

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Florida Land Sales, Condominiums and Mobile Homes HOA Arbitration Section

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FINAL ORDER INDEX **(Attorney's Fees, Election, and Recall Decisions)**

September 2007

Note: This supplement contains summaries of final and interim orders entered by division arbitrators in the arbitration program described by Section 720.311, Florida Statutes, from January 2005 through September 2007. The final order summaries are organized by dispute type and subject matter.

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ATTORNEY'S FEES SUBJECT MATTER

Costs

[Ritchie v. Spruce Creek Property Owners' Ass'n., Inc.,](#)

Arb. Case No. 2005-05-5064 (Mnookin / Final Order on Motion for Award of Costs / November 21, 2005)

- Where the arbitrator ordered the HOA to conduct a new election as requested by the homeowner, the homeowner was entitled, as the prevailing party, to an award of \$200 which was the filing fee for his petition for arbitration.

Defenses

Failure to timely file/request fees

General defenses

Excessive / Reasonable

[Palm Beach Polo, Inc. v. Southfields of Palm Beach Polo and Country Club Homeowners' Ass'n., Inc.](#)

Arb. Case No. 2005-05-7363 (Harnden / Final Order on Motion for Attorney's Fees and Costs / February 10, 2006)

- Requested rate of \$260.00 per hour for attorney practicing law in Florida for a little over four years found to be unreasonable; \$175.00 per hour found to be reasonable.
- The duration of a case may be considered when determining the reasonableness of hours expended by counsel.
- Where underlying proceeding consists of one single, non-complying issue (whether or not a director was properly seated on the board) and where the case required no evidentiary hearing, 28.7 hours expended by counsel is unreasonable.

Generally

[Fieldbrook Property Owners' Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2006-03-4636 (Harnden / Final Order on Request for Attorney's Fees and Costs / June 23, 2006)

- In recall arbitration instituted pursuant to section 720.303(10) and 720.311(1), F.S., homeowners voting for recall are not awarded attorney's fees.

[Matanzas Shores Owners' Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-05-2404 (Harnden / Summary Final Order Denying Attorney's Fees and Costs / February 27, 2006)

- An award of attorney's fees and costs is improper in a recall where the recall arbitration petition is filed by the homeowners' association in accordance with section 720.303(10), F.S.

Prevailing Party

[Beach Haven Cove Homeowners Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2006-00-1713 (Earl / Final Order on Request for Attorney's Fees and Costs / February 24, 2006)

- Whether prevailing party attorney's fees and costs are available to the homeowners voting in favor of the recall is questionable in light of the decision in *Planter's Walk Homeowner's Assoc. v. Homeowners Voting for Recall*, Arb. Case No. 2005-05-3848, Final Order on Attorney's Fees and Costs (February 20, 2006) which held that the prevailing party attorney's fees and costs are not available to an association in a recall arbitration brought pursuant to section 720.303(10) and 720.311(1), F.S. However, even if prevailing party attorney's fees and costs are available to the homeowners, they are not the prevailing party in this matter since the dispute was not rendered moot by the voluntary action of the association, but rather by the association's annual election which was held as required by the association's controlling documents.

ELECTION DISPUTES SUBJECT MATTER

Arbitration

Affirmative defenses

Evidence

Generally

Jurisdiction (See [Dispute-jurisdiction](#))

Misarbitration

Parties (See also [Dispute-Standing](#))

[Fairway Club Homeowners Ass'n., Inc. v. Russo.](#)

Arb. Case No. 2006-01-8280 (Scheuerman / Order Requiring Response / May 11, 2006)

- Where the association conducted an election and announced the vote, but immediately after the election meeting questioned the validity of certain of the ballots and ultimately filed a petition for arbitration seeking to challenge those votes naming as respondents those candidates receiving the highest number of votes, the arbitrator entered an order requiring the petitioning association to show good cause why the petition should not be dismissed. If the named respondents received the highest number of votes and the election was conducted and concluded, the old board was no longer in authority and the named respondents constituted the current board. If the former board members seek to challenge the conduct of the election, they must file a petition for arbitration in their individual capacities.

Prevailing party ([See separate heading on attorney's fees cases](#))

Sanction

Dispute

Considered Dispute

Jurisdiction

Not Considered Dispute

[Busby v. Farinhas.](#)

Arb. Case No. 2005-05-2382 (Scheuerman / Final Order on Request for Determination of Jurisdiction / October 21, 2005)

- Arbitrator lacked jurisdiction to arbitrate dispute where one homeowner sued another homeowner alleging that the owner had reconstructed a boat dock and lift without approval of the city or association board. The dispute does not concern recall or an election, and the dispute, accordingly, could not be arbitrated pursuant to section 720.311, Florida Statutes.

Standing

Developer

Disclosure

Exemptions (See also Declaration-[Exemptions](#))

Filing

Generally

Transfer of control (See also [Elections/Vacancies](#))

Elections/Vacancies

Candidate information sheet

Generally

[Fairway Club Homeowners Ass'n., Inc. v. Russo.](#)

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[Karmatz v. Gulf Harbors Woodlands Ass'n., Inc.,](#)

Arb. Case No. 2005-06-3659 (Scheuerman / Summary Final Order / July 31, 2006)

- Where the bylaws required elections to be conducted by written ballot, the association violated its documents by holding an election by electronic voting machine. However, the arbitrator did not require the conduct of a new election, as there were no allegations that the failure to follow the documents tainted or compromised the outcome

of the election. There was no indication that the will of the electorate had been thwarted.

- Where the board filled a vacancy on the board with a homeowner who was not a candidate in the past election, the bylaws requiring that interim vacancies be filled by the unsuccessful candidates at the last election were violated. The appointment was vacated.
- Where the articles of incorporation made a passing reference to the homeowners electing both officers and directors but the bylaws only set forth procedures for the homeowners to elect board members, and provided further that the board shall select officers, the arbitrator was unwilling to interpret the articles to require the election of officers.

[Yocum v. Harbour Oaks Homeowners Ass'n., Inc.](#)

Arb. Case No. 2007-00-8945 (Campbell / Final Order of Dismissal / April 10, 2007)

- As to a contested election, any relief provided by arbitration is limited to ordering a new election, in accordance with Chapter 720, Florida Statutes, and the association's governing documents. The arbitrator does not have the authority to declare all board positions vacant, or mandate extra procedural requirements that are not provided for in the association's governing documents, despite petitioner's request for an order granting that relief.

Master association

Notice of election

Term limitations

[Castro v. Pine Island Bay Homeowner Ass'n., Inc.](#)

Arb. Case No. 2006-04-5179 (Earl / Final Order of Dismissal / February 5, 2007)

- The petitioners claim that the association's controlling documents only permit members of the board of directors to serve a single one-year term and prohibit a director from being elected to a subsequent term. Petitioners seek removal of such board members and seek an order to enjoin members from seeking election to the board after their one-year term has expired. The petition fails to plead facts demonstrating that the petitioners are entitled to any relief regarding the claim that directors are serving more than one term. The petitioners have failed to plead sufficient facts that demonstrate that they are entitled to any relief and the petition is dismissed.

Vacancies

[Karmatz v. Gulf Harbors Woodlands Ass'n., Inc.](#)

Arb. Case No. 2005-06-3659 (Scheuerman / Summary Final Order / July 31, 2006)

- Where the board filled a vacancy on the board with a homeowner who was not a candidate in the past election, the bylaws requiring that interim vacancies be filled by the unsuccessful candidates at the last election were violated. The appointment was vacated.

[Verjano v. Marbella Park Homeowners Ass'n., Inc.](#)

Arb. Case No. 2006-02-1201 (Scheuerman / Final Order / August 25, 2006)

- Where the association adjourned its election meeting prematurely and refused to recognize a late-attending unit owner who had a large number of proxies, the association was given the option of either holding a new election or appointing the owner to a vacancy on the board.

Voting certificates

Voting rights

Governing Documents

Amendments

Covenants/restrictions

Exemptions

Generally

Interpretation

[Karmatz v. Gulf Harbors Woodlands Ass'n., Inc.](#)

Arb. Case No. 2005-06-3659 (Scheuerman / Summary Final Order / July 31, 2006)

- Where the articles of incorporation made a passing reference to the homeowners electing both officers and directors but the bylaws only set forth procedures for the homeowners to elect board members, and provided further that the board shall select officers, the arbitrator was unwilling to interpret the articles to require the election of officers.

Validity

Meetings

Board meetings

Committee meetings

Emergency

Generally

Notice/agenda

Quorum

[Verjano v. Marbella Park Homeowners Ass'n., Inc.](#)

Arb. Case No. 2006-02-1201 (Scheuerman / Final Order / August 25, 2006)

- Homeowners' association was required to wait a reasonable time after the time noticed for the beginning of the annual election before it announced that no quorum existed and adjourned the meeting. The association adjourned the meeting between 5 and 10 minutes after it had commenced.

Ratification

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

RECALL DISPUTES SUBJECT MATTER

Arbitration Procedure

Authority to file petition

[Robbins Rest Homeowners Association, Inc. v. Homeowners Voting for Recall.](#)

Arb. Case No. 2005-06-2675 (Grubbs / Summary Final Order on Petition for Recall Arbitration / January 19, 2006)

- The petition was filed by the association named, individually, the forty homeowners who signed the alleged recall agreement. However, in recall arbitration, it is the group of unit owners, collectively, that is to be named as the sole respondent in accordance with section 720.303(10)(d), Florida Statutes. Therefore, the style of the case would be corrected to reflect the appropriate respondent.

Failure to comply with 61B-80 / Order of the arbitrator

Generally

[Sandpointe Townhouse Owner's Ass'n., Inc. v. Homeowners Voting for Recall.](#)

Arb. Case No. 2006-00-3035 (Harnden / Summary Final Order / April 24, 2006)

- Where a second, corrective recall petition attempting to recall the same board members as the pending recall arbitration has been served on the board, and the parties agree that the first recall attempt is flawed and should be dismissed, a summary final order in the first, pending recall is proper.

[Townhomes Neighborhood v. Homeowners Voting for Recall.](#)

Arb. Case No. 2006-02-3783 (Scheuerman / Summary Final Order / July 12, 2006)

- Where the community association filed its petition for recall arbitration and named as co-petitioners five member neighborhoods, the neighborhood which were not operated as corporations or sub-associations had no legal identity and could not be named as parties. Moreover, it was intuitive that the community association had standing to initiate legal proceedings on behalf of the neighborhoods.

Withdrawal of petition / Withdrawal of written agreement

[The Landing at Forest Lake Homeowners Association, Inc. v. Homeowners Voting for Recall.](#)

Arb. Case No. 2006-02-2618 (Earl / Summary Final Order / May 16, 2006)

- The homeowners representative's notice of intent to withdraw the written recall agreement was treated as a confession of error and the respondent was considered not to dispute the association's reasons for rejecting the recall.

Attorney's Fees / Costs

Board's Failure to Certify Recall

Failure to date recall agreements / Failure of agreements to be executed within a finite period of time

[Imagination Farms Community Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2007-01-6587 (Campbell / Summary Final Order / April 12, 2007)

- Section 720.303(10)(b)(3), Florida Statutes, provides that a written ballot is valid for 120 days after it has been signed by an association member. The operative date for determination of the validity is the date on which it is served upon the board, not the date of the meeting to determine whether to certify the ballot.

[Lakeforest at St. Lucie Homeowners' Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2004-05-5982 (Harnden / Summary Final Order / January 31, 2005)

- The failure of the recall agreement to include a date upon which the agreement was signed and the failure to identify a representative of the homeowners are not fatal flaws in the recall effort, but could be considered along with all other defects in determining whether the agreement achieved substantial compliance with the requirements of the rules and statute.

Failure to obtain a majority of voting interests / Failure to properly calculate a majority of voting interests

[Lake Charleston Maintenance Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-00-0387 (Harnden / Summary Final Order / January 25, 2005 and [Amended Summary Final Order and Response to Petitioner's Unopposed Motion for Clarification](#) / February 9, 2005)

- Where the board received well in excess of a majority number of ballots in favor of recall, and declined to certify the recall based on information that some of the owners may have provided a rescission of their recall ballots to a board member not in attendance at the board meeting, such objection was speculative and uncertain, and was rejected by the arbitrator. Pursuant to section 720.303(10)(h), F.S., the minutes of the board meeting must identify the parcel number for each ballot rejected and the specific reason for such rejection. Additionally, since there was no evidence that any rescissions were delivered to the board prior to service of the recall ballots on the board, any such rescissions were invalid.
- Where the owners sought to recall a majority of the board, the fact that one of the board members subject to the recall sold his residence and moved from the community does not recast the recall effort into a recall for less than a majority of the board members.

Failure to properly serve written agreements on the board

[Bayside Key Homeowners Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-05-7957 (Grubbs / Summary Final Order on Petition for Recall Arbitration / January 24, 2006)

- Where recall agreement was served on the property manager at the association's management company, whose principal had attempted to resign as the association's registered agent on the same day the recall agreement was served and the association had been in the process of terminating the management company, service of the recall agreement on the property management was service on the association in accordance with rule 61B-81.003(1)(g), F.A.C. Further, there were no allegations in the minutes or the petition for arbitration stating that the management company had refused to deliver the recall agreement to the board.

[Camelot Homeowners' Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-06-0136 (Earl / Summary Final Order / December 1, 2005)

- Where there is no dispute as to when the association received the recall agreement, the method of delivery is of no significance, as the law only requires formal service in order to determine exactly when the agreement was received.
- Delivery by United States Postal Service Express Mail with the delivery record indicating that it was received by the association is equivalent to certified mail.

[Lakeforest at St. Lucie Homeowners' Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2004-05-5982 (Harnden / Summary Final Order / January 31, 2005)

- Service of the recall agreements on the board via courier is sufficient service under the statute.
- Where initial service of the recall agreements was contested by the board, and where the arbitrator ultimately determined that the initial service was valid, the fact that the board failed to call and hold its certification meeting within 5 days of the contested service date would not lead to automatic certification by operation of statute where the recall agreement was *void ab initio*.

Generally

[Bayside Key Homeowners Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-05-7957 (Grubbs / Summary Final Order on Petition for Recall Arbitration / January 24, 2006)

- At the board meeting, the board was "concerned about the accuracy of the ballots and referred them to the Association's attorney for review." The board cannot reject a recall agreement because it has "concerns" about the validity of the ballots and then assign the task of determining what the concerns are to an attorney or property manager.

[Lakeforest at St. Lucie Homeowners' Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2004-05-5982 (Harnden / Summary Final Order / January 31, 2005)

- Objections to a written recall agreement not identified in the minutes of the board meeting at which the board decided not to certify the recall could not be considered by the arbitrator in deciding whether to certify the recall.

[Robbins Rest Homeowners Association, Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-06-2675 (Grubbs / Summary Final Order on Petition for Recall Arbitration / January 19, 2006)

- Where the “recall agreement” was served on November 17, 2005, and the cover letter identified the enclosed petition as a recall agreement, but the enclosed petition with the homeowners’ signatures was entitled “Petition to Declare All Director Positions...Open for Election” and referred to electing all the directors at the next election on January 6, 2006, “regardless of current term obligations,” it did not appear that the “recall agreement” was actually intended to be a recall agreement at all, but rather a petition requesting a change in the terms of the board members so that all the board seats would be up for election at the next meeting. The petition could not be converted into a recall agreement by a cover letter; nevertheless, due to the cover letter, the board wisely chose to consider the document as a recall agreement and then rejected it because it did not substantially comply with the requirements of rule 61B-81.003(1), F.A.C.

[Townhomes Neighborhood v. Homeowners Voting for Recall,](#)

Arb. Case No. 2006-02-3783 (Scheuerman / Summary Final Order / July 12, 2006)

- Where the board of a community association is composed of one member from each of five neighborhoods, the recall effort was invalid where the homeowners voted to recall various board members on the community association board without regard to whether the particular board member sought to be recalled was voted onto the board by his particular neighborhood, such that members of one neighborhood voted to recall the representative of a different neighborhood. Under Chapter 720, F.S., as well as the rules adopted by the Division, only that class of members entitled to select a board member may vote to recall the board member.

Home owner delinquent in assessment

Home owner meeting to recall failed to comply with 61B-81.002

Generally

[Tiituswoods Homeowner's Ass'n., Inc. v. Homeowners Voting for Recall,](#)

2007-04-4228 (Campbell / Summary Final Order / September 11, 2007)

- Section 720.303(10), Florida Statutes, does not provide for recall by special meeting in homeowners’ associations unless governing documents specifically so provide. General provision allowing special meeting is not specific enough.

- Proxies not allowed where governing homeowners' documents require voice vote, in person, at membership meeting.

Presiding officer

Quorum

Illegible or incorrect signatures / Failure to print name

Misleading information given to voters / Fraud

Pre-marked ballots

Proxy

[McNeil v. Heathgate-Sunflower Homeowners Ass'n., Inc.,](#)

Arb. Case No. 2006-01-7244 (Campbell / Summary Final Order / February 12, 2007)

- A homeowner may authorize a proxy to use the homeowner's vote for whomever the proxy chooses; leaving check boxes for the candidate blank does not invalidate the proxy.

[Tituswoods Homeowner's Ass'n., Inc. v. Homeowners Voting for Recall,](#)

2007-04-4228 (Campbell / Summary Final Order / September 11, 2007)

- Proxies not allowed where governing homeowners' documents require voice vote, in person, at membership meeting.

Qualifications of replacement candidates / Replacement candidates not properly elected (See also, [Replacement Candidates](#))

Representative

Vote cast by unauthorized person

[Gemini VII Townhouse Association, Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2006-01-3574 (Harnden / Summary Final Order / April 25, 2006)

- Where ballot is unsigned, board has properly rejected as the ballot is not properly executed and thus is invalid. A ballot is properly rejected by the board as invalid where individual who is not record owner asserts his authority to vote as attorney in fact, yet failed to file the power of attorney instrument with the board and homeowners failed to include a copy when serving recall agreement on the board.

[Lakeforest at St. Lucie Homeowners' Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2004-05-5982 (Harnden / Summary Final Order / January 31, 2005)

- The failure of the recall agreement to provide a statement that the person signing the agreement represents that he or she is authorized to sign does not render the agreement invalid when considered alone.

Power of attorney

Proxy

Trusts / Trustee

Voting certificate

Vote cast improperly

Vote withdrawn / Rescission / Added after service of petition

[Lake Charleston Maintenance Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-00-0387 (Harnden / Summary Final Order / January 25, 2005)

- Where the board received well in excess of a majority number of ballots in favor of recall, and declined to certify the recall based on information that some of the owners may have provided a rescission of their recall ballots to a board member not in attendance at the board meeting, such objection was speculative and uncertain, and was rejected by the arbitrator. Pursuant to section 720.303(10)(h), F.S., the minutes of the board meeting must identify the parcel number for each ballot rejected and the specific reason for such rejection. Additionally, since there was no evidence that any rescissions were delivered to the board prior to service of the recall ballots on the board, any such rescissions were invalid.
- Where the owners sought to recall a majority of the board, the fact that one of the board members subject to the recall sold his residence and moved from the community does not recast the recall effort into a recall for less than a majority of the board members.

Written agreement form did not substantially comply with 61B-81.003(1)

[Robbins Rest Homeowners Association, Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-06-2675 (Grubbs / Summary Final Order on Petition for Recall Arbitration / January 19, 2006)

- Where the "recall agreement" was served on November 17, 2005, and the cover letter identified the enclosed petition as a recall agreement, but the enclosed petition with the homeowners' signatures was entitled "Petition to Declare All Director Positions...Open for Election" and referred to electing all the directors at the next election on January 6, 2006, "regardless of current term obligations," it did not appear that the "recall agreement" was actually intended to be a recall agreement at all, but rather a petition requesting a change in the terms of the board members so that all the board seats would be up for election at the next meeting. The petition could not be converted into a recall agreement by a cover letter; nevertheless, due to the cover letter,

the board wisely chose to consider the document as a recall agreement and then rejected it because it did not substantially comply with the requirements of rule 61B-81.003(1), F.A.C.

[Westwoods Property Owner's Ass'n., v. Homeowners Voting for Recall,](#)

Arb. Case No. 2006-00-7908 (Harnden / Summary Final Order / April 4, 2006)

- Where the document signed by homeowners attempting to recall more than one board member does not individually list the board members and provide separate recall/retain spaces in order to afford each voter the opportunity to either retain or recall that board member, the board's decision not to certify the recall because it fails to substantially comply with rule 61B-81.003, F.A.C., shall be affirmed.

Recall / Retain lines

[Avalon Master Homeowner Ass'n., Inc. v. Unit Owners of Avalon Master Homeowner Ass'n., Inc.,](#)

Arb. Case No. 2005-05-0316 (Mnookin / Summary Final Order / November 3, 2005)

- Ballots that were pre-marked and then presented to the homeowners for signing were void ab initio.

[Westwoods Property Owner's Ass'n., v. Homeowners Voting for Recall,](#)

Arb. Case No. 2006-00-7908 (Harnden / Summary Final Order / April 4, 2006)

- Where the document signed by homeowners attempting to recall more than one board member does not individually list the board members and provide separate recall/retain spaces in order to afford each voter the opportunity to either retain or recall that board member, the board's decision not to certify the recall because it fails to substantially comply with rule 61B-81.003, F.A.C., shall be affirmed.

Written agreement held to be defective

[Lakeforest at St. Lucie Homeowners' Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2004-05-5982 (Harnden / Summary Final Order / January 31, 2005)

- Where the form recall ballot used by the owners seeking recall failed to provide a signature line for the homeowners signing the recall agreement, but instead merely contained columns for the name and address of the voter, the recall ballot was fatally flawed even where some of the owners may have actually signed their names to the form. The requirement of a signature is self-evident.
- The failure of the recall agreement to include a date upon which the agreement was signed and the failure to identify a representative of the homeowners are not fatal flaws in the recall effort, but could be considered along with all other defects in determining whether the agreement achieved substantial compliance with the requirements of the rules and statute.

[Robbins Rest Homeowners Association, Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-06-2675 (Grubbs / Summary Final Order on Petition for Recall Arbitration / January 19, 2006)

- Where the “recall agreement” was served on November 17, 2005, and the cover letter identified the enclosed petition as a recall agreement, but the enclosed petition with the homeowners’ signatures was entitled “Petition to Declare All Director Positions...Open for Election” and referred to electing all the directors at the next election on January 6, 2006, “regardless of current term obligations,” it did not appear that the “recall agreement” was actually intended to be a recall agreement at all, but rather a petition requesting a change in the terms of the board members so that all the board seats would be up for election at the next meeting. The petition could not be converted into a recall agreement by a cover letter; nevertheless, due to the cover letter, the board wisely chose to consider the document as a recall agreement and then rejected it because it did not substantially comply with the requirements of rule 61B-81.003(1), F.A.C.

[The Terraces at North Pointe Homeowner’s Ass’n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2006-01-2357 (Grubbs / Final Order / April 24, 2006)

- Where the recall agreement failed to state the name of the board member sought to be removed, and only stated that it was to “remove the current Terraces HOA President – January 29, 2006,” the agreement failed to comply with the first requirement of rule 61B-81.003, F.A.C., that the agreement “list by name each director sought to be recall.” Here, not only was the name of the director omitted, but also it was not clear that the homeowners wanted the president recalled from the board or just removed as the president of the association. Someone might not be a good president, and the homeowner’s might only wish to have him or her removed from that office. The “recall agreement” could have been interpreted by the persons who signed it as a petition to the board to remove the president from office, rather than to recall him or her from the board. Therefore, the agreement cannot be considered a valid recall agreement.

[Westwoods Property Owner’s Ass’n., v. Homeowners Voting for Recall,](#)

Arb. Case No. 2006-00-7908 (Harnden / Summary Final Order / April 4, 2006)

- Where the document signed by homeowners attempting to recall more than one board member does not individually list the board members and provide separate recall/retain spaces in order to afford each voter the opportunity to either retain or recall that board member, the board’s decision not to certify the recall because it fails to substantially comply with rule 61B-81.003, F.A.C., shall be affirmed.

Written agreement held to substantially comply

Class Voting

[The Ridges Maintenance Association, Inc. v. Homeowners Voting For Recall,](#)

Arb. Case No. 2007-03-6986 (Campbell / Summary Final Order / August 27, 2007)

- In HOA consisting of 13 neighborhoods, governing documents provide for election of “voting members” by each neighborhood separately; then the voting members elect a seven-member board of directors. Recall sought as to five directors by written ballots signed by homeowners. Board rejected all ballots on the ground that when directors are chosen by classes of voters, only the voters within a class may seek to recall the director representing the class. Board reasoned that only voting members could recall directors - not homeowners through at-large ballots. Held that because amended articles of incorporation allowed directors to appoint a replacement-voting member for a neighborhood, who did not reside in the neighborhood, board’s position would result in disenfranchisement of homeowners in a neighborhood which did not select its voting member. That result cannot stand up to the intent of the Florida Legislature to provide a right to recall to homeowners “regardless of any provision to the contrary in the governing documents.” S. 720.303(10) F.S. Under the statute that right must be allowed to be exercised through direct written ballot. Recall certified.

Conflict of Interest

Corporations / Chapter 617, Florida Statutes

Developer

Dispute Moot (i.e., election held after recall, recalled director resigns)

[Avalon Master Homeowner Ass’n., Inc. v. Homeowners of Avalon Master Homeowner Ass’n., Inc.,](#)

Arb. Case No. 2005-05-2493 consolidated with 2005-05-2614 (Mnookin / Summary Final Order / December 20, 2005)

- Where in the course of a pending recall arbitration proceeding, a regular election was duly noticed but not held due to the lack of a quorum, the recall dispute was not moot. Although the owners had a chance to unseat the incumbent board at the election if a quorum had attended, the recall dispute would only become moot upon the conduct of an actual election.

[Lakebridge Homeowners’ Ass’n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2006-00-2431 (Harnden / Final Order Dismissing Petition for Recall Arbitration / February 13, 2006)

- During the pendency of a recall proceeding, the holding of an annual election of the board renders the recall petition moot. Challenge to the election must be raised in a separate petition.

[Palma Vista at Ponte Verde Homeowners’ Ass’n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2006-00-5360 (Earl / Final Order of Dismissal / April 14, 2006)

- Where the director subject to the recall effort is voted out of office during the pendency of the recall arbitration case, the recall dispute is rendered moot.

[Tamerlane Homeowners' Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-06-0188 (Bembry / Final Order of Dismissal / December 22, 2005)

- Final order of dismissal was issued after the respondent filed a notice that it did not wish to contest the association's petition for recall arbitration due the respondent's decision not to pursue the recall of the subject board members.

[Windward Property Owners Ass'n., Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2007-04-6085 (Earl / Final Order of Dismissal / September 7, 2007)

- Case dismissed as moot where the directors subject to the recall resigned from the board, and the replacement candidates named in the written recall agreement were appointed to fill the vacant positions.

Effect of Recall

Jurisdiction

Power of Attorney

Proxy

Reconsideration / Rehearing

Replacement Candidates (See also, [Board's Failure to Certify Recall](#))

[Island Cove Villas at Meadow Woods Homeowners Ass'n., Inc. v. Owners Voting for Recall,](#)

Arb. Case No. 2005-01-2789 (Mnookin / Amended Final Order / November 9, 2005)

- Where 2 of 3 of the replacement candidates named by the owners voting for recall became ineligible to sit on the board after the final order certifying the recall and appointing them to office (one sold his unit and another became delinquent in assessments), the arbitrator ordered the homeowner representative to compose a ballot and conduct an election for new replacement candidates.

Standing

[Robbins Rest Homeowners Association, Inc. v. Homeowners Voting for Recall,](#)

Arb. Case No. 2005-06-2675 (Grubbs / Summary Final Order on Petition for Recall Arbitration / January 19, 2006)

- Although rule 61B-80.106(2), F.A.C., states that "every homeowner who voted in favor of recall and who did not revoke his or her vote prior to service on the board of the recall agreements shall be deemed to be a party in the recall arbitration proceeding," the homeowners are not parties to the arbitration proceeding individually. The

homeowners, as a group, have a representative who is served with the pleadings and is authorized to respond on behalf of the group. The homeowners are not considered individual parties. None of the homeowners voting for recall may file an individual response to the petition, none may file a motion, or any other paper with the arbitrator, and none can confess error or withdraw his or her individual ballot.

Time Limits / Legitimate Justification (See also, Failure to timely file petition)

Home Owner Defenses to Petition for Arbitration

Division advice

Failure of association to previously enforce voting certificate requirement

Failure of minutes to include specific reasons for not certifying

[Avalon Master Homeowner Ass'n., Inc. v. Homeowners of Avalon Master Homeowner Ass'n., Inc.](#)

Arb. Case No. 2005-05-2493 consolidated with 2005-05-2614 (Mnookin / Summary Final Order / December 20, 2005)

- Where the minutes of the board meeting to decide whether to certify the recall merely stated that a number of ballots were “altered” and did not state what parts were altered or in what manner, the minutes failed to comply with rule 61B-81.00(3).

[Bayside Key Homeowners Ass'n., Inc. v. Homeowners Voting for Recall.](#)

Arb. Case No. 2005-05-7957 (Grubbs / Summary Final Order on Petition for Recall Arbitration / January 24, 2006)

- The minutes of the board meeting stated that the recall was rejected because service was improper and because a sufficient number of persons had revoked their votes to recall. However, the petition for arbitration alleged that eight individual ballots were rejected because they did not contain the signature of an owner based on the unit owner roster. During the case management conference, it was noted that the minutes did not support the rejection of the eight ballots; however, the petitioner was given an opportunity to file video or audio tape of the board meeting to support the allegations regarding invalid ballots. Petitioner, instead, filed an affidavit of the new property manager that raised a number of new issues, but failed to allege that the eight ballots in question were discussed at the board meeting. Because a tape of the meeting was not filed as required, the reasons for rejection of the agreement not stated in the minutes were not considered.

- The minutes of the recall board meeting must be specific. Because the minutes of the board meeting did not establish that the board gave any legitimate reasons for the refusal to certify the recall, the board's action in rejecting the recall could not be sustained unless the petitioner could establish that the specific reasons for rejecting the identifiable ballots specified in the petition were articulated at the board meeting, but were simply omitted by the secretary of the association in the minutes. Unless the

board has indicated the reason a specific ballot is being rejected or cited a reason for rejection that is clear from the face of the ballots, the petitioner cannot argue that the ballot is invalid.

- At the board meeting, the board was “concerned about the accuracy of the ballots and referred them to the Association’s attorney for review.” The board cannot reject a recall agreement because it has “concerns” about the validity of the ballots and then assign the task of determining what the concerns are to an attorney or property manager.

Failure to give proper notice of board meeting

[Castro v. Pine Island Bay Homeowner Ass’n., Inc.](#)

Arb. Case No. 2006-04-5179 (Earl / Final Order of Dismissal / February 5, 2007)

- Where petitioners failed to plead sufficient facts demonstrating entitlement to any relief regarding the recall for the board’s failure to duly notice and properly conduct a meeting to consider the recall, petitioner’s claim and their related requests for relief were dismissed.

[Island Cove Villas at Meadow Woods Homeowners Ass’n., Inc. v. Owners Voting for Recall.](#)

Arb. Case No. 2005-01-2789 (Mnookin / Final Order / August 23, 2005)

- Where the board failed to give 48 hours notice of its meeting where the recall was to be considered, and where the recall petition signed by the owners substantially complied with the statute and rules and contained at least a majority vote of the membership, the board’s failure to comply with the mandatory notice requirement of the statute resulted in the arbitrator certifying the recall.

Failure to have a quorum at board meeting

Failure to hold or timely hold board meeting

[Camelot Homeowners’ Ass’n., Inc. v. Homeowners Voting for Recall.](#)

Arb. Case No. 2005-06-0136 (Earl / Summary Final Order / December 1, 2005)

- Recall was certified where association failed to timely hold its meeting to consider the recall and its only explanation for failing do so was that the written recall agreement was hand-delivered which it contended did comply with the service requirements of section 720.303(10)(b)1, Florida Statutes which provides for service by certified mail or personal service in the manner authorized by Chapter 48 and the Florida Rules of Civil Procedure. This defense was rejected since the association did not dispute it had received the recall agreement and where there is no dispute as to when the association received the recall agreement.

[Townhomes Neighborhood v. Homeowners Voting for Recall.](#)

Arb. Case No. 2006-02-3783 (Scheuerman / Summary Final Order / July 12, 2006)

- Where the board of the community association failed to properly call and hold a board meeting of the community association, but instead appeared at meetings of the member neighborhoods, the failure of the community association to call and hold a meeting did not operate to validate a recall effort that was void from its inception.

Failure to timely file petition (see also, [Time Limits/Legitimate Justification](#))

Generally

No Legitimate Reasons for Failing to Certify

Ratification

Vacancies