



# **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

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

Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1029

## **VOLUME ONE RECALL ARBITRATION SUBJECT MATTER INDEX**

**AUGUST 1998**

Note: This index contains summaries of recall final orders entered by Division arbitrators in the arbitration program described by Section 718.1255, Florida Statutes, during the period May 1992 through July 1997. The final order summaries are organized by subject matter. Final orders entered after July 1997 are reported in a separate supplement. Final orders involving awards of attorney's fees and issues not involving recall are reported in separate indices.

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**RECALL ARBITRATION SUBJECT MATTER INDEX**

**ARBITRATION PROCEDURE**

**- authority to file petition (See also, STANDING)**

Forestbrook V Condo. Assn., Inc.,

Case No. 92-0134 (Grubbs / Amended Order / May 26, 1992)

•Where one person signed the petition but indicated another person represented the association, and a third person signed a letter claiming to represent the corporation, no verified representative could be identified, so petition was not properly verified.

Scottish Highlands Condo. Assn., Inc.,

Case No. 92-0230 (Goin / Final Order Dismissing Pet. for Arb. / October 29, 1992)

•Since petition was not signed by representative or majority of board, recall was automatically certified by waiver.

Siegal v. Ivanhoe East Condo. Assn. I at Century Village,

Case No. 92-0225 (Grubbs / Final Order / September 25, 1992)

•Petition must be signed by board not unit owner and 2 board members.

Windsong of Boca Del Mar Condominium Association, Inc. v. Unit Owners Seeking Recall,

Case No. 96-0466 (Draper / Summary Final Order / February 27, 1997)

•Where petition alleged recalled board members failed to file a petition for recall arbitration within time permitted by statute and failed to step down as directors and where minutes of board meeting did not raise any legitimate reasons for failing to certify the recall, association permitted to maintain petition seeking to certify the recall. Where petition improperly named as respondents the board members sought to be recalled, arbitrator substituted unit owners seeking recall as respondents per 718.112(2)(k)3, F.S.

**- failure to comply with 61B-50/order of the arbitrator**

Bellair Condo. Assn., Inc. v. Unnamed,

Case No. 95-0242 (Vaughn / Dismissal / August 8, 1995)

•Petition dismissed without prejudice for failure to meet content requirements of Rule 61B-50.105, F.A.C.

\*Note: This volume contains arbitration orders through July 1997. It does not purport to include the holdings of all final orders, whether final orders on default or otherwise entered in the arbitration program. Also, the holdings which are included do not bind an arbitrator in another case as the particular facts at issue or rules to be applied may differ significantly. These rulings of independent arbitrators do not constitute agency action and do not bind the Division. Final orders pertaining to regular condominium arbitration are listed in separate indexes.

**ARBITRATION PROCEDURE** (continued)

**- failure to comply with 61B-50/order of the arbitrator** (continued)

The Board of Directors of The Breakers of Fort Walton Beach Condo., Inc. v. Group of Members of Condo. Corp. Who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0280 (Vaughn / Final Order Dismissing Petition and Certifying Recall / August 31, 1995)

- Petition dismissed when board failed to timely file supplemental materials showing date and time of receipt of written agreement, a copy of the written agreement, and affidavit of board's selection of representative within time allowed by arbitrator's order extending filing deadline; where board mailed supplemental information on the date that it should have been filed, petition would be dismissed for failure to comply with arbitrator's order.

Georgian Court Apts. No., Inc.,

Case No. 92-0108 (Player / Order of Dismissal / August 26, 1992)

- Board's failure to respond to arbitrator's order as to its position on petition for recall arbitration resulted in dismissal and certification of recall.

Greenglades Condo Assn., Inc. v. Coletti, et al.,

Case No. 93-0156 (Grubbs / Summary Final Order / August 31, 1993)

- Final order on merits could be issued based on material filed with the petition because unit owners failed to respond to the petition due to unit owner representative not accepting service of petition by certified mail delivery.

Board of Directors of Hialeah Club Villas Condominium Association v. Groups of Members of the Association who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 96-0272 (Oglo / Summary Final Order Dismissing Petition for Arbitration / October 15, 1996)

- Case summarily dismissed where board failed to provide arbitrator with particular written agreements it alleged were invalid, after arbitrator issued order requiring board to do so.

Northlake Village Condominium Association 1, Inc. v. Unit Owners Voting for Recall,

Case No. 95-0448 (Goin / Summary Final Order / February 9, 1996)

- Where respondents/unit owners failed to file an answer to petition for arbitration, facts alleged in petition deemed admitted.

**ARBITRATION PROCEDURE** (continued)

**- failure to comply with 61B-50/order of the arbitrator** (continued)

Raffa v. Tymber Skan on the Lake Condo. Assn., Inc.,

Case No. 93-0301 (Price/ Final Order Dismissing Pet. for Arb. and Order Closing File / November 3, 1993)

•Petition dismissed under rule 61B-45.036 because petitioner did not respond to arbitrator's order to comply with the content required by 61B-50.105.

Board of Admin. of Westchester Point Condo. Assn., Inc.,

Case No. 93-0144 (Price / Order Dismissing Pet. for Recall Arb. and Order Closing File / August 3, 1993)

Failure to respond to order w/in time given warranted dismissal as moot since regular election to be held.

**- withdrawal of petition/withdrawal of written agreement**

Ocean Harbour Condo. Assn., Inc.,

Case No. 93-0031 (Goin / Final Order Dismissing Pet. for Arb. / April 15, 1993)

•Board's withdrawal of petition for arbitration certifies recall of board members as of date of board vote to withdraw petition, rule 7D-50.112 renumbered 61B-50.112. See also, Senate Manor Homeowner's Assn., Inc., Case No. 93-0083 (Price/ Final Arb. Order: 4/20/93).

Villas of Westland Condo. Assn., Inc. v. Ramos,

Case No. 93-0084 (Grubbs / Final Order / May 25, 1993)

•Summary disposition appropriate when unit owner representative voluntarily withdrew written agreement and written agreement was fatally defective.

Windsong of Boca Del Mar Condominium Association, Inc. v. Unit Owners Seeking Recall,

Case No. 96-0466 (Draper / Summary Final Order / February 27, 1997)

•Where petition alleged recalled board members failed to file a petition for recall arbitration within time permitted by statute and failed to step down as directors and where minutes of board meeting did not raise any legitimate reasons for failing to certify the recall, association permitted to maintain petition seeking to certify the recall. Where petition improperly named as respondents the board members sought to be recalled, arbitrator substituted unit owners

seeking recall as respondents per 718.112(2)(k)3, F.S.

**ATTORNEY'S FEES/COSTS\***

Caribbean Condo. Mgmt. Assn., Inc. v. Kennedy,

Case No. 93-0406F (Price / Arb. Final Order on Motion for Attorney's Fees and Costs / February 17, 1994)

- Awarding unit owners' attorney's fees because they were the prevailing party and the recall was done properly; of \$8,790 requested for 58.6 hours at \$150/hour, \$6,135 awarded as reasonable.

Clipper Bay Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 96-0285F (Draper / Final Order on Attorney's Fees / November 5, 1996)

- Unit owners' service of recall agreement after election in which director sought to be recalled was re-elected, where most agreements were executed prior to election, was rejected; however, because there was no prior arbitration orders prescribing the practice and it was not contrary to Ch. 617, 718, or division rules, it was not frivolous, unreasonable or groundless and fees not awarded to prevailing association.

Courts of Inverrary Condo. Assn., Inc. v. Shepard, et. al,

Case No. 95-0091F (Draper / Order Acknowledging Withdrawal of Pet. for Costs and Atty's Fees and Closing File / March 6, 1995)

- File closed when respondents withdrew the motion for attorney's fees and costs.

Board of Admin. of The Eagle Creek Rec. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Board of Dir.,

Case No. 95-0264F (Price / Final Order on Motion for Attorney's Fees and Costs / August 14, 1995)

- Attorney's fees denied because recalling unit owners who lost arbitration were required to participate in arbitration and failure to include the names of replacement candidates, to provide spaces for write-in votes, and to designate a representative were not so deficient as to rise to the level of being frivolous, groundless, or unreasonable.

Greenglades Condo. Assn. II, Inc. v. Deneen Coletti, et al.,

Case No. 93-0282F (Grubbs / Order on Motion for Attorney's Fees and Costs / February 25, 1994)

- Denying association's request for fees and costs even though association was prevailing party based on the reasoning in International Princess and because legislature requires board to petition for recall to review validity of board action, which is tantamount to requiring the



prevailing party in a trial court to appeal, leaves unit owners without the option of participating in litigation.

\*Note: Attorney's fees awards are no longer granted by the arbitrators following repeal of Rule 61B-50.141, F.A.C., effective December 21, 1997.

**ATTORNEY'S FEES/COSTS** (continued)

Internat'l Princess Condo. Assn., Inc.,

Case No. 92-0245 (Price / Arb. Final Order / December 21, 1992; Atty's Fees/ March 17, 1993)

- Amount of fees requested was reasonable, however, award of fees to the association denied because the record did not support a finding that the recall effort of the non-prevailing unit owners (which included some renters' signatures and was not served on board by certified mail) was frivolous, unreasonable, or groundless, when viewed in light of legislative intent of 718.1255 and F.A.C.R. 7D-50.141(4).

Jupiter Bay Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed A Written Agreement to Recall Members of the Board of Directors,

Case 95-0239F (Price / Final Order / August 8, 1995)

- Where intervening election rendered recall arbitration moot, rather than some voluntary act of the respondent unit owners that was motivated by the filing of the petition, association is not the prevailing party. Also, even if it had been determined that the Association was the prevailing party, no attorney's fees would have been awarded. Serving a written agreement for recall on a board of directors four to twelve weeks in advance of an election does not necessarily constitute a frivolous, groundless or unreasonable action by the unit owners).

Las Casas Owners Association, Inc. v. Group of Members of Condominium Corporation Who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0466F (Scheuerman / Final Order on Motion for Attorney's Fees / March 13, 1996)

- Attorney's fees not awarded to unit owners where counsel for the owners voting in favor of recall, who at the time also was a director not subject to recall, and who was also an owner who voted for the recall, should have resigned from the board to accept the representation in order to avoid the appearance of impropriety. Board member/attorney for the owners participated in board vote on whether to accept recall petition.

Board of Directors of Ludlum Lake Townhouses Section One Association, Inc. v. Unit Owners Voting for Recall,

Case No. 96-0322F (Goin / Final Order on Motion to Tax Petitioner's Costs and Attorney's Fees / September 18, 1996)

- No attorney's fees awarded to association where recall became moot because of an intervening election; fact that unit owners served written agreement approximately three weeks before election did not make recall effort frivolous, groundless or unreasonable.

**ATTORNEY'S FEES/COSTS** (continued)

Board of Dir. of Pinebark Condo. Assn., Inc. v. Lopez, et al.,

Case No. 94-0014F (Grubbs / Order Denying Motion for Attorney's Fees and Costs / April 4, 1994)

- Failure of party requesting attorney's fees to file a motion that complies with F.A.C.R. 61B-50.141(2) precludes an award of attorney's fees and, in the absence of special circumstances, an association will not be awarded attorney's fees in a recall arbitration dispute; failure of unit owners seeking recall to include recall/retain lines and election of replacements where minority of board was being recalled did not constitute special circumstances).

Provincial Assn., Inc. v. Aseltine,

Case No. 92-0109 (Linthicum / Arb. Final Order / July 22, 1992)

- Attorney's fees, which are a substantive rather than procedural right, cannot be awarded pursuant to a stipulation of the party's awarding fees because the cause of action arose prior to the effective date of s.718.1255, F.S. provision for award of fees. No retroactive application since fee provision is substantive.

The Board of Admin. of River Run Yacht Club Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Bd. of Dir.,

Case No. 94-0445F (Price / Final Order on Motion for Attorney's Fees and Costs / December 21, 1994)

- Imposition of attorney's fees against recalling unit owners appropriate only under special circumstances. The failure of written agreement to include recall and retain lines by the directors' names and failure to include spaces by the name of replacement candidates does not constitute special circumstances.

Timber Lakes Estates, Inc. v. Unit Owners Voting for Recall,

Case No. 96-0325F (Draper / Final Order on Attorney's Fees / November 27, 1997)

- Attorney's fees not awarded to association where unit owners submitted a recall agreement which on its face lacked a majority of unit owners. Unit owners apparently misconstrued clear division rule regarding inclusion of developer's units in determining majority (61B-23.0026(2)(b)); nevertheless this does not compel a finding that the recall was frivolous, unreasonable or groundless to the extent that fees should be awarded.

## **ATTORNEY'S FEES/COSTS** (continued)

Twin Lakes South Condominium Association, Inc. v. Members of the Association Voting for Recall,

Case No. 96-0187F (Draper / Order on Attorney's Fees and Costs / July 18, 1996)

- Recall was not certified because some votes were signed by someone other than the person listed on the voting certificate. However, no attorney's fees awarded to the association because of the factor in Rule 61B-50.141(4)(a) which provides that unit owners are more likely than the board to be awarded prevailing party attorney's fees and because none of the other factors in 61B-50.141(4) applied.

Whisper Wood Townhomes Association, Inc. v. Unit Owners Voting for Recall,

Case No. 96-0362F (Goin / Final Order on Petitioner's Motion for Attorney's Fees / October 22, 1996)

- Where unit owners failed to include recall/retain lines and failed to designate a representative, deficiencies did not rise to level of being frivolous, unreasonable, or groundless and special circumstances not applied. Association not awarded attorney's fees.

## **BOARD'S FAILURE TO CERTIFY RECALL**

### **- generally**

East Lake Woodlands Condominium Unit Seven Association, Inc. v. Unit Owners Voting for Recall,

Case No. 96-0214 (Draper / Partial Summary Order and Order Setting Prehearing Procedure / August 28, 1996)

- Four agreements which were previously submitted to the board after which a regular election was held and the board members sought to be recalled were reelected, have been superseded by the will of the majority as expressed through their election at the annual meeting.

### **- failure to date recall agreements/failure of agreements to be executed within a finite period of time**

East Lake Woodlands Condominium Unit Seven Association, Inc. v. Unit Owners Voting for Recall,

Case No. 96-0214 / Draper / Partial Summary Order and Order Setting Pre-hearing Procedure / August 28, 1996)

- There is no requirement in Chapter 718 or 617 that condominium association recall

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- failure to date recall agreements/failure of agreements to be executed within a finite period of time** (continued)

East Lake Woodlands Condominium Unit Seven Association, Inc. v. Unit Owners Voting for Recall, (continued)

Case No. 96-0214 / Draper / Partial Summary Order and Order Setting Pre-hearing Procedure /August 28, 1996)

agreements had to be dated or had to be executed within a finite period of time. Section 617.0701(4)(a), F.S., requiring that written consents be obtained within 60 days of the date of the earliest dated consent, was found not to apply to written recall agreements. See also, Jupiter Bay Condominium Association, Inc. v. Group of Unit Owners Seeking Recall, Case No. 97-0105, Order Striking Portions of Amended Petition and Requiring Amended Petition (Draper, March 19, 1997).

**- failure to obtain a majority of the voting interests/failure to properly calculate a majority of the voting interests**

In re: Board of Administration of the Conqueror Condominium Association, Inc.;

Case No. 85-104 (Presnell / Final Order /July 8, 1985)

- Where by-laws provided that director may be recalled by 75% of the unit owners and where declaration adopted the provisions of Ch. 711, as amended, unit owners could recall by a majority vote of the owners as provided in Section 718.112(2)(k).

Fosca Condo. Assn., Inc. v. Unit Owners Signing the Recall Agreement,

Case No. 93-0373 (Draper / Summary Final Order / December 29, 1993)

- Four signatures were invalid because the representative admitted to signing the agreements rather than the unit owner supposedly represented on the form, so the recall was void ab initio and not certified as majority not met.

Galt Ocean Manor Condo. Assn., Inc. v. Unit Owners Seeking Recall,

Case No. 97-0185 (Draper / Summary Final Order / July 15, 1997).

- Recall rejected where less than a majority of voting interests eligible to elect directors approved recall. Bylaws which permitted unit owners to take any action by written agreement that could be taken at a meeting, so long as not less than the minimum number of votes that would be necessary to authorize an action at a meeting signed the written

agreement, and s. 718.112(2)(b)(1), which provides that decisions shall be made owners of a majority of the voting interests represented at a meeting, were superseded by s. 718.112(2)(k), which requires majority of voting interests to effect recall by written agreement.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- failure to obtain a majority of the voting interests/failure to properly calculate a majority of the voting interests** (continued)

Internat'l Princess Condo. Assn., Inc.,

Case No. 92-0245 (Price / Arb. Final Order / December 12/21/92)

- Subtracting renters and duplicate signatures from total of unit owners voting for recall reduced total below majority needed to certify recall.

Board of Administration of Lake Heather Heights Condominium Association, Inc. v. Group of Members of the Association Who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0245 (Price / Summary Final Order / October 5, 1995)

- Where unit owners failed to file an answer to the petition and where petition alleged that less than a majority of the voting interests voted in favor of the recall, arbitrator took facts alleged in petition as true and held that recall could not be certified.

Park Lake Village Condominium Association, Inc. v. Unit Owners Voting for Recall,

Case No. 96-0414, Final Order (Draper, March 17, 1997)

- Despite board's failure to timely notice meeting on whether to certify recall, arbitrator refused to certify recall where less than a majority of the unit owners signed recall agreement and where it did not appear board's untimely notice was done in bad faith, in an effort to preclude unit owner participation.

Timber Lake Estates, Inc. v. Unit Owners Voting for Recall,

Case No. 96-0067 (Draper / Summary Final Order / March 18, 1996)

- Argument that units without voting certificates on file should be excluded from determination of the majority of the voting interests rejected. Bylaws provided that if no certificate was on file the "vote of the unit owner shall not be considered in determining the requirement for a quorum nor for any other purpose"; reduction of the majority of the voting interests not authorized by any statute, rule or case law; it would have the effect of reducing the number of voting interests required to effect a recall under s. 718.112(2)(k); also, developer units may not be excluded from the determination of the number of units required to constitute a majority of the voting interests.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- failure to obtain a majority of the voting interests/failure to properly calculate a majority of the voting interests** (continued)

Twin Lakes South Condominium Association, Inc. v. Members of the Association Voting for Recall,

Case No. 97-0030 (Draper / Summary Final Order / March 12, 1997)

•Where number of unit owners participating in recall, by proxy and in person, constituted less than a majority of the unit owners, recall rejected. Section 718.112(2)(k) requires vote of a majority of all unit owners rather than, as unit owners contend, the favorable vote of a majority of the voting interests present at a meeting.

Villa Dorada Condo. Assn., Inc. v. Unit Owners Signing the Written Recall Agreement,

Case No. 93-0209 (Price / Arbitration Final Order / December 10, 1993)

•Where condominium consists of several buildings, and bylaws provide that resident directors shall be elected solely by members of each building, unit owners in each building constitute the voting interests pursuant to s. 718.103(27), F.S.

Whisper Wood Townhomes Association, Inc. v. Unit Owners Voting for Recall,

Case No. 96-0290 (Oglo / Summary Final Order / December 24, 1996)

•Despite submitting written agreements for a majority of units, since there was not a majority of unit owners voting to recall any of the directors, because some units voted to retain, recall effort not certified based on failure to obtain a majority of votes.

**- failure to properly serve written agreement on the board**

The Beach Condo. Owners' Assn., Inc.,

Case No. 92-0273 (Goin / Order Dismissing Pet. for Arb. / January 22, 1993)

•Service of written recall on one board member is sufficient to put board on notice; requirement of service by certified mail is to provide proof of when board was served to calculate the 72-hour meeting requirement and not to invalidate actual service; see also Beach Condo. Order to Show Cause (1/12/93).

Countryside Condo. Assn., Inc. v. Unit Owners Signing Recall Agreement,

Case No. 93-0260 (Goin / Final Order Dismissing Pet. for Arb. / September 7, 1993)

- Service on association's registered agent by certified mail meets the service requirements of 61B-23.0028(1)(g).

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- failure to properly serve written agreement on the board** (continued)

Courts of Inverrary Condo. Assn., Inc. v. Shepard, et al.,  
Case No. 94-0274 (Draper / Final Order / January 18, 1995)

- Service of copy of recall agreement on board determined not to render recall flawed where there was no evidence that agreement was altered, modified, or otherwise changed.

Board of Admin. of the Hialeah Club Villas Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Bd. of Dir.,  
Case No. 95-0102 (Price / Recall Arb. Summary Final Order / July 24, 1995)

- Time for holding the board meeting to determine whether to certify the recall did not begin to run on the date that the board received notice from the post office that a certified mail package needed to be picked up. Since service was effected by hand delivery after board failed to claim the certified mail package, the board timely held its meeting within 5 full business days of hand delivery of agreement on board.

Board of Dir. of Pinebark Condo. Assn., Inc. v. Lopez, et al.,  
Case No. 93-0177 (Grubbs / Summary Final Order / December 2, 1993)

- Service of photocopy of written recall instead of original as required by F.A.C.R. 61B-23.0028(1)(g) & (h), might constitute a failure to substantially comply if, for example, the photocopy did not show whiteouts, erasures, or clearly reproduce signatures in various color inks.

Board of Admin. of Sea Monarch Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Bd. of Dirs.,  
Case No. 95-0246 (Price / Summary Final Order / November 20, 1995)

- Service of written agreement by process server on association's registered agent who was also association attorney satisfied service requirement of s. 718.112(2)(k), F.S., *on rehr'g*, Arb. certified recall.

Everidge v. Board of Dir. of Seaview Villas Condo. Assn., Inc.,  
Case No. 93-0098 (Price / Order Denying Pet. for Recall Arb. / April 21, 1993)

- 72-hour time limit is not tolled because the only board member not recalled was served the

written agreement but did not notify recalled board members; service on any board member is service on board.

### **BOARD'S FAILURE TO CERTIFY RECALL** (continued)

#### **- illegible signatures/failure to print name**

Board of Administration of the Sea Monarch Condominium Association, Inc. v. Group of Members of the Association Who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0246 (Goin / Amended Summary Final Order / December 18, 1995)

- Written agreements valid where some unit owners failed to print their names where association did not allege that it was unable to determine whether person signing the agreement was the owner of record.

Villages of Emerald Bay Condo. Assn. v. Little,

Case No. 93-0074 (Grubbs / Final Order / May 4, 1993)

- Signatures that were illegible did not render vote invalid where board did not assert or prove that the signer was not a unit owner entitled to vote.

The Villas of West Miami Condominium Association, Inc. v. Unit Owners Voting for Recall,  
Case No. 95-0432 (Goin / Partial Summary Final Order / December 11, 1995)

- Written agreements that included a combination of signed or printed name with a unit number determined to substantially comply with rules; association did not identify any specific signatures that were so illegible that it was unable to determine whether it was a valid vote.

#### **- misleading information given to voters/fraud**

Board of Directors of Boca Cove Home Condominium Assn., Inc. v. Martin, et al.,

Case No. 93-0261 (Grubbs / Summary Final Order Certifying the Recall / November 30, 1993)

- Board cannot refuse to certify on basis that unit owners were told lies about board members and board activity.

Diplomat Square Condominium Assn., Inc. v. Ronald McKonly and All Other Owners Voting in Favor of Recall,

Case No. 95-0473 (Goin / Summary Final Order / February 6, 1996)



Argument by association that recall should not be certified because the unit owners were given misinformation rejected.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- misleading information given to voters/fraud**(continued)

Board of Dir. of Driftwood Sands Condo. Assn., Inc. v. Driftwood Sands Condo. Assn., Inc.,  
Case No. 94-0422 (Grubbs / Summary Final Order Certifying Recall / October 17, 1994)

- Misrepresentations concerning sitting board contained in cover letter sent with recall "ballot" could not justify board's refusal to certify recall.

- Right to vote carries with it duty to be informed about issues and candidates, so board cannot ignore the will of the majority because the board thinks the vote was based on misinformation. See also, East Lake Woodlands Condominium Unit Seven Association, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 96-0214, Partial Summary Order and Order Setting Prehearing Procedure (Draper, Aug. 28, 1996).

Forestbrook V Condo. Assn., Inc. v. Mackenzie, et al.,  
Case No. 92-0129 (Grubbs / Final Order / August 1, 1992)

- Intent of voters is irrelevant to whether recall should be certified.

- Laguna Club East Condominium, Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0122 (Draper / Summary Final Order / April 28, 1997)

- Unit owners' claim that board used intimidation to scare unit owners from signing recall agreement rejected. Board warned unit owners that recall effort might result in unit owners being liable for attorney's fees and argued that it did not support certain assessment level. Threats did not involve harm to unit owners. Unit owners were told untrue things in attempt to discourage them from signing recall agreement. Political process, with all its free speech attributes, applies in condominium association matters, and petition will not be rejected on these grounds.

Las Casas Owners Assn., Inc. v. Group of Members of Condominium Corp. Who Executed a Written Agreement to Recall Members of the Board of Directors,  
Case No. 95-0410 (Vaughn / Summary Final Order / October 31, 1995)

- Arbitrator will not consider the motivation of the voters of the truth or falsity of representations made in the recall campaign. See also, Hammock Pine Village IV Association, Inc. v. Unit Owners Voting for Recall, Case No. 96-0153, Final Order Certifying Recall (Scheuerman, May 17, 1996).

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- misleading information given to voters/fraud**(continued)

Board of Administration of the Sunrunner Place Condominium Homeowners Association, Inc. v. Group of Members of the Association Who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0189 (Price / Summary Final Order / December 18, 1995)

•Where board did not challenge statements made in cover letter to written agreement as amounting to fraud in the inducement, statements not relevant to recall and do not form sufficient basis for invalidating recall.

Terrace Park of Five Towers Assn. No. 19, Inc.,

Case No. 93-0079 (Price / Final Arb. Order / June 28, 1993)

•Voter affidavits, submitted after the time for board action, that alleged owners signed recall under threat of loss of use of recreational facilities were merely political assertions and did not amount to "coercion" or "duress" so as to justify invalidation of recall.

Vanderbilt Shores Condo. Assn., Inc.,

Case No. 92-0117 (Grubbs / Arb. Summary Final Order / June 10, 1992)

•Summary disposition based upon inadequate factual basis going to motivation of members signing recall and board's failure to timely file for petition.

**- proxy**

Seascape Phase 5-A, Inc. v. Unit Owners Voting for Recall,

Case No. 97-0109 (Oglo / Summary Final Order / June 9, 1997)

•During a recall attempt at a meeting of the unit owners of the twenty-member association, a separate vote was taken from the *owners present* on each director sought to be recalled and each replacement candidate. However, eight of the thirteen votes submitted at the meeting were by proxy. Even if the proxy were to be considered together with provisions in a cover letter that accompanied the proxy mailed to the owners, the proxy impermissibly lumped both of the recalled directors together and lumped both of the replacement candidates together. As the requirements for a separate vote were not met by the *owners voting by proxy*, the recall was not certified, based upon the failure of the owners to substantially comply with Rule 61B-23.0027(3)(c)3-5 and (d), F.A.C.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- qualifications of replacement candidates (See also, REPLACEMENT CANDIDATES)**

Board of Dir. of Driftwood Sands Condo. Assn., Inc. v. Driftwood Sands Condo. Assn., Inc.,  
Case No. 94-0422 (Grubbs / Summary Final Order Certifying Recall / October 17, 1994)

- Competency of replacement board members cannot be considered when determining whether to certify a recall.

- In absence of provision in condominium documents that requires board members to live at condominium, the fact that replacement board members don't live at condominium is not a proper consideration.

Habitat II Condominium, Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0073 (Goin / Final Order / April 29, 1997)

- Where association alleged that three out of 10 replacement candidates were ineligible to be on the board because they were not record owners, but allegation was not raised at board meeting held to determine whether to certify recall, it was not fundamental error which could be raised for the first time subsequent to the filing of the petition. Although three were ineligible, the unit owners properly elected seven replacement members. Nevertheless, the issue was examined in order to determine the properly elected board members.

- Where articles required board members to be unit owners and where ownership was established by the acquisition of fee title to or fee interest in a condominium parcel and by the recordation in the public records of the deed or other instrument establishing the acquisition, it was determined that someone who had entered into a purchase contract and was making payments to a trust and who would receive title after making all payments, was not an owner. Likewise, a person who had obtained quit-claim deed which was not recorded was not eligible to be a board member. In addition, individual who obtained quit-claim deed and recorded it after the board meeting held to determine whether or not to certify the recall was not eligible to be a replacement candidate but would be eligible to be appointed or elected to fill a vacancy.

- Where three out of ten replacement candidates were ineligible to be on the board, the seven validly elected board members could fill the vacancies by appointment or election.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- representative**

East Lake Woodlands Condo. Unit Seven Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0214 (Draper / Partial Summary Order and Order Setting Prehearing Procedure  
/ August 28, 1996)

•The lack of a designated representative in written agreement did not result in an omission of the functions of a designated representative where the board was aware that one of the board members was the actual representative of the unit owners and the unit owners' attorney was at the board meeting held to determine whether or not to certify the recall.

Greenglades Condo. Assn. II, Inc. v. Deneen Coletti, et al.,  
Case No. 93-0282F (Grubbs / Notice of Correspondence and Order on Objection to  
Consideration of Correspondence / February 23, 1994)

•Noting that failure to name representative, standing alone, was not a fatal defect, the arbitrator accepted correspondence filed by a unit owner voting for recall, who was a party to the dispute, as a filing on behalf of the recalling unit owners.

Board of Administration of the Hialeah Club Villas Condominium Association, Inc. v. Group of Members of the Association Who Executed a Written Agreement to Recall Members of the Board of Directors,  
Case No. 95-0102 (Price / Summary Final Order / July 24, 1995)

•Failure to name a representative, standing alone, is not sufficient to invalidate a written agreement, particularly where representative is named in cover letter that was delivered with the written agreement.

**- unit owner delinquent in assessment**

Alhambra Village No. 1 Condo. Assn., Inc. v. The Group of Members of the Assn. Seeking Recall,  
Case No. 93-0280 (Price / Arbitration Summary Final Order / September 2, 1993)

•Voting rights appurtenant to a unit cannot be suspended, denied or otherwise impaired on the basis of unit owners' failure to pay common expenses or other fees owed to association; thus votes in a recall will not be invalidated on basis that unit owners are delinquent in assessments, even where declaration provides that voting rights are suspended.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- unit owner meeting to recall failed to comply with 61B-23.0027**

**- generally**

River Place Condominium Association at Ellenton, Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0015 (Goin / Final Order Not Certifying Recall / March 19, 1997)

•Recall not certified where unit owner meeting notice did not list by name each board member sought to be recalled, did not specify a person who would act as the presiding officer, did not attach a copy of the signature list, and was not mailed or delivered to the unit owners or board at least 10 days before the unit owner meeting, as required by Rule 61B-23.0027(2)(b).

Habana Park Condo. Assn., Inc. v. Delgado,  
Case No. 93-0300 (Draper / Summary Final Order / November 19, 1993)

•Unit owners failed to meet the substantial compliance requirement of the rule because of defects in the proxies and notice [notice failed to name replacement candidates or inform unit owners that nominations could be taken from floor], so recall not certified.

Northlake Village Condominium Assn. 1, Inc. v. Unit Owners Voting for Recall,  
Case No. 95-0448 (Goin / Summary Final Order / February 9, 1996)

•Where Respondents failed to provide notice of unit owner recall meeting to the board and all unit owners and also failed to allow nominations from the floor for replacement candidates, it was determined that Respondents did not substantially comply with rules and recall not certified.

Seascape Phase 5-A, Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0109 (Oglo / Summary Final Order / June 9, 1997)

•During a recall attempt at a meeting of the unit owners of the twenty-member association, a separate vote was taken from the *owners present* on each director sought to be recalled and each replacement candidate. However, eight of the thirteen votes submitted at the meeting were by proxy. Even if the proxy were to be considered together with provisions in a cover letter that accompanied the proxy mailed to the owners, the proxy impermissibly lumped both of the recalled directors together and lumped both of the replacement candidates together. As the requirements for a separate vote were not met by the *owners voting by proxy*,

the recall was not certified, based upon the failure of the owners to substantially comply with Rule 61B-23.0027(3)(c)3-5 and (d), F.A.C.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- unit owner meeting to recall failed to comply with 61B-23.0027** (continued)

**- generally** (continued)

Twin Lakes South Condo. Assn., Inc. v. Members of the Assn. Voting for Recall,  
Case No. 97-0030 (Draper / Summary Final Order / March 12, 1997)

•Where number of unit owners voting in favor of recall, either by proxy or in person, constituted less than a majority of the unit owners, recall rejected. Section 718.112(2)(k) requires vote of a majority of all unit owners rather than, as unit owners contend, the favorable vote of a majority of the voting interests present at a meeting.

Versailles Gardens I Condominium Assn., Inc. v. Unit Owners Voting for Recall;  
Case No. 95-0501 (Goin / Summary Final Order / February 23, 1996)

•Where a combined signature list and recall meeting notice did not include all information required by Rule 61B-23.0027(2); ballots used at unit owner meeting to recall the board listed all board members together and did not give the owners a chance to recall some but not others; and ballots to elect replacement board members did not provide a space for write-in candidates and no nominations were taken from the floor, it was determined that recall committee did not substantially comply with rule.

Whittier Towers Apartment Assn., Inc. v. Group of Members of the Assn. who Voted to Recall Members of the Board of Directors,  
Case No. 94-0038 (Price / Arbitration Final Order / March 25, 1994)

•Where signature list failed to state that replacement board members would be elected at unit owner recall meeting and failed to list eligible replacement candidates; minutes of recall meeting failed to record the specific seats for which replacement candidates are elected; and minutes were not delivered to the board of directors, unit owners failed to substantially comply with administrative rules and recall deemed ineffective.

**- presiding officer**

Shady Brook Village Owners Assn. Inc.,  
Case No. 95-0433 (Scheuerman / Final Order Certifying Recall / November 9, 1995)

- Even if individual chosen to be the presiding officer at the unit owner recall meeting had publicly taken sides on the recall issue, neither the statute nor the administrative rules place such substantive limitations upon the presiding officer; only substantive limitation upon the presiding officer is that he not be a board member subject to recall.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- quorum**

Habana Park Condo. Assn., Inc. v. Delgado,  
Case No. 93-0300 (Draper / Summary Final Order / November 19, 1993)

- Limited proxies used to establish quorum at unit owner recall meeting were defective in that none named a person authorized to vote the proxy, none gave the date the proxy was given or date and time of recall meeting, so no quorum was present.

**- vote cast by unauthorized person**

**-generally**

Board of Dir. of Boca Cove Home Condo. Assn., Inc. v. Martin, et al.,  
Case No. 93-02610 (Grubbs / Summary Final Order Certifying the Recall / November 30, 1993)

- Ballot must be considered valid in absence of evidence showing that unit owner who voted was not person authorized to vote by the co-owners.

Habitat II Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0073 (Goin / Final Order / April 29, 1997)

- Where articles of incorporation provided that ownership was established by the acquisition of fee title to or fee interest in a condominium parcel and by the recordation in the public records of the deed or other instrument establishing the acquisition, it was determined that someone who had entered into a purchase contract and was making payments to a trust and who would receive title after making all payments, was not an owner. Likewise, a person who had obtained quit-claim deed which was not recorded was not an owner as defined in the articles. In addition, individual who obtained quit-claim deed and recorded it after the board meeting held to determine whether or not to certify the recall was not considered an owner at the time of the recall.

Tierra del Mar Condo. Assn., Inc. v. Unit Owners Who Executed a Written Agreement to Recall One or More Members of the Board,  
Case No. 94-0206 (Richardson / Final Order / October 19, 1994)

- Vote of unit owner under her new married name was valid even though the deed on file for her unit was in her prior married name because there was not requirement of registering name changes and association had listed her on its election sign-in sheets for the last two years under her present name.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- vote cast by unauthorized person** (continued)

**- generally** (continued)

Villa Dorada Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0343 (Goin / Final Order / December 9, 1996)

- Where it appeared that six written agreements had signatures that did not match the signatures on file with the association and one was signed by someone other than the voting representative, the recall not certified where unit owners did not file an answer and did not dispute facts in petition.

**- power of attorney**

Courts of Inverrary Condo. Assn., Inc. v. Shepard, et al.,  
Case No. 94-0274 (Draper / Final Order / January 18, 1995)

- Under s.718.112, F.S., and rule 61B-23, F.A.C., a unit owner may cast recall vote through a power of attorney.

James Place Condo. Assn., Inc. v. The Group of Members of the Assn. Seeking Recall,  
Case No. 93-0227 (Price / Arb. Summary Final Order / October 27, 1993)

- Affirming board's failure to certify recall because holder of power of attorney did not give notice to board of his authorization to vote and board made search of association. records and found no evidence of agent's authority to vote, board's non-certification of the vote was reasonable in light of the short time in which it had to certify the votes.

**- proxy**

Colonial Arms Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 95-0375 (Goin / Summary Final Order / February 8, 1996)

- Proxy that did not substantially comply with Division's limited proxy form and that was used to recall the board and elect replacement candidates held to be invalid.

Greenglades Condo Assn., Inc. v. Coletti, et al.,



Case No. 93-0156 (Grubbs / Summary Final Order / August 31, 1993)

- Limited proxies, which did not provide date, time and place of meeting, the board member(s) to be recalled, or instructions on how to vote, were fatally defective and could not be counted toward majority needed to recall member.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

- proxy (continued)

Habana Park Condo. Assn., Inc. v. Delgado,

Case No. 93-0300 (Draper / Summary Final Order / November 19, 1993)

- Limited proxies used to establish quorum at unit owner recall meeting were defective in that none named a person authorized to vote the proxy, none gave the date the proxy was given or date and time of recall meeting, so no quorum was present.

High Pt. of Orlando Condo. Assn. Sec. 1, Inc. v. Members of the Assn. Voting for Recall,

Case No. 95-0241 (Grubbs/ Final Order on Pet. for Recall Arb. December 4, 1995)

- Limited proxies were not substantially similar to limited proxy form adopted by the Division and, therefore, were improperly counted in order to attain majority for recall.

- Where, on proxy form, the names of all the board members are listed with a "yes" or "no" next to the name, and it is not clear from any language preceding the name whether a "yes" means that the person is to be retained or removed, the limited proxy does not clearly and explicitly set forth instructions to the proxy holder on how to vote.

Shady Brook Village Owners Assn., Inc.,

Case No. 95-0433 (Scheuerman / Final Order Certifying Recall / November 9, 1995)

- Use of proxies at unit owner meeting to recall members of the board and to elect replacements is permitted, so these votes will be counted; and lack of "yes" or "no" did not prejudice recall as there was no ambiguity in the form where it clearly stated "in favor of recall of. . . ."

Sterling Condo. Assn., Inc. v. Group of the Members of the Assn. who Voted for Recall,

Case No. 94-0126 (Price / Arbitration Summary Final Order / May 4, 1994)

- Where ten owners signed a form purporting to authorize other persons to sign the written agreement for them, owners were, in effect, attempting to use general proxies which may not be used in voting.

Twin Lakes South Condo. Assn., Inc. v. Members of the Assn Voting for Recall,

Case No. 97-0030 (Draper / Summary Final Order / March 12, 1997).

- Where limited proxy utilized by unit owners specified only that the proxy holder was authorized to vote on recall and in replacement election, but did not specify whether board members should be recalled or not and did not list replacement board members, limited proxy held invalid.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- trust/trustee**

Board of Directors of Lover's Key Beach Club Condo., Inc. v. Group of Members of Condominium Corporation who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0244 (Vaughn / Final Order / October 3, 1995)

- Trustee appointed over developer's estate could not vote in favor of recalling directors elected by non-developer owners.

**- voting certificate**

The Caribbean Condo. Mgmt. Assn., Inc. v. Kennedy,

Case No. 93-0175 (Price / Arb. Final Order / October 27, 1993)

- Association, by not enforcing provision of declaration in regard to voting certificates, has established a pattern of allowing irregularities in the certificates; therefore, provision will not be enforced in recall arbitration.

Courts of Inverrary Condo. Assn., Inc. v. Shepard, et al.,

Case No. 94-0274 (Draper / Final Order / January 18, 1995)

- Association's failure to enforce designated voter requirements on other association voting precludes use of it to disqualify votes cast in favor of recall agreement. A failure to enforce the requirement, which is attributable to a previous board does not excuse disenfranchisement of voters unless board provides notice of its intent to change policy prior to election.

East Lake Woodlands Condo. Unit Seven Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 96-0214 (Draper / Case Management Order / October 3, 1996)

- Where unit was owned by three individuals, only one signed the recall agreement, and there was no voting certificate on file, the written agreement was properly rejected.
- Voting certificate authorizing mother, who was not an owner, to vote for the unit was invalid.

- Voting certificate executed after the recall agreement was served on the board was invalid for purposes of written agreement.

### **BOARD'S FAILURE TO CERTIFY RECALL** (continued)

#### **- voting certificate** (continued)

#### East Lake Woodlands Condo. Unit Seven Assn., Inc. v. Unit Owners Voting for Recall, (continued)

Case No. 96-0214 (Draper / Case Management Order / October 3, 1996)

- Were recall agreement was signed by husband, voting certificate on file designated wife as person authorized to vote, and bylaws provided that H and W are deemed one person and either may cast vote "unless either he, she or they wish the Unit to be considered as being owned by more than one person", regardless of voting certificate, association improperly rejected the vote.

- Board improperly rejected agreement that was signed by husband where it was rumored that he was dead.

#### East Lake Woodlands Condo. Unit Seven Assn. Inc. v. Unit Owners Voting for Recall,

Case No. 96-0214 (Draper / Final Order (Draper / October 25, 1996)

- Unit owners failed to prove that association had failed to observe voting certificate requirement in past election, such that requirements should not be upheld in recall voting. Even if unit owners proved two instances of a unit owner being permitted to vote though not properly designated as voting representatives, this does not establish a pattern of disregard by the association so as to require non-enforcement of the requirements in the recall vote. Two instances of a failure to enforce voting certificate requirements do not amount to selective enforcement.

#### Forestbrook V Condo. Assn., Inc. v. Mackenzie, et al.,

Case No. 92-0129 (Grubbs / Final Order / August 18, 1992)

- No bylaw or rule requires voter certificates, so lack of certificate by those voting to recall does not invalidate those unit owners' votes.

#### Board of Administration of the Hialeah Club Villas Condo. Assn., Inc. v. Group of Members of the Assn. who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0102 (Price / Summary Final Order / July 24, 1995)

Where declaration did not require a voting certificate to be on file for all jointly owned units, but gives unit owners the option of providing a vote by unanimous agreement or designating one person to vote for the unit, votes will not be invalidated on basis that no voting certificates were on file for jointly-owned units.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**-voting certificate** (continued)

Shipwatch III Condo. Assn., Inc. v. All Unit Owners Voting for Recall,  
Case No. 96-0081 (Goin / Summary Final Order / April 29, 1996)

Where unit owner who owned unit by himself signed a "Certificate of Appointment" meant to be used when unit is owned by more than one individual, vote of "representative" at unit owner meeting was ineffective.

Twin Lakes South Condo. Assn., Inc. v. Members of the Assn. Voting for Recall,  
Case No. 95-0240 (Draper / Summary Final Order / March 20, 1996)

- Where condominium documents required voter on behalf of unit to be designated by properly executed voting certificate and unit owners did not claim the association had failed in the past to adhere to the requirements, association properly did not count recall agreements signed by someone other than the individual designated.

Villa Dorada Condo. Assn., Inc. v. Unit Owners Signing the Written Recall Agreement,  
Case No. 93-0209 (Price / Arbitration Final Order / December 10, 1993)

- Allowing voting certificates executed by husband and/or wife because the certificates distributed by the association were conflicting--one allowing either spouse to vote, the other stating that certificate was optional for married couples.

**- vote cast improperly**

Board of Directors of The Breakers Condo., Inc. v. Group of Members of Condo. Corp. Who Executed a Written Agreement to Recall Members of the Board of Directors,  
Case No. 95-0243 (Vaughn / Final Order / November 1, 1995)

- Where unit owner voted to recall four board members on one written agreement, then signed a second written agreement recalling all of the board, second vote was considered an amendment to the first one. Since change made prior to service on board, second agreement should have been counted.

The Indigo Pines Condo. Management Assn., Inc. v. Group of Members of the Assn. Who

Executed the Written Agreement to Recall,  
Case No. 93-0384 (Price / Arbitration Summary Final Order / January 25, 1994)

- Unit owner who owns more than 1 unit may cast all of his votes on one ballot.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- vote cast improperly** (continued)

Jellystone Park Condo. Assn., Inc. v. Fern Gordon and All Other Owners Voting in Favor of Recall,

Case No. 95-0494 (Goin / Summary Final Order / January 23, 1996)

- Where unit owners voted twice, one vote counted where no reason to believe that the signature on one of the written agreements not the signature of the owner; and where one document was signed by husband, and other by wife or husband and wife, each document was a valid vote for the unit so one should have been counted and the other thrown out.

Board of Administration of the Sea Monarch Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0246 (Goin / Amended Summary Final Order / December 18, 1995)

- Where unit owner signed written agreement but later sold unit prior to the time the written agreements were served on the board, written agreement invalid because it was not signed by the owner of record at the time written agreement was served on the board.

- Where bylaws stated that if a unit is owned by two or more persons, only one vote can be cast and it must be by unanimous consent, written agreements signed by only one of the co-trustees held to be valid because the bylaws do not require that all owners must sign the written agreement and association did not allege that the other trustees did not agree with the vote of the trustee signing the written agreement.

**- votes withdrawn/votes added after service**

Board of Dir. of Boca Cove Home Condo. Assn., Inc. v. Martin, et al.,

Case No. 93-0261 (Grubbs / Summary Final Order Certifying the Recall / November 30, 1993)

- Signatures cannot be revoked or withdrawn after board votes.

Habitat II Condo., Inc. v. Unit Owners Voting for Recall,

Case No. 97-0073 (Goin / Partial Summary Order / April 14, 1997)

- Revocation of written agreements invalid where they were signed after the written agreements had been served on board. (Extensive discussion on this subject is contained in the order).

### **BOARD'S FAILURE TO CERTIFY RECALL** (continued)

#### **- votes withdrawn/votes added after service** (continued)

Courts of Inverrary Condo. Assn., Inc. v. Shepard, et al.,  
Case No. 94-0274 (Draper / Final Order / January 18, 1995)

- Absent unique circumstances, withdrawal or revocation of signature on recall agreement is not effective unless received by the time the board of association receives the recall agreement.

East Lake Woodlands Condo. Unit Seven Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0214 (Draper / Final Order / October 25, 1996)

- Ballots received after agreement was served on the board were untimely and properly rejected.

Essex Tower Condo. Assn., Inc. v. Mitchell,  
Case No. 95-0470 (Goin / Summary Final Order / December 1, 1995)

- Unit owners could not withdraw votes once written agreement had been served on the board. See also, Diplomat Square Condominium Association, Inc. v. Ronald McKonly and All Other Owners Voting in Favor of Recall, Case No. 95-0473, Summary Final Order (Goin, 2/6/96), Royal Grenadier II Condominium, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 96-0344, Summary Final Order (Goin, 11/4/96).

Forestbrook V Condo. Assn., Inc. v. Mackenzie, et al.,  
Case No. 92-0129 (Grubbs / Final Order / August 18, 1992)

- Attempted withdrawal of vote after board meeting to discuss recall is irrelevant because it could not have affected board's decision.

Hammock Pine Village IV Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0153 (Scheuerman / Final Order Certifying Recall / May 17, 1996)

- Recall ballots cannot validly be revoked after service on board of recall ballots.

Board of Administration of the Hialeah Club Villas Condo. Assn., Inc. v. Group of Members

of the Assn. who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0102 (Price / Summary Final Order / July 24, 1995)

- Retractions by unit owners on basis that written agreement was obtained through fraud or misrepresentations are invalid when received after board meeting.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- votes withdrawn/votes added after service** (continued)

Board of Dir. of Pinebark Condo. Assn., Inc. v. Lopez, et al.,

Case No. 93-0177 (Grubbs / Summary Final Order / December 2, 1993)

- Attempt to change written agreement to either withdraw or add signatures after service on board would be questionable as F.A.C.R. 61B-23.0028(1)(h) makes written agreement an official board record upon service.

Tierra del Mar Condo. Assn., Inc. v. Unit Owners Who Executed a Written Agreement to Recall One or More Members of the Board,

Case No. 94-0206 (Richardson / Final Order / October 19, 1994)

- Recall vote could not be revoked after delivery of written agreement on board.

Tropicana Gardens, Inc. v. Harriet Dawson and Other Unit Owners Seeking Recall,

Case No. 96-0226 (Draper / Summary Final Order / September 20, 1996)

- Where unit owners served the board with an "agreement" consisting of a single blank recall agreement with the notation that there were 47 votes to recall director, the board was correct in not certifying the recall. Fact that unit owners provided the actual signatures, unit numbers, and individual votes on whether to recall or retain the director not sufficient because the issue was whether the agreement that the board had at its meeting complied with the applicable statute and rules.

In re: Board of Directors of Vantage View, Inc.,

Case No. 84-116 (Presnell / Final Order / July 1, 1985)

- To be effective, a rescission would have to be shown to have been made prior to the time the written agreement was served on the association and notice given to the individual or individuals who presented the agreement to that unit owner.

Wildwood River Villas Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 96-0115 (Goin / Summary Final Order / April 15, 1996)

- Where unit owners obtained 55 votes to recall the board (a minimum of 48 was necessary

to effectively recall a board member) and the association challenged five because the votes were later withdrawn and seven for other reasons, it was determined that the five votes could not be withdrawn after delivery of the written agreements and therefore, even if the other seven votes were invalidated, the owners would still have a sufficient number of votes to recall.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- written agreement form did not substantially comply with 61B-23.0028**

**- recall/retain lines**

Greenwood Manor Condo. Assn., Inc. v. Womack,  
Case No. 94-0541 (Richardson / Summary Final Order / December 23, 1993)

•Written agreements to recall two members of board were certified where the absence of recall/retain lines was not a fatal defect where the two written agreements were separate and distinct, each a recall of one member.

High Pt. of Orlando Condo. Assn. Sec. 1, Inc. v. Group of Members of the Assn. Voting to Recall Members of the Bd. of Dir.,  
Case No. 95-0034 (Price / Summary Final Order / April 3, 1995)

•Affirming board's decision to not certify recall because of substantial defects in procedures, such as failure to include recall/retain lines where two members were slated for recall.

Board of Admin. of Holiday Travel Park Co-op, Inc. v. Shareholders Voting for Recall,  
Case No. 94-0092 (Richardson / Summary Final Order / April 22, 1994)

•Failure to include retain line in written recall agreement of single director was an insufficient reason to justify board's failure to certify the recall.

Laguna Club East Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0122 (Draper / Summary Final Order / April 28, 1997)

•Board decision to reject recall agreement affirmed where there were no recall/retain lines next to names of board members sought to be recalled or replacement board members and there was no space for write-in candidates. Because agreement was in the form of a petition, with as many as eight unit owners signatures on a page, and listed all board members to be recalled as well as replacement board members, unit owners could not elect to recall some, but not all, directors or elect some, but not all, replacement candidates.

Palmetto Springs Villas Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed the Written Agreement to Recall Members of the Board,



Case No. 94-0281 (Price / Summary Final Order / September 8, 1994)

- Failure to provide recall/retain lines for attempted recall of entire board was a fatal defect, which taken in addition to other defects, constituted sufficient cause to affirm board's refusal to certify the recall.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**-written agreement form did not substantially comply with 61B-23.0028** (continued)

**-recall/retain lines** (continued)

Board of Dir. of Pinebark Condo. Assn., Inc. v. Lopez, et al.,  
Case No. 93-0177 (Grubbs / Summary Final Order / December 2, 1993)

- Where two or more board members are impermissibly "linked," i.e., there is no option to vote to recall only one, the recall agreement is defective. see Pinebark, infra "written recall—defective."

Villa Dorada Condo. Assn., Inc. v. Unit Owners Signing the Written Recall Agreement,  
Case No. 93-0209 (Price / Arbitration Final Order / December 10, 1993)

Where only one board member was slated for recall, the retain line was unnecessary, and not a substantial deviation from rule requirement.

Villages of Emerald Bay Condo. Assn. v. Little,  
Case No. 93-0074 (Grubbs / Final Order / May 4, 1993)

- Rule 7D-23.0028(1)(a) requiring written agreement contain a "recall" and a "retain" line for signature by each board member's name does not require both lines for each unit's signature line when only one member is being recalled.

**- written agreement held to be defective**

Board of Directors of The Breakers Condo., Inc. v. Group of Members of Condo. Corp. Who Executed a Written Agreement to Recall Members of the Board of Directors,  
Case No. 95-0243 (Vaughn / Final Order / November 1, 1995)

- No substantial compliance with rules where the written agreement included the list of names of each board member to be recalled and next to each name a space to check "to retain" or "to recall," next to these spaces a line labeled "if recalled, to replace with"; on most of the written agreements the name of a person to replace each board member was pre-typed in; where on some written agreements the spaces contained hand-written names of replacement candidates; and there was no defined space for write-in votes.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

- **written agreement form did not substantially comply with 61B-23.0028** (continued)

- **written agreement held to be defective** (continued)

Coquina Beach Club Condo. Assn., Inc. v. Members of the Assn. Voting for Recall,  
Case No. 96-0012 (Scheuerman / Final Order / January 31, 1996)

• Recall was void at the time it was served on the board, where agreement did not list board members sought to be recalled; failed to list any candidates as replacement board members; and where neither copies nor original agreements were served on the board. Recall void and rejected even though existing board failed to timely notice board meeting; emergency meeting held instead.

Eagle Creek Recreation Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Board of Directors,  
Case No. 94-0516 (Price / Summary Final Order / June 2, 1995)

• No substantial compliance where three of five directors were subject to recall but written agreement did not include the names of eligible candidates for replacement board members, did not include a space for write-in votes, and did not designate a representative.

Forest Villas Condo. Apts., Inc. v. Tonniges, et al.,  
Case No. 93-0189 (Grubbs / Final Order / July 12, 1993)

• Written agreement failed to substantially comply with rule 61B-23.0028 in that it failed to designate representative, retain lines were not included in an attempt to recall a majority of board, and replacement candidates were not listed.

The Gardens of Forest Lake Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 95-0403 (Grubbs / Summary Final Order / January 31, 1996)

• Where "recall agreement" simply stated "We, the members of this Association (the Gardens of Forest Lakes Condo), hereby petition the board and wish to replace the board of directors and call for a recall election," it did not comply with any of the requirements set forth in Rule 61B-23.0028 and the association properly refused to certify the recall.

Grand Vista Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0475 (Oglo / Summary Final Order / February 7, 1997)

- Written agreement did not comply with the requirements set forth in Rule 61B-23.0028, F.A.C., such as failing to indicate its purpose was to recall board members and failing to list the board members. For these and numerous other defects, the recall was not certified.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

- **written agreement form did not substantially comply with 61B-23.0028** (continued)

- **written agreement held to be defective** (continued)

High Pt. of Orlando Condo. Assn. Sec. 1, Inc. v. Group of Members of the Assn. Voting to Recall Members of the Bd. of Dir.,  
Case No. 95-0034 (Price / Summary Final Order / April 3, 1995)

- Affirming board's decision to not certify recall because of substantial defects in procedures, such as failure to include recall/retain lines where two members were slated for recall.

Isla del Mar Condo. Assn., Inc. v. Unit Owners Signing the "Recall" Petition,  
Case No. 93-0146 (Grubbs / Final Order / June 18, 1993)

- Written agreement was fatally defective because it failed to indicate its purpose was to recall board members, did not provide a way for owners to retain any member when entire board was being recalled, did not give replacement candidates, and failed to designate a representative.

Lakeshore Townhomes Condo. Assn., Inc. v. Unit Owners Voting for Recall  
Case No. 96-0259 (Goin / Summary Final Order / July 24, 1996)

- Written agreement failed to comply with 61B-23.0028, where it did not include recall/retain lines, did not designate a representative; and did not include replacement candidates where a majority of the board was sought to be recalled.

Palmetto Springs Villas Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed the Written Agreement to Recall Members of the Board,  
Case No. 94-0281 (Price / Summary Final Order / September 8, 1994)

- Written agreement that did not contain recall/retain lines, did not contain the names of the individual board members to be recalled rather than a reference to a recall of the entire board, provided only three replacement candidates for a recall of a five-member board, and failed to designate a representative, was not certified because it substantially failed to comply with F.A.C.R. 61B-23.0028.

Board of Dir. of Pinebark Condo. Assn, Inc. v. Lopez, et al.,  
Case No. 93-0177 (Grubbs / Summary Final Order / December 2, 1993)

•Written recall fatally defective: 1) it attempted to recall two board members at the same time without a recall/retain line so that a unit owner did not have the option of recalling one and  
**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

- **written agreement form did not substantially comply with 61B-23.0028** (continued)

- **written agreement held to be defective** (continued)

Board of Dir. of Pinebark Condo. Assn, Inc. v. Lopez, et al., (continued)  
Case No. 93-0177 (Grubbs / Summary Final Order / December 2, 1993)

retaining one; 2) a photocopy was sent to board instead of original as required by rule 61B-23.0028(1)(g), (h); 3) it attempted to name the replacement members without an optional write-in candidate even though less than a majority of the board was being recalled; 4) it failed to designate a representative to receive pleadings, etc.

The Assn. for the Plaza of Bal Harbour Condo. Inc. v. Unit Owners Executing Written Agreements for Recall,  
Case No. 94-0279 (Goin / Summary Final Order / August 19, 1994)

•Written agreement not certified where respondents failed to provide recall/retain lines; failed to provide spaces next to replacement candidates; failed to provide space for write-in candidates; and failed to properly designate a representative.

The Bd. of Admin. of River Run Yacht Club Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Bd. of Dir.,  
Case No. 94-0304 (Price / Recall Arbitration Summary Final Order / September 27, 1994)

•Not certifying written agreement because of substantial defects, such as the failure to include recall and retain lines by the names of members to be recalled; the failure to include a ballot-style, check-off line by each of the names of the replacement candidates; and the failure to include a space for a write-in candidate.

Board of Dir. of Seagull Townhomes Condo. Assn., Inc. v. Larry Winn, et al.,  
Case No. 94-0320 (Richardson / Summary Final Order / August 29, 1994)

•Where written agreement to recall entire board was substantially defective because it failed to provide: 1) recall/retain lines; 2) a designated representative; 3) a ballot of replacement candidates; and 4) a space for write-in candidate; and where one board member's name to be recalled was crossed off after the signatures were obtained, the board's decision to not certify

the recall would be affirmed pursuant to FACR 61B-23.0028.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

**- written agreement form did not substantially comply with 61B-23.0028** (continued)

**- written agreement held to be defective** (continued)

Sterling Condo. Assn., Inc. v. Group of the Members of the Assn. who Voted for Recall,  
Case No. 94-0126 (Price / Arbitration Summary Final Order / May 4, 1994)

•Where written agreement failed to provide recall/retain lines, replacement board members were not listed in the form of a ballot, no spaces by replacement candidates' names so that persons could vote for them individually, and no representative designated, written agreement was defective. Also, where ten owners signed a form purporting to authorize other persons to sign the written agreement for them, owners were, in effect, attempting to use general proxies which may not be used in voting.

Trafalgar Condo. Assn., Inc. v. Group of Unit Owners Seeking Recall,  
Case No. 97-0017 (Oglo / Summary Final Order / January 30, 1997)

•Recall not certified because written agreement was defective. Written agreement failed to provide recall/retain lines, replacement board members were not listed, there were no places by the replacement candidates' names so person could vote for them individually, and no unit owner representative was designated.

Tropicana Gardens, Inc. v. Harriet Dawson and Other Unit Owners Seeking Recall,  
Case No. 96-0226 (Draper / Summary Final Order / September 20, 1996)

•Where unit owners served the board with an "agreement" consisting of a single blank recall agreement with the notation that there were 47 votes to recall director, the board was correct in not certifying the recall. Fact that unit owners provided the actual signatures, unit numbers, and individual votes on whether to recall or retain the director not sufficient because the issue was whether the agreement that the board had at its meeting complied with the applicable statute and rules.

Victoria Towers Condo. Assn., Inc. v. Unit Owners Signing Written Agreements,  
Case No. 94-0233 (Goin / Summary Final Order / June 20, 1994)

•Summary final order entered where unit owners substantially failed to comply with F.A.C.R.

61B-23.0028 as it did not list each board member sought to be recalled by name, did not state on the signature page the purpose of the agreement, did not provide recall/retain lines, did not list an equal number of replacement candidates, did not provide a space to vote for the candidates or a write-in space, and did not designate a representative.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

- **written agreement form did not substantially comply with 61B-23.0028** (continued)

- **written agreement held to be defective** (continued)

Villa Biscaya Jardines Phase I Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 95-0393 (Goin / Summary Final Order / January 23, 1996)

•Where written agreement form indicated that the written agreements were for the purpose of recalling three of five board members when only two of five were actually sought to be recalled; where written agreements contained a space for replacement candidates, even though a majority of the board was not being recalled; and where written agreements included a fictitious condominium association and a fictitious name and address for the person designated as the unit owner representative, there was no substantial compliance and recall not certified.

Villas of Westland Condo. Assn., Inc. v. Ramos,  
Case No. 93-0084 (Grubbs / Final Order / May 25, 1993)

•Written agreement that fails to name representative is not sufficient in itself to invalidate agreement, but failure to indicate that it is a recall petition is a fatal defect, which invalidates recall.

The Villas of West Miami Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 95-0432 (Goin / Partial Summary Final Order / December 11, 1995)

•Where written agreements identified two of the board member to be recalled by their first name and address only, written agreements were invalid as to those two board members.

Whisper Wood Townhomes Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0240 (Goin / Summary Final Order / July 24, 1996)

•Written agreement failed to substantially comply with 61B-23.0028, F.A.C., where it did not list by name the board members sought to be recalled; did not include recall/retain lines; did not designate a representative; and did not include replacement candidates where a majority of the board was sought to be recalled.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

- **written agreement form did not substantially comply with 61B-23.0028** (continued)

- **written agreement held to substantially comply**

Board of Dir. of Driftwood Sands Condo. Assn., Inc. v. Driftwood Sands Condo. Assn., Inc.,  
Case No. 94-0422 (Grubbs / Summary Final Order Certifying Recall / October 17, 1994)

- Misrepresentations concerning sitting board contained in cover letter sent with recall "ballot" could not justify board's refusal to certify recall.
- Right to vote carries with it duty to be informed about issues and candidates, so board cannot ignore the will of the majority because the board thinks the vote was based on misinformation.
- Competency of replacement board members cannot be considered when determining whether to certify a recall.
- In absence of provision in condominium documents that requires board members to live at condominium, the fact that replacement board members don't live at condominium is not a proper consideration.

East Lake Woodlands Condo .Unit Seven Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0214 (Draper / Partial Summary Order and Order Setting Prehearing Procedure / August 28, 1996)

- Where written agreement stated that it was for the purpose of recalling four board members at "Condominium VII, East Lake Woodlands Country Club Estates" and the correct name of the condominium is "East Lake Woodlands Condominium Unit Seven Association, Inc.", written agreement held to substantially comply with Rule 61B-23.0028(2), especially where the board members were named in the agreement.
- Lack of a date on recall agreements did not render them invalid.

Board of Dir. of Eden Owner's Assn., Inc. v. Marchand,  
Case No. 93-0138 (Price / Arb. Final Order / July 2, 1993)

•Rule 7D-23.0028(1)(a)-(c) was substantially complied with even though agreements did not provide a space for unit owners to state their names but did include either typewritten or printed names of owners, some were faxed, one agreement contained 12 signatures of those owners initiating the recall evidencing the intent to recall.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

- **written agreement form did not substantially comply with 61B-23.0028** (continued)

- **written agreement held to substantially comply** (continued)

Essex Tower Condo. Assn., Inc. v. Mitchell,  
Case No. 95-0470 (Goin / Summary Final Order / December 1, 1995)

•Written agreements found to substantially comply with Rule 61B-23.0028(1)(d), (e), F.A.C., despite failure to provide a signature line for unit owners to indicate their authority to vote and a place to state their names.

Greenwood Manor Condo. Assn., Inc. v. Womack,  
Case No. 94-0541 (Richardson / Summary Final Order / December 23, 1994)

•Written agreements to recall two members of board were certified where (1) board failed to state reasons for not certifying recall in minutes of board meeting that were given in petition; (2) the absence of recall/retain lines was not a fatal defect where the two written agreements were separate and distinct, each a recall of one member; (3) the absence of unit owner authorization lines was not a fatal defect where written agreements were prefaced with "we the unit owners" showing the undersigneds' authorization; and (4) board's claim that developer was attempting to regain control of board was legal impossibility because only unit owners may vote to recall or replace unit owner directors.

Habitat II Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0073 (Goin / Final Order / April 29, 1997)

•No fundamental error where three out of the ten replacement candidates were not eligible to serve on the board because they were not "unit owners" as defined by articles of incorporation. Seven out of the ten board members were properly elected.

Board of Admin. of Holiday Travel Park Co-op, Inc. v. Shareholders Voting for Recall,  
Case No. 94-0092 (Richardson / Summary Final Order / April 22, 1994)

•Failure to include retain line in written recall agreement of single director was an insufficient reason to justify board's action; written agreement, which was in petition format, was not required to be in "ballot" style because recalls are not conducted with the secrecy of



regular elections; failure of shareholders to designate a representative was harmless error where a committee of two responded promptly to arbitrator's order; and recall would be certified where majority of shareholders voted for recall and written agreement substantially complied with rules.

**BOARD'S FAILURE TO CERTIFY RECALL** (continued)

- **written agreement form did not substantially comply with 61B-23.0028** (continued)

- **written agreement held to substantially comply** (continued)

Tierra del Mar Condo. Assn., Inc. v. Unit Owners Who Executed a Written Agreement to Recall One or More Members of the Board,  
Case No. 94-0206 (Richardson / Final Order / October 19, 1994)

- Written agreement attempting to recall a majority of the board, substantially complied with requirements of FACR 61B-23.0028 even though it did not include a space for a write-in candidate for replacement board members because less than a majority was recalled, so issue did not need to be addressed, and even though photocopies were delivered instead of the original as no evidence of tampering was offered or proven.
- Incorrectly post-dating a ballot did not invalidate a vote
- Recall vote could not be revoked after delivery of written agreement on board.
- Vote of unit owner under her new married name was valid even though the deed on file for her unit was in her prior married name because there was not requirement of registering name changes and association had listed her on its election sign-in sheets for the last two years under her present name.
- Whether some unit owners received voting sheets or not would not invalidate written agreement because there was no legal requirement that all unit owners receive voting sheets in recall effort and law allows appointment of directors without election in certain instances.

Villages of Emerald Bay Condo. Assn. v. Little,  
Case No. 93-0074 (Grubbs / Final Order / May 4, 1993)

- Rule 7D-23.0028(1)(a) requires: 1) that written agreement contain a "recall" and a "retain" line for signature by each board member's name does not require both lines for each unit's signature line when only one member is being recalled; 2) that the agreement shall designate a representative was substantially satisfied by placing the names and addresses of the two co-chairmen on letter attached to agreement; and 3) that the agreement shall be signed by a person authorized to vote was substantially complied with by the agreement's introductory

statement: "we the owners. . . ."

### **BOARD'S FAILURE TO CERTIFY RECALL** (continued)

- **written agreement form did not substantially comply with 61B-23.0028** (continued)

- **written agreement held to substantially comply** (continued)

The Villas of West Miami Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 95-0432 (Goin / Partial Summary Final Order / December 11, 1995)

Written agreements that included a combination of signed or printed name with a unit number determined to substantially comply with rules; association did not identify any specific signatures that were so illegible that it was unable to determine whether it was a valid vote.

### **CLASS VOTING**

Villa Dorada Condo. Assn., Inc. v. Unit Owners Signing the Written Recall Agreement,  
Case No. 93-0209 (Price / Arbitration Final Order / December 10, 1993)

•Where condominium consists of several buildings, and bylaws provide that resident directors shall be elected solely by members of each building, 1) unit owners in each building constitute the voting interests for recalling that building's resident director pursuant to s. 718.103(27), F.S.; and 2) bylaw provision permitting a recall of any director by 2/3 vote of the membership present at the meeting conflicts with s. 718.112(2)(k), F.S., and may not be relied upon by association as reason not to certify recall.

### **CONFLICT OF INTEREST**

Las Casas Owners Assn., Inc. v. Group of Members of Condo. Corporation Who Executed a Written Agreement to Recall Members of the Board of Directors,  
Case No. 95-0466F (Scheuerman / Final Order on Motion for Attorney's Fees / March 13, 1996)

•Counsel for the owners voting in favor of recall, who at the time also was a director not subject to recall, and who was also an owner who voted for the recall, should have resigned from the board to accept the representation in order to avoid the appearance of impropriety. Board member/attorney for the owners participated in board vote on whether to accept recall petition.

## **CORPORATIONS/CHAPTER 617, FLORIDA STATUTES**

Board of Dir. of Eden Owner's Assn., Inc. v. Marchand,  
Case No. 93-0138 (Price / Arb. Final Order / July 2, 1993)

Specific provisions on recall by written agreement under s. 718.112(2)(k) supersede general 60-day action between first consent and final action provision under s. 617.0701(4)(a).

Marita v. Mendez,  
Case No. 93-0378 (Goin / Correspondence / November 18, 1993)

- Petition dismissed as Division does not have statutory authority to arbitrate disputes concerning the recall of homeowners' board under ch. 617.

The Villas of West Miami Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 95-0432 (Goin / Partial Summary Final Order / December 11, 1995)

- Where association had been administratively dissolved for failure to file an annual report, association not prevented from filing the petition for arbitration.

## **DEVELOPER**

Greenwood Manor Condo. Assn., Inc. v. Womack,  
Case No. 94-0541 (Richardson / Summary Final Order / December 23, 1994)

- Written agreements to recall two members of board were certified where board's claim that developer was attempting to regain control of board was legal impossibility because only unit owners may vote to recall or replace unit owner directors.

The Indigo Pines Condo. Management Association, Inc. v. Group of Members of the Association Who Executed the Written Agreement to Recall,  
Case No. 93-0384 (Price / Arbitration Summary Final Order / January 25, 1994)

- Where some of the directors had resigned and the vacancies were filled by appointment by the other directors, the board lost its characteristics as either a developer-controlled board or a unit owner-elected board, and therefore, Rule 61B-23.0026(1)(c), F.A.C., not applicable.

Board of Directors of Lover's Key Beach Club Condo., Inc. v. Group of Members of Condo. Corp. who Executed a Written Agreement to Recall Members of the Board of Directors,  
Case No. 95-0244 (Vaughn / Final Order / October 3, 1995)

- Trustee appointed over developer's estate could not vote in favor of recalling directors elected by non-developer owners.

**DEVELOPER** (continued)

Lover's Key Beach Club Condo., Inc. v. F.N.B. Properties, Inc.,  
Case No. 96-0040 (Goin / Final Order Dismissing Petition for Arbitration /September 30, 1996)

- Where subsequent developer who sought to recall board sold units during pendency of case, petition for arbitration dismissed as moot.

Solana Village Condo. Assn., Inc. v. Unit Owners Signing the Written Recall Agreement,  
Case No. 93-0336 (Goin / Summary Final Order / December 10, 1993)

- The fact that some of the owners' were also officers of the original developer corporation did not mean that the original developer owned the units. Even if the owners had been considered collectively as "developers," they were not entitled to a seat on the board because they were not holding units out for sale so rule 61B-23.0026, F.A.C., did not apply.

Ten Downing St. Condo. Assn., Inc.,  
Case No. 91-0141 (Parker / Arb. Final Order /April 10, 1992)

- Subsequent developer may not vote to recall the non-developer members of the Board, but may vote for a majority of board members in the next regular election.

Timber Lake Estates, Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0067 (Draper / Summary Final Order / March 18, 1996)

- Where both unit owners and developer elected board member who was subject of recall effort, developer units may not be excluded from the determination of the number of units required to constitute a majority. 61B-23.0026(2)(b), F.A.C.

**DISPUTE MOOT (For example, election held after recall, recalled director resigns, etc.)**

Abbey Park Gardens I Condo. Assn., Inc. v. Group of Members of the Assn. Voting for Recall,  
Case No. 95-0018 (Price / Final Order on Pet. for Recall Arb. / March 24, 1995)

- Petition was dismissed as moot when board withdrew petition because the terms of the

board members subject to recall had expired when an election had been held.

Chateau de Ville Condo. Assn., Inc. v. Group of Members of the Assn. Voting for Recall,  
Case No. 94-0475 (Price / Final Order Dismissing Pet. for Recall Arb. / January 10, 1995)

- Case dismissed as moot when the two members subject to recall resigned from board and replacement members were appointed.

**DISPUTE MOOT (For example, election held after recall, recalled director resigns, etc.)**  
(continued)

Board of Directors of Clipper Bay Condo. Assn., Inc. v. Unit Owners Voting in Favor of Recall,  
Case No. 96-0151 (Draper / Summary Final Order / June 11, 1996)

- Where a majority of the recall agreements were solicited and executed in September. and October 1995, annual meeting was held in December 1995, board members sought to be recalled were re-elected at annual meeting, and written agreements were served on the board in March 1996, board members' re-election supplanted the recall vote and recall not certified. Once an election opportunity has been presented to the unit owners and they forego the opportunity to unseat an incumbent director, a previously mounted recall effort should not be used to extinguish the latter manifestation of the electorate's will.

Jupiter Bay Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0281 (Goin / Final Order Dismissing Petition for Arbitration / September 16, 1996)

- Petition for recall arbitration dismissed where board member subject to recall resigned even though the board had not yet filled vacancy.

Los Arboles Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0450 (Goin / Final Order Dismissing Petition for Recall Arbitration / February 19, 1997)

- Where unit owners attempted another recall during pendency of recall proceedings and where board certified second recall, petition for arbitration was moot and case dismissed.

Lover's Key Beach Club Condo., Inc. v. F.N.B. Properties, Inc.,  
Case No. 96-0040 (Goin / Final Order Dismissing Petition for Arbitration / September 30, 1996)

- Where subsequent developer who sought to recall board sold units during pendency of case, petition for arbitration dismissed as moot.

Board of Directors of Ludlum Lake Townhouses Section One Association, Inc. v. Unit

Owners Voting for Recall,

Case No. 96-0201 (Goin / Final Order Dismissing Petition for Arbitration / January 22, 1996)

- Case rendered moot where election held during pendency of petition for recall arbitration, even where board members sought to be recalled were re-elected at annual meeting/election.

**DISPUTE MOOT (For example, election held after recall, recalled director resigns, etc.)**  
(continued)

Pebble Springs Condo. Assn., Inc. v. Pat Taylor and Other Owners Voting for Recall,

Case No. 95-0335 (Grubbs / Order Dismissing Petition as Moot / January 29, 1996)

- Recall arbitration rendered moot by new election where all directors purportedly recalled either had their terms expire or were elected to a new term; even where the board member who is the subject of the recall effort is reelected in the subsequent election, the recall issue dies because the "vote at the annual meeting supersedes any attempted recall."

Pinewood South Condo. Assn., Inc.,

Case No. 92-0110 (Player / Order Dismissing Pet. for Arb. / July 23, 1992)

- Petition for arbitration rendered moot by election of entire new board to replace former members that had been recalled. See also, Palmetto Springs Villas Condominium Association, Inc. v. Unit Owners Voting for Recall, Case No. 95-0450, Final Order Dismissing Petition for Arbitration (Goin, January 16, 1996).

Trafalgar Towers Assn., Inc. v. Greene and All Other Unit Owners Executing Written Agreements for Recall,

Case No. 94-0089 (Goin / Final Order Dismissing Pet. for Arb. / July 5, 1994)

- Dismissing petition with prejudice as the parties had settled the dispute by agreeing that the board members, who were elected at a subsequent member's meeting, would constitute the board).

Tristan Towers Homeowners' Assn., Inc. v. Group of Members Who Executed a Written Agreement to Recall,

Case No. 97-0171 (Oglo / Final Order of Dismissal / July 31, 1997)

Where unit owner representative in written recall filed a letter stating that there had been a recent annual election of board members and that there had been a sale of units of certain board members subject to recall, and the association failed to show cause why the case should not be dismissed as moot, the case was dismissed as moot due to the intervening election and other matters.

Victory Gardens Condo. Assn, Inc. v. Group of the Members of the Assn. Who Voted for Recall,

Case No. 94-0070 (Price / Final Order Dismissing Pet. for Arb. / May 11, 1994)

- Regular election at which board members allegedly recalled by written agreement were replaced rendered petition for arbitration moot, so dismissal was proper.

**DISPUTE MOOT (For example, election held after recall, recalled director resigns, etc.)**

(continued)

Waterview Condo. Assn., Inc. of Aventura v. Group of Members of the Assn. Voting for Recall,

Case No. 94-0443 (Price / Recall Arb. Final Order / January 18, 1995)

- Dispute rendered moot by annual election.

Board of Dir. of Westlandia Condo. Assn., Inc. v. Westlandia Condo. Assn., Inc.,

Case No. 94-0421 (Price/Recall Arb. Final Order of Dismissal / February 8, 1995)

- Regular election, which resulted in a new board being elected, rendered dispute moot.

Wildwood River Villas Condo. Assn., Inc. v. Group of Members of the Assn. who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 96-0312 (Oglo / Final Order Dismissing Petition for Arbitration / September 9, 1996)

- Petitioner withdrew petition because a receiver was appointed in an unrelated circuit court case to manage the association, thereby rendering the board incapacitated and the current dispute moot.

**EFFECT OF RECALL**

Coquina Beach Club Condo. Assn., Inc. v. Members of the Assn. Voting for Recall,

Case No. 96-0012 (Scheuerman / Final Order / January 31, 1996)

- Recall, even if valid, was not effective to rescind board action taken prior to recall.

**JURISDICTION**

Mendez v. The Board of Directors of Encore Homeowners Assn., Inc.,

Case No. 93-0378 (Goin / Correspondence / November 18, 1993)

- Petition dismissed as Division does not have statutory authority to arbitrate disputes concerning the recall of homeowners' board under ch. 617.

Sevilla Plaza Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0302 (Goin / Order Setting Pre-hearing Procedure / September 30, 1996)

- Affirmative defense that unit owners should not be required to recall individuals who have not been properly elected was stricken; respondents chose to recall the board members pursuant to s. 718.112(2)(k), F.S., and whether or not the board was properly elected not an issue that would be decided in a recall arbitration proceeding.

**JURISDICTION** (continued)

Taylor v. Grabin, et. al,  
Case No. 95-0163 (Price / Order on Petition to Certify Recall by Written Agreement / May 17, 1995)

- Recalling unit owners did not have standing under s. 718.112(2)(k), F.S., to petition for certification of recall where board failed to file petition for recall and failed to certify recall. However, they could file a petition for arbitration pursuant to s. 718.1255, F.S., where unit owners alleged that the board failed to properly notice and conduct its meeting to determine whether to certify the recall and that the board failed to properly conduct the election of replacement board members.

**POWER OF ATTORNEY** (See Board's Failure to Certify Recall)

**PROXY** (See Board's Failure to Certify Recall)

**RECONSIDERATION/REHEARING**

Board of Dir. for Point East IV Condo. Corp. v. Frank,  
Case No. 94-0220 (Draper / Order Denying Petitioner's Motion for Reconsideration / July 8, 1994)

- Denying request for reconsideration to limit Final Order to petitioner's procedural issues, which would change the substantive ruling, because F.A.C.R. 61B-50.140 only permits technical corrections that do not modify the substance of the order.

Internat'l Princess Condo. Assn., Inc. v. Unit Owners Signing the Recall Agreement,  
Case No. 93-0281 (Goin / Order on Petitioner's Motion for Reconsideration of Final Order / October 18, 1993)

- Rule 61B-50.140 permits correction of clerical errors in final orders but not substantive corrections; therefore, motion for reconsideration must be denied.

Board of Directors of the Internat'l Princess Condo. Assn., Inc. v. Group of Members of Condo. Corp. Who Executed a Written Agreement to Recall Members of the Board of Directors,



Case No. 95-0283 (Goin / Order Denying Motion for Re-hearing/Reconsideration of Order and Second Motion for Final Order / January 16, 1996)

- Where a final order certifying the recall had been entered, motion for re-hearing denied where it sought to present further evidence so that an order not certifying the recall could be entered; because s. 718.112(2)(k)3, F.S., states that if the arbitrator **certifies** the recall, the recall will be effective upon mailing of the final order, the arbitrator did not have the authority to change the substance of the order.

**RECONSIDERATION/REHEARING** (continued)

Jellystone Park Condo. Assn., Inc. v. Fern Gordon and All Other Owners Voting in Favor of Recall,

Case No. 95-0494 (Goin / Order Denying Application for Modification and/or Correction of Award of Summary Final Order and Application to Vacate Award of Summary Judgment Final Order / February 8, 1996)

- Chapter 682, F.S. not applicable to recall arbitration; former director whose recall had been certified by arbitrator did not have standing to file a motion for re-hearing and/or correction.

Board of Administration of the Sea Monarch Condo. Assn., Inc. v. Group of Members of the Association Who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0246 (Goin / Amended Summary Final Order / December 18, 1995)

- Where arbitrator had previously entered an order **not certifying** the recall and the final order was based on a clear error of law, the original final order was vacated and an order certifying the recall was entered in its place.

Second Moorings Condo. Assn.,

Case No. 92-0178 (Price / Order Denying Motion to Set Aside Final Order Denying Pet. for Arb. / August 11, 1992)

- Parties may file to amend a final order only for clerical mistakes or errors in form, not for substantive corrections, so request to extend time for filing is insufficient basis to alter final order).

**REPLACEMENT CANDIDATES/MEMBERS** (See also, Board's failure to certify recall)

Habitat II Condo., Inc. v. Unit Owners Voting for Recall,

Case No. 97-0073 (Goin / Final Order / April 29, 1997)

- Where association alleged that three out of ten replacement candidates were ineligible to be on the board because they were not record owners, but allegation was not raised at board meeting held to determine whether to certify recall, it was not fundamental error which could be raised for the first time subsequent to the filing of the petition. Although three were

ineligible, the unit owners properly elected seven replacement members. Nevertheless, the issue was examined in order to determine the properly elected board members.

**REPLACEMENT CANDIDATES/MEMBERS** (See also, Board's failure to certify recall)  
(continued)

Habitat II Condo., Inc. v. Unit Owners Voting for Recall, (continued)  
Case No. 97-0073 (Goin / Final Order / April 29, 1997)

- Where articles required board members to be unit owners and where ownership was established by the acquisition of fee title to or fee interest in a condominium parcel and by the recordation in the public records of the deed or other instrument establishing the acquisition, it was determined that someone who had entered into a purchase contract and was making payments to a trust and who would receive title after making all payments, was not an owner. Likewise, a person who had obtained quit-claim deed which was not recorded was not eligible to be a board member. In addition, individual who obtained quit-claim deed and recorded it after the board meeting held to determine whether or not to certify the recall was not eligible to be a replacement candidate but would be eligible to be appointed or elected to fill a vacancy.

- Where three out of ten replacement candidates were ineligible to be on the board, the seven validly elected board members could fill the vacancies by appointment or election.

Laguna Club East Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0122 (Draper / Summary Final Order / April 28, 1997)

- Where written agreement purported to recall six board members and to elect seven replacements (to replace six recalled directors and one director who resigned), unit owners not authorized to use recall process to fill vacancy of director who had resigned. 61B-23.0021(13) requires remaining directors to appoint replacement or hold election to fill vacancy.

L'Esplanade on Key Biscayne Condo. Assn., Inc.,  
Case No. 95-0200 (Price / Summary Final Order / June 23, 1995)

- Where two members of a six member board are recalled, unit owners are not authorized to elect replacement board members at a special unit owner meeting for recall because rule 61B-23.0027(3)(e)1, F.A.C., gives right of filling vacancy to board if less than a majority of directors are recalled.

**REPLACEMENT CANDIDATES/MEMBERS** (See also, Board's failure to certify recall)  
(continued)

Board of Directors of the International Princess Condo. Assn., Inc., v. Group of Members of Condo. Corp. who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 95-0283 (Goin / Order Denying Motion for Re-hearing/Reconsideration of Order and Second Motion for Final Hearing / January 16, 1996)

- Where board terms all ended at the same time, i.e., no staggered terms, and where arbitrator certified the recall, the replacement board members could fill the vacancy caused by the recall only until the next regularly scheduled election even though the first notice of election had already gone out because all seats were up for re-election and any person could have submitted his or her name as a candidate in the election.

Shady Brook Village Owners Assn., Inc.,

Case No. 95-0433 (Scheuerman / Final Order Certifying Recall / November 9, 1995)

- Where at time of commencement of the recall effort a majority of the then-existing board was the target of the recall, but at the time of the board vote to challenge the recall the two vacancies were filled, the three members sought to be recalled no longer constituted a majority of the board and the unit owners voting in favor of recall no longer had the right to elect replacement members.

**STANDING**

Anderson v. Wagner,

Case No. 95-0077 (Price / Final Order Dismissing Pet. for Arb. / March 15, 1995)

- Board member slated for recall does not have standing to file petition for arbitration against a faction of the board . See also, Board of Administration of Eagle Creek Recreation Assn., Inc. v. Group of Members of the Assn. who Executed a Written Agreement to Recall Members of the Board of Directors, Case No. 94-0516/95-0150, Final Order Dismissing Petition for Recall Arbitration (Price, April 25, 1995).

Anzelon, et al. v. Unit Owners Voting for the Recall of Juanita Drum,

Case No. 94-0115 (Draper / Final Order Dismissing Petition for Arbitration / May 26, 1994)

- Five members of the board who petitioned for recall arbitration met requirements of statute and 61B-50.105 (limiting right to petition for recall arbitration to the board of directors) where the five constituted a majority of the board of directors and their action was taken at a meeting at which five of the nine directors were present.

**STANDING** (continued)

Brin v. Nobel Pt. Condo. Assn., Inc.,

Case No. 94-0114 (Scheuerman / Final Order Dismissing Pet. for Arb. / March 31, 1994)

- Unit owner who was the recalled board member does not have standing to challenge his recall, which was certified by the board.

Friar v. Mission Hills Condo. Assn., Inc.,

Case No. 94-0025 (Scheuerman / Final Order Dismissing Pet. for Arb. / February 10, 1994)

- Individual board member has no standing to petition for arbitration as only the board in action taken at a duly noticed meeting can determine whether to certify or challenge a recall.

Jellystone Park Condo. Assn., Inc. v. Fern Gordon and All Other Owners Voting in Favor of Recall,

Case No. 95-0494 (Goin / Order Denying Application for Modification and/or Correction of Award of Summary Final Order and Application to Vacate Award of Summary Judgment Final Order / February 8, 1996)

- Former director whose recall had been certified by arbitrator did not have standing to file a motion for re-hearing and/or correction.

Mackay v. Landmark at Hillsboro Condo. Assn.,

Case No. 92-0257 (Scheuerman / Final Order Rejecting Pet. for Recall Arb. / November 3, 1992)

Board not unit owner has authority to petition for recall arbitration.

Mitchell v. Essex Tower Condo. Assn., Inc,

Case No. 94-0361 (Scheuerman / Final Order Dismissing Petition for Arbitration / August 31, 1994)

- Unit owner/former board member lacked standing to challenge recall under sections 718.112(2)(k) or 718.1255, F.S.

The Executive Committee of Sea Ranch Club Condo "A" Assn., Inc. v. Bustillos, pro se, and

as representative of the Class of Unit Owners of Sea Ranch Club Condo "A" for Recall,  
Case No. 95-0053 (Richardson / Final Order / May 3, 1995)

- Board, not executive committee, had authority to certify or not certify a recall, so committee had no standing to decide not to certify the recall or petition for arbitration. The discretion to certify or not certify a recall is so basic a function of the board that it may not be delegated.

### **STANDING** (continued)

Taylor v. Grabin, et. al,

Case No. 95-0163 (Price / Order on Petition to Certify Recall by Written Agreement / May 17, 1995)

- Recalling unit owners did not have standing under s. 718.112(2)(k), F.S., to petition for certification of recall where board failed to file petition for recall and failed to certify recall. However, they could file a petition for arbitration pursuant to s. 718.1255, F.S., where unit owners alleged that the board failed to properly notice and conduct its meeting to determine whether to certify the recall and that the board failed to properly conduct the election of replacement board members.

The Villas of West Miami Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 95-0432 (Goin / Partial Summary Final Order / December 11, 1995)

- Where association had been administratively dissolved for failure to file an annual report, association not prevented from filing the petition for arbitration.

### **TIME LIMITS/LEGITIMATE JUSTIFICATION (See also, Unit Owner Defenses - Failure to Timely File Petition)**

Forestbrook V Condo. Assn., Inc. v. Mackenzie, et al,

Case No. 92-0129 (Grubbs / Final Order / August 18, 1992)

- Section 718.112(2)(k), F.S., 72-hour time limits are not jurisdictional; however they must be complied with unless the board provides legitimate reasons for late filing and has acted in good faith.

Lakeshore Townhomes Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 96-0259 (Goin / Summary Final Order / July 24, 1996)

- Where petition was filed two days late, petitioner not ordered to file legitimate justification where written agreement clearly failed to substantially comply with administrative rules.

Second Moorings Condo. Assn.,

Case No. 92-0178 (Price / Order Denying Motion to Set Aside Final Order Denying Pet. for Arb. / August 11, 1992)

- 72-hour statutory deadline for filing petition is not extended by five-day service by mail rule 7D-50.002, and 72-hour deadline for holding meeting following written recall is not extended even though it falls on a Saturday or Sunday. **NOTE:** 50.106 extends time if last day to do an act falls on Saturday or Sunday); see also Second Moorings, (Price/ Final Order Denying Pet. for Arb.; 7/13/92)

**TIME LIMITS/LEGITIMATE JUSTIFICATION (See also, Unit Owner Defenses - Failure to Timely File Petition)** (continued)

Terrace Park of Five Towns, No. 15,

Case No. 93-0044 (Price / Order Denying Petition for Arb. / April 2, 1993)

- Board's receipt of written agreement not delivery by certified mail is the event, which triggers the first 72-hour time limit referenced in s. 718.112(2)(k), F.S.

Vanderbilt Shores Condo. Assn., Inc.,

Case No. 92-0117 (Grubbs / Arb. Summary Final Order / June 10, 1992)

- Recall arbitration petitions filed after April 1, 1992, ch. 7D-45 would apply where applicable to a recall situation, otherwise ch. 7D-50 applies; and s. 718.112(2)(k), F.S., 72-hour time limits are not jurisdictional; however they must be complied with unless the board provides legitimate reasons for late filing and has acted in good faith.

Villa Biscaya Jardines Phase I Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 95-0393 (Goin / Summary Final Order / January 23, 1996)

- Where petition was filed one day late, petitioner not ordered to provide legitimate justification where written agreements clearly failed to substantially comply with rules).

Villa Dorada Condo. Assn., Inc. v. Unit Owners Signing The Written Recall Agreement,

Case No. 93-0209 (Goin / Order Requiring Respondent to Answer July 29, 1993)

- In calculating the 72-hour time period from receipt of written agreement to board meeting, the day of receipt is not counted, rule 7D-50.106 renumbered 61B-50.106; because affidavit and certificate of service show service on division by facsimile within 72-hour time period, board has met deadline even though petition may have been misdirected or misplaced by division.

Windsong of Boca del Mar Condo. Assn., Inc. v. Unit Owners Seeking Recall,

Case No. 96-0466 (Draper / Summary Final Order / February 27, 1997)

- Recall certified where petition was filed 3 days late where no legitimate justification

provided for late filing and where board meeting minutes failed to raise any legitimate reasons for failing to certify the recall.

## **UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION**

### **-generally**

Galt Ocean Manor Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 97-0185 (Draper / Summary Final Order / July 15, 1997).

- Recall rejected where less than a majority of voting interests eligible to elect directors approved recall. Bylaws which permitted unit owners to take any action by written agreement that could be taken at a meeting, so long as not less than the minimum number of votes that would be necessary to authorize an action at a meeting signed the written agreement, and s. 718.112(2)(b)(1), which provides that decisions shall be made owners of a majority of the voting interests represented at a meeting, were superseded by s. 718.112(2)(k), which requires majority of voting interests to effect recall by written agreement.

Courts of Inverrary Condo. Assn., Inc. v. Shepard, et al.,  
Case No. 94-0274(Draper / Final Order / January 18, 1995)

- Board's failure to call roll at meeting to determine whether to certify agreement, as required by documents, does not invalidate board's decision at meeting where there was no allegation that quorum not present at meeting.

Laguna Club East Condominium, Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0122 (Draper / Summary Final Order / April 28, 1997)

- Fact that unit owners used recall agreement forms from condominium association literature irrelevant; where agreement form is totally flawed, this will not remedy deficiencies.

Merritt Island Cooperative Housing Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0082 (Goin / Summary Final Order / March 27, 1996)

- Where board failed to hold meeting within five full business days after receiving written agreements, failed to articulate in the board meeting minutes its reasons for not certifying the recall, and where reasons for failing to certify raised in petition were legally insufficient (unit owners were given misinformation, some unit owners revoked their vote), recall was

certified.

**- division advice**

Habana Park Condo. Assn., Inc. v. Delgado,  
Case No. 93-0300 (Draper / Summary Final Order / November 19, 1993)

- Arbitrators are not bound by Division policy-makers' advice or findings; hence, pleading Division advice is not an affirmative defense to failure to follow rules.

**UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

**- failure of association to previously enforce voting certificate requirement**

The Caribbean Condo. Mgmt. Assn., Inc. v. Kennedy,  
Case No. 93-0175 (Price / Arb. Final Order / October 27, 1993)

- Association, by not enforcing provision of declaration in regard to voting certificates, has established a pattern of allowing irregularities in the certificates; therefore, provision will not be enforced in recall arbitration; in absence of a showing by association of a consistent effort to enforce provision regarding voter certificates, enforcement of irregular voter certificates in recall proceeding would constitute selective enforcement.

Courts of Inverrary Condo. Assn., Inc. v. Shepard, et al.,  
Case No. 94-0274 (Draper / Final Order / January 18, 1995)

- Association's failure to enforce designated voter requirements on other association voting precludes use of it to disqualify votes cast in favor of recall agreement. A failure to enforce the requirement, which is attributable to a previous board does not excuse disenfranchisement of voters unless board provides notice of its intent to change policy prior to election.

East Lake Woodlands Condo. Unit Seven Assn., Inc. v. Unit Owners Voting for Recall, Arb.  
Case No. 96-0214 (Draper / Final Order / October 25, 1996)

- Unit owners failed to prove that association had failed to observe voting certificate requirement in past election, such that requirements should not be upheld in recall voting. Even if unit owners proved two instances of a unit owner being permitted to vote though not properly designated as voting representatives, this does not establish a pattern of disregard by the association so as to require non-enforcement of the requirements in the recall vote. Two instances of a failure to enforce voting certificate requirements do not amount to selective enforcement.

**- failure of minutes to include specific reasons for not certifying**



Bent Tree Parcel Six Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 96-0347 (Goin / Order on Petitioner's Motion to Allow Supplement to Petition for Recall Arbitration and Respondent's Motion for Extension of Time to File Answer to Recall Arbitration Petition / October 10, 1996)

- Board not permitted to supplement petition with information regarding the validity of a vote where such information was not in the board's meeting minutes.

### **UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

#### **- failure of minutes to include specific reasons for not certifying** (continued)

Board of Dir. of Boca Cove Home Condo. Assn., Inc. v. Martin, et al.,  
Case No. 93-0261 (Grubbs / Summary Final Order Certifying the Recall / November 30, 1993)

- Board must have legitimate reason for not certifying recall, which reason(s) must be set forth in minutes.
- Counsel for board cannot be assigned task of supplying the basis for the board's failure to certify.

Caribbean Condo. Mgmt. Assn., Inc. v. Kennedy,  
Case No. 93-0175 (Price / Order Striking Allegations from Pet. for Recall Arb. / September 21, 1993)

- "None of the reasons for the board's failure to certify the recall which are not included in the minutes of the board meeting at which the decision was made not to certify the recall, may be included in the Petition for Arbitration." p.5

Board of Admin. of The Eagle Creek Rec. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Board of Dir.,  
Case No. 94-0516 (Price / Summary Final Order / June 2, 1995)

- Where the minutes of the board meeting reflect that the board of directors relied on the written advice of counsel in making their decision not to certify a recall, and where the letter from counsel is a part of the record, there was no violation of rule 61B-23.0028(4)(d), F.A.C., which requires that the specific reasons for the board's failure to certify a recall be recorded in the minutes of the board meeting.

Fosca Condo. Assn., Inc. v. Unit Owners Signing the Recall Agreement,

Case No. 93-0373 (Draper / Summary Final Order / December 29, 1993)

- Board did not articulate reasons for failing to certify recall at meeting or in minutes, but because four signatures were invalid the recall was void ab initio and not certified.

Habitat II Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0073 (Goin / Final Order / April 29, 1997)

- Where association alleged that three out of ten replacement candidates were ineligible to be on the board because they were not record owners, but allegation was not raised at board

**UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

**-failure of minutes to include specific reasons for not certifying** (continued)

Habitat II Condo., Inc. v. Unit Owners Voting for Recall, (continued)  
Case No. 97-0073 (Goin / Final Order / April 29, 1997)

meeting held to determine whether to certify recall, it was not fundamental error which could be raised for the first time subsequent to the filing of the petition. Although three were ineligible, the unit owners properly elected seven replacement members. Nevertheless, the issue was examined in order to determine the properly elected board members.

Board of Admin. of the Hialeah Club Villas Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Bd. of Dir.,  
Case No. 95-0102 (Price / Recall Arb. Summary Final Order / July 24, 1995)

- Where petition alleged that written agreement did not provide a space for write-in votes, but where this reason was not included in the board minutes, arbitrator could not consider it.

Board of Admin. of Holiday Travel Park Co-op, Inc. v. Shareholders Voting for Recall,  
Case No. 94-0092 (Richardson / Summary Final Order / April 22, 1994)

- Board's additional reasons for failure to certify recall of single director, which were included in its amended petition, were stricken as the additional reasons were not in the board's meeting minutes.

James Place Condo. Assn., Inc. v. The Group of Members of the Assn. Seeking "Recall",  
Case No. 93-0227 (Price / Order on Response to Notice to Show Cause and Order Requiring Answer / August 13, 1993)

- "Indeed, counsel could not provide additional basis for failing to certify the recall, as the reasons articulated at the meeting of the board and set out in the minutes are the only reasons which may be alleged in a petition for arbitration."

Sterling Condo. Assn., Inc. v. Group of the Members of the Assn. who Voted for Recall,  
Case No. 94-0126 (Price / Arbitration Summary Final Order / May 4, 1994)

- Even where board failed to include specific reasons for not certifying the recall in the minutes of the board meeting, the arbitrator may review the written agreement to determine whether it is in substantial compliance and whether it appears to be signed by a majority of the voting interest, and the arbitrator may enter an order failing to certify the recall if substantial compliance is not demonstrated.

#### **UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

##### **- failure of minutes to include specific reasons for not certifying** (continued)

Board of Admin. of the Sunrunner Place Condo. Homeowners Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Bd. of Dirs.,

Case No. 95-0189 (Price / Summary Final Order / December 18, 1995)

- Recall certified where board failed to include any reason justifying its refusal to certify in the minutes and all of the reasons given were insufficient, e.g., cover letter was misleading.

Twin Lakes South Condo. Assn., Inc. v. Members of the Assn. Voting for Recall,

Case No. 97-0030 (Draper / Summary Final Order / March 12, 1997)

- Minutes of board certification meeting which indicated reason for not certifying recall was because of “irregularities in the procedures” were not adequately specific to support rejection and petition went beyond reason stated in minutes. Normally, petition would be stricken and recall certified. However, where recall failed to obtain majority of unit owners, arbitrator will reject recall. In this case, the number of unit owners voting in favor of recall, either by proxy or in person, constituted less than a majority of the unit owners. Therefore, recall rejected.

##### **- failure to give proper notice of board meeting**

Anzelon, et al. v. Unit Owners Voting for the Recall of Juanita Drum,

Case No. 94-0115 (Draper / Final Order Dismissing Petition for Arbitration / May 26, 1994)

- Petition dismissed where board failed to give proper notice of the meeting at which it determined whether to certify recall. Circumstances did not support finding of an emergency; unit owner meeting at which recall was voted adjourned on Thursday at 7:00 p.m. making filing deadline Monday morning at the beginning of the business day. Thus board meeting could have been noticed and held on Saturday or Sunday, rather than Friday,

when it was held.

The Beach Condo. Owners' Assn., Inc.,

Case No. 92-0273 (Goin / Order Dismissing Pet. for Arb. / January 22, 1993)

- Failure to post 48-hour notice of board meeting to decide recall certification rendered decision to petition for arbitration void; see also Beach Condo. Order to Show Cause (1/12/93).

### **UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

#### **- failure to give proper notice of board meeting** (continued)

Coquina Beach Club Condo. Assn., Inc. v. Members of the Assn. Voting for Recall,

Case No. 96-0012 (Scheuerman / Final Order / January 31, 1996)

- Recall void and rejected even though existing board failed to timely notice board meetings; emergency meeting held instead.

Evergreen at Port St. Lucie Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Board of Directors,

Case No. 96-0376 (Oglo / Summary Final Order Dismissing Petition for Arbitration / October 16, 1996)

- Board held meeting to determine whether to certify the recall within 5 business days of service of written agreement, but did not duly notice the meeting. No circumstances shown to establish emergency nature of meeting. Pursuant to s. 718.112(2)(k)(4), F.S., the petition was dismissed and the recall certified.

Internat'l Princess Condo. Assn., Inc. v. Unit Owners Signing the Recall Agreement,

Case No. 93-0281 (Goin / Final Order / October 6, 1993)

- Summary disposition certifying recall because board did not give 48-hour posted notice of board meeting.

Park Lake Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 96-0414 (Draper / Final Order / March 17, 1997)

- Despite board's failure to timely notice meeting on whether to certify recall, arbitrator refused to certify recall where less than a majority of the unit owners signed recall agreement and where it did not appear board's untimely notice was done in bad faith, in an effort to

preclude unit owner participation.

The Bd. of Admin. of The Sterling Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall the Bd. of Dir.,  
Case No. 94-0232 (Price / Summary Final Order / September 8, 1994)

- Adding recall as an agenda item to notice of regular board meeting already posted did not satisfy the requirement that 48-hour notice be given to unit owners prior to a board meeting held to discuss a recall, and, as no emergency was shown to exempt the 48-hour requirement, the board's action taken at the meeting was void as a matter of law; therefore, since the written agreement substantially complied with the rules, it was certified.

**UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

**- failure to give proper notice of board meeting** (continued)

Trafalgar Towers Assn., Inc. v. Greene and All Other Unit Owners Executing Written Agreements for Recall,  
Case No. 94-0089 (Goin / Order Accepting Pet. for Recall Arb. and Order Requiring Respondents to Answer Pet. for Arb. / July 5, 1994)

- Accepting petition for arbitration, which was filed within 144 hours, because action taken at the first board meeting, which was held within 72 hours of receipt of recall agreement but without notice, was ratified at subsequently noticed meeting curing the defect of lack of notice.

**- ratification**

Evergreen at Port St. Lucie Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Board of Directors,  
Case No. 96-0376 (Oglo / Summary Final Order Dismissing Petition for Arbitration / October 16, 1996)

- Where board did not properly notice meeting to determine whether to certify the recall, board's attempt to ratify acts taken at meeting by holding a duly noticed meeting after the 5 day period had run was inconsistent with s. 718.1255(2)(k)(4), F.S., and petition dismissed and recall certified.

Trafalgar Towers Assn., Inc. v. Greene and All Other Unit Owners Executing Written Agreements for Recall,  
Case No. 94-0089 (Goin / Order Accepting Pet. for Recall Arb. and Order Requiring Respondents to Answer Pet. for Arb. / July 5, 1994)

- Accepting petition for arbitration, which was filed within 144 hours, because the first board

meeting held within 72 hours of receipt of recall agreement but without notice was ratified at subsequently noticed meeting curing the defect of lack of notice.

**- failure to have quorum at board meeting**

The Beach Condo. Owners' Assn., Inc.,

Case No. 92-0273 (Goin / Order Dismissing Pet. for Arb. / January 22, 1993)

- Only board member present at one meeting was one served, so no official action was taken; but board members present at other meeting constituted a quorum, but no notice was given so action taken was invalid; see also Beach Condo. Order to Show Cause (1/12/93).

**UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

**- failure to have quorum at board meeting** (continued)

Scottish Highlands Condo. Assn., Inc.,

Case No. 92-0230 (Goin / Final Order Dismissing Pet. for Arb. / October 29, 1992)

- With less than a quorum [3 of 7 members] board could not reach decision on whether to certify recall.

**- failure to hold or timely hold board meeting**

Anderson v. Wagner,

Case No. 95-0077 (Price / Final Order Dismissing Petition for Arbitration / March 15, 1995)

- Where board attempted on two occasions to hold a meeting to decide whether to certify the recall but no quorum was reached at either meeting, board's failure to take any official action validated the recall under s. 719.106(f)(4), F.S.

Anzelon, Botsacos, Drum, Leaders & Young v. Unit Owners Voting to Recall Director Drum,

Case No. 94-0115 (Draper / Order to Show Cause / April 11, 1994)

- Five members of board who petitioned for recall were ordered to demonstrate how their action was 'official' board action as it did not appear in the petition that a meeting had been called.

Bastos v. West Fontaine Condo. Assn., Inc.,

Case No. 94-0180 (Goin / Final Order Dismissing Pet. for Arb. / June 9, 1994)

- Where board failed to hold a meeting to decide whether or not to certify, failed to provide legitimate justification for not holding a meeting, and board members resigned, board waived

its right to arbitration; and where petition was filed by one former board member acting alone, no official board action was taken, so dismissal was proper.

East Atlantic Gardens Condo., Inc.,

Case No.92-0107 (Player / Final Order Dismissing Pet. for Arb. / June 15, 1992)

- Absent legitimate reasons, failure to timely hold meeting or file for arbitration after receiving written recall waived board's right to arbitration.

### **UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

#### **- failure to hold or timely hold board meeting** (continued)

Merritt Island Cooperative Housing Assn, Inc. v. Unit Owners Voting for Recall,

Case No. 96-0082 (Goin / Summary Final Order / March 27, 1996)

- Where board held its initial meeting within five full business days after receipt of written agreements but tabled the issue of whether or not to certify the recall to a date outside the five-day time limit, board failed to hold its meeting as required by statute.

Prefer v. Landmark at Hillsboro Condo. Assn., Inc.,

Case No. 92-0257 (Scheuerman / Order Dismissing Petitions for Arb. / December 31, 1992)

- Recall certified where board failed to hold meeting within 72 hours.

Sterling Condo. Assn., Inc. v. Group of the Members of the Assn. who Voted for Recall,

Case No. 94-0126 Price / Arbitration Summary Final Order / May 4, 1994)

- Where board showed that its failure to hold its meeting to determine whether to certify the recall was not a bad faith attempt to thwart the recall effort, and where filing petition two days beyond the 72-hour period was not done in bad faith, equity warrants acceptance of the petition.

#### **- failure to timely file petition (See also, Time Limits/Legitimate Justification)**

Windsong of Boca del Mar Condo. Assn., Inc. v. Unit Owners Seeking Recall,

Case No. 96-0466 (Draper / Summary Final Order / February 27, 1997)

- Recall certified where petition was filed 3 days late where no legitimate justification provided for late filing and where board meeting minutes failed to raise any legitimate reasons for failing to certify the recall.

**- petition accepted/legitimate justification found**

Courts of Inverrary Condo. Assn., Inc. v. Shepard and Other Owners Voting for Recall,  
Case No. 94-0274 (Draper / Order Accepting Pet. for Arb. / July 25, 1994)

Association's reliance on attorney's mistaken application of F.A.C.R. 61B-50.106(1), which excludes weekends from time of filing count, to statutory 72-hour and 144-hour petition filing requirement, was legitimate justification for late filing, so petition accepted.

**UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

**- failure to timely file petition (See also, Time Limits/Legitimate Justification)**  
(continued)

**- petition accepted/legitimate justification found** (continued)

James Place Condo. Assn., Inc. v. The Group of Members of the Assn. Seeking "Recall",  
Case No. 93-0227 (Price / Order on Response to Notice to Show Cause and Order Requiring Answer / August 13, 1993)

•Petition for recall arbitration accepted where board provided some justification for not filing petition within 72 hours as its meeting was held after the end of business on Friday and its attorney erroneously interpreted rule 61B-50.106(1) as excluding Saturday and Sunday from calculation of time period.

Sterling Condo. Assn., Inc. v. Group of the Members of the Assn. who Voted for Recall,  
Case No. 94-0126 (Price / Arbitration Summary Final Order / May 4, 1994)

•Where board showed that its failure to hold its meeting to determine whether to certify the recall was not a bad faith attempt to thwart the recall effort, and where filing petition two days beyond the 72-hour period was not done in bad faith, equity warrants acceptance of the petition.

Twin Lakes South Condo. Assn., Inc. v. Members of the Assn. Voting for Recall, Case No. 95-0240, Order Permitting Amended Answer and Accepting Petition as Timely (Grubbs, February 20, 1996) (Where petition was mailed within five-day time limit, rather than filed as required, based on misinformation provided to counsel for petitioner by employee of the Bureau of Condominiums, petition accepted as timely; time for filing petition is not jurisdictional).

Victoria Towers Condo. Assn., Inc. v. Unit Owners Signing Written Agreements,



Case No. 94-0233 (Goin / Summary Final Order / June 20, 1994)

- Unit owners were not prejudiced by board's failure to hold meeting within 72 hours since board did file petition within 144 hours.

### **UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

**- failure to timely file petition (See also, Time Limits/Legitimate Justification)**  
(continued)

**- petition dismissed as untimely**

Cherrywood Gardens, Inc.,

Case No. 93-0196 (Scheuerman / Summary Final Order / July 13, 1993)

- Recall petition for arbitration dismissed and recall certified where board failed to meet within 72 hours and failed to file for arbitration within 72 hours of meeting.

Columbia Commercial Condo.,

Case No. 93-0045 (Price / Order Denying Pet. for Arb. / March 16, 1993)

- Petition denied as not filed within 72 hours of unit owner meeting voting to recall board members.

Countryside Condo. Assn., Inc. v. Unit Owners Signing Recall Agreement,

Case No. 93-0260 (Goin / Final Order Dismissing Pet. for Arb. / September 7, 1993)

- Petition dismissed because association failed to hold meeting within 72 hours after receiving written agreement and failed to file petition until after 144 hours of receipt.

East Atlantic Gardens Condo., Inc.,

Case No.92-0107 (Player/Final Order Dismissing Pet. for Arb. / June 15, 1992)

- Absent legitimate reasons, failure to timely hold meeting or file for arbitration after receiving written recall waived board's right to arbitration.

Everidge v. Board of Dir. of Seaview Villas Condo. Assn., Inc.,

Case No. 93-0098 (Price / Order Denying Pet. for Recall Arb. / April 21, 1993)

- Failure to hold meeting within 72 hours and to file petition for arbitration within 72 hours of meeting acts as waiver and recall is certified.

Galeria III Condo. Assn., Inc. v. All Unit Owners Who Voted for Recall,

• Case No. 96-0045 (Goin / Summary Final Order / March 7, 1996)

- Where board received recall package and held a meeting wherein it was decided not to file a petition for arbitration because it believed that unit owners had not obtained a majority of votes and therefore, arbitration not necessary, arbitrator held that a petition for arbitration filed one month later, after association had received a letter from the Bureau of Condominiums, was untimely and the recall certified.

**UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

- **failure to timely file petition (See also, Time Limits/Legitimate Justification)**  
(continued)

- **petition dismissed as untimely** (continued)

Second Moorings Condo. Assn.,

Case No. 92-0178 (Price / Order Denying Motion to Set Aside Final Order Denying Pet. for Arb. / August 11, 1992)

- Petition dismissed because not filed within 72 hours of board meeting, five-day service by mail extension does not apply to filing petition); see also Second Moorings, (Price/ Final Order Denying Pet. for Arb./ 7/13/92)

Siegal v. Ivanhoe East Condo. Assn. I at Century Village,

Case No. 92-0225 (Grubbs / Final Order / September 15, 1992)

- Even though vote of board to certify recall was tied, failure of board to petition for arbitration within 72 hours resulted in automatic recall.

Board of Dir. of Sunset Terrace of the Palm Beaches Condo. Assn., Inc. v. Unit Owners Seeking Recall of Paul McGavin,

Case No. 93-0174 (Price / Final Order Dismissing Pet. for Arb. and Certifying Recall / August 6, 1993)

- Failure to file petition for arbitration within 72 hours and to respond to order to show cause waived arbitration, so recall was certified.

Terrace Park of Five Towns, No. 15,

Case No. 93-0044 (Price / Order Denying Petition for Arb. / April 2, 1993)

- Petition for recall not timely filed where petition was not received by division on last day of 72-hour period from adjournment of board meeting that was not a Saturday, Sunday or legal holiday as President's day is not a legal holiday; "filed" means received by division not postmarked, rule 7D-23.0028; and petition may be filed by facsimile, Federal Express, Express mail, or other priority mail service.

### **UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

- **failure to timely file petition (See also, Time Limits/Legitimate Justification)**  
(continued)

- **petition dismissed as untimely** (continued)

Victory Gardens Condo. Assn., Inc. v. Group of the Members of the Assn. Who Voted for Recall,

Case No. 94-0070 (Price / Order to Show Cause / March 8, 1994)

- Association ordered to show good cause why petition should not be dismissed for late filing since board had not complied with the requirements of rule 61B-50.106, F.A.C., which requires a board to provide legitimate justification for lateness and that its actions were taken in good faith.

- **no legitimate reasons for failing to certify**

Board of Admin. of the Hialeah Club Villas Condo. Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Bd. of Dir.,

Case No. 95-0102 (Price / Recall Arb. Summary Final Order / July 24, 1995)

- Recall certified where the basis for board's failure to certify the recall as identified in the minutes, e.g., no representative, no certificates for jointly owned units when documents don't require them, were legally insufficient.

L'Esplanade on Key Biscayne Condo. Assn., Inc. v. Groups of Members of the Association Voting for the Recall of Members of the Board of Directors,

Case No. 95-0200 (Price / Summary Final Order / June 23, 1995)

- Where three board members voted to certify the recall and three voted against, and where only basis for failing to certify the recall was that the recall "would be detrimental to the

association," arbitrator certified recall because board failed to allege any legitimate reasons for failing to certify the recall.

Oaklee Grove Condo. Assn., Inc. v. Group of Members of the Association who Executed a Written Agreement to Recall Members of the Board of Directors,  
Case No. 96-0342 (Oglo / Summary Final Order / December 19, 1996)

- Pursuant to declaration of condominium, unit owner having title to unit on vacant lot can vote in recall attempt just like unit owners who have title to units on improved lots. Association did not provide a preliminary basis for relief and the recall certified.

### **UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION** (continued)

**-no legitimate reasons for failing to certify** (continued)

Board of Directors for Point East IV Condo. Corp. v. Frank,  
Case No. 94-0220 (Draper / Final Order Dismissing Pet. for Arb. / June 23, 1994)

- Board waived right to petition for arbitration when it failed to hold a meeting due to lack of a quorum, however, recall would have been effective regardless as the reasons given for not certifying the recall were either not germane or vague, conclusory allegations that were not supported by alleging specific facts in the pleading.

Board of Admin. of the Sunrunner Place Condo. Homeowners Assn., Inc. v. Group of Members of the Assn. Who Executed a Written Agreement to Recall Members of the Bd. of Dirs.,  
Case No. 95-0189 (Price / Summary Final Order / December 18, 1995)

- Recall certified where board failed to include any reason justifying its refusal to certify in the minutes and all of the reasons given were insufficient, e.g., cover letter was misleading.

### **VACANCIES**

Habitat II Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0073 (Goin / Final Order / April 29, 1997)

- Where three out of ten replacement candidates were ineligible to be on the board, the seven validly elected board members could fill the vacancies by appointment or election.

Laguna Club East Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0122 (Draper / Summary Final Order / April 28, 1997)

- Where written agreement purported to recall six board members and to elect seven

replacements (to replace 6 recalled directors and one director who resigned), unit owners not authorized to use recall process to fill vacancy of director who had resigned. 61B-23.0021(13) requires remaining directors to appoint replacement or hold election to fill vacancy.

L'Esplanade on Key Biscayne Condo. Assn., Inc.,  
Case No. 95-0200 (Price / Summary Final Order / June 23, 1995)

- Where two members of a six member board are recalled, unit owners are not authorized to elect replacement board members at a special unit owner meeting for recall because rule 61B-23.0027(3)(e)1, F.A.C., gives right of filling vacancy to board if less than a majority of directors are recalled.