

# **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

## **RECALL ARBITRATION SUBJECT MATTER INDEX**

**VOLUME TWO**

**DECEMBER 2002**

Note: This index contains summaries of arbitration recall final orders entered from June 1997 through December 31, 2002. This index updates Volume One supplement of the Recall Subject Matter Index.. Final orders pertaining to regular condominium arbitration cases are listed in separate indexes.

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## **ARBITRATION PROCEDURE**

### **- authority to file petition**

Board of Directors of Harbour Village Property Owners Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 99-0106 (Pine / Summary Final Order on Petition for Recall / March 23, 1999)

- Where unit owners asserted selective enforcement of voting certificate requirements, but failed to support assertion with specific data as ordered, defense was stricken and recall was certified. See Rule 61B-50.119(2), F.A.C.

Inverrary Gardens Condo. I. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 99-2142 (Draper / Summary Final Order / January 25, 2000)

- Two board members constituting a majority of the board had the authority to file a petition on behalf of the board. Respondents argued that petition was not authorized because at the meeting on whether to certify recall of one director, board did not vote not to certify recall and file a petition. Arbitrator held that the two directors were authorized to act on behalf of board, especially in light of fact that one of the directors had been excluded from voting at board meeting on certification. In addition, where board fails to certify recall, a petition for recall arbitration must be filed, pursuant to s. 718.112(2)(j)2., F.S.

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

Chateau at Boca Grove Plantation Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 98-2786 (Cowal / Final Order of Dismissal / July 14, 1998)

- Case dismissed as presumptively settled after parties advised that they were actively working to settle dispute and then parties failed to respond to order to show cause why the case should not be dismissed as presumptively settled.

Les Jardins Condo. Assoc., Inc. v. Unit Owners Voting for Recall,

Case No. 00-1838 (Pine / Final Order Dismissing Petition and Certifying Recall / December 4, 2000)

- Rule 61B-50.105(b), F.A.C., requires a petition for recall arbitration to be filed within 5 business days after adjournment of the board meeting at which board declined to certify recall. Where board ignores directive to explain tardy filing, recall certified.

Third Mooring Condo. Assoc., Inc. v. Unit Owners Voting for Recall,

Case No. 01-2729 (Pasley / Final Order Certifying Recall / May 29, 2001)

- Where the board failed to file minutes of the board meeting (or a copy of the tape of the board meeting) and failed to file proof that it relied upon valid reasons when it decided not to certify the recall, even after being specifically instructed to do so, the arbitrator is unable to evaluate the reasonableness and the validity of the board's decision not to certify the recall. Therefore, the recall of the two board members was certified.

**ARBITRATION PROCEDURE** (continued)

**- generally**

The Charter Club of Naples Bay Owners' Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5360 (Coln / Order Denying Motions to Dismiss / September 13, 2002)

- The Division has the authority pursuant to s. 718.112(2)(j), to hear the petition for recall arbitration filed by a timeshare condominium association.

San Remo Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-5285 (Pine / Summary Final Order / February 19, 1999)

- Generally, assertion that arbitrator may have had ex parte communication with opposing party, based on circumstantial inferences, does not meet the standards required for disqualification or recusal of arbitrator.

The Shores at Coco Plum Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4837 (Anderson-Adams / Order Denying Motion for Temporary Injunction / October 14, 1998)

- The four prerequisites for issuance of a temporary injunction in a recall action are: 1) irreparable harm; 2) an inadequate remedy at law; 3) a clear legal right to the relief requested; and 4) that the injunction would not be adverse to the public interest. Association has not shown that it has no adequate remedy at law where some of the respondents have begun acting as if they were the board of directors and cancelled a painting contract. If the association is found to have breached the painting contract, its remedy would be to seek money damages from those unit owners who interfered with the contract.

Stonebridge Gardens Section One Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4167 (Coln / Summary Final Order / April 17, 2002)

- When an issue given as a reason for failing to certify the recall is not raised in the petition for arbitration, the issue is abandoned.

Stonebridge Gardens Section Two Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4168 (Coln / Summary Final Order / April 17, 2002)

- When an issue given as a reason for failing to certify the recall is not raised in the petition for arbitration, the issue is abandoned.

Stonebridge Gardens Section Three Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4169 (Coln / Summary Final Order / April 17, 2002)

- When an issue given as a reason for failing to certify the recall is not raised in the petition for arbitration, the issue is abandoned.

**ARBITRATION PROCEDURE** (continued)

**- generally** (continued)

Stonebridge Gardens Section Four Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4170 (Coln / Summary Final Order / April 17, 2002)

- When an issue given as a reason for failing to certify the recall is not raised in the petition for arbitration, the issue is abandoned.

Sunset Villas Phase III Condo. v. Unit Owners Voting for Recall,  
Case No. 00-1737 (Draper /Order Allowing Answer to Petition for Arbitration / October 11, 2000)

- Board members sought to be recalled shall, unless they resign, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator, pursuant to rule 61B-23.0028(3)(b), F.A.C. Respondents ordered to refrain from holding themselves out as directors of the association, or otherwise interfering or attempting to interfere with the administration of the association.

Sunset Villas Phase III Condo. v. Unit Owners Voting for Recall,  
Case No. 00-1737 (Draper / Order Requiring Compliance / October 16, 2000)

- Association alleged that respondents refused to return keys to the association's offices and the association records to the board members sought to be recalled during the pendency of the recall arbitration. In addition, respondents called the police to remove the property manager from the property, and posted notices directing the owners to mail maintenance and assessment payments to an address other than the management company. Respondents' conduct held to violate order permitting response that prohibited the respondents from holding themselves out as directors of the association, or otherwise interfering or attempting to interfere with the administration of the association.

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

Capri Lagoons Club Condo. Assn., Inc. v. Strachan, et al.,  
Case No. 98-4899 (Powell / Final Order of Dismissal / October 7, 1998)

- Where association filed a notice of voluntary dismissal, arbitrator dismissed the petition for recall arbitration with prejudice and deemed certified the recall of the director in question, pursuant to Rule 61B-50.112(2), F.A.C.

The Commodore Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1314 (Anderson-Adams / Final Order Dismissing Petition and Closing Case File / July 12, 1999)

- Recall is automatically deemed certified under Rule 61B-50.112, F.A.C., where association voluntarily withdraws petition for recall arbitration.

## **ARBITRATION PROCEDURE** (continued)

### **- withdrawal of petition/withdrawal of written agreement** (continued)

Sailboat Cay Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 99-0919 (Powell / Final Order Dismissing Petition for Arbitration / July 8, 1999)

- Where there was no substantive objection to the authority of the association, acting through the board elected pursuant to the recall effort, to withdraw the petition for arbitration, the petition was deemed withdrawn. Pursuant to Rule 61B-50.112, F.A.C., the recall was deemed certified and the replacement board members would serve subject to limitations imposed by circuit court appointing the receiver.

Towers of Westland Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-2506 (Oglo / Order Acknowledging Withdrawal and Certifying Recall / March 6, 1998)

- Where board stated that it no longer wished for the petition for arbitration to go forward and that the replacement directors listed in the recall agreement would replace existing board members, the arbitrator acknowledged the withdrawal and certified the recall pursuant to Rule 61B-50.112(1), F.A.C.

Villa Biscaya Jardines II Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4102 (La Plante / Final Order Dismissing Petition / June 16, 1998)

- Recall petition dismissed and recall was not certified where unit owner representative “cancelled” recall effort because the written agreements to recall indicated that they were for the purpose of recalling members currently serving on the board of directors of “The BPR Condominium Association, Inc., Tallahassee, Florida”. Recall attempt found to be void *ab initio*, and unit owner representative’s cancellation of recall effort, which was not objected to by petitioner, obviated the need for the petition, which sought to affirm the non-certification of the recall, and rendered the matter moot.

## **ATTORNEY'S FEES/COSTS**

Conners, et al., as Directors of Pinewood Village Condo. Assn., Inc. v. Demarco of Class Enterprises, as Representative of the Group of Members of the Association Who Executed a Written Agreement of Recall,  
Case No. 97-1967 (Draper / Final Order on Attorney's Fees / January 29, 1998)

- Former board members who were recalled would not be held individually responsible for attorney's fees of unit owners who initiated recall where the board members met standards of s. 617.0830, F.S., for director conduct.



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

The Doria Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 97-0358F (Draper / Final Order on Attorney's Fees / November 17, 1997)

- Association's attorney's fees request denied where recall arbitration mooted by resignation of board member sought to be recalled. Errors alleged by association to have been committed by unit owners in their recall attempt--predicating recall on slanderous and untrue allegations against director, and submitting a few agreements cast by unauthorized persons--are either not procedural errors or are not so grave as to render recall effort frivolous, unreasonable or groundless.

The Federation of Kings Point Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-0600 (Draper / Final Order on Attorney's Fees / April 28, 2000)

- Sections 718.303 and 57.105, F.S., do not give a right of attorney's fees to the prevailing party in a recall arbitration proceeding. Section 57.105, F.S., applies to a "civil proceeding or action" which does not include an arbitration proceeding.

Board of Directors of Greentree Condo. Assoc., Inc. v. Unit Owners Signing Written Agreement to Recall Board of Directors, Lisset Fernandez and Antonio Palenzuela, individually and as unit owner representatives,  
Case No. 98-3479 (La Plante / Final Order on Motion to Tax Petitioner's Costs and Attorneys' Fees / March 13, 1998)

- Where intervening election caused recall dispute to become moot, association not considered a prevailing party because dispute became moot due to an intervening event, the scheduled election, rather than becoming moot due to a voluntary act by respondents motivated by the filing of the petition.
- Even if association deemed prevailing party, no fees would have been awarded because unit owners seeking recall have no vote as to whether a recall will be certified or not; the imposition of attorney's fees against recalling owners would only be appropriate under special circumstances, such as where the procedural steps taken by the recalling unit owners failed to materially or substantially conform to the procedures of Chapter 718, F.S., and the relevant administrative rules, to such an extent that the recall effort was frivolous, unreasonable, or groundless.
- Moreover, Rule 61B-50.141, F.A.C., which interpreted s. 718.1255, F.S., and s. 718.112(2)(k), F.S., as permitting an award of prevailing party fees, was repealed. Accordingly, the rules governing recall arbitrations do not contain a prevailing party fee provision. Rather, under the recall statute, there is no entitlement to prevailing party fees and none may be awarded.

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

International Park Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case Nos. 99-1884 & 99-1614 (consolidated) (Powell / Summary Final Order in Case No. 99-1884 / December 12, 1999)

- There is no entitlement to prevailing party fees in recall cases and none may be awarded. It is beyond the purview of the order on recall to determine whether the unit owners' attorney's fees incurred in this proceeding may be paid by the association as a common expense.

Key Capri Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-3279 (Draper / Final Order on Attorney's Fees / March 9, 1998)

- Arbitrator denied fees request of prevailing unit owners because request for award of fees was not made prior to entry of final order as required by Rule 61B-50.141, F.A.C.

Martinique 2 Owners' Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1843 (Pine / Final Order Dismissing Petition / September 27, 1999)

- Respondents' argument that board members, rather than respondents or association as a whole, should bear attorney's fees and costs is outside the scope of recall arbitration. Rule 61B-50.141, F.A.C., has been repealed and currently there is no rule providing for an award or other recovery of attorney's fees. Also, the arbitrator can not prohibit a future assessment to pay attorney's fees; arbitrators have no jurisdiction over assessment disputes.

The Regency of St. Petersburg, Inc. v. Unit Owners Voting for Recall,  
Case Nos. 97-0192 and 97-2047 (consolidated) (Draper / Final Order on Attorney's Fees / December 24, 1997)

- Despite unit owners' error, association would not be awarded its attorney's fees where unit owners seeking recall submitted votes of a developer who was ineligible to vote on the recall of the board members. Error did not render the recall effort frivolous, unreasonable or groundless.

San Remo Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-5285 (Pine / Summary Final Order / February 19, 1999)

- In a recall arbitration, no entitlement to prevailing party attorney fees exists. Rule 61B-45.048 does not apply to recall arbitration and former Rule 61B-50.141 has been repealed.

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

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

Central Cortez Plaza Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0179 (Draper / Summary Final Order / June 7, 1997)

- Argument that recall ballots were invalid because unit owners were confused about what they were signing was rejected where ballots were straightforward and could not have been misunderstood by unit owners.
- Fact that recall agreement form did not contain words indicating that unit owner was "authorized" to cast a vote for the unit did not render agreement invalid. Spaces were provided for unit owners' name, unit number and unit owners' signature. Despite this deficiency, agreement substantially complied with Rule 61B-23.0028(1), F.A.C.
- Recall agreements need not be dated, nor is their validity time-limited.

Greenway Village North II Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3713 (Pine / Final Order Certifying Recall / October 11, 2001)

- Fact that recall ballots were undated constituted minor procedure inconsistency and would not invalidate the recall effort where there were no conflicting votes that needed to be placed in chronological order.

International Park Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case Nos. 99-1884 & 99-1614 (consolidated) (Powell / Summary Final Order in Case No. 99-1884 / December 12, 1999)

- Association's objection that most of the ballots served were copies of those presented in a previous recall attempt was rejected by the arbitrator. Rule 61B-23.0028(1)(g), F.A.C., permits photocopies. There is no provision in the statutes or administrative rules that the validity of recall agreements is time limited.

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

The Charter Club of Naples Bay Owners' Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5360 (Coln / Summary Final Order / September 17, 2002)

- Where units are owned by both the developer and non-developer unit owners, only the developer can vote to recall the developer appointed members of the board. The developer cannot vote to recall the non-developer appointed members of the board.

Clarcona Resort Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3640 (Pasley / Summary Final Order / November 21, 2001)

- Where less than a majority of the voting interests vote in favor of the recall of any board member, the recall effort fails to substantially comply with S. 718.112(2)(j), F.S.

## **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)

The Crosswinds Mobile Home Park, Inc. v. Unit Owners Seeking Recall,  
Case No. 98-2973 (Draper / Final Order Dismissing Petition and Certifying Recall / March 4, 1998)

- Where minutes of board's certification meeting indicated that agreement lacked approval by 51% of voting interests, but agreement attached to petition contained ballots for a majority of the voting interests, recall certified.

Les Chateaux at International Gardens Condo. Assn., Inc. v. Group of Members of the Association Who Executed a Written Agreement to Recall All of the Board Members,  
Case No. 00-0830 (Pasley / Summary Final Order / May 22, 2000)

- Where association asserted that less than a majority of the voting interests voted to recall board members and the unit owners voting for recall did not file an answer to the petition, the board's decision to not certify recall was affirmed.

Marina Real Condo. No. 3 Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1228 (Pasley / Summary Final Order / July 9, 1999)

- The unit owners did not rebut the association's assertion that less than a majority of the voting interests submitted written agreements voting in favor of recalling the board members. A majority of affirmative votes is required to effect a recall; therefore, the association's decision not to certify the recall was affirmed.

Oceans Four Condo. Assn., Inc. v. Unit Owners Voting in Favor of Recall,  
Case No. 00-0607 (Draper / Final Order on Recall / May 2, 2000)

- Section 718.112(2)(j), F.S., which permits recall of a director by unit owners at a meeting, requires a majority of all voting interests in the association to approve the recall in order to be effective. This applies even where the association's bylaws purport to allow the recall of a director upon the majority vote of all unit owners attending the meeting. As the bylaw provision conflicts with the statute, the provision of the bylaws permitting recall upon the agreement of less than a majority of voting interests is invalid.

Oceanview Park Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3115 (Draper / Final Order on Recall Arbitration / June 18, 2001)

- Despite contrary provision in bylaws, number of unit owners required to recall director is a majority of the voting interest (not majority of voting interests present at recall meeting).

Panama Apartments, Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3151 (Pine / Final Order on Recall / June 27, 2001)

- Pursuant to section 718.112(2)(j), F.S., recall can only be effected by a majority of the voting interests, not by a majority of the persons present at the recall meeting.

**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)

The Regency of St. Petersburg, Inc. v. Unit Owners Voting for Recall,  
Case Nos. 97-0192 and 97-2047 (consolidated) (Draper / Final Order on Attorney's Fees / December 24, 1997)

- Owner of 29 units which were typically leased and listed with realtor but which were not advertised for sale and no unit had sold for last five years, held to be developer not offering units for sale in the ordinary course of business. As a result, pursuant to Rule 61B-23.0026, F.A.C., developer's votes could not be counted toward recall of majority of board, or in calculation of majority required to recall a director elected by unit owners other than the developer.
- Fact that developer had voted for all directors in past elections is not dispositive of whether developer could vote to recall a director; question is whether developer is entitled to vote for director in the first place.

Sorrento Park Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-0603 (Pine / Summary Final Order / May 2, 2000)

- Where association's assertion, that unit owners filed only 27 votes in favor of recall and association is comprised of 56 voting interests, remains un rebutted, board's decision not to certify recall for lack of majority vote was affirmed.

Snug Harbor Lakes Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5243 (Coln / Summary Final Order / August 9, 2002)

- Pursuant to Section 61B-23.0026, Florida Administrative code and Section 718.112(2)(j), Florida Statutes recall can only be effected by a majority of the voting interests, not by a majority of the voting interests present at the recall meeting.

Villa Regina Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-0592 (Pine / Summary Final Order / April 15, 1999)

- Respondents/unit owners did not rebut assertion that fewer than a simple majority of the voting interests submitted agreements to recall board members. Majority of votes required to effect recall, so decision not to certify recall was affirmed.

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

Aqua Gardens Townhouse Assoc. Inc. v. Unit Members Voting for Recall,  
Case No. 02-5861 (Gioia / Recall Arbitration Summary Final Order / December 24, 2002)

- Service by hand-delivery to a board member is sufficient to put the board on notice that a written recall has been attempted and that a meeting of the board must be held within this specific period of time. A defect in formal service does not invalidate a recall.

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

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

Castillian Club Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4865 (Draper / Case Management Order / November 6, 1998)

- Unit owners' claim, that written recall should have been certified by action of law because board failed to timely hold a meeting on certification, was rejected. Board denied that agreement had been received by the board and unit owners alleged only that the secretary of the board was served. Service on board's secretary, where there was no indication that president or vice-president of association was not available, did not comply with Rule 61B-23.0028(1)(g), F.A.C. The rule requires service on the board by certified mail or personal service in accordance with Chapter 48, F.S. Chapter 48.081 provides that process may be served on president or vice-president or, in their absence, on the secretary, treasurer, etc.

Gateland Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-5247 (Anderson-Adams / Amended Summary Final Order / January 25, 1999)

- Where unit owners contended that the board failed to hold a meeting on certification within five days after a recall agreement was "hand served" on the president of the association, resulting in the recall being automatically certified per s. 718.112(2)(j), F.S., and the board contended that the president had not received the recall agreement as alleged by the unit owners, it was unnecessary to address issue because the agreement was void *ab initio*.

The Golfview Club at Fountainbleau Park Condo. #3 Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-0285 (Pine / Final Order on Recall / March 24, 2000)

- Rule 61B-23.0028(1), F.A.C., requires that the unit owners seeking recall shall serve on the board copies of the written agreements. Where neither the actual agreements nor copies were served on the board, board's decision not to certify the recall must be affirmed.

Gulf Island Beach and Tennis Club Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 98-4198 (Powell / Summary Final Order Certifying Recall / August 18, 1998)

- Where person serving written agreement on corporate president was not unit owner designated on written agreement as unit owner representative, delivery was, nevertheless, acceptable.

Hidden Forest Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5347 (Coln / Summary Final Order / August 29, 2002)

- Service of the recall agreements by a certified process server constitutes personal service as contemplated by Rule 61B-23.0028(1).

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

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

#### International Park Condo. Assn., Inc. v. Unit Owners Seeking Recall,

Case Nos. 99-1884 & 99-1614 (consolidated) (Powell / Summary Final Order in Case No. 99-1884 / December 12, 1999)

- President's admission that she received the written agreement establishes that service was accomplished on the board for purposes of satisfying Rule 61B-23.0028(1), F.A.C. There is no requirement that all members of the board be served.

#### Marina Club of Tampa Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case Nos. 98-5143 and 98-5266 (consolidated) (Pine / Order Consolidating Cases, Summary Final Order Approving Decision Not to Certify Recall in Case No. 98-5143, and Certifying Recall in Case No. 98-5266 / November 24, 1998)

- Rule 61B-23.0028(1), F.A.C., requires that unit owners' representative must serve copies of written agreements on board. Where no agreements or copies were served on the board, board properly declined to certify recall.

#### Ocean View Towers Condo. Assoc., Inc. v. Unit Owners Seeking Recall,

Case No. 00-1912 (Powell / Order Striking Claim and Allowing Answer / November 22, 2000)

- Service on the president by certified mail was sufficient; there is no requirement that all of the board members be served with the written agreement for recall.

#### Opal Towers Condo. Assoc. Inc. v. Unit Members Voting for Recall,

Case No. 02-5700 (Gioia / Recall Arbitration Summary Final Order / December 24, 2002)

- Service by hand-delivery to a board member is sufficient to put the board on notice that a written recall has been attempted and that a meeting of the board must be held within this specific period of time. As the required meeting was held within the required time, the form of delivery of the recall ballots is of no significance.

#### The Shores at Coco Plum Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 98-4837 (Anderson-Adams / Final Order Certifying Recall / October 15, 1998)

- Three individual recall agreement forms, amended to include the missing signatures of joint owners, and resubmitted during the course of the board meeting on whether to certify the recall, do not constitute service of a complete new recall agreement upon the board.

#### Snug Harbor Lakes Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 99-2293 (Draper / Recall Arbitration Final Order / January 14, 2000)

- Leaving a copy of the written agreement on the table at the board's meeting does not constitute service as required by ss. 718.112(2)(j) and 48.081(1), F.S.

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

**- generally**

Alexandra Village Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case Nos. 00-1851 and 00-1720 (Pine / Final Order / December 5, 2000)

- Where ballot shows a mark on both the retain line and the recall line, and the "retain" mark has been scratched out, then in absence of initials by alteration, handwritten note by voter, or other indicia of reliability, board did not act unreasonably in rejecting recall vote as possibly altered. Other votes on same ballot are not thrown into umbra of suspicion, however, and will be given effect.
- Recissions specifically referred to in the minutes and the petition, and supported by written documents attached to the petition, and which were submitted to the board before the recall agreement was served on board, are given effect. However, a recission that was referred to in the minutes but not in the petition or any attachment filed with the petition will not be given effect; rather, it is assumed that the protest regarding the recall vote attached to the petition has been abandoned. Recission filed with arbitrator after issuance of final order will not be given effect.
- Where someone other than the unit owner signs on the line provided for the unit owner's signature, but the unit owner signs right below that line, vote is not invalidated for failure to sign in designated spot.
- Where multiple ballots cast on behalf of one unit all have identical votes, the duplicates are disregarded but the duplication does not invalidate all votes cast by that unit.

Boca Terrace Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1887 (Pasley / Summary Final Order / January 16, 2001)

- Neither Chapter 718, F.S., nor rule 61B-23.0027, F.A.C., requires a board to call a recall meeting upon receipt of a signature list of 10% of the voting interest. Rule 61B-23.0027(2)(a), F.A.C., permits 10% of the voting interests to call a recall meeting.

The Charter Club of Naples Bay Owners' Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5360 (Coln / Summary Final Order / September 17, 2002)

- Rule 61B-23.0027(3)(6), F.A.C. requires that a separate recall vote must be taken for each board member, unless otherwise provided for in the declaration or by-laws. The unit owners' failure to provide a separate recall vote for each board member is a fatal flaw and the recall is void ab initio.

Continental Inn Condo. of Key Colony Beach, Inc. v. Unit Owners Seeking Recall,  
Case No 99-2341 (Powell / Summary Final Order / December 30, 1999)

- Section 718.112, F.S., providing for recall with or without cause, supersedes provision of bylaws providing that directors may be recalled only for cause.



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

- **generally** (continued)

The Crosswinds Mobile Home Park, Inc. v. Unit Owners Seeking Recall,  
Case No. 98-2973 (Draper / Final Order Dismissing Petition and Certifying Recall / March 4, 1998)

- Fact that a majority of unit owners present at unit owner meeting on recall, which was held after written recall petition was received, voted to retain board members does not relieve association from requirement of filing petition for recall arbitration; nor does it indicate that recall agreement should not be certified or that recall issue is moot.

Country Club Villas & Townhomes Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5361 (Coln / Summary Final Order / October 17, 2002)

- Decision of the board not to certify the recall upheld where numerous copies of ballots were missing the unit number, signature and name. Unit owners were given the opportunity to supply the arbitrator with correct copies of the ballots but failed to do so. Since the unit owners failed to provide an accurate photocopy of the ballots in question to the arbitrator no determination of their validity could be made, and the decision of the board to not certify the recall affirmed.

El Galeon by the Sea Condo. Assoc. Inc. v. Unit Owners Voting For Recall,  
Case No. 02-4821 (Coln / Summary Final Order Certifying Recall / June 6, 2002)

- Where unit owners have obtained legal title to a unit, recorded the deed to that unit in the public records prior to casting a vote for that unit, notified the association of the change in ownership and where the association is aware of the recorded change in ownership, the rejection of a vote based upon the non-service of a recorded deed to the association is invalid.

Hidden Forest Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5347 (Coln / Summary Final Order / August 29, 2002)

- Association argued that the written recall agreement should be rejected as the board was not given copies of the recall ballots prior to service and permitted to defend themselves. Nothing in the Florida Statutes or Florida administrative code requires that a written recall be submitted to all voting interests or to the board of directors prior to service of the agreement on the board. Board members may be recalled for with or without cause, unit owners attempting a written recall of the board are not required to hold a debate upon the merits of the recall petition.

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

- **generally** (continued)

Hidden Forest Condo. Assoc. Inc. v. Unit Owners Voting for Recall, (continued)  
Case No. 02-5347 (Coln / Summary Final Order / August 29, 2002)

- Association challenged several recall ballots where the unit number of the individual casting vote was added to the ballot by another person. Where the addition of the unit numbers only clarifies the unit casting vote, and not other changes are made to the ballots that would challenge the validity of the vote to recall, the ballots are valid and should not have been rejected.
- Board argued that based upon prior litigation involving the association, the board should not address the recall pending the outcome of the prior suit. Prior suit involved dispute of whether the association's annual board election had been properly conducted. As part of the suit, the parties agreed not to count the ballots of the annual election prior to the outcome of the litigation. Argument without merit, as Section 718.112(2)(j), Florida Statutes, provides that "any member of the board may be recalled.

Hillwood Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1680 (Draper / Final Order on Recall / October 24, 2000)

- Recall ballot on which "confusing notations" were written should not have been rejected by the board. The ballot clearly is a vote to recall the directors and is valid regardless of admittedly confusing comments written on its face.

Horizons West Condo. #1 Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1641 (Pine / Final Order / October 19, 2000)

- A ballot with no mark on the "recall" line by a board member's name is not a vote to recall that board member. The simple act of signing a blank ballot form reflecting that some or all of the present board members should be recalled is not a vote to recall any particular board member.

Inverrary Gardens Condo. I. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2142 (Draper / Summary Final Order / January 25, 2000)

- Board that fails to certify a recall must file a petition for recall arbitration pursuant to s. 718.112(2)(j)2., F.S. At board meeting on certification of recall agreement, a motion was made to "not certify the recall." Upon failure of the motion to pass, board was required to file petition anyway. Section 718.112(2)(j) 2., F.S., requires board to either certify the agreement for recall or file a petition for recall arbitration.
- Respondents failed to permit two board members present at meeting on certification to review the original agreements for recall, and this failure invalidated recall effort. The right of the board to inspect the written agreements is fundamental.

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

- **generally** (continued)

Lincolnwood Towers Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2047 (Draper / Order Striking Motion for Stay / December 21, 1999)

- Request for stay of an order certifying recall is not cognizable under ss. 718.1255, 718.112(2)(j), F.S., or rules of procedure governing recall. Section 718.1255 does not grant substantive appellate rights to parties in recall arbitration; rather, 718.112(2)(j) incorporates only the procedural aspects of s. 718.1255 into recall arbitration proceedings.

McArthur Park at Misty Lake Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1790 (Draper / Final Order Certifying Recall / October 16, 1999)

- That unit owners who cast votes to recall the board signed ballots that were already filled out does not constitute a valid objection. Unit owners are, presumably, capable of making their own decisions on who to vote for and what to sign.

Nautilus Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2076 (Pine / Summary Final Order / December 3, 1999)

- Argument that recall should be voided because one person alone selected names of replacement candidates rejected where ballots had blanks for write-in candidates.
- Argument that one written agreement should be voided because it was submitted as a fax rather than an original is rejected.

Oceans Five Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 02-4511 (Pasley / Final Order Certifying Recall / February 22, 2002)

- Section 718.112(2)(j), F.S., allows a majority of the voting interests to recall a board member with or without cause; therefore, the following reasons listed by the board for not certifying the recall - the recall was a personal vendetta, an attempt to further personal revenge and "malicious mischief" - were found to be irrelevant and invalid reasons for not certifying the recall.

The Palace Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5150 (Coln / Summary Final Order / October 9, 2002)

- Rescission ballots received by the board prior to the service of the recall petition are properly considered by the board and are valid.

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

- **generally** (continued)

### Sailboat Cay Condo. Assn., Inc. v. Group of Members of the Association who Executed a Written Agreement to Recall,

Case No. 97-0317 (Oglo / Final Order / January 27, 1998)

- Written agreements which were blank (signed by unit owners, but which did not contain vote to "recall" or "retain") were excluded from the total count of recall votes, despite this deficiency not having been addressed in the minutes of the board meeting held on whether to certify the recall. As the agreements did not contain votes, they did not constitute agreements to recall.

### San Remo Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 98-5285 (Pine / Partial Summary Final Order and Order Allowing Response / December 28, 1998)

- Condominiums are creatures of statute and are thus only permitted to exercise those powers granted by statute. Nowhere does the statute permit an association to deny an owner the right to vote or to hold office due to an arrearage in the payment of assessments. The right to vote is specifically made an appurtenance to the unit. Section 718.106, F.S.
- While the board may discover new reasons not to certify the recall while preparing the petition for arbitration or even later, the arbitrator may consider only the reasons set out in the minutes of the meeting in which the board voted not to certify.

### Sea Ranch Club Condo. Assn., Inc. v. Patti, Chairperson, Recall Committee-Bldg. B, and All Other Unit Owners Voting for Recall,

Case No. 97-0238 (Draper / Final Order / November 25, 1997)

- Section 718.112, F.S., allowing a majority of unit owners to recall a director, supersedes provisions of bylaws requiring agreement of two-thirds of unit owners for recall.
- Section 718.112, F.S., providing for recall with or without reason, supersedes provision of bylaws providing that director sought to be recalled must be given notice and an opportunity to be heard at meeting.

### The Shores at Coco Plum Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 98-4837 (Anderson-Adams / Final Order Certifying Recall / October 15, 1998)

- Section 718.112(2)(k), F.S., allows recall by written agreement and takes precedence over condominium bylaws which provide for only one method of recall by means of a duly called general meeting of the membership.

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

- **generally** (continued)

Skylark R.O. Assoc. Inc. v. Unit Owners Voting For Recall,  
Case No. 02-4873 (Coln / Summary Final Order Certifying Recall / July 3, 2002)

- The basis or motivation behind a recall is irrelevant and is not a legal basis for denying a recall. Fla. Stat. 718.112(2)(j).
- Where association alleged that a unit owners' ballot was changed without her permission, yet after careful review of the original ballot by the arbitrator, no changes or alterations were noted on the ballot; the ballot was held to be valid.

Terranova Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1299 (Pasley / Summary Final Order / November 8, 2000)

- The arbitrator cannot consider the board's "more exact" reasons for not certifying a recall, where these reasons were contained with a supplemental pleading that was filed after the petition for recall and where these reasons were not listed in the minutes of the board meeting on recall.

Third Mooring Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-2729 (Pasley / Final Order Certifying Recall / May 29, 2001)

- Where the board failed to file minutes of the board meeting (or a copy of the tape of the board meeting) and failed to file proof that it relied upon valid reasons when it decided not to certify the recall, even after being specifically instructed to do so, the arbitrator is unable to evaluate the reasonableness and the validity of the board's decision not to certify the recall. Therefore, the recall of the two board members was certified.

Villa Biscaya Jardines Condo. Phase II, Inc. v. Castillo, et al.,  
Case No. 98-3936 (La Plante / Recall Arbitration Summary Final Order / May 14, 1998)

- Although recall petition was not timely filed, arbitrator affirmed the board's failure to certify recall under the circumstances of the case. In this case, equitable considerations precluded certification of the recall despite its untimeliness, as the recall was void *ab initio* when agreement stated, "place a check mark next to the board member's name on the "RECALL" line if you are voting for the board member to remain on the board". No actual agreement to recall existed where unit owners were instructed that a recall vote was a vote to retain a board member.

The Villas at Bristol Park Condo. Assoc. Inc. v. Unit Members Voting for Recall,  
Case No. 02-5362 (Gioia / Recall Arbitration Summary Final Order / October 3, 2002)

- The delivery of the recall in photocopy form has never been accepted, standing alone, as sufficient grounds to invalidate a recall.

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

### **- generally** (continued)

Windermere Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-2192 (Draper / Final Order Certifying Recall / February 3, 1998)

- Recall votes presumed valid where board raised no specific objection to their validity.

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

Grand Vista Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1214 (Draper / Recall Arbitration Final Order / September 27, 2000)

- That a signature on a recall ballot is illegible is not a valid reason for rejecting the vote. Rule 61B-23.0021(10)(a), F.A.C, provides that in elections for directors, “[t]he signature and unit identification on the outer envelope shall be checked against a list of qualified voters, unless previously validated...Any exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted.” The rule requires that, except in those cases where the envelope is signed in the presence of an election official who knows the identity of the signing individual, the association check the signatures on the outer envelopes against a signature list or other evidence of voter signatures, and disregard the ballots in envelopes not signed by an eligible voter.
- Where association was ordered to produce the records it relied on to reject ballots on the ground that the signatures on them were illegible, and failed to do so, the arbitrator independently evaluated the evidence to determine whether the rejection of the ballots was inappropriate.

Greenwich Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 99-0263 (Powell / Summary Final Order / May 28, 1999)

- Where signatures on ballots were so identical that they could only have been the result of photostatic duplication or some other mechanical means of reproduction, ballots were properly rejected by the board.

Gulf Island Beach and Tennis Club Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 98-4198 (Powell / Summary Final Order Certifying Recall / August 18, 1998)

- Where copies of individual recall agreements served on association were partly obscured because envelopes were covering part of two ballots when copied, these ballots were held valid by the arbitrator because the missing portion of the form ballots could be established by inference.

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

### **- illegible signatures/failure to print name** (continued)

Hidden Forest Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5347 (Coln / Summary Final Order / August 29, 2002)

- The association challenged the written recall ballots stating that the signatures did not match those on file with the association. The minutes of the board meeting do not identify any specific unit where the signature did not match and indicated the review of the ballots was ongoing. Where the minutes merely state that there appears to be a discrepancy with some ballots and does not list the individual challenges, Rule 61B-23.0028(4)(d), Florida Administrative Code, which requires that the board record the specific reasons for not certifying the recall, has not been complied with.

High Point Of Delray Condo. Assoc., Section IV, Inc. v. Unit Owners Voting For Recall,  
Case No. 02-4727 ( Coln / Summary Final Order / June 21, 2002)

Where a signature or mark, albeit unusual, appears on the recall ballot on both the signature line for the vote and the signature line for the authorization to cast the vote, the vote is improperly rejected since the ballot bears a mark in the signature line and the association has not challenged whether the mark was made by the unit owner.

McArthur Park at Misty Lake Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1790 (Draper / Final Order Certifying Recall / October 16, 1999)

- Where signature on recall vote was similar to the owner's signature contained in association records, the ballot should not have been rejected. However, where a signature on a vote differed markedly from the signature contained in the association's records, board properly rejected the vote.

Sterling Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-2110 (Draper / Final Order Certifying Recall / December 5, 1997)

- Arbitrator independently compared signatures on agreements rejected by board on grounds that the signatures did not appear to match signatures on file with the association, and determined that the agreements had been improperly rejected. It appeared that the board rejected a unit owner's signature if it was not identical in every way to the signature contained in the association's records. Some slight variation is to be expected in a signature.

The Village of Kings Creek Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1919 (Draper / Final Order Certifying Recall / November 1, 1999)

- Board erred in rejecting votes in which owners drew a big X or an arrow through all of the recall lines beside board members' names.

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

### **- illegible signatures/failure to print name** (continued)

West Garden Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4958 (Pine / Summary Final Order Certifying Recall / December 3, 1998)

- Signatures on written agreements need not be identical to signatures on file with association in order to be valid. A person's signature may vary to some extent each time it is made.

Windermere Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-2192 (Draper / Final Order Certifying Recall / February 3, 1998)

- Where unit owner signature appeared printed, and association did not allege that the signature was not that of the unit owner, agreement was valid. A signature may be rendered in printed, handwritten letters as well as in a cursive style.
- Where board rejected vote on ground that signature on agreement was not the signature of the unit owner, and association failed to produce evidence of the discrepancy in signatures when ordered to do so by arbitrator, signature on agreement will be presumed valid.
- Recall vote should not have been rejected on ground that unit number was not marked on agreement. Association had within its records, information which would have clarified the unit being voted by the agreement.

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

Central Cortez Plaza Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0179 (Draper / Summary Final Order / June 7, 1997)

- Allegation that cover letter to recall agreement circulated to unit owners contained false and misleading information rejected as basis for not certifying recall.

Dolphin Point Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2381 (Pine / Final Order on Recall / February 25, 2000)

- Misrepresentation of voting patterns and budget determinations of directors by recall promoters does not constitute good cause to invalidate a recall agreement.

Greentree Condos. Assn., Inc. v Unit Owners Seeking Recall,  
Case No. 98-5427 (Powell / Order Striking Allegations from Petition for Recall Arbitration and Order Allowing Answer to Petition / December 12, 1998)

- Where ballots in recall by written agreement misinformed the unit owners as to the total number of directors, misstated that a certain individual was one of the directors sought to be recalled and did not inform the unit owners that there were two vacant positions on the board, the defects were not sufficient to invalidate the ballots.



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

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

Gulf Island Beach and Tennis Club Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 98-4198 (Powell / Summary Final Order Certifying Recall / August 18, 1998)

- Where board presented affidavits of unit owners who voted to recall, which purport to indicate that they were misled into signing the recall, the arbitrator noted that the statute provides for recall with or without cause and the assertion that some signatures may have been obtained through misinformation is not a legally sufficient reason to refuse to certify.

Hialeah Club Villas Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1216 (Pasley / Summary Final Order Certifying Recall / September 7, 2000)

- Board's argument that the unit owners were deceived as to the purposes of their votes (that is, unit owners were told that the agreement was a petition for making repairs to the common areas) was rejected. Unit owners are presumed to be capable of making their own decisions in the face of misinformation or ambiguous information.

Kendallwood Villas Condo. Assoc. v. Unit Owners Voting for Recall,  
Case No. 02-4782 (Richardson Partial Summary Final Order and Order Requiring Answer / June 26, 2002)

- The agreements are not invalid because they contain a statement that the costs of arbitration would be borne by individual board members. In general, recall agreements are not invalid because of untrue statements used in the recall effort.

Los Palacios II Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4173 (Gioia / Recall Arbitration Final Order / April 12, 2002)

- When an allegation of fraud is made, the burden is on the one alleging fraud to prove it. *Sponholtz v. Sponholtz*, 190 So.2d 572 (Fla. 1966). The party who seeks to prove fraud must then do so by "clear and convincing evidence." *Finney v. Frost*, 228 So.2d 617 (Fla. 4th DCA 1969). The petitioner was unable to meet that burden as to the recall form presented to the voters. Particularly, in light of credible testimony by the individuals involved in the production of the ballots that the names of the replacement were added to the Xeroxed forms prior to being presented to the unit owners for signature.
- The Petitioner also contended that the voters were misled as to the purpose of the recall document. This has been uniformly rejected as a valid ground to overturn a recall.

Sand Castle I Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1796 (Draper / Final Order Certifying Recall / August 31, 1999)

- Where basis of board's decision not to certify recall was that owners had been given misinformation regarding board's decision to alter manager's position, this rationale was rejected and recall was certified.

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

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

Skylark R.O. Assoc. Inc. v. Unit Owners Voting For Recall,  
Case No. 02-4873 (Summary Final Order Certifying Recall / July 3, 2002)

- Where the association failed to list specific unit owners who were unduly influenced and, further, failed to specify the nature of the undue influence employed to coerce votes, the allegation that undue influence was exerted on voters did not constitute a valid basis for denying the recall.

**- proxy**

Sabal Point Apartment Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4748 (Cowal / Final Order on Petition for Recall / September 18, 1998)

- Where proxy forms used in recall at a unit owner meeting 1) were general, not limited; 2) did not allow unit owners to vote to recall individual board members rather than the entire slate or to vote for individual replacement candidates rather than the entire slate; and 3) granted proxy holder sole discretion to decide how to vote, proxy forms were held invalid and unit owner meeting failed to substantially comply with Rule 61B-23.0027, F.A.C.

Waterway Plaza, Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3866 (Pasley / Summary Final Order / December 17, 2001)

- Limited proxies may be used for any other matter for which chapter 718, F.S., requires or permits a vote of the unit owners; accordingly, limited proxies may be used to recall a board member.
- Where the proxy form used to recall board members did not permit unit owners to separately vote whether to retain or recall each board member, the proxy form was fatally flawed.

**- qualifications of replacement candidates/replacement candidates not properly elected (See also, REPLACEMENT CANDIDATES)**

Forever Elegant Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-1885 (Draper / Final Order Dismissing Petition and Certifying Recall / November 26, 1997)

- Replacement candidates ordered to take office despite allegation by association that they have no experience and have not availed themselves of board leadership opportunity in the past, and that one replacement director was former director who resigned in 1995-96 because of allegations of mismanagement and financial abuse. Neither Chapter 718, F.S., nor condominium documents restricts board service on these grounds.

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

### **- qualifications of replacement candidates/replacement candidates not properly elected (See also, REPLACEMENT CANDIDATES)** (continued)

Grand Vista Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1214 (Draper / Recall Arbitration Final Order / September 27, 2000)

- Recall agreement form that required owners to vote for replacement candidates as a group, rather than affording unit owners the opportunity to vote for one, but not the other three, failed to comply with Rule 23.0028(1)(c), F.A.C. However, even if the replacement candidate election portion of the written recall agreement was invalid, the entire recall agreement would not necessarily be rejected. Generally, the recall of directors and the election of their replacements are two separate questions. If the election portion of a recall agreement is fatally flawed, the arbitrator may still certify the recall if the recall of a majority of the members of the board of administration is certified, and require the resulting vacancies to be filled in a special election of the voting interests.

Hialeah Club Villas Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1216 (Pasley / Summary Final Order Certifying Recall / September 7, 2000)

- Where unit owners are seeking to recall less than a majority of the board, the listing of a replacement candidate on the recall ballot who had not given her permission to be so listed had no impact on the validity of the recall agreement.

San Remo Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-5285 (Pine / Summary Final Order / February 19, 1999)

- Where eligibility for board membership is predicated upon association membership, which in turn requires having a "vested present interest in a fee title," a party to a contract for deed has equitable but not legal title, and is therefore not eligible for board membership.

Seapointe Terrace Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3656 (Pine / Final Order Certifying Recall / September 20, 2001)

- The form used to collect signatures was flawed in that it did not include the name, address, and telephone number of the unit owners' representative. Where no specific prejudice has resulted, however, the failure to designate a representative in the recall agreement is insufficient to invalidate the agreements. Moreover, in the instant case, the recall was served along with a letter from the respondents' attorney; consequently, there should have been no confusion regarding who represented the respondents.

### **- representative**

Hidden Forest Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5347 (Coln / Summary Final Order / August 29, 2002)

- Where no prejudice and no actual confusion resulted regarding who represents the unit owners, the unit owners' failure to properly list the unit owners' representative's name, address and telephone number is insufficient to invalidate a written recall agreement.

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

**- representative** (continued)

Marina Club of Tampa Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case Nos. 98-5143 and 98-5266 (consolidated) (Pine / Order Consolidating Cases,  
Summary Final Order Approving Decision Not to Certify Recall in Case No. 98-5143, and  
Certifying Recall in Case No. 98-5266 / November 24, 1998)

- Agreement form that designated unit owner representative, rather than providing for his election, complied with Rule 61B-23.0028(1), F.A.C. Association's rejection of recall on this basis was rejected.

Stonebridge Gardens Section One Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4167 (Coln / Summary Final Order / April 17, 2002)

- Where no prejudice and no actual confusion resulted regarding who represents the unit owners, the unit owners' failure to properly list the unit owners representative's name, address and telephone number is insufficient to invalidate written recall agreements.

Stonebridge Gardens Section Two Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4168 (Coln / Summary Final Order / April 17, 2002)

- Where no prejudice and no actual confusion resulted regarding who represents the unit owners, the unit owners' failure to properly list the unit owners representative's name, address and telephone number is insufficient to invalidate written recall agreements.

Stonebridge Gardens Section Three Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4169 (Coln / Summary Final Order / April 17, 2002)

- Where no prejudice and no actual confusion resulted regarding who represents the unit owners, the unit owners' failure to properly list the unit owners representative's name, address and telephone number is insufficient to invalidate written recall agreements.

Stonebridge Gardens Section Four Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4170 (Coln / Summary Final Order / April 17, 2002)

- Where no prejudice and no actual confusion resulted regarding who represents the unit owners, the unit owners' failure to properly list the unit owners representative's name, address and telephone number is insufficient to invalidate written recall agreements.

**- unit owner delinquent in assessment**

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

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

The Royal Seafarer Condo. Apartments of Marco Island, Inc.,  
Case No. 02-5273 (Gioia / Summary Final Order / August 30, 2002)

- A review of the record shows that eighty-eight voting interests (out of 128 units) were represented in person or by limited proxy at the recall meeting. This means that 69% of the voting interests were in attendance, including one of the members of the board who was a target of the recall. This fact establishes that, whatever the nature of notice, it was sufficient for over two-thirds of the voting interests to participate in the recall.

### **- generally**

Bayshore Gardens Condo. Apartments Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1113 (Cowal / Summary Final Order / July 16, 1999)

- Recall attempt by unit owner meeting failed to substantially comply with Rule 61B-23.0027, F.A.C., where only two days' notice of meeting was given, notice did not indicate that nominations would be taken from the floor, and ballots did not provide owners with the opportunity to vote to recall individual board members while voting to retain others.

Beach Haven Gardens Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-5318 (Pine / Summary Final Order / January 22, 1999)

- Where condominium is so small that even one vote would constitute at least 10% of voting interests, failure to circulate and submit signature list as provided in Rule 61B-23.0027(2), F.A.C., is not fatal to recall effort. Where unit owners seeking recall failed to provide advance notice to all unit owners and to board that a unit owners' meeting on subject of recall would be held, however, recall effort was not in substantial compliance with Rule 61B-23.0027, F.A.C., and recall will not be certified.

Carmel Townhomes Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0349 (Draper / Summary Final Order / October 29, 1997)

- Recall attempt by unit owner meeting failed to substantially comply with Rule 61B-23.0027(2), F.A.C., where only one day's notice was given of meeting; notice failed to state that purpose of meeting was to recall director; owners failed to first circulate list and obtain signatures of 10 percent of voting interests; and minutes of meeting were not kept, making it impossible to ascertain whether meeting was conducted in accordance with rule.

Les Chateaux at International Gardens Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1328 (Pasley / Summary Final Order / September 18, 2000)

- Recall meeting failed to comply with Rule 61B-23.0027, F.A.C., where signature list failed to state that replacement board members would be elected at the meeting, and the meeting notice failed to list by name each board member sought to be recalled at the meeting.

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

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

**- *generally*** (continued)

Oceans Four Condo. Assn., Inc. v. Unit Owners Voting in Favor of Recall,  
Case No. 00-0607 (Draper / Final Order on Recall / May 2, 2000)

- Section 718.112(2)(j), F.S., which permits recall of a director by unit owners at a meeting, requires a majority of all voting interests in the association to approve the recall in order to be effective. This applies even where the association's bylaws purport to allow the recall of a director upon the majority vote of all unit owners attending the meeting. As the bylaw provision conflicts with the statute, the provision of the bylaws permitting recall upon the agreement of less than a majority of voting interests is invalid.

Pelican Landing Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2347 (Pasley / Summary Final Order / January 24, 2000)

- Unit owners' failure to state that the purpose for obtaining signatures is to call a unit owner meeting to recall one or more members of the board, failure to state that replacement board members shall be elected at the meeting, failure to mail or deliver to all unit owners notice of the recall meeting, and failure to hold an election to fill purported vacancies at a meeting to recall constitute a failure to "substantially comply" with the requirements of Rule 61B-23.0027, F.A.C.

Sabal Point Apartment Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4748 (Cowl / Final Order on Petition for Recall / September 18, 1998)

- Where proxy forms used in recall at a unit owner meeting 1) were general, not limited; 2) did not allow unit owners to vote to recall individual board members rather than the entire slate or to vote for individual replacement candidates rather than the entire slate, and 3) granted proxy holder sole discretion to decide how to vote, proxy forms were held invalid and unit owner meeting failed to substantially comply with Rule 61B-23.0027, F.A.C.

**- *presiding officer***

**- *quorum***

The Charter Club of Naples Bay Owners' Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5360 (Coln / Summary Final Order / September 17, 2002)

- Where the association contained 967 non-developer owned units, the developer and non-developer controlled units cannot combine their units to create a quorum at the recall meeting. Since 346 non-developer unit owners out of a possible 967 units appeared at the recall meeting, a quorum of non-developer unit owners was not obtained.

**- vote cast by unauthorized person**

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

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

#### [Alexandra Village Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case Nos. 00-1851 and 00-1720 (Pine / Partial Final Order / November 29, 2000)

- Sale of units voting in favor of recall prior to date on which recall was served on board was sufficient cause to invalidate those votes.

#### [Alexandra Village Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case Nos. 00-1851 and 00-1720 (Pine / Final Order / December 5, 2000)

- Sale of two units prior to date on which recall was served on board was sufficient cause to invalidate those votes.
- The association is charged to maintain a current roster of unit owners. Where name of person who signed a ballot appears on association's own records of unit owners but not on an unauthenticated printout purporting to be from the property appraiser's public access system, the association's roster is not automatically granted a lesser credibility such that the votes should be rejected.

#### [El Galeon by the Sea Condo. Assoc. Inc. v. Unit Owners Voting For Recall,](#)

Case No. 02-4821 (Coln / Summary Final Order Certifying Recall / June 6, 2002)

- Where the association has not rejected votes of unit owners in the past for failing to comply with the voting certificate requirement, the association cannot assert this as a basis for rejecting votes cast for the recall of the board.

#### [High Point Of Delray Condo. Assoc., Section IV, Inc. v. Unit Owners Voting For Recall,](#)

Case No. 02-4727 (Coln / Summary Final Order / June 21, 2002)

- A voter designation certificate cannot be used to establish voting rights in the association by a non-unit owner.

#### [Palmsea Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 01-3449 (Pine / Final Order Certifying Recall / September 7, 2001)

- Where all owners of a unit evince a clear intent to vote in the manner reflected in the written agreement submitted on behalf of that unit, the voting certificate is in effect superfluous and the vote counts.

### **- generally**

#### [Boca Terrace Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 00-1887 (Pasley / Summary Final Order / January 16, 2001)

- Where a written agreement is rejected because the signature is allegedly not the signature of the owner or designated voter, the arbitrator must review the signature evidence relied on by the board in making its determination to reject the vote on signature grounds.

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

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

**- *generally*** (continued)

Fountain Park Village Homes Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-2508 (Draper / Final Order / February 4, 1998)

- Recall agreements bearing signatures that did not match the unit owner signatures on file with association were properly rejected.

Glen Cove Apartments Condo. Master Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1395 (Draper / Final Order on Recall / September 15, 2000)

- Where bylaws provide that either owner of a unit owned by more than one individual may vote the unit's vote, unless the owners cannot agree on the vote to be cast, ballots signed by only one owner should not have been rejected by board. There was no allegation that the unit owners could not agree on the vote to cast on behalf of the unit.
- Developers' recall votes could not be counted toward recall of any of the directors sought to be recalled. A majority of the directors were being recalled and only unit owners other than developers had the right to vote to recall a majority or more of the board, pursuant to R.61B-23.0026, F.A.C. Since director seats had not been designated as unit owner or developer seats, developers' votes would not be counted toward recall of any director.
- The question whether a director is elected by unit owners other than the developer does not depend on whether the developer actually cast its votes for a particular director. That no election was held because the number of candidates was equal to the number of open seats is irrelevant.

Greenwich Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 99-0263 (Powell / Summary Final Order / May 28, 1999)

- Where unit owner who signed ballot in recall by written agreement was no longer the owner of record on the date the written agreement was served, the board properly rejected that vote.

International Park Condo. II Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0251 (Draper / Final Order / August 7, 1997)

- Voting certificate requirement of documents could not be enforced by association to invalidate recall votes where association had no certificates on file and did not enforce the voting certificate requirement during previous unit owner vote.



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

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

**- *generally*** (continued)

[Island Towers Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 01-3070 consolidated with 01-2796 (Pine / Consolidated Final Order Certifying Recall / August 3, 2001)

- On specific facts of these consolidated cases, where ballots are each signed by the person listed on the association's roster or list of approved voters that is disseminated after association has been put on notice of possible discrepancies, association may not use those discrepancies to reject the applicable votes.

[Key Capri Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 97-0413 (Draper / Amended Final Order Certifying Recall / February 19, 1998)

- Signatures on ballots closely enough matched signatures on voting certificates such that rejection by board of signatures and ballots was found to be unreasonable.

[Les Jardins Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 00-1838 (Pine / Final Order Dismissing Petition and Certifying Recall / December 4, 2000)

- Unidentified set of computer printouts that might be property records of some kind, but which are not referred to in the minutes of the meeting at which the board declined to certify recall, are not sufficient to invalidate any one of the 14 votes contested on grounds that they were not cast by unit owners. This is particularly so where the board's minutes note that the association's own membership records are inaccurate.

[Poinciana Royal Villas I Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 99-0943 (Cowl / Final Order Affirming Non-Certification of Recall / May 26, 1999)

- Where unit owners voting for recall did not file a response to the petition and did not dispute evidence offered by association that persons other than unit owners signed written agreements, votes deemed invalid.

[Poinciana West No. 2 Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No.00-1334 (Draper / Final Order Certifying Recall / August 16, 2000)

- Vote cast by Yamirka Durante, for unit owned by Yamirka Fernandez, should not have been rejected by board. Since Yamirka is such an unusual name, arbitrator may assume that unit owner has married and changed her last name only. Thus, Yamirka Durante and Yamirka Fernandez are same person.

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

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

**- *generally*** (continued)

Sterling Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-2110 (Draper / Final Order Certifying Recall / December 5, 1997)

- Arbitrator independently compared signatures on agreements rejected by board on grounds that the signatures did not appear to match signatures on file with the association, and determined that the agreements had been improperly rejected. It appeared that the board rejected a unit owner's signature if it was not identical in every way to the signature contained in the association's records. Some slight variation is to be expected in a signature.

Towne & Country Condo. Assoc. of Lauderdale Lakes, Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3408 (Pine / Amended Final Order on Recall / October 11, 2001)

- Where five signature exemplars are submitted and four of them are so remarkably similar to each other that the one remaining signature - the one on the initial recall ballot - stands out, it was reasonable for the board to reject the ballot.

Windermere Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-2192 (Draper / Final Order Certifying Recall / February 3, 1998)

- Where board rejected vote on ground that signature on agreement was not the signature of the unit owner, and association failed to produce evidence of the discrepancy in signatures when ordered to do so by arbitrator, signature on agreement will be presumed valid.

**- *power of attorney***

Decoplage Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1868 (Pasley / Summary Final Order / December 20, 2000)

- Unit owners may vote via a power of attorney in a recall.

Sea Ranch Club Condo. Assn., Inc. v. Patti, Chairperson, Recall Committee-Bldg. B, and All Other Unit Owners Voting for Recall,  
Case No. 97-0238 (Draper / Final Order / November 25, 1997)

- Where votes cast by power of attorney on previous waiver of reserves question were allowed by association, association is precluded from rejecting same votes in recall on grounds that power of attorney is valid only for meetings.

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

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

**- proxy**

Innisbrook Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4897 (Pine / Summary Final Order on Petition for Recall Arbitration /  
October 20, 1998)

- Where Limited Proxy Form used to obtain proxy votes for use at unit owners' meeting refers to replacing the 11 members of the board with 11 persons named on another form, without listing the 11 board members and 11 candidates individually and with provision to register whether to recall or retain each, recall not certified. Rule 61B-23.0027(3)(d), F.A.C., requires that the voting interests shall vote to recall each board member separately, not as part of a group.

Sabal Point Apartment Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4748 (Cowal / Final Order on Petition for Recall / September 18, 1998)

- Where proxy forms used in recall at a unit owner meeting 1) were general, not limited; 2) did not allow unit owners to vote to recall individual board members rather than the entire slate or to vote for individual replacement candidates rather than the entire slate, and 3) granted proxy holder sole discretion to decide how to vote, proxy forms were held invalid and unit owner meeting failed to substantially comply with Rule 61B-23.0027, F.A.C.

Winston Towers 300 v. Unit Owners Voting for Recall,  
Case No. 00-0852 (Pine / Summary Final Order / August 4, 2000)

- Nearly all of the ballots had been executed "in blank" by the respective unit owners and were presented in that form to a person who inserted the actual X marks showing votes to recall. The most charitable light in which to view these ballots is as general proxies, which are not valid for use in recalls.
- The person executing the written agreement must be the person who exercises the decision-making power with regard to each individual board member facing recall. See Rule 61B-23.0028 F.A.C.

**- trust/trustee**

**- voting certificate**

Aqua Gardens Townhouse Assoc. Inc. v. Unit Members Voting for Recall,  
Case No. 02-5861 (Gioia / Recall Arbitration Summary Final Order / December 24, 2002)

- The fact that six ballots did not carry the signatures of all listed owners does not invalidate the vote cast where there is no allegation that the signature is not that of an owner and there is no requirement of a designated voter for a given unit.

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

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

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

[Coral Towers Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 01-2664 (Pasley / Final Order Certifying Recall / May 7, 2001)

- Petitioner incorrectly rejected several recall ballots for failure to have a voting certificate on file where the bylaws do not require a voting certificate when a husband and his wife own a unit.
- Where the bylaws require a voting certificate when a unit is owned by more than one owner, no voting certificate is required when a single individual owns a unit.

[Dolphin Point Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 99-2381 (Pine / Final Order on Recall / February 25, 2000)

- Where unit owner-husband had been designated as voter for unit but had died before the vote, widow, as sole remaining owner of the unit, was authorized to vote on behalf of the unit unless documents require otherwise.

[El Galeon by the Sea Condo. Assoc. Inc. v. Unit Owners Voting For Recall,](#)

Case No. 02-4821 (Coln / Summary Final Order Certifying Recall / June 6, 2002)

- Where the association has not rejected votes of unit owners in the past for failing to comply with the voting certificate requirement, the association cannot assert this as a basis for rejecting votes cast for the recall of the board.

[Greenwich Assn., Inc. v. Unit Owners Seeking Recall,](#)

Case No. 99-0263 (Powell / Summary Final Order / May 28, 1999)

- Where ballots were signed by non-owners, and where unit owners seeking recall alleged that these individuals were designated on voting certificates, the ballots were properly rejected where bylaws' intention was that only an owner of a unit could properly be designated on the voting certificate to cast the vote on behalf of the unit.
- Association correctly rejected ballots cast on behalf of units owned by more than one person where only one individual signed and where there was no assertion that voting certificates were on file, as required in the bylaws.

[High Point Of Delray Condo. Assoc., Section IV, Inc. v. Unit Owners Voting For Recall,](#)

Case No. 02-4727 (Coln / Summary Final Order / June 21, 2002)

- A voter designation certificate cannot be used to establish voting rights in the association by a non-unit owner.

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

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

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

#### Key Capri Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 97-0413 (Draper / Amended Final Order Certifying Recall / February 19, 1998)

- Signatures on ballots closely enough matched signatures on voting certificates such that rejection by board of signatures and ballots was found to be unreasonable.
- Association improperly rejected recall vote cast by sole owner of unit who was listed as sole owner and designated voter on the association's current roster of unit owners, on grounds that association's records also contained 10-year-old voting certificate designating another individual as the designated voter for the unit.
- Association improperly rejected votes cast by sole owners of units on ground that there was no voting certificate on file designating them as authorized voters where bylaws did not require voting certificate to be on file. In addition, in the case of a unit owned by a single individual, there is no rationale for such a requirement.

#### Olsen Hotel, a Condo. v. Unit Owners Voting for Recall,

Case Nos. 98-4295 and 98-4478 (consolidated) (La Plante / Summary Final Order Certifying Recall / August 19, 1998)

- Where written agreements to recall were signed by all unit owners of units owned by more than one person, who were not husband and wife, and no voting certificates were on file, written agreements found to be valid.

#### Opal Towers Condo. Assoc. Inc. v. Unit Members Voting for Recall,

Case No. 02-5700 (Gioia / Recall Arbitration Summary Final Order / December 24, 2002)

- Votes were determined by the arbitrator to be valid despite the failure to comply with technical requirements of voting certificates where the association had not in the past rejected votes on the basis for such noncompliance. The only proof offered by the petitioner of prior rejections of ballots, a tally sheet from an accountancy firm, was not specific as to the grounds for rejections it recorded. Therefore, it was found, as sworn to by unit owners who had voted in previous elections, that the voting certificate requirements have not been enforced during prior elections.

#### Palmsea Condo. Assoc., Inc. v. Unit Owners Voting for Recall,

Case No. 01-3449 (Pine / Final Order Certifying Recall / September 7, 2001)

- Where all owners of a unit evince a clear intent to vote in the manner reflected in the written agreement submitted on behalf of that unit, the voting certificate is in effect superfluous and the vote counts.

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

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

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

Poinciana Royal Villas I Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-0943 (Cowan / Final Order Affirming Non-Certification of Recall / May 26,  
1999)

- Where unit owners did not dispute association's assertion that no voting certificates were on file, as required by by-laws for certain units that were owned by multiple persons not husband and wife, votes deemed invalid.

Poinciana West No. 2 Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No.00-1334 (Draper / Final Order Certifying Recall / August 16, 2000)

- Voting certificate is not required where unit is owned by a husband and wife, and bylaws provide that under such circumstances they may, but are not required to, designate a voting member.

Sea Ranch Club Condo. Assn., Inc. v. Patti, Chairperson, Recall Committee-Bldg. B, and All Other Unit Owners Voting for Recall,  
Case No. 97-0238 (Draper / Final Order / November 25, 1997)

- Association's rejection of recall votes based on noncompliance with voting certificate requirements was unreasonable. Association's failure to enforce voting certificate requirement in previous vote on waiver of reserves precludes use of it to disqualify votes cast on recall agreement.

The Shores at Coco Plum Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4837 (Anderson-Adams / Final Order Certifying Recall / October 15, 1998)

- No basis exists for disallowing the vote cast by only one joint owner, where husband and wife are joint owners of unit, condominium documents are silent on the issues of voting certificates and whether all joint owners of a unit must sign ballots, no objection to the ballot has been raised by the non-voting joint owner, and the association has not in the past required all joint owners of a unit to sign ballots.

Three Lakes Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case Nos. 99-2148 and 99-1921 (Pasley / Summary Final Order / November 4, 1999)

- The association's rejection of a vote cast by one owner of a jointly owned unit because there was no voting certificate on record was held to be invalid where the condominium documents did not require owners of jointly-owned units to file voting certificates and no objection to the ballot had been raised by the non-voting joint owner.

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

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

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

333 By the Sea Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 98-3681 (Powell / Summary Final Order Denying Relief and Certifying Recall / May 15, 1998)

- Association correctly rejected individual recall agreement cast on behalf of unit owned by more than one person where there was not a voting certificate on file, as required by the by-laws, and where only one of the owners signed the individual agreement. Nevertheless, the recall was certified because there were sufficient other valid votes. As to the other votes, they were signed by all owners of the units in question, even though there were no certificates on file for those units, so those votes were valid. Discounting a vote where all of the owners of a unit have signed would lead to an absurd result.

West Garden Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4958 (Pine / Summary Final Order Certifying Recall / December 3, 1998)

- A voting certificate may be filed along with written agreements; it need not be on file with the association prior to board's receipt of recall agreement.

**- vote cast improperly**

Coral Towers Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-2664 (Pasley / Final Order Certifying Recall / May 7, 2001)

- The existence of extra signatures on a ballot does not invalidate a ballot.

Florida 2000 Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-4591 (Pasley / Summary Final Order / July 9, 2002)

- Where the minutes of the unit owners recall meeting indicated that a vote was taken to recall a board member and that everyone in the room voted for recall, yet failed to state a count of the number of individuals/unit owners in attendance at that time, the recall was not certified as to the board member.

Nautilus Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2076 (Pine / Summary Final Order / December 3, 1999)

- In the absence of some indication of which (or even how many) written agreements are involved, complaint that some agreements do not contain "accurate signatures" and that one person apparently filled out a number of agreements cannot be used as reason not to certify recall. Minutes of meeting on certification should reflect specific problems associated with specific unit votes.

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

### **- vote cast improperly** (continued)

The Village of Kings Creek Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1919 (Draper / Final Order Certifying Recall / November 1, 1999)

- Board erred in rejecting votes in which owners drew a big X or an arrow through all of the recall lines beside board members' names.

### **- vote withdrawn/added after service of petition**

Barwood Condo. Ill Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-4680 (Coln / Summary Final Order Certifying Recall / April 11, 2002)

- Arbitration precedent is clear. The revocation of a recall ballot received after the board has been served with the recall agreement is ineffective.

Castaways Beach Resort Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1319 (Draper / Final Order on Recall / August 11, 2000)

- Where rescissions of recall votes were received before board received recall agreement, rescissions were valid. Arbitrator rejected unit owners' claim that rescission was not valid because unit owner who signed it was on the phone when presented with it, and did not know what he was signing. Unit owners are presumed to know what they are signing, and association should be able to rely on documents it receives.

Dolphin Point Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2381 (Pine / Final Order on Recall / February 25, 2000)

- A vote or ballot cannot be rescinded after the recall agreement is served on the board. Where rescission statements were inscribed on the face of the corresponding ballot, inference was raised that each was executed and received by board after service of the agreement on the board.

The Dorset House Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-2714 (Pine / Final Order Certifying Recall / April 13, 2001)

- An individual vote to recall a board member cannot be rescinded after the written agreement has been served on the board. Rule 61B-23.0028(5)(a), F.A.C.

Fountainview Assoc. Inc. #4 v. Unit Owners Voting for Recall,  
Case No. 02-5819 (Coln / Summary Final Order / December 20, 2002)

- In the course of the arbitration proceeding, the unit owners voting for recall sought to submit four newly acquired written recall agreements to supplement recall ballots previously submitted to the board. These newly acquired recall agreements could not be accepted as they were submitted after the initial written recall ballots had been served on the board and were not submitted as part of the recall effort.



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

### **- vote withdrawn/added after service of petition** (continued)

#### Gloucester E. Condo. Assoc., Inc. v. Unit Owners Seeking Recall,

Case No. 01-2606 (Powell / Summary Final Order Certifying Recall / March 23, 2001)

- Pursuant to rule 61B-23.0028(5)(a), F.A.C., as amended effective Feb. 19, 2001, after service of a written agreement on the board, any rescission of a unit owner vote is ineffective. Thus, where notices of revocation reflected they were signed after the written agreement was served, such revocations were ineffective to rescind the votes cast by those unit owners.

#### Granada House Association, Inc. v. Unit Owners Seeking Recall,

Case No. 00-0879 (Powell / Summary Final Order / August 2, 2000)

- Where revocation of a ballot was received prior to the service of the written agreement on the board, board properly rejected ballot. The same result obtained even though the unit owner stated, after the board's meeting at which it determined not to certify the recall, that he wanted to revive his ballot for recall.
- Written agreement initially served on the board was the document which was before it, pursuant to Rule 61B-23.0028(1)(h), F.A.C., when it met to determine whether to certify the recall. Corrected and additional ballots were added before the board's meeting on whether to certify, and after the filing of the petition for arbitration. Since these were added after the initial service of the written agreement on the board, they could not be counted toward the recall and the additional ballots did not constitute a new written agreement.

#### Hialeah Club Villas Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 00-1216 (Pasley / Summary Final Order Certifying Recall / September 7, 2000)

- Rescission ballots, filed after the association has been served with the recall agreement, are invalid.

#### Innisbrook Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 99-0739 (Draper / Final Order Affirming Board's Decision to Not Certify Recall / May 18, 1999)

- Where recall vote revocations were received by the board prior to its receipt of the written recall agreement, the board properly excluded these recall votes from the tally of votes in favor of recall. Revocation form entitled "Recall by Written Agreement" was not misleading where the instructions on the form explained the effect of the form. Nor was the form inadequate because it failed to contain the elements required in a recall agreement, such as individual recall and retain lines for each director, etc. The fact that the form elicits a revocation of recall votes as to all directors and does not elicit a revocation as to each director, does not invalidate the form. Such requirements are not prescribed by any division rule, and respondents have not articulated a convincing rationale for imposing such requirements.

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

### **- vote withdrawn/added after service of petition** (continued)

#### Key Capri Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 97-0413 (Draper / Amended Final Order Certifying Recall / February 19, 1998)

- Agreements that were purportedly rescinded by unit owners after recall agreement received by board should not have been rejected.

#### Marina Point Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 98-3630 (Cowan / Final Order Certifying Recall / August 14, 1998)

- Where unit owners attempted to rescind votes to recall after written agreement was served on board, but before board meeting to consider recall, votes to recall were not effectively rescinded.

#### Nautilus Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 99-2076 (Pine / Summary Final Order / December 3, 1999)

- Vote to recall a board member cannot be revoked, rescinded, or withdrawn after recall agreement delivered to the board.

#### The Palace Condo. Assoc. Inc. v. Unit Owners Voting for Recall,

Case No. 02-5150 (Coln / Summary Final Order / October 9, 2002)

- Rescission ballots received by the board prior to the service of the recall petition are properly considered by the board and are valid.

#### The Regency of St. Petersburg, Inc. v. Unit Owners Voting for Recall,

Case Nos. 97-0192 and 97-2047 (consolidated) (Draper / Final Order on Attorney's Fees / December 24, 1997)

- Where recall votes were revoked by actual delivery to board president of a writing indicating revocation, prior to time resident agent received association's copy of recall agreement, votes represented by agreement would not be counted toward recall.

#### Sanibel Arms West Condo. Assn., Inc. v. Unit Owners Seeking Recall,

Case No. 98-3176 (La Plante / Summary Final Order / May 15, 1998)

- Purported rescissions of recall votes found not valid where unit owners withdrew their votes after the written agreement had been served on the board.

#### Seapointe Terrace Condo. Assoc., Inc. v. Unit Owners Voting for Recall,

Case No. 01-3656 (Pine / Final Order Certifying Recall / September 20, 2001)

- Pursuant to rule 61B-23.0028(5)(a), F.A.C., a vote cannot effectively be rescinded after the board convened a meeting to address the recall that had been served.

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

**- vote withdrawn/added after service of petition** (continued)

The Shores at Coco Plum Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4837 (Anderson-Adams / Final Order Certifying Recall / October 15, 1998)

- Three individual recall agreement forms, amended to include the missing signatures of joint owners, and resubmitted during the course of the board meeting on whether to certify the recall, do not constitute service of a complete new recall agreement upon the board.

Westview Condo. Assoc. No. Three Inc. v. Unit Owners Voting For Recall,  
Case No. 02-4895 (Coln / Summary Final Order / June 4, 2002)

- Amended recall agreement, signed by the unit owner, could not be accepted after service of the recall petitions on the board.
- While an amended recall agreement could be submitted with all of the previous recall ballots in a new recall effort, the submission of a corrected recall agreement to correct defects in the original recall effort was improper.

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

Barwood Condo. III Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-4680 (Coln / Summary Final Order Certifying Recall / April 11, 2002)

- Absent an allegation of fraud, gross neglect or intentional wrongdoing, recall agreements that are not dated substantially comply with the requirements of Rule 61B-23.0028, and the non-certification of the written recall agreement on this basis is invalid.
- Where the recall agreements utilized contained a line for the unit owner to sign his or her name and a space for their unit number, this is sufficient to indicate that the person signing the agreement is authorized to cast the unit's vote.

Kendallwood Villas Condo. Assoc. v. Unit Owners Voting for Recall,  
Case No. 02-4782 (Richardson / Partial Summary Final Order and Order Requiring Answer / June 26, 2002)

- The recall agreement is not invalid because the recall agreement stated that owners should vote for five new directors, instead of three. Rule 61B-23.0028(1)(c), F.A.C., does not say that the recall agreement must list the exact number of candidates as the number of directors subject to recall, but that it must be at least as many as are subject to recall. This is especially true where, as here, a review of the recall agreements attached to the Petition shows that this had no effect in that the agreement, in another place, had the instruction, "in any event, do not vote for more than a total of three candidates," underlined in capital letters positioned right above the voting spaces. Further, it is not alleged that any person actually voted for more than three replacement directors. Even if they had, it would not invalidate the recall, but it would invalidate any ballot with more votes than open positions for the purpose of electing replacement candidates only.

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

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

Kendallwood Villas Condo. Assoc. v. Unit Owners Voting for Recall, (continued)  
Case No. 02-4782 (Richardson / Partial Summary Final Order and Order Requiring Answer / June 26, 2002)

- The agreements are not invalid because they do not contain a statement that the unit owner is authorized to vote for the unit.

Opal Glen Condo. Assoc., Inc. v. Unit Members Voting for Recall,  
Case No. 02-5700 (Gioia / Recall Arbitration Summary Final Order / December 24, 2002)

- The failure to have a statement on the recall ballot for the person signing to affirm that he is authorized to cast the unit's vote and the failure to designate a unit owner representative is not critical and will not justify rejection of the recall.

Stonebridge Gardens Section One Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4167 (Coln / Summary Final Order / April 17, 2002)

- Even though written recall agreements failed to contain a space for write-in votes, this defect standing alone does not constitute a failure to substantially comply with Rule 61B-23.0028(1), Florida Administrative Code.
- Absent an allegation of fraud, gross neglect, or intentional wrongdoing, the omission of the line for a signature date, is not a substantial deviation from the essential requirements of the law such that an otherwise valid recall ballot should be rejected.

Stonebridge Gardens Section Two Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4168 (Coln / Summary Final Order / April 17, 2002)

- Even though written recall agreements failed to contain a space for write-in votes, this defect standing alone does not constitute a failure to substantially comply with Rule 61B-23.0028(1), Florida Administrative Code.

Absent an allegation of fraud, gross neglect, or intentional wrongdoing, the omission of the line for a signature date, is not a substantial deviation from the essential requirements of the law such that an otherwise valid recall ballot should be rejected.

Stonebridge Gardens Section Three Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4169 (Coln / Summary Final Order / April 17, 2002)

- Even though written recall agreements failed to contain a space for write-in votes, this defect standing alone does not constitute a failure to substantially comply with Rule 61B-23.0028(1), Florida Administrative Code.
- Absent an allegation of fraud, gross neglect, or intentional wrongdoing, the omission of the line for a signature date, is not a substantial deviation from the essential requirements of the law such that an otherwise valid recall ballot should be rejected.

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

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

Stonebridge Gardens Section Four Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4170 (Coln / Summary Final Order / April 17, 2002)

- Even though written recall agreements failed to contain a space for write-in votes, this defect standing alone does not constitute a failure to substantially comply with Rule 61B-23.0028(1), Florida Administrative Code.
- Absent an allegation of fraud, gross neglect, or intentional wrongdoing, the omission of the line for a signature date, is not a substantial deviation from the essential requirements of the law such that an otherwise valid recall ballot should be rejected.

Wellington. Assoc. Inc. v. Unit Members Voting for Recall,  
Case No. 02-5878 (Gioia / Summary Final Order / December 4, 2002)

- The recall ballots treated the targeted board members as a block, which meant that their status as presented to the voting interests, were impermissibly linked.

**- recall/retain lines**

Courts of Inverrary Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5480 (Scheuerman / Final Order / September 19, 2002)

- Given the configuration of the recall ballot, the voters were constrained to vote for or against the entire slate of board members sought to be recalled. The cases are legion holding that in the interests of fair play, each board member sought to be recalled must be given separate consideration and accommodation in the ballot form utilized. Here, the form in no wise compared favorably with the recommended Division recall ballot form located on the Division website, and the decision by the board not to certify the recall is affirmed.

Board of Directors for Evanston Park Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2257 (Draper / Final Order Affirming Decision Not to Certify Recall / December 21, 1999)

- Board's rejection of recall agreement was affirmed where unit owners were provided recall ballots that had the names of all three directors sought to be recalled checked off in advance, and there were no "retain" lines by the directors' names. Unit owners were not given the option of recalling or retaining each individual director, contrary to the requirement of 61B-23.0028(1)(h), F.A.C.

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

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

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

5050 Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1462 (Anderson-Adams / Final Order Affirming Board's Decision Not to Certify Recall / August 3, 1999)

- Recall not certified due to absence of "recall/retain" lines on written agreement. Ballot listed nine directors sought to be recalled and unit owners were directed to place a check by the names of those they wished to recall. By not giving unit owner the opportunity of indicating affirmatively which board members the unit owner wished to retain, risk of vote tampering existed.

Florida 2000 Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-4591 (Pasley / Summary Final Order / July 9, 2002)

- Where the minutes of the unit owners meeting indicated that a vote was taken to recall all three board members cumulatively, the recall failed to substantially comply with the Rule 61B-23.0027, F.A.C., and was deemed fatally flawed.

Florida Ocean Club Condo. Assoc. Inc. v. Unit Members Voting for Recall,  
Case No. 02-4591 (Gioia / Summary Final Order / December 13, 2002)

- When the issue is the failure to include separate recall and retain lines for each board member to be recalled on a written agreement, that failure has been treated as a defect that is fatal to the recall effort.

Hillwood Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1556 (Draper / Final Order on Recall / September 19, 2000)

- Technical flaws that did not go to the validity of the recall agreement were not a legitimate reason for rejecting the recall. Recall ballots used "yes" and "no" spaces for the owners to indicate each board member to be recalled, rather than "recall" and "retain" spaces; failed to provide a space for the person signing the written agreement to state his name; and failed to provide an affirmation that the person executing the agreement is "authorized in the manner required by the condominium documents to cast the vote for that unit."

Laguna Club Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1335 (Pine / Summary Final Order / July 30, 1999)

- Procedural flaws in board's reaction to the recall effort cannot be used to validate an otherwise invalid recall agreement. Where written agreement ballots did not have a recall/retain line, recall is fatally defective and void. Even though ballot had plenty of white space on which voters could have written specific directions to retain one or more of the listed directors, without recall/retain lines by each name it is not clear that such a course is a permissible option.

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

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

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

Lincolnwood Towers Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2047 (Draper / Summary Final Order / November 18, 1999)

- On the particular facts of this case, omission of "retain" space by the names of directors sought to be recalled **did not** invalidate the recall agreement. A single owner cast a majority of votes to recall the directors and was present at the board meeting on certification. The concern that this would promote fraud, expressed in previous recall arbitration cases, was clearly not present in this case.

Olive Glen Condo. Assoc. Inc. v. Unit Owners Voting For Recall,  
Case No. 02-4985 (Coln / Final Order Affirming Decision Not to Certify Recall / July 3, 2002)

- Pursuant to Rule 61B-23.0028(1)(b), the written recall was invalid where the unit owners voted to recall two board members as a group, without the ability to recall them individually.

Royal Palm Condominium Assoc., Inc. of Hialeah v. Unit Owners Voting for Recall,  
Case No. 02-4518 (Gioia / Recall Arbitration Summary Final Order / February 26, 2002)

- Where written agreements were circulated calling for the removal of the "entire board" and those written agreements did not separately list the names of the board members being recalled, the written agreements failed to substantially comply with rule 61B-23.0028(1), F.A.C., because the fate of the board members wubject to the recall was impermissibly linked.

Seapointe Terrace Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3656 (Pine / Final Order Certifying Recall / September 20, 2001)

- The omission of recall and retain lines is insufficient in itself to invalidate an otherwise valid recall where only a single board member is sought to be recalled. Any unit owner who did not wish to recall that board member could simply have refused to sign the agreement.

Waterway Plaza, Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3866 (Pasley / Summary Final Order / December 17, 2001)

- Where the proxy form used to recall board members did not permit unit owners to separately vote whether to retain or recall each board member, the proxy form was fatally flawed.

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

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

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

Winston Towers 300 v. Unit Owners Voting for Recall,  
Case No. 00-0852 (Pine / Summary Final Order / August 4, 2000)

- Nearly all of the ballots had been executed "in blank" by the respective unit owners and were presented in that form to a person who inserted the actual X marks showing votes to recall. The most charitable light in which to view these ballots is as general proxies, which are not valid for use in recalls.
- Election of replacement directors was invalid where names of replacements were filled in after ballots had been executed by unit owners.

Woodbridge Mobile Home Owners, Inc. v. Unit Owners Voting for Recall,  
Case No. 01-2778 (Pasley / Summary Final Order / May 7, 2001)

- Where all of the board members to be recalled names were listed in an introductory paragraph and the instrument did not contain "retain" and "recall" lines, the agreement was fatally flawed.

- ***written agreement held to be defective***

Cedar Creek Landing Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-3038 (La Plante / Recall Arbitration Summary Final Order / February 26, 1998)

- Recall agreement did not substantially comply with Rule 61B-23.0028, F.A.C., where names of directors sought to be recalled were not listed individually, replacement candidates were not listed, line for write-in candidate was omitted, and unit owner representative was not designated. Written agreement held to be defective.

Lake Howell Arms Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-3766 (Draper / Summary Final Order / May 22, 1998)

- Written agreement held to be fatally flawed where two directors were listed for recall, but separate "recall" and "retain" lines were not provided for each. Regardless of whether board erred by not properly noticing or conducting certification meeting, agreement was void *ab initio*; board's error would not serve to rehabilitate invalid agreement.



**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)

Los Arboles Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-0082 (Draper / Summary Final Order / February 29, 2000)

- Written recall agreement held fatally flawed where there were no retain lines, failed to instruct voters to vote for only as many replacement candidates as directors sought to be recalled, and indicated that the replacement candidates would serve "temporarily" until an election could be called. The fact that the board may not have held its meeting on certification within five working days and failed to duly notice the meeting would not rehabilitate the flawed agreement.

Lovers Key Beach Club Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3821 (Pasley / Summary Final Order / December 17, 2001)

- Where a written agreement does not permit unit owners to vote to retain one board member while voting to recall another, the fate of the board members are impermissably linked and the written agreement is fatally flawed.

Marina Club of Tampa Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case Nos. 98-5143 and 98-5266 (consolidated) (Pine / Order Consolidating Cases,  
Summary Final Order Approving Decision Not to Certify Recall in Case No. 98-5143, and  
Certifying Recall in Case No. 98-5266 / November 24, 1998)

- Rule 61B-23.0028(1), F.A.C., requires that unit owners' representative must serve copies of written agreements on board. Where no agreement or copies were served on the board, board properly declined to certify recall.
- Agreement form that designated unit owner representative, rather than providing for his election, complied with Rule 61B-23.0028(1), F.A.C. Association's rejection of recall on this basis was rejected.

Pelican Landing Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2347 (Pasley / Summary Final Order / January 24, 2000)

- Where recall of the entire board was sought, written agreements' failure to list replacement candidates and failure to provide a space for write-in votes constituted a failure to "substantially comply" with the requirements of Rule 61B-23.0028(1)(c), F.A.C.

Southview at Aventura Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 00-0194 (Powell / Summary Final Order / March 31, 2000)

- Where written agreement consisted of blank sheets of paper on which the unit owners signed their names and on which a statement was typed in later at the top, reflecting that the undersigned agreed to recall a director, the form of the agreement did not substantially conform to the requirements of Rule 61B-23.0028, F.A.C.

**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)

[Sunset Villas Phase III Condo. v. Unit Owners Voting for Recall,](#)

Case No. 00-1737 (Draper / Final Order on Recall / November 2, 2000)

- Form of agreement was wholly insufficient to effect recall. The document attempted to recall "all of the directors of the board" without listing the names of the individual directors sought to be recalled; there were no recall and retain lines, no replacement candidates listed and less than a majority of the voting interests signed it.

- **written agreement held to substantially comply**

[Barwood Condo. III Assoc. Inc. v. Unit Owners Voting for Recall,](#)

Case No. 02-4680 (Coln / Summary Final Order Certifying Recall / April 11, 2002)

- Where the recall agreements utilized contained a line for the unit owner to sign his or her name and a space for their unit number, this is sufficient to indicate that the person signing the agreement is authorized to cast the unit's vote.

[Bayshore Towers of Ft. Lauderdale, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 01-2597 (Draper / Final Order on Recall / May 23, 2001)

- Written recall agreement in a petition format should not have been rejected by board if notation on first page, describing the purpose of the agreement, was circulated along with signature pages of petition.

[Central Cortez Plaza Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 97-0179 (Draper/ Summary Final Order / June 6, 1997)

- Argument that recall ballots were invalid because unit owners were confused about what they were signing was rejected where ballots were straightforward and could not have been misunderstood by unit owners.
- Fact that recall agreement form did not contain words indicating that unit owner was "authorized" to cast a vote for the unit did not render agreement invalid. Spaces were provided for unit owners' name, unit number and unit owners' signature. Despite this deficiency, agreement substantially complied with Rule 61B-23.0028(1), F.A.C.
- Recall agreements need not be dated, nor is their validity time-limited.

**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 Crosswinds Mobile Home Park, Inc. v. Unit Owners Seeking Recall,  
Case No. 98-2973 (Draper / Final Order Dismissing Petition and Certifying Recall / March 4, 1998)

- Agreement which failed to designate a unit owner representative nevertheless substantially complied with Rule 75.008(1), F.A.C. No response was required from unit owners; therefore, failure was inconsequential.

Galt Plaza Apartment, Inc. v. Unit Owners Seeking Recall,

Case No. 01-2262 (Draper / Final Order Certifying Recall / January 19, 2001)

- Provisions of section 617.0701(4)(a), F.S., permitting members of association to take action in writing, and requiring that their written consents be dated, do not supercede the more specific provision of the Cooperative Act.

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

Case No. 98-5144 (Anderson-Adams / Summary Final Order / January 11, 1999)

- Petitioner alleged that the written agreement for recall was served upon the board president, who deliberately did not inform other board members and did not hold a meeting on whether to certify recall, in an attempt to oust other board members through the board's failure to hold a meeting within 5 business days after receipt of a recall agreement as required by s. 718.112(2)(j), F.S. Despite apparent failure of the board to conduct a meeting on certification of the recall within the required time, the recall would not be certified because the recall agreement was void *ab initio*. Agreement, which sought to recall two directors, failed to list each board member sought to be recalled separately and to give unit owners the choice of recalling one and retaining the other, clearly in violation of Rule 61B-23.0028(1), F.A.C.

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

Case No. 98-5247 (Anderson-Adams / Amended Summary Final Order / January 25, 1999)

- Recall effort was fatally flawed where more than half of the signatures of persons who allegedly voted for recall were written on two otherwise blank sheets of paper, one of which had "Page 3 of 3" written at the top and the other of which had handwritten headings stating "PRINT" "SIGN" and "UNIT #" and which did not state the name of the board member sought to be recalled, as required by Rule 61B-23.0028(1)(a), FAC, and did not even contain any explanation that the person signing the paper was approving the recall of a named board member. Because the agreement was void *ab initio*, unit owner defense, that the board failed to hold its meeting on whether to certify the recall agreement within five days of receipt of the agreement, would not be considered.

**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)

Grand Vista Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1214 (Draper / Recall Arbitration Final Order / September 27, 2000)

- The agreement form utilized by the unit owners voting for recall did not contain a statement that the person signing the form was authorized to vote for the unit or a signature space following the listing of directors sought to be recalled. Instead, the agreement contained "recall" and "retain" blocks beside the name of each director, with a space for the unit number to be inserted, and directed unit owners to "specify your unit number below your signature." Each unit owner signed his or her name and unit number in the recall or retain block beside the name of each director, as appropriate; thus each unit owner signed his or her name at least five times. While the format is unorthodox, the form complies with the requirements of Rule 61B-23.0028(1)(e), F.A.C.

- Recall agreement form that required owners to vote for replacement candidates as a group, rather than affording unit owners the opportunity to vote for one, but not the other three, failed to comply with Rule 23.0028(1)(c), F.A.C. However, even if the replacement candidate election portion of the written recall agreement was invalid, the entire recall agreement would not necessarily be rejected. Generally, the recall of directors and the election of their replacements are two separate questions. If the election portion of a recall agreement is fatally flawed, the arbitrator may still certify the recall if the recall of a majority of the members of the board of administration is certified, and require the resulting vacancies to be filled in a special election of the voting interests.

Greentree Condos. Assn., Inc. v Unit Owners Seeking Recall,  
Case No. 98-5427 (Powell / Order Striking Allegations from Petition for Recall Arbitration and Order Allowing Answer to Petition / December 12, 1998)

- Where ballots in recall by written agreement misinformed the unit owners as to the total number of directors, misstated that a certain individual was one of the directors sought to be recalled and did not inform the unit owners that there were two vacant positions on the board, the defects were not sufficient to invalidate the ballots.

Hillwood Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1556 (Draper / Final Order on Recall / September 19, 2000)

- Technical flaws that did not go to the validity of the recall agreement were not a legitimate reason for rejecting the recall. Recall ballots used "yes" and "no" spaces for the owners to indicate each board member to be recalled, rather than "recall" and "retain" spaces; failed to provide a space for the person signing the written agreement to state his name; and failed to provide an affirmation that the person executing the agreement is "authorized in the manner required by the condominium documents to cast the vote for that unit."

**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)

Kendallwood Villas Condo. Assoc. v. Unit Owners Voting for Recall,

Case No. 02-4782 (Richardson / Partial Summary Final Order and Order Requiring Answer / June 26, 2002)

- The recall agreement is not invalid because the recall agreement stated that owners should vote for five new directors, instead of three. Rule 61B-23.0028(1)(c), F.A.C., does not say that the recall agreement must list the exact number of candidates as the number of directors subject to recall, but that it must be at least as many as are subject to recall. This is especially true where, as here, a review of the recall agreements attached to the Petition shows that this had no effect in that the agreement, in another place, had the instruction, "in any event, do not vote for more than a total of three candidates," underlined in capital letters positioned right above the voting spaces. Further, it is not alleged that any person actually voted for more than three replacement directors did. Even if they had, it would not invalidate the recall, but it would invalidate any ballot with more votes than open positions for the purpose of electing replacement candidates only.
- The agreements are not invalid because they do not contain a statement that the unit owner is authorized to vote for the unit.

Key Capri Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 97-0413 (Draper / Amended Final Order Certifying Recall / February 19, 1998)

- Failure of recall agreement to designate a representative of the unit owners seeking recall did not constitute a fatal flaw. Cover letter with agreement named a unit owner who could have served as the unit owners' representative. In addition, prior to the time the answer was due the unit owners retained an attorney to represent them. Thus, the failure to designate a representative did not impede the arbitration process.

Marina Club of Tampa Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case Nos. 98-5143 and 98-5266 (consolidated) (Pine / Order Consolidating Cases, Summary Final Order Approving Decision Not to Certify Recall in Case No. 98-5143, and Certifying Recall in Case No. 98-5266 / November 24, 1998)

- Rule 61B-23.0028(1), F.A.C., requires that unit owners' representative must serve copies of written agreements on board. Where no agreements, or copies, were served on the board, board properly declined to certify recall.
- Agreement form that designated unit owner representative, rather than providing for his election, complied with Rule 61B-23.0028(1). Association's rejection of recall on this basis was rejected.

**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)

[Ocean Towers of Hutchinson Island Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)  
Case No. 01-3189 (Pine / Final Order Certifying Recall / June 28, 2001)

- Lack of a space for the signatory to indicate the date the written agreement was signed is not a fatal flaw in absence of actors indicating fraud, gross negligence, intentional wrongdoing, or otherwise affect the integrity of the election, where all agreements were signed within a 30-day time frame and rescission is not at issue, and where written agreement otherwise substantially complies with the provisions of rule 61B-23.0028, F.A.C.

[Sea Dip Beach Resort Condo. Assn., Inc. v. Unit Owners Seeking Recall,](#)  
Case No. 98-5113 (Draper / Summary Final Order / November 4, 1998)

- Written agreement which failed to list names of replacement candidates “in the form of a ballot” nevertheless held to substantially comply with the provisions of Rule 61B-23.0028(1), F.A.C. Two candidates’ names were listed in one column and, on the opposite side of the page, there were three spaces for “write-in candidates.” The agreement did not contain a separate blank line or box beside the name of each replacement candidate and, as a result, most unit owners did not make a mark by either candidate’s name. Despite the small number of votes for the replacement candidates, they were ordered to be installed as board members. The division’s administrative rules do not set quorum or other requirements for recall elections, nor does there seem to be any justification for requiring that a minimum number of unit owners participate in the election of replacement candidates selected in a written agreement for recall or for requiring that a replacement candidate receive a certain percentage of votes in order to be elected. Recall agreement would not be rejected because “Deborah Wancio” was identified as one of the directors sought to be recalled and the recall/retain line identifies “Debbie Wencio” as a director sought to be recalled, possibly causing confusion in the minds of the signatories to the agreements.

[Three Lakes Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)  
Case Nos. 99-2148 and 99-1921 (consolidated) (Pasley / Summary Final Order / November 4, 1999)

- Unit owners are not required to designate on the ballot which replacement candidate will take a given board member’s seat. See Rule 61B-23.0028(3)(a)3., F.A.C. In the instant case, since the first notice of election has already been issued, all replacement candidates will be replaced at the next election scheduled in the future.
- Rule 61B-23.0028(1), F.A.C., does not require that the signatures on recall ballots be notarized.

## **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 Village of Kings Creek Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1919 (Draper / Final Order Certifying Recall / November 1, 1999)

- Listing of some replacement candidates' occupations does not constitute a fatal flaw.
- Fact that two of 14 replacements are not eligible to serve as directors is inadequate reason to reject entire recall.
- Where 14 directors are sought to be recalled, three write-in vote spaces is a sufficient number of write-in spaces. Rule 61B-23.0028(1)(c), F.A.C., does not require that there be as many write-in spaces as there are board members sought recalled. In addition, only one of 500+ agreements actually used all three write-in spaces.

Windermere Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-2192 (Draper / Final Order Certifying Recall / February 3, 1998)

- Recall vote should not have been rejected on ground that unit number was not marked on agreement. Association had within its records information which would have clarified the unit being voted.

## **CLASS VOTING**

Aventura Beach Club Condo. Assoc. Inc. v. Unit Members Voting for Recall,  
Case No. 02-5441 (Gioia / Recall Arbitration Summary Final Order / November 8, 2002)

- The dispositive issue in this case was the authority of the residential members of the association to recall those members of the board elected by the commercial members. It was not disputed that the present language governing the association requires the majority of the board to be elected by the commercial members (109) even though the majority of the units are residential (509). Such a situation, argued the residential owners, is contrary to law. The recording of the declaration of condominium predated the enactment of Section 718.404, governing mixed-use condominiums and providing that where the number of residential units in the condominium equals or exceeds 50% of the total units, residential owners are entitled to vote for a majority of the board, by a number of months. Specifically, the declaration of condominium was filed in January of 1995 and Florida Statute 718.404, was enacted in June of that year. Therefore, to attempt to impose this new standard retroactively would constitute an impairment of contract in violation of the State Constitution. Accordingly, those provisions of the governing documents of the association that establish the current distribution of power within the association cannot be overturned by the arbitrator.

## **CLASS VOTING** (continued)

The Charter Club of Naples Bay Owners' Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5360 (Coln / Order Striking Affirmative Defenses / September 17, 2002)

- Where developer terminated its registration with the Division and temporarily or otherwise pulled its units off the market, then proceeded to vote developer-owned units in favor of recalling unit owner representatives on the board, developer's claim that developer was no longer a developer but was a mere unit owner, rejected. Developer may not attempt to regain control of the association by mere subterfuge. The developer is not free to rewind the hands of the clock and re-assert control of the association.

The Charter Club of Naples Bay Owners' Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5360 (Coln / Summary Final Order / September 17, 2002)

- Where units are owned by both the developer and non-developer unit owners, only the developer can vote to recall the developer appointed members of the board. The developer cannot vote to recall the non-developer appointed members of the board.
- Where the association contained 967 non-developer owned units, the developer and non-developer controlled units cannot combine their units to create a quorum at the recall meeting. Since 346 non-developer unit owners out of a possible 967 units appeared at the recall meeting, a quorum of non-developer unit owners was not obtained.

Inverrary Gardens Condo. I. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2142 (Draper / Summary Final Order / January 25, 2000)

- Board vote on certification of recall of director was improperly conducted where director representing class of owners different from that represented by director being recalled was not permitted to vote. Rule 61B-23.0026, F.A.C., providing for class voting of members in recalls does not sanction class voting by directors.

Sea Ranch Club Condo. Assn., Inc. v. Patti, Chairperson, Recall Committee-Bldg. B, and All Other Unit Owners Voting for Recall,  
Case No. 97-0238 (Draper / Final Order / November 25, 1997)

- Where bylaws and articles of incorporation established voting classes, only members of class electing a director would be counted for the purpose of calculating a majority of the unit owners required to recall that director. Class voting need not be established in the declaration in order for class voting principles of Rule 61B-23.0026(3), F.A.C., to apply.

## **CONFLICT OF INTEREST**



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

Conners, et al., as directors of Pinewood Village Condo. Assn., Inc. v. Demarco of Class Enterprises, as representative of the group of members of the association who executed a written agreement of recall,

Case No. 97-1967 (Draper / Final Order on Attorney's Fees / January 29, 1998)

- Former board members who were recalled would not be required to pay fees of unit owners who initiated recall where the board members met standards of s. 617.0830, F.S., for director conduct.

## **DEVELOPER**

The Charter Club of Naples Bay Owners' Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5360 (Coln / Order Striking Affirmative Defenses / September 17, 2002)

- Where developer terminated its registration with the Division and temporarily or otherwise pulled its units off the market, then proceeded to vote developer-owned units in favor of recalling unit owner representatives on the board, developer's claim that developer was no longer a developer but was a mere unit owner, rejected. Developer may not attempt to regain control of the association by mere subterfuge. The developer is not free to rewind the hands of the clock and re-assert control of the association.

The Charter Club of Naples Bay Owners' Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5360 (Coln / Summary Final Order / September 17, 2002)

- Where units are owned by both the developer and non-developer unit owners, only the developer can vote to recall the developer appointed members of the board. The developer cannot vote to recall the non-developer appointed members of the board.
- Where the association contained 967 non-developer owned units, the developer and non-developer controlled units cannot combine their units to create a quorum at the recall meeting. Since 346 non-developer unit owners out of a possible 967 units appeared at the recall meeting, a quorum of non-developer unit owners was not obtained.

Glen Cove Apartments Condo. Master Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1395 (Draper / Final Order on Recall / September 15, 2000)

- Unit owners who owned and leased 138 and 28 units respectively, none of which were offered for sale, were determined to be developers. Fact that they did not succeed to the interests of the creating developer does not foreclose their treatment as developers. Since they are developers and none of their units are being offered for sale, the provisions of s. 718.301, F.S., apply; thus, only unit owners other than these developers are entitled to elect a majority of the members of the board and developers are not permitted to vote to recall a majority of the board.

**DEVELOPER** (continued)

Greenbrook Villas at Errol Estates Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-0193 (Draper / Summary Final Order / June 2, 2000)

- Developer's units would not be considered in determining the number of votes necessary to recall a majority of directors on the board. The fact that the association had not designated director positions as "developer" or "unit owner" positions did not authorize the association to count the developer's units in determining the number of units constituting a majority; otherwise, provisions of s. 718.303, F.S., providing that the developer may vote its units in the same manner as any other unit owner except for purposes of reacquiring control of the association, would not be met.

The Regency of St. Petersburg, Inc. v. Unit Owners Voting for Recall,  
Case Nos. 97-0192 and 97-2047 (consolidated) (Draper / Final Order on Attorney's Fees / December 24, 1997)

- Owner of 29 units which were typically leased and listed with realtor but which were not advertised for sale and no unit had sold for last five years, held to be developer not offering units for sale in the ordinary course of business. As a result, pursuant to Rule 61B-23.0026, F.A.C., developer's votes could not be counted toward recall of majority of board, or in calculation of majority required to recall a director elected by unit owners other than the developer.
- Fact that developer had voted for all directors in past elections is not dispositive of whether developer could vote to recall a director; question is whether developer is entitled to vote for director in the first place.

Sailboat Cay Condo. Assn., Inc. v. Group of Members of the Association Who Executed a Written Agreement to Recall,  
Case No. 97-0317 (Oglo / Order Ruling on Several Other Objections / January 5, 1998)

- The association alleged that agreements submitted for 38 units were counted in error, as they were signed by entities that were subsequent developers. Since these entities acquired their units at a bulk sale without an assignment of rights from the original developer, and since they sold units in the ordinary course of business, the arbitrator concluded that the owners of these 38 units could properly vote to recall a majority of members of the board of administration pursuant to Rule 61B.15.007(1)(b), F.A.C.

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

Boca Pinar Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5059 (Coln / Final Order of Dismissal / July 5, 2002)

- Where unit owner submitted second recall petition to the board, during the pendency of the recall arbitration on the first recall attempt, which the board certifies the petition for arbitration is dismissed as moot as the board member has been recall form the board.

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

Boca Pinar Condo. Assoc. Inc. v. Unit Owners Voting for Recall, (continued)  
Case No. 02-5059 (Coln / Final Order of Dismissal / July 5, 2002)

- Where unit owners secured a second recall by written agreement of the same board members during the pendency of the original recall proceedings, and where the board certified the second recall, the original petition for recall arbitration was dismissed moot.

The Crosswinds Mobile Home Park, Inc. v. Unit Owners Seeking Recall,  
Case No. 98-2973 (Draper / Final Order Dismissing Petition and Certifying Recall / March 4, 1998)

- Fact that a majority of unit owners present at unit owner meeting on recall, which was held after written recall petition was received, voted to retain board members does not relieve association from requirement of filing petition for recall arbitration nor does it indicate that recall agreement should not be certified or that recall issue is moot.

Board of Directors of Greentree Condo. Assn., Inc. v. Unit Owners Signing Written Agreement to Recall Board of Directors, Lisset Fernandez, and Antonio Palenzuela, individually and as unit owner representatives,  
Case No. 97-2461 (La Plante / Order Granting Suggestion of Mootness and Dismissing Recall / February 17, 1998)

- Recall rendered moot when directors sought to be recalled were re-elected without an election per s. 718.112(1)(d)3., F.S., because there were not more candidates than open seats on the board.

Greentree Condos. Assn., Inc. v Unit Owners Seeking Recall,  
Case No. 98-5427 (Powell / Final Order Dismissing Petition for Arbitration / March 4, 1999)

- Where election for all positions on the board was held during the pendency of a recall arbitration, the recall was rendered moot, even though three of the board members sought to be recalled were re-elected to the board. Arbitrator dismissed the petition and held the recall not certified.
- Where election for all positions on the board was held during pendency of recall arbitration, petition was dismissed as moot even though the unit owners disputed the manner in which the new election was held. Any unit owner disputing the manner in which the election was held could file a new petition for arbitration pursuant to s. 718.1255(1)(b)1., F.S.

Hacienda Del Sol Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3566 (Pine / Final Order / September 14, 2001)

- An intervening election of which all board members subject to recall are re-elected moots a recall attempt. If the unit owners wish to contest the validity of the intervening election, their recourse is to file a petition pursuant to section 718.1255(1)(b)1., Florida Statutes.

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

International Park Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case Nos. 99-1614 and 99-1884 (consolidated) (Powell / Final Order Dismissing Petition  
in Case No. 99-1614 / December 9, 1999)

- Where unit owners served a second written agreement for recall of the same directors during pendency of original recall proceedings and where arbitrator certified second recall, original petition for arbitration was moot and case dismissed.

Les Jardins Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-0986 (Pine / Final Order Dismissing Petition / August 22, 2000)

- Where intervening recall was certified and new board seated, prior recall is moot and recall arbitration is dismissed.

Marie's Yacht Harbor Club Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0346 (Draper / Final Order of Dismissal / November 12, 1997)

- Petition dismissed and recall not certified where respondents sought to abate arbitration until after annual election. Since terms of board members sought to be recalled would end at the annual election, and recall arbitration would become moot at that time, respondents essentially sought to withdraw their agreement to recall board.

Marina Cove at Harbor Village Condo. Apartments, Inc. v. Unit Owners Seeking Recall,  
Case No. 99-0130 (Powell / Final Order Dismissing Petition for Arbitration / March 5, 1999)

- Petition for recall arbitration dismissed as moot and recall not certified where unit owners rescinded written recall agreements during pendency of arbitration.

Martinique 2 Owners' Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1860 (Pine / Summary Final Order Dismissing Petition / September 27, 1999)

- When respondents do not file any answer to a petition, the petitioner's assertions will be accepted as factual. Respondents' failure to dispute petitioner's assertions that all board members facing recall had resigned resulted in petition being dismissed as moot.

Ocean Park North Assn., Inc. v. Unit Owners Seeking Recall,  
Case Nos. 99-1355 and 99-1699 (consolidated) (Powell / Final Order Dismissing Petition  
in Case No. 99-1355 / September 3, 1999)

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

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

Sandpiper Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1554 (Pine / Final Order Dismissing Petition / September 16, 1999)

- Resignation of all board members sought to be recalled renders petition for recall arbitration moot.

St. Louis Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-2862 (Cowal / Final Order of Dismissal / July 14, 1998)

- Case is dismissed as moot on association's motion after election held for those positions subject to recall.

Southwinds at Crosswinds Condo. Assn., Inc. v. Alport, as representative of a group of individuals seeking the recall of certain directors,  
Case No. 97-2023 (La Plante / Final Order Dismissing Recall Petition as Moot / March 11, 1998)

- Recall is rendered moot when recalled board members are re-elected.

Sterling Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-2110 (Draper / Final Order Certifying Recall / December 5, 1997)

- Rule 61B-23.0028(3)(b)4., F.A.C., requires that replacement candidates serve until the next election scheduled in the future.

Sunset Villas Phase III Condo. v. Unit Owners Voting for Recall,  
Case No. 00-1737 (Draper / Order on Motions for Determination of Mootness and Rehearing / October 20, 2000)

- Respondents moved to dismiss petition for recall arbitration on the ground that all of the directors had resigned, rendering the arbitration moot. Association responded that some directors had resigned under duress, and therefore resignations were invalid. Arbitrator held that recall issue was not moot where one director had never resigned from the board and others were found to have repudiated their resignations. Directors who resigned did so at a meeting of the board that "went out of control" because the unit owners at the meeting wanted the remaining board members to resign, requiring intervention of police. The right to recall directors afforded by the Condominium Act is a right effectuated by the agreement of the majority of the voting interests. Loud voices and strong arms lack legitimacy as recall tools pursuant to the Condominium Act. Resignations of other directors that resulted after division notified them in writing that by failing to step down as directors or file a petition for recall arbitration they were in violation of the Condominium Act and division rules, would not be set aside, however.

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

[The Tower of Quayside No. 2 Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)  
Case No. 01-2668 (Draper / Final Order of Dismissal / April 16, 2001)

- Where the two directors sought to be recalled resigned, and the two constitute less than a majority of the entire board, petition would be dismissed and remaining directors would be authorized to fill the vacancies. Objection to dismissal by owners was rejected. Respondents argued that dismissal was not appropriate as the result would be that three directors only remain and three directors constitutes a quorum. If any one of the directors refused to attend a board meeting, the board would be unable to conduct business, lacking a quorum. Argument was rejected as remaining board members, even if they do not constitute a quorum, may appoint replacements thus eliminating the threat envisioned by respondents.

[West Garden Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)  
Case No. 98-4958 (Pine / Summary Final Order Certifying Recall / December 3, 1998)

- Resignation of any board member automatically moots the question of whether that person should be recalled, and a vote to recall that person is of no effect.

[Winding Wood Condo. VIII Assn., Inc. v. Unit Owners Seeking Recall,](#)  
Case No. 99-2191 (Powell / Final Order of Dismissal / November 23, 1999)

- Recall arbitration case was dismissed as moot and recall not certified where election of directors was held 13 days after recall petition was filed.

**EFFECT OF RECALL**

**JURISDICTION**

[Courtyards at Mayport I Condo. Assoc., Inc. V. Unit Members Voting for Recall,](#)  
Case No. 02-5699 (Gioia / Summary Order Dismissing Petition / October 21, 2002)

- Where the recall forms served on the association call not for the removal of board members but for a recall meeting under Rule 61B-23.0027 Florida Administrative Code, the filing was premature and beyond the jurisdiction of the arbitrator until the meeting actually occurred.

[The Federation of Kings Point Condo., Inc. v. Unit Owners Voting for Recall,](#)  
Case No. 00-0419 (Draper / Final Order of Dismissal / March 29, 2000)

- Where respondents alleged that association was not an association pursuant to s. 718.103(2), F.S., and petitioner agreed, petition would be dismissed for lack of jurisdiction and recall would not be certified.

## **JURISDICTION** (continued)

Sumrall, et al. v. 335 Office Building Condo. Assn., Inc., et al.,  
Case No. 97-0363 (Oglo / Final Order of Dismissal for Lack of Jurisdiction / September 15, 1997)

- The board of directors of a commercial association challenged a recall attempt made by a group of commercial unit owners at an owner meeting. Rule 61B-45.013(8), F.A.C., states that no petition for arbitration shall be accepted unless it arises in a residential condominium. This rule is based upon the legislative intent of s. 718.1255(3)(a), F.S., that the arbitration remedy was designed with residential unit owners in mind. Accordingly, the petition was dismissed for lack of jurisdiction.

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

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

## **RECONSIDERATION/REHEARING**

Alexandra Village Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case Nos. 00-1851 and 00-1720 (Pine / Order Denying Motion / December 8, 2000)

- A motion to invalidate three votes and thus affirm the board's decision not to certify the recall of a particular board member constitutes a motion to modify the substance of the final order and also constitutes a motion for rehearing of a final order certifying recall. Both motions are prohibited by rule 61B-50.140, F.A.C.

Castaways Beach Resort Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1319 (Draper / Order Denying Motion for Rehearing / August 24, 2000)

- Final order would not be modified to reflect "new" evidence purporting to show that rescission of recall vote was received by board after recall agreement was received.

The Crosswinds Mobile Home Park, Inc. v. Unit Owners Seeking Recall,  
Case No. 98-2973 (Draper / Order on Motion for Reconsideration / March 13, 1998)

- Motion for reconsideration may not be filed seeking change to the substance of an order certifying a recall.

Decoplage Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1868 (Pasley / Order Denying Motion for Reconsideration / January 10, 2001)

- No motion for rehearing of a final order certifying a recall can be considered. The arbitrator cannot address for a second time the merits of the petitioner's arguments why the recall should not be certified.

## **RECONSIDERATION/REHEARING** (continued)

### [Sunset Villas Phase III Condo. v. Unit Owners Voting for Recall,](#)

Case No. 00-1737 (Draper / Order on Motions for Determination of Mootness and Rehearing / October 20, 2000)

- Respondents moved to dismiss petition for recall arbitration on the ground that all of the directors had resigned, rendering the arbitration moot. Association responded that some directors had resigned under duress, and therefore resignations were invalid. Arbitrator held that recall issue was not moot where one director had never resigned from the board and others were found to have repudiated their resignations. Directors who resigned did so at a meeting of the board that “went out of control” because the unit owners at the meeting wanted the remaining board members to resign, requiring intervention of police. The right to recall directors afforded by the Condominium Act is a right effectuated by the agreement of the majority of the voting interests. Loud voices and strong arms lack legitimacy as recall tools pursuant to the Condominium Act. Resignations of other directors that resulted after division notified them in writing that by failing to step down as directors or file a petition for recall arbitration they were in violation of the Condominium Act and division rules, would not be set aside, however.

## **REPLACEMENT CANDIDATES** (See also, **Board’s failure to certify recall**)

### [Alexandra Village Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case Nos. 00-1851 and 00-1720 (Pine / Final Order / December 5, 2000)

- Votes to elect replacement for recalled board member deemed ineffective where less than a majority of the board is recalled; remaining board members have right to appoint replacement board member pursuant to rule 61B-23.0028(3)(a)2, F.A.C.

### [Aqua Gardens Townhouse Assoc. Inc. v. Unit Members Voting for Recall,](#)

Case No. 02-5861 (Gioia / Recall Arbitration Summary Final Order / December 24, 2002)

- Three ballots did not list replacement candidates, but the recall of directors and the election of their replacements are two separate questions and the failure to list replacement candidates did not invalidate the ballots.

### [Baypointe Yacht & Racquet Club Condo. Assoc., Inc. v. Unit Owners Seeking Recall,](#)

Case No. 01-2245 (Powell / Partial Summary Final Order and Order Requiring Supplemental Information / February 26, 2001)

- Subsequent developer who owned 22 of 160 units urged that recall by written agreement not be certified because subsequent developer, which was entitled to vote for three out of seven total directors, did not participate in the written agreement or the election of replacement directors included in the written agreement. The request was denied since turnover of control had already occurred and S. 718.301(1)(e), F.S., provides that after turnover the developer may exercise the right to vote its units in the same manner as any other unit owner. The result urged by the subsequent developer in the present case would, in effect, permit it to veto a recall effectuated by a majority of the voting interests.



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

Forever Elegant Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 97-1885 (Draper / Final Order Dismissing Petition and Certifying Recall / November 26, 1997)

- Replacement candidates ordered to take office despite allegation by association that they have no experience and have not availed themselves of board leadership opportunity in the past, and that one replacement director was former director who resigned in 1995-96 because of allegations of mismanagement and financial abuse. Neither Chapter 718, F.S., nor condominium documents restrict board service on these grounds.

Gloucester E. Condo. Assoc., Inc. v. Unit Owners Seeking Recall,

Case No. 01-2606 (Powell / Summary Final Order Certifying Recall / March 23, 2001)

- Where arbitrator certified recall of one member of five-member board, the remaining directors were permitted to fill the vacancy, with the replacement serving for the unexpired term of the seat being filled. Rule 61B-23.0028(3)(a)2, F.A.C., as amended Feb. 19, 2001.

Greenway Village North II Assoc., Inc. v. Unit Owners Voting for Recall,

Case No. 01-3713 (Pine / Final Order Certifying Recall / October 11, 2001)

- Fact that recall ballot listed replacement candidates even though recall involved less than a majority of the board constituted minor procedural inconsistency and would not invalidate the recall effort. The association's argument that the listing of potential candidates was so misleading as to clearly prejudice the recall vote was rejected because unit owners are presumed to be capable of making their own decisions in the face of misinformation or ambiguous information.

International Park Condo. II Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 97-0251 (Draper / Final Order / August 7, 1997)

- Where agreement purported to elect five replacement directors, however recall was effective as to only three board seats and there was a tie in number of votes received by four top replacement candidates, association ordered to conduct runoff election for three open seats.

International Park Condo. Assn., Inc. v. Unit Owners Seeking Recall,

Case Nos. 99-1884 & 99-1614 (consolidated) (Powell / Summary Final Order in Case No. 99-1884 / December 12, 1999)

- Where the four eligible candidates for three open seats each received an equal number of votes, the arbitrator ordered that the candidates confer and reach an understanding where one of them withdraws or, absent such understanding, the board would be required to conduct a runoff in accord with Rule 61B-23.0021(10), F.A.C.

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

[Les Jardins Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 00-1838 (Pine / Final Order Dismissing Petition and Certifying Recall / December 4, 2000)

- Votes to elect replacement for recalled board member ruled ineffective where only one member of three-person board is recalled; remaining board members have right to appoint replacement pursuant to rule 61B-23.0028(3)(a)2, F.A.C.

[Liberty Square Condo., Inc. v. Unit Owners Seeking Recall,](#)

Case No. 00-0905 (Powell / Summary Final Order / June 27, 2000)

- Written agreement seeking to recall all six sitting board members properly recalled five board members, but portion of ballots for election of replacements did not instruct unit owners to vote for only the number of candidates sought to be recalled. The result, in which most unit owners voted for more than six replacements, raised a concern regarding the accuracy of the election of replacements. Arbitrator installed the three candidates who would have been elected in either event, i.e., where the vote not counting those ballots voting for excess candidates yielded the same result as counting all the ballots. The order further instructed the resulting new board of four to fill the remaining two vacancies created by the recall.

[Lincolnwood Towers Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 99-2047 (Draper / Summary Final Order / November 18, 1999)

- Replacement candidates for recalled directors were not disqualified from holding office because they were delinquent in paying assessments.

[Nautilus Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 99-2076 (Pine / Summary Final Order / December 3, 1999)

- Petitioner's argument that replacement directors should be elected by owners as a whole rather than by the subset that executed recall agreements was rejected. Division rules do not set a quorum for recall elections.

[Nova Hills North Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 01-3638 (Pasley / Final Order Certifying Recall / November 20, 2001)

- Section 718.112(2)(d)1., F.S., was amended in 2000, deleting the requirement that a person must meet the requirements set forth in the declaration in order to be eligible for board membership; accordingly, even assuming that prior statute authorized the board to reject a candidate on these grounds, the board's assertion that unit owners whose accounts with the association were allegedly delinquent were not qualified to serve on the board was rejected.

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

San Remo Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-5285 (Pine / Partial Summary Final Order and Order Allowing Response /  
December 28, 1998)

- Condominiums are creatures of statute and are thus only permitted to exercise those powers granted by statute. Nowhere does the statute permit an association to deny an owner the right to vote or to hold office due to an arrearage in the payment of assessments. The right to vote is specifically made an appurtenance to the unit. Section 718.106, F.S.

Sea Dip Beach Resort Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 98-5113 (Draper / Summary Final Order / November 4, 1998)

- Written agreement which failed to list names of replacement candidates "in the form of a ballot" nevertheless held to substantially comply with the provisions of Rule 61B-23.0028(1), F.A.C. Two candidates' names were listed in one column and, on the opposite side of the page, there were three spaces for "write-in candidates." The agreement did not contain a separate blank line or box beside the name of each replacement candidate and, as a result, most unit owners did not make a mark by either candidate's name. Despite the small number of votes for the replacement candidates, they were ordered to be installed as board members. The division's administrative rules do not set quorum or other requirements for recall elections, nor does there seem to be any justification for requiring that a minimum number of unit owners participate in the election of replacement candidates selected in a written agreement for recall or for requiring that a replacement candidate receive a certain percentage of votes in order to be elected.

The Village of Kings Creek Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1919 (Draper / Final Order Certifying Recall / November 1, 1999)

- Fact that two of 14 replacements are not eligible to serve as directors is inadequate reason to reject entire recall.
- Where 14 directors are sought to be recalled, three write-in vote spaces is a sufficient number of write-in spaces. Rule 61B-23.0028(1)(c), F.A.C., does not require that there be as many write-in spaces as there are board members sought recalled. In addition, only one of 500+ agreements actually used all three write-in spaces.

The Villas at Bristol Park Condo. Assoc. Inc. v. Unit Members Voting for Recall,  
Case No. 02-5362 (Gioia / Recall Arbitration Summary Final Order / October 3, 2002)

- The failure of the recall ballot to list five replacements when five board members were the targets of the recall effort is not fatal to the recall either as a matter of law or under the facts of this case where only four board members were recalled.

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

The Villas at Bristol Park Condo. Assoc. Inc. v. Unit Members Voting for Recall, (continued)  
Case No. 02-5362 (Gioia / Recall Arbitration Summary Final Order / October 3, 2002)

- Alleged "over-votes" (as where an owner voted to recall 4 members but voted for 5 replacement members) is of no legal or practical significance. The ballots in question show the fifth vote being cast by a blank write-in line. As there was no significant write-in vote to be considered, these marks are mere surplusage and this argument against certification of the recall effort also fails.

## **STANDING**

Gabriel, et al. v. Parkway Towers Building No. 1 Condo. Assn., Inc.,  
Case No. 98-4974 (Draper / Final Order Dismissing Petition / November 12, 1998)

- Petitioners, two recalled directors, who alleged that the association failed to adequately notice and properly conduct its board meeting concerning whether to certify the recall of the petitioners and that the recall lacked majority approval, lacked standing to challenge board's certification of their recall.

Oross, et al. v. Boca Linda North Condo. Assn., Inc.,  
Case No. 98-4714 (Draper / Summary Final Order / September 4, 1998)

- Pursuant to s. 718.1255, F.S., arbitrator had jurisdiction over petition filed by unit owner against association alleging that board failed to notice and hold a meeting on whether to certify recall of president within five business days after receiving written recall agreement.

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

The Crosswinds Mobile Home Park, Inc. v. Unit Owners Seeking Recall,  
Case No. 98-2973 (Draper / Final Order Dismissing Petition and Certifying Recall / March 4, 1998)

- Where recall petition was filed seven full business days after certification meeting because association secretary was scheduled for surgery and generally unavailable to assist association counsel in obtaining all pertinent facts and records in preparation for filing the petition, petition was accepted. Justification based on medical reasons is legitimate reason for late filing.

Granada House Association, Inc. v. Unit Owners Seeking Recall,  
Case No. 00-0879 (Powell / Summary Final Order / August 2, 2000)

- Where petition was stamped in as received by division one day after due date, but had been shipped by express mail so that it would arrive on due date, petition not dismissed as untimely since the association made a good-faith effort to ensure timely receipt and there was no showing that the filing was done late for purposes of delay or to thwart the recall.

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

[Hillwood Condo. Assoc., Inc. v. Unit Owners Voting for Recall.](#)

Case No. 00-1680 (Draper / Final Order on Recall / October 24, 2000)

- Petition filed 14 working days after board's meeting on certification would be accepted for arbitration. Petition was delivered to the offices of the division on the 5th day after the meeting but thereafter was lost and was never received in the arbitration section. When the association was advised of the loss, a copy was immediately sent and filed. The time limit for filing a petition for recall arbitration is not jurisdictional, and where it appears that there is a legitimate reason for the late filing and the board has acted in good faith, the petition will be accepted.

[Snug Harbor Lakes Condo. Assn., Inc. v. Unit Owners Voting for Recall.](#)

Case No. 99-2293 (Draper / Recall Arbitration Final Order / January 14, 2000)

- Board's failure to hold timely meeting on certification and to timely file petition for arbitration would be excused where it did not appear that the board's action was taken in an effort to thwart the recall attempt. Through apparent inadvertence of registered agent, board did not receive agreement served by personal service, and board attempted to hold an earlier board meeting but could not obtain a quorum because it was the day after Thanksgiving. Nevertheless, the petition was filed on the 11th day after receipt by the board of the recall agreement. An additional consideration was that the agreement was not approved by a majority of the voting interests.

[Sunset Villas Phase III Condo. v. Unit Owners Voting for Recall.](#)

Case No. 00-1737 (Draper / Order Allowing Answer to Petition for Arbitration / October 11, 2000)

- Petition for recall arbitration was accepted by the arbitrator despite its being filed over four months later than required by the statute. Initially, the association did not file on advice from its attorney to the effect that the recall agreement was void *ab initio* and it could not be ascertained whether the document was a petition for a unit owner meeting or a recall agreement. The document served on the board could easily have been mistaken for the signature list used by unit owners who wish to recall a board member or members at a unit owner meeting. Thus, it was understandable how the attorneys for the association could have assumed that the petition was actually a signature list and could have advised the board to adopt a "wait and see" approach.

**UNIT OWNER DEFENSES TO PETITION FOR ARBITRATION**

**- division advice**

[Halstead Condo. Assoc. Inc. v. Unit Owners Voting for Recall.](#)

Case No. 01-4136 (Pasley / Summary Final Order / March 27, 2002)

- When an issue given as a reason for failing to certify the recall is not raised in the petition for arbitration, the issue is abandoned.

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

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

Greynolds Park Club Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5018 (Coln / Summary Final Order Certifying Recall / October 9, 2002)

- Where association had not enforced voting certificate requirement for many years, the association could not enforce voting certificate requirement on recall without first notifying the unit owners of the change in the association's policy of requiring voting certificates.

Gulf Island Beach and Tennis Club Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 98-4198 (Powell / Summary Final Order Certifying Recall / August 18, 1998)

- Where association had not previously required a voting certificate before accepting the vote of a corporate owner, it was precluded from requiring that this owner comply with the voting certificate requirement for purposes of casting its vote on recall.

International Park Condo. II Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0251 (Draper / Final Order / August 7, 1997)

- Voting certificate requirement of documents could not be enforced by association to invalidate recall votes where association had no certificates on file and did not enforce the voting certificate requirement during previous unit owner vote.

Los Arboles Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-0082 (Draper / Summary Final Order / February 29, 2000)

- Mere fact that written recall agreement was received by the board a few days after Christmas did not qualify as an emergency exempting the board from providing 48-hour notice of the meeting at which certification would be considered.

Sanibel Arms West Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 98-3176 (La Plante / Summary Final Order / May 15, 1998)

- Votes contested by board because there was no voting certificate on file for them were valid where the association never enforced the voting certificate requirement. The association had never kept voting certificates on file.

Sea Ranch Club Condo. Assn., Inc. v. Patti, Chairperson, Recall Committee-Bldg. B, and All Other Unit Owners Voting for Recall,  
Case No. 97-0238 (Draper / Final Order / November 25, 1997)

- Association's rejection of recall votes based on noncompliance with voting certificate requirements was unreasonable. Association's failure to enforce voting certificate requirement in previous vote on waiver of reserves precludes use of it to disqualify votes cast on recall agreement. In addition, because votes cast by power of attorney on previous waiver of reserves question were allowed by association, association is precluded from rejecting same votes in recall on grounds that power of attorney is valid only for meetings.

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

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

The Charter Club of Naples Bay Owners' Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5360 (Coln / Summary Final Order / September 17, 2002)

- Since the failure to provide a separate recall vote for each board member is a fundamental error, the failure to list this as a ground for denying the certification of the recall will not invalidate the attempted recall.

1575 Assn., Inc. v. Unit Owners for Recall,

Case No. 97-2260 (La Plante / Final Order Dismissing Petition and Certifying Recall / December 10, 1997)

- Recall certified where copy of recall agreements was not attached to the petition, ballots being rejected were not identified, and minutes of board meeting did not contain reasons why recall was not certified.

Gulf Island Beach and Tennis Club Condo. Assn., Inc. v. Unit Owners Seeking Recall,  
Case No. 98-4198 (Powell / Summary Final Order Certifying Recall / August 18, 1998)

- Where minutes made no mention of rejecting ballots due to illegibility, association's contention that copies of individual recall agreements served on association were partly obscured because envelopes were covering part of two ballots when copied, was stricken by arbitrator and the votes were held valid by the arbitrator.

Hidden Forest Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5347 (Coln / Summary Final Order / August 29, 2002)

- The association challenged the written recall ballots stating that the signatures did not match those on file with the association. The minutes of the board meeting do not identify any specific unit where the signature did not match and indicated the review of the ballots was ongoing. Where the minutes merely state that there appears to be a discrepancy with some ballots and does not list the individual challenges, Rule 61B-23.0028(4)(d), Florida Administrative Code, which requires that the board record the specific reasons for not certifying the recall, has not been complied with.

International Towers Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-2861 (Cowan / Final Order Certifying Recall / March 6, 1998)

- Recall agreement certified where association failed to articulate specific reasons for not certifying the agreement in the minutes as required by Rule 61B-23.0028(4)(d), F.A.C., and failed to provide notice of a board meeting to consider the recall agreement as required by Rule 61B-23.0028(3), F.A.C., and s. 718.112(2), F.S.

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

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

#### [Nova Hills North Condo. Assoc., Inc. v. Unit Owners Voting for Recall.](#)

Case No. 01-3638 (Pasley / Final Order Certifying Recall / November 20, 2001)

- Where the board failed to indicate in the minutes of the recall meeting that it was relying on a supplemental document and, moreover, failed to specifically reference that supplemental document at anytime during the recall meeting, the arbitrator cannot consider the reasons for not certifying the recall that are contained within the supplemental document.

#### [Ocean Gate Phase I Condo. Assoc. Inc. v. Unit Owners Voting for Recall.](#)

Case No. 02-5594 (Gioia / Recall Arbitration Summary Final Order / October 10, 2002)

- Where a board does not at its recall meeting advance reasons for its decision to not certify the recall, reasons cannot later be asserted as justification for the board's refusal to certify the recall.

#### [Pendleton Club Assoc., Inc. v. Unit Owners Voting for Recall.](#)

Case No. 01-3686 (Pine / Final Order Certifying Recall / September 28, 2001)

- Where neither minutes of the board meeting on recall nor Attorney's letter referenced in minutes provided any specific objections to ballots cast in favor of recall, recall certified by a Arbitrator. Mere general conclusory allegations that recall was illegal or otherwise invalid are not sufficient.

#### [Rossmoor Bahama Village Assn., Inc. v. Unit Owners Voting for Recall.](#)

Case No. 99-1939 (Pine / Summary Final Order / October 15, 1999)

- Rule 61B-23.0028(4)(d), F.A.C., requires that when a board votes not to certify a recall, minutes of that meeting must record the "specific reasons" the recall was not certified. Where the minutes merely state that "there appears to be some discrepancy with some of the ballots," the rule has not been complied with and none of the written agreements may be invalidated for the reasons elucidated in the petition.

#### [Seagull Townhomes Condo. Assn., Inc. v. Unit Owners Voting for Recall.](#)

Case No. 99-0682 (Cowal / Final Order Certifying Recall / April 15, 1999)

- Where minutes of board meeting at which board decided not to certify recall offered no reasons for that decision and stated only that board would provide paperwork to their attorney, and where recall was deemed to substantially comply with Rule 61B-23.0027, F.A.C., recall was certified.



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

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

#### [Seapointe Terrace Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 01-3656 (Pine / Final Order Certifying Recall / September 20, 2001)

- Rule 61B-23.0028(4)(d), F.A.C., provides that the minutes of the board meeting at which the board determined not to certify the recall shall include the specific reasons it was not certified. Accordingly, the arbitrator cannot address reasons other than those set out in the minutes of the board meeting.

#### [Sterling Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 97-2110 (Draper / Final Order Certifying Recall / December 5, 1997)

- Respondents challenged specificity of minutes of board's meeting on certification, per Rule 61B-23.0028, F.A.C., which requires the minutes to state the specific reasons for rejecting the agreement. Minutes stated that 21 of the signatures appearing on the recall agreements did not match the signatures on file with the association, but minutes failed to specify which units' agreements were rejected for this reason. Arbitrator rejected the challenge where it appeared that when the board met on certification, it had in fact determined a specific group of agreements with this flaw, as later substantiated by the petition which listed 18 agreements with the alleged flaw.

- Board incorrectly rejected agreements because voting certificates were not on file, where the files of the association had not been checked prior to, or at the time of, the board's meeting on whether to certify the recall agreement. Board could not utilize a reason developed after the fact of the meeting on certification.

#### [Board of Directors of Tilden Condo. Assn., Inc. v. Unit Owners Seeking Recall,](#)

Case No. 98-5250 (Draper / Final Order Certifying Recall / December 3, 1998)

- Recall certified where minutes of board's meeting on certification failed to include any reason to support the board's rejection of the agreement.

#### [Tymber Skan on the Lake Owners' Assoc., Section Three v. Unit Owners Seeking Recall,](#)

Case No. 00-1069 (Powell / Final Order Certifying Recall / November 3, 2000)

- Where minutes reflected that board adopted a motion incorporating a schedule of disputed ballots, and where the schedule was not before the board as a whole at its meeting, and all directors were not made aware the schedule was available, the schedule cannot be considered part of the minutes. Thus, the petition did not comply with the rule requiring that the specific reasons for the board's action be set forth in the minutes. Rule 61B-23.0028(4)(d), F.A.C.
- Claims raised during pendency of arbitration by association, that additional ballots had invalid signatures and that other ballots were rescinded, which claims had not been included in petition, were stricken. Any reasons for not certifying the recall which were discovered after the filing of the petition could not have formed the basis of the board's reasoning in deciding not to certify.

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

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

The Village of Kings Creek Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1919 (Draper / Final Order Certifying Recall / November 1, 1999)

- Board may not add to meeting minutes reasons for rejecting recall agreement that were not discussed at meeting. Board must, at its meeting on certification, either list the unit identification for each unit subject to an objection, the number of units subject to each objection, or otherwise satisfy the arbitrator that the specific objections contained in the petition fairly reflect the basis of the board's decision.

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

Ambassador South Development Corp. v. Unit Owners Voting for Recall,  
Case No. 97-0256 (Oglo / Summary Final Order Dismissing Petition / November 25, 1997)

- Where arbitration petition revealed that board did not post 48 hours' notice of its meeting on certification as required by s. 719.106(1)(f)1, F.S., and s. 719.106(1)(c), the arbitrator dismissed the petition and certified the recall. No preliminary basis for relief had been demonstrated in the board's petition, as it failed to properly follow the notice procedures.

The Charter Club of Naples Bay Owners' Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 02-5360 (Coln / Order Denying Motions to Dismiss / September 13, 2002)

- Where bylaws provided for 5 days advance notice of a board meeting, but where statute required at least 48 hours notice but required meeting to be held within 5 days of the board's receipt of a recall petition, the association was not required to comply with its bylaws that were found to conflict with the statute.

Grand Vista Condo. Assn., Inv. v. Unit Owners Voting for Recall,  
Case No. 00-1214 (Draper / Recall Arbitration Final Order / September 27, 2000)

- Where the only support cited by respondents for their contention that the board's meeting on certification was not properly noticed or conducted was that the minutes of the meeting were signed only by the president of the board, who is a "proven liar," that one of the board members was not informed of the meeting, that there was no evidence other than the word of the president that other members of the board attended the meeting, the "facts" alleged in support of this defense would not, even if proven, substantiate the respondents' assertion. A mere suspicion that the meeting was not held, based on enmity and distrust of one of the board members, is insufficient. Furthermore, where, as here, it is clearly evident that the recall was not approved by a majority of the voting interests, a procedural violation such as this will not resurrect it.

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

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

International Towers Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-2861 (Cowan / Final Order Certifying Recall / March 6, 1998)

- Recall agreement certified where association failed to articulate in the board meeting minutes specific reasons for not certifying the recall, as required by Rule 61B-23.0028(4)(d), F.A.C., and failed to provide notice of the board meeting to consider the recall agreement as required by Rule 61B-23.0028(3), F.A.C., and s. 718.112(2), F.S.

Lake Howell Arms Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-3766 (Draper / Summary Final Order / May 22, 1998)

- Written agreement held to be fatally flawed where two directors were listed for recall, but separate “recall” and “retain” lines were not provided for each. Regardless of whether board erred by not properly noticing or conducting certification meeting, agreement was void *ab initio*; board’s error would not serve to rehabilitate invalid agreement.

Panama Apartments, Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3151 (Pine / Final Order on Recall / June 27, 2001)

- Where recall effort is void *ab initio*, board’s failure to give proper notice of its meeting will not validate the recall.

Sunrise Towne Preferred Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-2517 consolidated with 01-2570 (Draper / Final Order on Recall / April 12, 2001)

- Where board posted notice of its meeting but did not indicate that the board would address the issue of certification of the recall, recall agreement would be certified.

Windrush Condo. Assoc., Inc. v. Unit Owners Seeking Recall,  
Case No. 00-1560 (Powell / Summary Final Order Certifying Recall / November 21, 2000)

- Original notice posted two days before meeting did not give agenda, or list time of day or place for meeting; additional notice one day before meeting gave full particulars. Because the required 48-hour notice meeting was not given, arbitrator entered summary order certifying recall.

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

Clarcona Resort Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 01-3640 (Pasley / Summary Final Order / November 21, 2001)

- The board's failure to have a quorum present at the beginning of the board meeting at which the recall was not certified cannot be used to validate an invalid recall effort.

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

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

Villa Biscaya Jardines II Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4406 (Cowan / Final Order Certifying Recall / July 29, 1998)

- Where board consisted of five members, and where two board positions were vacant at time of board meeting regarding recall and another member was absent, the two participating board members did not constitute a quorum. Therefore, it was not possible for board to reach a decision on whether or not to certify recall.

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

Castillian Club Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-4865 (Draper / Case Management Order / November 6, 1998)

- Unit owners' claim that written recall should have been certified by action of law because board failed to timely hold a meeting on certification was rejected. Board denied that agreement had been received by the board and unit owners alleged only that the secretary of the board was served. Service on board's secretary, where there was no indication that president or vice-president of association was not available, did not comply with Rule 61B-23.0028(1)(g), F.A.C. The rule requires service on the board by certified mail or personal service in accordance with Chapter 48, F.S. Chapter 48.081, F.S., provides that process may be served on president or vice-president or, in their absence, on the secretary, treasurer, etc.

Conners, et al., as directors of Pinewood Village Condo. Assn., Inc. v. Demarco of Closs Enterprises, as representative of the group of members of the association who executed a written agreement of recall,

Case No. 97-0338 (Draper / Summary Final Order / August 29, 1997)

- Recall certified where board failed to hold meeting on whether to certify recall within five full business days and gave no justification for delay. In addition, the only reason cited in board minutes for failure to certify recall was that board did not feel it had done anything wrong to justify recall. Reasons cited in petition, and not in minutes, cannot be considered by arbitrator.

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

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

Gateland Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-5144 (Anderson-Adams / Summary Final Order / January 11, 1999)

- Petitioner alleged that the written agreement for recall was served upon the board president, who deliberately did not inform other board members and did not hold a meeting on whether to certify recall, in an attempt to oust other board members through the board's failure to hold a meeting within 5 business days after receipt of a recall agreement as required by s. 718.112(2)(j), F.S. Despite apparent failure of the board to conduct a meeting on certification of the recall within the required time, the recall would not be certified because the recall agreement was void *ab initio*. Agreement, which sought to recall two directors, failed to list each board member sought to be recalled separately and to give unit owners the choice of recalling one and retaining the other, clearly in violation of Rule 61B-23.0028(1), F.A.C.

Gateland Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 98-5247 (Anderson-Adams / Amended Summary Final Order / January 25, 1999)

- Where unit owners contended that the board failed to hold a meeting on certification within five days after a recall agreement was "hand served" on the president of the association, resulting in the recall being automatically certified per s. 718.112(2)(j), F.S., and the board contended that the president had not received the recall agreement as alleged by the unit owners, it was unnecessary to address issue because the agreement was void *ab initio*.

Grand Vista Condo. Assn., Inv. v. Unit Owners Voting for Recall,  
Case No. 00-1214 (Draper / Recall Arbitration Final Order / September 27, 2000)

- Where the only support cited by respondents for their contention that the board's meeting on certification was not properly noticed or conducted was that the minutes of the meeting were signed only by the president of the board, who is a "proven liar," that one of the board members was not informed of the meeting, that there was no evidence other than the word of the president that other members of the board attended the meeting, the "facts" alleged in support of this defense would not, even if proven, substantiate the respondents' assertion. A mere suspicion that the meeting was not held, based on enmity and distrust of one of the board members, is insufficient. Furthermore, where, as here, it is clearly evident that the recall was not approved by a majority of the voting interests, a procedural violation such as this will not resurrect it.

Halstead Condo. Assoc. Inc. v. Unit Owners Voting for Recall,  
Case No. 01-4136 (Pasley / Summary Final Order / March 27, 2002)

- Where the unit owners seeking recall failed to obtain valid votes in favor of recall from a majority of the voting interests, unit owners' defense that the board failed to hold its recall meeting in a timely fashion was rejected. Because a majority of the voting interest voting in favor of recall is the foundation of any recall effort, failure to meet this criteria is a fatal flaw

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

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

#### Ocean Park North Assn., Inc. v. Unit Owners Seeking Recall,

Case No. 99-1699 (Powell / Summary Final Order Certifying Recall in Case No. 99-1699 / September 3, 1999)

- Recall certified where board failed to hold meeting on whether to certify recall within five full business days and did not provide sufficient justification. Fact that board was confused as to how to proceed, in light of pending recall arbitration, and had difficulty obtaining a quorum, is insufficient to excuse board's noncompliance.

#### Oceans Four Condo. Assoc., Inc. v. Unit Owners Voting for Recall,

Case No. 01-3302 (Draper / Final Order Dismissing Petition and Certifying Recall / June 28, 2001)

Where the board failed to conduct meeting within 5 full business days on whether to certify recall, recall would be certified. The board noticed a meeting and then cancelled it, stating in a notice that the recall agreement was improperly served and, therefore, board did not have to hold a meeting. The board cannot avoid filing a petition for recall arbitration on the ground that service of the agreement was, in the board's view, flawed.

#### Gross, et al. v. Boca Linda North Condo. Assn., Inc.,

Case No. 98-4714 (Draper / Summary Final Order / September 4, 1998)

- Where board failed to notice and hold a meeting on whether to certify recall of president within five days after receiving recall agreement, the recall is deemed effective by operation of s. 718.112(2)(k), F.S. Arbitrator ordered that president step down and replacement director be appointed by remaining board members per Rule 61B-23.0028(3)(a)2., F.A.C.

#### Snug Harbor Lakes Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 99-2293 (Draper / Recall Arbitration Final Order / January 14, 2000)

- Board's failure to hold timely meeting on certification and to timely file petition for arbitration would be excused where it did not appear that the board's action was taken in an effort to thwart the recall attempt. Through apparent inadvertence of registered agent, board did not receive agreement served by personal service, and board attempted to hold an earlier board meeting but could not obtain a quorum because it was the day after Thanksgiving. Nevertheless, the petition was filed on the 11th day after its receipt by the board. An additional consideration was that the agreement was not approved by a majority of the voting interests.

#### Unit Owners Voting for Recall v. Sunrise Towne Preferred Condo. Assoc., Inc.,

Case No. 01-2864 (Draper / Summary Final Order / May 15, 2001)

- Where board of association failed to hold meeting on whether to certify written agreement for recall served on it, and recall agreement was facially valid, association violated S. 718.112(2)(j), F.S. Recall was certified and directors ordered to turn over records of association to remaining board members.

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

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

The Federation of Kings Point Condo., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-0419 (Draper / Final Order of Dismissal / March 29, 2000)

- Petition was not untimely where petition, excluding attachments, was faxed to division on the 5th working day after board's meeting on certification, and attachments were filed a few days later.

Forever Elegant Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 97-1885 (Draper / Final Order Dismissing Petition and Certifying Recall / November 26, 1997)

- Petition dismissed and recall certified where board filed petition for arbitration seven working days after it voted not to certify recall and failed to provide justification for its late filing.

Granada House Association, Inc. v. Unit Owners Seeking Recall,  
Case No. 00-0879 (Powell / Summary Final Order / August 2, 2000)

- Where petition was stamped in as received by division one day after due date, but had been shipped by express mail so that it would arrive on due date, petition not dismissed as untimely since the association made a good-faith effort to ensure timely filing and there was no showing that the filing was done late for purposes of delay or to thwart the recall.

Hillwood Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1680 (Draper / Final Order on Recall / October 24, 2000)

- Petition filed 14 working days after board's meeting on certification would be accepted for arbitration. Petition was delivered to the offices of the division on the 5th day after the meeting but thereafter was lost and was never received in the arbitration section. When the association was advised of the loss, a copy was immediately sent and filed. The time limit for filing a petition for recall arbitration is not jurisdictional, and where it appears that there is a legitimate reason for the late filing and the board has acted in good faith, the petition will be accepted.

Snug Harbor Lakes Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-2293 (Draper / Recall Arbitration Final Order / January 14, 2000)

- Board's failure to hold timely meeting on certification and to timely file petition for arbitration would be excused where it did not appear that the board's action was taken in an effort to thwart the recall attempt. Through apparent inadvertence of registered agent, board did not receive agreement served by personal service, and board attempted to hold an earlier board meeting but could not obtain a quorum because it was the day after Thanksgiving. Nevertheless, the petition was filed on the 11th day after its receipt by the board. An additional consideration was that the agreement was not approved by a majority of the voting interests.

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

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

Villa Biscaya Jardines Condo. Phase II, Inc. v. Castillo, et al.,  
Case No. 98-3936 (La Plante / Recall Arbitration Summary Final Order / May 14, 1998)

- Although recall petition was not timely filed, arbitrator affirmed the board's failure to certify recall under the circumstances of the case. In this case, equitable considerations precluded certification of the recall despite its untimeliness, as the recall was void *ab initio* when it stated, "place a check mark next to the board member's name on the "RECALL" line if you are voting for the board member to remain on the board". No actual agreement to recall existed where unit owners were instructed that a recall vote was a vote to retain a board member.

**- generally**

**- no legitimate reasons for failing to certify**

Conners, et al., as directors of Pinewood Village Condo. Assn., Inc. v. Demarco of Closs Enterprises, as representative of the group of members of the association who executed a written agreement of recall,  
Case No. 97-0338 (Draper / Summary Final Order / August 29, 1997)

- Recall certified where board failed to hold meeting on whether to certify recall within five full business days and gave no justification for delay. In addition, the only reason cited in board minutes for failure to certify recall was that board did not feel it had done anything wrong to justify recall. Reasons cited in petition, and not in minutes, cannot be considered by arbitrator.

**- ratification**

## **VACANCIES**

Alexandra Village Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case Nos. 00-1851 and 00-1720 (Pine / Final Order / December 5, 2000)

- Votes to elect replacement for recalled board member deemed ineffective where only one member of board is recalled: remaining board members have right to appoint replacement pursuant to rule 61B-23.0028(3)(a)2, F.A.C.



## VACANCIES (continued)

Blau v. Martinique 2 Owners' Assn., Inc.,  
Case No. 99-1880 (Scheuerman / Summary Final Order / January 6, 2000)

- In accordance with Chapter 617, F.S., a director may resign with a delayed effective date and may generally, during the period between tendering the resignation and the effective date of the resignation, continue to exercise the authority conferred upon board members. However, where a board member resigns in the face of an impending recall of less than a majority of the board, such board member is not authorized to participate in the board vote to fill the anticipated vacancy. Restricting the board member's ability to select his replacement is inherent in the concept of recall, and this interpretation of the statute and rules is the only one which will give meaning and effect to the statutory right of the owners to recall board members. Accordingly, where statute provides that "remaining board members" may fill vacancy caused by recall of less than a majority of the board, statute interpreted to refer to board members not subject to the recall effort. To permit the resigned member to vote under these circumstances would enable the board members sought to be ousted to affect future decisions of the association, a result that the owners sought to avoid by the recall, and would further encourage an endless procession of recall efforts, with the owners always one step behind the board.

Decoplage Condo. Assoc., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1868 (Pasley / Summary Final Order / December 20, 2000)

- Where all five members of the board were being recalled and two of the board members resigned prior to issuance of the recall final order and the three remaining board members appointed new board members to fill the vacancies, the three original board members and the two temporary board members were all replaced with the replacement board members elected by written agreements when the recall was certified. To allow temporary replacements to stay in office after the certification of the recall would circumvent the meaning and intent of the rules regarding recall.

Hillwood Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 00-1556 (Draper / Order on Motion for Rehearing / September 27, 2000)

- Where recall of directors filling three of seven positions on the board is certified by the arbitrator, the remaining board members may fill the vacancy or vacancies as the recall of less than a majority of the board has been certified. Rule 61B-23.0028(3)(b)3., F.A.C. The number of members on a board, which number determines whether a majority or less than a majority of the board is recalled, is determined by the number of *positions* on the board rather than the number of *positions currently filled* on the board.
- Even though certification of the recall of three directors left only two directors on the board and a quorum could be obtained, the two remaining directors are empowered to select replacements for the vacancies created by the recall. Section 718.112(2)(j)5., F.S.

**VACANCIES** (continued)

[Les Jardins Condo. Assoc., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 00-1838 (Pine / Final Order Dismissing Petition and Certifying Recall / December 4, 2000)

- Votes to elect replacement for recalled board member ruled ineffective where only one member of three-person board is recalled; remaining board members have right to appoint replacement pursuant to rule 61B-23.0028(3)(a)2, F.A.C.

[McArthur Park at Misty Lake Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 99-1790 (Draper / Final Order Certifying Recall / October 16, 1999)

- Association and respondents disputed whether director subject to recall had resigned, and whether he resigned prior to the board's receipt of the recall agreement. Rather than delay recall in order to conduct fact-finding hearing as to when/if director resigned, arbitrator ordered the four replacement candidates receiving the most votes to take office, and directed them to select an individual to fill the vacancy.

[Sabal Point Apartment Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 98-5060 (Cowan / Final Order Certifying Recall / December 23, 1998)

- Where five board members subject to recall resigned after service of recall on board and resulting vacancies were filled by the remaining two board members, who were also sought to be recalled, and where recall was certified as to each board member, replacement board members elected by written agreement are to take office immediately upon the recall being certified by arbitrator's final order. Whether or not the remaining board members had the authority to appoint temporary replacements for board members who resigned, to allow the members of the board to fill those vacancies with permanent replacements at a time when their own removal is being effected would circumvent the meaning and intent of the rules regarding recall.