DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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REGULAR FINAL ORDER INDEX SUPPLEMENT

June 2006

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 January 1, 2006 through June 30, 2006. 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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Case No. 2005-05-1074 (Bembry / Summary Final Order / January 25, 2006)

- Where unit owner failed to submit an application and requisite application fee for tenant approval to the association in accordance with the association's declaration of condominium, unit owner was ordered to submit the application and application fee.

Affirmative defenses

Boca South Assn., Inc. v. Engesath,
Case No. 2005-00-7896 (Scheuerman / Order Following Status Conference / May 20, 2005)

- Where in earlier litigation, certain rental rules and restrictions were struck by the trial court as being inconsistent with rights implied in the declaration; the final judgment did not and could not prohibit the association from enacting future rules regarding renting. Hence, the defense of *res judicata* did not bar the association from adopting new rental rules.

Garcia v. Bleau Grotto Condo. Assn. Inc.,
Case No. 2006-00-4151 (Earl / Final Order of Dismissal / February 6, 2006)

- The petitioning unit owner's pre-arbitration notice letter was found to be deficient where the letter only requested information and documents from the association regarding the election disputed in the petition but did not comply with section 718.1255(4)(b), F.S., such as, notice of the nature of dispute, a demand for relief and reasonable time to comply or provide the relief, and notice of intent to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Kosse v. Shorewalk Condo. Assn., Inc.,
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- A challenge to a 1993 amendment to the declaration is barred by the statute of limitations, and is dismissed.

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- Where the trial court ordered the association to commence enforcement actions against owners who had installed screen enclosures on the common elements, and where the association procrastinated in filing an appropriate arbitration petition to the point that that five-year statute of limitations had run against the association well before the arbitration proceeding had commenced, the statute of limitations barred the association from taking the enforcement action notwithstanding the order and threat of contempt of the trial court.

- While an action to enforce the declaration against a unit owner who had installed an unauthorized screen enclosure, thereby annexing a portion of the common elements, is subject to a five-year statute of limitations, and the action was properly dismissed, the arbitrator did not decide whether another action for the recovery of real property, with a longer statute, would be barred.

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- A final order denying the relief requested by the unit owner because the unit owner failed to present any evidence of damages.

Sunrise Lakes Condo. Assn. Phase I, Inc. v. Quiles,
Case No. 2005-01-5881 (Bembry / Final Order / January 10, 2006)

- The petitioner's motion for reconsideration of the arbitrator's decision based on the presentation of additional evidence submitted after entry of the final order was denied. The proper basis for a motion for rehearing is the arbitrator's misapprehension of the law of facts presented at final hearing. Permitting the introduction of evidence discovered after entry of the order would be highly prejudicial to the non-moving party and amounts to a denial of due process.

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Engel v. Seascape Condo. Assn. of Tarpon Springs, Inc.,
Case No. 2005-01-3749 (Scheuerman / Order / January 25, 2006)

- Where a final order was issued rejecting the association's defense that permitting the construction of patios on the ground floor units was necessary in order to address an erosion problem, and where the association on rehearing objected to not having the opportunity to present testimony on this defense, the final order was suspended while a fact-finding hearing was scheduled.

Fooden v. Preston Condo. Assn. at Century Village, Inc.,
Case No. 2006-00-5248 (Grubbs / Order Holding Case in Abeyance / February 7, 2006)

- Petitioner requested that arbitration be delayed, noting that arbitration is "too tied to immediate action." Petitioner was correct. Arbitration is a condition precedent to filing a

lawsuit when the subject matter of the suit falls within the definition of a "dispute" as set forth in section 718.1255(1), F.S. In effect, filing for arbitration is initiating a legal proceeding. Once an arbitrator's final order is entered, the losing party has only 30 days to institute a court proceeding challenging the arbitrator's decision or the arbitrator's order becomes binding on the parties and enforceable in court. If the parties want to settle their dispute, the first attempts at settlement should take place prior to filing for arbitration. Section 718.1255(4)(b), F.S., requires that before a party files for arbitration, the party must provide notice to the other party and an opportunity for that party to correct the problem. If a petitioner just wants advice concerning the best course of action to follow regarding his situation, he should consult with an attorney rather than filing an arbitration petition.

Topaz v. Waterview Condo. Assn., Inc. of Aventura,
Case No. 2005-04-3532 (Earl / Final Order of Dismissal / January 19, 2006)

- Where the arbitrator abated the arbitration for a period of sixty (60) days to enable the petitioning unit owner to seek injunctive relief with the courts and the petitioner failed to respond to two orders issued by the arbitrator requiring the petitioner to file a status report indicating the status of any court action and the need to continue with the arbitration proceeding, it was presumed there was no need to continue with matter and the arbitration case was dismissed.

Victoria Terrace Condo. Assn., Inc. v. White,
Case No. 2005-06-0944 (Grubbs / Final Order Incorporating Settlement Agreement / February 1, 2006)

- Provisions of a settlement agreement that stated, the "Arbitrator shall retain jurisdiction of the parties in this cause to enforce settlement agreement should the need arise," and the parties' prepared proposed order stated that "the arbitrator retains jurisdiction to enforce any provision" of the settlement is properly stricken from the agreement as the arbitrator lacked jurisdiction to enter an order incorporating settlement provision.

Water Glades 300 Condo. Assn., Inc. v. Interco Management Services, Inc.,
Case No. 2006-00-1728 (Earl / Final Order of Dismissal / January 24, 2006)

- Where petition alleged that the unnamed tenants of the corporation which owned the unit were maintaining a dog in violation of the condominium documents, the association was ordered to amend its petition to name the tenants and produce evidence that the tenants were given proper pre-arbitration notice prior to filing the petition. In response, the association indicated that it had not given the tenants pre-arbitration notice. Therefore, the petition was dismissed.

Water Glades 300 Condo. Assn., Inc. v. Interco Management Services, Inc.,
Case No. 2006-00-1728 (Earl / Order on Motion for Reconsideration / April 13, 2006)

- The arbitrator had dismissed the association's petition for failure to provide pre-arbitration notice to the tenants whom the association alleged were improperly maintaining a dog in their unit. In its motion for rehearing, the association indicated that the tenants had in fact been given pre-arbitration notice prior to the filing of the petition; however, the respondent unit owner had not been given such notice. The association request that the proceeding be stayed in order to permit it to provide the owner with pre-arbitration notice was denied since arbitration case law has consistently held that pre-arbitration notice must be provided prior to the filing of the petition, failing which the petition will be dismissed. The motion for reconsideration was denied because failure to provide the unit owners with pre-arbitration notice is sufficient cause to dismiss the petition.

Jurisdiction (See Dispute)

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Parties (See also Dispute-Standing)

Aronson v. Lakeview Condo. Assn., Inc.,
Case No. 2006-01-2188 (Grubbs / Final Order Dismissing Petition / March 16, 2006)

- Because two of the petitioners who brought this action are the replacement board members who, according to the rules and statute, took office months prior to the filing of the petition for arbitration and are therefore, in effect, the association that they are bringing this action against, this action could not qualify as a "dispute" under section 718.1255, F.S. Further, even if a board fails to properly proceed after receiving a recall agreement, if the board certifies the agreement or recognizes the certification of the recall by operation of statute, the board's failure to properly proceed cannot be a "dispute" subject to arbitration unless the petition is brought by the board member whose recall was certified alleging that the certification was not appropriate. It cannot be a "dispute" when the petitioners, who wanted the board removed from office, obtained the relief requested.

Brandell v. Bay Point Studio Villas III Assn., Inc.,
Case No. 2005-04-1920 (Scheuerman / Order Allowing Response / October 4, 2005)

- Where other owners were potentially interested in the issue of whether the second floor owners were allowed to convert the attic of the building into unit living space, the arbitrator required the association to direct letter to each member disclosing the existence of the case and providing each owner with an opportunity to intervene in the preceding.

Brandell v. Bay Point Studio Villas III Assn., Inc.,
Case No. 2005-04-1920 (Scheuerman / Summary Final Order / January 23, 2006)

- Upon the petition of second floor owners desiring to procure the common element attic space for an additional living area, the arbitrator confirmed the board's decision to

disallow construction, and where it was shown that the association had already permitted an owner who was not a party to the proceeding to build a loft and bathroom in the attic, the board was ordered to commence an enforcement action against the other owner subject to any defenses of that owner.

Habitat II Condo., Inc. v. Joseph,
Case No. 2006-01-3496 (Chavis / Order Determining Jurisdiction and Order Dismissing Petition / March 31, 2006)

- The arbitrator dismissed the dispute for lack of jurisdiction where the association initiated a proceeding against a former owner seeking an order voiding the transfer of the subject parcels. Arbitration is limited to disputes between a condominium association and unit owners and, in limited circumstances, tenants. Disputes involving a non-owner, such as a former owner and disputes involving title of the property are not within the jurisdiction of this forum.

Rasmussen v. Grenelefe Assn. of Condo. Owners, No. 1, Inc.,
Case No. 2006-01-8316 (Scheuerman / Order / May 8, 2006)

- Where petitioner unit owner sought to challenge the ability of a subsequent developer to vote for a majority of the board, the subsequent developer must be made a party as his substantial interest are implicated by the action.

Saxony Condo. Assn, Inc. v. Miller,
Case No. 2005-03-8023 (Grubbs / Final Order Vacating Summary Final Order Entered March 21, 2006 and Dismissing Petition for Lack of Jurisdiction / May 22, 2006)

- Where after issuance of a final order against respondent, the respondent showed he was not a unit owner, the final order was vacated.

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Kosse v. Shorewalk Condo. Assn., Inc.,
Case No. 2005-00-1164 (Scheuerman / Summary Final Order / January 30, 2006)

- Board member who had offered his unit for rent in the past is not disqualified from voting on passage of a new rental rule liberalizing the rental policies of the association. The allegations of the petition do not rise to the level required for the application of

section 617.0832, F.S., addressing regulated conflicts of interest. Under the petitioner's theory, any board member whether they offered their unit for rent or not would be prohibited from voting on the subject of rental restrictions. The board would thus be forced to stop transacting business on this topic in derogation of its duties.

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Nassif v. Continental Towers, Inc.,
Case No. 2005-04-8962 (Earl / Summary Final Order / March 6, 2006)

- By-law that limited service on the board to no more than three consecutive years found to be applicable to both elected and appointed board members. Furthermore, where the board members served three-year terms, the three-year limitation was not found to prohibit a person from being elected or appointed to the board who could not complete the entire term due to prior service. However, such a person would be required to resign upon the third consecutive year of service at which time a new board member would be elected or appointed.

Villa Rio Condo. Apartments, Inc. v. Martin,
Case No. 2005-04-7198 (Earl / Final Order / May 26, 2006)

- Pursuant to rules and regulations governing the association's common element boat dockage area, the dock master and/or board of directors had discretion to reassign spaces according to boat size. The association's decision regarding assignment of the boat slips is subject to the "reasonableness" standard established by *Hidden Harbour Estates, Inc. v. Basso,* 393 So.2d 637 (Fla. 4th DCA, 1981) which standard was expressly adopted by the Florida Supreme Court in *Woodside Village Condominium*

Assn., Inc. v. Jahren, 806 Fla. So2d 452 (Fla. 2002). *See Cooper v. 1231 Penn, Inc., a Condo.,* Arb. Case No. 00-0103, Summary Final Order (October 23, 2000) (where condominium had 10 common element parking spaces, and twelve units, the board was free to assign and reassign their use to owners, so long as such assignment was not arbitrary and capricious). The "reasonableness" standard requires a two-part analysis: the restriction must be based upon a legitimate objective of the association and the restriction must be reasonably related to that objective.

- The association's request that the respondents move their boat in order to allow the clearing of the docking area for another boat was found to be related to the legitimate objective of making the full and safe use of the association's boat slips and reasonably related to this objective. It was clear that as the boat was docked its rigging encroached upon the slip of another owner, making it difficult for the other boat owner to use her slip.

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Generally

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Limited common elements

Hypoluxo's Mariner's Cay Condo. Assn., Inc. v. Wise,
Case No. 2005-05-1243 (Scheuerman / Summary Final Order / May 2, 2006)

- Where neither the purchase contract nor the condominium documents referred to or purported to convey a storage room for the exclusive use rights of the respondent owner, the storage room was not a limited common element and the respondent was not entitled to exclusive use of it.

Maintenance and protection

Material alteration or addition (See also Fair Housing Act)

Brandell v. Bay Point Studio Villas III Assn., Inc.,
Case No. 2005-04-1920 (Scheuerman / Summary Final Order / January 23, 2006)

- Desired changes of the unit owner involving cutting a hole in the common element ceiling and converting the common element attic space to a unit loft and bathroom would materially alter the appurtenances to the units and required approval of 100% of the owners. The fact that the association was proposing to sell or lease the area to the adjacent owners did not permit a different conclusion.

Engel v. Seascape Condo. Assn. of Tarpon Springs, Inc.,
Case No. 2005-01-3749 (Scheuerman / Order / January 25, 2006)

- Although associations under the case law are permitted and required to provide for the maintenance and protection of the common elements, even if a material alteration to the common elements is created simultaneously, no court has decided whether this "maintenance defense" is viable where the board simultaneously undertakes a material change to the appurtenances to the unit.

Kingswood, Phase I, Inc. v. Wire,
Case No. 2005-02-4875 (Earl / Final Order / April 19, 2006)

- Provision of the declaration which prohibited unit owners from making alterations or additions to the common elements except with the prior approval in writing by the record owners of not less than 75% of the units, found not to require that the alteration be material in nature. The unit owner was found to have violated this provision by running a heavy-duty electrical wiring through the common element attic.

- Although the condominium documents did not specifically prohibit the installation of clothes washers and dryers, a washer and dryer could not be properly installed without modifying the common elements. Expert testimony established that the washing machine had not been installed with a separate drain vent, which would adversely affect the common element plumbing to which the unit's plumbing connected. Moreover, a separate drain vent could not be installed without breaching the common element wall or roof.

Right to use

Villa Rio Condo. Apartments, Inc. v. Martin,
Case No. 2005-04-7198 (Earl / Final Order / May 26, 2006)

- Pursuant to rules and regulations governing the association's common element boat dockage area, the dock master and/or board of directors had discretion to reassign spaces according to boat size. The association's decision regarding assignment of the boat slips is subject to the "reasonableness" standard established by *Hidden Harbour Estates, Inc. v. Basso,* 393 So.2d 637 (Fla. 4th DCA, 1981) which standard was expressly adopted by the Florida Supreme Court in *Woodside Village Condominium Assn., Inc. v. Jahren,* 806 Fla. So2d 452 (Fla. 2002). *See Cooper v. 1231 Penn, Inc., a Condo.,* Arb. Case No. 00-0103, Summary Final Order (October 23, 2000) (where condominium had 10 common element parking spaces, and twelve units, the board was free to assign and reassign their use to owners, so long as such assignment was not arbitrary and capricious). The "reasonableness" standard requires a two-part analysis: the restriction must be based upon a legitimate objective of the association and the restriction must be reasonably related to that objective.

- The association's request that the respondents move their boat in order to allow the clearing of the docking area for another boat was found to be related to the legitimate objective of making the full and safe use of the association's boat slips and reasonably related to this objective. It was clear that as the boat was docked its rigging encroached

upon the slip of another owner, making it difficult for the other boat owner to use her slip.

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Free speech

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Amendments

Engel v. Seascape Condo. Assn. of Tarpon Springs, Inc.,
Case No. 2005-01-3749 (Scheuerman / Summary Final Order / December 23, 2005)

- An amendment to the declaration that purported to grant to the board the authority to approve the addition of a rear deck to the ground floor units extending over the common elements via a nonexclusive license agreement was not approved by 100% of the membership and was invalid. The right to use the common elements is an appurtenance that can only be bartered away with the unanimous consent of the owners. Labeling the changes as a license does not change what they are in reality; changes to the appurtenances to the units.

Covenants/restrictions

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Interpretation

Haakenson v. The Nautilus Management Corp., Inc.,
Case No. 2006-00-5354 (Scheuerman / Summary Final Order / April 21, 2006)

- Where one part of the declaration made the right to rent fundamental, and prohibited restrictions on the right to rent except with 100% approval of the owners, and another part prohibited practices that increased insurance expenses of the association, the insurance provision was not interpreted to present a restriction on the manner of

leasing, and owners were free to continue to rent on a short term transient basis. A provision that specifically addresses a subject will control over a general provision.

Kingswood, Phase I, Inc. v. Wire,
Case No. 2005-02-4875 (Earl / Final Order / April 19, 2006)

- Provision of the declaration which prohibited unit owners from making alterations or additions to the common elements except with the prior approval in writing by the record owners of not less than 75% of the unitscommon elements, found not to require that the alteration be material in nature. The unit owner was found to have violated this provision by running a heavy-duty electrical wiring through the common element attic.

- Although the condominium documents did not specifically prohibit the installation of clothes washers and dryers, a washer and dryer could not be properly installed without modifying the common elements. Expert testimony established that the washing machine had not been installed with a separate drain vent which would adversely affect the common element plumbing to which the unit's plumbing connected. Moreover, a separate drain vent could not be installed without breaching the common element wall or roof.

Kosse v. Shorewalk Condo. Assn., Inc.,
Case No. 2005-00-1164 (Scheuerman / Summary Final Order / January 30, 2006)

- The practice of short term leasing did not fall within the prohibition in the declaration prohibiting any practice that increased insurance rates. The insurance provision must be understood in the context of a declaration that specifically permitted rentals, and it would make no sense to say that although the declaration permitted renting, renting was prohibited because it caused insurance costs to increase.

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Boca Country Estates Condo. Assn., Inc. v. Borraiz,
Case No. 2005-05-1074 (Bembry / Summary Final Order / January 25, 2006)

- Where unit owner failed to submit an application and requisite application fee for tenant approval to the association in accordance with the association's declaration of condominium, unit owner was ordered to submit the application and application fee.

Jurisdiction

Cantelmo v. Tiffany Apartments, Inc.,
Case No. 2006-01-7220 (Bembry / Final Order of Dismissal / April 14, 2006)

- Petition for arbitration which raised issues involving breach of fiduciary duties by the board of directors was dismissed as arbitrator lacked jurisdiction.

Cinquina v. Oceanside Surf Condo. Assn., Inc.,
Case No. 2006-01-7293 (Chavis / Final Order Dismissing Petition for Lack of Jurisdiction / April 5, 2006)

- Arbitrator lacked jurisdiction of dispute involving the association’s failure to enforce restrictions against another unit owner.

DiPaola v. Beach Terrace Assn., Inc.,
Case No. 2006-02-4134 (Chavis / Final Order Dismissing Petition for Lack of Jurisdiction / April 12, 2006)

- No jurisdiction where petitioner is challenging the association’s authority to authorize unit owners to alter or add to the common elements.

Majestic Gardens Condo. Assn., Inc. v. Simelus,
Case No. 2006-01-8164 (Chavis / Final Order Dismissing Petition for Lack of Jurisdiction / April 12, 2006)

- No jurisdiction over a petition seeking removal of a tenant from the condominium unit.

Victoria Terrace Condo. Assn., Inc. v. White,
Case No. 2005-06-0944 (Grubbs / Final Order Incorporating Settlement Agreement / February 1, 2006)

- Provisions of a settlement agreement that stated, the "Arbitrator shall retain jurisdiction of the parties in this cause to enforce settlement agreement should the need arise," and the parties' prepared proposed order stated that "the arbitrator retains jurisdiction to enforce any provision" of the settlement is properly stricken from the agreement as the arbitrator lacked jurisdiction to enter an order incorporating settlement provision.

The Warehouse Condo. Assn., Inc. v. Titi's Drink, L.L.C.,
Case No. 2006-01-7124 (Chavis / Final Order Dismissing Petition for Lack of Jurisdiction / April 10, 2006)

- No jurisdiction of dispute involving improper use of commercial condominium.

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Bonavida Condo. Assn., Inc. v. Starr,
Case No. 2004-06-0224 (Earl / Final Order of Dismissal / March 1, 2006)

- Where the board sought removal of a cat grandfathered in all existing pets, the dispute was deemed moot and was dismissed.

Cameo Woods Condo. Assn., Inc. v. Nebus,
Case No. 2005-05-8934 (Grubbs / Final Order of Dismissal as Moot / February 16, 2006)

- Petitioner's Motion for Entitlement for Attorney's Fees and Costs Due to Mootness of Action would be treated as a motion to dismiss cases as moot. The motion, insofar as it asked for attorney's fees, was premature. Any motion for attorney's fees and costs, which should include the basis for entitlement to the attorney's fees and costs, must be filed *after* the final order has been entered in the underlying case. If the petitioner believed it was entitled to fees, it could file an appropriate motion within 45 days after the date of the final order. Because the alleged violation was cured, the underlying case could be dismissed as moot.

Jade Residences at Brickell Bay Condo. Assn., Inc. v. Santa Maria 1101, Inc.,
Case No. 2006-00-0902 (Earl / Final Order of Dismissal / April 11, 2006)

- Where the respondent unit owners removed the dog in dispute, the case was dismissed as moot. The association's requested relief that the respondents be enjoined from committing future violations was denied since there had been no reasonable indication that the respondents had a propensity to violate the pet restriction in the future.

Not considered dispute

Aronson v. Lakeview Condo. Assn., Inc.,
Case No. 2006-01-2188 (Grubbs / Final Order Dismissing Petition / March 16, 2006)

- Because two of the petitioners who brought this action are the replacement board members who, according to the rules and statute, took office months prior to the filing of the petition for arbitration and are therefore, in effect, the association that they are bringing this action against, this action could not qualify as a "dispute" under section 718.1255, F.S. Further, even if a board fails to properly proceed after receiving a recall agreement, if the board certifies the agreement or recognizes the certification of the recall by operation of statute, the board's failure to properly proceed cannot be a "dispute" subject to arbitration unless the petition is brought by the board member whose recall was certified alleging that the certification was not appropriate. It cannot be a "dispute" when the petitioners, who wanted the board removed from office, obtained the relief requested.

Clingan v. Spinnaker Cove Condo. Assn., Inc.,
Case No. 2006-01-3839 (Grubbs / Final Order Dismissing Petition for Lack of Jurisdiction / March 24, 2006)

- Although the petition alleged that the jurisdictional basis for the petition was the authority of the association to alter or add to the common elements, the petitioner was actually challenging the failure of the association to enforce the rules and regulations relating to the approval of docks against another unit owner. In addition to not being defined as a "dispute" pursuant to section 718.1255, F.S., the conflict primarily involved a disagreement between unit owners, which is clearly outside the jurisdiction of the arbitrator.

Edgewood Greens Condo. Assn., Inc. v. Tulloch,
Case No. 2006-03-4978 (Bembry / Order of Dismissal / June 28, 2006)

- Where petitioner sought removal of an occupant of respondent's unit, an order of dismissal was issued where relief sought by the association in its petition for arbitration requested an order for removal of an occupant of the owner's unit. The arbitrator lacked jurisdiction to issue an order requiring tenant to vacate the unit.

Habitat II Condo., Inc. v. Joseph,
Case No. 2006-01-3496 (Chavis / Order Determining Jurisdiction and Order Dismissing Petition / March 31, 2006)

- The arbitrator dismissed the dispute for lack of jurisdiction where the association initiated a proceeding against a former owner seeking an order voiding the transfer of the subject parcels. Arbitration is limited to disputes between a condominium association and unit owners and, in limited circumstances, tenants. Disputes involving a non-owner, such as a former owner and disputes involving title of the property are not within the jurisdiction of this forum.

Llopis v. Armen Apartments Condo. Assn., Inc.,
Case No. 2006-01-0766 (Harnden / Order of Dismissal / March 6, 2006)

- Action seeking to challenge an assessment would be dismissed for lack of jurisdiction.

Pearl-Dart v. Palm Beach Biltmore Condo. Assn., Inc.,
Case No. 2005-06-5917 (Scheuerman / Final Order Dismissing Petition / March 15, 2006)

- Where the petition alleged that the association negligently allowed water to intrude into the unit, causing mold and water damage, and where the petitioner asked only for damages and not for remedial action, the petition was dismissed for lack of jurisdiction.

Sailer v. Pelican Pointe of Sebastian II Condo. Assn., Inc.,
Case No. 2006-02-6786 (Earl / Final Order of Dismissal / May 26, 2006)

The arbitrator lacked jurisdiction over dispute where the petitioning unit owner claimed the association had failed to take action against neighboring unit owners who had installed an air conditioning unit in violation of the condominium documents. The dispute was not eligible for arbitration because it fundamentally involved the association's failure to enforce the condominium documents and was a dispute between unit owners.

Watmuff v. Keys RV/Mobile Home Condo. Assn., Inc.,
Case No. 2006-01-7116 (Earl / Final Order of Dismissal / April 10, 2006)

- Allegation by the unit owner that the association undertook a corrective survey of the condominium property which was subsequently filed in the public records of the county where the condominium is located which decreased the size of his condominium lot by 32 percent as compared with the size as described in the special warranty deed he obtained from the association when he purchased the unit, primarily involved a dispute as to title and therefore was not eligible for arbitration.

Not ripe/bona fide dispute / live controversy

Pending court or administrative action / abatement / stay

Indian Lake Village II Condo. Assn., Inc. v. Conklin,
Case No. 2006-01-5870 (Bembry / Order on Request for Expedited Determination of Jurisdiction / March 30, 2006)

- Petition for arbitration was dismissed for lack of jurisdiction when the dispute raised in the petition was also pending in circuit court, and the circuit court had not relinquished jurisdiction of the dispute.

Relief granted or requested

Boca Country Estates Condominium Assn., Inc. v. Borraiz,
Case No. 2005-05-1074 (Bembry / Summary Final Order / January 25, 2006)

- Where unit owner failed to submit an application and requisite application fee for tenant approval to the association in accordance with the association's declaration of condominium, unit owner was ordered to submit the application and application fee.

Brandell v. Bay Point Studio Villas III Assn., Inc.,
Case No. 2005-04-1920 (Scheuerman / Summary Final Order / January 23, 2006)

- Upon the petition of second floor owners desiring to procure the common element attic space for an additional living area, the arbitrator confirmed the board's decision to disallow construction, and where it was shown that the association had already permitted an owner who was not a party to the proceeding to build a loft and bathroom in the attic, the board was ordered to commence an enforcement action against the other owner subject to any defenses of that owner.

Grand Key Condo. Assn., Inc. v. Dellose,
Case No. 2005-05-6837 (Earl / Final Order / January 31, 2006)

- Where it is demonstrated that a lesser remedy will achieve the result sought, an injunction should go no further in ordering relief. Since the unit owners' had demonstrated that the dog at issue was undergoing training to prevent it from barking and whining, the arbitrator found it appropriate to require the dog to be removed from the unit for a period of six months from the date the final order, at which time the respondents may return the dog to the unit provided that it wears a bark collar. Thereafter, if the association found that the dog still constitutes a nuisance by creating noise in excess of that expected in a condominium that permits dogs, the respondents would be required to permanently remove the dog upon the association's request.

Jade Residences at Brickell Bay Condo. Assn., Inc. v. Santa Maria 1101, Inc.,
Case No. 2006-00-0902 (Earl / Final Order of Dismissal / April 11, 2006)

- Where the respondent unit owners removed the dog in dispute, the case was dismissed as moot. The association's requested relief that the respondents be enjoined from committing future violations was denied since there had been no reasonable indication that the respondents had a propensity to violate the pet restriction in the future.

Standing

Aronson v. Lakeview Condo. Assn., Inc.,
Case No. 2006-01-2188 (Grubbs / Final Order Dismissing Petition / March 16, 2006)

- Because two of the petitioners who brought this action are the replacement board members who, according to the rules and statute, took office months prior to the filing of

the petition for arbitration and are therefore, in effect, the association that they are bringing this action against, this action could not qualify as a "dispute" under section 718.1255, F.S. Further, even if a board fails to properly proceed after receiving a recall agreement, if the board certifies the agreement or recognizes the certification of the recall by operation of statute, the board's failure to properly proceed cannot be a "dispute" subject to arbitration unless the petition is brought by the board member whose recall was certified alleging that the certification was not appropriate. It cannot be a "dispute" when the petitioners, who wanted the board removed from office, obtained the relief requested.

Garofalo v. Maya Marca Condo. Apts., Inc.,
Case No. 2005-05-4707 (Scheuerman / Summary Final Order / April 19, 2006)

- Where a challenged rental rule was enacted prior to October 1, 2004, the effective date of section 718.110(3), Florida Statutes, prohibiting certain amendments restricting the right to lease a unit, the rule was not subject to the statutory amendment as it pre-existed the statute.

- Where the declaration permits the rental of units and provided that a unit may only be leased once every year for a 12-month period, a rental rule that prohibited any leasing during the first three years of ownership of a unit was inconsistent with the right to rent as set forth in the declaration, and was invalid.

Easements

Elections/Vacancies

Candidate information sheet

Rasmussen v. Grenelefe Assn. of Condo. Owners, No. 1, Inc.,
Case No. 2006-01-8316 (Scheuerman / Order / May 8, 2006)

- If a candidate is allowed to use an information sheet in excess of the prescribed one page format, perhaps even a multi-page brochure complete with color photographs and pie diagrams, the candidate has an unfair advantage and the association has violated applicable Division rules. It is no excuse to say that a candidate information sheet may not be changed by an association. Obviously, the association is conducting the election effort, and must only allow the use of conforming candidate information sheets.

Generally

Murray v. Starlight Towers Assn., Inc.,
Case No. 2006-01-4160 (Scheuerman / Amending Order Holding Case in Abeyance / April 7, 2006)

- There are circumstances where an association can and should cancel a duly noticed election, as where a fatal procedural error has occurred in pre-election procedures. An election should not be cancelled where the president, required to preside over

meetings, is not feeling well or is absent from the jurisdiction, or where the current board does not consider the slate of candidates to be worthy or beneficial to the community.

- Where an association inadvertently omitted the name of a duly qualified candidate from the ballot included with the second notice of election, whether the association should start the election process anew with a new first notice of election or simply re-issue a corrected ballot and new second notice of election will depend on the facts and circumstances. The discretion of the board will be examined under such circumstances. There is no authority in the statute for permitting the association to issue a new first notice of election and thereby re-open the nomination period to new candidates. Doing so may be unfair to those candidates who nominated themselves during the first election effort. By the same token, there is no provision in the statute that prevents the association from commencing the election process anew. All of the facts and circumstances will be examined under these circumstances.

Nassif v. Continental Towers, Inc.,
Case No. 2005-04-8962 (Earl / Summary Final Order / March 6, 2006)

- The by-laws limited persons who could serve on the board to no more than three consecutive years of service and the board members served staggered terms. The association confused the eligibility of individuals with the actual term of the seat held by the person. Confusion was further increased because the by-laws provided that where a replacement candidate was appointed to the board by the remaining board members, the replacement candidate served until the next election for any seat, at which time the membership was permitted to vote on a replacement candidate who would complete the remainder of the term. When the petitioner sought election to the board along with two other candidates, she should have been automatically elected to the board, as there should have been three seats open, not two as the association mistakenly thought.

- By-law that limited service on the board to no more than three consecutive years found to be applicable to both elected and appointed board members. Furthermore, where the board members served three-year terms, the three-year limitation was not found to prohibit a person from being elected or appointed to the board who could not complete the entire term due to prior service. Such a person would be required to resign upon the third consecutive year of service at which time a new board member would be elected or appointed.

Master association

Notice of election

Term limitations

Nassif v. Continental Towers, Inc.,
Case No. 2005-04-8962 (Earl / Summary Final Order / March 6, 2006)

- By-law that limited service on the board for no more than three consecutive years found to be applicable to both elected and appointed board members. Furthermore, where the board members served three-year terms, the three-year limitation was not found to prohibit a person from being elected or appointed to the board who could not complete the entire term due to prior service. Such a person would be required to resign upon the third consecutive year of service at which time a new board member would be elected or appointed.

Schweitzer v. Canterbury C Condo. Assn., Inc.,
Case No. 2005-06-5921 (Harnden / Summary Final Order / June 22, 2006)

- The board's failure to properly notice annual election and budget meeting requires the association to hold new election and meeting in accordance with the governing documents and section 718.112(2)(d)(2)., Florida Statutes.

Voting certificates

Estoppel (See also Selective Enforcement; Waiver)

Brandell v. Bay Point Studio Villas III Assn., Inc.,
Case No. 2005-04-1920 (Scheuerman / Summary Final Order / January 23, 2006)

- Where a board exceeds its authority and performs some act that is ultra vires and contrary to its authority as set forth in the documents, it is not reasonable to rely on the board policy, and estoppel or waiver will not lie.

Sunrise Lakes Condo. Assn. Phase I, Inc. v. Quiles,
Case No. 2005-01-5881 (Bembry / Final Order / January 10, 2006)

- The association was estopped from enforcing its pet restriction where the unit owner demonstrated that the board president, who was authorized by the board to approve prospective owners, approved the owner's pet at the time she purchased her unit.

West Bay Gardens Condo. Assn., Inc. v. Arancibia,
Case No. 2005-02-2074 (Earl / Final Order / May 2, 2006)

- To establish estoppel, the respondents must demonstrate the following: (1) a representation as to a material fact that is contrary to a later-asserted position; (2) reasonable reliance on the representation; and (3) a change in position to the respondent's detriment by the representation and reliance. *Energren v. Marathon Country Club Condo. Assn., Inc.*, 525 So.2d 488 (Fla. 3d DCA 1988). Where the president of the association informed the respondent unit owners that the board was only sending the respondents violation letters in order to appease a complaining unit owner and had no intention of taking further action to demand the removal of the respondent's dog, it was found to be unreasonable and detrimental to the respondents to order them to remove their pet that they have kept for the nine years they have lived at the condominium investing in its health care and becoming emotionally attached to it.

Evidence (See Arbitration-Evidence)

Fair Housing Act

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

Financial Reports/Financial Statements

Fines

Guest (See also Family; Tenant)

Hurricane Shutters

Injunctive Type Relief (See Dispute-Relief granted)

Insurance

Jurisdiction (See Dispute)

Laches (See also Estoppel; Waiver)

Lien

Marina

Villa Rio Condo. Apartments, Inc. v. Martin,
Case No. 2005-04-7198 (Earl / Final Order / May 26, 2006)

- Pursuant to rules and regulations governing the association's common element boat dockage area, the dock master and/or board of directors had discretion to reassign spaces according to boat size. The association's decision regarding assignment of the boat slips is subject to the "reasonableness" standard established by *Hidden Harbour Estates, Inc. v. Basso,* 393 So.2d 637 (Fla. 4th DCA, 1981) which standard was expressly adopted by the Florida Supreme Court in *Woodside Village Condominium Assn., Inc. v. Jahren,* 806 Fla. So2d 452 (Fla. 2002). *See Cooper v. 1231 Penn, Inc., a Condo.,* Arb. Case No. 00-0103, Summary Final Order (October 23, 2000) (where condominium had 10 common element parking spaces, and twelve units, the board was free to assign and reassign their use to owners, so long as such assignment was not arbitrary and capricious). The "reasonableness" standard requires a two-part analysis: the restriction must be based upon a legitimate objective of the association and the restriction must be reasonably related to that objective.

- The association's request that the respondents move their boat in order to allow the clearing of the docking area for another boat was found to be related to the legitimate objective of making the full and safe use of the association's boat slips and reasonably related to this objective. It was clear that as the boat was docked its rigging encroached upon the slip of another owner, making it difficult for the other boat owner to use her slip.

Meetings

Board meetings

Aronson v. Lakeview Condo. Assn., Inc.,
Case No. 2006-01-2188 (Grubbs / Final Order Dismissing Petition / March 16, 2006)

A board has authority to certify the recall of the two remaining board members when the board has failed to appoint a replacement board member for the third board seat. Obviously, it better serves the community to have a full board. When a seat is vacant, the remaining members should act with due diligence to appoint a replacement or hold an election to fill the vacancy in accordance with s. 718.112(2)(d)8., F.S.; however, the fact that a board seat is vacant does not mean that the board has no authority to take action on a recall agreement or conduct any other association business.

Ringler v. Tower Forty One Assn., Inc.,
Case No. 2005-04-1867 (Mnookin / Final Order / December 12, 2005)

- In this type of "reverse recall," the board member whose recall was certified initiates the arbitration proceeding, along with any other unit owners who wish to join in as petitioners, naming the association as the respondent and alleging that the recall was erroneously certified by the board.

Ringler v. Tower Forty One Assn., Inc.,
Case No. 2005-04-1867 (Grubbs / Order Denying Motion for Rehearing / January 17, 2006)

- To obtain the relief sought in a "reverse recall,", i.e, reinstatement to the board, the former board member must allege and prove not only that the association failed to properly hold or conduct the recall board meeting through no fault of his own, but that the recall agreement would not have been certified by the board at the meeting had the meeting been properly held and conducted. In other words, the petitioner must provide the reasons the recall agreement would not have been certified had the association done things properly. When the petitioner failed to provide any grounds for finding the recall agreement to be invalid, the certification of the recall would have to be affirmed regardless of the inappropriate action or inaction of the association.

Committee meetings

Emergency

Generally

Notice/agenda

Quorum

Aronson v. Lakeview Condo. Assn., Inc.,
Case No. 2006-01-2188 (Grubbs / Final Order Dismissing Petition / March 16, 2006)

- Two members of a three-member board constitute a majority, and a majority constitutes a quorum pursuant to section 617.0824, Florida Statutes.

Ratification

Recall (See separate index on recall arbitration)

Unit owner meetings

Generally

Notice

Quorum

Recall (See separate index on recall arbitration)

Moot

Mortgagee

Nuisance

Grand Key Condo. Assn., Inc. v. Dellose,
Case No. 2005-05-6837 (Earl / Final Order / January 31, 2006)

- Condominium owners live in close proximity to one another and owners must understand that even when the governing documents limit the amount of noise, noises from neighbors are expected to be heard to a certain degree. This, however, does not excuse behavior that rises to the level of a nuisance.

- Where the association established that the unit owners' dog excessively and unreasonably whined, barked and howled, the dog was found to be a nuisance.

Neo Lofts Condo. Assn., Inc. v. Shadanlou,
Case No. 2006-00-0891 (Harnden / Final Order on Default / April 26, 2006)

- Where a unit owner's dog persistently barks and makes other loud noises, the behavior is considered a nuisance in the condominium.

Sunrise Lakes Condo. Assn. Phase I, Inc. v. Quiles,
Case No. 2005-01-5881 (Bembry / Final Order / January 10, 2006)

- Unit owner's pet was not shown to be a nuisance where the only evidence presented by the association consisted of a single prior complaint from a neighboring unit. Association's failure to establish that pet was an ongoing disturbance precluded a finding of nuisance.

Official Records

Acosta v. Plaza 15 Condominium Assn., Inc.,
Case No. 2006-00-9593 (Earl / Summary Final Order / April 14, 2006)

- Where the association did not dispute that it failed to provide the petitioning unit owner access to its official records for more than 21 days after receipt of the owner's written request, the association was found to have willfully denied access to its official records and the petitioner was awarded $500 in statutory damages.

Parking/Parking Restrictions

Villa Rio Condo. Apartments, Inc. v. Martin,
Case No. 2005-04-7198 (Earl / Final Order / May 26, 2006)

- Pursuant to rules and regulations governing the association's common element boat dockage area, the dock master and/or board of directors had discretion to reassign spaces according to boat size. The association's decision regarding assignment of the boat slips is subject to the "reasonableness" standard established by *Hidden Harbour Estates, Inc. v. Basso,* 393 So.2d 637 (Fla. 4th DCA, 1981) which standard was expressly adopted by the Florida Supreme Court in *Woodside Village Condominium Assn., Inc. v. Jahren,* 806 Fla. So2d 452 (Fla. 2002). *See Cooper v. 1231 Penn, Inc., a Condo.,* Arb. Case No. 00-0103, Summary Final Order (October 23, 2000) (where condominium had 10 common element parking spaces, and twelve units, the board was free to assign and reassign their use to owners, so long as such assignment was not arbitrary and capricious). The "reasonableness" standard requires a two-part analysis: the restriction must be based upon a legitimate objective of the association and the restriction must be reasonably related to that objective.

- The association's request that the respondents move their boat in order to allow the clearing of the docking area for another boat was found to be related to the legitimate objective of making the full and safe use of the association's boat slips and reasonably related to this objective. It was clear that as the boat was docked its rigging encroached upon the slip of another owner, making it difficult for the other boat owner to use her slip.

Parties (See Arbitration-Parties)

Pets

Grand Key Condo. Assn., Inc. v. Dellose,
Case No. 2005-05-6837 (Earl / Final Order / January 31, 2006)

- Where the association established that the unit owners' dog excessively and unreasonably whined, barked and howled, the dog was found to be a nuisance.

- Where it is demonstrated that a lesser remedy will achieve the result sought, an injunction should go no further in ordering relief. Since the unit owners' had demonstrated that the dog at issue was undergoing training to prevent it from barking

and whining, the arbitrator found it appropriate to require the dog to be removed from the unit for a period of six months from the date the final order, at which time the respondents may return the dog to the unit provided that it wears a bark collar. Thereafter, if the association found that the dog still constitutes a nuisance by creating noise in excess of that expected in a condominium that permits dogs, the respondents would be required to permanently remove the dog upon the association's request.

Ocean Trace Condo. Assn., Inc. v. Russo,
Case No. 2005-05-4736 (Grubbs / Final Order of Default / January 4, 2006)

- Where neither unit owner nor tenants challenged the provisions in the declaration and rules that permitted a unit owner to keep two pets in a unit but forbid a lessee from having any animals, (see Grove Isle Condo. Assn., Inc. v. Levy, Arb. Case No. 96-0172, Summary Final Order (November 19, 1996)), the respondents would be required to remove the dogs from the leased unit. The respondent unit owner would be responsible for ensuring the dogs were removed within 30 days.

Pine Ridge at Sugar Creek Village Condo. Assn., Inc. v. Garlauska,
Case No. 2006-00-9569 (Chavis / Final Order on Default / April 12, 2006)

- Pursuant to section 718.1255(1)(1)1., Florida Statutes, where respondents upon purchasing unit agreed to be bound by terms of condominium documents including prohibition of domestic pets or animals exceeding twenty-five pounds, respondents were ordered to provide the association, within five days, a certificate from a veterinarian establishing that the dog weighs less than twenty-five pounds or shall remove the dog from the condominium property.

Sunrise Lakes Condo. Assn. Phase I, Inc. v. Quiles,
Case No. 2005-01-5881 (Bembry / Final Order / January 10, 2006)

- The association was estopped from enforcing its pet restriction where the unit owner demonstrated that the board president, who was authorized by the board to approve prospective owners, approved the owner's pet at the time she purchased her unit.

West Bay Gardens Condo. Assn., Inc. v. Arancibia,
Case No. 2005-02-2074 (Earl / Final Order / May 2, 2006)

- To establish estoppel, the respondents must demonstrate the following: (1) a representation as to a material fact that is contrary to a later-asserted position; (2) reasonable reliance on the representation; and (3) a change in position to the respondent's detriment by the representation and reliance. *Energren v. Marathon Country Club Condo. Assn., Inc.*, 525 So.2d 488 (Fla. 3d DCA 1988). Where the president of the association informed the respondent unit owners that the board was only sending the respondents violation letters in order to appease a complaining unit owner and had no intention of taking further action to demand the removal of the respondent's dog, it was found to be unreasonable and detrimental to the respondents

to order them to remove their pet that they have kept for the nine years they have lived at the condominium investing in its health care and becoming emotionally attached to it.

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)

Haakenson v. The Nautilus Management Corp., Inc.,
Case No. 2006-00-5354 (Scheuerman / Summary Final Order / April 21, 2006)

- Where the declaration provides that there are none, nor shall there be any, restrictions or limitations on the right to rent, and further contains provision requiring a vote of 100% of the owners to diminish the right to rent, the holding of Woodside, that purchasers are on notice that the right to rent may be diminished through future amendments to the documents, does not apply because the documents have elevated the right to rent to the status of those rights protected by section 718.110(4), Florida Statutes.

- Nothing in the condominium statute prevents a declaration as originally recorded from affording the right to rent fundamental right status. Rather, condominiums are creatures of both statute and their documents, and the documents may be drafted to make the right to rent paramount.

- Section 718.110(13), Florida Statutes, prohibiting amendments to the declaration that diminish the right to rent except as to new purchasers or consenting owners, did not apply to rental provisions in the declaration that existed prior to October 1, 2004, but only addresses amendments made after that date.

- Where one part of the declaration made the right to rent fundamental, and prohibited restrictions on the right to rent except with 100% approval of the owners, and another part prohibited practices that increased insurance expenses of the association, the insurance provision was not interpreted to present a restriction on the manner of leasing, and owners were free to continue to rent on a short term transient basis. A provision that specifically addresses a subject will control over a general provision.

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)

Brandell v. Bay Point Studio Villas III Assn., Inc.,
Case No. 2005-04-1920 (Scheuerman / Summary Final Order / January 23, 2006)

- Upon the petition of second floor owners desiring to procure the common element attic space for an additional living area, the arbitrator confirmed the board's decision to disallow construction, and where it was shown that the association had already permitted an owner who was not a party to the proceeding to build a loft and bathroom in the attic, the board was ordered to commence an enforcement action against the other owner subject to any defenses of that owner.

Standing (See Dispute-Standing)

State Action (See also Constitution)

Tenants

Generally

Boca Country Estates Condominium Assn., Inc. v. Borraiz,
Case No. 2005-05-1074 (Bembry / Summary Final Order / January 25, 2006)

- Where unit owner failed to submit an application and requisite application fee for tenant approval to the association in accordance with the association's declaration of condominium, unit owner was ordered to submit the application and application fee.

Sunshine Towers Condo. Assn., Inc. v. Tyrawa,
Case No. 2006-02-1575 (Grubbs / Final Order of Dismissal / April 26, 2006)

- The petition alleged that there was child under the age of 16 permanently residing in the respondent's unit in violation of the declaration, which forbids children under the age of 16 to occupy a unit. The petition requested that the respondent "be enjoined from allowing a person under the age of 16 from residing in his unit." In effect, the petition requested an order removing the under-age child from the unit. A "dispute" as defined in section 718.1255(1), does not include a disagreement that primarily involves "the eviction or other removal of a tenant."

Nuisance (See also Nuisance)

Rental restriction/rental programs

Boca South Assn., Inc. v. Engesath,
Case No. 2005-00-7896 (Scheuerman / Order Following Status Conference / May 20, 2005)

- Where in earlier litigation, certain rental rules and restrictions were struck by the trial court as being inconsistent with rights implied in the declaration; the final judgment did not and could not prohibit the association from enacting future rules regarding renting. Hence, the defense of *res judicata* did not bar the association from adopting new rental rules.

Garofalo v. Maya Marca Condo. Apts., Inc.,
Case No. 2005-05-4707 (Scheuerman / Summary Final Order / April 19, 2006)

- Where rental rule sought to be declared invalid was only one of three grounds cited by the association for rejecting a rental application, and where the other two grounds were either invalid or inapposite, the owner had standing to file an action seeking to declare the rental rule void.

Haakenson v. The Nautilus Management Corp., Inc.,
Case No. 2006-00-5354 (Scheuerman / Summary Final Order / April 21, 2006)

- Where the declaration provides that there are none, nor shall there be any, restrictions or limitations on the right to rent, and further contains provision requiring a vote of 100% of the owners to diminish the right to rent, the holding of Woodside, that purchasers are on notice that the right to rent may be diminished through future amendments to the documents, does not apply because the documents have elevated the right to rent to the status of those rights protected by section 718.110(4), Florida Statutes.

- Nothing in the condominium statute prevents a declaration as originally recorded from affording the right to rent fundamental right status. Rather, condominiums are creatures of both statute and their documents, and the documents may be drafted to make the right to rent paramount.

- Section 718.110(13), Florida Statutes, prohibiting amendments to the declaration that diminish the right to rent except as to new purchasers or consenting owners, did not apply to rental provisions in the declaration that existed prior to October 1, 2004, but only addresses amendments made after that date.

- Where one part of the declaration made the right to rent fundamental, and prohibited restrictions on the right to rent except with 100% approval of the owners, and another part prohibited practices that increased insurance expenses of the association, the insurance provision was not interpreted to present a restriction on the manner of leasing, and owners were free to continue to rent on a short term transient basis. A provision that specifically addresses a subject will control over a general provision.

Kosse v. Shorewalk Condo. Assn., Inc.,
Case No. 2005-00-1164 (Scheuerman / Summary Final Order / January 30, 2006)

- Where the board, acting within the scope of its authority, repealed a rule that defined "family" as persons related by blood, thereby liberalizing the rental restrictions in the condominium, the board did nothing inappropriate, having no obligation to perpetuate past rental practices. The petitioning owners have no vested right in the continuation of restrictive rental policies.

- Where the documents required the use of the units to be residential, this use was not violated by a rental program that made units available in hotel-like manner to visiting sports teams as the declaration specifically contemplated and permitted short-term rentals.

- The practice of short term leasing did not fall within the prohibition in the declaration prohibiting any practice that increased insurance rates. The insurance provision must be understood in the context of a declaration that specifically permitted rentals, and it would make no sense to say that although the declaration permitted renting, renting was prohibited because it caused insurance costs to increase.

Vista Del Sol Condo. Assn., Inc. v. Siwek,
Case No. 2005-03-1662 (Bembry / Summary Final Order / February 23, 2006)

- Amendment to declaration of condominium that placed further restrictions on the unit owner's use of the unit and precludes occupancy of the unit by unrelated guests more than twice a year was deemed valid, as the amendment did not impair any vested or fundamental rights of the owner.

Unauthorized tenant/association approval

Boca Country Estates Condominium Assn., Inc. v. Borraiz,
Case No. 2005-05-1074 (Bembry / Summary Final Order / January 25, 2006)

- Where unit owner failed to submit an application and requisite application fee for tenant approval to the association in accordance with the association's declaration of condominium, unit owner was ordered to submit the application and application fee.

Miller Sixty-Seven Townhouses Condo. Assn., Inc. v. Arias,
Case No. 2005-05-9565 (Scheuerman / Summary Final Order / March 8, 2006)

- Where only one of two tenants signed the rental agreement and neither had sat for an interview with the board, the tenants were ordered to comply with the documents. The association's request for a security deposit that more realistically represented market value rather than the deposit called for in the lease was denied, as there was no authority to require the tenants to submit a higher amount than the amount set in the lease agreement.

Violation of documents

Sunshine Towers Condo. Assn., Inc. v. Tyrawa,
Case No. 2006-02-1575 (Grubbs / Final Order of Dismissal / April 26, 2006)

- The petition alleged that there was child under the age of 16 permanently residing in the respondent's unit in violation of the declaration, which forbids children under the age of 16 to occupy a unit. The petition requested that the respondent "be enjoined from allowing a person under the age of 16 from residing in his unit." In effect, the petition requested an order removing the under-age child from the unit. A "dispute" as defined in section 718.1255(1), does not include a disagreement that primarily involves "the eviction or other removal of a tenant."

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

Transfer Fees

Unit

Access to unit

Alteration to unit (See also Fair Housing Act)

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

Brandell v. Bay Point Studio Villas III Assn., Inc.,
Case No. 2005-04-1920 (Scheuerman / Summary Final Order / January 23, 2006)

- Desired changes of the unit owner involving cutting a hole in the common element ceiling and converting the common element attic space to a unit loft and bathroom would materially alter the appurtenances to the units and required approval of 100% of the owners. The fact that the association was proposing to sell or lease the area to the adjacent owners did not permit a different conclusion.

Brandell v. Bay Point Studio Villas III Assn., Inc.,
Case No. 2005-04-1920 (Scheuerman / Order on Rehearing / February 16, 2006)

- Where the final order of the arbitrator in response to the defense of selective enforcement ordered the association to initiate an enforcement action against a non-party second floor owner who had converted the attic to his personal use, on rehearing the arbitrator would not order the association to commence enforcement proceedings against the owners who had, years earlier, expanded their ground floor patios onto the common elements. The association's acquiescence years ago in permitting all the ground floor owners to expand their patios cannot be used to justify the association's wholesale abandonment of enforcing the documents in other situation. Here, the violations are distinct in nature and involved different numbers of owners.

Engel v. Seascape Condo. Assn. of Tarpon Springs, Inc.,
Case No. 2005-01-3749 (Scheuerman / Summary Final Order / December 23, 2005)

- An amendment to the declaration that purported to grant to the board the authority to approve the addition of a rear deck to the ground floor units extending over the common elements via a nonexclusive license agreement was not approved by 100% of the membership and was invalid. The right to use the common elements is an appurtenance that can only be bartered away with the unanimous consent of the owners. Labeling the changes as a license does not change what they are in reality; changes to the appurtenances to the units.

Floor coverings

Generally; definition

Rental (See also Tenants)

Repair

The Waterview Towers Condo. Assn., Inc. v. Kamhi,
Case No. 2004-05-ass (Bembry / Final Order / February 23, 2006)

- Where unit owner failed to maintain her unit balcony tile permitting the balcony to be damaged by water intrusion, unit owner was required to reimburse the association for the costs to repair the unit balcony.

The Waterview Towers Condo. Assn., Inc. v. Kamhi,
Case No. 2005-03-0729 (Bembry / Final Order / February 23, 2006)

- Unit owner was required to reimburse the association for the cost to replace unit's sliding glass doors and for repairs to the unit interior where unit owner failed to maintain her unit air conditioner, permitting substantial mold growth within the unit and causing proliferation of mold to other units and the common element hallways.

Restraints on alienation

Sale

Unit Owner Meetings (See Meetings)

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

Waiver (See also Estoppel; Selective Enforcement)

Brandell v. Bay Point Studio Villas III Assn., Inc.,
Case No. 2005-04-1920 (Scheuerman / Summary Final Order / January 23, 2006)

- Where a board exceeds its authority and performs some act that is ultra vires and contrary to its authority as set forth in the documents, it is not reasonable to rely on the board policy, and estoppel or waiver will not lie.