order of Dismissal / August 14, 2008)

Where unit owner sought reimbursement for the cost of repairing a burst common element sewer line and of water damage remediation, the dispute was not eligible for arbitration because section 718.1255(1), F.S., provides that disputes eligible for arbitration do not include claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property

Not ripe/bona fide dispute / live controversy

Pending court or administrative action / abatement / stay

Horvath and Zitron v. Hillsboro Light Towers, Inc.,
Case No. 2007-00-4274 (Lang / Final Order of Dismissal / Dec. 20, 2007)

- Where legal theories for cases pending in arbitration and circuit court were tailored to particular forum, arbitration case dismissed because both cases sought same damages, discovery sought was available in court, judicial economy would be served, and possibility of inconsistent judgments was avoided.

Relief granted or requested

Hillsboro Mile Tower, Inc. v. Wine,
Case No. 2007-02-6548 (Lang / Order on Respondent's Motion to Dismiss, Requiring Supplemental Information, and Denying Petitioner's Emergency Motion for Injunctive Relief / Oct. 22, 2007)

- Respondent asserted arbitrator lacked subject matter jurisdiction over a dispute relating to respondent's alleged agreement to obtain liability insurance to cover association against claims arising from respondent's boatlift, which was alleged to be

attached to association's common element seawall. Respondent claimed the dispute did not involve an alteration or addition to a common area or element. Issue was whether arbitrator had jurisdiction to enforce the alleged agreement. Such a dispute is not excluded under the exceptions to the governing statute and is a dispute between the association and the shareowner and involves the board's authority to require a shareowner to take an action involving the appurtenances to the share. Therefore, arbitrator had jurisdiction over the dispute.

- Respondent asserted petitioner failed to state a cause of action, because respondent never agreed to obtain a liability insurance policy covering the association. There was no document in the record signed by respondent wherein he agreed to obtain a liability insurance policy covering association. Case law holds that where there is an inconsistency in the general allegations of the complaint and the specific facts of the accompanying exhibit, the pleading fails to state a cause of action. However, petitioner given leave to amend.

- Petitioner sought emergency injunction requiring respondent to remove a floating dock allegedly attached to the common element seawall due an accident or incidents involving individuals accessing the dock. In order to obtain emergency relief under the rule, the moving party must establish all four of the required elements. Injunction must be denied if any one of the elements is not established.

Standing

John McGowan v. Unit Owners of Waters Edge Condominium,
Case No. 2007-06-8203 (Chavis / Order Striking Unidentified Parties and Order to Show Cause / December 27, 2007)

- Rule 61B-45.015(1), F.A.C., provides, in pertinent part, as follows, "[p]arties in proceedings before the arbitrator are unit owners, associations, and tenants to the extent provided in subsection 61B-45.013(5), F.A.C." Based on the style of the case, the arbitrator was unable to determine whether she has jurisdiction over the "Unit Owners of Waters Edge Condominium" for a dispute in this forum.

Easements

Elections/Vacancies

Candidate information sheet

Generally

John Tinney and Nick Lazzara v. The Grand Bellagio at Baywatch Association, Inc.
Case No. 2006-04-0900 (Chavis / Final Order / January 23, 2008)

- Petitioners allege that the instructions for the ballot used at the special meeting may have caused confusion among the unit owners. Association communicated with the unit owners concerning the proposals with a special meeting package which included, in

pertinent part, an explanation of the various leasing options, the exact wording of each of the proposed amendments and held special meetings, informal informational meetings, and sent e-mails. Accordingly, the unit owners had ample time and opportunity to clear up any confusion relating to the proposed four options.

Stern v. Playa Del Mar Ass'n, Inc.,
Case No. 2007-06-6957, (Earl / Order / May 5, 2008)

- The trustee of the trust that owns a unit is eligible to serve on the Association's board of directors.

Barrera v. Arlen House East Condo. Ass'n, Inc. and Gustavo Mire, President,
Case No. 2008-03-4515 (Earl / Final Order of Dismissal / July 7, 2008)

- Petitioner's claim that he was improperly removed from the board was rendered moot by his subsequent re-election to the board.

Cypress Palms Condo. Ass'n, Inc. v. Wyndham Vacation Resorts, Inc.,
Case No. 2008-02-6258 (Earl / Final Order of Dismissal / July 25, 2008)

- Case dismissed where the association attempted to challenge the manner in which it conducted its own election.

Master association

Notice of election

Term limitations

Voting certificates

John Tinney and Nick Lazzara v. The Grand Bellagio at Baywatch Association, Inc.
Case No. 2006-04-0900 (Chavis / Final Order / January 23, 2008)

- Both parties agreed that the voting certificate requirement had not been enforced prior to the challenged voting event. In prior cases, the association's failure to enforce voting certificates has estopped it from doing so because each failure was detrimentally relied upon by the owners or the association was deemed to have waived the right to enforce the requirement. In the case at hand, it has not been demonstrated that the unit owners have waived or should otherwise be estopped from raising an objection to the lack of voting certificates.

Estoppel (See also Selective Enforcement; Waiver)

Oak Park Villas Condo. Assn., Inc. v. Crisafulli,
Case No. 2006-04-4437 (Lang / Final Order / August 22, 2007)

- Unit owners did not submit plans for interior work on their unit or obtain board approval as required by the condominium documents. Reasonable to expect that if any of the board members who observed on many occasions the work the unit owners were doing in their unit objected to it, the board member or members would have raised the objection with the unit owners. Hearing no such objection, it was reasonable for the unit owners to complete the interior work as they did.

Montecito Palm Beach Condominium Association, Inc., v. D'Amico,
Case No. 2006-05-4182(Campbell / Summary Final Order /September 17, 2007)

- Unit owners installed marble floor with approval of developer and with active cooperation by the developer during condo conversion. After turnover of board to unit owner control, association estopped to enforce requirement of written approval for such alteration of unit.

Sunrise of Palm Beach Condominium Association, Inc. 1, v. Carlson,
Case No. 2006-02-9202 (Bembry / Final Order / March 4, 2008).

- Association is not estopped to exercise control over common element utility room that unit owner had been allowed to use for storage of personal property. Evidence that a single board member gave unwritten permission for the use cannot establish a representation of material fact upon which the unit owner could reasonably rely. Reliance would be unreasonable because approval would be required from entire association membership for amendment to declaration to terminate other unit owners' interests in common element.

The Admiral Owners Ass'n, Inc. v. Walker,
Case No. 2007-02-9645 and 2007-02-9649 (Earl / Final Order / April 8, 2008)

- Unit owners' argument that association acquiesced to installation of the shutters on the perimeter of their balcony on their unit by signing off on the approval application was rejected since the approval application did not state the location of the shutters. The approval must be considered in light of the governing documents which required the installation of hurricane screens on the penthouse units. The approval of the installation did not waive the requirement of hurricane screens. Thus, any approval of shutters would require that they be installed in such a manner as to also allow for hurricane screens. Additionally, association's property manager informed the unit owners that the shutters must be installed against the window wall. Therefore, the unit owners' conclusion that they could install hurricane shutters in lieu of screens was unreasonable.

Island Club Two, Inc., v. James Magnanti,
Case No. 2007-06-8211 (Campbell / Summary Final Order / May 13, 2008)

- Unit owner could not reasonably rely on letter from office manager relating a purported discussion of the directors which stated a policy that unit owners could make

whatever improvement and use whatever colors the owners wanted on exterior balconies and windows. Where statute and condominium declaration require 75% of owner votes for material alteration of common elements, board of directors could not adopt such a policy. Additionally, since informal representation from employee of association cannot represent board's position.

Evidence (See Arbitration-Evidence)

Fair Housing Act

Family (See also Fair Housing Act; Guest; Tenants)

Financial Reports/Financial Statements

Fines

Guest (See also Fair Housing Act; Family; Tenants)

Hurricane Shutters

The Admiral Owners Ass'n, Inc. v. Walker,
Case Nos. 2007-02-9645 and 2007-02-9649 (Earl / Final Order / April 8, 2008)

- Provision of declaration requiring only penthouse owners to install hurricane screens was valid as of some fundamental constitutional right.

4000 Island Boulevard Condominium Association, Inc., v. Bernard Weisman and Roberta Weisman,
Case No. 2008-00-0871 (Campbell / Summary Final Order / April 21, 2008)

- Declaration of condominium was amended to require individual unit owners to install hurricane protection shutters or impact resistant glass. Some units in 30-story building had fixed windows, the exterior of which was not accessible from the unit. Declaration provided that the interior and exterior of apertures, including sliding glass doors, windows, and skylights, were within the boundaries of the unit. Although all such apertures were within the boundaries of the unit, the Declaration also provided that the association will wash the exterior of inaccessible fixed windows. Unit owners argued they should not be directly responsible to install hurricane protection for the fixed windows. Section 718.113(5), F.S., and distinctive provisions of declaration authorize the association to place this burden of installation on unit owner.

Villa Regina Ass'n, Inc. v. John H. Faro and Maruchi Faro, husband and wife,
Case No. 2007-04-6030 (Lang / Summary Final Order / July 16, 2008)

- Where amendment to declaration required unit owners to install hurricane shutters or high impact glass at the unit owners sole cost and expense, respondents were ordered to install the shutters or glass at their expense.

Injunctive Type Relief (See Dispute-Relief granted)

Hillsboro Mile Tower, Inc. v. Wine,
Case No. 2007-02-6548 (Lang / Order on Respondent's Motion to Dismiss, Requiring Supplemental Information, and Denying Petitioner's Emergency Motion for Injunctive Relief / Oct. 22, 2007)

- Petitioner sought emergency injunction requiring respondent to remove a floating dock allegedly attached to the common element seawall due an accident or incidents involving individuals accessing the dock. In order to obtain emergency relief under the rule, the moving party must establish all four of the required elements. Injunction must be denied if any one of the elements is not established.

Insurance

Jurisdiction (See Dispute)

Laches (See also Estoppel; Waiver)

Lien

Marina

Meetings

Board meetings

Committee meetings

Emergency

Generally

Notice/agenda

Quorum

Ratification

Recall (See separate index on recall arbitration)

Unit owner meetings

Generally

Notice

Quorum

Recall (See separate index on recall arbitration)

Moot

Mortgagee

Nuisance

Official Records

Gary Griffith v. Punta Rassa Condominium Association, Inc.,
Case No. 2007-02-9651 (Campbell / Summary Final Order, September 26, 2007)

- Association ordered to pay Petitioner $500, as minimum damages pursuant to s. 718.111(12)(c), F.S. Association failed to make available records, including statutorily required financial reports, for more than a month after written request. No evidence to rebut statute's presumption that such failure was willful. Arbitration not improper where the petitioner had filed complaints with compliance section of DBPR and in small claims court. Compliance is a separate independent mechanism. Small claims action, abated to require arbitration, is sufficient written pre-arbitration notice.

Ronan v. Imperial Apartments Ass'n, Inc.,
Case No. 2007-00-4239 (Earl / Final Order / December 12, 2007)

- Unit owners' attorney sent a written request for access to association's official records to association's attorney whose representation was limited to the collection of an assessment. Since association's attorney forwarded the request to association's property manager and copy was also provided by mail to the association's registered agent, association was deemed to have been properly served with the request and required to respond to it.

- Where unit owners requested that association provide proof of insurance, association's argument that the request sought information, not access to records, was rejected since a reasonable person would interpret the request as seeking a document.

- Typically, an association does not have duty to mail or otherwise deliver copies of requested to records to its members. However, where the prior conduct of the parties demonstrated that it was routine for the association, through its management company, to respond to requests for records by providing copies and where the association had responded to the prior verbal requests of the unit owners by providing them copies via facsimile, if the association intended to establish a different, more formal policy for requesting access to records, it needed to do so by notifying the members of the change in policy or by informing unit owners of the new policy in response to requests for records and stating that the request was being rejected for failure to comply with the new policy.

Wanda Dipaola Stephen Rinko General Partnership v. Beach Terrace Ass'n, Inc.,
Case No. 2007-02-2785 (Chavis / Final Order / February 20, 2008)

- The general rule is that a unit owner has access to the official records of the association within five working days from the board's receipt of the owner's request, subject to reasonable rules adopted by the association, with three exceptions: attorney client privilege, unit transfer information, and medical records.

- Nothing in section 718.111(12), F.S., prohibits a unit owner or his authorized representative from making repeated requests for access to records. Although the statute does authorize the association to adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying of official records, such restrictions cannot unreasonably deny reasonable access to such records. Whether a particular rule is reasonable or unreasonable depends on the facts and circumstances of each individual case.

- Association adopted a records inspection and copying policy which limited the number of record requests to not more than two in a six month period. While the statute allows the association to adopt reasonable rules governing unit owners' access to records, it does not authorize an association to adopt rules that substantially erode or eliminate a unit owner's right of access.

- In the case at hand, association's counsel was clearly able to protect the "confidentiality" of records protected by attorney-client privilege through redaction and a delay of some five to seven months in providing the unit owner redacted copies was clearly unreasonable.

Fancher v. Lighthouse Terrace, Inc.,
Case No. 2008-02-6951, (Grubbs / Summary Final Order / July 22, 2008)

- Association's disregard of the statutory requirement that election records be retained for a year and its assertion that "no person in their right mind would object to the disposal" of a record "three months prior to its statutory disposal date," clearly established that the association knowingly disposed of the records and willfully failed to comply with section 719.104, Florida Statutes. Thus, the statutory penalty would be imposed.

Smith v. Water Bridge 2 Ass'n, Inc.
Case No. 2008-03-7428, (Grubbs / Summary Final Order / September 19, 2008)

- Allegation that petitioner, while president of the board, fired the accountant and management company, which resulted in certain records not being prepared in a timely manner, cannot excuse the failure of association to produce the records it did have in a timely manner and explain, in a timely manner, that the financial records for 2007 had not yet been prepared.

Parking/Parking Restrictions

Parties (See Arbitration-Parties)

Unit Owners Voting for Recall and Frank Cipolla v. Pearl Condominium Ass'n, Inc.,
Case No. 2008-03-0146, (Grubbs / Summary Final Order / July 25, 2008)

- When the Unit Owners Voting for Recall file a "reverse recall" pursuant to section 718.1255(1)(b), Florida Statutes, a unit owner must be named as a petitioner. Attorney's fees may be awarded to the association against the named petitioner should the association prevail. However, in this type of proceeding, even if a recall is not certified for some reason, the association would not prevail if the association was properly served, it failed to hold a recall meeting as required by statute, and it appears from the face of the agreement that majority of the unit owners signed the recall agreement.

Pets

The Treasury Condominium Association, Inc., v. Murolas,
Case No. 2007-03-9149 (Campbell / Summary Final Order / October 29, 2007)

- Photographs of dogs outside respondent's unit and of respondent's relatives with dogs on common elements; along with testimony of six witnesses that they saw the dogs walked twice a day; plus complaint of dog noise from neighbor below respondent's unit provides sufficient evidence respondent kept dog in unit in violation of declaration of condominium. Burden of proof on respondent as to weight of dog to qualify for exception to rule, where photographs and estimates of witnesses based on experience with dogs indicate dogs weigh over 25 pounds.

Champlain Towers South Condominium Association, Inc. v. LaFont,
Case No. 2006-03-0101 (Bembry / Final Order / March 5, 2008)

- Testimony of neighbors that they heard the sound of barking of a small dog coming from respondent's unit combined with testimony of association president that Respondent asked if he would have to remove his dog from the unit, were sufficient to prove that unit owner violated declaration by keeping a pet in his unit, despite the fact there was no testimony that a witness saw a dog.

Mediterreanea on Hillsboro Mile Condominium Assn. v. Verdino,
Case No. 2006-06-1482 (Lang / Summary Final Order / Jan. 17, 2008)

- Respondents alleged they lived with their dog at the unit since it was purchased in January 2002. Petition was filed in November 2006. Respondents asserted applicable statute of limitations was one year for specific performance. Held that five-year statute of limitations for action on a contract was applicable because where there is reasonable question as to which limitation period applies, resolution should be in favor of longer limitation period.

- Respondents alleged their dog was a service animal. Respondents must produce evidence in support of the assertion that their dog is a service animal and thereby entitled to exemption from the weight restriction in the condominium documents. Respondents asserted that they had health issues that would be exacerbated if the dog no longer resided with them because the dog provides relief for their condition. Dog found not to be a service animal because respondents did not allege or show that respondents have a condition for which a service animal is a medical necessity.

Barrera v. Arlen House East Condo. Ass'n, Inc. and Gustavo Mire, President,
Case No. 2008-03-4515 (Earl / Final Order of Dismissal / July 7, 2008)

- Allegation by petitioners that the association had failed to enforce the governing document's pet restriction was not eligible for arbitration.

Pre-Arbitration Notice

O'Hara v. Seaplace at Atlantic Beach Condo. Ass'n, Inc.,
Case No. 2008-01-9871 (Earl / Final Order of Dismissal / May 21, 2008)

- Pre-arbitration notice must be provided prior to the filing of the petition.

Barrera v. Arlen House East Condo. Ass'n, Inc. and Gustavo Mire, President,
Case no. 2008-03-4515 (Earl / Final Order of Dismissal / July 7, 2008)

- Petition was dismissed without prejudice where it failed to attach any proof of having provided pre-arbitration notice.

Widerman v. Harbor Beach Resort Condominium Ass'n,
Case No. 2008-04-1689, (Grubbs / Order Dismissing Petition with Leave to Amend / July 28, 2008)

- The pre-arbitration notice, as all other exhibits, provides support for facts alleged in the petition. It supports the allegation that the respondent was provided with sufficient pre-arbitration notice. The notice cannot be used to provide facts that are required to be alleged in the petition in numbered paragraphs.

The Towers Condo. Ass'n, Inc. v. Baxter,
Case No. 2008-04-6660 (Earl / Final Order of Dismissal / September 22, 2008)

- Where the association failed to name a necessary party and had not provided that person pre-arbitration with notice, the case was dismissed.

Prevailing Party (See separate index on attorney's fees cases)

Purchase Contracts

Quorum (See Meetings)

Ratification (See Meetings-Board meetings-Ratification)

Recall of Board Members (See Meetings-Board meetings-Recall) (See separate index on recall arbitration)

Recreation Leases

Relief Requested (See Dispute-Relief granted or requested)

Rental Restrictions/Rental Program (See Tenants-Rental Restrictions/Rental Program)

Reservation Agreements

Reserves

Restraints on Alienation (See Unit-Restraints on alienation)

Sanctions (See Arbitration-Sanctions)

Security Deposits (See Purchase Contracts)

Selective Enforcement (See also Estoppel; Waiver)

Island Club Two, Inc., v. James Magnanti,
Case No. 2007-06-8211 (Campbell / Summary Final Order / May 13, 2008)

- Defense of selective enforcement must show that application to unit owner is unfair or discriminatory. Selective enforcement as to color of shutters was not shown by isolated photograph appearing to show a violation at another unit where association proved it had sent letters to several other unit owners requiring shutter color to conform to the rule and the other owners had come into compliance.

Emerald Beach Apartments Condo., Inc. v. Jean,
Case No. 2008-00-7053 (Earl / Final Order / July 16, 2008)

- Where association objected to the unit owner's balcony enclosure, association found to have arbitrarily and selectively applied its policy of maintaining uniform building appearance because the balconies on the same side of the building as the unit owner's unit demonstrated five different treatments, including one very similar to unit owner's balcony enclosure. Additionally, the balcony enclosure rules envisioned a lack of uniformity to some extent by permitting various types of hurricane shutters and enclosures.

- Where the association's balcony enclosure rules permitted installation of glass panels such as installed by the unit owner, such installation must be done in

accordance with the Florida Building Code. Therefore, the rule must be read to allow installation that would comply with the code.

Standing (See Dispute-Standing)

State Action (See also Constitution-State action)

Tenants

Generally

Pine Ridge at Ft. Myers Village I Condo. Ass'n, Inc. v. McCullough,
Case No. 2008-02-0218 (Earl / Final Order of Dismissal / April 15, 2008)

- Dispute not eligible for arbitration where the association sought an order compelling respondent to remove underage occupants from his unit.

Nuisance (See also Nuisance)

Rental restriction/rental programs

Unauthorized tenant/association approval

Majestic Gardens Condominium G Association, Inc., v. Motley,
Case No. 2007-05-1873 (Golen / Summary Final Order / October 25, 2007)

- Respondent, though being bound by association's governing documents as a unit owner, failed to submit an application and an application fee for association's approval of the tenant prior to association's initiation of arbitration proceeding. Therefore, respondent was in violation of the association's governing documents. However, the arbitration has no jurisdiction to order the removal of any tenant/occupant in respondent's unit.

Violation of documents

Transfer of Control of Association (See Developer; Election/Vacancies)

Transfer Fees

Unit

Access to unit

MacArthur Beach & Racquet Club, Inc. v. McGowe,
Case No. 2007-05-1445 (Golen / Summary Final Order / October 23, 2007)

- Where association alleged it needed access to the unit to make plumbing repairs, the unit owner was required to provide association a key to her unit; however, association was required to give respond 24 hours notice of its intention to access the unit so that the respondent may monitor access.

Alteration to unit (See also Fair Housing Act)

Montecito Palm Beach Condominium Association, Inc., v. D'Amico,
Case No. 2006-05-4182 (Campbell / Summary Final Order / September 17, 2007)

- Unit owners installed marble floor with approval of developer and with active cooperation by the developer during condo conversion. After turnover of board to unit owner control, association estopped to enforce requirement of written approval for such alteration of unit.

Ocean Winds, Inc. v. Ashburn ,
Case No. 2008-02-8123, (Grubbs / Summary Final Order / August 4, 2008)

Unit owner's installation of a window air conditioner violated the declaration of condominium and also constituted a material alteration of the common elements. When a window air conditioner is placed in the window, the window, whether it is a common element or a part of the unit, is altered and the appearance of the building is changed.

Appurtenances; changes to the appurtenances; Section 718.110(4)

Stephen E. Raphael, and Marjorie Raphael v. Beach Pointe Condominium Association, Inc.,
Case No. 2007-00-1291 (Campbell / Final Order / January 22, 2008)

- Where declaration of condominium does not describe dividers between balconies of adjacent units on a continuous slab, but floor-to-ceiling "basket weave" aluminum barriers provided privacy to each unit's balcony for 25 years, change to different dividers was a material alteration. New dividers allowed unobstructed observation from adjacent balconies into petitioners' balcony and unit. Held that privacy was appurtenance to the unit and to its balcony that was materially altered by change of divider. Section 718.110(4), F.S., prohibits such a change unless approved by 100 percent of the owners, including petitioners.

Floor coverings

Generally; definition

Rental (See also Tenants)

Conquistador Landing Condominium, Inc. v Haas,
Case No. 2007-05-2617 (Golen / Final Order / December 27, 2007)

- Amendment to declaration which increased the minimum time allowed for rentals from one month to three months did not conflict with section 718.110(13), F.S. because amendment was adopted before the effective date of that subsection of the statute.

Repair

Restraints on alienation

Sale

Casa Sevilla Condominium Association, Inc., v. David J. Pirola and Scott Michaels, Case No. 2007-05-6668 (Campbell / Summary Final Order / January 28, 2008)

- Requirement of board authorization for sale or transfer of unit authorized by statutes and declaration of condominium. Board approved sale from one unit owner to two named buyers. Once board has approved sale, it cannot control the form or procedure by which they acquire record legal title. Approved unit owners cannot be required to request additional approval because transaction from previous owner deeded to only one person, who then deeded the unit to the two approved persons.

Unit Owner Meetings (See Meetings)

Voting Rights (See Developer-Transfer of control; Elections)

Waiver (See also Estoppel; Selective Enforcement)