

**DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION**

**Recall Procedures for  
Condominiums and  
Cooperatives**

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

**Arbitration Section**

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

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## NOTICE TO RECIPIENT

Chapter 718 of the Florida Statutes, also known as the Condominium Act, provides that a majority of the unit owners may recall one or more board members whether for cause or not. Section 718.112(2)(j), Florida Statutes, allows the owners to recall their board either at a meeting or by an agreement in writing. Under the recall procedures, if the board determines not to accept the recall effort, it is required to petition the Division for arbitration. This package of information contains a beginner's guide to recall procedures, the rules of procedure governing recall arbitration, Section 718.112(2)(j), Florida Statutes, Division rules 61B-23.0026, .0027 and .0028 containing requirements relating to recalls, and certain recall forms, including a petition for recall arbitration form, and a sample written recall agreement / ballot form with instructions.

Due to the numerous changes to the statute and rules, each person should inquire periodically to ensure that the version you are referring to is the most recently revised copy.

E-Mail Address:

[fls.arbitration@dbpr.state.fl.us](mailto:fls.arbitration@dbpr.state.fl.us)

Web Address:

[www.myflorida.com/dbpr/lsc/arbitration.shtml](http://www.myflorida.com/dbpr/lsc/arbitration.shtml)

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## Recall Procedures from A to Z: A Beginner's Guide to Recall Procedures

### Introduction

Recall of a board member or members under section 718.112(2)(j), Florida Statutes, can be accomplished either in writing (by written agreement or written ballot), or by a vote at a meeting. Recall by a unit owner vote at a meeting is procedurally challenging and rarely succeeds, and is not recommended. The procedures for recall at a meeting are set forth in rule 61B-23.0027, Florida Administrative Code.

Recalls by written ballot are successful much more often because the procedures are easier. The procedures for recall by written ballot are set forth in rule 61B-23.0028, Florida Administrative Code. The arbitration web site contains a recall ballot form that the owners may adapt for their use that is located on the website and is also available in this package of materials.

In order to accomplish a recall by written ballot or agreement in writing, the following steps should be taken:

1. **Owners should choose an individual who will act as the unit owner representative** during the recall effort. If the board fights the recall and petitions the Division for recall arbitration, the unit owner representative will have an opportunity to send written arguments to the Division arbitrator in response to the petition for arbitration filed by the board. The unit owners should choose someone who is accessible and lives at the condominium, someone who will accept certified mail from the Division, and someone who is willing to commit himself or herself to the task of coordinating the recall effort and to the task of defending the recall effort. This individual does not need to be an attorney but should be someone who is familiar with the laws and procedures relating to recall and who is willing to become involved.

2. The unit owner representative should **circulate the approved recall ballot forms** to the owners and get them signed by at least a majority of the total voting interests. A margin of 5-10% over the minimum majority figure should be obtained so that defective ballots can be rejected and a majority of the voting interests may still be achieved. It is common for a number of recall ballots to be rejected by the arbitrator for the reasons discussed below. Replacement board members should be chosen and identified on the recall ballot form if the unit owners are attempting to recall a majority or more of the board members. (If recall of *less than* a majority of the board is sought, the board members who remain after the recall are permitted to fill the vacancies caused by the recall, and the recall ballot form should not contain replacement candidates). Note that the form of the ballot used should provide both retain and recall lines for each board member sought to be recalled, and should provide for a separate vote as to each board member sought to be recalled. The form should list each board member separately and should not list the board collectively. In addition, it is most important that the recall ballot form not be pre-checked when presented to the owners for signatures. Instead, the individual owner who is voting in the recall is required to fill in the recall or retain box with a checkmark or an "X" for each board member named on the ballot.

3. Owners should check the documents and see if **voting certificates** are required in order for a unit owner to cast a vote. A voting certificate is a document used where a single unit is owned by more than one person, or is owned by a corporation or trust. By use of a voting certificate, the multiple owners of a unit all sign the voting certificate and designate one of the owners who shall be authorized to cast a vote on behalf of the unit. If the documents require a voting certificate for units

owned by more than one person, (if, for example, a unit is owned jointly by a husband and a wife), then a voting certificate must be signed by all owners and filed with the association along with the recall ballot signed by the authorized voter (unless the unit owner already has a completed voting certificate on file with the association). Alternatively, if each and every owner of a unit owned by more than one person signs a recall ballot, the arbitrator will accept the recall ballot regardless of whether a voting certificate is on file with the association.

4. Make sure that the person who signs the recall ballot is the true owner of the unit. Guests, tenants, or family members of a person who owns the unit are generally not authorized to cast a vote on behalf of the unit, and these ballots will be properly rejected by the board. If an individual has only recently become the owner of a unit, the person should make sure that his or her deed is recorded in the public records, and a copy of the deed should be sent along with the recall ballot to the association. If a unit owner signs a power of attorney permitting a non-owner to sign on his behalf, a copy of the power of attorney instrument should be delivered to the association along with the recall ballot for that individual.

5. The unit owner representative should **collect the completed ballots**, and once a sufficient number has been collected in excess of a simple majority, the ballots **should be served on the board** in order to formally begin the recall process. Service may be accomplished by delivering the original or copies of the ballots to the registered agent of the association, the association president, or the manager currently employed by the association, by process server or by certified mail (although the board might decline to accept delivery of the certified mail). The Division has permitted delivery of the ballots by hand delivery, although this method of service may be less reliable.

6. Once the recall ballots have been received by the board, the board has 5 business days in which to call and hold a board meeting at which the board will decide whether to accept the recall (this is called "certifying" the recall), or to reject the recall effort. The minutes of the board meeting at which the board decides to contest the recall must identify each ballot rejected along with the reason for rejecting each such ballot. If the board rejects the recall effort, the board is required to file a petition for recall arbitration with the Division within 5 business days of the board meeting. If the board fails to timely submit the dispute to recall arbitration by filing a petition for recall arbitration, the owners may elect to file a petition for arbitration under section 718.1255, Florida Statutes, and the Division arbitrator will determine the validity of the recall effort.

7. Once the board files for recall arbitration with the Division, an arbitrator will be assigned who will review the petition to determine if the petition for arbitration presents a valid claim. At this time, the unit owners voting in favor of the recall will be given an opportunity to submit written arguments in favor of the validity of those ballots rejected by the board. The arbitrator may also require the parties to submit additional documentation including deeds and affidavits.

8. Next, the arbitrator will either issue a final order, or if disputed facts exist, the arbitrator will schedule and conduct a final hearing and then issue a final order. The final order will either certify the recall or will rule that the board was correct in challenging the recall effort in whole or in part. Depending on the facts of the case, the final order may remove board members and may designate and empower a replacement board. The final order is effective once it is placed in the mail. The arbitrator will generally provide a copy of the final order to the parties by email, fax, and/or regular U.S. Mail. Unit owners and associations with questions concerning recall procedures and how particular issues have been ruled on previously may review the holdings of prior recall arbitration decisions located on the arbitration web site.

9. If the recall is deemed to be invalid by the arbitrator, as a general matter, written recall votes that were determined to be valid in that recall proceeding may be used in a subsequent recall effort, and the owners can simply replace the recall ballots found to be invalid with valid votes and may serve the recall package on the board to begin another recall effort.

## Chapter 61B-50, The Rules of Procedure Governing Recall Arbitration

### 61B-50.101 Scope, Organization, Procedure, and Title.

(1) This chapter shall be entitled "The Rules of Procedure Governing Recall Arbitration" and shall govern the arbitration of a recall of one or more members of a board of administration of a condominium or cooperative association. These rules shall be construed to secure the just, speedy and inexpensive determination of every proceeding. Specifically, this chapter applies to all proceedings held pursuant to Sections 718.112(2)(j) or 719.106(1)(f), Florida Statutes. The provisions of Chapter 682, Florida Statutes, and Chapter 61B-45, Florida Administrative Code, do not apply.

(2) All petitions and other papers filed with the division for recall arbitration pursuant to Sections 718.112(2)(j) and 719.106(1)(f), Florida Statutes, and these rules, shall be filed at the official headquarters of the Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes, Arbitration Program, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1030.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.01, Amended 7-27-88, Formerly 7D-50.001, Amended 1-17-93, Formerly 7D-50.101, Amended 1-19-97, 6-24-04.*

### 61B-50.105 Initiation of Recall Arbitration.

(1) When one or more members of a board of administration of a condominium or cooperative association have been recalled, the board of administration may initiate a recall arbitration by filing a petition for recall arbitration with the division, as follows:

(a) Recall at a Unit Owner Meeting. Where the unit owners attempt to recall one or more members of a board at a unit owner meeting, and the board does not certify the recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the recall.

(b) Recall by Written Agreement. Where the unit owners attempt to recall one or more members of a board by written agreement of a majority of the voting interests, and the board does not certify the written agreement to recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

(2) The time periods contained in Sections 718.112(2)(j) and 719.106(1)(f), Florida Statutes, operate, for purposes of these arbitration rules and not for enforcement purposes under Section 718.501, Florida Statutes, in the manner of statutes of limitation and are therefore subject to equitable considerations. However, where the board fails to timely comply with these rules relating to the filing of the petition for recall arbitration, the board must provide legitimate justification and must demonstrate that its actions or inactions were taken or based in good faith. The board's claims of excusable neglect or the inability to identify defects in the recall effort within the time provided, or other unremarkable excuses will not be considered as proper defenses. The failure of an association to timely file a petition for recall arbitration within the time limits imposed under these rules or Chapters 718 and 719, Florida Statutes, will result in the certification of the recall and the immediate removal of the board members subject to recall; however, the failure of the association to timely file a petition for recall arbitration will not validate a written recall that is otherwise void at the outset for failing to obtain a majority of the voting interests or is deemed fatally defective for failing to substantially comply with the provisions of Rule 61B-23.0028, Florida Administrative Code.

(3) Only the board of an association may file a petition for recall arbitration. Where the board fails to file a petition for recall arbitration as required by these rules and Chapters 718 and 719, Florida Statutes, the unit owners seeking to challenge the board's decision not to file for recall arbitration may file a petition for arbitration pursuant to Section 718.1255(1)(b) or 719.1255, Florida Statutes.

(4) Form of Petition. The term "petition" as used in this rule includes any application or other

document that expresses a request for arbitration of a recall of one or more board members. The petition shall comply with the provisions of this rule, and be printed, typewritten or otherwise duplicated in legible form on one side of the paper only with lines double-spaced.

(5) All petitions for arbitration of a recall shall be signed by either a duly authorized board member, a member of the Florida Bar, or a qualified representative who has been retained by the board. Each petition shall contain:

(a) The name and address of the association and the number of voting interests;

(b) The name or names of the board member or members who were recalled;

(c) The name and address of the unit owner representative selected, pursuant to subparagraph 61B-23.0027(3)(b)2. or paragraph 61B-23.0028(1)(f), Florida Administrative Code, or subparagraph 61B-75.007(3)(b)2. or paragraph 61B-75.008(1)(f), Florida Administrative Code, to receive pleadings, notices, or other papers on behalf of the recalling unit owners;

(d) A statement of whether the recall was by vote at a meeting of the membership or by written agreement.

(e) If the recall was by vote at a meeting, the petition shall state the date of the meeting of the membership and the time the meeting was adjourned; if the recall was by written agreement, the petition shall state the date and time of receipt of the written agreement by the board, and a copy of the written agreement to recall shall be attached to the petition;

(f) The date of the board meeting at which the board determined not to certify the recall, and the time the meeting was called to order and adjourned;

(g) A copy of the minutes of the board meeting at which the board determined not to certify the recall;

(h) Each specific basis upon which the board based its determination not to certify the recall, including the unit number and specific defect to which each challenge applies. Any specific reason upon which the board bases its decision not to certify the recall that is stated in the petition for recall arbitration, but absent from the board meeting minutes or attachments thereto, shall be ineffective and shall not be considered by the arbitrator. A board member may be recalled with or without cause. The fact that a unit owner may have received misinformation is not a valid basis for rejecting a recall agreement and shall not be considered by the arbitrator;

(i) Any relevant sections of the bylaws, articles of incorporation, the declaration of condominium, cooperative documents, and rules, including all amendments thereto, as well as any or other documents which are pertinent to the petition; and

(j) Any other information which the petitioner contends is material.

(6) If, during the pendency of a recall arbitration, the unit owners in the condominium or cooperative attempt another recall effort and the board files another petition for arbitration, the newly filed petition shall be consolidated with the pending case.

(7) Upon receipt and review of a petition for arbitration of a recall of one or more board members, the division shall either accept or deny the petition. If the petition is accepted, within 10 days the arbitrator shall serve the respondent unit owners by mailing a copy of the petition and an order allowing answer by United States certified mail to the representative of the recalling unit owners identified in the petition.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f) FS. History—New 1-17-93, Formerly 7D-50.105, Amended 11-15-95, 6-24-04.*

61B-50.106 Computation of Time.

(1) In computing the five full business days prescribed by Sections 718.112(2)(j), and 719.106(1)(f), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, Florida Statutes, in which event the period shall run until the end of the next business day.

(2) Additional Time After Service By Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of a paper upon that party and the paper is served by regular United States mail, five days shall be added to the prescribed period. This provision does not apply to the filing of the petition for recall arbitration. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 719.106(1)(f) FS. History—New 7-1-82, Formerly 7D-50.02, 7D-50.002, Amended 1-17-93, Formerly 7D-50.106, Amended 11-15-95, 6-24-04.*

#### 61B-50.107 Parties.

(1) Parties in any proceeding conducted in accordance with Section 718.112(2)(j) or 719.106(1)(f), Florida Statutes, are petitioners or respondents.

(2) The petitioner shall be the board of administration of an association that files a petition for binding arbitration of a recall of one or more members of the board.

(3) The respondent shall be the group of members of an association who voted at a meeting, or who executed a written agreement, to recall one or more members of the board.

(4) All parties shall receive copies of all pleadings, motions, notices, orders, and other matters filed in arbitration proceedings in the manner provided by Rule 61B-50.115, Florida Administrative Code.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 719.106(1)(f) FS. History—New 7-1-82, Formerly 7D-50.03, Amended 7-27-88, Formerly 7D-50.003, Amended 1-17-93, Formerly 7D-50.107, Amended 6-24-04.*

#### 61B-50.108 Who May Appear; Criteria for Other Qualified Representatives.

(1) Any person who appears before any arbitrator has the right, at that person's own expense, to be accompanied, represented and advised by a member of the Florida Bar or by a qualified representative who is not a member of the Florida Bar, but who shall demonstrate his or her familiarity with and understanding of the arbitration rules of procedure, and with any relevant portions of Chapter 718 or 719, Florida Statutes, and the rules promulgated by the Division.

(2) If a person wishes to be represented by a qualified non-attorney representative, the arbitrator shall make diligent inquiry of the prospective representative during a non-adversarial proceeding, under oath, to assure that the prospective representative is qualified to appear in the arbitration proceedings and is capable of representing the rights and interests of the person. In lieu of the above, the arbitrator may consider the prospective representative's sworn affidavit setting forth the representative's qualifications.

(3) If the arbitrator is satisfied that the prospective non-attorney representative has the necessary qualifications to render competent and responsible representation of the unit owner's interest in a manner that will not impair the fairness of the proceedings or the correctness of the action to be taken, the arbitrator shall authorize the prospective non-attorney representative to appear in the pending arbitration.

(4) The arbitrator shall make a determination of the qualifications of the prospective non-attorney representative in light of the nature, scope and extent of the proceedings, the proposed representation, the applicable federal and state laws, rules and regulations, and the factual and legal issues to be presented during the arbitration proceeding. (The prospective non-attorney

representative shall not, however, be required to disclose facts and legal theories to the prejudice of his client.) In determining the qualifications of a prospective non-attorney representative, the arbitrator shall consider the following criteria to the extent they are relevant, material, and applicable to the proceeding:

(a) The prospective representative's knowledge of jurisdiction and supportive legal authority to file the initial petition;

(b) The knowledge or experience of the prospective representative regarding Chapter 61B-50, Florida Administrative Code, The Rules of Procedure Governing Recall Arbitration, Section 718.112(2)(k) or 719.106(1)(f), Florida Statutes, and the scope and remedies of the arbitration process;

(c) The knowledge or experience of the prospective representative regarding the application and interpretation of the Florida Rules of Civil Procedure as they relate to discovery in an arbitration proceeding;

(d) The knowledge or experience of the prospective representative regarding the rules of evidence, including the concept of hearsay and its use in an arbitration proceeding;

(e) The knowledge or experience of the prospective representative regarding the statutes of rules which may be at issue;

(f) The educational background, training or work experience of the prospective representative relevant to the subject matter involved in the proceeding;

(g) The relationship of the prospective representative to the person, and the need of the person to have a representative speak on the person's behalf; and

(h) Any other matters which are deemed relevant and material by the arbitrator.

(5) A representative named in the initial petition or who has filed a notice of appearance shall remain the representative of record and shall receive pleadings and continue in a representative capacity until the representative's withdrawal has been approved in writing by the arbitrator.

(6) Any successor or associated attorney or other non-attorney representative shall file a notice of appearance prior to, or at the time of, the filing of any pleading with, or appearance before, the arbitrator.

(7) Members of the Florida Bar and certified law students are bound by the Rules of Professional Conduct of the Rules Regulating the Florida Bar. For other qualified representatives, the following standards have been written. These standards of conduct are adopted as a mandatory guide for all representatives, including unit owner representatives chosen pursuant to subparagraph 61B-23.0027(3)(b)2. or paragraph 61B-23.0028(1)(f), Florida Administrative Code, appearing in any arbitration proceeding, except counsel subject to disciplinary procedures of the Florida Bar.

(8) Standards of Conduct.

(a) A representative shall exercise due diligence in the filing and argument of any motion or pleading. All motions or pleadings shall be filed and argued in good faith.

(b) The signature of a representative upon any motion or pleading shall constitute a certificate that the representative has read the motion or pleading, that to the best of the representative's knowledge it is supported by good faith grounds and that it has not been presented solely for the purpose of delay.

(c) A representative shall advise the client to observe and to obey the law.

(d) A representative shall not:

1. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of the arbitration process;

2. File a pleading, assert a position, conduct a defense, delay an arbitration proceeding or take other action on behalf of the client when such action would serve merely to harass or maliciously injure another;

3. Handle a legal or factual matter which the representative knows or should know that the representative is not competent to handle without associating an attorney or another qualified

representative; or handle a legal or factual matter without adequate preparation;

4. State or imply that he or she is able to improperly influence the arbitrator or any agency or public official;

5. Communicate or cause another to communicate with an adverse party regarding matters at issue in the arbitration proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative;

6. Disregard or advise the client to disregard a rule or statute of an agency or a ruling of an arbitrator made in the course of an arbitration proceeding;

7. Conceal or knowingly fail to disclose that which one is bound to reveal by law;

8. Knowingly use perjured testimony or false evidence, or withhold any evidence that the representative or the client should produce;

9. Knowingly make a false statement of law or fact;

10. Advise or cause a person to secret himself or leave the jurisdiction of any agency for the purpose of making the person unavailable as a witness therein; pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.04, Amended 7-27-88, Formerly 7D-50.004, Amended 1-17-93, Formerly 7D-50.108, Amended 2-13-97, 6-24-04.*

#### 61B-50.110 Communication with an Arbitrator.

(1) While a case is pending, no party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation concerning the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward with respect to the conduct or outcome of a proceeding.

(2) An arbitrator who has received a communication prohibited by this rule, or who has received a threat or offer of reward by any person with respect to the conduct or outcome of a proceeding, shall place upon the record all written communications received, all written responses to such communications and a memorandum stating the substance of all oral communications received and all oral responses made, simultaneously serving all parties.

*Specific Authority 718.501(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 1-17-93, Formerly 7D-50.110, Amended 1-19-97, 6-24-04.*

#### 61B-50.112 Withdrawal of Petition.

(1) A petition for arbitration of a recall may be withdrawn at any time prior to the commencement of the scheduled final hearing. Such withdrawal shall be in writing and directed to the arbitrator. Withdrawal may be made by telephone, but must be subsequently confirmed in writing, or by an order certifying the recall entered by the arbitrator if the petitioner fails to file written notice.

(2) Withdrawal of a petition for arbitration of a recall shall be with prejudice. If the board withdraws the petition, the recall shall be deemed certified and the board members recalled. The board member or members recalled shall turn over all association records in his or their possession within five full business days after the withdrawal is filed (i.e., received by the division).

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 1-17-93, Formerly 7D-50.112, Amended 11-15-95, 6-24-04.*

#### 61B-50.115 Filing; Service of Papers; Signing.

(1) Filing. Unless specifically ordered, every pleading or other paper filed in the proceedings, including the initial petition, shall also be served on each party. A pleading or other paper is

considered “filed” when it is received by the division.

(2) Method and Proof of Service.

(a) When service is to be made upon a party represented by an attorney or by a qualified representative, service shall be made upon the attorney or representative unless service upon the party is ordered by the arbitrator. Service shall be made by delivering or mailing, by United States mail postage prepaid, a copy of the document to the attorney, representative, or party at that person's last known address.

(b) When the unit owners have not designated a unit owner representative to represent their interest in a recall proceeding or when the unit owner representative cannot be ascertained, the arbitrator shall require that the association post a copy of the petition for recall arbitration and the order allowing answer on the condominium property in a conspicuous location as a means of notifying the unit owners of the recall arbitration.

(c) Certificate of Service. When any attorney, representative, or unrepresented party signs a certificate of service such as the following, the certificate of service shall be taken as evidence of service in compliance with these rules:

“I certify that a copy hereof has been furnished

to (here insert name or names and address or addresses) by U.S. mail this \_\_\_ day of \_\_\_, 20\_\_

.”

\_\_\_\_\_  
Signature

(3) Number of Copies. Only the original of all pleadings shall be filed with the arbitrator; no copies shall be filed. However, the initial petition for recall arbitration shall be accompanied by one (1) copy for the respondents.

(4) “Filing” shall mean receipt by the Division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the Division received the document. Except for the initial petition for recall arbitration, a facsimile copy is filed within the meaning of this rule when the facsimile copy of the document is received by the Division. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

(5) Any pleading or other document received after 5:00 p.m. shall be deemed to be filed as of 8:00 a.m. on the next regular business day.

(6) All pleadings and motions filed shall contain the following:

(a) The style of the proceeding involved;

(b) The case number, if any;

(c) The name of the party on whose behalf the pleading or motion is filed;

(d) The name, address, and telephone number of the person filing the pleading or motion;

(e) The signature of the person filing the pleading or motion; and

(f) A certificate of service attesting that copies have been furnished to other parties as required by subsection (2) of this rule.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.09, 7D-50.009, Amended 1-17-93, Formerly 7D-50.115, Amended 1-19-97, 6-24-04.*

An application to the arbitrator for an order shall be made by written motion, unless made during a hearing. The motion shall state in detail the grounds for the relief requested and shall set forth the relief or order sought. The arbitrator shall conduct such proceedings and render such orders as are deemed necessary to dispose of issues raised by motion. Other parties may, within 7 business days of service of a written motion, file a written response in opposition to the motion.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 7-1-82, Formerly 7D-50.12, 7D-50.012, Amended 1-17-93, Formerly 7D-50.117, Amended 1-19-97, 6-24-04.*

#### 61B-50.119 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.

(1) Any dispute which does not involve a disputed issue of material fact shall be arbitrated as hereinafter provided.

(2) At any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order denying relief and certifying the recall if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition.

(3) At any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief and failing to certify the recall if the arbitrator finds that no meritorious defense exists or if substantial compliance with the requirements of the rules and statutes relating to recall has not been demonstrated, and the petition is otherwise appropriate for relief.

(4) No formal evidentiary hearing as described by Rule 61B-50.131, Florida Administrative Code, shall be conducted for arbitrations determined pursuant to this rule. The arbitrator shall decide the dispute based solely upon the pleadings and evidence filed by the parties.

(5) Any party may move for summary final order whenever there are no disputed issues of material fact. The motion shall be accompanied by supporting affidavits if necessary. All other parties may, within 7 days of service of the motion, file a response in opposition, with or without supporting affidavits.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 1-17-93, Formerly 7D-50.119, Amended 2-13-97, 6-24-04.*

#### 61B-50.124 Discovery.

(1) The discovery process shall be used sparingly and only for the discovery of those things that are necessary for the proper disposition of the petition. Parties may obtain discovery only upon the prior approval of the arbitrator. A motion to conduct discovery shall describe with specificity the subject matter of the discovery and the method(s) by which discovery will be sought. The arbitrator may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(2) Except as otherwise specified herein, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. However, a unit owner desiring to obtain copies of official association records for use in the proceeding shall utilize the owner's right of access to the official records as provided by Sections 718.111(12) and 719.104(2), Florida Statutes, in lieu of formal discovery.

(3) A party may seek enforcement of an order directing discovery by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the order resides.

(4) At any time after the filing of the petition for arbitration, the arbitrator may enter an order requiring the parties to submit supplemental information, evidence or affidavits in support of or refuting the reason(s) listed in the petition as grounds for failing to certify the recall.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.15, 7D-50.015, Amended 1-17-93,*

*Formerly 7D-50.124, Amended 1-19-97, 6-24-04.*

61B-50.126 Conduct of Proceeding by Arbitrator.

(1) The failure or refusal of a respondent to comply with a provision of these rules or any lawful order of the arbitrator shall result in the striking of the answer including any defenses or pending claims where such failure is deemed willful, intentional, or a result of neglect.

(2) The failure or refusal of an association to comply with any lawful order of the arbitrator or with a provision of these rules shall result in a dismissal of the petition where such failure is deemed willful, intentional, or a result of neglect.

(3) In order to expedite the case, the arbitrator may, without the agreement of the parties, conduct any proceeding permitted under these rules, including a motion hearing or final hearing, by telephone or video conference.

(4) At any time after a petition has been filed with the division for arbitration, the arbitrator may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibility of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a prehearing stipulation.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(k), (l), 718.1255, 719.106(1)(f) FS. History—New 1-17-93, Formerly 7D-50.126, Amended 1-19-97.*

61B-50.127 Subpoenas and Witnesses; Fees.

(1) A subpoena requiring the attendance of witnesses or the production of documents, whether for purposes of discovery or for purposes of a final hearing, may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age, as provided in Rule 1.410, Florida Rules of Civil Procedure, or as that rule may subsequently be renumbered. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(2) All witnesses, other than public employees subpoenaed to appear in their official capacity, appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as set forth in Section 92.142, Florida Statutes, or as that statute may subsequently be renumbered. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(3) Any party or any person upon whom a subpoena is served or to whom a subpoena is directed may file a motion to quash or for protective order.

(4) Subpoenas shall be issued from the arbitrator in blank except for the case style, the case number, the name, address and telephone number of the attorney or party requesting issuance of the subpoena and the signature of the arbitrator assigned. Subpoenas shall be completed and served by the party requesting issuance of the subpoenas.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.19, 7D-50.019, Amended 1-17-93, Formerly 7D-50.127, Amended 1-19-97, 6-24-04.*

61B-50.130 Stenographic Record and Transcript.

(1) Any party wishing to obtain a stenographic record shall make such arrangements directly with the court reporter for such services and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall bear all the costs of obtaining such a record.

(2) Any party may have a stenographic record and transcript made of the final hearing at the party's own expense. The record transcript may be used in subsequent legal proceedings subject to the applicable rules of evidence.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255,*

719.106, 719.1255 FS. History—New 1-17-93, Formerly 7D-50.130, Amended 1-19-97, 6-24-04.

61B-50.131 Conduct of Formal Hearing; Evidence.

(1) Hearings shall be open to the public. However, the arbitrator shall exclude any observer, witness or party who is disruptive to the conduct of the hearing.

(2) Each party shall have the right to present evidence, cross examine the other party's witnesses, enter objections, and to rebut the evidence presented against the party.

(3) The arbitrator is authorized to administer oaths. Oral testimony shall be taken only upon oath or affirmation.

(4) Unless otherwise ordered by the arbitrator, the petitioner shall present its evidence and witnesses. Thereafter, the respondent may present its evidence and witnesses.

(5) Evidence.

(a) An arbitration proceeding is less formal than a court proceeding. The arbitrator shall admit any relevant evidence if it is the kind of evidence on which reasonable, prudent persons rely in the conduct of their affairs. Reliable, relevant evidence may be presented by the parties. Facts are to be proven through the testimony of witnesses under oath at the final hearing and through documents admitted into evidence at the request of a party. Hearsay evidence (i.e., statements not made at the final hearing under oath, used to establish the truth of the matter asserted) may be used to supplement or explain other evidence, but is not sufficient to support a finding, unless the hearsay evidence would be admissible in a court of law. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. Irrelevant and unduly repetitious evidence shall not be admitted into evidence.

(b) All exhibits shall be identified as petitioner's exhibits, respondent's exhibits, or as joint exhibits. The exhibits shall be marked in the order that they are received and made a part of the record.

(c) Documentary evidence may be received in the form of a photocopy.

(6) The arbitrator shall afford the parties an opportunity to submit proposed findings of fact, conclusions of law, and proposed orders, or legal briefs or memoranda on the issues, within a time designated by the arbitrator after the final hearing.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.22, 7D-50.022, Amended 1-17-93, Formerly 7D-50.131, Amended 1-19-97, 6-24-04.*

61B-50.136 Notice of Final Hearing; Scheduling; Venue; Continuances.

(1) The arbitrator shall set the time and place for all final hearings. The arbitrator shall serve written notice of the final hearing by regular mail on all parties of record.

(2) All hearings shall be held in the state of Florida. Whenever possible, hearings shall be held in the area of residence of the parties and witnesses or at the place most convenient to all parties as determined by the arbitrator.

(3) In the arbitrator's discretion, a continuance of a hearing shall be granted for good cause shown. Requests for continuance shall be made in writing. Except in cases of emergency, requests for continuance must be made at least 10 days prior to the date noticed for the final hearing.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.24, 7D-50.024, Amended 1-17-93, Formerly 7D-50.136, Amended 1-19-97, 6-24-04.*

61B-50.139 Final Orders.

(1) Unless waived, a final order shall be entered within 30 days after any final hearing, receipt by the arbitrator of the hearing transcript if one is timely filed, or receipt of any post-hearing memoranda, whichever is applicable. The final order shall be in writing and shall include a statement of whether or not the recall was certified. Failure to render a decision within such time period shall not invalidate the

decision.

(2) The final order shall be mailed to the parties, if unrepresented, or to their counsel or other qualified representative of record by regular U.S. mail. The final order shall include a certificate of service which shall show the date of mailing of the final order to the parties.

(3) In reaching a decision, the arbitrator may take official notice of and find as true without proof, any fact which may be judicially noticed by the courts of this state, including any arbitration final order or any final order of the division involving a similar or related issue.

(4) A final order certifying the recall of one or more board members takes effect upon the mailing of the final order. As of the moment of mailing, those board members found to be recalled cease to be authorized board members and shall not exercise the authority of the association.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.25, 7D-50.025, Amended 1-17-93, Formerly 7D-50.139, Amended 1-19-97, 6-24-04.*

#### 61B-50.140 Technical Corrections; Rehearing.

(1) Any party may file a motion to correct any clerical mistake or error arising from oversight or omission in any final order entered by an arbitrator within 10 days of the date on which the order was entered. "Clerical corrections" shall be generally defined as computational corrections, correction of clerical mistake or typographical error or other minor corrections of error arising from oversight or omission; or an evident miscalculation of figures or an evident mistake in the description of any thing, person, or property referred to in the order; or an award by the arbitrator upon a matter not submitted. The order may be corrected without affecting the merits of the decision upon the issues submitted. Such correction shall be achieved by the entry of a corrected order. The substance of the order itself may not be modified.

(2) The arbitrator may on his or her own motion initiate entry of a corrected order as described by subsection (1) above within 60 days of the entry of the final order.

(3) No motion for rehearing of a final order certifying the recall shall be filed.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 1-17-93, Formerly 7D-50.140, Amended 1-19-97, 6-24-04.*

#### 61B-50.1405 Motions for Attorney's Fees and Costs.

No party shall be entitled to recover its costs and attorney's fees in a recall proceeding initiated pursuant to Section 718.112(2)(j) or 719.106(1)(f), Florida Statutes.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 6-24-04.*

**Section 718.112(2)(j), Florida Statutes; Recall of Board Members**

(j) *Recall of board members.*--Subject to the provisions of s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided herein. The board shall duly notice and hold a board meeting within 5 full business days of the adjournment of the unit owner meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall a member or members of the board, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall a member or members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file with the division a petition for arbitration pursuant to the procedures in s. 718.1255. For the purposes of this section, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the board, the recall will be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 718.501. Any member or members so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days of the effective date of the recall.

4. If the board fails to duly notice and hold a board meeting within 5 full business days of service of an agreement in writing or within 5 full business days of the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

5. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures

governing the conduct of the recall election as well as the operation of the association during the period after a recall but prior to the recall election.

## CHAPTER 61B-23 THE ASSOCIATION

**61B-23.0026 Right to Recall and Replace a Board Member; Developers; Other Unit Owners; Class Voting.**

(1) Developer Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to Section 718.301, Florida Statutes, or Rule 61B-23.003, Florida Administrative Code, the following provisions apply to recall and replacement of board members elected or appointed by a developer:

(a) Only units owned by the developer shall be counted to establish a quorum for a meeting to recall and replace a board member who was elected or appointed by that developer.

(b) The percentage of voting interests required to recall a board member who was elected or appointed by a developer is a majority of the total units owned by that developer.

(c) A board member who is elected or appointed by a developer may be recalled only by that developer.

(d) Only the developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected or appointed by that developer.

(2) Unit Owner Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to Section 718.301, Florida Statutes, or Rule 61B-23.003, Florida Administrative Code, the following provisions apply to recall and replacement of board members elected or appointed by unit owners other than a developer:

(a) Only units owned by unit owners other than a developer shall be counted to establish a quorum at a meeting to recall and replace a board member elected by unit owners other than a developer.

(b) The percentage of voting interests required to recall a board member elected by unit owners other than a developer, is a majority of the total units owned by unit owners other than a developer.

(c) A board member who is elected by unit owners other than a developer may be recalled only by unit owners other than a developer.

(d) Only unit owners other than a developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected by unit owners other than a developer.

(3) Class Voting. When the declaration provides that a specific class of unit owners is entitled to elect a member or members to the board, the class of unit owners electing such member or members to the board shall constitute all the voting interests within the meaning of Section 718.112(2)(k), Florida Statutes, that may recall or remove such board member or members.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.112, 718.301 FS. History—New 12-20-92, Formerly 7D-23.0026, Amended 12-20-95.*

**61B-23.0027 Recall of One or More Members of a Board of Administration at a Unit Owner Meeting; Board Certification; Filling Vacancies.**

(1) Calling a Recall Meeting. Regardless of any provision to the contrary in the condominium documents, 10 percent of the voting interests may call a meeting of the unit owners to recall one or more members of the board by the voting interests giving the notice specified in paragraphs (2)(a) and (b) below. As utilized in this rule, the phrase “condominium documents” means the recorded declaration of condominium and all recorded exhibits and amendments thereto, and the articles of incorporation and bylaws of the condominium association in effect, and any amendments to each which are in effect.

(2) Noticing a Recall Meeting.

(a) Signature List. Prior to noticing a unit owner meeting to recall one or more members of the board, a list shall be circulated for the purpose of obtaining signatures of not less than 10 percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a unit owner meeting to recall one or more members of the board;

2. State that replacement board members shall be elected at the meeting if a majority or more of the existing board members are successfully recalled at the meeting; and,

3. Contain lines for the voting interest to fill in his unit number, signature and date of signature.

(b) Recall Meeting Notice. The recall meeting notice shall:

1. State that the purpose of the unit owner meeting is to recall one or more members of the board and, if a majority or more of the board is subject to recall, the notice shall also state that an election to replace recalled board members will be conducted at the meeting;

2. List by name each board member sought to be recalled at the meeting, even if every board member is sought to be recalled;

3. Specify a person, other than a board member subject to recall at the meeting, who shall determine whether a quorum is present, call the meeting to order, preside, and proceed as provided in paragraph (3)(b) of this rule;

4. List at least as many eligible persons who are willing to be candidates for replacement board members as there are board members sought to be recalled, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement board members shall not be listed when a minority of the board is sought to be recalled, as the remaining members of the board may appoint replacements. In addition, the notice must state that nominations for replacement board members may be taken from the floor at the meeting;

5. Have attached to it a copy of the signature list referred to in paragraph (2)(a) above;

6. Be mailed or delivered to all unit owners at least 10 days prior to the meeting, if the association is incorporated, unless a different time for notice of the meeting is provided in the condominium documents. If the association is unincorporated, notice shall be mailed or delivered according to the time requirements stated in the condominium documents for sending unit owner meeting notices; and,

7. Be delivered to the board at least 10 days prior to the recall meeting, unless the condominium documents provide a different notice requirement. The notice shall become an official record of the association upon actual receipt by the board.

(3) Recall Meeting; Electing Replacements.

(a) Date for Recall Meeting. If the association is incorporated, a recall meeting shall be held not less than 10 days nor more than 60 days from the date when the notice of the recall meeting is mailed or delivered, unless otherwise provided in the condominium documents. If the association is unincorporated, the meeting shall be held within the times required by the condominium documents.

(b) Conducting the Recall Meeting. After determining that a quorum exists (proxies may be used to establish a quorum) and the meeting is called to order, the voting interests shall proceed, as follows:

1. A representative to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling unit owners in the event the board disputes the recall, shall be elected or designated by the presiding officer.

2. A person to record the minutes of the recall meeting, who shall not be a board member subject to recall at that meeting, shall be elected or designated by the presiding officer.

3. The requirements of this subsection do not prohibit the voting interests from electing one person to perform one or more of these functions.

(c) Recall Meeting Minutes. The minutes of the recall meeting shall:

1. Record the date and time the recall meeting was called to order and adjourned;

2. Record the name or names of the person or persons chosen as the presiding officer, the recorder of the official minutes and the unit owner representative's name and address;

3. Record the vote count taken on each member of the board sought to be recalled;

4. State whether the recall was effective as to each member sought to be recalled;

5. Record the vote count taken on each candidate to replace the board members subject to recall and, if applicable, the specific seat each replacement board member was elected to, in those cases where a majority or more of the existing board was subject to recall; and,

6. Be delivered to the board and, upon such delivery to the board, become an official record of the association.

(d) Separate Recall Vote. The voting interests shall vote to recall each board member separately, unless otherwise provided in the declaration or bylaws.

(e) Filling Vacancies. When the voting interests have recalled one or more board members at a unit owner meeting, the following provisions apply regarding the filling of vacancies on the board:

1. If less than a majority of the existing board is recalled at the meeting, no election of replacement board members shall be conducted at the unit owner meeting as the existing board may, in its discretion, fill these vacancies, subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, Florida Administrative Code, by the affirmative vote of the remaining board members. In the alternative, if less than a majority of the existing board is recalled at the unit owner meeting, the board may call and conduct an election which meets the requirements of Section 718.112(2)(d), Florida Statutes, and Rule 61B-23.0021, Florida Administrative Code, to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election, which is subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, Florida Administrative Code, shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote in person or by limited proxy to elect replacement board members in an amount equal to the number of recalled board members.

(f) Taking office. When a majority or more of the board is recalled at a unit owner meeting, replacement board members shall take office:

1. Upon the expiration of five full business days after adjournment of the unit owner recall meeting, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting; or,

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or,

3. Upon certification of the recall by the board; or,

4. Upon certification of the recall by the arbitrator, in accordance with subparagraph (5)(b)4. of this rule, if the board files a petition for recall arbitration.

(g) After adjournment of the meeting to recall one or more members of the board of administration:

1. Any rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

2. Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(4) Substantial compliance with the provisions of subsections (1), (2) and (3) of this rule shall be required for the effective recall of a board member or members.

(5) Board Meeting Concerning a Recall at a Unit Owner Meeting; Filling Vacancies. The board shall properly notice the board meeting at which it will determine whether to certify the recall of one or more board members at a unit owner meeting. It shall be presumed that recall of one or more board members at a unit owner meeting shall not, in and of itself, constitute grounds for an emergency meeting of the board if the board has been provided notice of the recall meeting as provided in subparagraph (2)(b)7. of this rule.

(a) Certified Recall. If the recall of one or more board members by vote at a unit owner meeting is certified by the board, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession

within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, Florida Administrative Code, regardless of whether the authority to fill vacancies in this manner is provided in the condominium documents. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote, as defined by Rule 61B-23.0021, Florida Administrative Code, on the proposed replacement member; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by Section 718.112(2)(d)3., Florida Statutes, and Rule 61B-23.0021, Florida Administrative Code, in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected at the recall meeting shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the board. If the board votes not to certify the recall of one or more board members at a unit owner meeting for any reason, the following provisions apply:

1. The board shall, subject to the provisions of Chapter 61B-50, Florida Administrative Code, file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the recall of one or more members of the board.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (5)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of replacement board members elected at the recall meeting shall expire in accordance with the provisions of subparagraph (5)(a)3. of this rule.

(6) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall by vote at a unit owner meeting are an official record of the association and shall record the following information:

(a) The date and time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(7) Failure to duly notice and hold the board meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting.

(b) If a majority of the board is recalled, replacement board members elected at the unit owner meeting shall take office immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting, in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled,

each recalled board member shall immediately return to the board all association records in his possession.

(8) Computation of five full business days. In computing the five full business days prescribed by Section 718.112(2)(k), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section 683.01, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in Section 683.01, Florida Statutes, shall be included.

*Specific Authority 718.112(2)(j)5., FS. Law Implemented 718.112(2)(j) FS. History—New 12-20-92, Formerly 7D-23.0027, Amended 8-24-94, 12-20-95, 2-19-01.*

### **61B-23.0028 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.**

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more members of the board of administration shall:

(a) List by name each board member sought to be recalled;

(b) Provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement board members as there are board members subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement members shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are board members sought to be recalled. A space shall be provided and designated for write-in votes. The failure to comply with the requirements of this subsection shall not effect the validity of the recall of a board member or members;

(d) Provide a space for the person signing the written agreement to state his name, identify his unit and indicate the date the written agreement is signed;

(e) Provide a signature line for the person executing the written agreement to affirm that he is authorized in the manner required by the condominium documents to cast the vote for that unit;

(f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the persons executing the written agreement;

(g) The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday, as prescribed by Section 110.117, Florida Statutes, shall be deemed effective as of the next business day that is not a Saturday, Sunday, or legal holiday. Service of the written agreement on an officer, association manager, board member or the association's registered agent will be deemed effective service on the association. Service upon an attorney who has represented the association in other legal matters will not be effective on the association unless that attorney is a board member, the association's registered agent, or has otherwise been retained by the association to represent it in the recall proceeding. Personal service shall be effected in accordance with the procedures set out in Chapter 48, Florida Statutes, and the procedures for service of subpoenas as set out in Rule 1.410(c), Florida Rules of Civil Procedure; and

(h) Become an official record of the association upon service upon the board.

(i) Written recall ballots in a recall by written agreement may be reused in one subsequent recall effort. Written recall ballots do not expire through the passage of time, however, written recall ballots

become void with respect to the board member sought to be recalled where that board member is elected during a regularly scheduled election.

(j) Written recall ballots may be executed by an individual holding a power of attorney or limited proxy given by the unit owner(s) of record.

(k) Any rescission or revocation of a unit owner's written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served the written recall agreements.

(2) Substantial compliance with the provisions of subsection (1) of this rule shall be required for an effective recall of a board member or members.

(3) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more board members shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, Florida Administrative Code, regardless of whether the authority to fill vacancies in this manner is provided in the condominium documents. As utilized in this rule, the phrase "condominium documents" means the recorded declaration of condominium and all recorded exhibits and amendments thereto, and the articles of incorporation and bylaws of the condominium association in effect, and any amendments to each which are in effect. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote, as defined by Rule 61B-23.0021, Florida Administrative Code, on the proposed replacement member; if a quorum is not obtained, or otherwise) the board may, in its discretion, call and hold an election in the manner provided by Section 718.112(2)(d)3., Florida Statutes, and Rule 61B-23.0021, Florida Administrative Code, in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, subject to the provisions of Chapter 61B-50, Florida Administrative Code, file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected by written agreement of the voting interests shall become effective upon mailing of the final order of arbitration. The term of office of those replacement board members elected by written agreement of the voting interests shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a board member, regardless of any provision to the contrary in the condominium documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and unit owner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement.

(4) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record the following information:

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a board member, regardless of any provision to the contrary in the condominium documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and unit owner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement

(a) The date and time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(5) After service of a written agreement on the board:

(a) Any written rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(6) Taking Office. When a majority or more of the board is recalled by written agreement, replacement board members shall take office:

(a) Upon the expiration of five full business days after service of the written agreement on the board, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days after service of the written agreement; or,

(b) Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or,

(c) Upon certification of the recall by the board; or,

(d) Upon certification of the recall by the arbitrator, in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(7) Failure to Duly Notice and Hold a Board Meeting. If the board fails to duly notice and hold the board meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

(b) If a majority of the board is recalled, replacement board members elected by the written agreement shall take office upon expiration of five full business days after service of the written agreement on the board in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his

possession.

(8) Computation of Five Full Business Days. In computing the five full business days prescribed by Section 718.112(2)(j), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section 110.117, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in Section 110.117, Florida Statutes, shall be included.

*Specific Authority 718.112(2)(j)5. FS. Law Implemented 718.112(2)(j) FS. History—New 12-20-92, Formerly 7D-23.0028, Amended 12-20-95, 2-19-01, 6-7-04.*

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

IN RE: PETITION FOR RECALL ARBITRATION

\_\_\_\_\_,  
Petitioner (*name of association  
filing petition*),

v.

Case No. \_\_\_\_\_  
(*To be assigned by Division*)

UNIT OWNERS VOTING FOR RECALL,

Respondent.  
\_\_\_\_\_ /

RECALL ARBITRATION PETITION  
(*for contesting a recall by written agreement*)

The original of this recall arbitration petition form, which shall be accompanied by a \$50.00 filing fee and one copy for the respondent, shall be mailed (and may be faxed) to:

Department of Business and  
Professional Regulation  
Attn: Arbitration Section  
1940 North Monroe Street  
Tallahassee, FL 32399-1029  
Fax: 850-487-0870

The petitioner shall attach a complete copy of the bylaws, articles of incorporation, declaration of condominium or cooperative documents, and rules, including any amendments to each, as well as any other documents that are pertinent to the petition.

The petitioner files this recall arbitration petition in accordance with Chapter 61B-50, Florida Administrative Code (specifically Rule 61B-50.105(2), Florida Administrative Code), and states as follows:

1. The name of the association is \_\_\_\_\_.
2. The name and address of the association's qualified representative or attorney is :

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3. The total number of voting interests in the association is \_\_\_\_\_.

4. The total number of seats on the association's board of directors is \_\_\_\_\_.

5. The names of the board members against whom the written recall agreement was directed and the total number of votes to recall each board member are:

- a. \_\_\_\_\_ b. \_\_\_\_\_
- c. \_\_\_\_\_ d. \_\_\_\_\_

6. The date(s) of the next regularly scheduled election for the seat(s) of the board member(s) being recalled is/are \_\_\_\_\_.

7. The name, address, and telephone number (if known) of the unit owners' representative referenced in the recall agreement is:

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8. The attempted recall was by written agreement. The written recall agreement was received by the board on (date) \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. A copy of the written recall agreement is attached to the petition as Composite Exhibit 1 and made a part of the petition.

9. The board determined not to certify the recall at a meeting held on (date) \_\_\_\_\_. The meeting was called to order at \_\_\_\_\_ a.m./p.m., and adjourned at \_\_\_\_\_ a.m./p.m. A copy of the minutes of the board meeting is attached as Composite Exhibit 2.

10. As reflected in the minutes of the board meeting, or in any resolution adopted by the board at the meeting, the board determined to not certify the recall because: (list each specific vote

*rejected by the board and each specific basis upon which the board at the board meeting based its determination to reject the vote and not certify the recall).*

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A copy of each supporting document, such as voting certificates or signature samples that were considered by the board in rejecting individual written agreements, is attached as Composite Exhibit 3.

WHEREFORE, petitioner requests that the arbitrator enters a final order upholding the decision not to certify the recall.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_\_.

Submitted by:

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(Signed)

**SAMPLE WRITTEN RECALL AGREEMENT / BALLOT FORM**

**BLOCK A**

This agreement is being circulated for the purpose of recalling the board members listed below, currently serving on the board of directors at \_\_\_\_\_ (*fill in name of association*). Pursuant to section 718.112(2)(j), Florida Statutes, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. Rule 61B-23.0028, Florida Administrative Code, governs recall by written agreement. This recall ballot may be used for a successive recall effort if the first recall effort is unsuccessful. Any revocation of this agreement must be in writing and delivered to the board prior to service of the recall agreement on the board.

**THE BOARD MEMBERS SUBJECT TO RECALL ARE LISTED BELOW. PLEASE CAST YOUR VOTE BY PLACING A CHECK MARK IN EITHER THE "RECALL" OR "RETAIN" BOX NEXT TO EACH BOARD MEMBER'S NAME.**

	RECALL	RETAIN
Name of board member _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of board member _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of board member _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of board member _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of board member _____	<input type="checkbox"/>	<input type="checkbox"/>

**BLOCK B**

**BALLOT FOR REPLACEMENT OF BOARD MEMBERS (use only where at least a majority of the board is being recalled)**

The individuals listed below have indicated their willingness to replace the recalled board members. You may vote for these candidates by placing a check mark in the box next to the candidate's name OR you may write in the name of a write-in candidate. **In any event, do not vote for more than a total of the number of directors sought to be recalled, including write-in candidates.**

	Check Mark
Name of replacement board member _____	<input type="checkbox"/>
Name of replacement board member _____	<input type="checkbox"/>
Name of replacement board member _____	<input type="checkbox"/>
Name of replacement board member _____	<input type="checkbox"/>
Name of replacement board member _____	<input type="checkbox"/>
Write-In Candidate _____	<input type="checkbox"/>

**BLOCK C**

\_\_\_\_\_  
Unit Owner(s) (Print name)

\_\_\_\_\_  
Unit Number

By signing this document, I affirm that I am authorized in the manner required by the condominium documents to cast this vote on behalf of this unit.

\_\_\_\_\_  
Unit Owner(s) Signature

\_\_\_\_\_  
Date signed

**UNIT OWNERS' REPRESENTATIVE:** The person identified below has been designated as the unit owners' representative who will receive the recall agreements, open the written agreements, tally the votes, serve copies of the agreements on the board, and receive other information on behalf of the unit owners: (*below, fill in the name and address of the unit owners' representative*)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Sample Written Recall Agreement Instructions

*To recall and replace board members listed on the recall agreement, please follow the steps below:*

- (1) In Block A on the attached form, place a check mark on the "RECALL" line next to the name of each board member you wish to recall and remove from the board. Place a check mark next to the board member's name on the "RETAIN" line if you are voting for the board member to remain on the board.
- (2) Place a check mark next to the names of the candidates in Block B who you wish to replace the recalled board members **OR** you may write in your own choices. **DO NOT VOTE FOR MORE THAN A TOTAL OF THE NUMBER OF DIRECTORS SOUGHT TO BE RECALLED. This includes voting for persons listed, write-in votes, or a combination.** The ballot for replacement board members in Block B should be included and filled in on the written agreement only if a majority or more of the board members are sought to be recalled. Where a majority or more of the board members are recalled, the owners have the right to name replacement board members. If less than a majority of the board is recalled, the remaining board members have the right to appoint replacements.
- (3) In Block C, print your name and unit number in the space designated. Sign the agreement in the space designated. This will affirm that you are authorized to cast the vote, in the manner required by the documents. If your unit is owned by more than one person, your documents may require that a voting certificate be filed with the association designating which owner has the authority to cast votes on behalf of the unit. If your documents require a voting certificate and one has not been filled out and delivered to the association, your vote may be rejected.
- (4) Return the executed agreement to the unit owners' representative named in the agreement in Block C.