

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

REGULAR FINAL ORDER INDEX VOLUME ONE

Note: This index contains summaries of final orders entered by division arbitrators in the arbitration program described by Section 718.1255, Florida Statutes, during the period January 1992 through August 1997. The final order summaries are organized by subject matter. Final orders entered after August 1997 are reported in a subsequent publication.

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Age-Restrictions (See Fair Housing Act)**Alienation (See Unit-Restraints on alienation)****Annual Meeting (See Meetings-Unit owner meetings)****Arbitration*****Affirmative defenses***Alan v. Boca Cove Home Condo. Assn., Inc.,

Case No. 92-0263 (Scheuerman / Order Denying Motion for Stay / January 7, 1993)

- Fact that issues presented in petition for arbitration are currently being investigated by Division does not operate as a legal bar to arbitration proceeding; the complaint process and the arbitration proceeding are two independent mechanisms which bear no relationship to each other.

Bronstein v. Hills of Inverrary Condo., Inc.,

Case No. 94-0147 (Goin / Order Denying Motion to Dismiss / July 28, 1994)

- Motion alleging that arbitrator lacked jurisdiction because dispute involved interpretation of the condominium documents denied. Appellate cases prohibiting division in administrative enforcement action from interpreting ambiguous condominium documents find no application to the arbitration program as arbitrators act in a quasi-judicial capacity and may properly interpret ambiguous condominium documents.

Chateau Chaumont of Ibis Isle Assn., Inc. v. Williams,

Case Nos. 93-0327; 93-0326 (Draper / Case Management Order / August 16, 1994)

- Where association filed arbitration petition against unit owners seeking removal of unauthorized dogs, affirmative defense of unit owners that there is a lack of security on the premises, and that crimes occur with frequency in the surrounding community, struck.

Cramer v. Riverwoods Plantation RV Resort Condo. Assn., Inc.,

Case No. 94-0082 (Scheuerman / Order on Motion to Dismiss / June 28, 1994)

- Where petitioning unit owner failed to comply with a condition precedent to the institution of litigation by failing to give written notice of the grievance to the board prior to filing her petition for arbitration, cause for dismissal, or at least temporary relinquishment of jurisdiction, had been stated.

Earp v. Holiday Village Assn.,

Case No. 92-0250 (Player / Order on Jurisdiction / December 29, 1992)

- Issues raised in arbitration that previously were the subject of Bureau investigation are not subject to dismissal under the doctrine of collateral estoppel.

Glencove Apartment Condo. Master Assn., Inc. v. Weitz,

Case No. 93-0075 (Scheuerman / Order on Motion to Strike / August 20, 1993)

- Unit owner's answer complied with Rule 61B-45.019 requiring that the answer separately identify all facts, which the Respondent disputes. The answer sequentially denied nearly every fact alleged in the Petition including the fact that the association was the entity responsible for the operation of the condominium. A categorical denial of facts is, however, specifically identified as a consideration for a determination of any claim for costs and attorney's fees under Rule 61B-45.048, Florida Administrative Code.
- Affirmative defenses raised, including estoppel and waiver, should, within the contemplation of Rule 61B-45.019, Florida Administrative Code, include any facts forming the basis for the affirmative defenses.

Hazen v. America Outdoors Condo. Assn., Inc.,

Case No. 96-0298 (Goin / Final Order Dismissing Petition For Arbitration / November 20, 1996)

- Where declaration required that unit owners file a written complaint with association before filing litigation or arbitration and gave association 20 days to resolve dispute, petition dismissed for failure to comply with condition precedent.

Inverness at Golfview Condo. Assn., Inc. v. Dunlop,

Case No. 96-0247 (Oglo / Summary Final Order / November 13, 1996)

- While being a problem and inconvenience, the spraying of water by golf course sprinklers into respondents' lanai does not legally entitle the Dunlops to alter the exterior of their unit, by installing vinyl windows, without prior board approval.

Jamaica House Assn., Inc. v. Rudolph,

Case No. 94-0110 (Goin / Order on Petitioner's Motion to Strike Answer / August 29, 1994)

- Section 83.53 of Landlord/Tenant Law, requiring landlord to obtain tenant's consent prior to entering apartment, finds no application to condominium and therefore defense struck.

Le Club at Kendale Lakes Condo. Assn., Inc. v. Ruiz,

Case No. 95-0430 (Draper / Summary Final Order / June 28, 1996)

- Where declaration prohibited pets without association approval, defense by unit owner that no one from association had adequately explained rules and regulations held inadequate.

Madden v. Tiffany Lake Assn., Inc.,

Case No. 96-0085 (Draper / Final Order / November 14, 1996)

- Unit owner petitioner seeking relief against pet weight rule denied relief on grounds of waiver. Waiver may not be used as a sword; rather, it is to be used defensively. In addition, only ground asserted to support waiver was passage of time.

Oceanside Plaza Condo. Assn., Inc. v. Salussolia,

Case No. 95-0384 (Scheuerman / Partial Summary Order On Issue Of Limitations / September 23, 1996)

- Where association seeks to enforce provisions of declaration prohibiting changes to the common elements, action is founded on a written instrument and five-year statute of limitations applies.

Olive Glen Condo. Assn., Inc. v. Santa,

Case No. 96-0162 (Draper / Order Striking Certain Affirmative Defenses and Setting Prehearing Procedure / October 15, 1996)

- Tenants' affirmative defenses, that prior illegal activity and failure to supply information on an application are not grounds for eviction, rejected.

Pelican Reef Condo. Assn., Inc. v. Caban,

Case No. 95-0504 (Scheuerman / Final Order / November 14, 1996)

- Fact that prior owner performed material alteration without complying with documents did not insulate current owner from responsibility.

Smith v. Brittany Court Condo. Assn., Inc.,

Case No. 95-0256 (Draper / Summary Final Order / August 2, 1996)

- Statute of limitations defense rejected where association did not allege that the owner knew, or should have known, of board's action in contracting for maintenance services. Before a claim accrues for purposes of the statute of limitations, the claimant must be aware of his or her right of action.

Sun Properties, SA v. Gulf View Club Condo. Assn., Inc.,

Case No. 94-0458 (Grubbs / Order on Motion to Strike / May 12, 1995)

- Section 57.011, F.S., requiring a non-resident Plaintiff to post a bond of \$100.00 with the court to ensure payment of court costs, does not apply in arbitration proceeding.

Thomas v. Costa Del Sol Condo. Assn., Inc.,

Case No. 97-0025 (Oglo / Final Order of Dismissal / March 20, 1997)

- Owners filed a petition for arbitration claiming association was estopped from enforcing certain pet restrictions. Estoppel and selective enforcement are protective weapons only and are to be evoked as shields to an enforcement action and not as offensive weapons; the case was dismissed. However, these claims could be raised as affirmative defenses if the association decided to enforce the one-pet restriction.

Tortuga Club, Inc. v. Szarek,

Case No. 95-0274 (Goin / Final Order / February 13, 1997)

- Unit owners had standing to raise as a defense the failure of the association to obtain the consents of all institutional first mortgages. Association's argument that only institutional first mortgagee would have standing to challenge the validity of the amendment based on the failure to obtain the written consents of all institutional first mortgagees was rejected.

Villa Condo. I Assn., Inc. v. Bardy,

Case No. 94-0305 (Price / Final Order / April 19, 1995)

- Affirmative defense of waiver need not be specifically pled where facts upon which the defense is based are shown in the pleadings.

Evidence

Bayview at the Township Condo. Assn., Inc. v. Greenberg,

Case No. 96-0230 (Oglo / Final Order / May 22, 1997)

- Written agreement between the association and unit owner, regarding the conditions of bringing a dog on the condominium property, had handwritten alterations on it, causing its terms to be ambiguous. This permitted the arbitrator to consider parole evidence on the contract's terms.

Boca Center Plaza Condo. Assn., Inc. v. Mull,

Case No. 92-0165 (Helton / Order on Arbitration Procedure / August 17, 1992)

- Where dispute involved area rug in unit, parties ordered to submit photographs of room in question in order to permit Arbitrator to make factual determinations without necessity of conducting a formal hearing.

Le Club at Kendale Lakes Condo. Assn., Inc. v. Ruiz,

Case No. 95-0430 (Draper / Summary Final Order / June 28, 1996)

- Judicial notice taken of the fact that dog's barking is disturbing.

Generally

Ainslie at Century Village Condo. Assn., Inc. v. Liebgold,

Case No. 92-0223 (Player / Order Of Intent To Issue Final Order / July 20, 1993)

- Where record indicated that owner did not object to providing unit key to association, but objected to lax security under which key was kept, counsel were ordered to conduct an inspection of the key's location and security procedures. After association attorney notified arbitrator that inspection had been conducted and joint report prepared but unit owner's attorney had failed to indicate his view of the report, arbitrator ordered unit owner's attorney to indicate whether he disagreed with the report and that, if he did not, report would be accepted as true and a final order would be entered.

Bay Harbor Club Condo. Assn., Inc. v. Hawkins,
Case No. 92-0280 (Grubbs / Final Order / April 15, 1993)

- Neither parties nor arbitrator can waive arbitrator's jurisdiction over dispute to permit parties to proceed directly to court.

Four Seasons Condo. Assn. of Winter Park, Inc. v. Torres,
Case No. 92-0308 (Grubbs / Order on Motion to Supplement the Record / January 5, 1994)

- Where, after the conclusion of the formal hearing, the association filed a Motion to Supplement the Record which alleged that the Respondents have engaged in additional violations of the condominium documents after the hearing, the Motion to Supplement is denied as the arbitration rules do not contemplate supplemental pleadings or hearings. The association, under such circumstances, may appropriately file a separate Petition for Arbitration alleging the additional violations.

Friesen v. Boca Village Condo. Assn., Inc.,
Case No. 94-0498 (Draper / Order to Show Cause / December 9, 1994)

- Unless a unit owner alleges and proves negligence on the part of the association in failing to maintain the common elements, the unit owner cannot recover for damages caused to her unit by the failure.

Lakeview Gardens Condo. Assn., Inc. v. Hernandez,
Case No. 92-0158 (Grubbs / Order Denying Motion for Relief From Final Order / May 12, 1994)

- An arbitration "final" order is not actually final or enforceable until thirty days have passed from its issuance. Accordingly, the arbitrator would still have jurisdiction over the dispute during that thirty-day period. Therefore, the arbitrator would have jurisdiction to vacate the final order during that time unless a complaint for trial de novo had been filed.
- A final order may, within the thirty days provided by rule, be vacated whenever the failure to do so would result in manifest injustice.

Petersile v. Windwood Condo. Assn., Inc.,

Case No. 94-0245 (Draper / Summary Final Order / October 21, 1994)

- Association's answer stricken where individual representing association failed to provide either minutes of the board meeting at which the board authorized the representation or state in an affidavit the date of the meeting at which he was given authority to represent association.

Savannah Condo. Assn., Inc. v. Trans Management Corp.,

Case No. 93-0049 (Grubbs / Final Order / November 16, 1994) (currently on appeal)

- Issue argued in memorandum of law, but not raised in pleadings and not supported by facts alleged in pleadings, cannot ordinarily be considered by arbitrator.

Stonehedge Residents' Inc. v. Dryden,

Case No. 92-0160 (Player / Order Denying Petitioner's Motion for Technical Correction of Final Order / December 2, 1992)

- Motion requesting that arbitrator correct the method by which she calculated the number of voting interests required for a quorum at a shareholders meeting denied. The methods by which the arbitrator and association calculated a quorum were significantly different because they were based on fundamentally different understandings of the voting interests of non-resident shareholders. Thus, the change requested by the association was more than just a clerical or minor correction, as contemplated by administrative rule allowing clerical corrections to a final order, and motion denied.

Sun Resort, Inc. v. Jellystone Park Condo.,

Case No. 96-0007 (Scheuerman / Order On Motion For Clarification / June 21, 1996)

- Where election declared void, order was effective immediately if no stay requested and granted. Board legitimately in power after issuance of final order was the board as constituted prior to contested election.

Third Horizons Condo., Inc. v. Felicci,

Case No. 96-0340 (Oglo / Final Order Dismissing Case Without Prejudice to Refile / November 8, 1996)

- Case dismissed without prejudice to refile because it contained two independent causes of action against two different respondents.

Vendelin v. Golfview Condo. Assn., Inc.,

Case No. 93-0167 (Scheuerman / Summary Final Order / February 15, 1994)

- Petition failed to state a cause of action against association where unit owner merely alleged that broker informed prospective purchaser that parking of truck was permitted by documents.

Wilkins v. Oceanview Park Condo. Assn., Inc.,

Case No. 93-0325 (Draper / Order Denying Respondent's Motion to Dismiss / January 3, 1994)

- Where previous circuit court action was voluntarily dismissed by stipulation of the parties, and where subsequently filed arbitration included identical issues, doctrine of res judicata or collateral estoppel did not bar arbitration as a voluntary dismissal without prejudice is not an adjudication on the merits.

Jurisdiction (See Dispute)***Misarbitration/Recusal***Four Seasons Condo. Assn. of Winter Park, Inc. v. Torres,

Case No. 92-0308 (Grubbs / Order on Motion for Disqualification and Declaration of Misarbitration / August 20, 1993)

- Where non-party unit owner filed a letter with the Arbitrator addressing the merits of the case, the Respondent unit owner's Motion for Disqualification, not accompanied by an affidavit stating particular grounds and setting forth sufficient facts to show that Respondent has a well-founded fear that he will not receive a fair and impartial hearing, failed to comply with Rule 61B-45.008, Florida Administrative Code, and was accordingly denied.
- Rule 61B-45.040, Florida Administrative Code, providing for Motions for Disqualification, only addresses material errors committed by party, a party's attorney, or a party's representative and accordingly had no application where ex parte communication was filed by a non-party unit owner. Parties not denied fundamental fairness where Arbitrator published notice of receipt of the communication and permitted the parties to supplement proposed findings of fact and conclusions of law previously submitted.

Presley v. Venture out at Panama City Beach, Inc.,

Case No. 94-0358 (Grubbs / Order and Notice of Communication / May 1, 1995)

- Where letter written by counsel for a party impugning integrity of arbitrator was filed anonymously in pending case, arbitrator recused herself in order to avoid any appearance of impropriety.

Parties (See also Dispute-Standing)Casa Granada Condo. Assn., Inc. v. Diaz,

Case No. 93-0185 (Grubbs / Final Order on Default / January 3, 1994)

- Where identity of tenant was unknown to association seeking to bring arbitration forcing unit owner to remove tenant, and where the unit owner failed to respond to the Order Requiring Answer and Order Requiring the Unit Owner to Identify the Tenant,

Final Order on Default would be entered against unit owner requiring immediate removal of the unapproved tenant despite the fact that the Petition for Arbitration failed to comply with applicable rules requiring that tenants be made a party where the subject matter of the dispute involves the tenants.

Eden Owners Assn., Inc. v. Hennessee,

Case No. 94-0071 (Grubbs / Final Order of Dismissal / April 14, 1994)

- In association's petition alleging that the respondent unit owners did not agree with the association's purchase of association land, it is the unit owners, and not the association, which should file for arbitration.

1800 Atlantic Condo. Assn., Inc. v. Golan,

Case No. 94-0134 (Player / Order on Hearing Procedures / July 11, 1994)

- The only parties eligible to participate in an arbitration proceeding are unit owners, associations, and tenants under some circumstances. Representation of the association by counsel for the insurance carrier is deemed permissible where counsel appears as co-counsel for the association.

Gables Waterway Towers Assn., Inc. v. Novack,

Case No. 93-0286 (Player / Order on Respondent's Motion / October 28, 1993)

- Where association named in its petition the daughter of a unit owner who was engaging in alleged activities constituting a nuisance, daughter was dismissed as a party because she was not at least 18 years old.

Ginsberg v. Olympus Condo. Assn.,

Case No. 93-0210 (Player / Order Dismissing Petition for Lack of Jurisdiction / July 15, 1993)

- Arbitrator lacked jurisdiction to hear petition brought by a tenant residing in a unit which alleged that the association wrongfully refused to approve renewal of the lease. Under the applicable rules, the arbitration process may only be initiated by a unit owner or an association.

Maitland House Management, Inc. v. Martin,

Case No. 93-0242 (Draper / Order Joining Party Respondent / January 7, 1994)

- Where son occupied unit belonging to his father, and where association in arbitration sought entry of order requiring guests of son to be registered with association, son was in a broad sense a tenant and should be joined as a party respondent.

Orear v. Parkview Point Condo. Assn.,

Case No. 92-0168 (Scheuerman / Order Permitting Developer to Appear / September 28, 1992)

- In dispute to determine whether developer should be permitted to fill vacancies on the board, developer has a substantial interest in the outcome and could intervene as a party.

Osinski v. Bayview Terrace Condo. Assn., Inc.,

Case No. 92-0289 (Scheuerman / Order Determining Proper Respondents / December 4, 1992)

- Board members either individually or in their official capacity not proper parties under Section 718.1255, Florida Statutes, providing for arbitration of disputes between unit owners and associations.

Powers v. Voyager Condo. Assn., Inc.,

Case No. 93-0223 (Player / Order on Respondent's Motion to Dismiss / August 24, 1993)

- In dispute brought by unit owner alleging that the association failed to enforce parking assignment, the unit owner actually using the parking space, the use of which was appurtenant to the petitioning unit owner's unit, was not an indispensable party.

Pritchard v. Retreat Commons One Homeowners Assn.,

Case No. 92-0304 (Player / Order Granting Motion to Dismiss / February 15, 1993)

- Where unit owners filed Petition for Arbitration against their condominium association alleging, among other things, that an oak tree was blocking the unit owners' view of the community lake, where the property upon which the oak tree was situated was owned by a master association, which was also a condominium association within the meaning of the statute, the master association must be joined as a party in order to address the oak tree dispute, even where the master association delegated its maintenance responsibility concerning the parcel to the condominium association.

Schiffman v. Golden Isles Towers Condo. Assn., Inc.,

Case No. 93-0360 (Player / Order Joining Malcolm Singer as a Party Respondent / March 26, 1994) (Arbitrator's decision overturned. Golden Isles Towers Condo. Assn., Inc. v. Schiffman, / Case No. 94-13059(18) 17th Jud. Cir. Ct. / Feb. 22, 1996 (Plaintiffs were entitled to ownership and use of parking space 2-A and association had duty to enforce that right, where prior owner of space conveyed unit by warranty deed to defendants (Schiffman) but conveyed parking space by warranty deed to plaintiffs (Singers) and where declaration allowed such conveyance.)

- Where original petition filed by unit owner alleged that respondent association had failed to insure petitioner's exclusive use of a parking space appurtenant to the unit, and where petitioning unit owner alleged that the parking space was currently being used by Mr. Singer who would not relinquish his use of the parking space, Mr. Singer is an indispensable party and accordingly was made a party.

Sionne v. Pell Manor Condo. II Assn.,

Case No. 94-0195 (Draper / Order Requiring Joinder / August 17, 1994)

- In arbitration alleging that association had wrongfully reassigned parking spaces, where parking space claimed by Petitioners was occupied by another unit owner, and where that owner's space was occupied by yet a third unit owner, etc., owners whose parking spaces may be affected by the arbitration ordered to be joined as parties.

Szczepanski v. Cypress Bend Condo. II Assn., Inc.,

Case No. 96-0454 (Scheuerman / Final Order Dismissing Petition / August 4, 1997)

- Where, in response to challenge from association, petitioning owner did not file deed proving ownership of a unit as required by order of the arbitrator, petition dismissed on jurisdictional grounds as not involving an "owner" despite fact that petitioner resided in unit and was the husband of a record owner. Statute defines owner as record owner of legal title.

Prevailing party (see separate index on attorney's fees cases)

Sanction

Demling v. Green Hills Park West Condo., Inc.,

Case No. 93-0365 (Goin / Final Order Dismissing Petition / January 4, 1994)

- Where unit owner who filed Petition failed to respond to Order Requiring Supplementation of Petition, and failed to thereafter respond to Order to Show Cause, petition was dismissed for failure to comply with Order of Arbitrator.

The Glens Condo., Inc. v. Nelson,

Case No. 92-0163 (Player / Order Granting Motion for Sanctions / January 12, 1993)

- Sanctions including award of attorney's fees imposed where unit owner's attorney, in violation of Rule 7D-45.010, Florida Administrative Code, filed Motion to Dismiss with no basis in law or fact. Motion increased the cost of arbitration.

Jamaica House Assn., Inc. v. Rudolph,

Case No. 94-0110 (Goin / Order on Petitioner's Request for Sanctions / October 28, 1994)

- Where party/tenant failed to answer interrogatories twice, once after Order Permitting Discovery, and once after Order Granting Motion to Compel, tenant's answer stricken and tenant prohibited from presenting any evidence on his own behalf at the final hearing.

Midway Gardens Apartments Condo. Assn., Inc. v. Insausti,

Case No. 93-0236 (Price / Final Order Dismissing Petition for Arbitration / December 28, 1993)

- Where association, in filing Petition for Arbitration alleging that the unit owner's tenants were failing to comply with applicable rules and regulations, failed to initiate arrangements for prehearing conference as required by order of the arbitrator, and failed to file a prehearing stipulation, and failed to respond to an Order to Show Cause, petition was dismissed for failure to comply with the orders of the arbitrator.

Petersile v. Windwood Condo. Assn., Inc.,

Case No. 94-0245 (Draper / Summary Final Order / October 21, 1994)

- Association's answer stricken where individual representing association failed to provide either minutes of the board meeting at which the board authorized the representation or state in an affidavit the date of the meeting at which he was given authority to represent association.

Whisper Lake Condo. Assn., Inc. v. Scherber,

Case No. 94-0295 (Draper / Final Order on Default / March 9, 1995)

- Unit owner answer struck and final order on default entered where unit owner failed to respond to order of the arbitrator requiring responses to certain questions.

Assessments for Common Expenses (See Common Expenses)

Associations, Generally (For association records, See Official Records)

Garing v. Sugar Creek Country Club Travel Trailer Park Assn., Inc.,

Case No. 93-0153 (Goin / Final Order / March 23, 1994)

- Association not required to obtain a vote of the unit owners before borrowing \$7,000.00. Bylaws required unit owner vote only if the borrowing resulted in a total cumulative indebtedness of \$10,000.00 or more.

Licker v. Lauderdale West Community Assn., No. 1, Inc.,

Case No. 95-0186 (Richardson / Order Accepting Petition / June 15, 1995)

- Where community association contained both condominium owners as members as well as single family homeowner members, and where condominium association members did not have separate condominium association due to quirk in original documents, community association was condominium association regulated by Chapter 718.

Oakwood Court Condo. Assn., Inc. v. Ellis,

Case No. 94-0249 (Grubbs / Order Denying Motion to Dismiss Amended Petition and Order Denying Motion for Default / February 8, 1995)

- Where complaint stated association revoked a conditional license provided to unit owner to keep a pet, but only facts alleged concerning action taken by association regarding pet referred to annual meetings and vote of the unit owners, association ordered to file copies of minutes of board meeting(s) where board revoked the unit owners conditional license or cite provisions in documents, statutes, etc. that establishes authority of unit owners to take association action by vote at a meeting.

O'Reilly v. Treetops at North Forty Homeowners Assn., Inc.,

Case No. 95-0046 (Scheuerman / Arbitration Final Order / October 25, 1995)

- Association determined to be an "association" as defined by Chapter 718. Association was an entity which operated and maintained real property in which condominium unit owners have use rights; the association is composed exclusively of condominium unit owners, and membership is a required condition of unit ownership. Furthermore, despite a reservation of rights contained in the documents as to the developer and association, project is completely built out and neither the association nor the developer has the ability to add additional non-condominium properties. Existence of easement agreement with third party adjoining landowner by which landowner was entitled to utilize association storm water retention area did not operate to defeat association status.

Rodman v. Ocean Village Property Owners Assn., Inc.,

Case No. 94-0010 (Player / Final Order of Dismissal / April 18, 1994)

- Arbitrator lacked jurisdiction over respondent property owners association which was not composed exclusively of condominium unit owners and thus was not an association under section 718.103(2), Florida Statutes. Specifically, FDIC is a member in the property owners association, but it is not a unit owner as it simply owns a piece of undeveloped land within the development.

Second Forum Condo. Corp., Inc. v. Forum Board of Governors,

Case No. 96-0264 (Goin / Final Order Dismissing Petition for Arbitration / July 12, 1996)

- No jurisdiction over petition filed by association against master/recreation association for failure to pay its share of the water, garbage, and electricity bills.

Attorney-Client Privilege

Chateau Chaumont of Ibis Isle Assn., Inc. v. Williams,

Case No. 93-0327 (Draper / Case Management Order / March 21, 1994)

- Where association sought to produce, through discovery, any correspondence between the unit owner and his attorney concerning the subject matter of the action, request infringed on attorney-client privilege and work product privilege, was over broad, and unit owner's objection to request to produce was sustained.

Smith v. Edgewater Condo. Assn., Inc.,

Case No. 94-0216 (Richardson / Order on Discovery / September 28, 1994) (Appeal to circuit court dismissed due to settlement.)

- Attorney-client privilege protects communications made between a client and its attorney when that communication is made in confidence for the purpose of seeking legal advice.
- Association has burden of establishing the existence of the attorney-client privilege where unit owner, in course of discovery, seeks to obtain access to materials claimed to be confidential.
- In reviewing claims of attorney-client privilege, the first matter to be resolved is whether the communication was privileged as described by the Florida Supreme Court in Southern Bell v. Deason, 632 So. 2d 1377. For a communication to be privileged in a corporate setting, the communication must have been by an employee at the direction of his superior and be within the scope of the employee's duties. Where, in course of discovery, association inadvertently attached in response to interrogatory handwritten notes of unidentified association member, association failed to demonstrate that the communication was a privileged one. Furthermore, communication could not have been made in confidence because it was intended as a response to interrogatories. Moreover, association failed to demonstrate applicability of work product doctrine.

Board of Administration

Business judgment rule

Bronhard v. Opal Towers West Condo. Assn., Inc.,

Case No. 94-0407 (Richardson / Final Order of Dismissal / October 10, 1994)

- Arbitrator lacked jurisdiction to hear dispute regarding association's failure to enforce nuisance restriction against unit owner whose grandfather clock kept neighboring petitioner awake at night with its chiming. This dispute was essentially a dispute between unit owners where condominium documents did not place the affirmative obligation on the association to enforce the documents in all instances. The decision to enforce the documents in particular cases was a business judgment of the board.

Bronstein v. Hills of Inverrary Condo., Inc.,

Case No. 94-0147 (Goin / Summary Final Order / March 24, 1995)

- Where board determined to replace worn Chattahoochee decking with paver bricks, and further determined that such replacement was reasonably necessary for the maintenance, repair, and replacement of the common elements, under business judgment rule, board presumed to have acted properly.

DiBiase v. Beneva Ridge Condo. Assn.,

Case No. 92-0210 (Scheuerman / Final Order / January 19, 1994)

- Board is given wide latitude in its determination regarding maintenance of the common elements; board is typically given broad discretion in its exercise of ordinary business judgment.

Johnson v. Village of Windmeadows, No. 4, Condo. Assn., Inc.,
Case No. 95-0487 (Goin / Final Order / April 25, 1997)

- Where unit was flooded due to plumbing leak, unit owner did not establish that association's decision to repair leak rather than replumb entire building was unreasonable. During the two years since the leak and repair, no other leaks had occurred. Also, unit owner did not present any expert witness to establish that the board's decision not to replumb was unreasonable.

O'Neill v. Coral Isle East Condo. Assn., Inc.,
Case No. 93-0332 (Scheuerman / Final Order / June 24, 1994)

- Where board was required, in accordance with applicable valid local ordinances, to construct fence around recycling facility, the board decision on the precise placement of the facility is within the business judgment of the board and is not subject to unit owner vote.

Raska v. Fountains of Ponte Verdra, Inc.,
Case No. 93-0364 (Goin / Order / January 21, 1994)

- Board of directors is required to make day-to-day decisions affecting routine maintenance, and directors have wide discretion in performance of their duties. Board's decision regarding degree of maintenance required in chain link fence count and similar count regarding failure to adequately paint unit doors failed to state a cause of action for which relief could be granted.

Raska v. The Fountains Assn., Inc.,
Case No. 93-0364 (Goin / Summary Final Order / December 23, 1994)

- Day-to-day decisions made by board to remove some bushes and shrubberies and to plant bushes and shrubberies in other locations on the common elements fell within the board's duty to maintain, repair, and replace the common elements for which the board had a certain measure of discretion and deference under the business judgment rule. Although the change in landscaping may have altered the common elements somewhat, such alteration was made pursuant to the association's duty to maintain the landscaping and compliance with section 718.113(2), Florida Statutes, was not required.

Schwartz v. Brickell Townhouse Assn., Inc.,
Case No. 95-0222 (Goin / Arbitration Final Order / December 2, 1996)

- Board of directors did not abuse its discretion under the business judgment rule where it chose to locate a structure to house an emergency generator and fire pump next to the building in a rear service parking area; engineers recommended the location and other locations around the property were not recommended by the engineering company because of cost and problems with emergency vehicle access. Although the site selected by the board affected some owners whose balconies overlooked structure and who could hear the generator during power outages and weekly testing, the board's decision not determined to be unreasonable.

Village Green at Baymeadows Property Owners Assn., Inc. v. Danninger,
Case No. 94-0091 (Price / Final Order / November 4, 1994)

- The extent to which a board performs routine maintenance on the common elements, such as the pruning of shrubberies, is within the board's discretion, pursuant to the business judgment rule. Unit owner failed to demonstrate that the association was not adequately maintaining the shrubberies and foliage on the common elements.
- Routine maintenance of the common elements is a matter within the discretion of the board, and the board's decisions regarding maintenance of the common elements, including planting and pruning of plants, trees, shrubs, and grass, are presumed correct absent a showing of mismanagement, fraud, or breach of trust. Business judgment rule provides that arbitrator will not substitute her judgment for that of the board.

Village on the Green Condo. II Assn., Inc. v. Knaus,
Case No. 93-0388 (Player / Order on Petitioner's Motions to Strike Affirmative Defenses and to Dismiss Counter petition / March 4, 1994)

- The business judgment rule permits the board considerable latitude in making decisions concerning the day-to-day operations, including maintenance of the common elements. Mere complaint about board's exercise of its business judgment, absent a showing of mismanagement, fraud, or breach of trust, fails to state a cause of action for which relief can be granted.

Ratification (See Meetings-Board meetings-Ratification)

Resignation

Term limitations (See Elections/Vacancies-Term limitations)

Vacancies (See Elections/Vacancies)

Board Meetings (See Meetings-Board meetings)

Boats

Alvares v. Las Olas Condo.,
Case No. 93-0114 (Player / Final Order / April 6, 1994)

- Association's practice of enforcing rule prohibiting boats on the condominium property as to open parking spaces, but not as to enclosed garages was contrary to plain language of the rule and constituted selective enforcement against petitioner who parked his boat in an open parking space.

Savoy East Assn., Inc. v. Janssen,

Case No. 92-0133 (Player / Final Order / January 4, 1994)

- Boat not permitted to be docked on the common elements where boat was not owned by unit owner, but was owned by corporation of which unit owner was a token partial owner. Corporation was formed solely for purpose of creating the appearance that the unit owner was part owner of the boat.

Budget

Bylaws

Amendments

Earp v. Holiday Village Assn., Inc.,

Case No. 92-0250 (Player / Final Order / October 27, 1993)

- Where bylaws required all amendments to be approved by 2/3 of the members and evidenced by "a certificate certifying that the amendment was duly adopted as an amendment of the by-laws, which certificate shall be executed by the officer of the Association with the formalities required of a deed," 1985 amendments to bylaws that were not certified and recorded as required by bylaws were invalid. Also, 1988 amendments not valid because they were not voted on by unit owners and 1992 amendments to 1988 amendments were invalid because 1988 amendments were never properly approved, even if 1992 amendments had been approved by the requisite vote of the owners.
- Association's argument that it had a duty to provide prospective purchasers with by-laws that accurately reflect the statutory requirements rejected because it was contrary to the statute and because even if the by-laws were not amended, they were deemed to include those provisions mandated by s. 719.106(1).

Hillcrest East No. 26, Inc. v. Weinberg,

Case No. 96-0432 (Draper / Summary Final Order / March 26, 1997)

- Bylaw prohibiting dogs in unit determined to be invalid where declaration provided unit owner could keep dogs in the unit. Association's argument that failure to amend declaration to prohibit dogs constituted a scrivener's error and should, therefore, be overlooked, rejected. Fact that bylaw amendment to prohibit dogs was approved by 75% of unit owners, the same number required to amend declaration, also rejected as rationale for recognition of restriction. Fact that unit owner signed application to

purchase unit in which he agreed to be bound by bylaws does not require him to be bound by invalid bylaw.

Lott v. The Moorings of Pinellas County Condo. Assn., Inc.,

Case No. 93-0179 (Scheuerman / Arbitration Final Order / January 14, 1994)

- Where bylaws prohibited the parking of trucks at any time, board rule permitting daytime parking was invalid as unlawful amendment to the bylaws.

Mait v. Flanco Condo. Assoc.,

Case No. 92-0131 (Scheuerman / Final Order / December 17, 1992)

- Bylaw amendment not invalid under Section 718.112(2)(h), Florida Statutes, where old language intended to be deleted was not stricken through; old language, which continued to exist, could be construed and harmonized with new language.

Zube v. Holiday Shores Park, Inc.,

Case No. 93-0059 (Grubbs / Summary Final Order / June 7, 1993)

- Since bylaw amendment proposed by unit owner failed to utilize the strike through/underline format provided by 719.106, Florida Statutes for proposals to amend existing bylaws, the board was correct in refusing to replace the defective amendments on the agenda of the shareholders meeting.

Generally

Interpretation

Evans v. Raintree Village Condo., Inc.,

Case No. 96-0440 (Draper / Summary Final Order / April 7, 1997)

- Association authorized to continue collecting proxies for vote on document amendment after unit owner meeting adjourned and up to continuation of meeting. Adjournment of meeting at which quorum was in attendance was permissible. Bylaw provision permitting adjournment where quorum lacking is an expansion of power rather than a restriction on it.

Hennessee v. Eden Owners' Assn., Inc.,

Case No. 94-0269 (Richardson / Summary Final Order / September 20, 1994)

- A bylaw is interpreted by using the same rules of construction that apply to interpretation of contracts and statutes. When an ambiguity exists, the interpretation that renders a valid reading is preferred over one that renders an invalid reading. Ambiguous clauses are read in conjunction with the governing documents and statutes as a whole. The interpretation that is most reasonable and gives the greatest benefit to the corporation is favored.

- Where bylaw provided that if any meeting of the members cannot be organized because a quorum is not present, the members present may adjourn the meeting, was interpreted as permissive and not restrictive such that even where a quorum of the membership was present, the meeting may be properly adjourned.

Mait v. Flanco Condo. Assoc.,

Case No. 92-0131 (Scheuerman / Final Order / December 17, 1992)

- Bylaws should be construed in favor of their validity; every part must be given effect.

Pisz v. Holiday Out At St. Lucie, a Condo.,

Case No. 96-0186 (Goin / Summary Final Order / October 23, 1996)

Where by-laws provided that all unit owners "general park welfare" correspondence not exceeding one page shall be included in board meeting minutes, rule adopted by board defining the phrase "general park welfare" and requiring that the correspondence be received seven days before meeting did not contravene the by-laws. However, portion of rule providing that president would have the final decision as to whether to print the correspondence did contravene the by-laws; if it was unclear whether the correspondence should be printed, it should be the decision of the board at the meeting.

Cable Television

Storch v. Sunrise Lakes Condo. Phase IV, Inc.,

Case No. 94-0048 (Goin / Final Order Dismissing Petition / March 11, 1994)

- Arbitrator lacked jurisdiction to determine the constitutionality of section 718.115, Florida Statutes, relating to cable television.

Common Elements/Common Areas

Generally

Hurricane shutters (See Hurricane Shutters)

Limited common elements

Brazlavsky v. Admiral Towers Condo., Inc.,

Case No. 95-0460 (Draper / Final Order / November 1, 1996)

- Common element parking space, once assigned by association for the exclusive use of a unit owner, does not become a limited common element appurtenant to the unit where declaration did not designate space as limited common element and provided only that once assigned the space would remain a part of the common area but used by the unit owner.

Five Coins Condo. Assn., Inc. v. Smith,

Case No. 96-0114 (Oglo / Summary Final Order / January 8, 1997)

- Whether foyer was a limited common element or part of a “unit” was determined by the definition of unit in declaration, which referred to a survey/floor plan of a unit. Using definition of structural alteration from Black’s Law Dictionary, changing carpeting, replacing carpeting with tile, and changing the wall color and wall paper not found to be structural alterations.

Galleon Condo. Apartments, Inc. v. Rappaport,
Case No. 92-0297 (Player / Final Order / April 8, 1993)

- Rule prohibiting installation of carpeting on limited common element balconies is reasonable.

Goldman v. Hallmark of Hollywood Condo. Assn., Inc.,
Case Nos. 92-0162; 92-0166 (Grubbs / Final Order / February 17, 1993)

- Under declaration, unit owners have the responsibility for repair of the limited common element balconies appurtenant to their units.

Goodman v. Mayfair Condo. in Park West Condo. Assn., Inc.,
Case No. 94-0144 (Richardson / Summary Final Order / August 10, 1994) (Appeal dismissed. Goodman v. Mayfair Condo. in Park West Condo. Assn., Inc., /Case No. 94-5204-CI-19, 6th Jud. Cir. Ct., March 14, 1995) (Unit owner’s appeal dismissed with prejudice for failure to present prima facie case. Amendment to declaration did not alter or modify appurtenances to unit and was validly passed)

- Amendment to declaration which redesignated the covered parking spaces from common elements to limited common elements did not change the appurtenances to Petitioner’s unit because Petitioner did not have use of a carport when he purchased the unit. Moreover, parking spaces, by their very nature, are exclusive. Also, the spaces were originally intended to constitute limited common elements as evidenced by the developer’s deeds of sale.

Guglielmoni v. Pine Ridge at Sugar Creek Village I Condo. Assn., Inc.,
Case No. 94-0392 (Scheuerman / Summary Final Order / October 17, 1994)

- Where garages were constructed upon limited common elements, but where declaration did not seek to impose maintenance obligation upon those owners entitled to use the garages, expenses associated with maintenance of the garages were common expenses assessable to all unit owners.

Levinson v. Victoria Towers Condo. Assn., Inc.,
Case No. 95-0296 (Draper / Final Order / February 11, 1997)

- Association responsible for expense of repairing limited common element balconies, as common expense, where deteriorating portions of concrete floor of cantilevered

balconies were removed and replaced, and where rust sandblasted off the metal reinforcement bar embedded within the concrete. Unit owners were responsible for expenses of maintaining the interior surfaces of the balconies; repair held not to be a “surface” repair. In addition, association responsible for expenses of maintenance involving “structural” maintenance, repair or replacement, which repair was involved.

London v. Boca Barwood Condo. VI Assn., Inc.,

Case No. 94-0059 (Goin / Order to Show Cause / February 25, 1994)

- Mere fact that carport is a limited common element does not mean that the cost of maintaining it cannot be a common expense. Unless the condominium documents provide otherwise, the association is required to assess all unit owners for maintenance of the carport.

Ouziel v. Ambassadors East Condo. Assn., Inc.,

Case No. 96-0392 (Scheuerman / Summary Final Order / August 12, 1997)

- Where declaration prohibited owners from altering, replacing, or repairing the windows, other portion of the declaration requiring the owners to replace fixtures interpreted not to refer to windows, such that windows determined to constitute common elements within the maintenance responsibility of the association.

Park v. Capri Harbour South Condo. Assn., Inc.,

Case No. 94-0178 (Draper / Summary Final Order / November 10, 1994)

- Association correctly treated expense of repairs to limited common element spiral staircase serving a single unit as a common expense where declaration did not provide that maintenance and repair of limited common elements is specifically made the sole responsibility of the owners using the limited common element.
- The deck railing system, including railings, supporting columns, posts, and beams, constitute the exterior walls of the unit, and being limited common elements are the maintenance responsibility of the association unless otherwise designated in the declaration.

Salamone v. Golden Horn Condo. Assn., Inc.,

Case No. 96-0370 (Scheuerman / Summary Final Order / July 17, 1997)

- Where association undertook to remove Chattahoochee covering from limited common element terrace in order to repair a leak in the roof, no vote of the owners was required for the association to undertake its maintenance obligation. In addition, in absence of an agreement to the contrary, association, in permitting the flooring to be installed in the first instance, did not agree to replace the flooring whenever it became necessary to fix the roof. Owner has no reasonable expectation that association will perpetually reinstall the flooring where its removal becomes necessary to maintain the common elements.

Sionne v. Pell Manor Condo. II Assn.,

Case No. 94-0195 (Draper / Summary Final Order / June 22, 1995)

Although survey attached to original declaration designated parking area as limited common elements and contained numbered spaces, where text of declaration did not refer to limited common elements and did not indicate that particular numbered parking space was appurtenant to any particular unit, arbitrator concluded that no particular parking space was reserved for a particular unit, and the only appurtenance to the Petitioner's unit was the exclusive right to use a parking space as later assigned by the association.

Towner v. Aldea Mar Condo. Assn., Inc.,

Case No. 95-0322 (Draper / Summary Final Order / September 24, 1996)

- Association's removal of sundecks to re-roof and failure to replace them constituted a material alteration of the appurtenances to the units served by the sun decks, requiring association to comply with s. 718.110(4).
- Sundecks were limited common elements. While they were not specifically designated as such in the declaration, the way the condominium was constructed, with nine of the units having sundecks accessible only from inside the unit and a tenth unit with a sundeck on the unit's carport and accessible by stairs directly outside the unit, indicates that the sundecks were reserved for the use of those ten units, and thus, were limited common elements.

Maintenance and protectionAldea Mar Condo. Assn., Inc. v. Wallace,

Case No. 93-0200 (Scheuerman / Arbitration Final Order / March 29, 1994)

- Where unit owner replaced stepping stones with concrete slab, concrete slab did not constitute a repair, but instead constituted a change to the common elements, even where it was shown that stepping stones had become weathered and broken.

Anderson v. Five Towns of St. Petersburg No. 305, Inc.,

Case No. 94-0440 (Draper / Order on Issue of Law / March 28, 1995)

- Association materially altered the common element carport by painting the bottom 36 inches of support columns and gutter down spouts bright yellow without a vote of the owners, and violated documents, unless association could prove in later fact-finding hearing that painting was necessary to protect and preserve the common elements or enhance the safety of the owners.

Arena v. Cricket Clubhouse Condo. Assn., Inc.,

Case No. 96-0106 (Scheuerman / Final Order / July 21, 1997)

- Where certain improvements installed on terrace consisting of Jacuzzi and other items were built by developer with the original construction of the building, improvements deemed to be part of the units themselves, and the association is responsible for removing the improvements and replacing the items at its expense, where such was necessary to accomplish needed repairs to the common element roof.

Birnbaum v. Sunrise Lakes Phase 4, Inc.,

Case No. 94-0521 (Draper / Order to Show Cause / December 19, 1994)

- Unit owner petition seeking to challenge installation of security lights on condominium buildings without vote of the unit owners, and which recognized the need for improved security, was without merit and dismissed. Changes to the common elements necessitated by criminal intrusions may be made without approval of the owners.

Blake v. Beachaven Assn., Inc.,

Case No. 96-0406 (Scheuerman / Final Order Dismissing Petition / November 26, 1996)

- Petition dismissed for failure to state a valid claim for relief, where owner sought to challenge special assessment for painting on the basis that the assessment should be based on area of unit exterior to be painted. Board required to assess based on ownership interest in the common elements instead.

Brickell Town House Assn., Inc. v. Del Valle,

Case No. 95-0133 (Scheuerman / Final Order / September 12, 1995) (Scheuerman / Order on Motion for Rehearing / December 6, 1995)

- Where association, pursuant to its duty to maintain and repair the common elements, undertook restoration project to the exterior of building damaged by hurricane, where method of reconstruction chosen by association required certain owners to vacate their units for one to two months, the expenses shown to be actually necessary to permit the association to carry out its duty of undertaking maintenance project are, as a matter of law, deemed to be common expenses to be shared by all unit owners, including expenses of securing alternate living arrangements for owners; storage expenses for furniture, moving expenses, expenses of repairing unit damaged by reconstruction effort; and lost income where a tenant was forced to leave the unit.
- While the right of access to a unit granted under statute and documents was not broad enough in and of itself to provide authority for the association to displace unit owners from their homes for a period of one to two months in order to permit repairs to the common elements, the right of access, when combined with the duty of the association to maintain and protect the common elements, provides sufficient authority for the association to proceed with the project.
- No vote of the unit owners required pursuant to documents or section 718.113(2), Florida Statutes, where reconstruction project undertaken by board clearly implicates

the protection of the common elements and the inhabitants thereof. Project included repair of the wind truss bracing.

Bronstein v. Hills of Inverrary Condo., Inc.,

Case No. 94-0147 (Goin / Summary Final Order / March 24, 1995)

- Section 718.113(2) not violated where board replaced Chattahoochee pool deck with paver bricks, where documents gave board the authority to approve alterations to common elements.
- Installation of paver bricks did not result in an additional improvement within the meaning of the bylaws where the association did not expand the size of the decking but merely changed the type of surface.
- Even if installation of paver bricks which replaced Chattahoochee decking could be considered an additional improvement, thus triggering unit owner vote requirement in the bylaws, decision to remove Chattahoochee decking and install paver bricks fell within the association's duty to maintain, repair, and replace the common elements for which no vote of the unit owners is required, where board determined that Chattahoochee decking needed repair or replacement.

Celentano v. Reflections-On-The-River Assn., Inc.,

Case No. 94-0162 (Goin / Summary Final Order / December 16, 1994)

- Installation of pool heater would result in material alteration of the common elements, thereby requiring compliance with section 718.113(2), and the declaration. Installation of a pool heater does not fall within the association's duty to maintain, repair, replace, or protect the common elements. By adding a pool heater, the pool's existing condition will be palpably and perceptively changed in such a manner as to appreciably affect and influence its function and use. The addition of the pool heater would most likely increase use of the pool thereby changing the pool's use and function.

Cohen v. Summit Towers Condo. Assn., Inc.,

Case No. 95-0117 (Draper / Final Order / June 21, 1996)

- Association failed to correct backup of sewer into unit, which occurred at least a dozen times over nine years and was held to have negligently failed to maintain common element plumbing system. Although piecemeal remedies were performed, association never committed to determine cause of backups. Lost rent of \$46,000.00 awarded.

Conrath v. Alhambra Village No. 1 Assn., Inc.,

Case No. 95-0112 (Draper / Final Order / November 19, 1996)

- Association held responsible for damages suffered by water intrusion into unit where association, charged with maintaining common element walls, had permitted leaks to

continue for 13 years. Association had performed numerous ad hoc repairs but finally concluded leak was due to construction defect for which it was not responsible.

- Unit owner awarded cost of replacing carpet, wallpaper, ceiling and bathroom tile throughout the unit. Though some tile was not directly damaged, it could not be matched. Therefore, for continuity, all carpet, tile, etc. would have to be replaced.
- Association ordered to install vapor barrier on exterior walls and correct slope on upstairs balcony floor so rain water flowed away from building. If these repairs are not effective, association required to hire engineer and follow that professional's prescription for alleviating leaks.

Cypress Woods, Inc. v. Larger,

Case No. 93-0076 (Scheuerman / Final Order / October 21, 1993)

- Repair of limited common element screen enclosure by replacing roof and part of wood siding is not an alteration within the meaning of declaration requiring board approval for alteration or changes to enclosures.

Davidson v. Clearwater Key Association-Bayside Gardens, Inc.,

Case No. 94-0175 (Grubbs / Summary Final Order / April 10, 1995)

- Where dispute was filed by unit owner requesting reimbursement for repairs to screen door, claiming that the screen doors, located to the outside of the sliding glass doors, constituted a portion of the common elements, and where declaration did not define the boundaries of the unit except to state that the common elements included all external walls of the units, other than the internal surfaces thereof, declaration construed to provide that the doors are a portion of the unit. A "wall" is an erection of stone, brick, or other material, raised to some height, and intended for the purposes of privacy, security, or enclosure. A "door" is not a wall, but is a movable structure used to close off an entrance, typically consisting of a panel that swings out on hinges, slides, or rotates. Accordingly, declaration which included within the concept of unit, internal walls, did not refer to doors. Also, since unit owner has exclusive control over the door, and since the declaration did not provide for limited common elements, the screen door must be part of the unit because the unit is the part of the condominium property subject to exclusive ownership.

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

Case No. 94-0157 (Grubbs / Partial Summary Final Order / April 17, 1995)

- Where declaration provided that unit owners are responsible for maintaining, replacing, and repairing all portions of the unit, including window panes, but prohibited owners from replacing windows, declaration construed to mean that the replacement of window panes would be the responsibility of the owner, while the replacement of the window as a whole would be considered the responsibility of the association.

DiBiase v. Beneva Ridge Condo. Assn.,

Case No. 92-0210 (Scheuerman / Final Order / January 19, 1994)

- Record demonstrated that board had adequately addressed its duty to maintain the common elements and to protect common elements from flooding, where it had taken
- a number of steps recently which were reasonably designed to alleviate flooding. No association is required to protect the property against a one hundred-year storm. Rather, the duty is to take those steps reasonably necessary to protect condominium property.
- Failure to take steps earlier to alleviate flooding condition, where property had flooded at least annually for the last ten years, required conclusion that association failed to take those steps necessary to adequately address the drainage problem; \$1,620.00 in damages to the unit awarded the unit owner.

Dunn v. Plaza 15 Condo. Assn., Inc.,

Case No. 94-0461 (Draper / Final Order on Damages / March 5, 1997)

- Unit owner whose unit was uninhabitable for a period of years because association failed to repair common elements awarded \$26,650.00 in damages for lost rent. Measure of damages for breach of contract are those money damages which are the natural and proximate cause of the breach.

Earl v. High Point of Delray, Section 5,

Case No. 94-0527 (Scheuerman / Final Order on Default / March 31, 1995)

- Association, not unit owner, determined responsible for repainting screen door of unit where declaration required association to repair, maintain and replace all of the common elements, including exterior surfaces of unit and landscaping and unit owner prohibited from repairing or replacing exterior portions of building maintained by association, including doors. Similarly, board policy of requiring unit owner who planted tree to be responsible for pruning tree, raking leaves etc., not authorized by declaration.

1800 Atlantic Condo. Assn., Inc. v. Golan,

Case No. 94-0134 (Player / Final Order / September 17, 1994)

- Where association, in order to conserve water and to reduce water bills paid as a common expense by all unit owners, replaced single master meter with individual water meters located within the units, board's action to conserve water and reduce water bills cannot be construed as action to maintain or protect the common elements. While water system equipment constituted common elements, water itself cannot be characterized as a common element.
- Decision by board to replace single water meter with individual water meters did not implicate the board's repair and replacement function, which the documents permitted the board to undertake at its discretion, but instead constituted a capital addition or

improvement within the meaning of the condominium documents requiring a unit owner vote. Installation of the submeters altered the way water is paid for by the unit owners and must be viewed as a capital addition, alteration, and improvement.

- Where documents authorized board to undertake capital improvement where cost of project was, in the aggregate, \$25,000.00 or less, board violated documents without obtaining unit owner vote where the total cost of installation was \$32,000.00, half of which was paid in 1993, and half of which was paid in 1994. Association utilized accrual method of accounting and the term "cost" includes both what has been paid and what has been engaged to be paid.

Friesen v. Boca Village Condo. Assn., Inc.,

Case No. 94-0498 (Draper / Order to Show Cause / December 9, 1994)

- Unless a unit owner alleges and proves negligence on the part of the association in failing to maintain the common elements, the unit owner cannot recover for damages caused to her unit by the failure.

Garing v. Sugar Creek Country Club Travel Trailer Park Assn., Inc.,

Case No. 93-0153 (Goin / Final Order / March 23, 1994)

- Where association razed its old maintenance building and replaced it with a new building but in a different location less prone to flooding, such alteration did not result in a material alteration to the appurtenances thereby requiring 100% approval. Unit owner did not allege that reconstruction of the building at an alternative site resulted in a material alteration to the common areas. Sufficient evidence presented that new maintenance building was constructed pursuant to the association's duty to maintain, repair and replace the common areas, and therefore association can authorize the building replacement without a vote of the unit owners, citing Tiffany Plaza; Cottrell.

Gillett v. The Greens Condo. Assn., Inc.,

Case No. 94-0489 (Scheuerman / Final Order / July 26, 1995)

- Where items of personal property located within the unit were damaged as a result of the association's negligent failure to maintain the common element roof, unit owner entitled to recover the cost of repairs or restoration, or, in the alternative, recovery could be had for the difference between the value of the items of personal property before and after the event.
- The certainty doctrine applies in Florida and requires that fact of damages and the extent of damages must be established with a reasonable degree of certainty in order to permit recovery.
- Unit owner awarded \$4,275.00 for repairs to the unit due to water damage. Owner not awarded any recovery for ancient VCR; for roof patch that was done by an

unqualified maintenance person; or for lost rent during a two-month period during which certain repairs were being done, due to insufficient evidence.

Griffith v. Capistrano Condo. Assn., Inc.,

Case No. 96-0159 (Draper / Final Order Dismissing Petition / July 8, 1996)

- Where declaration required association to be responsible for incidental damage caused to a unit by reason of the maintenance, repair or replacement which is the association's responsibility, petition seeking damages for backup of drainage pipe dismissed for failure to state a claim where petition failed to allege that association had negligently failed to maintain drainage system.
- Incidental damage clause applies to damage caused by association in the process of performing maintenance, repair or replacement responsibilities, and not to damages caused by well seepage.

Hannon v. Shore Plaza Building Assn. of Town Apartment South, No. 101, Inc.,

Case No. 95-0363 (Goin / Summary Final Order / February 28, 1996)

- Air conditioning ducts servicing only petitioners' unit and not part of the common elements determined to be maintenance responsibility of unit owners.

Harrison v. Land's End Condo. Assn., Inc.,

Case No. 94-0298 (Price / June 27, 1995)

- Where evidence did not show that balcony was originally built with a painted, texturized surface, and did not show that the association approved any alteration to the original balcony for the application of painted texturized surface, association not obligated to restore unit owner's balcony with painted texturized surface after performance of routine maintenance on the balcony.

Head v. Gulf Claridge Apartment Assn., Inc.,

Case No. 94-0434 (Richardson / Final Order / March 28, 1995)

- Association found to be negligent in failing to maintain the common condensation lines to the air conditioning system, causing the lines to clog and water to back up into Petitioner's unit, resulting in damages of \$926.00 in repair costs, and \$1,888.00 in property loss. Expert testimony established that the type of condensation lines found in the community required routine maintenance, and association did no maintenance on its common lines for 12 to 17 years.

Jones v. Lake Harbour Towers South Condo. Assn., Inc.,

Case No. 93-0266 (Price / Order on Motion to Dismiss / February 4, 1994)

- Where unit owners in their petition alleged that in violation of the documents, the association had failed to maintain a common element pipe which was leaking water into

the unit, petition for arbitration not required to allege that association was negligent in its maintenance of the pipe. If the association has failed to maintain the common elements, then the association may be liable to the unit owner for damages sustained because of such failure.

Kemper v. Whitehall Condo. of Pine Ridge Assn., Inc.,
Case No. 92-0180 (Grubbs / Final Order / November 23, 1993)

- Where a recorded declaration, in contradistinction to the unrecorded documents, defined the unit to include a window frame in need of repair, but where documents further placed the responsibility on the association to repair, maintain, and replace all exterior surfaces of the building except window panes, association was responsible for repairing window frame.

Klopstad v. Park West Condo. Assn., Inc.,
Case No. 95-0084 (Draper / Final Order / December 13, 1995)

- Association ordered to remedy flooding of unit owners' lanai caused by rainwater runoff from surrounding common element grounds where grounds sloped upward from the unit.
- Association defense that ground has always been that way and association was responsible only to maintain it in an unchanged condition rejected. The duty to maintain the common elements includes making changes and alterations necessary to protect the common elements.
- Claim involving failure to maintain the common elements is not barred by statute of limitations as the duty to maintain the common elements to prevent flooding is a continuing one. The right of action for such a claim accrues from day to day as long as the breach continues.

Lakebridge Condo. Assn., Inc. v. Fernando,
Case No. 93-0151 (Grubbs / Final Order / May 12, 1995)

- Association did not establish by convincing evidence that removing gate and sealing opening in common element wall behind respondents' unit, which provided access to tennis academy adjoining condominium, was necessary and required to preserve the condominium property. Board failed to present evidence of any criminal activity on condominium property, or any evidence of any other improper use of opening in the wall.

Lamar v. La Arboleda Condo. Assn., Inc.,
Case No. 93-0229 (Goin / Final Order / September 14, 1993)

- Unreasonable noise coming into a unit owners' unit which was caused by the air conditioner of another unit owner constituted a nuisance thereby obligating the

association to relieve the unacceptable noise levels. Association ordered to require non-party unit owner who installed the air conditioner to install vibration springs and vibration muffler on unit. Association further ordered to separate and replace refrigerant lines passing through Petitioner unit owners' unit.

Lessne v. Family Townhouses of the Lakes of Emerald Hills, Inc.,
Case No. 92-0235 (Goin / Summary Final Order / July 28, 1993)

- In case brought by unit owners claiming that assigned parking space collected rainwater, association ordered to repave parking space to alleviate condition.

Levinson v. Victoria Towers Condo. Assn., Inc.,
Case No. 95-0296 (Draper / Final Order / February 11, 1997)

- Association responsible for expense of repairing limited common element balconies, as common expense, where deteriorating portions of concrete floor of cantilevered balconies were removed and replaced, and where rust sandblasted off the metal reinforcement bar embedded within the concrete. Unit owners were responsible for expenses of maintaining the interior surfaces of the balconies; repair held not to be a "surface" repair. In addition, association responsible for expenses of maintenance involving structural maintenance, repair or replacement, which repair involved.
- Because unit owners had already paid for repairs to their individual balconies, association ordered to prepare accounting to adjust charges to unit owners, returning inappropriately charged amounts and implementing assessments as necessary to pay for the repairs as a common expense.

McDonnell v. Sugar Spring Assn., Inc.,
Case No. 94-0160 (Grubbs / Final Order / February 23, 1996)

- Where declaration provided that if emergency *repairs* to the common elements were not performed by association within 24 hours, the affected unit owner could make the repair, and association would be required to reimburse owner for the reasonable value of any necessary repairs, unit owner who *replaced* common element roof over her unit failed to prove that the roof replacement was an "emergency repair" which was "necessary."

O'Neill v. Coral Isle East Condo. Assn., Inc.,
Case No. 93-0332 (Scheuerman / Final Order / June 24, 1994)

- Where local ordinance required recycling facility with containment structure (i.e., fence), board's duty to maintain and operate the common elements is broad enough to encompass operational activities designed to bring association in conformity with existing ordinances. An association's duty to maintain and operate the common elements implies maintenance and operation according to some standard, and where it is shown that applicable local ordinance defines the standard of maintenance, it is within

the purview of the board's authority under section 718.111(4), Florida Statutes, to operate the property in a manner consistent with those local ordinances. Accordingly, the decision by the board to construct the containment facility is a maintenance function requiring no vote of the unit owners.

Park v. Capri Harbour South Condo. Assn., Inc.,

Case No. 94-0178 (Draper / Summary Final Order / November 10, 1994)

- Association correctly treated expense of repairs to limited common element spiral staircase serving a single unit as a common expense where declaration did not provide that maintenance and repair of limited common elements is specifically made the sole responsibility of the owners using the limited common element.
- The deck railing system, including railings, supporting columns, posts, and beams, constitute the exterior walls of the unit, and being limited common elements are the maintenance responsibility of the association unless otherwise designated in the declaration.

Poitier Corporation v. Fountainview Unified Committee,

Case No. 93-0238 (Goin / Order on Petitioner's Emergency Motion for Immediate Hearing and Motion to Conduct Discovery / August 24, 1993)

- Association's alleged failure to replace the roof and correct other maintenance problems does not relieve the unit owner of his responsibility to pay monthly maintenance fees; conversely, the failure of the unit owner to pay monthly fees does not relieve the association of its duty to maintain the common elements and replace the roof.

Preston v. Vendome Place Condo. Assn., Inc.,

Case No. 93-0337 (Player / Final Order / July 11, 1994)

- Where evidence did not support unit owner's claim that the windows and glass doors were common elements for which the association had maintenance responsibilities, association not responsible for expenses incurred in replacing them.

Price v. Promenade Condo. Owners Assn., Inc.,

Case No. 94-0055 (Scheuerman / Final Order / June 20, 1995) (Arbitrator's decision overruled. Promenade Condo. Owners Assn., Inc. v. Price, Case No. 95-4072-CA-01, 12th Jud. Cir. Ct. (December 12, 1996), *aff'd per curiam*, 696 So.2d 361 (Fla. 2nd DCA 1997). The court, relying upon Woodlake Redevelopment Corp. v. Woodlake Condo. Assn. of Marco Shores, Inc., 671 So.2d 253 (Fla. 2nd DCA 1996), held that division did not have jurisdiction over dispute involving association's failure to maintain common elements. Note that effective October 1, 1997, §718.1255(1), F.S., was amended to specifically exclude "alleged breaches of fiduciary duty by one or more directors . . ." and "claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property."

- Where association had for a period of years been on continuous notice of a problem of water intrusion into the unit, and had failed to hire a professional to specifically investigate and remedy the problem, association negligently failed to maintain and repair the common elements. Unit owner awarded \$47,800.00 in damages and \$3,800.00 to obtain an alternate residence for two months while the association retained the services of a professional to conduct the study required by the final order.

Raska v. The Fountains Assn., Inc.,

Case No. 93-0364 (Goin / Summary Final Order / December 23, 1994)

- Decision by board to remove artificial putting surface and replace with picnic furniture due to deterioration of the artificial turf, and the expense of replacement not a maintenance decision by board exempting it from the operation of section 718.113(2); while the board has broad discretion in determining the degree of maintenance required on the common elements, the association cannot ignore its duty to maintain and replace the common elements which results in a material alteration or substantial addition to the common elements, unless such alteration is approved pursuant to s. 718.113(2).
- Although change in landscaping may have altered the common elements somewhat, such alteration was made pursuant to the association's duty to maintain the landscaping and no compliance with section 718.113(2), Florida Statutes, was required.

Raska v. Fountains of Ponte Verdra, Inc.,

Case No. 93-0364 (Goin / Order / January 21, 1994)

- Board's decision regarding degree of maintenance required in chain link fence count and similar count regarding failure to adequately paint unit doors failed to state a cause of action for which relief could be granted.

Rebholz v Beau Mond, Inc.,

Case No. 93-0178 (Scheuerman / Summary Final Order / January 31, 1994)

- Where board sought to conduct opinion poll of unit owners concerning desirability of extending sea oats program, opinion poll did not have effect of delegating to the unit owners the board's authority to make decisions concerning the common elements. The maintenance and preservation function does not, in the usual case, require a vote of the unit owners. Action taken by board to protect common elements from possible storm damage requires only board approval.

Reilly v. Royal Hawaiian Club Condo. Assn., Inc.,

Case No. 94-0069 (Goin / Final Order / January 27, 1995)

- In order for a unit owner to recover from the association for damages to his or her unit, the owner must prove that the damage was caused by the association's failure to maintain or repair the common elements or other portion of the condominium property

which is within the maintenance responsibility of the association. Further, in order to recover damages either for injury to himself or to guests, or for damages caused to the unit by the common elements, an owner must prove that the association was negligent in failing to repair the cause of the damage, or that the association breached its contractual duty under the declaration to maintain the common elements.

- Where termites damaged wood included within the definition of unit, association not responsible for the cost of repairing the damage unless the association was shown to be negligent in failing to spray or protect against termite damage. The elements of actionable negligence include existence of duty to protect unit owner from the injury complained of; the failure to perform the duty; and injury arising from such failure. Here, unit owners failed to prove negligence. Specifically, unit owner never advised board of termite problem until after the damage had already occurred.

Rivoli v. Fairways of Tamarac Condo. II Assn., Inc.,
Case No. 94-0125 (Price / Final Order / August 2, 1995)

- In order to prevail on a claim for damages to their unit, owners must prove that the damage was caused by the association's negligent failure to maintain, repair, or replace the common elements, or a portion of the condominium property within the responsibility of the association to maintain. As part of establishing that a duty was owed by the association, unit owners must prove that the source of the water damage to their unit was from the common elements or from a portion of the condominium property within the maintenance responsibility of the association. In this case, the owners failed to prove the source of water intrusion and no relief was granted.

Schlegel v. Fisherman's Cove Assn., Inc.,
Case No. 93-0123 (Draper / Final Order / April 4, 1996)

- Declaration construed as a whole, placed responsibility of maintaining balconies on association. Declaration prohibited unit owner from repairing outside of exterior portion of the building. Fact that balcony damaged by sea water spray confirmed that it was an exterior portion of building.

Schwartz v. Brickell Townhouse Assn., Inc.,
Case No. 95-0222 (Goin / Arbitration Final Order / December 2, 1996)

- Where structure to house emergency generator and fire pump was constructed on the common elements without a vote of the unit owners, association did not violate section 718.113(2) or 718.110(4) where generator and fire pump (and structure to house them) was part of an engineered life safety system required by the So. Florida Prevention Code.

Silverman v. Golden Lakes Village Condo. Assn. "A", Inc.,
Case No. 94-0327 (Scheuerman / Final Order / February 5, 1996)

- Board acted unreasonably in demanding that extensive garden areas planted by owner on the common elements with consent of the board over a period of years be pruned or removed where no rules had been promulgated by board describing in what locations plants could be maintained, or what types of plants could be maintained, where board had consistently failed to enforce rules which did exist, where board selectively forced certain owners to prune while not demanding the same of others, and where demand to prune did not identify plants which needed pruning or degree of trimming or removal required. Actions of the association were not reasonably designed to accomplish its stated goals of aesthetics and free access to mowing areas, as facts did not demonstrate mowing difficulties.

Slater v. Palm Beach Towers Condo. Assn., Inc.,

Case No. 94-0418 (Scheuerman / Summary Final Order / April 3, 1995)

- Where declaration delegated to board of administration the authority to approve material alterations to the common elements, and where no spending limitation on the board was imposed by the condominium documents, consistent with its duty to maintain and protect the common elements, board had authority, prior to 1994 amendment to statute, without a vote of the unit owners, to require the installation of hurricane shutters on all openings to the units.

Smith v. Brittany Court Condo. Assn., Inc.,

Case No. 95-0256 (Draper / Summary Final Order / August 2, 1996)

- Contract for maintenance services violated section 718.3025, Florida Statutes, by failing to specify services and responsibilities to be performed and their frequency.

Southridge Homeowners Assn., Inc. v. Barbieri,

Case No. 94-0382 (Scheuerman / Summary Final Order / December 27, 1994)

- Association could have properly determined to install security lights without a vote of the owners if there existed convincing factual predicate that the board's action was necessary to protect the common elements or inhabitants from a known danger.

Stearns v. Aquavista Owner's Assn. of Panama City Beach,

Case No. 93-0289 (Draper / Final Order / April 29, 1996)

- Installation of carpeting, desks and file cabinets in former laundry room held to be material alteration to the common elements.
- Where video games were removed from game room and room was changed to lunch room/supply room for association personnel, common elements were materially altered.

- General power granted in declaration for association to manage and operate the common elements does not supersede requirement that common element alterations such as changing video game room to lunch room be approved by the unit owners.
- Where unit owners retroactively approved an amendment of the declaration specifically providing for the changes to the common elements, unit owner approval of alterations no longer required.
- Change in rooms held not to be material alterations to the appurtenances to the unit. While the rooms' purposes have changed, they are still within the ambit of intended uses of the common elements (furnishing services and facilities for the enjoyment of the apartments) and no specific service facility type previously provided was entirely deleted.

Sturman v. Harbour Royale Condo. Assn., Inc.,
Case No. 95-0070 (Draper / Final Order / September 28, 1995)

- Board of directors authorized to adopt regulation prohibiting reinstallation of tile/carpet following repairs to condominium balconies where association responsible for maintaining balcony foundation and evidence showed tile/carpet covering could result in further future damage to reinforcing steel and also impair inspection for such damage. Construing declaration and 718.113(2) as a whole, arbitrator determined that provisions of declaration requiring unit owner approval of regulations on the use of the condominium property not intended to prohibit board from adopting regulation proscribing installation/reinstallation of tile/carpet when deterring such action was reasonably necessary for the maintenance and protection of the common elements.
- Regulation prohibiting installation/reinstallation of tile/carpet on balcony deemed reasonable where it was designed to protect balconies from future damage and unit owners from further costly assessments for repairs.
- Fact that board adopted some but not all of its contractor's recommendations as to regulation of balcony use to protect the concrete slab does not render the recommendation adopted--prohibiting installation/reinstallation of tile/carpet following repairs--unreasonable where bigger risk to balconies was the one addressed by board's regulation. A decision to prohibit some, but not all, harm is within board's discretion.

Third Ocean Club Condo. Assn., Inc. v. Costley,
Case No. 95-0436 (Scheuerman / Final Order / June 27, 1996)

- Owner who pruned planting on common elements and who directed association personnel to prune plantings ordered to cease activity, and ordered to pay the association \$515.00 for replacement shrubbery and clean-up costs, where windbreak area as a whole was rendered less effective by trimming.

Village Green at Baymeadows Property Owners Assn., Inc. v. Danninger,

Case No. 94-0091 (Price / Final Order / November 4, 1994)

- Where unit owner had been given authority to perform limited maintenance of the common elements, but where authority was subsequently revoked by the association, unit owner was prohibited from continuing to perform maintenance on the common elements. Association is given authority to maintain the common elements.
- Routine maintenance of the common elements is a matter within the discretion of the board, and the board's decisions regarding maintenance of the common elements, including planting and pruning of plants, trees, shrubs, and grass, are presumed correct absent a showing of mismanagement, fraud, or breach of trust. Business judgment rule provides that arbitrator will not substitute her judgment for that of the board.

Wagster v. Sea Palm of FWB Condo. Assn., Inc.,

Case No. 92-0243 (Goin / Final Order / April 20, 1993)

- Sea wall constructed to protect the common elements did not have to be approved by the unit owners where there had been a noticeable loss of beach front property during previous 13 years.

Williams v. Sky Harbour Condo. Apartments, Inc.,

Case No. 93-0334 (Scheuerman / Summary Final Order / June 24, 1994)

- Where there is an established history of criminal activity against property and person, board had authority pursuant to its obligation to maintain the common elements to construct security fence without a vote of the unit owners. Although fence would have otherwise constituted a material alteration to the common elements requiring compliance with section 718.113, Florida Statutes, where it was demonstrated in evidence that the action of the board was necessary to protect the condominium property and the unit owners, and that criminal activity would continue in the absence of precautionary steps taken by the board, compliance with section 718.113 not required.
- Consistent with Cottrell and Tiffany Plaza, the maintenance/repair concept includes considerations of securing the condominium property and residents from a perceived threat of danger from intruders and criminal activity.

Material alteration or addition (See also Fair Housing Act)

Aldea Mar Condo. Assn., Inc. v. Wallace,

Case No. 93-0200 (Scheuerman / Arbitration Final Order / March 29, 1994)

- Where unit owner replaced stepping stones with concrete slab covering the same area, and where no change to the use of the property or the appearance of the property as a whole resulted, and where approximately one out of four of all unit owners had a concrete slab-patio, it could not be said that the pouring of concrete slab perceptively changed the form, shape, elements, or specifications of the existing common elements

in such a manner as to appreciably affect or influence its function, use, or appearance, and section 718.113(2), was not violated.

- Where declaration prohibited any alteration or addition to the common elements without approval of the owners, but where association had historically permitted unit owners to alter common elements adjacent to their unit in non-material fashion by placement of shrubberies and stepping stones, association obviously interprets its documents to prohibit only material alterations to the common elements outside the unit without a vote of the unit owners.

Aldrich v. Tahitian Gardens Condo. Assn., Inc.,

Case No. 96-0055 and 96-0070 (Consolidated) (Scheuerman / Summary Final Order / August 5, 1996)

- Where documents delegated authority to board to approve material alterations and additions, no vote of the owners required to install circulating fountain in lake pursuant to section 718.113(2), Florida Statutes, and the documents. Also, changes did not alter the appurtenances to the unit within the meaning of section 718.110(4), Florida Statutes, and the documents.

Aldrich v. Tahitian Garden Condo. Assn., Inc.,

Case No. 97-0373 (Scheuerman / Final Order Dismissing Petition / August 19, 1997)

- When executive committee made the decision to leave the back gate unlocked during business hours, decision more akin to a business decision left to the judgment of the board and did not result in a material alteration to the common elements.

Aldrich v. Tahitian Gardens Condo. Assn., Inc.,

Case No. 95-0198 (Evans / Summary Final Order / October 5, 1995)

- Construction of stage in recreation hall resulted in a material alteration or addition to association real property and should have been approved by 75% of the unit owners. However, replacement of externally mounted fluorescent lighting fixtures with recessed fluorescent lighting fixtures did not result in a material alteration or addition.

Anderson v. Five Towns of St. Petersburg No. 305, Inc.,

Case No. 94-0440 (Draper / Order on Issue of Law / March 28, 1995)

- Association materially altered the common element carport by painting the bottom 36 inches of support columns and gutter down spouts bright yellow without a vote of the owners, and violated documents unless association could prove in later fact-finding hearing that painting was necessary to protect and preserve the common elements or enhance the safety of the owners.

Aspenwood at Grenelefe Condo. Owner's Assn., Inc. v. Schifano,

Case No. 94-0190 (Richardson / Summary Final Order / January 27, 1995)

- Unit owner violated restriction in declaration, prohibiting a unit owner from changing any portion of his unit in such a way as to change the exterior appearance of the unit, by removing the top of the screen enclosing his patio and replacing it with a metal roof without the prior written approval of the association.

Bay Hill Village Club Condo. Assn., Inc. v. Farah,
Case No. 93-0255 (Grubbs / Final Order / June 19, 1995)

- Satellite dish, capable of receiving satellite television transmission, is an antenna within the meaning of the documents.
- Satellite dish was not "structure" within the meaning of the documents prohibiting structures of any nature, whether sheds, shacks, tents, barns, storage areas, or other buildings under principle of ejusdem generis.
- Satellite dish constituted alteration or improvement requiring compliance with documents.
- No federal preemption occurred where restriction in documents prohibited all antennas and not merely satellite dish antennas.

Bay Place Condo. Assn., Inc. v. Jiminez,
Case No. 96-0330 (Oglo / Summary Final Order / January 30, 1997)

- A unit owner materially altered the common elements by cutting a hole in a common element wall and roof to vent his stove and dryer. The declaration of condominium requires a unit owner to obtain board approval and 75% unit owner approval before materially altering the common element. Even though the unit owner alleged that the board approved the action, the arbitrator ordered him to restore the walls and roof to their original condition, since he violated the condominium documents by failing to also obtain 75% unit owner approval.

Bowditch v. Sunset Shores of Tarpon, Inc.,
Case No. 93-0189 (Scheuerman / Final Order / October 12, 1993)

- Where declaration prohibited installation of screen doors by unit owner "without prior written approval of the condominium association," only board approval was required instead of a vote of the unit owners.

Bronstein v. Hills of Inverrary Condo., Inc.,
Case No. 94-0147 (Goin / Summary Final Order / March 24, 1995)

- Section 718.113(2) not violated where board replaced Chattahoochee pool deck with paver bricks, where documents gave board the authority to approve alterations to common elements.

- Installation of paver bricks did not result in an additional improvement within the meaning of the bylaws where the association did not expand the size of the decking but merely changed the type of surface.
- Even if installation of paver bricks which replaced Chattahoochee decking could be considered an additional improvement, thus triggering unit owner vote requirement in the bylaws, decision to remove Chattahoochee decking and install paver bricks fell within the association's duty to maintain, repair, and replace the common elements for which no vote of the unit owners is required, where board determined that Chattahoochee decking needed repair or replacement.

Burrelli v. Ocean at Bluffs South Condo. Assn., Inc.,
Case No. 94-0386 (Draper / Summary Final Order / May 8, 1995)

- Where association sought to add pool enclosure on association property, and did not argue that the alteration was required for reasons of maintenance or safety, addition of enclosure would constitute material alteration to association property requiring a vote of the owners under the documents despite unilateral amendment by association to recreational property agreement, that was incorporated into original declaration, purporting to give board authority to make further improvements to the condominium property without a vote of the owners.

Carriage Club North Condo. Assn., Inc. v. Wayne,
Case No. 92-0271 (Goin / Final Order / May 25, 1993)

- Neon lighting installed within unit had effect of changing the exterior appearance of building in violation of declaration despite fact that lighting was installed within unit itself.

Cartagena v. Hilltop Condo. Assn., Inc.,
Case No. 93-0023 (Player / Final Order / July 29, 1993)

- Where declaration, as interpreted consistent with disclosure documents, permitted the board to approve terrace extensions, and where previous boards had permitted the installation of 15 terrace extensions onto the common elements, current board ordered to develop criteria for approving proposals to install terrace extensions, which criteria must be consistent with previous approvals. Board ordered to apply new criteria to the unit owners' terrace extension requests and to approve or deny the same.

Celentano v. Reflections-On-The-River Assn., Inc.,
Case No. 94-0162 (Goin / Summary Final Order / December 16, 1994)

- Installation of pool heater would result in material alteration of the common elements, thereby requiring compliance with section 718.113(2), and the declaration. Installation of a pool heater does not fall within the association's duty to maintain, repair, replace, or protect the common elements. By adding a pool heater, the pool's existing

condition will be palpably and perceptively changed in such a manner as to appreciably affect and influence its function and use. The addition of the pool heater would most likely increase use of the pool thereby changing the pool's use and function.

- Where addition of heater to pool would cost approximately \$2,000.00, although cost of alteration should not be determinative of whether an alteration is material, cost can certainly be considered.

Coventry Place Condo. Assn., Inc. v. Little,

Consolidated Case Nos. 95-0044, 95-0045 (Scheuerman / Final Order / February 21, 1996)

- Owner ordered to remove awnings which had been approved only by the president of the developer corporation and not by the association, even though developer was on board of the association. Evidence did not support claim that developer ever formally or informally polled other board members on addition of awnings.

Cravitz v. Lake Laura Condo. Assn., Inc.,

Case No. 93-0277 (Player / Final Order / June 27, 1994)

- Where board, after construction had been completed, approved deck and trellis which had been constructed by a unit owner and which extended onto the common elements, structure constituted a material alteration to the common elements and disturbed the appurtenances to the units in violation of sections 718.110(4) and section 718.113(2), Florida Statutes. Board lacked authority to "give away" portions of the common elements by approving structures which effectively appropriate common areas for the exclusive use and enjoyment of individual unit owners.

- Wooden fence enclosing a grassy limited common element adjacent to a unit constituted a material alteration to the common elements because it changed the original condition and appearance of the lawn next to the unit which was a limited common element. The illegal fence did not implicate section 718.110(4), Florida Statutes, because the area enclosed was a limited common element reserved for the exclusive use of a particular unit owner.

Cypress Woods, Inc. v. Larger,

Case No. 93-0076 (Scheuerman / Final Order / October 21, 1993)

- Repair of limited common element screen enclosure by replacing roof and part of wood siding is not an alteration within the meaning of declaration requiring board approval for alteration or changes to enclosures.

Dubois v. Lakes Village East Condo. Assn., Inc.,

Case No. 95-0209 (Scheuerman / Order Dismissing Petition / December 11, 1995)

- Where only evidence of other approved patios was single patio approved by the developer-controlled board in 1974, action of board in refusing to approve petitioner's request to install patio not shown to be arbitrary.

1800 Atlantic Condo. Assn., Inc. v. Golan,

Case No. 94-0134 (Player / Final Order / September 17, 1994)

- Where documents permitted the board to undertake repairs and replacements, but prohibited capital additions, alterations, or improvements costing more than \$25,000.00 without advance approval of 67% of the unit owners, project whereby board replaced single association meter with individual water meters housed within the units constituted a capital addition, alteration, or improvement to the common elements requiring a vote of the unit owners. The board's action designed to conserve water and reduce water bills cannot be construed as action to maintain or protect a common element.

Environ Condo. II Assn., Inc. v. Friedland,

Case No. 96-0228 (Oglo / Final Order / February 24, 1997)

- Unit owner ordered to remove stacked washer/dryer from unit and restore the unit's plumbing and wiring to original condition based upon expert testimony that the machines would impair the soundness of the building by increasing the likelihood of back up of waste water. Also, plumbing and wiring connections altered the common elements and were not part of the "as built" plans for the condominium, in violation of the condominium documents.

Flynn v. St. Regis Assn. of Sarasota, Inc.,

Case No. 96-0350 (Goin / Arbitration Final Order / April 28, 1997)

- Painting the condominium building from white to a two-tone terra cotta color resulted in an alteration to the common elements which required the approval of the unit owners.

Gardens at Palm-Aire Country Club Assn., Inc. v. Lee,

Case No. 94-0533 (Richardson / Final Order / May 16, 1995)

- Where unit owners built a patio/lanai on the limited common element behind their unit, they were ordered to remove it because it was larger than what had been approved by the board.

Garing v. Sugar Creek Country Club Travel Trailer Park Assn., Inc.,

Case No. 93-0153 (Goin / Final Order / March 23, 1994)

- Where association razed its old maintenance building and replaced it with a new building but in a different location less prone to flooding, such alteration did not result in a material alteration to the appurtenances thereby requiring 100% approval. Unit owner did not allege that reconstruction of the building at an alternative site resulted in a material alteration to the common areas. Sufficient evidence presented that new

maintenance building was constructed pursuant to the association's duty to maintain, repair and replace the common areas, and therefore association can authorize the building replacement without a vote of the unit owners, citing Tiffany Plaza; Cottrell.

Goodman v. Winston Towers 300 Assn., Inc.,

Case No. 93-0368 (Richardson / Final Order / June 16, 1994)

- Association violated declaration prohibiting material alterations to the common elements absent prior approval of seventy-five percent of the unit owners where it subdivided a room previously used for social gatherings into two separate rooms in order to construct a board meeting room. Association ordered to restore the room to its prior condition unless approval of seventy-five percent of the voting interests vote in favor of the alteration.

Greenlee v. Oceanside Terrace Condo. Assn., Inc.,

Case No. 95-0497 (Goin / Partial Summary Order / February 9, 1996)

- Where declaration provided that there shall be no alteration nor further improvement to the common elements without the prior approval of not less than 20 unit owners and that such alteration could not interfere with the rights of any owner without their consent, security gate installed by association which was approved by at least 20 unit owners did not violate declaration because the security gate did not "interfere with the rights" of petitioner even though petitioner and his guests would no longer have the same direct access as before.
- In addition to requiring the consent of 20 unit owners for alterations or improvements, where declaration of condominium also provided that any alterations "shall not interfere with the rights of any unit owners without their consent," the arbitrator held that association did not act improperly in installing a security gate without the consent of petitioners. The association obtained the approval of the requisite number of unit owners pursuant to the declaration and even though access to the units would be more difficult once the gate was installed, the security gate would not "interfere with the rights" of the unit owners as contemplated by the declaration. Any inconvenience suffered by petitioner/unit owner would also be suffered by other unit owners.

Greenlee v. Oceanside Terrace Condo. Assn., Inc.,

Case No. 95-0497 (Goin / Final Order / March 26, 1997)

- Unit owner did not prove that the association had failed to obtain the consent of the unit owners before installing a security gate. Although unit owner believed that association had not included certain relevant information in the written consent forms that had been sent to the unit owners, no unit owners testified that they had been misled by the board and that they wanted to change their vote regarding the security gate. If unit owner felt that he did not have sufficient information to make an "informed" decision, that unit owner could have asked for further information, voted against the security gate, or could have not voted at all.

Haines v. The Longwood Condo. Assn., Inc.,
Case No. 92-0286 (Grubbs / Final Order / April 29, 1994)

- Chain link fence erected on the common elements was a material alteration that required approval of 75% of the unit owners. While association has legitimate interest in providing a safe environment and in protecting individuals from falling into the canals, no showing was made that the alteration or improvement was necessary to preserve the health and safety of the residents.
- Chain link fence was "alteration" and not a "replacement" of previously existing cable and post barrier, despite the fact that both structures served a similar purpose. To be a replacement, it must be something substantially similar in appearance as well as function.

Hickey v. The Georgian Condo. Assn., Inc.,
Case No. 97-0201 (Scheuerman / Summary Final Order / July 23, 1997)

- Where board permitted city to mount a time lapse camera atop condominium building to monitor construction activity in adjacent lot, association violated section 718.113(2) by permitting a material alteration without a vote of the owners as required by documents.

Inverness At Golfview Condo. Assn., Inc. v. Dunlop,
Case No. 96-0247 (Oglo / Summary Final Order / November 13, 1996)

- While being a problem and inconvenience, the spraying of water by golf course sprinklers into respondents' lanai does not legally entitle the owners to alter the exterior of their unit, by installing vinyl windows, without prior board approval.

Inverness II Condo. Assn., Inc. v. Nettestad,
Case No. 95-0165 (Draper / Summary Final Order / May 31, 1996)

- Unit owner who cut doorway through unit wall into adjacent common element space violated declaration prohibition against altering common elements. Such action also violated provisions prohibiting structural modifications. The addition of a door, or any opening, in a room is a modification in the structure of the room. Rather than a single access, the room has two access points; rather than a solid wall, the wall now has a hole in it.

James v. Perdido Towers Owners Assn., Inc.,
Case No. 96-0424 (Goin / Summary Final Order / March 4, 1997)

- Where unit owner sought board's approval to install a boat lift on the common element dock, board properly denied request; condominium documents were silent as

to material alterations to common elements by unit owners so 75% approval of the unit owners was required pursuant to section 718.113(2), F.S.

Jamestown Condo. Assn., Inc. v. Perrico,

Case No. 94-0329 (Grubbs / Summary Final Order / January 23, 1996)

- Where replacement windows had a frame that was wider and of a different color than the standard windows, the unit owner's installation of the windows constituted a change to the windows which required approval in writing of other unit owners in building under the declaration.

Kamfjord v. Harbour Green Condo. Assn., Inc.,

Case No. 93-0173 (Scheuerman / Summary Final Order / October 28, 1993)

- Proposed expansion of limited common element patio onto the common elements changed the appurtenances to the units for which a 100% affirmative vote of the owners was required. A proposed change may simultaneously change the common elements within the meaning of section 718.113(2), F.S., while also changing the appurtenances to the unit within the meaning of section 718.110(4), F.S. The proposed patio extension would result in a smaller portion of the common elements being available for use by the unit owners, thereby diminishing the common elements appurtenant to the units.

Karr v. Spyglass Walk Condo. Assn. Inc.,

Case No. 94-0411 (Draper / Final Order / October 10, 1996)

- Association's refusal to permit unit owners to leave tile installed in common element lobby area was not arbitrary, capricious and discriminatory where the board determined that the tile was a safety hazard. Association showed tile was slippery when wet and was not skid proof.

Ladolcetta v. Carlton Condo. Assn., Inc.,

Case No. 94-0499 (Draper / Summary Final Order / April 24, 1995)

- Conversion of game room including pool table, card tables, and furniture into office for manager changed function, use, and appearance of game room and constituted material alteration to the common elements. Similarly, conversion of manager's former office into locked storage room constituted material alteration to the common elements. Neither change, however, constituted alteration to appurtenances of units as unit owners have not been deprived of the use of any area.
- Unit owners did not waive their right to contest conversion of game room into manager's office by failing to replace board in subsequent election.

Lakebridge Condo. Assn., Inc. v. Fernando,

Case No. 93-0151 (Grubbs / Final Order / May 12, 1995)

- Removing gate and sealing opening in common element wall behind respondents unit, which provided access to tennis academy adjoining condominium, would constitute substantial alteration requiring unit owner vote under declaration because it would completely change the appearance, function and use of that portion of the common elements. Removing gate and sealing opening in wall is not "replacing" the common element, even though the wall was initially constructed without the opening, because developer had installed gate for owners.

Lipton v. Martinique Village II B Condo. Assn., Inc.,

Case No. 94-0213 (Price / Final Order Dismissing Petition / August 29, 1994)

- Failure of board to prune a tree in a manner preferred by unit owner cannot be viewed as an addition or alteration to the common elements, and dispute accordingly does not come within the jurisdiction of the arbitrator. Also, since the condominium documents did not establish a right in the unit owners to have a view of the common elements from the unit, petition failed to demonstrate how the board had required unit owner to take action or not take action involving the use of the unit or the common elements.

Lockner v. Waterway Townhouse Condo. Assn., Inc.,

Case No. 94-0389 (Grubbs / Final Order Dismissing Petition / October 27, 1994)

- Change to parking rules allowing vans does not constitute an alteration or addition to the common elements as the general use, function, and appearance of the area has not been changed.

Lorenzini v. Eaglewood West Condo. Assn., Inc.,

Case No. 93-0061 (Price / Arbitration Summary Final Order / August 26, 1993)

- Installation of screen doors on limited common elements appurtenant to the units did not result in a violation of the documents or Section 718.113(2), Florida Statutes, where the declaration prohibited the installation of screen doors without the prior approval of the association, and where the board ratified the installation of the screen doors.

Marinelli v. Crescent Royale Condo. Assn.,

Case No. 93-0197 (Player / Post Conference Call Order / November 5, 1993)

- A dispute filed by unit owners alleging that trees planted by association constitute material alteration to common elements, where association scheduled a meeting at which the issue would be put to a vote of the unit owners, dispute would be rendered moot if the unit owners approved the plantings, as the granting of after-the-fact approval for a material alteration to the common elements is an accepted means of securing unit owner approval.

Martin v. Central Park South Condo. Assn., Inc.,

Case No. 93-0108 (Goin / Summary Final Order / November 23, 1993)

- Where board, without a vote of the unit owners, installed a walkway between buildings connecting to the swimming area at a cost of \$800.00, construction of walkway violated provision of declaration of covenants prohibiting the building of an improvement without the approval of a majority of the owners. Later board action, by which after commencement of the arbitration, it purported to grant itself a variation from the declaration provisions, was ineffective as it applied only to cases of hardship for which no factual predicate was introduced into the record. Also, construction of walkway was not a maintenance function pursuant to Tiffany Plaza, and accordingly, compliance with section 718.113, F.S., and documents was required.

Miami Beach Club Motel Condo. Assn., Inc. v. Escar,

Case No. 93-0162 (Goin / Preliminary Order / December 21, 1993)

- Where unit owner installed central air conditioning unit on common elements, section 718.113, Florida Statutes, was not violated where only the board gave permission for the installation, as the condominium documents delegated the authority to the board to approve alterations to the common elements.

Misty Lake South Condo. Assn., Inc. v. Caron,

Case No. 94-0113 (Scheuerman / Summary Final Order / August 3, 1995)

- Addition of satellite dish to common elements outside of unit constituted a material alteration or change to the common elements prohibited by documents except with the consent of the board.

Niles v. The Oaks at Hunter's Run Condo. Assn., Inc.,

Case No. 92-0267 (Grubbs / Final Order / July 1, 1994)

- Establishment of golf cart path across the common elements was a material alteration and substantial addition to the common elements. The cart path eliminated shrubbery which had previously blocked access to the golf course, resulted in the construction of an asphalt surface, and changed the use of the area.
- Petition signed by twenty out of twenty-four voting interests, which petition urged the board to establish a golf cart path, did not satisfy the unit owner voting requirements of section 718.113(2), Florida Statutes. The signing of a petition is a preliminary matter that urges the board to take a certain kind of action. It has no binding effect.
- Even where the documents permit material alterations by the association without a vote of the unit owners, the board's decision in a particular case is nonetheless subject to scrutiny. Here, board's decision to use a portion of the common elements as a golf cart path must be considered a rule or regulation for purposes of challenge to that action. Decision of board determined to be unreasonable, arbitrary, and capricious. The board failed to take into consideration obvious safety concerns in that the path

encouraged golf cart and pedestrian traffic adjacent to and on petitioning unit owner's driveway. Further, action of the board was discriminatory by treating petitioning unit owners differently from all other members of the association.

Olive Glen Condo. Assoc. v. Timothee,

Case No. 92-0207 (Helton / Final Order on Default / November 25, 1992)

- Energizer Bunny wooden figure erected on common elements by unit owner violated documents prohibiting unit owners from changing appearances of common elements; even if animal was situated within the unit boundary, its presence simultaneously changed the appearance of the common elements.

One Thousand Venetian Way Condo. Assn., Inc. v. Correa,

Case No. 94-0485 (Richardson / Final Order / February 6, 1996)

- Unit owner violated the restriction against making any alterations to the balcony of her unit without board approval by installing a non-conforming tile on her balcony area. Unit owner failed to prove her affirmative defenses of estoppel by silence of association's on-site manager, selective enforcement, and arbitrary application of a board rule restricting alterations to the balconies.

O'Neill v. Coral Isle East Condo. Assn., Inc.,

Case No. 93-0332 (Scheuerman / Final Order / June 24, 1994)

- Fence constructed around recycling dumpster and recycling waste drums constitutes material alteration or addition to the common elements requiring compliance with section 718.113 and documents unless compliance is otherwise obviated by interplay of local ordinances requiring such facility.
- Where local ordinance required recycling facility with containment structure (i.e., fence), board's duty to maintain and operate the common elements is broad enough to encompass operational activities designed to bring association in conformity with existing ordinances. An association's duty to maintain and operate the common elements implies maintenance and operation according to some standard, and where it is shown that applicable local ordinance defines the standard of maintenance, it is within the purview of the board's authority under section 718.111(4), Florida Statutes, to operate the property in a manner consistent with those local ordinances. Accordingly, the decision by the board to construct the containment facility is a maintenance function requiring no vote of the unit owners.

Palm Court Owners Assn., Inc. v. Palm Bay Development Corporation,

Case No. 95-0131 (Scheuerman / Final Order / August 14, 1996) (*aff'd* Palm Bay Development Corp. v. Palm Bay Owners Assn., Inc., / Case No. CA-96-3497 12th Jud. Cir. Ct. / (November 7, 1997) / appeal pending 2d DCA 1998)

- Pursuant to declaration, right of original developer to use units as model or sales office ended at the sale of the last unit, and accordingly, subsequent purchaser had no right to use the unit as model or office, or to continue physical modifications to unit designed to enhance sales effort of original developer. Remote purchaser required to remove alteration which had become unauthorized.

Pelican Reef Condo. Assn., Inc. v. Caban,

Case No. 95-0504 (Scheuerman / Final Order / November 14, 1996)

- Fact that prior owner performed material alteration without complying with documents did not insulate current owner from responsibility.

The Racquet Club of Fort Lauderdale Assn., Inc. v. Kramer,

Case No. 93-0003 (Goin / Final Order / July 20, 1993)

- Where declaration prohibited unit owners from enclosing balconies and patios, unit owners ordered to remove a fence that had been built enclosing their patio. Unit owners' selective enforcement argument rejected where other structures placed on the patios (wooden storage shed and foot-high planter on surrounding patio) were not comparable to the fence. Unit owners' argument that the fence was necessary for security and privacy also rejected, because self-help measures in violation of documents are prohibited.

Raska v. The Fountains Assn., Inc.,

Case No. 93-0364 (Goin / Summary Final Order / December 23, 1994)

- Alteration of putting greens by removing artificial turf and placing tables, chairs, and plants on the surface did not result in a material alteration to the appurtenances to the units, but did result in a material alteration of the common elements. While the association changed the use of the common elements from a putting green to a patio and picnicking area, the area remains a recreational area, the beneficial use of the area has not been diminished, and the appurtenances to the units have not changed. However, the removal of the artificial turf and the placement of furniture resulted in a material alteration of the common elements requiring compliance with section 718.113(2), Florida Statutes, and the documents.
- Decision by board to remove artificial putting surface and replace with picnic furniture due to deterioration of the artificial turf, and the expense of replacement, not a maintenance decision by board exempting it from the operation of section 718.113(2); while the board has broad discretion in determining the degree of maintenance required on the common elements, the association cannot ignore its duty to maintain and replace the common elements which results in a material alteration or substantial addition to the common elements, unless such alteration is approved pursuant to §718.113(2).

- Although the change in landscaping may have altered the common elements somewhat, such alteration was made pursuant to the association's duty to maintain the landscaping and no compliance with section 718.113(2), Florida Statutes, was required.

Rensen v. Heritage Landings Condo. Assn., Inc.,

Case No. 92-0307 (Scheuerman / Summary Final Order / May 27, 1993)

- Installation of wooden decks on common elements adjacent to units constituted material alteration to the common elements requiring compliance with Section 718.113, Florida Statutes.
- Where declaration failed to provide a method whereby material alterations to the common elements could be made by a unit owner, 75% vote of entire voting interests must be obtained to permit installation of wooden decks.
- Board's action, in approving installation of two decks on the common elements, prevented other unit owners from enjoying full use of common elements and impermissibly changed the appurtenant right to use the common elements.

Salamone v. Golden Horn Condo. Assn., Inc.,

Case No. 96-0370 (Scheuerman / Summary Final Order / July 17, 1997)

- Where association undertook to remove Chattahoochee covering from limited common element terrace in order to repair a leak in the roof, no vote of the owners was required for the association to undertake its maintenance obligation. In addition, in absence of an agreement to the contrary, association, in permitting the flooring to be installed in the first instance, did not agree to replace the flooring whenever it became necessary to fix the roof. Owner has no reasonable expectation that association will perpetually reinstall the flooring where its removal becomes necessary to maintain the common elements.

Schwartz v. Brickell Townhouse Assn., Inc.,

Case No. 95-0222 (Goin / Arbitration Final Order / December 2, 1996)

- Where structure to house emergency generator and fire pump was constructed on the common elements without a vote of the unit owners, association did not violate section 718.113(2) or 718.110(4) where generator and fire pump (and structure to house them) was part of an engineered life safety system required by the So. Florida Prevention Code.

Shore Haven Condo. Assn. v. Drake,

Case Nos. 92-0136; 92-0137 (Price / Final Order / January 15, 1993)

- Initial construction and reconstruction by association of storage sheds situated on limited common elements violated Section 718.113(2), Florida Statutes, and documents as their construction involved a material alteration or improvement to the common

elements for which no unit owner vote was taken. Association required either to remove sheds or to amend declaration to add sheds to limited common elements with unit owner approval.

- Storage sheds located on limited common elements, the construction of which constituted an illegal material alteration to the common elements for which no unit owner approval was obtained, could not be reconstructed after hurricane with common expense monies because expense was not valid common expense.

Smith v. Mystic Pointe Tower 500 Condo. Assn., Inc.,
Case No. 93-0004 (Player / Final Order / October 12, 1993)

- Board had authority to pass rule restricting size of religious ornaments and doorbells to be affixed and installed on doorframes to the units, where adopted rule was not in conflict with a provision in the declaration. Board rule was reasonable because, due to aesthetic considerations, board could properly conclude that size and location restrictions were called for.

Southridge Homeowners Assn., Inc. v. Barbieri,
Case No. 94-0382 (Scheuerman / Summary Final Order / December 27, 1994)

- Material alteration of the common elements existed where unit owner installed fireplace chimney and security lights, even though board had previously installed security lights on the corners of the buildings in the condominium.
- Association could have properly determined to install security lights without a vote of the owners if there existed convincing factual predicate that the board's action was necessary to protect the common elements or inhabitants from a known danger.

Stearns v. Aquavista Owner's Assn. of Panama City Beach,
Case No. 93-0289 (Draper / Final Order / April 29, 1996)

- Installation of carpeting, desks and file cabinets in former laundry room held to be material alteration to the common elements.
- Where video games were removed from game room and room was changed to lunch room/supply room for association personnel, common elements were materially altered.
- General power granted in declaration for association to manage and operate the common elements does not supersede requirement that common element alterations such as changing video game room to lunchroom be approved by the unit owners.
- Where unit owners retroactively approved an amendment of the declaration specifically providing for the changes, unit owner approval of alterations no longer required.

- Change in rooms held not to be material alterations to the appurtenances to the unit. While the rooms' purposes have changed, they are still within the ambit of intended uses of the common elements (furnishing services and facilities for the enjoyment of the apartments) and no specific service facility type previously provided was entirely deleted.

Stoner v. 440 West, Inc.,

Case No. 93-0139 (Scheuerman / Summary Final Order / December 1, 1993)

- Radio antennae to be installed on top of building by unit owner constituted a material alteration of the common elements requiring compliance with section 718.113(2), F.S.

Sturman v. Harbour Royale Condo. Assn., Inc.,

Case No. 95-0070 (Draper / Final Order / September 28, 1995)

- Construing declaration and 718.113(2) as a whole, arbitrator determined that provisions of declaration requiring unit owner approval of regulations on the use of the condominium property not intended to prohibit board from adopting regulation proscribing installation/reinstallation of tile/carpet when deterring such action was reasonably necessary for the maintenance and protection of the common elements.

Szczepanski v. Cypress Bend Condo. II Assn., Inc.,

Case No. 96-0454 (Scheuerman / Final Order Dismissing Petition / August 4, 1997)

- Cell phone tower authorized by the association to be installed atop condominium building by Communications Company to enhance public telephone communications held to constitute a material alteration to the common elements requiring compliance with s. 718.113(2), F.S., and the documents. Tower changed the use, function, and appearance of the building.
- Where documents permitted board to change the common elements so long as the change does not prejudice the rights of any owner, determination of whether petitioning unit owner was prejudiced within the meaning of the documents held to refer to some disproportionate impact on or bias to an individual owner or group of owners; bias is not equated with monetary impact.
- Easement authority of board to grant easements which benefit the owners does not override the board's duty to comply with procedures required by declaration and statute for materially altering the common elements, where easement was not shown to actually benefit the owners.

Taracomo Townhomes Condo. Assn., Inc. v. Knowles,

Case No. 95-0206 (Richardson / Final Order / February 5, 1996)

- Unit owner violated the restriction against making any alterations to the exterior and common area adjacent to her unit without board approval by installing a shed and washbasin in the fenced backyard of the unit. The board's reasons for disapproving the shed and washbasin were reasonable.

Towner v. Aldea Mar Condo. Assn., Inc.,

Case No. 95-0322 (Draper / Summary Final Order / September 24, 1996)

- Association's removal of sundecks to re-roof and failure to replace them constituted a material alteration of the appurtenances to the units served by the sun decks, requiring association to comply with S. 718.110(4).
- Sundecks were limited common elements. While they were not specifically designated such in the declaration, the way the condominium was constructed, with nine of the units having sundecks accessible only from inside the unit and a tenth unit with a sundeck on the unit's carport and accessible by stairs directly outside the unit, indicates that the sundecks were reserved for the use of those ten units, and thus, were limited common elements.

Villas at Eagles Point Condo. Assn., Inc. v. Kahn,

Case No. 94-0391 (Scheuerman / Arbitration Final Order / July 10, 1995) (aff'd, Kahn v. Villas at Eagles Point Condo. Assn., Inc., Case No. 96-02074 / Fla. 2d DCA May 14, 1997/ 693 So.2d 1029).

- Addition of patio deck constituted material alteration to the common elements and simultaneously altered the appurtenances to the units.

Wagster v. Sea Palm of FWB Condo. Assn.,

Case No. 92-0209 (Grubbs / Final Order / May 26, 1993)

- Repair or replacement of air conditioner shroud servicing two units not deemed a material alteration to common elements.

Wagster v. Sea Palm of FWB Condo. Assn., Inc.,

Case No. 92-0243 (Goin / Final Order / April 20, 1993)

- Sea wall constructed to protect the common elements did not have to be approved by the unit owners where there had been a noticeable loss of beachfront property during previous 13 years.

Williams v. Sky Harbour Condo. Apartments, Inc.,

Case No. 93-0334 (Scheuerman / Summary Final Order / June 24, 1994)

- Where there is an established history of criminal activity against property and person, board had authority pursuant to its obligation to maintain the common elements to construct security fence without a vote of the unit owners. Although fence would

have otherwise constituted a material alteration to the common elements requiring compliance with section 718.113, Florida Statutes, where it was demonstrated in evidence that the action of the board was necessary to protect the condominium property and the unit owners, and that criminal activity would continue in the absence of precautionary steps taken by the board, compliance with section 718.113 not required.

- Consistent with Cottrell and Tiffany Plaza, the maintenance/repair concept includes considerations of securing the condominium property and residents from a perceived threat of danger from intruders and criminal activity.

Yacht Harbour Condo. Assn., Inc. v. Seikman,

Case No. 94-0167 (Scheuerman / Summary Final Order / November 2, 1994)

- Prior to 1991 amendments to Chapter 718, Florida Statutes, unless otherwise provided by the declaration, installation of hurricane shutters would ordinarily constitute material alteration to the common elements requiring compliance with section 718.113, Florida Statutes.

Right to use

Bay Harbor Towers Condo. Assn., Inc. v. Berk,

Case No. 95-0100 (Vaughn / Final Order / October 19, 1995)

- Owner failed to demonstrate entitlement under documents and statute to continue to utilize as storage space, area originally reserved for association mailroom.

Estes v. Lido of Pinellas Condo. Assn., Inc.,

Case No. 94-0428 (Draper / Final Order / September 8, 1995)

- Common element recreation room containing exercise area was not available to unit owners as required by s. 718.123, F.S., where room was kept locked and could only be used by unit owners by reservation or by requesting key from maintenance staff, board member, or by driving to get key from management office located 15 minutes away. In the past, all owners had been issued a key.

- Rule requiring owners to locate board member or off-site manager to gain access to recreation and exercise room was not a reasonable restriction on use where association failed to demonstrate the necessity of the rule. Damage to room in the past was minimal and occurred during period when keys to condominium property in general had been widely distributed throughout busy beachfront area. Since locks were re-keyed or changed and locked beach gate installed, no damage to recreation room had occurred.

51 Island Way Condo. Assn., Inc. v. Gramlich,

Case No. 94-0332 (Scheuerman / Summary Final Order / November 14, 1994)

- Rule prohibiting all unit owners from fishing on a designated area of the common elements not shown to be unreasonable; right to fish, while substantial, does not rise to

the level of a fundamental or constitutional right where the right to fish is only regulated and not abolished.

Najafzadeh v. Rossmoor Bahama Village Assn., Inc.,
Case No. 93-0089 (Player / Final Order / December 13, 1993)

- Unit owner entitled to identification cards for all permanent residents of the unit where association had no written guidelines concerning the matter and where the owner was previously issued three identification cards.

Scottish Highlands Condo. Assn., Inc. v. MacKellar,
Case No. 94-0168 (Scheuerman / Summary Final Order / August 5, 1994)

- The condominium documents may properly determine that a garage or yard sale, with its attendant carnival-like atmosphere, should be prohibited.

Common Expenses

Boettger v. Ocean Palms Condo. Assn., Inc.,
Case No. 92-0269 (Goin / Final Order / May 17, 1993 / Order on Motion for Clarification / June 7, 1993)

- The salary of a rental manager, hired by the Association to conduct a rental program for all unit owners desiring to rent out their unit, is not an appropriate common expense under Section 718.115, Florida Statutes. While the salary of a manager providing management services relating to the common elements would be an appropriate common expense, salary for providing rental services cannot be assessed as a common expense. Nothing in the declaration purported to authorize the expense as a common expense.

Brickell Town House Assn., Inc. v. Del Valle,
Case No. 95-0133 (Scheuerman / Final Order / September 12, 1995) (Scheuerman / Order on Motion for Rehearing / December 6, 1995)

- Where association, pursuant to its duty to maintain and repair the common elements, undertook restoration project to the exterior of building damaged by hurricane, where method of reconstruction chosen by association required certain owners to vacate their units for one to two months, the expenses shown to be actually necessary to permit the association to carry out its duty of undertaking maintenance project are, as a matter of law, deemed to be common expenses to be shared by all unit owners, including expenses of securing alternate living arrangements for owners; storage expenses for furniture, moving expenses, expenses of repairing unit damaged by reconstruction effort; and lost income where a tenant was forced to leave the unit.

Murray v. Inlets Condo. Assn.,
Case No. 93-0101 (Player / Final Order / January 27, 1994)

- Maintaining canals to a depth of -4.5 feet is a maintenance function where original dredging permits allowed maintenance dredging to a depth of -4.5 feet. Accordingly, dredging project of association to preserve original depth is a maintenance function of the association for which it may assess the costs as a common expense to all unit owners. Fact that some unit owners without canal lots could not use the canals for boating does not require the opposite conclusion.

Palmer v. Bellamy Forge Assn., Inc.,

Case No. 94-0111 (Richardson / Summary Final Order / July 28, 1994)

- Board did not ratify adoption of a use fee at a later board meeting where ratification was not an item on the agenda and the minutes of the meeting did not clearly indicate a vote on ratification.

Schlegel v. Fisherman's Cove Assn., Inc.,

Case No. 93-0123 (Draper / Final Order / April 4, 1996)

- Even if balcony was a part of the unit, association was still authorized to pay cost of balcony repairs because declaration defined common expenses to include repair of "portions of units to be maintained by the association," such as exterior of building, and balcony is an exterior portion of a building.

Constitution

Corporation

Savannah Condo. Assn., Inc. v. Trans Management Corporation,

Case No. 93-0049 (Grubbs / Final Order / November 16, 1994) (currently on appeal)

- Corporation is a "person" entitled to equal protection of the laws under the fourteenth amendment.

Due process

Equal protection

Misty Lake South Condo. Assn., Inc. v. Caron,

Case No. 94-0113 (Scheuerman / Summary Final Order / August 3, 1995)

- Provision in declaration prohibiting erection of antennas did not violate owner's right to free speech.

Savannah Condo. Assn., Inc. v. Trans Management Corporation,

Case No. 93-0049 (Grubbs / Final Order / November 16, 1994) (currently on appeal)

- Where declaration was amended to eliminate exemption enjoyed by corporate unit owner from occupancy restrictions, amendment did not violate corporation's right to

equal protection. Rather than creating two classes of owners and unreasonably restricting the use and occupancy of each, the amendment merely eliminated the exception which had been enjoyed in the past and did not create a restriction which differentiated between types of unit owners.

Free speech

Generally

State action

Savannah Condo. Assn., Inc. v. Trans Management Corporation,
Case No. 93-0049 (Grubbs / Final Order / November 16, 1994) (currently on appeal)

- Association seeking state assistance, through arbitration, to enforce its restriction concerning occupancy limitation is seeking "state action" and thus, the corporate unit owner could claim that the restriction violates equal protection.

Covenants (See Declaration-Covenants/restrictions)

Declaration

Alteration to appurtenances to unit (See Unit-Appurtenances)

Amendments

Burrelli v. Ocean at the Bluffs South Condo. Assn., Inc.,
Case No. 95-0292 (Goin / Final Order Denying Petition for Arbitration / October 27, 1995)

- Amendment to the declaration which added provision specifying the procedure for approving alterations and improvements to the recreation area, which was association property, was not an amendment which had to be approved by 100% of the owners because amendment did not alter the appurtenances to the units.

Catron v. Palmetto Palms RV Resort Condo. Assn., Inc.,
Case No. 92-0208 (Player / Final Order / November 30, 1992)

- Ambiguous amendatory provision of declaration required a 66^{2/3} vote of the entire membership.

Dazelle v. Beach Terrace Resort Condo. Assn., Inc.,
Case No. 95-0160 (Price / Arbitration Final Order / March 25, 1996)

- Purported amendment to declaration invalid where it was neither voted on by 2/3rds of the unit owners executing a modification or amendment to the declaration with the formalities of a deed and recording same in public records nor did it receive the approval of 2/3rds of the members at a regular or special meeting. Also, the text of

amendment was derived from incomplete association records and from the memory of a board member recollecting items voted on for amendment over a period of five years.

Digialcomo v. Seascaple Condo. Management Assn., Inc.,
Case No. 96-0436 (Goin / Summary Final Order / April 1, 1997)

- Amendment to declaration recorded in 1993 prohibiting pets was invalid where unit owners passed amendment by general proxy.

Earp v. Holiday Village Assn., Inc.,
Case No. 92-0250 (Player / Final Order / October 27, 1993)

- Amendments to proprietary lease valid even though they were made by written approval of the owners and it took more than a year to obtain all approvals.

Gate Condo. Assn., Inc. v. Finkel,
Case No. 95-0344 (Scheuerman / Final Order of Dismissal / December 9, 1996)

- Declaration could be amended to prohibit all future rental of units, and such an amendment did not affect the security of mortgages on the unit.

Goodman v. Mayfair Condo. in Park West Condo. Assn., Inc.,
Case No. 94-0144 (Richardson / Summary Final Order / August 10, 1994) (appeal dismissed. Goodman v. Mayfair Condo. in Park West Condo. Assn., Inc., Case No. 94-5204-CI-19, 6th Jud. Cir. Ct., March 14, 1995) (Unit owner's appeal dismissed with prejudice for failure to present prima facie case. Amendment to declaration did not alter or modify appurtenances to unit and was validly passed)

- Amendment to declaration which redesignated the covered parking spaces from common elements to limited common elements did not change the appurtenances to Petitioner's unit because Petitioner did not have use of a carport when he purchased the unit. Moreover, parking spaces, by their very nature, are exclusive. Also, the spaces were originally intended to constitute limited common elements as evidenced by the developer's deeds of sale.

Lakeview Gardens Condo. Assn., Inc. v. Hernandez,
Case No. 92-0158 (Grubbs / Final Order/As Corrected / April 11, 1994)

- Where declaration restricted use of unit to residential purposes and identified persons who could use unit including families, guests, and invitees, board rule which limited number of persons who could occupy the unit in effect amended declaration and was invalid. If, as argued by association, sewage treatment facility required use limitations, declaration could be amended.

Lathrop v. The Cove at South Beaches Condo. Assn., Inc.,

Case No. 95-0147 (Goin / Final Order Denying Petition for Arbitration / October 27, 1995)

- Unit owner failed to state a basis for relief where he alleged that amendment to declaration which required all owners to obtain insurance on their units was invalid. Amendment was not wholly arbitrary in its application, in violation of public policy, and did not abrogate some fundamental constitutional right.

Pisz v. Holiday Out at St. Lucie Condo. Assn., Inc.,

Case No. 94-0207 (Grubbs / Summary Final Order / February 22, 1995)

- Provision in declaration not interpreted to require association to include on the ballot, or with the materials sent out prior to the annual meeting, every proposed amendment to the declaration that it receives in writing from unit owners.

Seminole Cove Condo. Assn., Inc. v. Enterprise Health Management, Inc.,

Case No. 95-0444 (Goin / Summary Final Order / August 14, 1996)

- Where original declaration provided that the developer owned the property submitted to condominium ownership and extensive amendments deleted all references to developer and provided that the property was owned by the association, amendment providing that condominium was intended as housing for older persons did not apply only to those 3 units owned by association; reference to association as owner of property was a non-material error that should not invalidate entire amendment.

Stearns v. Aquavista Owner's Assn. of Panama City Beach,

Case No. 93-0289 (Draper / Final Order / April 29, 1996)

- Where unit owners retroactively approved an amendment of the declaration specifically providing for changes including changing a video game room into a lunchroom, unit owner approval no longer required.

Tortuga Club, Inc. v. Szarek,

Case No. 95-0274 (Goin / Final Order / February 13, 1997)

- Where unit owners had signed an application for purchase which stated that owner agreed to abide by the condominium documents without reservation "as they now exist", unit owner did not agree to be bound by invalid amendment that had been recorded prior to purchase of unit; amendment had not been approved by the institutional first mortgagee and therefore, the amendment was void and did not legally exist at time that owner signed application for purchase.

Covenants/restrictions

Courtyard Square Condo. Assn., Inc. v. Buchholz,

Case No. 96-0415 (Draper / Final Order on Default / May 1, 1997)

- Declaration restriction prohibiting use of unit for other than single-family residence held not to preclude reasonable incidental commercial use.

Galleon Condo. Apartments, Inc. v. Rappaport,
Case No. 92-0297 (Player / Final Order / April 8, 1993)

- Rule prohibiting installation of carpeting on limited common element balconies is reasonable.
- No waiver of right to enforce rule demonstrated and no selective enforcement shown.

Palm Royal Apartments, Inc. v. Flaherty,
Case No. 96-0088 (Draper / Summary Final Order / December 12, 1996)

- Current unit owner responsible for removing air conditioner/splash guards installed by previous owner without approval of other unit owners and board of directors. Where restriction against changes to building exterior was contained in the declaration, it was covenant running with the land, enforceable against subsequent owners whether or not they have knowledge of restriction. In addition, section 718.104(4)(f), F.S. provides that provisions of declaration are enforceable equitable servitudes that run with the land and are effective until the condominium is terminated.

Sky Lake Gardens No. 2, Inc. v. Gomez,
Case No. 95-0362 (Draper / Summary Final Order / September 25, 1996)

- Ban on leasing adopted by board invalidated where declaration provided that unit was to be used as a residence for the unit owner and his tenants. Because the unit may be used as a residence for a tenant, the right to lease the unit may be inferred from the declaration.

Twin Fountains Club, Inc. v. Pyle,
Case No. 92-0191 (Grubbs / Final Order / May 11, 1993)

- A swing/gazebo is a "structure" within the meaning of the documents prohibiting addition of structure on common elements without approval in advance of board.

Yacht Harbour Condo. Assn., Inc. v. Seikman,
Case No. 94-0167 (Scheuerman / Summary Final Order / November 2, 1994)

- Where violation of covenant contained in condominium documents is shown, no independent showing of irreparable injury is required in order to obtain injunctive-type relief.

Exemptions

Palm Court Owners Assn., Inc. v. Palm Bay Development Corporation,

Case No. 95-0131 (Scheuerman / Final Order / August 14, 1996) (*aff'd* Palm Bay Development Corp. v. Palm Bay Owners Assn., Inc., / Case No. CA-96-3497 12th Jud. Cir. Ct. / November 7, 1997) / appeal pending 2d DCA 1998)

- Subsequent developer did not stand in shoes of first developer's obligations in declaration under mere continuation doctrine which holds subsequent corporation responsible for obligation of first corporation. Although corporations were related, they were engaged in different business activities.
- Pursuant to declaration, right of original developer to use units as model or sales office ended at the sale of the last unit, and accordingly, subsequent purchaser had no right to use the unit as model or office, or to continue physical modifications to unit designed to enhance sales effort of original developer. Remote purchaser required to remove alteration which had become unauthorized.

Ross v. El Dorado Towers Condo. Assn., Inc.,
Case No. 93-0005 (Scheuerman / Summary Final Order / July 2, 1993)

- Exemption from rental restrictions in the declaration for first mortgagee foreclosing on unit mortgage did not extend to purchaser at foreclosure sale where foreclosure action was initiated by a first mortgagee but where the mortgage in action was assigned to a non-institutional corporation which completed the foreclosure sale.

Generally

Interpretation

Arlen House East Condo. Assn., Inc. v. Olemberg,
Case No. 95-0273 (Draper / Final Order / July 31, 1996)

- Restriction contained in declaration of condominium against "laundry facilities" not vague and was properly applied to prohibit a washer and dryer.
- "Reasonableness" not appropriate standard against which to measure restriction in declaration of condominium, citing Hidden Harbour Estates, Inc. v. Basso. Standard is whether restriction is wholly arbitrary in its application, in violation of public policy or violates some fundamental constitutional right.
- Restriction prohibiting laundry facilities in the units and permitting common laundry facilities for the owners not arbitrary, where declaration provided for arrangement and association had contract with private concern to provide all laundry facilities to the condominium.

Bowditch v. Sunset Shores of Tarpon, Inc.,
Case No. 93-0189 (Scheuerman / Final Order / October 12, 1993)

- Where declaration prohibited installation of screen doors by unit owner "without prior written approval of the condominium association," only board approval was required instead of a vote of the unit owners.

Brickell Town House Assn., Inc. v. Del Valle,

Case No. 95-0133 (Scheuerman / Final Order / September 12, 1995)

- Provision in declaration providing that association is not liable to the unit owners for injury or damage caused by latent condition or by the elements, construed to apply to damage caused by latent condition or elements, but not to apply to damages caused where association entered unit to repair common elements damaged by hurricane, and where repair project resulted in damages to the unit.

Cartagena v. Hilltop Condo. Assn., Inc.,

Case No. 93-0023 (Player / Final Order / July 29, 1993)

- Ambiguous portion of declaration should be interpreted in conjunction with written materials and summaries provided to the petitioner unit owner at time of purchase. Where disclosure materials provided that board had authority to approve extension of decks, provision in declaration should be interpreted to permit board the authority to approve deck extension requested by the unit owner.
- Ambiguity in the declaration must be resolved against the party claiming the right to enforce the declaration.

Catron v. Palmetto Palms RV Resort Condo. Assoc., Inc.,

Case No. 92-0208 (Player / Final Order / November 30, 1992)

- Declaration should be interpreted using basic rules of construction, if ambiguous; interpretation favored which gives reasonable meaning to all provisions.

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

Case No. 94-0157 (Grubbs / Partial Summary Final Order / April 17, 1995)

- Where unit owner is given the responsibility for the repair of window panes, and where declaration clearly recognizes the distinction between windows and window panes, the rule of expressio unis est exclusio alterius requires the conclusion that the owner is not responsible for any part of the window other than the window panes.
- The fact that association under declaration is given the duty to repair or maintain the windows could be viewed as convincing evidence that the windows were intended to be a part of the common elements considering section 718.113(1), where declaration was somewhat unclear on whether the windows were common elements.

Five Coins Condo. Assn., Inc. v. Smith,

Case No. 96-0114 (Oglo / Summary Final Order / January 8, 1997)

- Whether foyer was a limited common element or part of a “unit” was determined by the definition of unit in declaration, which referred to a survey/floor plan of a unit. Using definition of structural alteration from Black’s Law Dictionary, changing carpeting, replacing carpeting with tile, and changing the wall color and wall paper not found to be structural alterations.

Grove Isle Condo. Assn., Inc. v. Levy.,

Case No. 96-0172 (Draper / Summary Final Order / November 19, 1996)

- Declaration provision prohibiting pets in units except for those kept by unit owners construed to mean unit owners but not tenants could have pets. This differential treatment of tenants is acceptable as it is not wholly arbitrary, and does not violate public policy or abrogate a fundamental constitutional right.

The Harborage II Condo. Assn., Inc. v. Keenan,

Case No. 96-0253 (Oglo / Final Order / March 5, 1997) (Arbitrator’s decision overturned, Keenan v. Harborage II Condo. Assn., Inc., / Case No. 97-4828-CI-20, 6th Jud. Cir. Ct. / March 6, 1998) (Rule limiting installation of certain floor coverings within unit invalid and unenforceable, as it is arbitrary and unreasonable. Association is enjoined from requiring removal of tile from owner’s unit.)

- Despite the declaration permitting a unit owner to repair, maintain, and replace floor covering, provided all work shall be done without disturbing the rights of other apartment owners, the arbitrator found that the rule requiring carpet and pad was valid under the Beachwood test, given that it is not readily inferable from the declaration that a unit owner has the right to tile the entire unit, and given that the board has a concern that other unit owners may be disturbed.

Hutchinson Island Club Condo. Assn., Inc. v. Scialabba,

Case No. 96-0089 (Scheuerman / Partial Summary Order / November 15, 1996)

- Where declaration was silent on issue of pets, and where board given authority to promulgate rules regarding unit use, rule prohibiting pets was authorized.
- Declaration not required to contain pet restrictions, and hence rule restricting pets not invalid on this basis.

Lessne v. Family Townhouses of the Lakes of Emerald Hills,

Case No. 92-0235 (Goin / Partial Summary Final Order / June 17, 1993)

- Where declaration provided that each unit owner is responsible for maintenance of windows, the term “window” means the entire window, including the glass and frame, and hence the unit owner was required to maintain the defective frame.

Loperfido v. Vista St. Lucie Assn., Inc.,

Case No. 92-0274 (Goin / Final Order / February 4, 1993)

- When interpreting declaration, every part of instrument must be given effect; mention of one thing excludes another.

Nettles Island, Inc. v. Barrett,

Case No. 93-0224 (Player / Final Order / May 3, 1994)

- Rule prohibiting boats, boat trailers, and utility trailers, held to contravene the declaration. The ban on permanent and semi-permanent structures in the declaration suggested a recreation-oriented style of living. Therefore, it would be logical to assume that vehicles associated with recreational activities, and the trailers needed to move them, would be permitted to be kept at the condominium.
- Rule was also held to be unreasonable. Rule did not further the objectives of aesthetics, preservation of view and air flow, management of crowded conditions, and safety because rules allowed a second RV-type vehicle to be parked (if the resident's only form of transportation); board had allowed large permanent and semi-permanent residences to be constructed; it would be substantially more hazardous to back a car out of a driveway where the view is blocked by a second RV-type vehicle than it would be to back out where the only visual obstacle is a boat or small trailer; and the second mobile homes and the golf carts covered and stored in the driveways, which are not prohibited by rules, are more unsightly than the various boats and trailers which are prohibited.

Ormondy Condo. Management Assn., Inc. v. Street,

Case No. 94-0534 (Grubbs / Summary Final Order / August 14, 1995)

- When interpreting the sentence "no dog, cat, or other pet which normally requires access to the outside shall be kept in the condominium," the clause "which normally requires access to the outside" must be construed as modifying only "any other pet" both as a matter of the plain language of the restriction and under the doctrine of the last antecedent. Accordingly, owner not permitted to have a cat even if cat did not require access to the outside.

Palm Court Owners Assn., Inc. v. Palm Bay Development Corporation,

Case No. 95-0131 (Scheuerman / Final Order / August 14, 1996) (*aff'd* Palm Bay Development Corp. v. Palm Bay Owners Assn., Inc., / Case No. CA-96-3497 12th Jud. Cir. Ct. / November 7, 1997) / appeal pending 2d DCA 1998)

- Where declaration permitted original developer to use units as models, such right included the authority to physically modify the units to facilitate their use as a model, including replacing the garage door with French doors.

Schlegel v. Fisherman's Cove Assn., Inc.,

Case No. 93-0123 (Draper / Final Order / April 4, 1996)

- If declaration were ambiguous, fact that association had previously interpreted the declaration to authorize and require it to pay for repairs to balconies would permit adoption of that interpretation so long as it was not completely at variance with the provisions of the declaration.

Slater v. Palm Beach Towers Condo. Assn., Inc.,

Case No. 94-0418 (Scheuerman / Summary Final Order / April 3, 1995)

- Where documents gave the board the authority to approve alterations without a vote of the unit owners, except where the change would prejudice the rights of the owner of any unit, board decision to require installation of hurricane shutters on the units was not prejudicial to a unit owner within the meaning of the documents. First, prejudice is not equated with monetary impact. If the drafters of the document had sought to impose a monetary restriction, such provision should have been included in the declaration. The word "prejudice" suggests some disproportionate impact or bias upon an individual or group of individuals. Here, the board had required the owners of all units to install hurricane shutters; there was no effect upon one owner which was not shared by every other unit owner. Neither did prejudice occur where unit owners' balconies were blocked when the shutters were closed, or that they were no longer entitled to choose a contractor of their own choosing. These restrictions are inherent in the condominium lifestyle.

Tamarac Gardens Condo. One Assn., Inc. v. Nathanson,

Case No. 96-0277 (Oglo / Summary Final Order / December 23, 1996)

- The association sought removal of a tenant pursuant to the declaration provision prohibiting rentals. However, the tenant resided in the unit prior to the effective date of the declaration provision. Despite the tenant's failure to obtain association approval of her 4-year lease, that omission only gave the association the right of first refusal at the time the lease was entered into, and not the right to remove the tenant. The arbitrator concluded that it was appropriate for the tenant to reside in the unit until her lease expired, since even if the declaration procedure had been followed, some tenant, whether the owner's or the association's tenant, would have been in the unit for the term of the lease.

Towner v. Aldea Mar Condo. Assn., Inc.,

Case No. 95-0322 (Draper / Summary Final Order / September 24, 1996)

- Association's removal of sundecks to re-roof and failure to replace them constituted a material alteration of the appurtenance to the units served by the sun decks, requiring association to comply with S. 718.110(4).
- Sundecks were limited common elements. While they were not specifically designated such in the declaration, the way the condominium was constructed, with nine of the units having sundecks accessible only from the inside unit and a tenth unit

with a sundeck on the unit's carport and accessible by stairs directly outside the unit, indicates that the sundecks were reserved for the use of those ten units, and thus, were limited common elements.

Vaught v. Imperial Point Condo. Assn., Inc.,
Case No. 92-0228 (Grubbs / Final Order / June 22, 1993)

- Where declaration provided that common elements included the land and all improvements not included within the units, water valve not located within the unit was part of the common elements and hence the maintenance responsibility of the association.
- That association had always interpreted the documents in a particular fashion to require water valve to be the responsibility of the unit owner did not bar the association from changing its procedure to procedure required by the declaration.

The Village of Stuart Assn., Inc. v. Huff,
Case No. 95-0141 (Draper / Final Order / May 29, 1996)

- Declaration provision prohibiting "marble, ceramic or other hard flooring tile flooring (sic)" in units above first floor, held to prohibit wood flooring. Though the language is inartful and grammatically incorrect, the obvious intent is to prohibit noise and disturbance created when marble, tile or other hard flooring is placed in units located above the first floor.

Validity

Surfside Owners Assn., Inc. v. Desteq, Inc.,
Case No. 92-0238 (Grubbs / Final Order / March 1, 1993) (Decision overturned on appeal)

- Provision contained in declaration requiring use of commercial unit as a restaurant not found to be unreasonable, arbitrary, in violation of public policy, or violative of any fundamental constitutional right.

Tortuga Club, Inc. v. Szarek,
Case No. 95-0274 (Goin / Final Order / February 13, 1997)

- Where unit owners had signed an application for purchase which stated that owner agreed to abide by the condominium documents without reservation "as they now exist," unit owner did not agree to be bound by invalid amendment that had been recorded prior to purchase of unit; amendment had not been approved by the institutional first mortgagee and therefore, the amendment was void and did not legally exist at time that owner signed application for purchase.

Default

GenerallyAinslie at Century Village v. Liebgold,

Case No. 92-0223 (Player / Order Granting Motion to Set Aside Final Order on Default / April 12, 1993)

- Final Order on Default would be set aside where letter had been filed in a separate related arbitration and where unit owner who defaulted had not been represented by counsel. Also, dispute was still not resolved and it would be consistent with arbitration goal of relieving court overcrowding to vacate default.

Circle Villas Condo. Assn., Inc. v. Thompson,

Case No. 93-0187 (Goin / Order Denying Respondent's Motion to Set Aside Final Order on Default / January 3, 1994)

- Respondent unit owner received Order Requiring Answer in July, but planned to be out of the country soon afterwards, returned to the United States in August whereupon he learned that a default had been entered against him but did not contact the arbitrator until November, which was subsequent to the Final Order on Default being issued. Motion to Set Aside Default was denied as respondent's failure to file an Answer or Request for Extension of Time was inexcusable; respondent had failed to act with due diligence in requesting that Final Order on Default be set aside.

Courtyard Square Condo. Assn., Inc. v. Buchholz,

Case No. 96-0415 (Draper / Final Order on Default / May 1, 1997)

- Default would not be vacated where unit owner blamed failure to file answer on former attorney, who had withdrawn prior to order requiring unit owner to answer, and motion to vacate default failed to state meritorious defense to association's claim.

Lockner v. Waterway Townhouse Condo. Assn., Inc.,

Case No. 94-0152 (Scheuerman / Final Order on Default / September 14, 1994)

- Where association sought approval of qualified lay representative, who, upon approval, promptly left the jurisdiction for three or four months, and where association failed to otherwise secure an attorney or an alternate qualified lay representative, final order on default entered against association.

Lockner v. Waterway Townhouse Condo. Assn., Inc.,

Case No. 94-0449 (Scheuerman / Final Order on Default / February 1, 1995)

- Where, after a twenty-day continuance permitted by arbitrator, association failed to file any paper in the proceeding, and likewise failed to respond to a default entered against the association, Final Order on Default entered appointing unit owner to board.

Northgate Condo. Assn., Inc. v. Samaniego,

Case No. 93-0111 (Goin / Final Order on Default / August 16, 1993)

- A defaulting party admits well pleaded facts and acquiesces in the relief sought.

Park East Home Owners Assn., Inc. v. Perez,

Case No. 96-0351 (Goin / Order on Respondents' Verified Motion for Rehearing and To Set Aside Order on Default / April 9, 1997)

- Final order on default was not set aside where unit owners failed to demonstrate excusable neglect and due diligence. Unit owners' attorney's inexplicable failure to file an answer to the petition did not amount to excusable neglect. In addition, the default and final order on default were mailed to the unit owners (not to their attorney) but unit owners waited nine weeks after the default was entered and six weeks after the final order was entered before they sought to vacate the default. Therefore, the unit owners failed to demonstrate that they had been reasonably diligent in seeking to vacate the default after it was discovered.

Poinciana Island Yacht & Racquet Club Condo. Assn., Inc. v. Menendez,

Case No. 92-0142 (Scheuerman / Order Denying Motion to Set Aside Default / November 18, 1992)

- Motion to set aside default alleging general complications caused by Hurricane Andrew denied where unit owner's attorney found time to file letters of protest with Arbitrator but never filed any Answer to the Petition.

Rosenstein v. Sunrise Towne Preferred Condo., Inc.,

Case No. 94-0267 (Scheuerman / Default / November 9, 1994)

- Where association through counsel filed a motion to dismiss petition which was groundless and summarily dismissed; where association filed answer and affirmative defenses which were struck in favor of requiring an amended answer which fairly responded to the allegations of the petition; where president of association filed letter expressing association's inability to respond to petition; and where case was in the same posture as it was six months earlier, default entered against association.

Tanglewood Environmental Preservation Assn., Inc. v. Thomason,

Case No. 96-0308 (Goin / Order Denying Motion to Set Aside Default / April 4, 1997)

- Motion to set aside default denied where unit owner failed to show a meritorious defense. The petition had alleged that unit owner was in violation of parking rules by continuing to parallel park on street rather than driveway. Unit owner did not have a meritorious selective enforcement defense because examples given by unit owner had occurred in the past and had subsequently been corrected and other examples did not involve parallel parking on street. In addition, defense that unit owner did not have room in her driveway and garage to park up to four vehicles was without basis; there was an adequate number of guest spaces available.

Terraces Condo. Assn., Inc. v. Stephensen,
Case No. 93-0287 (Draper / Default / February 10, 1994)

- Where default entered against owner but where tenant filed timely answer and defended action, tenant permitted to defend action and no final order on default would be entered against owner at that time.

Sanctions (See Arbitration-Sanctions)

Developer

Disclosure

Exemptions (See also Declaration-Exemptions)

Glen Cove Apartments Condo. Master Assn., Inc. v. Weit,
Case No. 93-0075 (Scheuerman / Final Order / May 30, 1995)

- Subsequent developer did not enjoy creating developer's exemption from rental restrictions contained in condominium documents where there was no assignment of developer rights to the subsequent developer, and where the documents, viewed in totality, expressed no overall intent that the rights and privileges granted to the original developer were intended to extend to include all remote developers as well, particularly where the original developer completed construction of the condominium.

Palm Court Owners Assn., Inc. v. Palm Bay Development Corporation,
Case No. 95-0131 (Scheuerman / Final Order / August 14, 1996) (*aff'd* Palm Bay Development Corp. v. Palm Bay Owners Assn., Inc., / Case No. CA-96-3497 12th Jud. Cir. Ct. / November 7, 1997) / appeal pending 2d DCA 1998)

- Subsequent developer did not stand in shoes of first developer's obligations in declaration under mere continuation doctrine which holds subsequent corporation responsible for obligations of first corporation. Although corporations were related, they were engaged in different business activities.
- Where declaration permitted original developer to use units as models, such right included the authority to physically modify the units to facilitate their use as a model, including replacing the garage door with French doors.
- Pursuant to declaration, right of original developer to use units as model or sales office ended at the sale of the last unit, and accordingly, subsequent purchaser had no right to use the unit as model or office, or to continue physical modifications to unit designed to enhance sales effort of original developer. Remote purchaser required to remove alteration which had become unauthorized.

Pencor Financial Corporation v. Majestic Tower I Condo. Assn., Inc.,
Case No. 95-0208 (Scheuerman / Summary Final Order / January 24, 1995)

- Where declaration clearly permitted developer to assign in whole or in part developer rights and exemptions granted under the documents, and where developer executed clear assignment in favor of purchaser giving the purchaser the developer's exemption

from the association's right of first refusal, purchaser entitled to exercise developer's exemption from association's right of first refusal.

Vivienda at Bradenton II Condo. Assn., Inc. v. Brittain,

Case No. 95-0043 (Scheuerman / Partial Summary Order / September 1, 1995)

- Where declaration provided that all powers and privileges created for the benefit of the original developer shall also benefit the developer's successors and assigns, declaration construed to confer on subsequent remote developer the powers and privileges granted to the original developer in the documents, even though there was no express assignment of developer rights from the first to the second developer.
- Declaration construed to permit subsequent developer of land condominium to change the configuration of unsold units.

Filing

Generally

A. C. Condo. Assn., Inc. v. Blue Teal Corporation,

Case Nos. 94-0085; 94-0098 (Price / Order on Petitioner's Motion to Abate / November 21, 1994)

- Where developer in related circuit court foreclosure action filed by association, argued that its "units" were not "units" for purposes of foreclosure where the units were not substantially completed, but where developer argued in arbitration filed by association that as the owner of units, it was entitled to elect or recall a majority of the board, and where in the consolidated arbitrations, association filed a motion to abate arguing that if the developer is permitted to recall a majority of the board, it will dismiss the circuit court foreclosure action of the association, abatement not granted where the causes of action were not the same, and where the issues, although similar, were not the same. However, arbitrator entered a stay of the arbitration proceedings as it appeared likely that the association would experience hardship or inequity if the arbitration continued. If the arbitrator determined the validity of the recall, one probable result could be that the association would be under the control of the developer, and the arbitrator would be powerless to require the developer to pay assessments. This would be inequitable because the developer would be receiving the full benefits of voting its majority interests to control the association while not paying any assessments to the association.

Dostis v. Mar Del Plata Condo. Assn., Inc.,

Case No. 95-0250 (Scheuerman / Final Order / December 16, 1996)

- Where declaration authorized the developer to assign limited common element parking and guaranteed penthouse owners 2 spaces, declaration did not create an absolute limitation on the number of spaces which could be assigned an owner except to the extent of the number of extra spaces left after minimum entitlements to spaces was satisfied.
- Agent for developer shown to possess sufficient authority to assign parking spaces to purchaser.
- Parking spaces duly assigned by the developer created vested rights in purchaser which could not be divested by unilateral action of the association in purporting to re-assign spaces.

Glen Cove Apartments Condo. Master Assn., Inc. v. Weit,
Case No. 93-0075 (Scheuerman / Final Order / May 30, 1995)

- Subsequent developer did not enjoy creating developer's exemption from rental restrictions contained in condominium documents where there was no assignment of developer rights to the subsequent developer, and where the documents, viewed in totality, expressed no overall intent that the rights and privileges granted to the original developer were intended to extend to include all remote developers as well, particularly where the original developer completed construction of the condominium.

Perez v. Grand Plaza Assn., Inc.,
Case No. 94-0323 (Draper / Order on Jurisdiction / August 22, 1994)

- Arbitrator lacked authority to hear dispute filed by prospective purchaser against developer, seeking a return of down payment made pursuant to a purchase contract, despite fact that purchase contract provided for arbitration under section 718.1255. Petitioners were merely prospective unit owners who had a dispute with the developer, and not with the association. Accordingly, jurisdiction did not exist to hear the dispute. Purchase agreement cannot expand upon legislatively created grant of authority.

Vivienda at Bradenton II Condo. Assn., Inc. v. Brittain,
Case No. 95-0043 (Scheuerman / Partial Summary Order / September 1, 1995)

- Entity which purchased 22 units in bulk and offered the units for sale in the ordinary course of business was a developer as defined by statute. Also, developer was a subsequent developer in that it had filed as a successor developer with the division, had succeeded to the interests of the original developer by foreclosure of mortgage or other transfer, and where declaration defined developer to mean the original developer, its designees, successors, substitutes, and assigns. While successor generally refers to a corporation which, through amalgamation, consolidation, or other legal succession becomes invested with the rights and assumes the burdens of the first corporation, the word "assigns" generally comprehends all those who take either immediately or

remotely from or under the assignor. Accordingly, entity was a successor to the original developer.

- Where declaration provided that all powers and privileges created for the benefit of the original developer shall also benefit the developer's successors and assigns, declaration construed to confer on subsequent remote developer the powers and privileges granted to the original developer in the documents, even though there was no express assignment of developer rights from the first to the second developer.

Transfer of control (See also Elections/Vacancies)

Cail v. Sebastian Harbor Villas Condo. Owners' Assn., Inc.,

Case No. 94-0084 (Scheuerman / Final Arbitration Order / August 27, 1996)

- Certain owners of units who offered units for lease but not for sale in ordinary course of business were "developers" who were not entitled to vote for a majority of the board.
- Record supported finding that certain owners offered units for lease in ordinary course of business. Units were regularly offered for rent to the public and have been rented except for occasional periods of vacancy.
- Record supported finding that certain owners did not offer units for sale in ordinary course of business. Units not listed on MLS; no units had been sold for 5 years; prices for the units were higher than value; and there was a lack of an active and concerted sales effort.

Frazier v. David William Hotel Condo. Assn., Inc., (consolidated)

Case Nos. 95-0251 and 95-0258 (Scheuerman / Final Order / December 28, 1995)

- All units contained in the condominium, and not merely those offered for sale by the developer, are properly counted in the calculation for turnover contained in section 718.301, Florida Statutes, providing that turnover is triggered 3 years after 50% of the units to be operated by the association are sold to purchasers.
- Where original creating developer, a limited partnership, underwent a change in general and limited partners, but where the partnership did not dissolve and was not required to dissolve under the partnership act or agreement, but continued business without a name change or dissolution, no change in developer entity resulted upon the change in partners for purposes of determining whether turnover was triggered when partnership interests were assigned to the new partners.

Matthews v. Norton Park Place Condo. Assn., Inc.,

Case No. 96-0097 (Scheuerman / Summary Final Order / November 26, 1996)

- Where developer-appointed directors resigned at or shortly before the turnover meeting, owners elected to fill positions at the turnover election were only authorized to fill office until the next regularly scheduled election, even where first notice of the

subsequent election was sent prior to the turnover election. Rule 61B-45.0021(13) does not apply to turnover election. While it undoubtedly would be more convenient for the association to forego the conduct of the next election, in the absence of an applicable administrative rule or statute, concerns of convenience must give way to the requirements of the documents that an annual election be held.

Orear v. Parkview Point Condo. Assn.,

Case No. 92-0168 (Scheuerman / Final Order / December 16, 1992)

- Developer after control was relinquished to the unit owners not entitled to vote for a majority of board despite 1991 Act amendment and Division rules requiring use of a single form ballot; two ballot forms could be utilized.

Sun Resort, Inc. v. Jellystone Park Condo.,

Case No. 96-0007 (Scheuerman / Order On Motion For Clarification / June 21, 1996)

- Association required to use different ballot forms where subsequent developer is not entitled to vote for a majority of board.

Vivienda at Bradenton II Condo. Assn., Inc. v. Brittain,

Case No. 95-0043 (Scheuerman / Partial Summary Order / September 1, 1995)

- Reservation of right of subsequent developer to change configuration of unsold unit in land condominium construed to be not inconsistent with right of unit owners to elect a majority of the board of administration.

Disability, Person with (See Fair Housing Act)

Discovery

Attorney-client privilege (See Attorney-Client Privilege)

Generally

Alan v. Boca Cove Home Condo. Assn., Inc.,

Case No. 92-0263 (Scheuerman / Order Granting Petitioners' Request for Discovery / February 24, 1993)

- Petitioners-unit owners not entitled to discover copy of unit owner roster where petition for arbitration alleged that the Association deprived unit owners of access to official record roster; granting discovery request for roster would be tantamount to a partial summary judgment on issue of whether association unjustifiably withheld access to roster.

Chateau Chaumont of Ibis Isle Assn., Inc. v. Williams,

Case No. 93-0327 (Draper / Case Management Order / March 21, 1994)

- Where association sought to produce, through discovery, any correspondence between the unit owner and his attorney concerning the subject matter of the action, request infringed on attorney - client privilege and work product privilege, was over broad, and unit owner's objection to request to produce was sustained.

Heisner v. Bimini Village Condo. Assn., Inc.,

Case No. 94-0130 (Goin / Order on Respondents' Motion to Inspect Premises / August 29, 1994)

- Where unit owners filed arbitration against association and allegedly-noisy neighbor unit owner, upon motion of association, association permitted to enter Petitioner's unit so that an expert can perform sound measurements.

The Trails at Royal Palm Beach, Inc. v. Wargovich,

Case No. 93-0320 (Goin / Order on Petitioner's Motion for Clarification / July 1, 1994)

- Where unit owner raised issues of Americans With Disabilities Act and Federal Fair Housing Act as defenses to the enforcement action brought by the association, and in his counter-claim, the issue of whether the unit owner is a handicapped person is relevant. Where association disputes handicapped status, and where association requests physical examination of the unit owner by the association's expert witness, association ordered to seek to depose unit owner's physician as a less intrusive method of discovery since alternate method of discovery may suffice under circumstances.

Dispute

Considered dispute

Ainslie at Century Village Condo. Assn., Inc. v. Liebgold,

Case No. 92-0223 (Player / Amended Final Order / August 24, 1993)

- Arbitrator had jurisdiction to entertain Arbitration Petition initiated by association alleging that a unit owner, in violation of the declaration, refused to provide the association with a key to her unit.

Alan v. Boca Cove Home Condo. Assn., Inc.,

Case No. 92-0263 (Scheuerman / Order on Motion to Dismiss for Lack of Jurisdiction / January 8, 1993)

- February 26, 1992 election is proper subject for arbitration; election law amendment sought to be applied was effective on January 1, 1992 and Division election rules sought to be applied were effective on January 23, 1992; fact that challenged election occurred prior to April 1, 1992, the effective date of the arbitration program, was not a bar to proceeding with the arbitration.

Baston v. Here and There Palm Shores RV Resort Condo. Assn., Inc.,

Case No. 94-0500 (Draper / Order / February 6, 1995)

- Arbitrator had jurisdiction over counter petition alleging that unit owner had unlawfully entered a common element easement containing the water, sewer, and electric services without approval of the association and requesting issuance of injunctive relief.

Cummings v. Seagate Towers Condo. Assn., Inc.,

Case No. 94-0270 (Richardson / Order Accepting Jurisdiction / September 14, 1994)

- Arbitrator had jurisdiction over petition alleging that association had wrongfully disapproved sale of unit to persons under 55 years of age.

Cypress Court of Oak Terrace v. Lingbloom,

Case No. 92-0179 (Grubbs / Final Order Determining Jurisdiction / July 29, 1992)

- Arbitrator had authority to hear dispute alleging unauthorized occupants in unit with dog; dispute involves the use of unit.

Earp v. Holiday Village Assn., Inc.,

Case No. 92-0288 (Scheuerman / Order / January 4, 1993)

- Failure to maintain certain records required by statute constituted dispute subject to arbitration.

Eldorado Towers Condo. Assn., Inc. v. Wile,

Case No. 96-0323 (Goin / Order on Jurisdiction / August 20, 1996)

- Arbitrator has jurisdiction over dispute alleging that unit owner cursed at security guard, and created a nuisance on the condominium property.

Epstein v. Bel-Aire, Inc.,

Case No. 92-0260 (Price / Order Denying Motion to Dismiss / December 22, 1992)

- Issue of reassignment of parking space by board is a "dispute" subject to arbitration.

Estes v. Lido of Pinellas Condo. Assn., Inc.,

Case No. 94-0428 (Goin / Order on Respondent's Motion to Dismiss / January 6, 1995)

- Where petition requested that arbitrator determine whether rule restricting access to the recreation room was reasonable, dispute was not request for advisory opinion, and fell within the jurisdiction of the arbitrator.

Four Seasons Condo. Assn. of Winter Park, Inc. v. Torres,

Case No. 92-0308 (Grubbs / Arbitration Final Order / January 28, 1994)

- Arbitrator had authority over dispute brought by association alleging that unit owners had failed to take action regarding leaks originating in their unit and alleging a failure to keep pets inside the unit.

Garing v. Sugar Creek Country Club Assn., Inc.,
Case No. 93-0153 (Goin / Order / July 21, 1993)

- Where bylaws provided that directors shall not be entitled to any compensation for their services unless compensation is approved by a majority of the voting interests, allegation that association unlawfully paid money to an officer of the association in exchange for services as an officer or unlicensed manager without unit owner approval, stated dispute over which the Arbitrator has jurisdiction because it involves an alleged failure by the association to properly conduct meetings.

Glading v. Top Village Condo. Assn., Inc.,
Case No. 93-0032 (Player / Order of Dismissal / March 10, 1993)

- Petition accepted for arbitration where unit owner alleged that association was permitting commercial vehicles to be parked on common elements in violation of documents.

The Glens Condo., Inc. v. Nelson,
Case No. 92-0163 (Player / Order Denying Motion to Dismiss / July 14, 1992)

- Arbitrator had jurisdiction over pet dispute seeking removal of dog and recovery of attorney's fees; bar in statute and rules preventing jurisdiction over dispute involving "fees" does not extend to pet dispute in which association seeks recovery of prevailing party attorney's "fees."

Goldman v. Hallmark of Hollywood Condo. Assn., Inc.,
Case Nos. 92-0162; 92-0166 (Grubbs / Final Order / February 17, 1993)

- Arbitrator had authority to determine whether unit owners or association should pay for repair of the limited common element balconies appurtenant to the units; the dispute involves the authority of the board to require the unit owners to pay for the repair costs.

Hernandez v. Frances Condo. Assn., Inc.,
Case No. 92-0242 (Player / Order on Issue of Liability / May 7, 1993)

- Arbitrator had authority to hear claim of unit owner that Association violated Federal Fair Housing Act by disapproving application to sell unit to prospective purchasers with children.

Hobbs v. Chateau Tower, Inc.,
Case No. 93-0047 (Scheuerman / Summary Final Order / July 8, 1993)

- The arbitrator had jurisdiction to hear the complaint of a unit owner that the association was failing to enforce a rule prohibiting the parking of vans on the common elements. Also, since the subject vehicle was parked on the common elements, the appurtenances to the unit are implicated within the meaning of Rule 61B-45.013(1).
- Any doubts as to whether a dispute should be arbitrated should be resolved in favor of arbitration.

Karr v. Spyglass Condo. Assn., Inc.,

Case No. 94-0411 (Grubbs / Order Determining Jurisdiction / January 18, 1996)

- Dispute filed by unit owners who had installed tile in a common area elevator lobby immediately adjacent to their units alleged that association had removed the tile without unit owners' permission, fell within the definition of "dispute" because it involved the authority of the board to require the unit owners to not take action (place tiles in the common element lobby) which involved an appurtenance to the units (the unit owners' right to use the common elements in an appropriate manner.)

Lee v. Palm Beach Harbour Club Assn., Inc.,

Case No. 94-0415 (Draper / Final Order on Request for Expedited Determination of Jurisdiction / November 21, 1994)

- The arbitrator had jurisdiction over alleged denial of access to the common element clubhouse or pool for parties, as dispute constituted a disagreement involving the use of the unit or the appurtenances thereto, including use of the common elements.
- Count alleging that a leak emanating from the common elements caused flooding and damage to the unit was within jurisdiction of arbitrator as Rule 61B-45.013(1), provides that a dispute includes disagreements involving use of the unit. Separate arbitration Rule 61B-45.013(11), providing that no petition shall be accepted which alleges the failure of the association to properly repair or maintain the common elements unless the petition alleges how the owner's use of the common elements has been directly affected, does not apply where jurisdiction already exists by involving use of the unit.

Licker v. Lauderdale West Community Assn., No. 1, Inc.,

Case No. 95-0186 (Richardson / Order Accepting Petition / June 15, 1995)

- Where community association contained both condominium owners as members as well as single family homeowner members, and where condominium association members did not have separate condominium association due to quirk in original documents, community association was condominium association regulated by Chapter 718.

Loperfido v. Vista St. Lucie Assn., Inc.,

Case No. 92-0274 (Goin / Final Order / February 4, 1993)

- Arbitrator had jurisdiction to hear dispute determining whether unit owner or association required to repair damaged weather-stripping around entrance door to unit; association's position in denying responsibility for the repair required unit owner to take an action regarding his unit.

Mele v. Wellington Condo. Assn., Inc.,

Case No. 95-0142 (Draper / Order Denying Respondent's Motion to Dismiss Petition / May 30, 1995)

- Where petition alleged that association had failed to maintain main sewage pipe which malfunctioned and damaged the unit, dispute fell within jurisdiction of arbitrator as it involved the association's failure to perform its obligations under the documents which forced the unit owner to take action, including repairs, to the unit.

Orear v. Parkview Point Condo. Assn., Inc.,

Case No. 92-0168 (Scheuerman / Order Denying Motion in Opposition to Petition / September 28, 1992)

- Arbitrator had jurisdiction over election dispute concerning whether developer should be permitted to elect board members.

Park v. Capri Harbour South Condo. Assn., Inc.,

Case No. 94-0178 (Draper / Summary Final Order / November 10, 1994)

- Arbitrator has jurisdiction over dispute concerning whether association can require unit owners to pay maintenance costs of deck system and limited common element staircases.

Pencor Financial Corporation v. Majestic Tower I Condo. Assn., Inc.,

Case No. 95-0208 (Scheuerman / Summary Final Order / January 24, 1995)

- Where unit owner who purchased a number of units from developer filed petition seeking a determination regarding whether owner was exempt from association's right of first refusal in subsequent sale, arbitrator had jurisdiction over dispute which involved issue of whether association had the right to require that the unit was subject to an association's right of first refusal. Not every dispute in which title is tangentially implicated is a dispute primarily relating to title for purposes of determining whether jurisdiction exists.

Powers v. Voyager Condo. Assn., Inc.,

Case No. 93-0223 (Player / Final Order / December 3, 1993)

- Arbitrator had jurisdiction over dispute alleging that association was failing to enforce the right of a unit owner under the documents to exclusive use of an assigned parking space appurtenant to the unit where another unit owner was asserting the right to use

the same parking space. The dispute involves the use of an appurtenance to the unit which is a limited common element parking space.

Reed v. Colony Point 3 Condo. Assoc., Inc.,
Case No. 92-0241 (Scheuerman / Order / January 4, 1992)

- Arbitrator clearly had authority to hear unit owner claim that board, without vote of the owners, cut and removed trees from common elements.

Reed v. Colony Point 3 Condo. Assoc., Inc.,
Case No. 92-0146 (Scheuerman / Order Determining Jurisdiction / June 12, 1992)

- Dispute is within jurisdiction of Arbitrator where unit owner sought to challenge association co-mingling of reserve and operating funds in apparent violation of statute. Conflict did not concern the levy or collection of an assessment but instead related to proper division of assessments after collection.

Republic Square Condo. Assn., Inc. v. Jochim,
Case No. 97-0107 (Goin / Final Order Determining Jurisdiction / March 28, 1997)

- Dispute involving provision in declaration limiting the number of persons that could reside in a unit fell within the jurisdiction of the arbitrator.

Schiffman v. Golden Isles Towers Condo. Assn., Inc.,
Case No. 93-0360 (Player / Order Denying Respondent's Motion to Dismiss / January 5, 1994) (Arbitrator's decision overturned. Golden Isles Towers Condo. Assn., Inc. v. Schiffman, / Case No. 94-13059(18) 17th Jud. Cir. Ct. / Feb. 22, 1996 (Plaintiffs were entitled to ownership and use of parking space 2-A and association had duty to enforce that right, where prior owner of space conveyed unit by warranty deed to defendants (Schiffman) but conveyed parking space by warranty deed to plaintiffs (Singers) and where declaration allowed such conveyance.)

- Where unit owner brought arbitration against association and alleged that the association had failed to ensure the owner's exclusive use of a parking space appurtenant to the unit, dispute was not dismissed because title to the unit and its appurtenances was not involved. Under section 718.107, the separate conveyance of a unit and the appurtenances thereto is prohibited, and accordingly, the conveyance of the subject parking space to a different unit owner separately from conveyance of the unit was void as a matter of law. The dispute instead involved the association's authority with regard to a unit and the appurtenances thereto.

Shaffer v. Regency Pines Condo., Inc.,
Case No. 95-0467 (Scheuerman / Final Order Determining Jurisdiction / January 22, 1996)

- Jurisdiction existed to hear challenge to election including allegation that unqualified person was serving on the board.

Shore Haven Condo. Assn. v. Drake,

Case No. 92-0136; 92-0137 (Price / Final Order / January 15, 1993)

- Arbitrator had jurisdiction to hear dispute brought by association to require unit owners to remove sheds located on limited common elements.

Sibley v. Seacoast Management, Inc.,

Case No. 94-0158 (Player / Order Determining Jurisdiction / June 7, 1994)

- Petition alleging that the association had improperly removed tile from the outside patio floors adjacent to petitioner's unit fell within the jurisdiction of the arbitrator, regardless of whether the floors were located on common elements or within the unit.

Surfside Owners' Assn. v. Desteq, Inc.,*

Case No. 92-0238 (Grubbs / Final Order / March 1, 1993) (Decision overturned on appeal)

- Dispute accepted for arbitration where petition alleged that owner of a commercial unit situated in a residential condominium had altered unit without approval of the board.

*note that Rule 61B-45.013 has been clarified to provide that the authority granted to Arbitrators in Section 718.1255, Florida Statutes, does not extend to hearing dispute involving commercial condominiums.

The Trails at Royal Palm Beach, Inc. v. Wargovich

Case No. 93-0320 (Goin / Order Dismissing Counts 4 and 5 / March 30, 1994)

- Arbitrator had jurisdiction over claim pursuant to the Americans With Disabilities Act of 1990 (ADA) and count claiming violation of federal fair housing amendments of 1988 (FHA). Unit owner alleged he is an individual with a disability and a handicap, and alleged that the association had discriminated against him by installing a fence between his unit and the pool closest to the unit and by refusing to install an access gate through the fence; by taking action against him for parking his van at the condominium, and by denying respondent the full use of his unit by refusing to allow construction of an enclosure on respondent's patio. Allegations involved authority of board to require unit owner to take any action, or not to take any action, involving the owner's unit and the appurtenances thereto including the right to use the common elements.

The Trails at Royal Palm Beach, Inc. v. Wargovich,

Case No. 93-0320 (Goin / Order on Respondent's Motion for Damages / February 8, 1995)

- Arbitrator lacked authority to grant punitive damages on counterclaim of handicapped unit owner claiming that association had prohibited him from making changes to his screened patio; that the association has prohibited him from parking his van on the common elements; and that the association erected a fence blocking the owner's access to the pool. Arbitrator had jurisdiction over the subject matter of the dispute as the claims involved the authority of the association to require an owner to take action, or not take action, involving the unit or the appurtenances thereto. Where counterclaim did not demonstrate that unit owner suffered any actual damages based on the association's failures, only relief which could be granted would be injunctive relief if violation of fair housing act demonstrated. Arbitrator's authority to award actual damages does not extend to awarding compensatory damages for emotional distress.

Vaught v. Imperial Point Condo. Assn., Inc.,
Case No. 92-0228 (Grubbs / Final Order / June 22, 1993)

- Where a question existed as to whether association or a unit owner had maintenance responsibility over water valve located on the common elements serving only one unit, arbitrator had jurisdiction because the dispute concerned the board's authority to require the unit owner to be responsible for the cost of repairing the valve.

Venditti v. Gateland Village Condo. Assn., Inc.,
Case No. 96-0438 (Goin / Final Order on Jurisdiction / December 17, 1996)

- Dispute involving failure of association to obtain competitive bids and failure to comply with So. Florida Building Code not eligible for arbitration. However, the gist of petition, alleging that association was negligent in maintaining/repairing roof, which caused damage to petitioner's unit, was eligible for arbitration.

Villas at Countryside Condo. Assn., Inc. v. Markovich,
Case No. 92-0279 (Grubbs / Arbitration Final Order / July 29, 1993)

- Where Petition was brought by association to enforce no truck prohibition contained in the documents against the son of a unit owner, the Arbitrator had jurisdiction because the disagreement involved the board's authority to require the unit owner to take action involving her unit by requiring her to prevent her son from parking his truck on the common elements.

Wagner v. The Pinnacle Apartments, Inc.,
Case No. 94-0416 (Draper / Order / November 28, 1994)

- Arbitrator had authority to hear dispute alleging that association improperly failed to approve Petitioner's transfer of a 1/20th interest in the unit.

Wagster v. Sea Palm of FWB Condo. Assn.,
Case No. 92-0209 (Grubbs / Final Order / May 26, 1993)

- Arbitrator had the jurisdiction to decide whether air conditioner shroud constituted part of the common elements for purposes of determining whether association or unit owner was required to repair it.

Generally

Jurisdiction

Moot

Aristocrat Condo. Assn., Inc. v. Rich,

Case No. 93-0350 (Player / Final Order of Dismissal / May 5, 1994)

- Petition for arbitration alleging unit owner and her tenant were creating a nuisance and disturbing other residents in violation of the condominium documents dismissed as moot after tenant moved out of the unit, even though the former tenant was sleeping outdoors between condominium and adjoining property and going on the condominium property. Unit owner had provided the relief requested by removing tenant from unit; because former tenant no longer a tenant, arbitrator lacked jurisdiction over anything that he may or may not be doing on the condominium property.

Bridgview Condo. Assoc. v. Diamond,

Case No. 92-0123 (Helton / Final Order / November 25, 1992)

- Dispute moot where cats removed from unit.

Cherney v. Braeloch Village Condo. Assn., Inc.,

Case No. 93-0234 (Grubbs / Order of Dismissal / September 29, 1993)

- Where association resubmitted issue regarding a change in the common elements (adding a hot water heater in locker room) to the unit owners for a vote, issue regarding alleged defect in the original vote became moot.

Cottone v. Bay Plaza Owners Assn., Inc.,

Case No. 92-0111 (Linthicum / Order / July 22, 1992)

- Part of petition challenging 1991 election dismissed where any violation was cured by conduct of 1992 election; dispute no longer active and present; moot.

Cramer v. Riverwoods Plantation RV Resort Condo. Assn., Inc.,

Case No. 94-0082 (Scheuerman / Order on Motion to Dismiss / June 28, 1994)

- Board of Administration may properly ratify previous action illegally taken, and in such case, the petition for arbitration may be rendered moot. However, dismissal of those issues as moot does not support an inference that the association under such circumstances is the prevailing party as the petitioning unit owner obviously was the moving force behind the board resolution and ratification.

Croysdale v. Galen Breakers Condo. Assn., Inc.,

Case No. 95-0143 (Draper / Final Order of Dismissal / October 20, 1995)

- Dispute over association's responsibility to maintain windows that rattle and leak dismissed as moot/settled after association offered to repair windows and unit owner refused. So long as windows are maintained, unit owner cannot dictate the means of accomplishing that maintenance by insisting on replacement instead of repair of windows.

Cypress Lake Estates Condo. Assn., Inc. v. Homer,

Case No. 94-0503 (Grubbs / Order Dismissing Petition as Moot / February 22, 1995)

- Where, after filing of petition by association, named unit owner entered bankruptcy proceedings, arbitration stayed pending filing of status report. Where status report indicated that tenant with overweight dog had vacated unit, proper procedure was to dismiss arbitration as moot.

Donley v. Chateau Tower, Inc.,

Case No. 95-0434 (Goin / Final Order Dismissing Petition for Arbitration / February 29, 1996)

- Where association had already trimmed the mangroves, arbitrator could not order association to obtain a vote before trimming the mangroves so case dismissed as moot.

Garner v. Racquet Club Apartments at Bonaventure,

Case No. 92-0268 (Player / Order Dismissing Petition as Moot / December 16, 1992)

- Dispute moot where association rescinded its prior vote disapproving lease renewal.

Gulf Harbors Condo., Inc. v. Arleo,

Case No. 94-0292 (Goin / Final Order Dismissing Petition for Arbitration / November 10, 1994)

- Where unit owner/respondent alleged that cat was no longer in the unit, petition dismissed as moot even though association, in response to order to show cause, stated that it was not "absolutely sure" that the cat had been removed. Association had burden of proving the violation and it did not allege that it had evidence to show that cat was still in unit.

Highpoint of Del Ray West Condo. Assn. Section 3, Inc. v. Mongillo,

Case No. 93-0136 (Grubbs / Order of Dismissal / August 10, 1993)

- Dispute was moot when tenant was no longer in unit and factual allegations did not establish course of conduct showing that future violations were likely and that injunctive relief was justified.

Hoadley v. Randolph Farms I Condo. Assn., Inc.,

Case No. 97-0140 (Goin / Final Order Dismissing Petition for Arbitration / July 21, 1997)

- Where unit owners sought an order permitting them to build an addition to their unit and where, prior to filing the petition, they had submitted to the association a number of revised plans, the association's action of approving the petitioners' last set of plans before the time for filing the answer rendered the dispute moot. Parties were ordered to bear their own attorney's fees and costs. Even though petitioners sought to build an addition in accordance with their first set of plans, they had never withdrawn the later submitted plans, which obviously were acceptable to them too.

Jones v. Vista St. Lucie Assn., Inc.,

Case No. 95-0397 (Scheuerman / Final Order Dismissing Petition / March 8, 1996)

- Where in response to petition, association conceded it was not enforcing its rule requiring owner to state purpose of records inspection request, petition challenging rule dismissed as moot. Petition challenging manager's appointment as board member dismissed as moot where manager subsequently removed from board.

The Lakes of Inverrary Condo., Inc. v. Goldberg,

Case No. 93-0125 (Price / Summary Final Order / October 5, 1993)

- Where tenant stated intention to vacate unit and remove offending dog when had not yet done so, dispute was not rendered moot.

Lake Tyler Condo. Assn., Inc. v. O'Donnell,

Case No. 94-0214 (Draper / Final Order of Dismissal / December 12, 1994)

- Arbitration brought by association for ejectment of nuisance tenant dismissed as moot over association objection where tenant moved out of the unit. Association's contention the former tenant continued to enter the condominium property insufficient reason to continue case where association failed to allege that former tenant had become an occupant in another unit.

The Landmark Club Condo. Assn., Inc. v. Lowitz,

Case No. 93-0058 (Goin / Final Order Dismissing Petition for Arbitration / April 5, 1993)

- Petition for arbitration dismissed as moot where Wilber the Pig was permanently removed from the condominium unit.

Landmark Place Condo. Assn., Inc. v. Bergdorf Holdings, Inc.,

Case No. 93-0029 (Grubbs/Order of Dismissal and Notice of Ex Parte Communications / May 31, 1994)

- When it became apparent that corporation named as the respondent was not in fact the owner of the unit, case dismissed as moot; arbitrator lacks jurisdiction over dispute between association and non-unit owner respondent. Association's request that arbitrator allow case to remain pending so association could file an amended petition against the correct unit owner should he again violate the leasing requirements on his unit denied.

The Laurels at Margate Condo. Assn., Inc. v. Slonenecky,
Case No. 92-0175 (Grubbs / Order of Dismissal / January 13, 1993)

- Dispute should be dismissed as moot, despite fact that claim for fees is pending, where tenant vacated unit.

Laurel Oaks at Country Woods Condo. Assn., Inc. v. Bonner,
Case No. 96-0126 (Draper / Summary Final Order / November 26, 1996)

- Where unit owner evicted illegal tenant, case not dismissed as moot where unit owner admitted having repeatedly violated the rental restrictions and having refused to comply in the past with the restrictions, giving rise to determination that probability of a future violation is probable and imminent.

MacIsaac v. South Bay Club Condo. Assn., Inc.,
Case No. 95-0464 (Scheuerman / Amended Order Dismissing Petition as Moot and Closing Case File / April 1, 1996)

- Petition seeking to prohibit association from destroying terrace garden dismissed as moot where garden razed.

Marine Colony Condo. Assn., Inc. v. Eggleston,
Case No. 94-0154 (Scheuerman/Final Order/June 29, 1994)

- Dispute dismissed as moot where petition sought enforcement of rule prohibiting unit owners from parking pickup trucks or commercial-type vehicles on the property and unit owner/respondent removed from the property his pickup truck bearing the words "Eggleston Plumbing."

Midnight Sea Condo. Assn., Inc. v. Hughes,
Case No. 96-0423 (Scheuerman / Final Order / February 26, 1997)

- Case not moot where although dog was removed, owner refused to agree that dog would not return to the condominium.

Neate v. Cypress Club Condo. Inc.,
Case No.96-0288 (Oglo / Final Order / May 14, 1997)

- Unit owner's claim that the association was enforcing its rule requiring unit owners to have a condominium parking sticker on their car against him, but not against other unit owners, is protective defense only and is not to be used as an offensive weapon, so this claim was dismissed.
- Association rule requires unit owners to place parking stickers on their cars. Unit owner claimed that the parking sticker unnecessarily divulges his apartment number to the public and is thus invalid. Since the association has given the unit owner permission to use a blank parking sticker, which does not contain any identifying information, the association has already provided relief to the unit owner and the claim is dismissed as moot.

Olive Glen Condo. Assn. v. Whelan,
Case No. 92-0169 (Player / Final Order / September 1, 1992)

- Dispute moot where tenant vacated unit in proceeding brought by association to remove tenant.

Pisz v. Holiday Out at St. Lucie Condo. Assn., Inc.,
Case No. 94-0207 (Grubbs / Summary Final Order / February 22, 1995)

- Where petitioning unit owner asserted that the association, in violation of the documents, had failed to include his proposed document amendments on the ballot sent to unit owners with notice of the annual meeting, although issue could be viewed as moot since the annual meeting had already been held, issue was capable of repetition and was addressed by arbitrator.

Playa Del Mar Assn., Inc. V. Frustaglio,
Case No. 95-0325 (Scheuerman / Final Order / November 20, 1995)

- Case not dismissed as moot where owner acknowledged violation but tenants did not vacate.

Pomeranz v. Quadomain Condo. III Assn., Inc.,
Case No. 94-0365 (Scheuerman / Order on Motion to Dismiss / September 27, 1994)

- Where, in response to petition alleging the conduct of closed board meetings at which vacancies on the board were filled, association claimed that subsequent board meeting at which confirmation of prior appointments was confirmed mooted out dispute, arbitrator determined that dispute was not moot because petition also alleged that notice of subsequent board meeting was posted without incorporating agenda items. If this is what occurred, the subsequent reappointment of the previously appointed board members was again illegal and the dispute was not moot.

Roush v. Republic Square Condo. Assn., Inc.,

Case No. 94-0046 (Goin / Final Order Dismissing Petition for Arbitration / June 7, 1994)

- Dispute moot where association conducted special unit owner meeting in proceeding brought to require special meeting to be held to reconsider amendment to documents restricting rental of units. Fact that association did not conduct reconsideration vote at the meeting no bar to dismissal where documents did not require conduct of vote, only calling of meeting.

Rustlewood Condo. Assn., Inc. v. Teta,

Case No. 94-0179 (Draper/Final Order of Dismissal/ December 14, 1994)

- Association petition seeking removal of unauthorized glass door and chimes installed by tenant who claimed door and chimes were required for his full enjoyment of the premises, as protected by the federal Fair Housing Act, dismissed as moot following agreement by parties to permit the door and chimes, despite fact that local fair housing agency had dismissed the respondents' complaint finding no cause to believe a discriminatory housing practice had occurred.

Sabal Chase Condo. Assn., Inc. v. Goode,

Case No. 93-0030 (Goin / Final Order Dismissing Petition for Arbitration / March 11, 1993)

- Dispute moot where unit owner removed unauthorized screen from patio and repainted balcony to conforming color.

Singer v. Quadomain Recreation Assn., Inc.,

Case No. 94-0505 (Richardson / Final Order Dismissing Petition / August 31, 1995)

- Dispute was moot where board voted to change the at-large seat on the board to an appointed seat, and where the parties had previously entered into a settlement agreement which was approved by a court.

Tivoli Trace Condo. Assn., Inc. v. Ng,

Case No. 96-0021 (Scheuerman / Final Order / July 9, 1996)

- Case filed by association seeking removal of dogs not moot where although dogs were removed from unit, owners intended to return the dogs during vacation periods.

Not considered dispute

Alan v. Boca Cove Home Condo. Assn., Inc.,

Case No. 92-0263 (Scheuerman / Order Enlarging Previous Order / March 1, 1993; Order Dismissing Counterclaim / February 24, 1993)

- Arbitrator not given statutory authority over counterclaim for libel, slander, and conspiracy to libel; likewise, punitive damages claimed as a result of libel and slander not cognizable.

Aldrich v. Tahitian Gardens Condo. Assn., Inc.,

Case No. 95-0365 (Goin / Final Order Dismissing Petition for Arbitration / November 8, 1995)

- No jurisdiction over dispute involving the authority of the board to require owners to pay \$0.25 per page when copying personal papers on association's copy machine. Dispute primarily involved the levy of a fee.

Alpers v. Golden Surf Towers Condo. Assn., Inc.,

Case No. 94-0218 (Goin / Order to Show Cause / June 17, 1994)

- Arbitrator lacked authority over allegations that president of association "insulted and maligned" the petitioner; that the former treasurer, prior to her demise, embezzled money from the association; that a special assessment passed by the association was invalid where the petitioner sought reimbursement; that individual board members should be responsible for civil penalties levied by the division against the association; that the association has overspent the budgeted amount on legal fees; and that the association breached its fiduciary duty.

Anderson v. #4 Condo. Assn., Village Green, Inc.,

Case No. 95-0474 (Goin / Final Order Dismissing Petition for Arbitration / February 7, 1996)

- Arbitrator had no jurisdiction over petition disputing the authority of the board to enter into an agreement with another entity regarding an easement existing over the common elements and shared with the other entity.

The Altamonte Condo. Assn., Inc. v. The City of Altamonte Springs,

Case No. 96-0209 (Scheuerman / Order Determining Jurisdiction and Order Dismissing Petition / June 25, 1996)

- Arbitrator lacked authority to hear dispute filed by association seeking to void deeds issued to purchasers, where association claimed that its right of first refusal was infringed upon where owners failed to disclose all terms of pending purchase contracts.

Alvarino v. Morrell,

Case No. 97-0080 (Oglo / Final Order of Dismissal / April 25, 1997)

- Petitioner owner filed arbitration against the unit owner above her claiming that neighbor was causing excessive noise by failing to cover her wood floors with carpet to mitigate noise from heavy footsteps. The petitioning unit owner also claimed that the association was doing nothing about it. The petition was dismissed for lack of jurisdiction, since the dispute was between unit owners and since it was not shown that the condominium documents require the association to take action on the disagreements contained in the petition.

Audi v. Chatham Towne at Jacaranda Condo. Assn., Inc.,

Case No. 94-0471 (Goin / Final Order Dismissing Petition / December 21, 1994)

- Where unit owner sold unit prior to filing of petition for arbitration concerning certain fees imposed by association during period of unit ownership, arbitrator lacked jurisdiction over dispute because petitioner was not a unit owner.

Baker v. Golden Gate Residents Assn. of Pinellas Park, Inc.,

Case No. 95-0007 (Grubbs / Order to Show Cause Why Petition Should Not Be Dismissed for Lack of Jurisdiction / January 31, 1996)

Petitioner ordered to show good cause why petition should not be dismissed for lack of jurisdiction where it appeared that dispute involved the association's authority to lease certain properties or its failure to properly regulate subleasing.

Barefoot Pelican Condo. Assn., Inc. v. Newsome,

Case No. 96-0299 (Goin / Final Order Dismissing Petition For Arbitration / October 18, 1996)

- No jurisdiction over petition alleging that unit owner had sold residential unit without simultaneously selling boat lot unit and seeking an order requiring owner to sell boat lot unit to residential unit owner; dispute primarily involved title.

Bazak v. Windermere Condo. Assn., Inc.,

Case No. 94-0237 (Richardson / Order Dismissing Petition in Part / July 21, 1994)

- The maintenance of routine office hours and office practices are not matters eligible for arbitration pursuant to section 718.1255, Florida Statutes. The petition had alleged that the association does not respond to telephone calls, that the association disregards letters, and that the office is always closed.

- Allegations that the association failed to maintain financial records is not an arbitratable issue.

- Allegations that generally, the association is not properly maintaining the condominium property are not arbitratable unless the petitioner can demonstrate that the failure has a discernable and actual impact on petitioner's use of his unit or common elements.

Bermuda Club Condo. Assn., Inc. v. Blackman,

Case No. 95-0482 (Draper / Final Order of Dismissal / March 22, 1996)

- Arbitrator lacked authority to hear dispute brought by association against unit owner alleging unit owner failed to pay lease application fee. Only relief requested was an order requiring unit owner to pay the fee; controversy is specifically excluded from definition of dispute as it primarily involves the levy of a fee or assessment, or the collection of an assessment levied against a party. Section 718.1255(1), Florida Statutes.

Blake v. Beachaven Assn., Inc.,

Case No. 96-0406 (Scheuerman / Final Order Dismissing Petition / November 26, 1996)

- Petition dismissed for lack of jurisdiction where owner sought to challenge special assessment for repainting on the ground that the assessment should have been assessed by area required to be painted. Arbitrator lacked authority over special assessment dispute.

Brakke v. Inlet Harbor Club Condo. Assn., Inc.,

Case No. 94-0394 (Price / Final Order Dismissing Petition / June 8, 1995)

- Where association had offered to treat termites within owner's unit by means other than tenting entire building as requested by unit owner, use of unit not affected by action of the association and a dispute subject to arbitration was not presented.

Bridgewater Condo. Assn., Inc. v. The Kennedy Group, Ltd.,

Case No. 93-0380 (Scheuerman / Final Order Determining Jurisdiction / December 7, 1993)

- Claim of breach of fiduciary duty not subject to arbitration.

Bronhard v. Opal Towers West Condo. Assn., Inc.,

Case No. 94-0407 (Richardson / Final Order of Dismissal / October 10, 1994)

- Arbitrator lacked jurisdiction to hear dispute regarding association's failure to enforce nuisance restriction against unit owner whose grandfather clock kept neighboring petitioner awake at night with its chiming. This dispute was essentially a dispute between unit owners where condominium documents did not place the affirmative obligation on the association to enforce the documents in all instances. The decision to enforce the documents in particular cases was a business judgment of the board.

Caliendo v. Deerfield Lake Condo. Assn., Inc.,

Case No. 93-0017 (Player / Order Dismissing Petition for Lack of Jurisdiction / February 17, 1993)

- Arbitrator lacked jurisdiction to hear claim that special assessment to purchase unit in condominium was invalid.

Carr v. Palm Club Village No. 1 Condo. Assn., Inc.,

Case No. 94-0511 (Grubbs / Final Order Dismissing Petition / April 25, 1995)

- Where petition filed by unit owner sought to challenge association's action in petitioning city to abandon maintenance obligations with reference to roads running through condominium community, unit owner sought to challenge association's authority to obtain property without a vote of the owners and as such, dispute did not fall within jurisdiction of arbitrator. Conflict involved the acquisition of property and not the alteration or addition to existing property.

Carriage House Condo. Assn., Inc. v. Bowen,

Case No. 96-0369 (Goin / Final Order Dismissing Petition For Arbitration / November 15, 1996)

- Where petitioner alleged that commercial unit owner was allowing a boat to occupy the commercial unit (boat slip), dispute involved a commercial unit and not a residential unit so no jurisdiction exists pursuant to Rule 61B-45.013(8).

Cedarwood Village Condo. Assn., Inc. v. Cole,

Case No. 95-0329 (Grubbs / Order Dismissing Petition for Lack of Jurisdiction / November 2, 1995)

- Where respondents were no longer unit owners, conflict involving alterations made by them to the unit and limited common elements was no longer a "dispute" subject to arbitration.

Chimenti v. Marbella Woods Condo. Assn., Inc.,

Case No. 96-0381 (Oglo / Order Determining Jurisdiction / November 20, 1996)

- Document enforcement claim not subject to arbitrator's jurisdiction, when brought by unit owner primarily against another unit owner.
- Two petitioning unit owners claimed that the association failed to do anything, including adopting rules, concerning condominium residents that were causing a nuisance by playing roller hockey in an asphalt area directly in front of the petitioners' unit. Pursuant to Rule 61B-45.013(6), the petition was not accepted for arbitration since it alleged the failure by the association to enforce the condominium documents. In addition, the arbitrator concluded that the claim of libel is not eligible for arbitration under Rule 61B-45.013(2), since it is a claim between unit owners.

Clark v. Commodore Club Unit II Condo. Assn., Inc.,

Case No. 95-0157 (Richardson / Order Rejecting Petition / May 1, 1995)

- Petition filed by owners against association and neighboring owners claiming that association failed to enforce its carpeting rule against respondent owners dismissed for lack of jurisdiction. Petition presented dispute between owners.

Condo. Assn. of Plaza Towers North, Inc. v. Security Management Corporation,
Case No. 96-0025 (Goin / Final Order Dismissing Petition for Arbitration / March 20, 1996)

- No jurisdiction over dispute filed by association against holder of recreation lease alleging that recreation lease was unconscionable.

Coomes v. Tymber Skan on the Lake Homeowners Assn., Inc.,
Case No. 92-0296 (Player / Order on Jurisdiction / April 26, 1993)

Claim alleging board harassment and breach of fiduciary duty not subject to arbitration; board members, not association, owe a fiduciary duty. Claims of harassment indicate a dispute between the board members and the unit owners, not between the association and the unit owners. Arbitrator not authorized to entertain these tort claims.

- Claim that board failed to remove irresponsible officers or directors is more properly addressed by recall rather than arbitration.

Coral Gardens Condo. Assn., Inc. v. Mella,
Case No. 96-0014 (Draper / Final Order Dismissing Petition For Arbitration / April 24, 1996)

- Presumed heirs to unit owner are not unit owners within the meaning of section 718.1255, Florida Statutes; dispute between association and presumed heirs is not subject to arbitration.

Cost v. Sunrise Point Condo. Assoc., Inc.,
Case No. 92-0237 (Goin / Final Order / October 8, 1992)

- Arbitrator could not order accounting to be performed by Association where unit owner suspected misapplication of funds.

Coulton v. Greentree Condo. Assn., Inc.,
Case No. 97-0209 (Draper / Order on Jurisdiction / July 3, 1997)

- Arbitrator did not have jurisdiction over petition alleging that association misused insurance money received for damages suffered in Hurricane Andrew by making additional improvements to condominium property, improving pool and pool areas not damaged in the hurricane, and constructing sprinkler system not in operation at the time of the hurricane.
- Claims that board hired unlicensed contractor to perform work, failed to obtain permits and generally engaged in questionable business practices not subject to arbitrator's jurisdiction. Basically, claims allege breach of fiduciary duty which arbitrator cannot consider.

Cullen v. First Lido Condo. Assn., Inc.,

Case No. 93-0369 (Draper / Order on Jurisdiction / December 8, 1993)

- Where unit owner sought to challenge validity of special assessment imposed upon all units at a flat rate of \$600.00 per unit instead of based upon the percentage ownership in the common elements, arbitrator lacked jurisdiction to hear dispute despite the fact that assessment was obviously invalid due to conflict with section 718.115(2), Florida Statutes, requiring that assessments (including special assessments) be imposed in accordance with ownership interest in the common elements. Also, claim of Petition that special assessment funds were used for purpose other than the object of the special assessment, primarily involves the levy or imposition of an assessment and falls outside the arbitrator's jurisdiction.

Culotta v. Gateland Village Condo. Assn., Inc.,

Case No. 92-0213 (Price / Order on Motion in Opposition to Arbitration / December 8, 1992)

- Where petition alleged that board failed to obtain unit owner vote prior to passing special assessment in excess of the \$1000 cap in the documents, arbitrator lacked authority to hear this portion of dispute as it involved levy of an assessment; however, Arbitrator could hear complaint that adequate notice of Board meeting to consider special assessment was not given.

Cutsinger v. Roger Allard,

Case No. 95-0132 (Scheuerman / Order Dismissing Petition for Arbitration / May 18, 1995)

- Where circuit court referred case to Division for determination of jurisdiction, petition for arbitration filed by unit owner dismissed where it named board members individually and other unit owners as respondents, and failed to name the association; parties named as respondents were not within the authority of the arbitrator. Irrespective of the issue of proper parties, the issues raised in the petition (alleging the wrongful filing of a lien by the association, breach of fiduciary duty, and a civil conspiracy among the named respondents) not within the jurisdiction of the arbitrator.

Cypress Bend Condo. VI Assn., Inc. v. Clements,

Case No. 93-0035 (Goin / Final Order Dismissing Petition for Arbitration / March 15, 1993)

- Arbitrator would not accept jurisdiction over dispute alleging that a unit owner violated a settlement agreement entered into in previous arbitration proceeding; association must enforce the agreement in court.

Cypress Woods, Inc. v. Seagraves,

Case No. 96-0125 (Goin / Final Order Dismissing Petition For Arbitration / June 12, 1996)

- No jurisdiction over petition alleging that previous unit owner (seller) failed to obtain prior approval of association before selling unit to current owner (buyer). Dispute primarily involved title where association was seeking an order voiding the sale of the unit and allowing the association to exercise its option to purchase the unit.

Dacher v. Heatherwood Condo. Assn. of Boca Raton, Florida, Inc.,

Case No. 97-0071 (Goin / Final Order Dismissing Petition for Arbitration Without Prejudice / May 21, 1997)

- No jurisdiction over claims involving the failure of the association to prepare financial statements and the failure to properly fund reserves.
- Allegations involving the association “writing off non-profit corporation losses,” the failure to audit the association records, allegations involving the method of assessment, and allegations involving the directors and management “altering drafts sent to association, for purpose of monthly maintenance fees” do not fall within the jurisdiction of the arbitrator.
- Allegation that the association failed to properly prepare minutes does not state a cause of action in that unit owner/petitioner did not identify any provision from the statute or condominium documents that requires the minutes to be prepared in a certain fashion.

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

Case No. 93-0385 (Price / Order Determining Jurisdiction / March 25, 1994)

- Arbitrator lacks jurisdiction in dispute involving unit owner's allegation that certain board members should reimburse association for payment of attorney's fees for services involved in previous recall, as this issue involves the levy of an assessment against unit owners.
- Arbitrator lacks jurisdiction over dispute alleging board's failure to fully fund reserve account for window repairs.
- Arbitrator lacks jurisdiction over allegation that, in violation of declaration, board initiated circuit court litigation without approval of 75% of the unit owners where unit owner refused to reframe issue in terms of board's failure to properly conduct a meeting.

Diaz v. Brown and Stanton House Assn., Inc.,

Case No. 96-0189 (Goin / Final Order Dismissing Petition for Arbitration / May 3, 1996)

- Where unit owners alleged that they were experiencing leaks in their units, apparently caused by unit upstairs, and where they requested an order requiring upstairs unit owner to allow them access to the unit to investigate cause of leaks, or in the alternative, an order requiring the association to enforce its powers to inspect units, petition dismissed for lack of jurisdiction because dispute involved the failure of upstairs unit owner to allow access to her unit and the failure of the association to require upstairs unit owner to provide access. Therefore, dispute was between unit owners and the association was named as a party only because it had failed to take action against upstairs unit owner and had failed to get involved in the dispute.

Didden v. Alik Gold Coast Condo. Number One Management Assn., Inc.,

Case No. 95-0361 (Grubbs / Order Dismissing Petition for Lack of Jurisdiction / October 27, 1995)

- Where petitioner alleged that association was replacing fire doors as common expense when they should be individual unit owner's responsibility, but made no allegations that petitioner was being required to take any action, or not take action, regarding his own unit, allegations did not establish jurisdiction under §718.1255(1)(a)1., Florida Statutes.
- When only action that petitioner was being required to take was paying share of common expenses, jurisdiction could not be based on §718.1255(1)(a)1., Florida Statutes, because issue necessarily involved assessments and such cases are specifically excluded from the definition of "dispute."

Di Francesco v. Lakeside Gardens B Condo. Assn., Inc.,

Case No. 94-0217 (Goin / Final Order Dismissing Petition / July 8, 1994)

- Arbitrator lacked authority to hear dispute alleging that transfer fee of \$50.00 for the lease of a unit should be refundable. No allegations contained in petition that association had abused its discretion by denying lease application.

Earp v. Holiday Village Assn., Inc.,

Case No. 92-0250 (Player / Order on Jurisdiction / December 29, 1992)

- Dispute involving Board's failure to recognize full size of Petitioner's lot is outside the scope of § 718.1255 as it primarily involves title to a unit.

Edlund v. Ora at Melbourne Beach, Inc.,

Case No. 93-0202 (Grubbs / Final Order of Dismissal / May 31, 1994)

- Board's failure to take action against those unit owners erecting permanent screen rooms cannot be arbitrated because the board is not requiring the petitioning unit owner to take action, or not to take action, involving his unit.

Edlund v. Ora at Melbourne Beach, Inc.,

Case No. 93-0202 (Grubbs / Order Requiring Second Amended Petition / September 8, 1993)

- Failure of board to take action against other unit owners who have erected permanent screen rooms in violation of the documents does not state a dispute subject to arbitration. The board's failure to take action against other unit owners for activity involving the other unit owners' units is not tantamount to the board requiring the petitioning unit owner to take action, or not to take action, involving his unit.

Engelson v. La Fontana Apartments of Palm Beach, Inc.,

Case No. 96-0333 (Oglo / Order Dismissing Petition for Lack of Jurisdiction / March 6, 1997)

- Claim of ex-board member (unit owner) against four current board members (also unit owners) that the four current board members breached their fiduciary duty to properly maintain the common elements found not to be a dispute because the controversy does not include the association, and the petitioner failed to allege how his use of the common elements was directly affected. Woodlake distinguished because petitioner did not allege misappropriation of funds, made no allegations against the association, and did not show that controversy was a dispute pursuant to Section 718.1255(1), F.S.

Fisher v. The Hideway Country Club Property Owners Assn., Inc.,

Case No. 97-0219 (Goin / Order on Petitioner's Motion for Temporary Injunctive or Emergency Relief and Request for Expedited Determination of Jurisdiction / July 30, 1997)

- The arbitrator did not have jurisdiction to hear dispute which involved the authority of the board to replace an irrigation system which unit owners believed was not in need of replacement. The fact that new irrigation system would cover an area approximately 24% larger than the area currently irrigated did not turn the replacement into an "alteration." The dispute primarily involved the authority of the board to properly maintain the common areas so pursuant to Rule 61B-45.013, there was no jurisdiction to hear controversy.

Fisherman's Cove v. Oglesby,

Case No. 93-0270 (Scheuerman/ Order on Motion to Dismiss/ November 10, 1993)

- Where association sought to challenge developer amendment to the declaration redefining a unit to include a portion of the common elements, dispute primarily

concerned title to a unit or the common elements and arbitrator lacked jurisdiction to hear dispute.

Five Towns of St. Petersburg No. 303, Inc. v. Blaser,

Case No. 96-0326 (Goin / Final Order Dismissing Petition For Arbitration / October 30, 1996)

- No jurisdiction over petition filed by association against occupant of unit where status as a tenant or owner was unknown. If respondent was a tenant, association failed to join the estate of the deceased owner of record; if respondent was an owner, the dispute would primarily involve title because association was seeking to require respondent to comply with the provisions of the declaration requiring her to obtain approval for her ownership and allowing the association members to buy the unit from respondent with or without her consent.

Frank v. Compass Point Condo. Assn., Inc.,

Case No. 96-0013 (Goin / Order Determining Jurisdiction / January 17, 1996)

- No jurisdiction to decide whether association properly assessing unit owners for cost of repairing balcony floor coverings, screens and frames on an equal percentage basis rather than on the basis of square footage.

Frank v. Compass Point Condo. Assn., Inc.,

Case No. 95-0423 (Goin / Order Determining Jurisdiction / October 30, 1995)

- No jurisdiction over dispute involving the authority of the association to assess the owners for repairs to limited common element balconies based on percentage of ownership of the common elements. The case primarily involved the levy of a fee or assessment and did not involve the authority of the board to require an owner to take action or not take action involving that owner's unit. If the only "action" that the association is requiring an owner to take is to pay an assessment, then the arbitrator does not have jurisdiction.

Freed v. Sable Palm Condo. of Pine Island Ridge Assn., Inc.,

Case No. 95-0099 (Goin / Final Order Rejecting Petition / March 28, 1995)

- Arbitrator lacked authority to hear dispute in which owners sought to challenge action of association in giving a rebate to the owners of certain condominiums where the painting expense had been a special assessment and painting on those condominiums had been performed in a defective manner.

Friedman v. DeSoto Park North Condo. Assn., Inc.,

Case No. 95-0336 (Grubbs / Order Dismissing Petition for Lack of Jurisdiction / November 6, 1995)

- The alleged failure of the association to procure adequate insurance in violation of s. 718.111(11), Florida Statutes, does not come within the definition of a dispute under s. 718.1255(1)(b), Florida Statutes, and neither does the failure to “timely” or “properly” rebuild the building that had contained petitioner’s unit.

Gables Waterway Towers Assn., Inc. v. Novack,

Case No. 93-0286 (Player / Order on Petitioner’s Motion to Dismiss Counterclaim / January 18, 1994)

- Arbitrator lacked jurisdiction over complaint alleging harassment by condominium manager.

Gabriel v. The Towers of Key Biscayne, Inc.,

Case No. 96-0338 (Goin / Final Order Dismissing Petition For Arbitration / September 16, 1996)

- No jurisdiction over petition filed by unit owners against association and upstairs owner alleging that upstairs owner had made modifications to unit without proper sound insulation thereby causing a disturbance in petitioner’s unit; involved a dispute between unit owners and the failure of the association to enforce the condominium documents.

Garcia v. Twelve Oaks Village Condo. Assn., Inc.,

Case No. 96-0417 (Draper / Final Order Dismissing Petition for Arbitration / November 26, 1996)

- Where petitioner alleged that association had failed to enforce the condominium documents by allowing another unit owner to build a wall between the unit owner’s patio and the petitioner’s patio, without a vote of the unit owners, as required for changes to the common elements, arbitrator was without jurisdiction over dispute. In addition, dispute was one between unit owners.

Garing v. Sugar Creek Country Club Assn., Inc.,

Case No. 93-0153 (Goin / Order / July 21, 1993)

- Where parties in settlement of prior civil action entered into settlement agreement in 1989 providing that future disputes alleging any violation of Chapter 719 would be subject to arbitration under Chapter 719, parties could not confer subject matter jurisdiction on the Arbitrator whose jurisdiction remained limited to those categories of disputes set forth in Section 719.1255, Florida Statutes.
- Count of Petition alleging that association misused reserve funds was not “dispute” subject to arbitration.
- Count alleging that the association failed to properly respond to complaints of the unit owner does not fall within the jurisdiction conferred on the Arbitrator.

- Allegation that social committee expends its own funds without supervision from the association does not constitute a “dispute” within the authority of the Arbitrator.

Ginsberg v. Olympus Condo. Assn., Inc.,

Case No. 93-0210 (Player / Order Dismissing Petition for Lack of Jurisdiction / June 15, 1993)

- Arbitrator lacked jurisdiction over dispute filed by tenant alleging that the association had wrongfully refused to approve the renewal of her lease.

Glencove Apartment Condo. Master Assn., Inc. v. Weit,

Case No. 93-0075 (Scheuerman / Order on Motion to Strike / August 20, 1993)

- Allegations of breach of fiduciary duty did not state a dispute within the jurisdiction conferred by Section 718.1255, Florida Statutes.

Greenfield v. Park Place Owners Assn., Inc.,

Case No. 95-0515 (Goin / Final Order Dismissing Petition for Arbitration / March 12, 1996)

- No jurisdiction to determine whether association’s practice of placing excess funds in reserve accounts violated IRS regulations.

Greenlee v. Oceanside Terrace Condo. Assn., Inc.,

Case No. 95-0497 (Goin / Order on Petitioner’s Amended Petition / March 28, 1996)

- Allegation that association funded security gate installation through invalid special assessment which was disguised as a revision to the budget did not fall within the jurisdiction of the arbitrator.
- Arbitrator did not have jurisdiction over dispute alleging that the association had permitted other owners to alter the common elements by modifying the appearance of their patios without the permission of the board or other unit owners. Dispute did not involve the authority of the board to alter or add to a common area or element, because it was the unit owners, not the association, who made the alteration.
- Allegation involving the failure of the association to maintain the common areas in the vicinity of petitioner’s unit was not within the arbitrator’s jurisdiction.

Grobman v. T.C.P.B. Condo. Assn., Inc.,

Case No.97-0022 (Goin / Final Order on Jurisdiction / March 24, 1997)

- Where unit owner alleged that association had passed an amendment to the declaration opening up the tennis club to non-unit owners and had therefore interfered with his use of the tennis facilities, the arbitrator did not have jurisdiction because the tennis facilities were association property and not common elements; the case did not involve the authority of the board to require petitioner to take action involving his unit or the appurtenances thereto because the use of the tennis facilities, which was association property, was not an appurtenance to his unit. Also, the case did not involve the use of common elements as provided in Rule 61B-45.013(1), but rather involved the use of association property.

Guastella v. Penbroke House West Condo. Assn.,
Case No. 92-0147 (Parker / July 2, 1992)

- No jurisdiction over dispute alleging that association had passed a special assessment that had been allocated equally among all units instead of being assessed pursuant to the percentages in the condominium documents.

Hansen v. Palisades Owners Assn., Inc.,
Case No. 95-0167 (Grubbs / Order Staying Proceeding and Requiring Amended Petition / May 18, 1995)

- Petition alleging that unit owners other than petitioning unit owner were permitted in the past to enclose balconies is not “dispute” within statute. Association is not requiring Petitioner to do anything in connection with his unit, and even assuming that the association’s affirmative approval of the alteration to other units constituted the equivalent of the association altering the common elements, petition failed to allege that the approval was unauthorized or that the alteration was unauthorized.

Hoechst v. Trapp,
Case No. 96-0018 (Goin / Final Order Dismissing Petition for Arbitration / January 10, 1996)

- No jurisdiction where petition filed by a unit owner against another unit owner alleging that a basketball hoop was placed on the common elements.

Hollywood Towers Condo. Assn., Inc. v. Hampton,
Case No. 95-0449 (Goin / Final Order Dismissing Petition for Arbitration / February 1, 1996)

- No jurisdiction where association sought to recover attorney’s fees and costs from unit owner regarding a previous circuit court case.

Huri v. La Riviere Assn. No. 1, Inc.,
Case No. 95-0428 (Grubbs / Final Order Dismissing Petition for Lack of Jurisdiction / December 27, 1995))

- Arbitrator did not have jurisdiction to hear case brought by unit owner against association that alleged that the association was not enforcing restrictions against other unit owners who had replaced plain aluminum storm doors with white storm doors of a different style.

Imber v. The Falls of Inverrary Condo., Inc.,

Case No. 95-0498 (Goin / Final Order Dismissing Petition For Arbitration / July 5, 1996)

- Petition dismissed where unit owner, who had filed petition alleging that the association had wrongfully disapproved a proposed tenant, sold unit in question. Petitioner was no longer a unit owner and association was no longer requiring an owner to take action, or not to take action.

Ingram v. Lime Bay Community Assn., Inc.,

Case No. 94-0326 (Scheuerman / Final Order Dismissing Petition / August 5, 1994)

- Arbitrator lacked authority to hear complaint that association violated 718.3026 by entering into a management contract without competitive bidding.

Israel v. Poinciana Condo. One of Pine Island Ridge,

Case No. 92-0141 (Grubbs / Order Dismissing Arbitration Petition / June 1, 1992)

- Arbitrator lacked jurisdiction to hear claim that association was failing to assess in the manner provided in the declaration.

Jackson v. Royal Point Manor West Condo. Assn., Inc.,

Case No. 94-0380 (Goin / Order Rejecting Count I of Petition / October 10, 1994)

- Legislative history of 1993 legislative session supported conclusion that legislature did not intend arbitration program to include disputes alleging the failure of an association to enforce the condominium documents. Accordingly, petition filed by unit owner against association alleging that unit owner below Petitioner installed tile without appropriate sound absorption qualities, dismissed.

Jacobs v. Islandia East Assn., Inc.,

Case No. 95-0026 (Richardson / Final Order of Dismissal / January 27, 1995)

- Arbitrator lacked jurisdiction to hear dispute between unit owners and property owners' association because the association was not comprised exclusively of condominium unit owners and was not a condominium association.
- Dispute concerning the association's failure to trim sea grapes located on the common elements failed to state a cause of action within the jurisdiction of the arbitrator; Florida law does not recognize a cause of action based on a view.

Jacobs v. Wood Hue Condo. Assn., Inc.,

Case No. 93-0008 (Goin / Final Order Dismissing Petition / April 6, 1993)

- Petition for arbitration dismissed where petitioner was not a “unit owner” as defined by statute. Although petitioner had entered into an agreement for deed with owners of unit, petitioner only held equitable title and unit owners still held legal title.

Jorosz v. Tradewinds Apartments of Marco Island, Inc.,

Case No. 95-0257 (Scheuerman / Final Order of Dismissal / July 25, 1995)

- Petition filed by owners against association alleging that association failed to enforce floor covering requirements of documents against other unit owners dismissed as dispute between unit owners and not between the unit owners and the association.

Kall v. Windward Cove Condo. Assn., Inc.,

Case No. 96-0041 (Goin / Final Order Dismissing Petition for Arbitration / March 29, 1996)

- Arbitrator did not have jurisdiction over dispute alleging that association cancelled a cable television contract and entered into contract with another company that did not provide “premium” channels directly to all unit owners but only to those who paid an additional charge.

Kingston v. The Harbor Oaks Condo. Assn., Inc.,

Case No. 95-0327 (Grubbs / Final Order Dismissing Petition / January 31, 1996)

- Where petition did not allege facts showing that association was altering common elements, and petition suggested that petitioner might be seeking a refund of the assessments paid to association for the purpose of correcting problems with the storm water drainage, petition was dismissed after petitioner failed to file an amended petition alleging facts establishing jurisdiction under s. 718.1255(1)(a)2., Florida Statutes.

Kleban v. Lake Tippecanoe Owners Assn., Inc.,

Case No. 97-0001 (Goin / Final Order Determining Jurisdiction / January 28, 1997)

- No jurisdiction over case involving failure of the association to require other owners to park bicycles in carports. Case involved failure of association to properly enforce condominium documents and no jurisdiction exists pursuant to Rule 61B-45.013(6).

Knapp v. Royal Bay Villas Condo. Assn., Inc.,

Case No. 96-0020 (Draper / Final Order Dismissing Petition / April 18, 1996)

- No jurisdiction over petition filed by unit owner to require association to take action against other owners to remove tile installed in their unit and to require unit owners to remove the tile.

Kohn v. Whitehall Condo. of the Villages of Palm Beach Lakes Assn.,
Case No. 94-0093 (Draper / Order of Dismissal / May 3, 1994)

- Arbitrator lacked authority over petition seeking to attack association's failure to gain approval of two-thirds of the membership prior to making an expenditure in excess of \$5,000.00 for repair and failure to assess in accordance with the condominium documents.

Kohn v. Whitehall Condo. of the Villages of Palm Beach Lakes Assn.,
Case No. 94-0093 (Draper / Order to Show Cause / March 21, 1994)

- Petitioner ordered to show cause why dispute framed by petition was not beyond the jurisdiction of the arbitrator, including claim that special assessment was made without requisite approval of members; that general and special assessments are not being assessed at a uniform rate; and that assessments are not being spent appropriately.

Kupersmith v. 2000 Island Boulevard Condo. Assn., Inc.,
Case No. 96-0252 (Goin / Final Order Dismissing Petition For Arbitration / July 25, 1996)

- No jurisdiction where petition was filed by unit owner against association and upstairs unit alleging that upstairs unit owner had installed marble tile without appropriate sound insulation and that association failed to enforce condominium documents against neighbor; case involved a controversy between two unit owners and the failure of association to enforce documents.

Landmark Place Condo. Assn., Inc. v. Bergdorf Holdings, Inc.,
Case No. 93-0029 (Grubbs / Order on Motion for Clarification or Rehearing, Motion for Temporary Injunction, and Motion to Transfer / June 23, 1993)

- Arbitrator lacks jurisdiction to hear dispute between unit owner acting as rental agent for other units in the condominium and the association seeking to enforce rental restrictions.

Landmark Place Condo. Assn., Inc. v. Bergdorf Holdings, Inc.,
Case No. 93-0029 (Grubbs / Order on Motions to Dismiss Count I / December 8, 1993)

- Arbitrator lacked jurisdiction over claim alleging that the association had failed to enforce restrictive covenants prohibiting signs against all unit owners equally. The failure to enforce compliance with condominium documents, where the board's failure to act does not have the effect of requiring a unit owner to take action or not to take action involving the unit or the appurtenances thereto, is not a subject identified by section 718.1255, Florida Statutes, as coming within the jurisdiction of the arbitrator.

Lathe v. Vanderbilt Towers Unit #1 of Naples, Inc.,

Case No. 96-0079 (Draper / Final Order Dismissing Petition For Arbitration / June 18, 1996)

- Arbitrator was without jurisdiction over dispute involving association's refusal to permit unit owner to purchase long term land lease encumbering unit.

LaTorre v. Chateau de Ville Condo. Assn., Inc.,

Case No. 96-0036 (Goin / Final Order Dismissing Petition for Arbitration / March 27, 1996)

- Arbitrator lacked jurisdiction over petition filed by unit owners against association and another unit owner alleging that other unit owner had a pet in violation of declaration and that petitioner's unit had been damaged by plumbing problems because it involved the failure of association to properly enforce documents and it involved a dispute between two unit owners.

Leisure Beach South Ad Hoc Condo Partners v. G.N. Properties, Inc.,

Case No. 94-0052 (Player / Order Dismissing Petition / February 25, 1994)

- Arbitrator lacked jurisdiction of dispute between group of unit owners and lessee under recreational lease of property used in conjunction with the condominium.

Liepold v. Brookfield Gardens Condo. Four, Inc.,

Case No. 95-0066 (Grubbs / Order Dismissing Petition for Lack of Jurisdiction / December 12, 1995)

- Where unit owner sold her unit, and thus was no longer a unit owner, petition would be dismissed for lack of jurisdiction. Association could no longer be exerting its authority to require the petitioner to take action involving her unit. The conflict is no longer a dispute between a unit owner and an association, and the disagreement no longer falls within those cases that must be arbitrated before filing a complaint in court.

Lipton v. Martinique Village II B Condo. Assn., Inc.,

Case No. 94-0213 (Price / Order to Show Cause / June 9, 1994)

- Petition alleging that board had failed to properly prune a tree from the common elements which blocked the unit owner's view of the common element golf course failed to come within the jurisdiction of the arbitrator.

Lockner v. Waterway Townhouse Condo. Assn., Inc.,

Case No. 94-0389 (Grubbs / Final Order Dismissing Petition / October 27, 1994)

- Failure by association to enforce parking regulation does not alter or add to the common elements; neither does change to parking rules to allow vans and trucks constitute an alteration or addition to the common elements as the general use, function, and appearance of the area has not been changed. A "dispute" does not

include conflicts concerning the failure of the board to enforce the condominium documents, unless the dispute affirmatively falls within one of the categories of the arbitrator's jurisdiction, like the failure to follow or enforce election requirements.

Lott v. The Moorings of Pinellas County Condo. Assn., Inc.,

Case No. 95-0190 (Draper / Order Dismissing Petition / May 30, 1995)

- Where petition alleged that board requested unit owner to voluntarily leave a board meeting at which owner's petition for arbitration would be discussed, in violation of the unit owner's civil rights, claim did not fall within arbitrator's jurisdiction.
- Where petition sought entry of a final order directing association to inform membership of details of theft where the money had subsequently been repaid to the association, controversy did not state a dispute within the jurisdiction of the arbitrator.

Lott v. The Moorings Condo. Assn. of Pinellas, Inc.,

Case No. 95-0328 (Grubbs / Order Dismissing Petition for Arbitration / September 20, 1995)

- No jurisdiction over petition alleging that association was failing to enforce the truck restriction against other unit owners who had been parking Blazers, Jeeps, and other similar vehicles. Also no jurisdiction to enforce final order entered in prior arbitration requiring the association to enforce the truck restriction against everyone equally.

M.B. Computing, Inc. v. Yacht & Tennis Club Assn., Inc.,

Case No. 94-0028 (Player / Final Order of Dismissal / May 12, 1994)

- Where issue involving boat slips could not be resolved without the joinder of a non-unit owner third party, where nothing had occurred to prohibit petitioner from using boat slips or docks, and where it was unknown whether the boat slips were situated on common elements or association property, case dismissed for lack of subject matter jurisdiction.

MacClary v. Carlton Towers Condo. Assn., Inc.,

Case No. 94-0355 (Draper / Order Dismissing Counterclaims / October 18, 1994)

- Arbitrator lacked authority to entertain counterclaim filed by association alleging that unit owner was using the provisions of the statute ensuring access to the association records in a bad faith attempt to punish the association for prior acts. The statute does not condition access to only those individuals who are acting in good faith counter petition failed to state a cause of action. Parenthetically, association had failed to take advantage of its ability to place reasonable restrictions on the right of access to books and records.

MacClary v. Carlton Towers Condo. Assn., Inc.,

Case No. 94-0355 (Draper / Order on Petitioner's Motion for Default / October 18, 1994)

- Petition filed by unit owner alleging that the association had failed to accurately report withholding taxes to the I.R.S.; failed to maintain reserve accounts; had improperly used funds collected for parking space rental; had afforded director preferential treatment; and failed to deposit reserve funds into the reserve account, are not failures of the association which are included within the definition of dispute.
- Unit owner's request for compensatory damages, not supported by sufficient factual allegations, dismissed.
- Unit owner's request that arbitrator suspend the license of the community association manager not allowed.

MacDonald v. Palm Villas of Venice Condo. Assn., Inc.,

Case No. 95-0168 (Scheuerman / Final Order Dismissing Petition for Lack of Jurisdiction / April 21, 1995)

- Petition filed by unit owner against developer and association alleging that adjoining owner had planted shrubberies on the petitioner's unit dismissed where petition did not allege that the association or developer approved the plantings. Dispute presented was one between unit owners.

Maguire v. Sea Crest of Broward Condo. Assn., Inc.,

Case No. 96-0207 (Draper / Final Order of Dismissal / July 29, 1996)

- Arbitrator without jurisdiction over unit owner's claim seeking reimbursement of maintenance assessments and funds spent in effort to obtain good title to common element penthouse/shed he purchased from association but for which deed was never given. Dispute primarily involved title and levy of assessment.

Maison Grande Condo. Assn., Inc. v. Kay,

Case No. 94-0367 (Grubbs / Order Dismissing Petition / March 9, 1995)

- Petition brought by association against a unit owner and president of social club, which alleged that the social club had conducted financial transactions utilizing the association's federal identification number without authorization of the association, and requesting entry of an order requiring the social club to turnover certain financial records to the association, dismissed for lack of jurisdiction.

Mayer v. Halifax Villas Condo. Assn., Inc.,

Case No. 93-0321 (Price / Final Order Dismissing Petition / January 6, 1994)

- Petition for Arbitration seeking to question a \$1,000.00 special assessment imposed by the board for mansard replacement, and seeking a determination over whether such replacement was a non-emergency or emergency expenditure, involved the imposition or levy of a special assessment not within the jurisdiction of the arbitrator.

McDonnell v. The Assn. of the Meadows of Crystal Lake, Inc.,
Case No. 92-0216 (Player / Final Order of Dismissal / October 5, 1992)

- No jurisdiction over dispute involving homeowner's association of single family residences.

McDonnell v. Sugar Spring Assn. II, Inc.,
Case No. 94-0160 (Grubbs / Order to Show Cause / July 7, 1994)

- Where unit owner filed petition seeking reimbursement of sums expended to repair roof, and where association filed counter-claim to collect past due assessments plus interest, association ordered to show cause why counter-claim should not be dismissed for lack of jurisdiction.

McNelis v. Ocean Club II Condo. Assoc.,
Case No. 92-0192 (Grubbs / Order Dismissing Petition for Arbitration / November 24, 1992)

- Arbitrator lacked authority where unit owner sought to challenge failure of association to enforce minimum rental period provisions; unit owner was trying to require the board to take action regarding other people's units.

Meriwether v. Brown,
Case No. 94-005 (Player / Order on Petitioner's Request for Expedited Determination of Jurisdiction / January 11, 1994)

- Arbitrator lacked jurisdiction over dispute against individual board members and claims of breach of fiduciary duty by former board members. Also, relief requested by unit owner of reimbursement of attorney's fees expended to protect her rights as a unit owner, could not be granted in the arbitration proceeding where such fees were unrelated to the Petition for Arbitration. Moreover, the arbitrator lacked authority to impose civil penalties sought to be imposed pursuant to section 718.501, Florida Statutes, which permits the Division in an enforcement proceeding to impose civil penalties.

Meriwether v. Talbert and R & I Associates v. Golfview Townhouses Condo. Assn., Inc.,
Case No. 95-0422 (Goin / Order Determining Jurisdiction / November 16, 1995)

- No jurisdiction over dispute involving the improper commingling and use of funds earmarked for building repairs.

- No jurisdiction over dispute involving failure of association to repair balconies where petitioners did not allege facts necessary for it to comply with jurisdictional requirements. However, defect could be cured if additional relevant facts are included.
- No jurisdiction over count alleging that association had levied assessments against owners in one building on a 1/4 basis rather than on all owners on a 1/22 basis.
- No jurisdiction over count involving the failure of association to take prompt action against owners for unpaid regular and special assessments.
- No jurisdiction over count alleging breach of settlement agreement.

Metropolitan Commercial Park Condo. Assn., Inc. v. Crawford,

Case No. 95-0343 (Grubbs / Order Dismissing Petition for Arbitration for Lack of Jurisdiction / November 7, 1995)

- There is no jurisdiction pursuant to §718.1255, Florida Statutes, to consider disputes that involve a commercial condominium or a commercial unit. Rule 61B-45.013(12), Florida Administrative Code, was adopted to clarify the jurisdictional issue after conflicting arbitration and circuit court opinions had been issued.

Miller v. Leisure Beach South Assn., Inc.,

Case No. 96-0071 (Scheuerman / Order Dismissing Petition for Arbitration / February 19, 1996)

- Petition filed by former owner claiming that harassment by association forced him to sell unit at a loss dismissed because petitioner no longer an owner.

Misty Lake South Condo. Assn., Inc. v. Caron,

Case No. 94-0113 (Scheuerman / Order / April 28, 1995)

- Arbitrator lacked authority to hear count of counterclaim alleging abuse of process where the association initially filed dispute in court when arbitration petition should have been filed instead.

Morrow v. Somerset S.C.C.C.,

Case No. 95-0002 (Goin / Final Order Dismissing Petition / January 24, 1995)

- Arbitrator lacked jurisdiction over petition in which unit owner alleged that the association would not allow her to bring her Hoover vacuum aboard a bus provided by the association.

Naples Sunrise, Inc. v. Lienemann,

Case No. 95-0407 (Scheuerman / Order Dismissing Petition / February 13, 1996)

- Where after petition was filed but before service on owner, unit owner purported to transfer title in a conveyance unapproved by association, arbitrator lacked jurisdiction to set aside conveyance and reach main dispute.

Neil v. Architectural Control Committee of the Camachee Island Owners Assn.,

Case No. 96-0287 (Draper / Final Order Dismissing Petition / November 8, 1996)

- Petition brought by unit owners to force master association to obtain condominium association approval before allowing unit owners to alter condominium common elements dismissed for lack of jurisdiction. Dispute is between unit owners and seeks to require association to force unit owners to do, or not do, something with their unit.

Oakwood Court Condo. Assn., Inc. v. Ellis,

Case No. 94-0249 (Grubbs / Order of Dismissal Without Prejudice / July 1, 1994)

- Where association's petition named the previous owner of a unit as well as the current owner and occupant, and requested that the sale and conveyance to the current owner be set aside, former unit owner not a proper party to the arbitration, and any disagreement between the association and the former owner cannot be considered a dispute within the purview of section 718.1255, Florida Statutes. Petition dismissed and association permitted to file an amended petition naming only the owner and occupant.

Olde South Condo. Assn., Inc.,

Case No. 97-0189 (Goin/ Final Order on Jurisdiction / July 9, 1997)

- No jurisdiction over petition which sought the collection of a fine where petition did not include a related dispute, which fell within the jurisdiction of the arbitrator. The collection of a fine, in and of itself, is not considered a dispute subject to arbitration.

Ostroff v. Lauderdale West Community Assn. Number 1, Inc.,

Case No. 95-0205 (Richardson / Order Dismissing Petition / July 10, 1995)

- Arbitrator lacks jurisdiction to hear dispute alleging that budgetary and financial affairs of entity determined to be condominium association were mismanaged.

Palm Beach Hampton Condo. Assn., Inc. v. Parkoff,

Case No. 96-0204 (Goin / Final Order Dismissing Petition For Arbitration / July 12, 1996)

- No jurisdiction where association sought to void a transfer of title based on failure of respondents to obtain prior approval of association for transfer of unit.

Palm Club West Village I Condo. Assn., Inc. v. Scopa,

Case No. 94-0127 (Scheuerman / Final Order Determining Jurisdiction / April 11, 1994)

- Arbitrator lacked jurisdiction over dispute filed by association seeking recovery of costs and attorney's fees of prior circuit court action to secure emergency injunction.

Palmer v. Bellamy Forge Assn., Inc.,

Case No. 94-0111 (Richardson / Summary Final Order / July 28, 1994)

- Final Order entered determining the sufficiency of notice where board determined to adopt a use fee, where arbitration arose prior to final orders entered in other arbitrations holding that use or transfer fee disputes were not eligible for arbitration even where adequate notice at a meeting was contested.

Pasichow v. Wynmoor Community Council, Inc.,

Case No. 94-0227 (Richardson / Final Order Dismissing Petition / June 24, 1994)

- Arbitrator lacked authority over dispute concerning use fees for the recreation area.

Pelican Walk Rentals and Sales, Inc. v. Pelican Walk Owners Assn., Inc.,

Case No. 94-0029 (Player / Final Order Determining Jurisdiction / June 17, 1994)

- In condominium composed of 118 residential units and 1 commercial unit, where petitioner owned the commercial unit and claimed that the association had created another competing commercial unit, arbitrator lacked authority as dispute involved a commercial unit.

Penn v. Harbor Towers Owners Assn., Inc.,

Case No. 93-0001 (Player / Final Order Dismissing Petition for Lack of Jurisdiction / January 11, 1993)

- Arbitrator lacked authority over the dispute alleging that the association, acting as rental agent for unit owners renting their units, negligently failed to rent petitioner's unit and to remit rental payments. Rental business operated by association is separate and apart from its functions in operating the condominium.

Pentenero v. The Villas of Somerset Woods, Inc.,

Case No. 95-0114 (Grubbs / Order to Show Cause / May 22, 1995)

- Arbitrator lacked authority to hear dispute brought by unit owners against association alleging that other unit owners had installed ventilator shafts on the common elements.

Pentenero v. The Villas of Somerset Woods, Inc.,

Case No. 95-0114 (Grubbs / Order Dismissing Petition for Lack of Jurisdiction / December 27, 1995)

- Arbitrator had no jurisdiction to determine validity of “maintenance” agreement entered into by certain unit owners and the association regarding the repair and maintenance of pre-existing ventilation shafts installed by those unit owners, as it did not involve the petitioners’ unit and association was not exerting its authority to alter or add to the common elements.

Perez v. Grand Plaza Assn., Inc.,

Case No. 94-0323 (Draper / Order on Jurisdiction / August 22, 1994)

- Action by prospective unit owners against developer for the return of monies deposited on sales contract for unit does not fall within jurisdiction of the arbitrator. Petitioners were merely prospective unit owners and may never be unit owners. The Respondent was a developer, and arbitrator only has jurisdiction to arbitrate disputes between association and unit owners. Fact that contract provided for mandatory non-binding arbitration pursuant to section 718.1255 did not confer jurisdiction on the arbitrator.

Peterkin v. Gingertree Homeowners’ Assn., Inc.,

Case No. 94-0137 (Price / Final Order Dismissing Petition / August 3, 1994)

- Dispute involving a homeowners association which is not an association within Chapter 718, Florida Statutes, is not within the jurisdiction of the arbitrator.

Phillips v. Rosewood Condo. Homeowners’ Assn., Inc.,

Case No. 95-0465 (Goin / Order Rejecting Certain Portions of Petition for Lack of Jurisdiction and Order Requiring Respondent to Answer Remaining Portions of Petition for Arbitration / February 7, 1996)

- The failure of the association to properly maintain the lawn is not a dispute eligible for arbitration because petitioner’s use of the lawn area has not been directly affected as a result of the association’s alleged failure. Petitioner simply does not agree with the association’s methods of maintaining the lawn.

Pitner v. Bayshore Yacht and Tennis Club Condo. Assn., Inc.,

Case No. 95-0056 (Richardson / Order Striking Claims / February 10, 1995)

- Arbitrator lacked jurisdiction over dispute alleging association misuse of condominium funds by paying rent for its in-house maintenance person who no longer lived in the building; spending thousands of dollars on petty cash disbursements without vouchers; spending the association’s funds on privately owned portions of the condominium; breach of fiduciary duty; that the association refused to verify whether or not it is paying electric bills for lighting on a privately-owned dock; that the association placed privately-owned vending machines on the common elements; that the association paid for installation of a new gas line to a unit for the exclusive use of a board member; that the association hired an unlicensed manager; that the association repaired the terrace connected to a director’s unit with association funds; that the

association routinely approves expenditures of \$500.00 without discussion at board meetings; the use of a common element laundry room by personnel; and the improper use of a parking area by a board member. Complaint that association was locking unit owner out of the tennis courts and certain sections of the parking area falls within the jurisdiction of the arbitrator, but count stricken because insufficient facts were included as there was no allegation that the individual plays tennis or has attempted to enter the courts to play and been locked out at unreasonable times of the day; nor was there an allegation that he has a parking space in the garage and that his use thereof has been precluded by the association's action.

Poitier Corporation v. Fountainview Unified Committee,
Case No. 93-0238 (Goin / Order on Petitioner's Emergency Motion for Immediate Hearing and Motion to Conduct Discovery / August 24, 1993)

- Alleged failure of unit owner to pay assessments does not constitute a "dispute" within the jurisdiction conferred on the Arbitrator.

Pugh v. Colony Reef Club Condo. Assn., Inc.,
Case No. 94-0370 (Goin / Final Order Dismissing Petition / March 13, 1995)

- Arbitrator lacked jurisdiction over petition alleging that association had purchased certain real property at a cost of \$225,000.00 without the approval of the unit owners required under section 718.111(7). Dispute did not concern a material alteration or a substantial addition to the common elements; there is an inherent difference between the acquisition of association property and the alteration or addition of common elements.

Raska v. Fountains of Ponte Verdra, Inc.,
Case No. 93-0364 (Goin / Order / January 21, 1994)

- Counts of petition seeking to challenge association's use of settlement money and common surplus funds were dismissed due to lack of jurisdiction.
- Count of petition complaining that the association has failed to adequately maintain a common element chain link fence surrounding a pool dismissed. Petition did not allege that petitioner's unit or use of the appurtenances to the unit would be affected or that the association's failure to maintain the fence adequately has affected the unit owner's use of the pool. Board of directors is required to make day-to-day decisions affecting routine maintenance, and directors have wide discretion in performance of their duties. Board's decision regarding degree of maintenance required in chain link fence count and similar count regarding failure to adequately paint unit doors failed to state a cause of action for which relief could be granted.

Ray v. Center Court Condo. Assn., Inc.,

Case No. 93-0275 (Goin / Order to Show Cause and Order Requiring Amended Petition / October 1, 1993)

- Count alleging the failure to furnish financial report to the unit owners is not a dispute within the jurisdiction of the arbitrator.
- Count of petition alleging various illegal expenditures by the association is not a dispute subject to arbitration.
- Count alleging that the association, on 750 occasions, was failing to enforce the rules and regulations, does not fall within the jurisdiction of the arbitrator. Selective enforcement is an affirmative defense and not a cause of action.
- Claim of breach of fiduciary duty is not subject to arbitration because the board members, and not the association owe a fiduciary duty.
- Count alleging that association financial records are “fouled up” and requesting entry of an order requiring an audit does not state a dispute subject to the jurisdiction of the arbitrator.
- Count of petition alleging that association intends to plunder reserve accounts for non-reserve expenditures is not subject to arbitration.

Rodman v. Ocean Village Property Owners Assn., Inc.,
Case No. 94-0010 (Player / Final Order of Dismissal / April 18, 1994)

- Arbitrator lacked jurisdiction over respondent property owners association which was not composed exclusively of condominium unit owners and thus was not an association under section 718.103(2), Florida Statutes. Specifically, FDIC is a member in the property owners association, but it is not a unit owner as it simply owns a piece of undeveloped land within the development.

Rodman v. Ocean Village Property Owners' Assn., Inc.,
Case No. 94-0010 (Player / Order Dismissing Respondent's Motion to Determine Prevailing Party / April 18, 1994)

- Arbitrator lacked jurisdiction over Respondent property owners' association that was not composed exclusively of condominium unit owners, and thus was not an “association” under Chapter 718. Where arbitrator lacked authority to hear Petitioner's claims, it follows that she does not have jurisdiction to make a determination of prevailing party costs and attorney's fees.

Rooth and Graham v. 2100 Towers Condo. Assn., Inc.,

Case Nos. 93-0166; 93-0192 (Price / Final Order Dismissing Petitions for Arbitration / August 11, 1993)

- Petition for Arbitration dismissed where unit owners failed to respond to an Order to Show Cause why the Petition should not be dismissed for lack of jurisdiction where the unit owners sought reimbursement from the association for expenses incurred in repairing automobiles which had been damaged by overspray while repair work was being done to the condominium.

Royal Flagler Condo. Assn., Inc. v. J & M Condominium Management,

Case No. 96-0305 (Goin / Final Order Dismissing Petition For Arbitration / September 16, 1996)

- No jurisdiction over petition brought by association against roofing contractor, management company and past president for negligence, fraud, unjust enrichment, and breach of fiduciary duty.

Salonia v. Oceanview Park Condo. Assn., Inc.,

Case No. 96-0439 (Goin / Final Order Dismissing Petition For Arbitration / December 11, 1996)

- The arbitrator did not have jurisdiction over emergency petition involving the failure of the association to provide adequate notice of a meeting of the unit owners to be held to approve a special assessment; dispute primarily involved the levy of a fee or assessment.

Sanborn v. Beverly Hills Condo. Assn., Inc.,

Case No. 93-0357 (Goin / Order Partially Dismissing Petition / December 1, 1993)

- Where record indicated that board, in response to written complaints concerning noise within a unit, had written a letter to the nuisance unit owner requiring the owner to take certain measures to eliminate the noises, association had taken preliminary steps to enforce the documents, and petition against association by another unit owner seeking to require association to enforce the condominium documents failed to state a cause of action against the association.
- If, upon amendment to petition, it was determined that water intrusion damage into unit was caused by water originating in another unit and within the purview of that unit owner, arbitrator lacked jurisdiction over the dispute as it involved one unit owner's complaint against another unit owner.

Sand Dollar of Indian Shores Condo. Assn., Inc. v. Fidelity Investments of Pinellas County, Inc.,

Case No. 94-0294 (Goin / Final Order Dismissing Petition / September 13, 1994)

- Where association sought to challenge amendment to declaration which designated certain portions of the common elements as part of a unit, dispute primarily involved title to a unit or common elements and was dismissed for lack of jurisdiction.

Schwartzman v. Golf's Edge Condo. Assn., Inc.,

Case No. 93-0127 (Goin / Final Order Dismissing Petition / June 18, 1993)

- Arbitrator lacked authority to hear dispute filed by unit owner claiming that the method of apportionment of the common expenses utilized by the association was unfair.

Sea Ranch Club Condo. Assn., Inc. v. Semaan,

Case No. 92-0122 (Linthicum / Final Order Dismissing Petition for Arbitration / December 11, 1992)

- Petition for arbitration filed by association against three directors from Condominium A (board composed of nine directors—3 from each condominium) alleging that they should no longer be on the board because their terms had ended dismissed for lack of jurisdiction. Petition did not allege that the governing body failed to properly conduct an election, but that the directors from Condominium A erred for taking the position that they were not required to stand for election at the annual meeting.

Seawatch at Marathon Condo. Assn., Inc. v. Marina Homes at Seawatch, Inc.,

Case No. 97-0216 (Draper / Final Order Dismissing Petition for Arbitration / July 12, 1997)

- No jurisdiction where association sought to void transfer of unit based on failure of respondents to obtain prior approval of association for transfer, so it could have opportunity to exercise right of first refusal.

Second Forum Condo. Corp., Inc. v. Forum Board of Governors,

Case No. 96-0264 (Goin / Final Order Dismissing Petition for Arbitration / July 12, 1996)

- No jurisdiction over petition filed by association against master/recreation association for failure to pay its share of the water, garbage, and electricity bills.

Shaffer v. Regency Pines Condo., Inc.,

Case No. 95-0467 (Scheuerman / Final Order Determining Jurisdiction / January 22, 1996)

- No jurisdiction to hear whether developer correctly granted easement over recreation facilities to separate group of condominium owners.

Smith v. 901 Condo., Inc.,

Case No. 94-0169 (Player / Final Order Determining Jurisdiction / June 22, 1994)

- Arbitrator lacked jurisdiction over dispute involving a commercial unit in a commercial condominium. It is evident that the arbitration remedy was designed with residential condominiums in mind.

Snyder v. Endless Summer Owners Assn., Inc.,

Case No. 93-0363 (Price / Final Order Dismissing Petition for Arbitration and Order Closing File / December 22, 1993)

- Arbitrator lacked jurisdiction over dispute involving board's failure to accept reservation deposit for clubhouse where dispute had previously been litigated and an order entered requiring the association to accept reservations on a first-come, first-serve basis per the rules and regulations of the association.

Soren v. Belle Plaza Condo. Assn., Inc.,

Case No. 97-0242 (Scheuerman / Final Order Dismissing Petition / July 21, 1997)

- Arbitrator lacked jurisdiction over count seeking damages for alleged misrepresentation by association to purchaser that soundproofing rules applied to all owners.
- Arbitrator lacked jurisdiction over count seeking damages from association for failing to prosecute nuisance owner for abatement of nuisance.
- Arbitrator lacked jurisdiction over count seeking to force association to prosecute adjoining owner who was creating a nuisance; dispute was between owners.

Spadaro v. Pembroke House Condo.,

Case No. 93-0211 (Price / Final Order Dismissing Petition for Arbitration/ August 31, 1993)

- Where unit owner failed to respond to Order to Show Cause why dispute should not be dismissed for lack of jurisdiction, Petition involving a road widening project which allegedly impaired the unit owner's use of individual parking spaces, was dismissed.

Stein v. Water Glades Property Owners' Assn.,

Case No. 93-0404 (Richardson / Order Dismissing Petition / March 11, 1994)

- Arbitrator does not have jurisdiction to hear dispute concerning the association's failure to trim Seagrape trees situated on the common elements. No claim presented that use of the common elements was impaired, and no right to an ocean view provided in the documents.

- The association's failure to trim sea grapes did not constitute an alteration or addition to the common elements over which the arbitrator would otherwise have jurisdiction, as mere failure to trim a tree, as opposed to the complete removal or substantial pruning of trees, relates to maintenance function of the board which generally does not come within the jurisdiction of the arbitrator but is subject to business judgment rule.

Steinmetz v. Belfort Condo. P Assn., Inc.,

Case No. 94-0410 (Richardson / Final Order Dismissing Petition / October 5, 1994)

- Petition for arbitration seeking to challenge a special assessment levied for beautification of the common elements dismissed for lack of jurisdiction.

Storch v. Sunrise Lakes Condo. Phase IV, Inc.,

Case No. 94-0048 (Goin / Final Order Dismissing Petition / March 11, 1994)

- Arbitrator lacked jurisdiction to determine the constitutionality of section 718.115, Florida Statutes, relating to cable television.

Sun Resorts, Inc. v. Jellystone Park Condo. Assn., Inc.,

Case No. 95-0453 (Scheuerman / Final Order Dismissing Petition for Lack of Jurisdiction / February 14, 1996)

- Arbitrator lacked jurisdiction to hear dispute between developer and multi-condominium association concerning proper allocation of expenses among different condominiums.

Szczepanski v. Cypress Bend Condo. II Assn., Inc.,

Case No. 96-0454 (Scheuerman / Final Order Dismissing Petition / August 4, 1997)

- Where, in response to challenge from association, petitioning owner did not file deed proving ownership of a unit as required by order of the arbitrator, petition dismissed on jurisdictional grounds as not involving an "owner" despite fact that petitioner resided in unit and was the husband of a record owner. Statute defines owner as record owner of legal title.

Terry v. Hidden Forest Condo. Assn., Inc.,

Case No. 94-0223 (Goin / Final Order Dismissing Petition / June 27, 1994)

- Count of petition alleging that petitioning unit owner was arrested for threatening the mayor of Lauderhill, and alleging that the petitioner was being harassed by the president of the association, is not a dispute.

- Counts alleging breach of fiduciary duty by employing incorrect accounting procedures and by failing to keep a record of plant purchases are not eligible for arbitration.
- Count alleging that the board, in companionship with the management company, had slandered the petitioning unit owner, is not eligible for arbitration.
- Failure of the association to provide financial statements is not a dispute within the meaning of the statute. Count alleging breach of fiduciary duty in the expenditure of reserve funds, and that the association was not funding the reserve accounts, did not state a case for arbitration.
- Count alleging that individual board members have used their positions to purchase units in the condominium at below market costs, was not an arbitratable dispute.
- Count alleging a breach of fiduciary duty in the non-collection of condominium fees was not a dispute subject to arbitration; count alleging the association had failed to foreclose upon units as to which a lien had been recorded, is not a dispute subject to arbitration.

Terzis v. Ocean Dunes of Hutchinson Island Condo. Assn., Inc.,
Case No. 94-0385 (Draper / Order to Show Cause / September 21, 1994)

- Arbitrator lacked jurisdiction over count in petition alleging that association had failed to provide financial reports and had failed to properly disclose reserves in the proposed budget or in the financial report or financial statements.

Terzis v. Ocean Dunes of Hutchinson Island Condo. Assn., Inc.,
Case No. 95-0162 (Draper / Order Dismissing Petition / May 4, 1995)

- Petition filed by unit owner seeking enforcement of summary final order previously entered against association must be filed instead as enforcement action in circuit court.

Thompson v. Silver Pines Assn., Inc.,
Case No. 92-0239 (Grubbs / Final Order / March 31, 1994)

- Arbitrator lacks jurisdiction to consider complaint by unit owner that association had failed to enforce various portions of the condominium documents against twenty-eight other unit owners. This information may, however, be pertinent to the defense of selective enforcement.

Tivoli Trace Condo. Assn., Inc. v. Chianese,

Case No. 96-0359 (Goin / Final Order Dismissing Petition For Arbitration / October 14, 1996)

- No jurisdiction where association was alleging that unit owners had purportedly sold unit without the prior approval of the association because dispute involved title.

Toepfer v. Crystal Sand Owners Assn., Inc.,

Case No. 95-0098 (Goin / Final Order Rejecting Petition / March 28, 1995)

- Arbitrator lacked jurisdiction over controversy alleging the failure of the association to properly prepare budgets or properly fund reserves.

Tope v. Glades Country Club Apartments Assn., Inc.,

Case No. 94-003 (Richardson / Final Order Dismissing Petition / January 14, 1994)

- Arbitrator lacked jurisdiction over dispute involving the imposition of a tennis court user fee.

Tornabene v. Villas at River Run Condo. Assn., Inc.,

Case No. 95-0513 (Goin / Final Order Dismissing Petition for Arbitration / March 12, 1996)

- No jurisdiction over dispute alleging that other unit owners had extended their patios onto the common elements and that association had failed to take action against offending unit owners.

Towers of Oceanview East Condo. Assn., Inc. v. Gonzalez,

Case No. 96-0394 (Oglo / Order Determining Jurisdiction / November 22, 1996)

- Association sought to collect \$350.00 fine against unit owner for keeping dog in her unit. Since unit owner had removed the dog prior to the filing of the petition, there was no controversy. Pursuant to statute, arbitrator had no jurisdiction over claim for fines when claim for fines not accompanied by a related controversy subject to arbitration jurisdiction.

Townes of Southgate Condo. Assn., Inc. v. The Townes of Southgate, Inc.,

Case No. 95-0065 (Grubbs / Order Dismissing Petition / March 17, 1995)

- Dispute filed by condominium association alleging that a recreation association was not properly maintaining the recreation facilities did not constitute a dispute between a unit owner and an association. Rather, dispute involved disagreement between two associations over which the arbitrator lacked jurisdiction. Moreover, any disagreement regarding the payment of maintenance fees is specifically exempted from the definition of dispute.

The Trails at Royal Palm Beach, Inc. v. Wargovich

Case No. 93-0320 (Goin / Order Dismissing Counts 4 and 5 / March 30, 1994)

- Arbitrator lacked jurisdiction over claim that association's collection practices gave rise to an action for damages pursuant to the Fair Debt Collections Practices Act and the Florida Consumer Collection Practices Act.

The Trails at Royal Palm Beach, Inc. v. Wargovich,

Case No. 93-0320 (Goin / Order on Respondent's Motion for Damages / February 8, 1995)

- Arbitrator lacked authority to grant punitive damages on counterclaim of handicapped unit owner claiming that association had prohibited him from making changes to his screened patio, that the association has prohibited him from parking his van on the common elements; and that the association erected a fence blocking the owner's access to the pool. Arbitrator had jurisdiction over the subject matter of the dispute as the claims involved the authority of the association to require an owner to take action, or not take action, involving the unit or the appurtenances thereto. Where counterclaim did not demonstrate that unit owner suffered any actual damages based on the association's failures, only relief which could be granted would be injunctive relief if violation of fair housing act demonstrated. Arbitrator's authority to award actual damages does not extend to awarding compensatory damages for emotional distress.

Troniar v. Royal Arms Extension Condo. Assn., Inc.,

Case No. 93-0346 (Goin / Final Order Dismissing Petition / January 11, 1994)

- Petition filed by unit owner requesting an invalidation of special assessment does not state a dispute subject to arbitration since the special assessment was authorized or contemplated by Chapter 718, Florida Statutes. The fact that the assessment may not have complied with all procedural requirements does not convert to the dispute into one falling within the jurisdiction of the arbitrator. Moreover, even where the Petition alleges the failure of the association to give notice of the special assessment and may therefore implicate the subject of meetings which does fall within the jurisdiction of the arbitrator, since the relief requested is an Order requiring the association to reimburse the unit owner for the amount of the special assessment, the primary dispute presented involves an assessment and is outside the authority of the arbitrator.

Vellucci v. Sanseair Condo. Assn., Inc.,

Case No. 96-0441 (Goin / Final Order on Jurisdiction / December 11, 1996)

- No jurisdiction over petition involving the failure of the association to obtain a vote of the unit owners before making an expenditure of more than \$25,000.00.

Venditti v. Gateland Village Condo. Assn., Inc.,

Case No. 96-0438 (Goin / Final Order on Jurisdiction / December 17, 1996)

- Dispute involving failure of association to obtain competitive bids and failure to comply with South Florida Building Code not eligible for arbitration. However, the gist of petition, alleging that association was negligent in maintaining/repairing roof which caused damage to petitioner's unit, was eligible for arbitration.

Village on the Green Condo. II Assn., Inc. v. Knaus,

Case No. 93-0388 (Player / Order on Petitioner's Motions to Strike Affirmative Defenses and to Dismiss Counter petition / March 4, 1994)

- Arbitrator lacks jurisdiction to hear a complaint concerning the association's failure to adequately maintain the common elements if the alleged failure to maintain has not affected the unit owner's use of his unit or the appurtenances thereto, which include the common elements.
- Claim of intentional harassment by association is outside the scope of a dispute under section 718.1255, Florida Statutes.

Wagner v. The Pinnacle Apartments, Inc.,

Case No. 94-0416 (Draper / Order / November 28, 1994)

- Arbitrator lacked jurisdiction over count in petition alleging that association had improperly charged a \$100.00 application fee for the transfer of the unit.

Wagster v. Sea Palm of Ft. Walton Beach Condo. Assn., Inc.,

Case No. 94-0150 (Grubbs / Order Dismissing Petition / February 17, 1995)

- Where amended petition claimed that unit owner vote to permit laundry equipment in units was taken by general proxy in violation of statute and documents, but where unit owner vote was simply a straw vote undertaken to assist board in ascertaining wishes of the owners, vote was of no official significance and question of propriety of vote was abstract or hypothetical.

Wagster v. Sea Palm of Ft. Walton Beach Condo. Assn., Inc.,

Case No. 94-0150 (Grubbs / Order to Show Cause / April 28, 1994)

- Where unit owner filed a petition alleging that other unit owners had installed laundry equipment in violation of the condominium documents and state law, and where petition requested relief against the owners of those units, unit owners ordered to show cause why petition should not be dismissed for lack of jurisdiction. Arbitrator does not have jurisdiction over disputes between unit owners. Except for disputes listed in subsection 718.1255(1)(b), arbitration cannot be used to remedy a board's failure to take an action that it is allegedly required to take, unless the board's failure results in the unit owner having to take action involving his own unit.

Wells v. Seacove Condo. Assn., Inc.,

Case No. 97-0151 (Oglo / Order on Jurisdiction / April 23, 1997)

- Petitioner's disagreement with the association's levy of maintenance fees on her hurricane-damaged unit falls outside the arbitration jurisdiction of the Division pursuant to Section 718.1255(1), F.S.

Wheeler v. Lighthouse Village Condo. Assn., Inc.,

Case No. 96-0224 (Goin / Final Order Dismissing Petition For Arbitration / July 25, 1996)

- No jurisdiction where petition was filed by unit owner against association alleging that upstairs neighbor had installed tile without appropriate sound insulation and that association failed to enforce rules and regulations against neighbor; case involved a controversy between two unit owners and the failure of association to enforce condominium documents.

Wimbledon Park Orlando No. 1, Inc. v. Wimbledon Park Recreation Assoc., Inc.,

Case No. 93-0218 (Grubbs / Final Order Determining Jurisdiction / July 14, 1993)

- Arbitrator did not have authority over controversy between condominium association and recreation Jungle Den-type association; under Rule 61B-45.013(5), Florida Administrative Code, the only disputes eligible for arbitration are those existing between a unit owner and the association or its board of administration. The particular conflict did not involve the authority of the recreation association to require a unit owner to take action regarding the unit, but involved the authority of the recreation association to require the condominium association to pay for its use of a common pump. Accordingly, the dispute is between two associations.

Wimmer v. Oasis – A Condo. Assn., Inc.,

Case No. 94-0201 (Goin / Final Order Dismissing Petition / July 6, 1994)

- Arbitrator lacked jurisdiction over dispute involving whether the declaration accurately reflected the percentage of ownership of certain units and whether the board can amend the declaration to change the percentage of ownership.

Winkler v. Tristan Towers Homeowners Assn., Inc.,

Case No. 95-0285 (Goin / Final Order Dismissing Petition for Arbitration / September 29, 1995)

- No jurisdiction over dispute involving breach of fiduciary duty; illegal activity by president; commingling of association funds with manager's company.

Wise v. Parker Tower Condo. Assn., Inc.,

Case No. 94-0246 (Draper / Order Dismissing Counter petition / August 25, 1994)

- Arbitrator lacked jurisdiction over association's counter petition to the effect that petitioning unit owner has previously filed with Bureau for investigation, a false and malicious complaint, where association sought entry of order determining that Bureau complaint was merit less and groundless, and prohibiting unit owners from filing future groundless complaints with the Bureau. Also, counter petition was abstract, hypothetical, and did not involve an actual and present dispute.

Wisotsky v. Kingsley at Century Village Condo. II, Inc.,
Case No. 94-0171 (Goin / Final Order Dismissing Petition / July 12, 1994)

- Arbitrator lacked jurisdiction over dispute whereby unit owner sought to challenge bulk cable television contract entered into by association.

Zell v. Maison Grove Assn., Inc.,
Case No. 95-0095 (Goin / Final Order Dismissing Petition / May 10, 1995)

- Where petition alleged that another unit owner had removed sliding glass doors and replaced them with French doors, and where complaining unit owner named association for failure to enforce condominium documents, case dismissed for lack of jurisdiction as it did not involve the authority of the board to require any owner to take action involving that owner's unit. In addition, controversy described dispute between or among unit owners instead of between the association and a unit owner. Controversy also did not involve the authority of the board to alter or add to a common area or element because the petition alleged that another unit owner, not the association, altered the property.

Zwirn v. Board of Administration of Karanda Village V Condo. Assn., Inc.,
Case No. 95-0204 (Richardson / Order Dismissing Petition / May 19, 1995)

- Dispute alleging that association had failed to take action against another unit owner who was keeping two dogs in her unit and failing to clean up after the dogs did not fall within the jurisdiction of the arbitrator.

Not ripe/bona fide dispute / live controversy

Ameri-Cana Resorts Co-op, Inc. v. Boudreau,
Case No. 95-0181 (Scheuerman / Final Order Dismissing Petition / June 19, 1995)

- Grant of injunctive-type relief not warranted under facts of petition alleging that unit owner had, on one occasion, torn up certain personal letters located in his unit file situated among the association records. Relief requested of entry of order preventing future interference with the association's books and records, and determining that the unit owner no longer had a right to inspect the official records denied and petition dismissed upon finding that no active dispute was presented as no pending request to view official records had been sent by owner to association.

Hazen v. America Outdoors Condo. Assn., Inc.,

Case No. 96-0298 (Goin / Final Order Dismissing Petition For Arbitration / November 20, 1996)

- Where declaration required that unit owners file a written complaint with association before filing litigation or arbitration and gave association 20 days to resolve dispute, petition dismissed for failure to comply with condition precedent.

Imparato v. Ocean View Assn., Inc.,

Case No. 96-0443 (Draper / Final Order of Dismissal / March 17, 1997)

- Petition dismissed under 61B-45.013(5), as involving abstract, hypothetical issue. Petitioner contended proposed porch repairs constituted a material alteration; however, association had not even decided whether to proceed with repairs nor had it decided which repair option to implement.

Kastin v. 9 Island Avenue Condo. Assn., Inc.,

Case No. 96-0476 (Goin / Final Order Determining Jurisdiction / January 28, 1997)

- Where petitioners stated that association had entered their unit while they were away in order to install a new alarm system and lock and where petition stated that they did not have a dispute with the association but merely wanted clarification and a guarantee that it would not happen again, it was determined that the arbitrator would not have jurisdiction because there was no bona fide, actual and present dispute. Dispute was only speculative.

MacClary v. Carlton Towers Condo. Assn., Inc.,

Case No. 94-0355 (Draper / Order Dismissing Counterclaims / October 18, 1994)

- Where count of petition alleged that unit owner had painted the outside of his unit in a nonconforming color, but where unit owner had since repainted in an approved color, and where petition failed to state facts in support of the association's fear that the unit owner will again repaint in an unapproved color, count of petition dismissed. A mere apprehension or fear on the part of the person seeking relief, that some harm may befall him in the future, is generally insufficient to support a determination that an actual controversy exists; claim is speculative. In order to justify injunctive relief, the harm must exceed mere speculation.

Neate v. Cypress Club Condo. Inc.,

Case No.96-0288 (Oglo / Final Order / May 14, 1997)

- The unit owner's claim that the association improperly towed his car in the past when he did not use the parking sticker with the apartment information on it, causing the unit owner to expend \$39.00 to retrieve his vehicle from the towing company, was dismissed as de minimis. The arbitration statute's legislative findings show a concern with the expenses of litigation and the desire for a more cost-effective option. In

addition, it does not make sense to litigate a \$39.00 issue when both parties are being represented by counsel in a location where the average fee is \$150 per attorney hour.

Platero v. Lighthouse Village Condo. Assn., Inc.,

Case No. 97-0160 (Oglo / Summary Final Order / May 1, 1997)

- Where unit owner was previously served with a summons to appear in court on the subject matter of the dispute, and where the association told the unit owner that he should file a petition for arbitration, the unit owner's petition was accepted for arbitration as a live controversy.

Ray v. Center Court Condo. Assn., Inc.,

Case No. 93-0275 (Goin / Summary Final Order / March 15, 1995)

- Petition dismissed where unit owner petitioned for arbitration to force association to amend minutes of meeting when there was no present controversy surrounding the alleged inaccuracies contained in the minutes. Dispute was not ripe for consideration.

Ricciuto v. Estates of Alpine Woods Assn., Inc.,

Case No. 93-0126 (Player / Order on Jurisdiction / May 19, 1993)

- Controversy involving whether a contemplated lawsuit is a proper common expense to be borne by the association or whether the cost should be borne by the unit owners involved in the litigation determined to not fall within the jurisdiction of the arbitrator because it was not ripe for resolution. The lawsuit filed in circuit court by the association against a unit owner in order to enforce its rules and regulations was in progress and the association was seeking as relief payment of all its attorney's fees and costs. Until the lawsuit is completed and the requested relief either granted or denied, the issue of whether the association will be required to levy an assessment to pay its attorney's fees will not arise.

Royal Arms Condo. Assn., Inc. v. Harris,

Case No. 96-0072 (Scheuerman / Summary Final Order / June 26, 1996)

- Summary order entered requiring dog to be removed from unit. However, that part of petition seeking to collect \$50.00 fine dismissed as de minimis issue; it would cost greatly in excess of fine to litigate disputed fine issue.

Thomas v. Costa Del Sol Condo. Assn., Inc.,

Case No. 97-0025 (Oglo / Final Order of Dismissal / March 20, 1997)

- Owners filed a petition for arbitration claiming association was estopped from enforcing certain pet restrictions. Estoppel and selective enforcement are protective weapons only and are to be evoked as shields to an enforcement action and not as offensive weapons; the case was dismissed. However, these claims could be raised as affirmative defenses if the association decided to enforce the one-pet restriction.

Vagnetti v. Surfsedge, Inc.,

Case No. 95-0253 (Grubbs / Order Dismissing Petition / July 13, 1995)

- Petition filed by unit owner, in which concerns relative to the manner in which the board was spending reserve funds were expressed, failed to present a bona fide, actual and present dispute and could not be accepted for arbitration. Unit owner failed to allege that the association had violated any law or document but merely wanted legal advice.

Wise v. Parker Tower Condo. Assn., Inc.,

Case No. 94-0246 (Draper / Order Dismissing Counter petition / August 25, 1994)

- Arbitrator lacked jurisdiction over association's counter petition to the effect that petitioning unit owner has previously filed with Bureau for investigation, a false and malicious complaint, where association sought entry of order determining that Bureau complaint was merit less and groundless, and prohibiting unit owners from filing future groundless complaints with the Bureau. Also, counter petition was abstract, hypothetical, and did not involve an actual and present dispute.

Pending court or administrative action / abatement / stayA.C. Condo. Assn., Inc. v. Blue Teal Corporation,

Case Nos. 94-0085; 94-0098 (Price / Order on Petitioner's Motion to Abate / November 21, 1994)

- Where developer in related circuit court foreclosure action filed by association, argued that its "units" were not "units" for purposes of foreclosure where the units were not substantially completed, but where developer argued in arbitration filed by association that as the owner of units, it was entitled to elect or recall a majority of the board, and where in the consolidated arbitrations, association filed a motion to abate arguing that if the developer is permitted to recall a majority of the board, it will dismiss the circuit court foreclosure action of the association, abatement not granted where the causes of action were not the same, and where the issues, although similar, were not the same. However, arbitrator entered a stay of the arbitration proceedings as it appeared likely that the association would experience hardship or inequity if the arbitration continued. If the arbitrator determined the validity of the recall, one probable result could be that the association would be under the control of the developer, and the arbitrator would be powerless to require the developer to pay assessments. This would be inequitable because the developer would be receiving the full benefits of voting its majority interests to control the association while not paying any assessments to the association.

Bayou Breeze Condo., Pensacola Executive House Condo., Inc. v. Wilfort,

Case No. 97-0018 (Oglo / Final Order of Dismissal / February 21, 1997)

- Dispute involves issues that are pending in a complaint filed by respondents with HUD and the Florida Commission on Human Relations alleging discrimination under Fair Housing Law. Petition dismissed without prejudice to refile to conserve resources of the parties, to avoid the possibility of inconsistent results, to avoid a multiplicity of actions, and to avoid violating Section 760.36, Florida Statutes.

BPCA Condo. Assn., Inc. v. Huggins,

Case No. 92-0118 (Scheuerman / Summary Final Order / June 21, 1993)

- Where Federal Fair Housing issue involving swimming pool rule prohibiting the use of the pool by any child aged three or younger was currently being investigated by local fair housing agency it was appropriate for the arbitrator to abstain from deciding the issue.

Carriage Hills Condo., Inc. v. Garry,

Case No. 94-0520 (Draper / Order Staying Proceedings / March 17, 1995)

- Stay of arbitration granted where age restriction was the subject of a complaint of housing discrimination filed by Respondent unit owner with the Florida Commission on Human Relations and HUD.

Christopherson v. Southbrook Condo. Assn., Inc.,

Case No. 94-0191 (Richardson / Final Order Dismissing Petition for Arbitration / June 10, 1994)

- Where dispute was also pending before the county court, arbitrator was without jurisdiction over dispute.

CSC Inverrary Gardens, Ltd. V. Inverrary Gardens Condo. I Assn., Inc.,

Case No. 95-0300 (Goin / Final Order Dismissing Petition for Arbitration / March 11, 1997)

- Case dismissed where same case was pending before circuit court.

Cypress Lake Estates Condo. Assn., Inc. v. Homer,

Case No. 94-0503 (Grubbs / Order Dismissing Petition as Moot / February 22, 1995)

- Where, after filing of petition by association, named unit owner entered bankruptcy proceedings, arbitration stayed pending filing of status report. Where status report indicated that tenant with overweight dog had vacated unit, proper procedure was to dismiss arbitration as moot.

Cypress Lake Estates Condo. Assn., Inc. v. Homer,

Case No. 94-0501 (Grubbs / Order Staying Further Proceedings and Directing Petitioner to file Status Report / February 9, 1995)

- Stay of arbitration proceeding entered where respondent had filed a petition for bankruptcy. Association given opportunity to move to vacate the stay if it did not believe that the arbitration case had been automatically stayed due to the bankruptcy action.

Fairway Park Condo. Assn., Inc. v. Dillof,

Case No. 97-0024 (Draper / Final Order of Dismissal / May 13, 1997)

- Abstention not required when Federal Fair Housing Act raised as a defense. Under the supremacy clause of federal constitution, the arbitrator has power and duty to rule on such federal defense. Nevertheless, where respondents filed federal fair housing complaint, arbitrator will dismiss petition until complaint resolved.

Garden-Aire Village Sea Haven Condo., Inc. v. Norris,

Case No. 97-0177 / Draper / Final Order Dismissing Petition / July 23, 1997)

- Where discrimination complaints involving the same issue as framed in petition were currently pending before human rights agency, petition dismissed.

Liebgold v. Ainslie at Century Village Condo. Assn.,

Case No. 92-0124 (Player / Order of Dismissal / July 8, 1992)

- Arbitrator did not have authority to proceed where case was pending in circuit court, absent order abating or dismissing the action.

Johnson v. Village of Windmeadows, No. 4 Condo Assn., Inc.,

Case No. 95-0252 (Grubbs / Order Dismissing Request for Expedited Determination of Jurisdiction / July 14, 1995)

- Petition for expedited determination of jurisdiction dismissed when it did not comply with Rule 61B-45.016, Fla. Admin. Code R., and case was pending in circuit court where motion to dismiss for failure to comply with s.718.1255 had been filed, and court had not relinquished jurisdiction to arbitrator to decide jurisdictional issue.

Meyer v. South Seas Northwest Condo. Apartments of Marco Island, Inc.,

Case No. 96-0116 (Goin / Final Order Dismissing Petition For Arbitration / June 10, 1996)

- No jurisdiction where petition alleged that association had filed a complaint against unit owner/petitioner in circuit court without complying with notice requirements in by-laws; case was pending in circuit court and without an order relinquishing jurisdiction or order granting a motion to dismiss, arbitrator did not have authority to proceed.

Sky Lake Gardens No. 3, Inc., v. Riguela,

Case No. 96-0145 (Scheuerman / Final Order Dismissing Petition / August 28, 1996)

- Where association filed petition seeking order requiring children of owner to play only in authorized portions of common elements, and where association had filed related – case in court in which owner filed counterclaim asserting discrimination based on familial status, petition dismissed where defenses to petition involved same issue as counterclaim in court.

Son v. The Gardens of Key Biscayne-Alhambra Condo. Assn., Inc.,
Case No. 94-0351 (Goin / Summary Final Order / June 13, 1995)

- Arbitrator declined to exercise jurisdiction over portion of petition filed by unit owner seeking entry of order permitting owners to extend interior staircase through the roof and onto the common element roof, as allegedly required by the South Florida Building Code. Village of Key Biscayne was currently investigating whether association was required to permit staircase extension, and it was appropriate for arbitrator to decline jurisdiction.

Wells v. Seacove Condo. Assn., Inc.,
Case No. 97-0151 (Oglo / Order on Jurisdiction / April 23, 1997)

- Where petitioner's disagreements regarding the association's rebuilding of her unit and the association's use of hurricane insurance proceeds were already pending in a circuit court foreclosure action, the arbitrator declined to exercise jurisdiction, since the disagreement was already in front of another tribunal.

Woodside Apartments Assn., Inc. v. Goff,
Case No. 93-0309 (Goin / Final Order Dismissing Petition / October 4, 1994)

- Where a unit owner who filed a discrimination complaint with HUD entered into a conciliation agreement with the association regarding his service dog, association filed request for dismissal, which was granted with prejudice.

Relief granted or requested

Alan v. Boca Cove Home Condo. Assn., Inc.,
Case No. 92-0263 (Scheuerman / Order Enlarging Previous Order / March 1, 1993)

- Counterclaim dismissed with prejudice on the merits; no basis in law to enter order prohibiting unit owners who filed petition for arbitration from nominating themselves in upcoming election. Every unit owner had right to become a candidate.

Alan v. Boca Cove Home Condo. Assn., Inc.,
Case No. 92-0263 (Scheuerman / Order Denying Petitioners' Request for Appointment of Receiver / February 24, 1993)

- Request for appointment of a receiver to conduct fair and impartial election denied; arbitrator lacks authority to appoint receiver. However, petitioners were free to pursue appointment of receiver in the courts during pendency of arbitration.

Ameri-Cana Resorts Co-op, Inc. v. Boudreau,

Case No. 95-0181 (Scheuerman / Final Order Dismissing Petition / June 19, 1995)

- Grant of injunctive-type relief not warranted under facts of petition alleging that unit owner had, on one occasion, torn up certain personal letters located in his unit file situated among the association records. Relief requested of entry of order preventing future interference with the association's books and records, and determining that the unit owner no longer had a right to inspect the official records denied and petition dismissed upon finding that no active dispute was presented as no pending request to view official records had been sent by owner to association.

BPCA Condo. Assn., Inc. V. Capano,

Case No. 93-0251 (Grubbs / Final Order on Default / April 14, 1994)

- Where unit owners intentionally and willfully violated declaration prohibiting leasing during the first year of ownership, legislature intended, by providing arbitration as alternative to court litigation, that arbitrator would have judicial flexibility in fashioning remedies, and final order entered prohibiting unit owner from renting or leasing for a period of ten months after unauthorized tenant vacates unit.

Board of Trustees of Bel Fontaine v. Caruso,

Case No. 94-0116 (Richardson / Final Order / September 14, 1994) (currently on appeal)

- Final order on merits issued despite fact that tenants possessing illegal dog had vacated unit because evidence showed that unit owner would continue to rent to tenants with illegal pets in violation of pet restriction.

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

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

- It is the board, and not the recalled unit owner/former board member which is statutorily entitled to challenge recalls. Where board certified recall, former board member subject to recall may not challenge the recall under section 718.1255, Florida Statutes.

Cammack v. Ocean Beach Assn., Inc.,

Case No. 93-0290 (Scheuerman / Final Order / March 24, 1995)

- Where documents prohibited transient occupancy, and where association was found to have permitted violation of documents to have occurred, association permitted to attempt to amend documents with unit owner vote for 120 day period. In the event that amendment removing transient occupancy prohibition, or defining "transient" occupancy, was not successful, association ordered to ensure that the conduct of its

rental program occurs within the confines of the condominium documents such that no units are leased to transient tenants.

Clipper Bay Condo. Assn., Inc. v. Jones,

Case No. 93-0016 (Grubbs / Final Order on Default and Final Order of Dismissal / June 28, 1993)

- Grant of injunctive type relief prohibiting unit owners from offering unit for rent for terms violating the rules and regulations was appropriate, even though tenant had vacated, where there was evidence that violations were knowing, willful, and repeated violations such that prospective injury was probable and imminent.

Conrath v. Alhambra Village No. 1 Assn., Inc.,

Case No. 95-0112 (Draper / Final Order / November 19, 1996)

- Association held responsible for damages suffered by water intrusion into unit where association, charged with maintaining common element walls, had permitted leaks to continue for 13 years. Association had performed numerous ad hoc repairs but finally concluded leak was due to construction defect for which it was not responsible.
- Unit owner awarded cost of replacing carpet, wallpaper, ceiling and bathroom tile throughout the unit. Though some tile was not directly damaged, it could not be matched. Therefore, for continuity, all carpet, tile, etc. would have to be replaced.
- Association ordered to install vapor barrier on exterior walls and correct slope on upstairs balcony floor so rain water flowed away from building. If these repairs are not effective, association required to hire engineer and follow that professional's prescription for alleviating leaks.

Cost v. Sunrise Point Condo. Assoc., Inc.,

Case No. 92-0237 (Goin / Final Order / October 8, 1992)

- Arbitrator could not order accounting to be performed by Association where unit owner suspected misapplication of funds.

Cravitz v. Lake Laura Condo. Assn., Inc.,

Case No. 93-0277 (Player / Final Order / June 27, 1994)

- Where association wrongfully approved construction of trellis and deck in violation of section 718.113 and 718.110, Florida Statutes, association ordered to obtain the approval of 100% of the voting interests or to require that the deck and trellis be reduced to dimensions comparable to existing backyard structures.

Cross Fox Condo. Assn., Inc. v. Dyer,

Case No. 93-0194 (Player / Final Order of Dismissal / October 5, 1993)

- Even where unit owner ultimately provided association with a duplicate key to the unit, injunctive-type relief awarded requiring the unit owner to refrain from further violations in the future where pattern of past violations established likelihood that rules would be violated in the future.

Cuervo v. West Lake Village II Condo. Assn., Inc.,

Case No. 94-0182 (Scheuerman / Order on Respondent's Motion for Temporary Injunction / June 22, 1994)

- Where, under partial summary order previously entered, it had been determined that petitioners had not successfully nominated themselves and could not, therefore, be board members, interim relief awarded to the association requiring petitioners to immediately take any and all steps necessary to return the association's funds and property to the association. Association was suffering irreparable harm because it could not pay its bills; a clear legal right had been violated, to wit, the association's ability to control and possess its own funds and financial records; and no adequate remedy at law existed.

Cuervo v. West Lake Village II Condo. Assn., Inc.,

Case No. 94-0182 (Scheuerman / Order Following Conference Call; Order Denying Motion for Emergency Relief / May 27, 1994)

- Where unit owners sought injunctive-type relief postponing the conduct of an upcoming election, unit owners were required to demonstrate that a clear legal right had been violated, irreparable harm has been threatened, and that there exists no adequate remedy at law. This burden was not sustained. An adequate remedy at law existed in that the election, if held, could be challenged. Generally, an injunction will not issue for the purpose of halting an election absent fraud or other compelling reason. Allegations that financial loss will result, are inadequate. Allegations that association resources will be wasted are insufficient to establish irreparable injury.

- To obtain temporary injunction halting election, movant required to demonstrate clear legal right violated, irreparable harm threatened, and no adequate remedy at law. No irreparable harm shown where association resources would be wasted if election were held, voided and had to be repeated. Further, movant failed to show no adequate remedy at law for claims that misappropriation of funds might occur in that an action for damages would exist or that procedural infirmities had occurred (as to notice) because the election could later be held null and void and new election required.

Cypress Woods, Inc. v. Robineau,

Case No. 93-0389 (Draper / Final Order / January 12, 1995)

- Despite fact that unapproved tenants vacated unit shortly prior to the final hearing, injunctive relief granted against unit owner prohibiting future violations of rental

provisions of documents where it was shown that these violations are likely to be repeated in the future.

ef. v. Plaza 15 Condo. Assn., Inc.,
Case No. 94-0461 (Draper / Final Order on Damages / March 5, 1997)

- Unit owner whose unit was uninhabitable for a period of years because association failed to repair common elements awarded \$26,650.00 in damages for lost rent. Measure of damages for breach of contract are those money damages which are the natural and proximate cause of the breach.

Earp v. Holiday Village Assn., Inc.,
Case No. 92-0288 (Scheuerman / Order Determining Jurisdiction / January 4, 1993)

- Arbitrator should not assume jurisdiction over dispute where relief requested, dissolution of the corporate association and appointment of a receiver, was not within the authority of the Arbitrator.

Edelstein v. Boca Teeca Condo. No. 10, Inc.,
Case No. 93-0037 (Goin / Final Order Dismissing Petition / April 1, 1993)

- Arbitrator does not have authority to award the equitable remedy of reformation of contract to change or amend certain provisions in a declaration of condominium in order to allow each building to have equal representation on the board of directors.

Ehrlich v. Euclid East Condo., Inc.,
Case No. 96-0184 (Goin / Order on Petitioner's Emergency Motion For Temporary Injunction and Order On Petitioner's Motion For Order Directing Discovery / June 28, 1996)

- Unit owner did not establish right to a temporary injunction against association which was going to replace jalousie windows with regular windows. Unit owner did not show a clear legal right to the relief requested. The windows were thirty (30) years old and some did not work properly. Therefore, even if the new windows were considered a material alteration to the common elements, such replacement would not require a vote of the owners if the replacement was necessary to maintain the common elements. In addition, petitioner did not show irreparable harm or an inadequate remedy at law in that the unit owners would still be able to open them for ventilation. Also, if petitioner were to prevail after a final hearing, the arbitrator could order the association to reimburse petitioner for any special assessment levied to pay for the new windows.

Elan at Calusa Club Condo. Assn., Inc. v. Kletzenbauer,
Case No. 95-0135 (Goin / Summary Final Order / February 14, 1996)

- Unit owner and tenant permitted to submit applications and association ordered to approve or disapprove the lease based on the same criteria that it normally applies to other applications for lease.

Fisher v. The Hideway Country Club Property Owners Assn., Inc.,

Case No. 97-0219 (Goin / Order on Petitioner's Motion for Temporary Injunctive or Emergency Relief and Request for Expedited Determination of Jurisdiction / July 30, 1997)

- Motion for temporary injunction which sought injunction prohibiting association from replacing irrigation system was denied where association had voted not to take any action with regard to the irrigation system until the issue had been decided in arbitration or the courts.

Four Seasons Condo. Assn. of Winter Park, Inc. v. Torres,

Case No. 92-0308 (Grubbs / Arbitration Final Order / January 28, 1994)

- Association was not awarded cost of replacing circuit breaker where it failed to establish negligence on the part of the unit owners in failing to ensure that unit was free of water leakage.
- Association not entitled, as a matter of law, to injunctive relief requiring upstairs unit owners to undertake such repairs as are necessary to ensure that no further leaks will occur, where evidence did not establish that unit owners were responsible for the leaking. Leaking could have originated in common elements or area of apartment required to be maintained by the association. Unit owner ordered instead to obtain the services of a professional within a reasonable period of time after becoming aware of leaks within unit owner area of responsibility.

Greenlee v. Oceanside Terrace Condo. Assn., Inc.,

Case No. 95-0497 (Goin / Final Order / March 26, 1997)

- Where unit owner claimed that election was null and void because association failed to include his information sheet with the second notice of election, no new election was ordered because another election had already been held during pendency of the arbitration proceedings. Association was, however, ordered to provide unit owners with a copy of the information sheet and to notify the owners that the arbitrator had ruled that the information sheet had been improperly omitted in the 1995 election and that a copy of the final order was available pursuant to section 718.111(12), F.S.

Greenlee v. Oceanside Terrace Condo. Assn., Inc.,

Case No. 95-0497 (Goin / Notice of Communications, Order Requiring Respondent to Address Portions of Amended Petition and Denying Emergency Relief / May 10, 1996)

- Motion for temporary injunction, asking that the arbitrator enjoin the association from installing a security gate, was denied. Petitioner did not show a clear legal right to the relief requested, because petitioner had admitted that the association obtained a vote of the unit owners. The only basis for relief was that the form utilized by the association to obtain the owners' approval, which was not attached to the petition for arbitration, provided no information as to the nature of the installation and that the owners were never informed that certain common elements would be destroyed when installing the security gate. Petitioner also did not show irreparable harm or an inadequate remedy at law because if petitioner prevailed, the arbitrator could have ordered that the association remove the security gate and return the common elements to their previous state.
- Motion for temporary injunction, asking that the arbitrator enjoin the board from conducting further meetings, was denied. Petitioner's basis for relief was that the election at which the board was elected was null and void for failure to distribute petitioner's information sheet. Petitioner failed to show a clear legal right to the relief requested because even if the election were held null and void, the appropriate relief would be to order a new election, not to declare all decisions of the board null and void.

Highpoint of Del Ray West Condo. Assn. Section 3, Inc. v. Mongillo,
Case No. 93-0136 (Grubbs / Order of Dismissal / August 10, 1993)

- To justify issuance of an injunction, a prospective injury must be more than a remote possibility. It must be so imminent and probable as reasonably to demand preventative action. Where unauthorized tenant was no longer in unit and factual allegations did not show that future violations of the declaration were likely, injunctive relief not warranted.

J-Mar Condo. Assn., Inc. V. Owen,
Case No. 97-0038 (Goin / Arbitration Final Order / July 17, 1997)

- Where board, during the seven years that tenants resided at the condominium, failed to notify owner and tenants that tenants' behavior was in violation of the declaration and where they instead sought an immediate eviction, it was held that tenants were not given an opportunity to correct their behavior before the association sought enforcement.
- Where tenants' improper behavior was isolated and where no violations occurred between the time that they were put on notice that their behavior was disturbing and the time that petition was filed (a period of nine months), it was held that there was no need for an injunction because prospective injury was only a remote possibility.

Johnson v. Village of Windmeadows, No. 4, Condo. Assn., Inc.,
Case No. 95-0487 (Goin / Final Order / April 25, 1997)

- Where on date of final hearing association stipulated that it was responsible for repairing the damage to the interior of unit caused by plumbing leak, association's argument that the arbitrator should not enter a final order requiring that it repair the damage because it had agreed to do so even before petition was filed was rejected. Evidence established that association offered to repair all damage to interior of unit only after the petition had been filed, not before.

Jones v. Lake Harbour Towers South Condo. Assn., Inc.,
Case No. 93-0266 (Price / Final Order / November 16, 1994)

- In order to be entitled to damages against the association, unit owners must prove either negligence by the association or breach of its contractual duty to maintain the common elements.
- Unit owners failed to prove the location of a defective seal which leaked causing damage to their unit, and thus no damages awarded.

Klopstad v. Park West Condo. Assn., Inc.,
Case No. 95-0084 (Draper / Final Order / December 13, 1995)

- Association ordered to remedy flooding of unit owners' lanai caused by rainwater runoff from surrounding common element grounds where grounds sloped upward from the unit.

Landmark Place Condo. Assn., Inc. v. Bergdorf Holdings, Inc.,
Case No. 93-0029 (Grubbs / Order on Motion for Clarification or Rehearing, Motion for Temporary Injunction, and Motion to Transfer / June 23, 1993)

- Attorney's fees cannot be recovered as an item of damages for breach of declaration of condominium; in the absence of any contractual or statutory liability, attorney's fees are not recoverable as an item of damages. This does not, of course, preclude an award of fees to the prevailing party.

Laurel Oaks at Country Woods Condo. Assn., Inc. v. Bonner,
Case No. 96-0126 (Draper / Summary Final Order / November 26, 1996)

- Where unit owner evicted illegal tenant, case not dismissed as moot where unit owner admitted having repeatedly violated the rental restrictions and having refused to comply in the past with the restrictions, giving rise to determination that probability of a future violation is probable and imminent

Levinson v. Victoria Towers Condo. Assn., Inc.,
Case No. 95-0296 (Draper / Final Order / February 11, 1996)

- Because unit owners had already paid for repairs to their individual balconies, association ordered to prepare accounting to adjust charges to unit owners, returning inappropriately charged amounts and implementing assessments as necessary to pay for the repairs as a common expense.

Lockner v. Waterway Townhouse Condo. Assn., Inc.,

Case No. 94-0105F (Draper / Order Denying Unit Owner's Request for Reimbursement of Pro-rata Share of Assessed Attorney's Fees and Costs / May 2, 1994)

- While reimbursement of assessment provision in section 718.303 does not apply to 718.1255 arbitrations, arbitrator had the broad authority under section 718.1255 to award such reimbursement as part of the remedy in an arbitration action. However, in order for such relief to be granted, it would have to be requested in the petition, which it was not in this case.

Lockner v. Waterway Townhouse Condo. Assn., Inc.,

Case No. 94-0449 (Scheuerman / Final Order on Default / February 1, 1995)

- Where, in prior arbitration, arbitrator removed board member from board who was not properly elected, and where petitioner in prior arbitration filed new arbitration requesting to be declared the replacement board member, arbitrator granted relief requested where Petitioner had obtained the next highest number of votes in the contested election.

MacClary v. Carlton Towers Condo. Assn., Inc.,

Case No. 94-0355 (Draper / Order Dismissing Counterclaims / October 18, 1994)

- Where count of petition alleged that unit owner had painted the outside of his unit in a nonconforming color, but where unit owner had since repainted in an approved color, and where petition failed to state facts in support of the association's fear that the unit owner will again repaint in an unapproved color, count of petition dismissed. A mere apprehension or fear on the part of the person seeking relief, that some harm may befall him in the future, is generally insufficient to support a determination that an actual controversy exists; claim is speculative. In order to justify injunctive relief, the harm must exceed mere speculation.

Oaks Unit III Condo. Assn., Inc. v. Hedges,

Case No. 93-0307 (Grubbs / Arbitration Final Order / March 29, 1994)

- In usual case, when pet violation has been cured by removal of dog, the case becomes moot and would be dismissed; however, where violation was willful and knowing, where unit owner made no attempt to cure the violation despite eight months of warnings by the association, and future violations are probable, injunctive type order, and not dismissal, entered.

Palm Club West Village I Condo. Assn., Inc. v. Di Stefano,

Case No. 94-0136 (Draper / Final Order of Dismissal / June 14, 1994)

- Dispute presented in petition was moot where unauthorized tenant vacated unit, and injunctive-type relief requiring the unit owner to comply with the screening procedures in the future not warranted where a prospective injury is no more than a remote possibility. The injury must be imminent and probable to justify injunctive relief.

Pinewood South Condo. Assn., Inc. v. Wilson,

Case No. 95-0507 (Scheuerman / Final Order / May 21, 1996)

- Permanent injunctive relief awarded association where owner had persisted in pet and truck violations for 1½ years prior to filing of petition by association.

Poitier Corporation v. Fountainview Unified Committee,

Case No. 93-0238 (Goin / Order on Petitioner's Emergency Motion for Immediate Hearing and Motion to Conduct Discovery / August 24, 1993)

- Interim order entered which required the association to immediately commence replacement of a roof, which was leaking resulting in damage to the unit and its contents. Emergency request that housing be provided by the association to the unit owner pending replacement of the roof was denied; if the unit was uninhabitable, the unit owner could, at a later time, request damages for loss of use of the unit.

Snyder v. Endless Summer Homeowners Assn.,

Case No. 93-0025 (Price / Arbitration Final Order / August 25, 1993)

- Where association wrongfully canceled reservation for use of clubhouse for New Year's Eve party, and where unit owners failed to satisfactorily prove the \$1,000 in actual damages requested, unit owners would be awarded \$200, the sum the association had previously offered to them to find alternative accommodations.

Soltero v. Calusa Club Village Condo. Building D Assn., Inc.,

Consolidated Case Nos. 96-0054 and 95-0144 (Scheuerman / Order Granting Emergency Relief / March 22, 1996)

- Association ordered to immediately unlock door to roof to allow repair to air conditioning unit. Existence of functioning air conditioning unit in Miami contributes to the health of the occupant; irreparable harm shown. Association presented no legitimate reason for not opening roof access for a period of months from the first request; operation would require 5 minutes of association time.

Sturman v. Harbour Royale Condo. Assn., Inc.,

Case No. 95-0070 (Draper / Order Denying Request for Temporary Injunction / July 21, 1995)

- Temporary injunction against association's sealing of concrete balcony flooring denied where unit owners' expert indicated sealing would not prohibit tile installation which installation owners sought through main arbitration, but would only make it more expensive. Four prerequisites for issuance of temporary injunction are irreparable harm; inadequate remedy at law; clear legal right to relief requested; and public interest considerations. Because action petitioners sought to prohibit by temporary injunction could be remedied by final order requiring association to pay additional cost of installation of tile over sealant, first prong of test not met and temporary injunction denied.

Terzis v. Ocean Dunes of Hutchinson Island Condo. Assn., Inc.,
Case No. 95-0162 (Draper / Order Dismissing Petition / May 4, 1995)

- Petition filed by unit owner seeking enforcement of summary final order previously entered against association must be filed instead as enforcement action in circuit court.

Terzis v. Ocean Dunes of Hutchinson Island Condo. Assn., Inc.,
Case No. 94-0385 (Draper / Summary Final Order / January 31, 1995)

- Where association admitted holding informal meeting of board without proper notice as board members did not consider this to be an official meeting, and where the association admitted the error of its ways on this and other issues, injunction entered directing association to comply with the statute since repeat violations appeared likely based on fact that violation involved basic statutory requirements.

Vanencia Village Condo. Assn., Inc. v. Aloof,
Case No. 96-0251 (Scheuerman / Order Granting Motion for Emergency Temporary Injunctive Relief / July 5, 1996 and Final Order / August 9, 1996)

- Interim temporary injunctive relief awarded requiring owner to remove dog during pendency of arbitration where rottweiler kept in unit had bitten a child, where dog had an abusive prior owner, and was prone to bite when excited.

Villa Sonrisa One Condo. Assn., Inc. V. Nierenberg,
Case No. 94-0424 (Scheuerman / Order Granting Interim Relief / November 29, 1994)

- As temporary emergency relief, owners required to immediately install padding and carpet over tiled areas where association presented expert and other witness testimony establishing that level of noise constituted a nuisance.

Westlandia Condo. Assn., Inc. v. Miro,
Case No. 93-0106 (Grubbs / Final Order on Default / December 30, 1993)

- In dispute involving unauthorized tenant, where unit owners failed to respond to order requiring answer, failed to respond to interrogatories aimed at ascertaining tenant's identity, and failed to ask that default be set aside, arbitrator ordered them to

remove tenant from the unit and not to lease their unit in the future without the association's approval. Their failure to comply with the provisions of the declaration after several requests from the association to do so and blatant refusal to participate in the arbitration proceeding, indicated that respondents would continue to flout the leasing restrictions and justified injunctive-like relief.

Yacht Harbour Condo. Assn., Inc. v. Seikman,

Case No. 94-0167 (Scheuerman / Summary Final Order / November 2, 1994)

- Where violation of covenant contained in condominium documents is shown, no independent showing of irreparable injury is required in order to obtain injunctive-type relief.

Standing

Alpers v. Golden Surf Towers Condo. Assn., Inc.,

Case No. 94-0218 (Goin / Order to Show Cause / June 17, 1994)

- Where petitioner alleged that the association is requiring unit owners to pay for maintenance and repair to the sliding glass doors and windows, unit owner lacked standing to assert the claim on behalf of all unit owners, and in any event the dispute is hypothetical as petition did not allege that the unit owner has had to repair his window or door.

Berlinger v. Carlyle House Assn., Inc.,

Case No. 94-0128 (Scheuerman / Order Granting Motion to Dismiss Without Prejudice / July 15, 1994)

- Where petitioning unit owners, who sought to challenge an amendment to the bylaws placing certain restrictions on leasing, failed to allege that they have attempted to rent their unit in the past or that they intend to rent their unit in the future, but merely alleged a speculative loss in market value, petition failed to supply the elements necessary for a bona fide dispute to exist and unit owner lacked standing to challenge the restriction.

Berlinger v. Carlyle House Assn., Inc.,

Case No. 94-0128 (Scheuerman / Order on Motion to Dismiss / September 14, 1994)

- While additional facts may and should have been alleged which would have more elegantly placed unit owners in the affected class of owners, as petition alleged that petitioning unit owners will, in the future, offer their units for rent, and that they are or will be affected by application of the amendment to the bylaws restricting rentals, arbitrator concluded that unit owners had standing. Actual violation of the rule amendment should not be a requisite where the petition shows that each unit owner Petitioner has routinely rented in the past, and plans to rent, and is desirous of renting, his unit in the future, and where the petition alleges an intent by the board to enforce the amended provision.

Edgerly v. Sand Pebble Pointe I Condo. Assn., Inc.,

Case No. 94-0239 (Scheuerman / Final Order Dismissing Petition / September 14, 1994)

- Where petitioning unit owners were in no way affected by amendment to declaration granting certain other unit owners the exclusive right to use boat slips not located on the condominium property, and where petitioning unit owners did not want a boat slip and were not forced to share the expenses for maintenance of the slips, unit owners failed to demonstrate any interest in the subject matter of the case, and lacked standing to initiate the arbitration.

Epstein v. Bel-Aire, Inc.,

Case No. 92-0260 (Price / Order Denying Motion to Dismiss and Order Striking Petitioners / December 22, 1992)

- Sons of unit owner were not unit owners and lacked standing to file petition challenging reassignment of parking space used by unit owner, their mother.

Greenlee v. Oceanside terrace Condo. Assn., Inc.,

Case No. 95-0497 (Goin / Notice of Communications, Order Requiring Respondent to Address Portions of Amended Petition and Denying Emergency Relief / May 10, 1996)

- Unit owner/petitioner did not have standing to challenge an election by raising the association's failure to distribute another unit owner's information sheet; substantial injury required to be demonstrated for standing to exist.

Greentree Villas Condo. Assn., Inc. v. Charles,

Case No. 92-0264 (Linthicum / Order Granting Motion to Intervene / December 24, 1992)

- Daughter who was less than 55 years old residing in unit had standing to intervene in action brought by association against unit owner, her father, for violating restriction in documents prohibiting occupancy by persons under 55 years of age.

Jones v. Vista St. Lucie Assn., Inc.,

Case No. 95-0397 (Scheuerman / Final Order Dismissing Petition / March 8, 1996)

- Petitioner lacked standing to challenge rule, which authorized the association to charge to an owner the attorney's fees incurred by association in responding to an owner's inquiry, where association had never sought to enforce rule against him.

Orear v. Parkview Point Condo. Assn.,

Case No. 92-0168 (Scheuerman / Order Permitting Developer to Appear / September 28, 1992)

- In dispute to determine whether developer should be permitted to fill vacancies on the board, developer has a substantial interest in the outcome and could intervene as a party.

Stonehedge Residents, Inc. v. Dryden,

Case No. 92-0160 (Player / Order Denying Petitioner's Motion for Technical Correction of Final Order / December 2, 1992)

- Parent of 24-year-old son residing in unit not "aggrieved person" within meaning of Federal Fair Housing Law prohibiting discrimination against families in housing; "Familiar status" discrimination limited to persons with children under the age of 18 years.

Stratton v. Deerfield Lakes Condo. Assn., Inc.,

Case No. 93-0222 (Grubbs / Final Order of Dismissal / September 27, 1993)

- A person who holds a power of attorney relating to the unit owner cannot petition for arbitration in his own name; he does not have standing under arbitration rules. Holding a power of attorney does not make the holder thereof a "unit owner". Additionally, the power of attorney does not give the holder the right to practice law. To appear as the unit owner's representative, the person signing the pleading must be an attorney at law or a qualified lay representative recognized under rule 61B-45.004, F.A.C.

Szczepanski v. Cypress Bend Condo. II Assn., Inc.,

Case No. 96-0454 (Scheuerman / Final Order Dismissing Petition / August 4, 1997)

- Where petition did not allege that petitioning unit owner lived in building containing the communications tower permitted by the board to be installed by a communications company, and where documents permitted board to change the common elements except where change results in prejudice to an owner, owner required to indicate where he owned a unit in order to determine whether he had standing to challenge decision of board to permit installation of the tower.

Tortuga Club, Inc. V. Szarek,

Case No. 95-0274 (Goin / Final Order / February 13, 1997)

- Unit owners had standing to raise as a defense the failure of the association to obtain the consents of all institutional first mortgages. Association's argument that only institutional first mortgagee would have standing to challenge the validity of the amendment based on the failure to obtain the written consents of all institutional first mortgagees was rejected.

Easements

Baston v. Here and There Palm Shores RV Resort Condo. Assn., Inc.,

Case No. 94-0500 (Draper / Order / February 6, 1995)

- Arbitrator had jurisdiction over counter petition alleging that unit owner had unlawfully entered a common element easement containing the water, sewer, and electric services without approval of the association and requesting issuance of injunctive relief.

Szczepanski v. Cypress Bend Condo. II Assn., Inc.,

Case No. 96-0454 (Scheuerman / Final Order Dismissing Petition / August 4, 1997)

- Easement authority of board to grant easements which benefit the owners does not override the board's duty to comply with procedures required by declaration and statute for materially altering the common elements, where easement was not shown to actually benefit the owners.

Elections/Vacancies

Candidate information sheet

Lockner v. Waterway Townhouse Condo. Assn., Inc.,

Case No. 94-0152 (Scheuerman / Final Order on Default / September 14, 1994)

- Where administrative rule requires a candidate to furnish an information sheet to the association not less than thirty-five days before the election, where candidate submitted information sheet thirty-four days before the election, association not required to accept a late submitted sheet.

Generally

Alan v. Boca Cove Home Condo. Assn., Inc.,

Case No. 92-0263 (Scheuerman / Order Enlarging Previous Order / March 1, 1993)

- Counterclaim dismissed with prejudice on the merits; no basis in law to request injunction prohibiting unit owners who filed petition for arbitration from nominating themselves in upcoming election.

Aldrich v. Tahitian Garden Condo. Assn., Inc.,

Case No. 97-0069 (Goin / Summary Final Order / July 8, 1997)

- Where bylaws, in one section, provided for a nine-member board, and in another section indicated that there would be seven directors elected to staggered two-year terms, it was determined that the board was composed of nine directors, seven of which would serve two-year staggered terms and two would serve one-year terms.

Alpers v. Golden Surf Towers Condo. Assn., Inc.,

Case No. 94-0218 (Goin / Order to Show Cause / June 17, 1994)

- Petition failed to state a cause of action where it alleged that the association had failed to fill vacancies on the board within a certain period of time. The administrative rules do not provide a deadline in which vacancies must be filled.

Alvarez v. Club Atlantis Condo. Assn., Inc.,

Case No. 92-0305 (Scheuerman / Final Order / March 25, 1993)

- Association violated voting rights where it disregarded ballots and inner envelopes signed by unit owners; right to vote in privacy benefits primarily unit owners and could be waived by them.
- Only substantial compliance with statute and rules pertaining to voting procedure required in order to cast valid ballot; strict compliance is not required.

Baltuch v. Rolling Green Condo. F,

Case No. 93-0090 (Player / Final Order / August 30, 1993)

- Provision in bylaw amendment making the president, after duration of his term as board member, an ex-officio member of the board with full voting powers for an unspecified period of time, was invalid due to conflict with Section 718.112(2)(d), Florida Statutes requiring that all board members be elected in the manner provided therein.

Boettger v. Ocean Palms Condo. Assn., Inc.,

Case No. 92-0269 (Goin / Final Order / May 17, 1993; Order on Motion for Clarification / June 7, 1993)

- Although condominium contained less than 25 units and was therefore eligible for exemption from ballot voting procedure contained in Section 718.112(2)(d), Florida Statutes, no affirmative vote on exemption was taken, and merely holding election under old procedure involving proxies was not sufficient to activate exemption. Election so held was void.

Brandwood v. Surfside Owners Assn., Inc.,

Case No. 94-0017 (Draper / Summary Final Order / April 26, 1994)

- Board had authority to move forward the date of annual meeting and election where the bylaws provided that the board shall determine the date, place and time of the annual meeting despite fact that particular date chosen would result in shortening of certain staggered terms.
- Substantial compliance with election requirements found where all members of committee to verify outer envelope compliance were not unit owners; where the association erred in utilizing outer envelopes which did not indicate the name of the voter; and where association erred by sending to the unit owners a limited proxy form requiring that both limited and general powers be checked.

Cail v. Sebastian Harbor Villas Condo. Owners' Assn., Inc.,

Case No. 94-0084 (Scheuerman / Final Arbitration Order / August 27, 1996)

- Certain owners of units who offered units for lease but not for sale in ordinary course of business were “developers” who were not entitled to vote for a majority of the board.
- Record supported finding that certain owners had not offered units for sale in ordinary course of business. Units not listed on MLS; units had been sold for 5 years; prices for the units were higher than value; and there was the lack of an active and concerted sales effort.

Cartagena v. Hilltop Condo. Assn., Inc.,

Case No. 93-0022 (Goin / Final Order / June 17, 1993)

- Where the bylaws and articles of incorporation failed to specify a set number of board members, but included a range with no provision for determining the specific number at any given time, consistent with section 718.112(2), Florida Statutes, the board of administration is composed of five members. The fact that a range was specified did not require the number of board members to be automatically enlarged to fifteen, where fifteen candidates sought to be elected to the board.
- Where board discovered shortly before election that candidate was ineligible to sit on the board, the fact that ineligible person was not withdrawn due to time constraints did not render election void. Chapter 7D-23, F.A.C. identifies only three situations, which would render an election null and void. Also, the result of the election would not have changed if ineligible candidate had been withdrawn from consideration.
- No new election ordered, where it was alleged that additional ballots were accepted after the commencement of the opening of the outer envelopes, in violation of Rule 7D-23.0021(10), F.A.C. The number of ballots allegedly accepted would not have changed the outcome of the election.

Cohen v. Lucerne Lakes Golf Colony Community Assn., Inc.,

Case No. 93-0048 (Goin / Final Order / June 4, 1993)

- Where there was no quorum at the annual meeting but at least 20% of the owners had cast a ballot for the election of directors, association correctly went ahead with the election but should have re-scheduled the annual meeting, as required by the bylaws, to deal with other items raised in the notice of annual meeting such as reports of officers and committees, unfinished business and new business.

Cottone v. Bay Plaza Owners Assn., Inc.,

Case No. 92-0111 (Linthicum / Order / July 22, 1992)

- Part of petition challenging 1991 election dismissed where any violation was cured by conduct of 1992 election; dispute no longer active and present; moot.

Cuervo v. West Lake Village II Condo. Assn., Inc.,

Case No. 94-0182 (Scheuerman / Partial Summary Final Order / May 31, 1994)

- A valid board meeting did not occur for purposes of accepting additional nominations pursuant to section 718.112(2)(d)3., Florida Statutes, where no board members attended the meeting. Accordingly, nominations received by the manager during the meeting were not effective.
- Where bylaws provided that the board shall consist of “five members together with the officers of the association,” and where the articles provided that the affairs of the corporation shall be managed by a board composed of not less than three nor more than nine persons, with the number to be determined in accordance with the provisions of the bylaws, the board appropriately consisted of five seats notwithstanding the association’s historical interpretation that there were nine seats on the board.

Cuervo v. West Lake Village II Condo. Assn., Inc.,

Case No. 94-0182 (Scheuerman / Summary Final Order / August 30, 1994)

- Where arbitrator had earlier entered interlocutory order determining proper number of positions on the board to be five, ballot form sent by association prior to order, which form indicated nine seats on board were open, did not render election void. Association simply announced that the five candidates obtaining the highest number of votes were elected.
- Where eleven ballots were missing and were not counted by the association, no new election ordered where missing ballots had no effect on the ultimate outcome of the election.

Cuervo v. West Lake Village II Condo. Assn., Inc.,

Case No. 94-0182 (Scheuerman/Order Following Conference Call; Order Denying Motion for Emergency Relief, As Amended / May 27, 1994)

- To obtain temporary injunction halting election, movant required to demonstrate clear legal right violated, irreparable harm threatened, and no adequate remedy at law. No irreparable harm shown where association resources would be wasted if election were held, voided and had to be repeated. Further, movant failed to show no adequate remedy at law for claims that misappropriation of funds might occur in that an action for damages would exist or that procedural infirmities had occurred (as to notice) because the election could later be held null and void and new election required.

Frazier v. David William Hotel Condo. Assn., Inc., (consolidated)

Case Nos. 95-0251 and 95-0258 (Scheuerman / Final Order / December 28, 1995)

- All units contained in the condominium, and not merely those offered for sale by the developer, are properly counted in the calculation for turnover contained in section 718.301, Florida Statutes, providing that turnover is triggered three years after 50% of the units to be operated by the association are sold to purchasers.

Garing v. Sugar Creek Country Club Travel Trailer Park Assn., Inc.,
Case No. 93-0153 (Goin / Final Order / March 23, 1994)

- Association provided proper notice of annual election meeting, in light of cooperative statute requiring notice of meeting by mail, where cooperative is a single drop site for the U.S. Postal Service, under which the postal service delivers all mail addressed to residents in bulk, and an employee of the association sorts the mail, and places the mail in the locked postal box of the unit owner from a mail room located at the rear of the mail boxes.
- Association violated rule 61B-75.005(10)(a), and 75.007(10)(a) when it failed to count the ballots in the presence of the unit owners and failed to conduct the election as the first item of business. Ballots were counted in a separate room down the hall from the general assembly room, and door separating the rooms was closed when the ballot counters complained of noise.

Gesing v. Townhomes of Carrollwood Village Condo. Assn., Inc.,
Case No. 93-0375 (Player / Final Order / February 24, 1994)

- At meeting held by board to accept additional nominations pursuant to section 718.112(2)(d)3., Florida Statutes, where neither board nor candidate announced in the course of the meeting that the candidate was nominating herself, no valid nomination occurred despite the fact that written notice of candidacy was given to the board prior to the meeting. However, where another individual also submitted her nomination in writing in advance of the board meeting and where the board in course of meeting acknowledged her nomination, a legal nomination occurred. Written notices of nomination must be submitted within the time deadlines of the statute; nomination at a meeting must occur at the meeting.

Greenlee v. Oceanside Terrace Condo. Assn., Inc.,
Case No. 95-0497 (Goin / Final Order / March 26, 1997)

- Where unit owner timely provided an information sheet to the association and where association failed to include the information sheet with the second notice of election, election held to be null and void. The fact that information sheet was unusual in that it included a "petition" that could be torn off and returned to the association did not mean that the association could disregard the information sheet. However, no new election was ordered because another election had already been held during pendency of the

arbitration proceedings. Association was, however, ordered to provide unit owners with a copy of the information sheet and to notify the owners that the arbitrator had ruled that the information sheet had been improperly omitted in the 1995 election.

Greens of Tampa, Inc. v. The Greens of Town 'N Country Condo. Assn., Inc.,
Case No. 93-0134 (Scheuerman / Summary Final Order / February 8, 1994)

- Where association closed polls promptly at noticed time of meeting and refused to accept late submitted ballots, association acted correctly as under administrative rule, upon commencement of the opening of the outer envelopes, the polls shall be closed and no more ballots shall be collected.
- Where board failed to designate, a duly called and noticed board meeting, committee responsible for verifying outer envelope information, board violated section 718.112(2)l, F.S., but since committee performed only ministerial function, no new election ordered.
- Election not set aside where association failed to deliver 116 separate notices of election to singular unit owner who owned 116 units, where the owner had actual notice of the election and had been delivered at least one notice of election.

Llopiz v. Sterling Condo. Assn., Inc.,
Case No. 96-0458 (Draper / Final Order / July 30, 1997)

- Where unit owners failed to show delivery to association of notice of intent to be candidate, omission of their names from ballot was not error. Even if notice was delivered to security guards in condominium lobby, this did not constitute receipt by association as guards were not agents of association authorized to receive official notices.

Lockner v. Waterway Townhouse Condo. Assn., Inc.,
Case No. 94-0152 (Scheuerman / Final Order on Default / September 14, 1994)

- At a minimum, a board conducting a special board meeting held for purpose of accepting additional nominations must publicly announce the identity of the additional nominees at the special board meeting; in the alternative, the individual nominee may nominate himself or herself. Where minutes did not identify nominees, no written nominations were attached to the meeting minutes, and where the nominations were not announced, no valid nominations occurred. Where nomination declared invalid, arbitrator ordered that the board no longer includes that individual.

Lockner v. Waterway Townhouse Condo. Assn., Inc.,
Case No. 94-0449 (Scheuerman / Final Order on Default / February 1, 1995)

- Where, in prior arbitration, arbitrator removed board member from board who was not properly elected, and where petitioner in prior arbitration filed new arbitration requesting to be declared the replacement board member, arbitrator granted relief requested where Petitioner had obtained the next highest number of votes in the contested election.

Marrano v. Jupiter Bay Condo. Assn., Inc.,

Case No. 95-0004 (Scheuerman / Final Order / September 26, 1996)

- Even if association improperly disregarded 2 ballots, error was unintentional and did not affect outcome of election. No new election ordered.

Matthews v. Norton Park Place Condo. Assn., Inc.,

Case No. 96-0097 (Scheuerman / Summary Final Order / November 26, 1996)

- Where developer-appointed directors resigned at or shortly before the turnover meeting, owners elected to fill positions at the turnover election were only authorized to fill office until the next regularly scheduled election, even where first notice of the subsequent election was sent prior to the turnover election. Rule 61B-45.0021(13) does not apply to turnover election. While it undoubtedly would be more convenient for the association to forego the conduct of the next election, in the absence of an applicable administrative rule or statute, concerns of convenience must give way to the requirements of the documents that an annual election be held.

Mikhael v. Rio Espana Condo. Assn., Inc.,

Case No. 93-0168 (Scheuerman / Summary Final Order / January 13, 1994)

- Association violated rule 61B-23.0021(2), F.A.C., by failing to conduct and conclude election portion of annual meeting prior to conduct of non-election association business.
- Where, contrary to administrative rule, prior to the conduct of election, first order of business at annual meeting was to take vote to reduce the number of directors in connection with the election, association business conducted had a direct bearing on the election, and as a consequence, vote to change number of directors was void.
- Where association failed to disregard deficient ballots including those ballots where unit owners failed to sign the outer envelope, and where it was not established that the defective votes impacted the election, new election not ordered held.
- Where association improperly reduced the number of board seats, arbitrator ordered the candidates receiving the sixth and seventh highest number of votes to be instated to the board.

North County Company, Inc. v. Yogi-by-the-Sea Condo. Assoc., Inc.,
Case No. 93-0119 (Player / Amended Final Order / December 10, 1993)

- Election of board of directors fraught with numerous errors in violation of chapter 718 and administrative rules. New election not ordered because new election scheduled in two to three months will make dispute moot. Board properly replaced member who resigned.

Orear v. Parkview Point Condo. Assoc.,
Case No. 92-0168 (Scheuerman / Final Order / December 16, 1992)

- Developer after turnover not permitted to vote for a majority of board even where 1991 amendments to Act and Division rules required use of single ballot form; class voting with use of two form ballots was required.

Orear v. Parkview Point Condo. Assn.,
Case No. 92-0168 (Scheuerman / Order Permitting Developer to Appear / September 28, 1992)

- In dispute to determine whether developer should be permitted to fill vacancies on the board, developer has a substantial interest in the outcome and could intervene as a party.

O'Reilly v. Treetops at North Forty Homeowners Assn., Inc.,
Case No. 95-0046 (Scheuerman / Arbitration Final Order / October 25, 1995)

- Ballots with no outer envelopes were properly disregarded. Separate ballot which differed in color from association ballots and which was received by the association in a plain, unmarked, unsigned envelope, was properly disregarded by association.
- No new election ordered based on violations found to exist where new election is scheduled for 2 months from entry of the final order.

Petito v. Greenglades Condo. Assn. II, Inc.,
Case No. 93-0239 (Scheuerman / Summary Final Order / January 13, 1994)

- Candidate who received the next higher number of votes at an election should automatically be made a board member where it is determined that a person elected to the board was not eligible to serve on the board at the time of election.
- Verbal resignation of director held effective where resignation occurred at official meeting of the association.

Schanberger v. Holiday Travel Park Cooperative, Inc.,

Case No. 93-0115 (Scheuerman / Summary Final Order / July 23, 1993)

- Administrative rule which was effective on 12-29-92 was not applicable to election of 2-6-93 where the 60 day notice was required to have been given on or about 12-8 -92. Thus, election was not void where association did not prepare ballots as required by rules.

Sun Resort, Inc. v. Jellystone Park Condo.,

Case No. 96-0007 (Scheuerman / Partial Summary Final Order / June 13, 1996)

- Failure to properly notice annual meeting does not invalidate election where election was properly noticed.
- Association required to use different ballot forms where subsequent developer is not entitled to vote for a majority of board.
- It was fundamental error for association to reject the candidacies of 2 individuals who took title shortly after first notice of election sent. Fact that deed was not recorded until 1 month prior to date of election did not bar candidacy where documents did not establish record date of ownership for purpose of determining eligibility for board position.

Terzis v. Ocean Dunes of Hutchinson Island Condo. Assn., Inc.,

Case No. 94-0385 (Draper / Summary Final Order / January 31, 1995)

- Election not set aside where annual meeting not held on the date provided in the bylaws and where only five candidates competed for the five open board positions

Thomas v. Tiffany Suites Condo., Inc.,

Case No. 94-0518 (Goin / Summary Final Order / April 7, 1995)

- Person who was married to a unit owner, but who himself is not the owner of a unit, was qualified to become a candidate for the board where bylaws did not provide specific qualifications for board eligibility. Section 617.0802 found application and only pertinent qualification was that directors be natural persons over 18 years of age.

Villamil v. Brickell Key I Condo. Assn., Inc.,

Case No. 94-0087 (Scheuerman / Summary Final Order / October 19, 1994)

- Association under no obligation to immediately commence election process anew where minimum twenty percent participation rate required by statute in order to have a valid election not achieved.

- Where less than twenty percent of the unit owners participated in the election, the hold-over board member doctrine found application to permit existing board to continue in office until successors are qualified and elected.
- Where unit owners failed to timely contest results of 1993 election which was conducted in accordance with bylaw amendment later determined to be invalid, election not set aside.
- Amendment to articles and bylaws deleting ability of non-unit owner to serve on board did not change fundamental property rights and was not invalid.

Walker v. The Hemispheres Condo. Assn., Inc.,

Case No. 94-0066 (Scheuerman / Partial Summary Final Order / December 14, 1994)

- Amendments to administrative rule made on December 20, 1992, and providing in part that a board member appointed or elected shall fill the vacancy until the next regularly-scheduled election for any position, construed to operate prospectively to vacancies occurring on or after December 20, 1992.
- Board had authority, without vote of the unit owners, to cast votes for the thirteen commercial units owned by the association.
- Prior to the December 1992 change to administrative rule providing that any interim vacancy on the board may be filled by the board or by an election of the membership, the board is permitted to fill the vacancy by board action. Administrative rules do not require the conduct of an election, but if such an election is held as required by the documents, the election must comply with the ballot provisions of the statute and rules.

Young-Ling v. Ebb Tide Condo. Assn., Inc.,

Case No. 93-0212 (Scheuerman / Summary Final Order / February 16, 1994)

- Association violated section 718.112(2)(b)2., by permitting unit owners to vote by general proxy on the matter of changing the method of election.

Master association

Charles v. Wynmoor Community Council, Inc.,

Case No. 94-0258 (Scheuerman / Summary Final Order / November 8, 1994)

- Master association, created to administer property held in its own name, and which had as members individual unit owners for sole purpose of enjoyment of common facilities, and also had as voting members, one representative from each of the 45 sub-

condominium associations, was a condominium association within the meaning of Chapter 718.

- Where elections for master association representatives occur at the condominium association level, and where elections so occurring complied with procedural requirements of Chapter 718, master association not required to conduct separate election in accordance with Chapter 718.

Notice of election

Bazak v. Windermere Condo. Assn., Inc.,

Case No. 96-0019 (Draper / Final Order / December 4, 1996)

- Petitioner failed to prove association had failed to provide 60-day notice of election. Where association sent notice at least 60 days before election, whether petitioner received it or not, he failed to show it was not sent; association is not required to show actual receipt under Section 718.112(2)(d), F.S., just mailing.

Sun Resort, Inc. v. Jellystone Park Condo.,

Case No. 96-0007 (Scheuerman / Order On Motion For Clarification / June 21, 1996)

- Failure to properly notice annual meeting does not invalidate election where election was properly noticed.

Term limitations

Visoly v. Buckley Towers Condo. Assn., Inc.,

Case No. 94-0224 (Scheuerman / Summary Final Order / November 2, 1994)

- Bylaws providing for term limitations for officers and directors are valid despite 1991 amendments to Condominium Act, and documents must be followed. Term limitations were valid before the 1991 amendments, and there is nothing in the Condominium Study Commission history or other legislative history to suggest that an abolition of term limitations contained in the documents was intended.

Voting certificates

Ledvina v. Orange Blossom Ranch Condo. Assn., Inc.,

Case No. 93-0292 (Grubbs / Arbitration Final Order / February 4, 1994)

- Where association has never required married couples to file a voting certificate, and where there is no allegation that any of the joint unit owners disputed the vote cast by his or her spouse, no basis exists for disallowing vote of one unit owner.

Estoppel (See also Selective Enforcement; Waiver)

Arlen House East Condo. Assn., Inc. v. Olemberg,

Case No. 95-0273 (Draper / Final Order / July 31, 1996)

- Estoppel and waiver held not to apply where association permitted washer and dryer to remain in unit during time that individual who later purchased unit viewed it, where declaration contained restriction against washer/dryer and owner was told of prohibition during screening interview.

Board of Trustees of Bel Fontaine v. Caruso,

Case No. 94-0116 (Richardson / Final Order / September 14, 1994) (currently on appeal)

- Board member/owner, under doctrine of unclean hands, could not raise estoppel where he knew of pet restriction in the documents, but nonetheless drafted lease agreement allowing his tenants to house an illegal dog.
- In action to remove an illegal dog from the premises, estoppel was not established where it was shown that board previously had not enforced the no-pet restriction against the owner of a parakeet. Board's conduct in failing to enforce documents against parakeet did not constitute representational conduct upon which the unit owner could reasonably rely.

Coventry Place Condo. Assn., Inc. v. Little,

Consolidated Case Nos. 95-0044, 95-0045 (Scheuerman / Final Order / February 21, 1996)

- Estoppel not applied where documents specifically required the permission of the board to install awnings, and where no board approval was obtained after developer gave oral permission to install the awnings. The association made no representation, and reliance on the developer's statements was not reasonable.

Cypress Bend Condo. I Assn., Inc. v. Dexner,

Case No. 95-0145 (Goin / Arbitration Final Order / May 19, 1997)

- Where rules and regulations, which were recorded, provided that unit owners could install tile with board permission, unit owner could not claim estoppel where he failed to get board permission before installing tile. Even if manager led him to believe that he could install the tile, it was not sufficient where rules required board permission, not management permission. In addition, even if board had given unit owner permission, unit owner still required to use proper soundproofing, which he failed to do.

Cypress Lake Estates Condo. Assn., Inc. v. Snyder,

Case No. 94-0288 (Scheuerman / Summary Final Order / December 27, 1994)

- The failure of the developer to enforce pet rules does not preclude the unit owner-controlled association from determining to enforce the documents after turnover.

Dubois v. Lakes Village East Condo. Assn., Inc.,

Case No. 95-0209 (Scheuerman / Order Dismissing Petition / December 11, 1995)

- Estoppel not applied where association refused to approve request to install patio, where real estate broker indicated to purchaser that he had permission to install patio.

Fiddler's Green Condo. Assn., Inc. v. Clements,

Case No. 93-0233 (Grubbs / Final Order / August 8, 1994)

- Fact that two other people had "after acquired" pets, four years before and seven years before respondent unit owner obtained her pet, was not sufficient to establish selective enforcement or estoppel where the only other two pets permitted on the property had been permitted by the developer-controlled association.

Forest Hill Gardens East Condo. Assn., Inc. v. Weitz,

Case No. 95-0047 (Scheuerman / Summary Final Order / June 1, 1995)

- Facts supporting estoppel and waiver not shown to exist where declaration clearly prohibited regularly renting out units and no reliance on any prior board interpretation was warranted under the circumstances. When association granted a hardship exemption to unit owner, hardship exemption was limited in scope and duration, and association did not intend to waive forever its ability to enforce the rental restrictions in the documents.

Forest Villas Condo. Apartments, Inc. v. Malicoat,

Case No. 97-0086 (Draper / Summary Final Order / July 31, 1997)

- Association would not be estopped from enforcing amendment to declaration prohibiting pets. Unit owner alleged he bought unit in reliance of fact that dogs were permitted under original declaration; however unit owner did not get dog or live in unit until long after amendment adopted. Also presence of one other after-acquired dog would not establish estoppel.

Gardens at Palm-Aire Country Club Assn., Inc. v. Lee,

Case No. 94-0533 (Richardson / Final Order / May 16, 1995)

- Where unit owners built a patio/lanai that was larger than what had been approved by the board, unit owners failed to prove estoppel in that the evidence showed that the board did not approve the type of lanai built by either express approval or conduct, so unit owners could not have reasonably relied upon any representation by the board.

Glen Cove Apartments Condo. Master Assn., Inc. v. Weit,

Case No. 93-0075 (Scheuerman / Final Order / May 30, 1995)

- Estoppel to enforce rental restrictions and residential use restrictions not shown where association did not represent to the purchasing subsequent developer that these portions of the documents would not be enforced against him. Also, reliance not shown

to exist where it was not shown that developer would not have purchased the units but for any representation by the association. Additionally, any reliance would not have been reasonable in any event because restrictions were a matter of public record at the time developer purchased the units.

The Glens Condo., Inc. v. Nelson,

Case No. 92-0163 (Player / Final Order / December 29, 1992)

- Estoppel applied in pet dispute where board was aware of presence of dog for 5 years; its inaction led the unit owners to believe it did not disapprove presence of dog; unit owners made extensive renovations to unit in reliance on board's inaction.
- Board member's knowledge of presence of dog acquired in social setting would be imputed to association.

Goodman v. Winston Towers 300 Assn., Inc.,

Case No. 93-0368 (Richardson / Final Order / June 16, 1994)

- Where association violated declaration by subdividing social room into two separate rooms, unit owner challenging the action was not estopped due to fact that unit owners in the past had not objected to alterations to the common elements made by the association. Estoppel cannot be based upon the silence from the other unit owners. Moreover, estoppel cannot be used to reach an unlawful result.

The Harborage II Condo. Assn., Inc. v. Keenan,

Case No. 96-0253 (Oglo / Final Order / March 5, 1997) (Arbitrator's decision overturned, Keenan v. Harborage II Condo. Assn., Inc., / Case No. 97-4828-CI-20, 6th Jud. Cir. Ct. / March 6, 1998) (Rule limiting installation of certain floor coverings within unit invalid and unenforceable, as it is arbitrary and unreasonable. Assn. is enjoined from requiring removal of tile from owner's unit.)

- Conduct of the board members did not establish a "representation" and the respondent did not reasonably rely upon the conduct. The fact that a board member noticed the tiling take place did not constitute a representation as required for estoppel because respondent was permitted to tile certain areas by rule. The fact that two board members may have noticed tile in a prohibited room, while accompanying a repairman, is not representation that respondent could reasonably rely on to tile the rest of her unit.

Heisner v. Bimini Village Condo. Assn., Inc.,

Case No. 94-0130 (Goin / Final Order / May 11, 1995)

- Estoppel against association determined to exist where association was silent when unit with carpet problem was conveyed to new owner, where association waited over a year after the purchase to take any action, and where purchasers reasonably relied on

the association's silence prior to their purchase and changed their position to their detriment by continuing to buy additional carpets.

Hillcrest East No. 26, Inc. v. Weinberg,

Case No. 96-0432 (Draper / Summary Final Order / March 26, 1997)

- Fact that unit owner signed application to purchase unit in which he agreed to be bound by bylaws does not require him to be bound by invalid bylaw.

Inverness Condo. II Assn., Inc. v. Riley,

Case No. 94-0328 (Grubbs / Summary Final Order / February 16, 1995)

- Association not estopped from enforcing provision of documents requiring association approval of occupants and \$50.00 screening fee where association originally approved occupancy by two daughters of unit owner, and where subsequent to approval, the two daughters vacated the unit and a third daughter moved in.

Karr v. Spyglass Walk Condo. Assn., Inc.,

Case No. 94-0411 (Draper / Final Order / October 10, 1996)

- Petitioners' estoppel defense rejected where evidence showed that comments of previous president, upon which they relied, were general comments that unit owners could decorate their elevator lobby areas without the board's permission and did not specifically address the installation of tile. Therefore, reliance was not reasonable.

Klopstad v. Park West Condo. Assn., Inc.,

Case No. 95-0084 (Draper / Final Order / December 13, 1995)

- Delay did not bar claim on grounds of estoppel or laches where association did not change its position based on representation of unit owners and unit owners continued to threaten legal action if board did not remedy conditions giving rise to claim.

Lake Emerald Owner's Assn., Inc. v. Moore,

Case No. 95-0232 (Scheuerman / Summary Final Order / September 12, 1995)

- Board members who made motion to conduct board vote by written anonymous ballot were estopped from later challenging the manner in which the board voted.

Lake Tippecanoe Owners Assn., Inc. v. Talierco,

Case No. 95-0462 (Scheuerman / Final Order / April 3, 1996)

- Estoppel not proved where owner was made specifically aware of motorcycle restriction at purchase and no representation was made that the restriction could be ignored. Neither was there a change in position; motorcycle was purchased prior to the purchase of the unit.

Mait v. Flanco Condo. Assoc., Inc.,

Case No. 92-0131 (Scheuerman / Final Order / December 17, 1992)

- Board member who voted in favor of conducting “emergency” meeting was estopped from later challenging the lack of notice given for the meeting.

Mallory v. Ballantrae Condo. Assn., Inc.,

Case No. 93-0265 (Scheuerman / Arbitration Final Order / January 23, 1995)

- Where unit owner filed petition seeking declaration that association’s refusal to permit installation of roll-down hurricane shutters was arbitrary, affirmative defenses of estoppel, waiver, and selective enforcement could not be asserted by the unit owner as these defenses are protective shields only and are not to be invoked as offensive weapons. However, some of the same considerations which apply in these defenses are relevant to a determination of whether the board acted reasonably in denying the requests of the unit owners to install roll-down shutters.

Melaleuca Gardens Condo., Inc. v. Montak,

Case No. 95-0096 (Evans / Final Order / October 9, 1995)

- Where unit owner obtained a cat and where two of the association’s board members regularly visited unit for approximately one year of the cat’s residency, board members knew or should have known that there was a cat. Where declaration gave board the authority to approve or disapprove pets, and where neither board member ever expressed disapproval to the unit owners or suggested that the cat’s presence violated the condominium documents, unit owners took the board members’ acquiescence as approval of the presence of the cat. Association estopped from enforcing restriction against pets.

Miami Beach Club Motel Condo. Assn., Inc. v. Escar,

Case No. 93-0162 (Goin / Final Order / July 28, 1994)

- Where unit owner seeking permission from board to install air conditioner forwarded approval form to association secretary, who informally polled other members of the board and who signed the approval form, association would be estopped from requiring removal of the air conditioner even where board approval did not occur at a formal board meeting. Reliance on secretary’s apparent authority was reasonable in light of the association’s informal method of approving alterations at the time, and where petition filed over 4 years after installation.

Palm Court Owners Assn., Inc. v. Palm Bay Development Corporation,Case No. 95-0131 (Scheuerman / Final Order / August 14, 1996) (*aff’d* Palm Bay Development Corp. v. Palm Bay Owners Assn., Inc., / Case No. CA-96-3497 12th Jud. Cir. Ct. / (November 7, 1997) / appeal pending 2d DCA 1998)

- Fact that association approved lease of unit did not operate to estop the association from later challenging modification to the unit.

Palm Royal Apartments, Inc. v. Flaherty,

Case No. 96-0088 (Draper / Summary Final Order / December 12, 1996)

- Estoppel not applied to bar enforcement of restrictions against altering building's exterior without approval of unit owners and board. Fact that association suspended enforcement efforts against previous owner for eight months because he was ill and reinstituted efforts only after he died and new owner took unit does not support estoppel. New owner had actual and constructive knowledge of restrictions.

Park Lake Village Condo. Assn., Inc. v. Gonzalez,

Case No. 94-0453 (Richardson / Final Order / March 30, 1995) (Appeal to circuit court dismissed due to settlement.)

- Where association approved transfer of unit to new owner with knowledge that new owner would be driving dealer cars, which would be frequently changed, on the common elements, association may not require unit owner to permanently affix the decals to the bumper of the cars. Association had previously accepted laminated tag arrangement, whereby owner laminated the parking decals and placed them in the front windshield, and such acceptance operated as a waiver of its right to enforce the bumper rule.

Payne v. Hillsborough Windsor Apartments, Inc.,

Case No. 92-0231 (Scheuerman / Final Order / June 4, 1993)

- Unit owners who participated in meeting wherein unit owners rejected proposed amendment to bylaws regarding rental restrictions not estopped to challenge board rule imposing related rental restrictions.

Pelican ef. Condo. Assn., Inc. V. Caban,

Case No. 95-0504 (Scheuerman / Final Order / November 14, 1996)

- Estoppel requires reasonable reliance, found to be lacking where association president unwittingly signed a permission form allowing lockable door to be installed on the common element by owner. Documents required approval of board of changes to the common elements, and did not delegate this authority to president; accordingly, reliance was unwarranted and unreasonable. Conclusion bolstered where owners subsequently agreed to voluntarily remove the door.

The Plum at Boca Pointe Condo. Assn., Inc. v. Pales,

Case No. 92-0224 (Player / Final Order / May 24, 1993)

- Where developer approved exception to pet rule, Association estopped from requiring removal of pets already approved; unit owner controlled Association could enforce pet restrictions prospectively.

Quail Hollow Condo. Assn., Inc. v. Eastman,

Case No. 96-0345 (Goin / Summary Final Order / January 2, 1997)

- Unit owners ordered to remove tile from limited common element walkway; fact that management company told unit owner that she “owned” area in question did not justify any belief by unit owners that she could ignore declaration which required prior board approval for such alterations.

Racquet Club Apts. At Bonaventure 4 North Condo. Assn., Inc. v. Boehle-Nelson,

Case No. 96-0037 (Goin / Final Order / October 29, 1996)

- Where unit owners brought in a 70-pound dog after they bought their unit, in violation of declaration, and association waited 18 months before filing petition for arbitration, unit owners did not establish estoppel; passage of time, standing alone, not sufficient to establish estoppel.

Rensen v. Heritage Landings Condo. Assn., Inc.,

Case No. 94-0042 (Scheuerman / Summary Final Order / September 16, 1994)

- In arbitration initiated by unit owners complaining that association had permitted other unit owners to install sliding glass doors and stepping stones, and where other unit owners had not been joined as parties, while arbitrator could not apply estoppel, selective enforcement, or waiver which the other unit owners would have been entitled to assert had they been parties, arbitrator could nonetheless consider the equitable considerations implicit in those defenses in fashioning appropriate relief.

San Paulo Village Condo. Assn., Inc. V. Hay,

Case No. 96-0178 (Draper / Final Order / January 21, 1997)

- Association not estopped from enforcing pet weight restriction against unit owner’s dog because there were other over-weight dogs in the condominium at the time the unit owner obtained his pet. Restriction was contained in the declaration; in addition; unit owner had been informed by manager of weight restriction prior to purchasing his unit. Unit owner’s reliance on presence of other large dogs was not reasonable.

Sarasota Lakes Co-Op, Inc. v. Paoline,

Case No. 95-0317 (Draper / Final Order / September 25, 1996 / Amended Final Order / October 1, 1996)

- Estoppel not shown as to occupancy limit where respondents were aware of the restriction and there was no representation that limit would not be enforced.

Savoy East Assn., Inc. v. Janssen,
Case No. 92-0133 (Player / Final Order / January 4, 1994)

- Doctrine of estoppel is a creature of equity and is governed by equitable principles; one who seeks equity must come with clean hands. Accordingly, where formation of corporation was simply a ruse to permit non-resident to dock boat at condominium, estoppel will not be applied.

Schiffman v. Golden Isles Towers Condo. Assn., Inc.,
Case No. 93-0360 (Richardson / Summary Final Order / October 3, 1994) (Arbitrator's decision overturned. Golden Isles Towers Condo. Assn., Inc. v. Schiffman, / Case No. 94-13059(18) 17th Jud. Cir. Ct. / Feb. 22, 1996 (Plaintiffs were entitled to ownership and use of parking space 2-A and association had duty to enforce that right, where prior owner of space conveyed unit by warranty deed to defendants (Schiffman) but conveyed parking space by warranty deed to plaintiffs (Singers) and where declaration allowed such conveyance.)

- Where owner purported to transfer limited common element parking garage separately from the transfer of unit, estoppel not shown to apply. Estoppel will not be used to achieve an unlawful result.

Shore Haven Condo. Assn. v. Drake,
Case No. 92-0136; 92-0137 (Price / Final Order / January 15, 1993)

- Association estopped from requiring unit owners to remove storage sheds at their own expense where developer-controlled association initially constructed sheds; association, however, was not estopped from removing illegal sheds itself.

Simon v. High Point of Delray West Condo. Assn. Section II, Inc.,
Case No. 94-0265 (Goin / Summary Final Order / April 3, 1995)

- Where unit owners had obtained verbal approval of one board member to place blocks in front of unit, such approval is insufficient pursuant to the condominium documents which required written approval from the board. A single director has no power to act in representative capacity for the corporation on matters for which a vote of the directors is required.

Southpointe Villas Condo. Phase IV Assn., Inc. v. Lowry,
Case No. 93-0400 (Grubbs / Final Order / February 27, 1995)

- Where association approved sale of unit to purchaser who had truck, and where purchaser/owner told the association of the existence of the truck and inquired whether there would be any problem concerning approval of the truck, association made representation that truck was permissible and was estopped to enforce truck regulation against owner.

Stoner v. 440 West, Inc.,

Case No. 93-0139 (Scheuerman / Summary Final Order / December 1, 1993)

- Where board, in response to written inquiries from unit owner requesting permission to install ham radio antennae, failed to respond to the inquiries, failure by the board to respond did not justify a belief by the unit owner that the provisions of the declaration concerning material alterations to the common elements could be safely ignored, and defense of estoppel did not apply.

Sun Resort, Inc. v. Jellystone Park Condo.,

Case No. 96-0007 (Scheuerman / Partial Summary Final Order / June 13, 1996)

- Where owners/petitioners made motions to adjourn annual meeting, petitioner estopped from challenging adjournment of meeting.

Taromonia Apartments, Inc. v. Hammond,

Case No. 93-0129 (Scheuerman / Final Order / March 14, 1994)

- Association estopped from enforcing new pet exclusion rule against unit owner where unit owner relied on former pet rule permitting house cats, and where association attorney expressed opinion that promulgation of pet rule was correct.

Terraces Condo. Assn., Inc. v. Morgenstern,

Case No. 93-0318 (Draper / Final Order / August 2, 1994)

- Statement by developer's sales agent that pet restriction would never be enforced cannot bind the association and estop it from enforcing pet restriction.

Terraverde II Condo. Assoc. V. Schulz,

Case No. 92-0135 (Grubbs / Final Order / December 3, 1992)

- Where documents prohibited more than 1 pet which must weigh less than 20 lbs., estoppel not shown by facts where it was not demonstrated that association permitted other owners to keep more than 1 pet.

Thompson v. Silver Pines Assn., Inc.,

Case No. 92-0239 (Grubbs / Final Order / March 31, 1994)

- While estoppel may be invoked as an affirmative defense to a petition or counter-claim, it may not be used as an offensive weapon in a petition for arbitration brought by unit owner alleging that the association was estopped from accusing unit owner of violating the declaration by painting fence adjacent to her unit.
- Defenses of waiver, selective enforcement, and estoppel could only be effective defenses for unit owners altering common elements for that period of time after the

association specifically advised the unit owners that they were on notice to make no further changes to the common elements.

The Towers of Quayside No. 4 Condo. Assn., Inc. v. Mui,
Case No. 95-0358 (Goin / Final Order / October 15, 1996)

- Tenant who was keeping a pet in violation of declaration did not show estoppel where association did not seek removal of pet until 2½ years after she acquired pet; when tenant was first seen with dog and questioned about it, tenant lied and told manager that dog belonged to unit owners who lived in another unit; association's inaction was caused by tenant's misrepresentation and tenant could not have reasonably relied on the association's failure to take action against her.

Versailles Gardens Condo. Assn., Inc. v. Rego,
Case No. 96-0076 (Goin / Final Order / February 13, 1997)

- Where declaration provided that no pets larger than 20 pounds and 14 inches in length and height were allowed; unit owner disclosed on application that dog weighed 22 pounds; and association failed to act on application, unit owner was approved with a 22 pound dog. However, the dog that the unit owner actually moved into the unit was larger than 14 inches in height and length and weighed more than 22 pounds. Because unit owner did not disclose dog's true size on application and because he knew of the height and weight limitations, unit owner failed to establish estoppel and dog ordered removed.

Villas at Eagles Point Condo. Assn., Inc. v. Kahn,
Case No. 94-0391 (Scheuerman / Arbitration Final Order / July 10, 1995) (aff'd, Kahn v. Villas at Eagles Point Condo. Assn., Inc., Case No. 96-02074 / Fla. 2d DCA May 14, 1997/ 693 So.2d 1029).

- Estoppel not shown to apply where general partner of general partnership developer, who was also on the board of the association, verbally approved the installation of a patio deck in the common elements, where the documents did not give the developer the ability to unilaterally approve such changes, and where the association acting as a board did not approve the change.

Windward Isle Homeowners, Inc. v. Birchler,
Case No. 95-0424 (Scheuerman / Final Order / January 17, 1997)

- Where owner was present at meeting and voted at meeting and did not object to notice given, owner waived defective notice and was estopped from challenging sufficiency of notice.

Evidence (See Arbitration-Evidence)

Fair Housing ActAmerica Outdoors Condo. Assn., Inc. v. Andjulis,

Case No. 94-0333 (Richardson / Order Striking Claims / August 26, 1994)

- Where association filed arbitration alleging that unit owner and her male friend are living in her unit on a permanent basis in violation of the declaration and the Fair Housing Act, petition dismissed with leave to amend for its failure to allege that neither occupant was under the age of 55 years. As long as one person residing in the unit is over the age of 55 years, declaration not violated.

Bayview at the Township Condo. Assn., Inc. v. Greenberg,

Case No. 96-0230 (Oglo / Final Order / May 22, 1997)

- Unit owner testified that she suffered from congestive heart failure and diabetes. As CFR Section 100.201(a)(1) & (2) provides that the term “physical impairment” includes conditions such as cardiovascular disorders, heart disease, and diabetes, it was concluded that the unit owner was “handicapped.” However, since the unit owner failed to prove that the dog was a reasonable accommodation to her handicap, the affirmative defense was rejected.

BPCA Condo. Assn., Inc. v. Huggins,

Case No. 92-0118 (Scheuerman / Final Order / June 21, 1993)

- Where Federal Fair Housing issue involving swimming pool rule prohibiting the use of the pool by any child aged three or younger was currently being investigated by local fair housing agency, it was appropriate for the arbitrator to abstain from deciding the issue.

Chateau Chaumont of Ibis Isle Assn., Inc. v. Williams,

Case No. 93-0327 (Draper / Final Order / May 30, 1995)

- Defense of medical necessity not shown where no competent evidence established handicapped status. Unit Owner/Respondent testified that she had a little nervous condition, and the letter from her daughter, a psychologist, was unsupported hearsay where daughter did not testify regarding mental impairments that substantially limit a major life activity.

Collins v. Hidden Harbour Estate, Inc.,

Case No. 93-0051 (Player / Final Order / June 4, 1993)

- Amendment to declaration approved by the board and at least 75% of the voting interests which, prospectively, required that at least one person over the age of 55 years must be a permanent occupant, and further provided that persons under the age of 55 and more than 21 could occupy a unit so long as at least one permanent resident is over the age of 55, was valid. After the United States Congress amended the Fair Housing Act in 1988 to prohibit discrimination based on familial status, the association

was required either to permit families with children under age 18 to reside in the community or to become a community that qualified for the older persons exemption to the Act.

Cummings v. Seagate Towers Condo. Assn., Inc.,

Case No. 94-0270 (Richardson / Final Order / February 24, 1995)

- Association disapproval of prospective purchaser who was under the age of 55, on the grounds that the declaration established the condominium as housing for older persons, was found to be reasonable, where condominium provided significant facilities and services designed to meet the needs of older persons, including where association offered 24 hour on-site management for emergencies, notary services, bookkeeping services, wheelchair services, oxygen tanks, crutches, walkers, wheelchair accessible doorways, a heated pool with a Jacuzzi, and two rooms for group activities, where a volunteer nurse available 24-hours-a-day lived at the condominium, security services, and other services.

Fairway Park Condo. Assn., Inc. v. Dillof,

Case No. 97-0024 (Draper / Final Order of Dismissal / May 13, 1997)

- Abstention not required when Federal Fair Housing Act raised as a defense. Under the supremacy clause of federal constitution, the arbitrator has power and duty to rule on such federal defense. Nevertheless, where respondents filed federal fair housing complaint, arbitrator will dismiss petition until complaint resolved.

Haines v. The Longwood Condo. Assn., Inc.,

Case No. 92-0286 (Grubbs / Final Order / April 29, 1994)

- Board could not justify installation of chain link fence on grounds that it was required to qualify for "55 or older" exemption since minutes did not reflect such purpose and safety concern was not unique to older persons.

The Harborage II Condo. Assn., Inc. v. Keenan,

Case No. 96-0253 (Oglo / Final Order / March 5, 1997) (Arbitrator's decision overturned, Keenan v. Harborage II condo. Assn., Inc., / Case No. 97-4828-CI-20, 6th Jud. Cir. Ct. / March 6, 1998) (Rule limiting installation of certain floor coverings within unit invalid and unenforceable, as it is arbitrary and unreasonable. Assn. is enjoined from requiring removal of tile from owner's unit.)

- Bad allergies were found by arbitrator not to constitute a "handicap" under fair housing laws. In addition, there were other reasonable accommodations available to the respondent, such as allergy medication.

Hernandez v. Frances Condo. Assn., Inc.,

Case No. 92-0242 (Player / Order on Issue of Liability / May 7, 1993)

- Arbitrator had authority to hear claim of unit owner that Association violated Federal Fair Housing Act by disapproving application to sell unit to prospective purchasers with children.
- The association, the party seeking to take advantage of the exemption from the prohibition against discrimination on the basis of familial status, has the burden of proving entitlement to the “housing for older persons” exemption.
- Association failed to show that the community published and adhered to policies and procedures which demonstrate an intent to provide housing for persons 55 years or older; declaration did not provide notice that the condominium is intended as housing for persons 55 years or older. Minutes of a board meeting ambiguously referring to the adoption of “the 55 and over exemption” did not suffice.
- Association unlawfully denied approval of prospective purchasers of unit because they had two children under the age of 18; pre-existing provision in declaration barring children under 15 years from residing in a unit was void as contrary to public policy.
- Where arbitrator had previously determined that a Federal Fair Housing Act violation had occurred, and where the petitioner unit owner had failed to file any information concerning asserted damages, Final Order was entered denying request for money damages.

High Point of Del Ray West Section 1 Condo. Assn., Inc. v. Brasgold,
Case No. 94-0435 (Richardson / Arbitration Final Order / September 18, 1995)

- Where daughter and husband who were under 55 years of age co-occupied unit with her parents who were both over 55 years of age as a single family, the restriction requiring at least one occupant to be 55 or older was satisfied.

Lake Tippecanoe Owners Assn., Inc. v. Swain,
Case No. 94-0109 (Player / Summary Final Order / September 5, 1994)

- Husband not ordered to vacate unit, where couple were married in 1993, and where declaration was amended in 1989 to exempt the community from the Federal Fair Housing statute by establishing a community of housing for older persons. Where wife of unit owner, in excess of fifty-five years old, was exempt from the age restriction contained in the amended declaration, her unit, accordingly, has never been in compliance with the requirement that each unit must be occupied by at least one person age fifty-five or older. Permitting her husband to occupy the unit does not have the effect of violating the age restriction, which had never been complied with by his wife.

Leisure Living Estates Condo. Assn., Inc. v. Sippell,
Case No. 92-0295 (Player / Final Order / September 23, 1993)

- Unit owner with hearing impairment that substantially limits her ability to hear may keep hearing guide dog in her unit despite no pet restriction in the declaration; permitting unit owner to keep dog is reasonable accommodation to her disability; hearing guide dog is not a “pet.”

Marilyn Pines Condo. Assn., Inc. v. Bowman,
Case No. 94-0090 (Player / Final Order / September 6, 1994)

- The intent in the state and federal fair housing statutes is to eradicate discrimination against persons with handicaps. Tenant demonstrated that she is a “handicapped individual” due to her manic depressive illness, which substantially limited her major life activities. The association was aware of her condition and was obligated to provide her with an equal opportunity to live in, use, and enjoy her unit. Reasonable accommodations included making allowances for the tenant’s unusual behavior, a burden which the association did not demonstrate would be an undue burden. Simultaneously, tenant ordered to take medication on a regular basis and to stop feeding the birds.

Oaks III Condo. Assn., Inc. v. Menuau,
Case No. 95-0418 (Goin / Summary Final Order / June 13, 1996)

- Where declaration required units to contain wall-to-wall carpeting and where unit owner installed tile in living room, dining room, and hallways, but not in bedrooms, unit owner ordered to remove tile and install wall-to-wall carpeting, where unit owner did not allege that she was “handicapped” as defined by Fair Housing Act, but only that she had swelling of the leg and arthritis and it was difficult for her to maintain carpeting.

Rustlewood Condo. Assn., Inc. v. Teta,
Case No. 94-0179 (Draper/Final Order of Dismissal/ December 14, 1994)

- Association petition seeking removal of unauthorized glass door and chimes installed by tenant who claimed door and chimes were required for his full enjoyment of the premises, as protected by the federal Fair Housing Act, dismissed as moot following agreement by parties to permit the door and chimes, despite fact that local fair housing agency had dismissed the respondents’ complaint finding no cause to believe a discriminatory housing practice had occurred.

Stonehedge Resident’s Inc. v. Dryden,
Case No. 92-0160 (Player / Final Order / November 10, 1992)

- Rule prohibiting occupancy of persons less than 55 years old did not apply retroactively to unit owner’s 24-year-old who resided in unit prior to passage of rule.

- Parent of 24-year-old son residing in unit not “aggrieved person” within meaning of Federal Fair Housing Law prohibiting discrimination against families in housing; “Familiar status” discrimination limited to persons with children under the age of 18 years.

South Gate Village Green Condo. Section 1 Assn. v. Marquis,
Case No. 93-0258 (Player / Final Order / May 24, 1994)

- Where association seeks to qualify for the housing for older persons exemption under the fair housing statutes, it must demonstrate that a package of facilities and services that indicates a genuine commitment to serving the special needs of older persons has been offered. Here, the only facilities at the condominium were a swimming pool and a shuffleboard court. These recreational facilities are equally usable to persons of all ages and are not unique to older persons. In addition, no evidence was presented that the association has considered making even the most basic modifications to enhance the physical accessibility of the units and property. For example, the association could have installed steps and railings at the pool; designed sidewalks that could be negotiated by a person using a cane or walker; could have placed one or more benches about the property; and made the entrances to the units accessible from the common elements. Moreover, the association offered only insignificant services and did not sponsor frequent social gatherings, continuing education events, or healthcare programs, nor has it investigated activities, which might be available for older persons in the community. Accordingly, petitioner failed in its burden of proving the existence of significant facilities and services and failed to establish qualification for the exemption.

The Trails at Royal Palm Beach, Inc. v. Wargovich
Case No. 93-0320 (Goin / Order Dismissing Counts 4 and 5 / March 30, 1994)

- Arbitrator had jurisdiction over claim pursuant to the Americans With Disabilities Act of 1990 (ADA) and count claiming violation of federal fair housing amendments of 1988 (FHA). Unit owner alleged he is an individual with a disability and a handicap, and alleged that the association had discriminated against him by installing a fence between his unit and the pool closest to the unit and by refusing to install an access gate through the fence; by taking action against him for parking his van at the condominium, and by denying respondent the full use of his unit by refusing to allow construction of an enclosure on respondent's patio. Allegations involved authority of board to require unit owner to take any action, or not to take any action, involving the owner's unit and the appurtenances thereto including the right to use the common elements.

The Trails at Royal Palm Beach, Inc. v. Wargovich,
Case No. 93-0320 (Goin / Order on Petitioner's Motion to Bifurcate / August 4, 1994)

- In case where the association alleged that unit owner had materially altered his unit by installing a door, wall, and windows, and where unit owner raised the Americans with

Disabilities Act and the Federal Fair Housing Act as defenses, and where unit owner filed counter-claim alleging the association had violated his rights by installing a fence between respondent's unit and the pool and by refusing to install access gate through the fence, association's motion to bifurcate, requesting that an initial hearing be held on the reasonableness of the modifications to the porch and pool fence, was denied. The issues are so interwoven that bifurcation would not serve the purpose of saving the parties time and expense. The reasonableness of the modifications made would depend on the extent and particulars of the disability.

The Trails at Royal Palm Beach, Inc. v. Wargovich,

Case No. 93-0320 (Goin / Order on Respondent's Motion for Damages / February 8, 1995)

- Arbitrator lacked authority to grant punitive damages on counterclaim of handicapped unit owner claiming that association had prohibited him from making changes to his screened patio, that the association has prohibited him from parking his van on the common elements; and that the association erected a fence blocking the owner's access to the pool. Arbitrator had jurisdiction over the subject matter of the dispute as the claims involved the authority of the association to require an owner to take action, or not take action, involving the unit or the appurtenances thereto. Where counterclaim did not demonstrate that unit owner suffered any actual damages based on the association's failures, only relief which could be granted would be injunctive relief if violation of fair housing act demonstrated. Arbitrator's authority to award actual damages does not extend to awarding compensatory damages for emotional distress.

The Trails at Royal Palm Beach, Inc. v. Wargovich,

Case No. 93-0320 (Goin / Final Order / May 31, 1995)

- Although unit owner was determined to be handicapped, modification to unit not shown to be necessary to afford him the full use and enjoyment of the unit. Modification was an enclosed porch, and as a factual matter, the porch was enclosed mainly due to security reasons.
- Action of association in installing fence blocking previous pathway to small pool did not discriminate against handicapped owner. The owner could still walk to the pool from his unit or drive to the pool and park in one of the adjacent spaces, and could continue to use the large pool as he had in the past.
- Removal of fence or installation of gate not shown to be necessary to afford handicapped owner full enjoyment of the premises.

Woodside Apartments Assn., Inc. v. Goff,

Case No. 93-0309 (Goin / Final Order Dismissing Petition / October 4, 1994)

- Where a unit owner who filed a discrimination complaint with HUD entered into a conciliation agreement with the association regarding his service dog, association filed request for dismissal, which was granted with prejudice.

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

Cape Parkway Condo. Assn., Inc. v. Specht,

Case No. 94-0470 (Goin / Order to Show Cause / November 21, 1994)

- Association ordered to show cause how its petition was meritorious where petition was filed against unit owner and two unrelated male tenants which the association believed did not constitute a “single family unit”. Two unrelated males who share the living, dining, and cooking areas and the work and responsibility of housekeeping were a “family” within the meaning of the declaration.

Country Village Condo. Assn., Inc. v. Roderick,

Case No. 94-0311 (Richardson / Order Striking a Claim / August 1, 1994)

- That portion of petition for arbitration claiming that respondent had permitted her boyfriend to move into her unit in violation of the declaration’s prohibition against leasing without prior approval of the association was struck. The petition did not state that respondent had actually leased her unit but had merely permitted another person to move into the unit with her. Obtaining a roommate is not the same as leasing a unit pursuant to the declaration; acquiring a roommate may be the equivalent of adding another member to the “family” residing in the unit.

Cypress Court of Oak Terrace Condo. Assn., Inc. v. Lingblom,

Case No. 93-0107 (Grubbs / Final Order / December 16, 1994)

- Although dog was purchased by unit owner as a gift for his fiancé, dog was a family dog and the unit owner and his fiancé were a family for purposes of construing pet restrictions contained in declaration.

High Point of Del Ray West Section 1 Condo. Assn., Inc. v. Brasgold and Schwartz,

Case No. 94-0435 (Richardson / Arbitration Final Order / September 18, 1995)

- Elderly unit owners’ adult daughter and husband who co-occupied unit with them were not tenants or guests under single-family use restriction because all 4 occupied the unit as a single housekeeping unit even though unit owners resided in unit on a seasonal basis while daughter and husband resided there year-round.

Maitland House Management, Inc. v. Martin,

Case No. 93-0242 (Draper / Summary Final Order / May 27, 1994)

- Rule defining “single family residence” as that term is used in the declaration was invalid where definition required use of unit as residence by one or more persons related by blood, marriage, or adoption. The term “family” is one of great flexibility.

- Even if rule was within the board's scope of authority, the rule prohibiting co-habitation by persons other than persons related by blood, marriage, or adoption was unreasonably restrictive and was invalid.

- Where two men occupied unit and shared the living, dining and cooking areas, they are not in violation of the declaration restriction that units be used only as single family residences.

Mitro v. Leisureville Fairway 8 Assn., Inc.,

Case No. 93-0060 (Player / Final Order / July 21, 1993)

- "Family" means one or more persons occupying premises and living together as a single housekeeping unit whether or not related by blood, adoption or marriage. Unit owner's nephew and his wife did not live with the unit owners and accordingly, these relatives are not part of the unit owner's immediate single family or household, but are "guests."

Olive Glen Condo. Assoc. v. Perez,

Case No. 92-0126 (Player / Final Order Denying Attorney's Fees and Costs to Petitioner's and to Respondent / October 14, 1992)

- The term "family" includes live-in fiancé' of unit owner for purposes of documents.

Park Central Towers Assn., Inc. v. Maikish,

Case No. 95-0030 (Goin / Summary Final Order / May 31, 1995)

- Although owner considered person occupying the unit to be like a son to her, it was determined that he was a tenant where the owner did not live in the unit with him, where the occupant paid maintenance fees, and where occupant was responsible for general upkeep of the unit. Accordingly, occupant was tenant and not part of the family for purposes of application of declaration requiring association approval for tenants.

Savannah Condo. Assn., Inc. v. Trans Management Corporation,

Case No. 93-0049 (Grubbs / Final Order / November 16, 1994) (currently on appeal)

- Officers, directors and employees of a corporate unit owner could not be considered the owner's "immediate family". The corporation is a separate and distinct entity from its officers, directors, and employees. However, under a provision in declaration to the effect that unit owners are permitted to have visitor occupants in their "presence", purpose of provision would require interpretation permitting corporation to have guests in its "presence" if it designates one particular individual who is its "presence" that would not change from week to week or month to month.

Seminole Cove Condo. Assn., Inc. v. Enterprise Health Management, Inc.,

Case No. 95-0444 (Goin / Summary Final Order / August 14, 1996)

- Where unit owners failed to obtain approval of association before entering into an agreement for deed with prospective purchaser, which agreement for deed was supposedly entered into before the date of the amendment making condominium housing for older persons, prospective purchaser who moved into the unit after the date of the amendment, and who did not begin payments pursuant to agreement until one year later, was ordered to vacate the unit.

Stonehedge Resident's Inc. v. Dryden,

Case No. 92-0160 (Player / Final Order / November 10, 1992)

- Son was member of family because he had not established his own household.

Thompson v. Quail Hollow,

Case No. 92-0115 (Grubbs / Final Order / October 30, 1992)

- Where father planned to purchase unit for daughter, when parent did not live in unit, daughter considered a tenant and not a guest or family member for purposes of declaration prohibiting lease of unit without association approval.

Financial Reports/Financial Statements

Fines

Calusa Club Village Condo. Building A Assn., Inc. v. Rodriguez,

Case No. 95-0276 (Goin / Summary Final Order / March 5, 1996) (Appeal dismissed as moot. 11th Jud. Cir. Ct. / Case No. 96-6805-CA-02 / July 11, 1997)

- Fine imposed by the association did not meet the procedural requirements of section 718.303 or Rule 61B-23.005. The board imposed the fine prior to any notice or hearing, and fine was imposed by board and not by a committee of other unit owners who were not directors.

Donnelly v. Boca Cove Condo. Assn., Inc.,

Case No. 93-0010 (Scheuerman / Final Order / December 21, 1993)

- Where declaration provided for maximum fine of \$50.00, imposition of \$1,000.00 fine, while authorized under the statute, could not be imposed absent amendment to declaration.
- Where fining committee recommended imposition of fine, but board never held meeting to actually impose a fine, no fine was levied on the unit owner.

- Where unit owner wrote letter to president stating he would not be able to attend hearing on proposed fine, and where letter was received the day after the hearing occurred, it was incumbent upon the board to reschedule the hearing.
- Due process not achieved, nor was compliance with statute achieved, where association letter failed to inform unit owner of date of alleged violation giving rise to a fine.
- Where fining committee was composed of board members, section 718.303, Florida Statutes, was violated.
- Cases defining due process in context of chapter 120, Florida Statutes, are persuasive when examining the fining procedures employed by an association pursuant to section 718.303, Florida Statutes.

Eldorado Towers Condo. Assn., Inc. v. Kurtz,

Case No. 96-0094 (Goin / Arbitration Final Order / January 17, 1997)

- Where grievance committee did not allow unit owner to present evidence or legal argument; did not have a written procedure for hearings which at a minimum provided for the items in 61B-23.005(1) F.A.C., and where board never actually voted to impose the fine recommended by the committee, fine not properly imposed.

Pickens v. Summerlin Woods Condo. Assn., Inc.,

Case No. 94-0468 (Draper / Final Order / July 26, 1995) (Arbitrator's decision upheld. Summerlin Woods Condo. Assn., Inc. v. Pickens, 20th Jud. Cir. Ct. (Lee Co. FL), *aff'd per curium*, 690 So.2 1311 (2nd DCA Fla. 1997).

- Where Division rule and association bylaws required notice of hearing on fine to be provided to unit owner not less than 14 days before the hearing, due process requires that the owner actually receive the notice 14 days before the hearing. Notice mailed by association to address in Ohio, when owner was actually living in Florida, was insufficient where owner did not receive notice until four days prior to the hearing and, therefore, fine imposed by board was invalid.

Presley v. Venture Out at Panama City Beach, Inc.,

Case No. 94-0358 (Scheuerman / Final Order / January 12, 1996)

- Association fine invalidated where it was imposed before giving owner an opportunity to contest the imposition of the fine; where association did not give at least 14 days notice of the meeting or hearing at which the fine would be imposed; and where the association fined the owner for a violation of an association order or directive,

instead of for a violation of the documents as permitted by the statute. Additionally, the notice of the fine failed to advise the owner of the nature of the offense.

South Patrick Condo. Apartments, Inc. v. Kaycee Wren,

Case No. 95-0191 (Draper / Order Dismissing Fine Claim and Accepting Remainder of Petition / July 6, 1995)

- Where amended petition seeking payment of a fine failed to include allegations that the association had notified the unit owner of the right to a hearing concerning the fine or that a hearing before other unit owners had been offered, fine claim dismissed.
- Board's "notice" that it had elected to fine the unit owner, with the fine to begin five days later, does not constitute notice of the right to a hearing as required by s. 718.303(3), F.S.
- Review solely by board of directors of case against unit owner involving fine does not comply with s. 718.303(3), F.S. Hearing required by statute is a hearing before other unit owners, not the board of directors.

Towers of Oceanview East Condo. Assn., Inc. v. Gonzalez,

Case No. 96-0394 (Oglo / Order Determining Jurisdiction / November 22, 1996)

- Association sought to collect \$350.00 fine against unit owner for keeping dog in her unit. Since unit owner had removed the dog prior to the filing of the petition, there was no controversy. Pursuant to statute, arbitrator had no jurisdiction over claim for fines when claim for fines not accompanied by a related controversy subject to arbitration jurisdiction.

Guest (See also Family; Tenant)

Aldea Mar Condo. Assn., Inc. V. Jamak, Inc.,

Case No. 92-0294 (Grubbs / Final Order / February 19, 1996)

- Where association brought suit against corporate unit owner because it was not using its unit as a residence, but as hotel accommodations for a series of guests that rotated in and out of the unit on a weekly basis, unit owner did not establish the defense of selective enforcement even though it did establish that other unit owners had allowed persons to use their units without having them approved in advance by the association. The evidence established that these incidents were primarily oversights or misunderstandings which occurred only once and no other unit owner routinely allowed guests to rotate in and out on a weekly basis or repeatedly had persons in the unit that had not been approved.

Cypress Woods, Inc. v. Robineau,

Case No. 93-0389 (Draper / Final Order / January 12, 1995)

- Argument that occupants were house guests of the unit owner instead of tenants required to be approved by the association was specious where individuals occupied unit for over a year, refurbished the premises, performed all maintenance and housekeeping, paid utilities, paid rent, and occupied the premises in the absence of their purported host, the unit owner. Even if no rent paid directly to the unit owner, but paid to owner's friend left in charge of unit, unit owner received valuable consideration in that substantial improvements were made to the property and day-to-day maintenance was performed.

Filehne v. Gateland Village Condo., Inc.,

Case No. 93-0248 (Player / Final Order / October 20, 1993)

- Where board rule simply required prior notification by an absentee owner that a visitor would occupy his unit, board wrongfully denied approval to guest to occupy unit where board demanded that guest be interviewed in advance of occupation.

High Point of Del Ray West Section 1 Condo. Assn., Inc. v. Brasgold,

Case No. 94-0435 (Richardson / Arbitration Final Order / September 18, 1995)

- Elderly unit owners' adult daughter and husband who co-occupied unit with them were not tenants or guests under single-family use restriction because all 4 occupied the unit as a single housekeeping unit even though unit owners resided in unit on a seasonal basis while daughter and husband resided there year-round.

Ironwood Villas Condo. Assn., Inc. v. U.S. Cable, Inc.,

Case No. 96-0307 (Goin / Arbitration Final Order / July 28, 1997)

- Corporate unit owner was not prohibited from using unit for short-term occupancy by its employees and guests. Although in one section, the declaration provided that no unit owner may allow his unit to be occupied in his absence without the approval of the association, another section indicated that the approval requirement would only apply to corporations if that requirement was contemplated and agreed to as a condition of ownership at the time that the corporation bought the unit, which was not the case.

The Landings Condo. Assn., Inc. v. Patterson,

Case No. 94-0366 (Scheuerman / Summary Final Order / March 1, 1995)

- Whether a person is a tenant or a guest is a mixed question of law and fact.
- A tenant has an estate in property, while a guest does not, and the tenant may maintain an action to recover possession while a guest may not. Where documents did not define "guest," the term "guest" not construed to require that a visitor occupy the unit along with the unit owner present in order to be considered a guest.

- Where the documents provided the guests of owners may not occupy the unit for more than two weeks per calendar year without obtaining approval under separate provisions of documents pertaining to tenant approval, declaration construed as permitting each individual guest to stay for two weeks or less per calendar year without obtaining approval in the manner provided for tenant approval. Accordingly, each guest can stay up to two weeks.

Mitro v. Leisureville Fairway 8 Assn., Inc.,

Case No. 93-0060 (Player / Final Order / July 21, 1993)

Where declaration provided that apartments shall be occupied only by the owner and his guests, and where applicable declaration of covenants and restrictions restricted use of unit to a single family home, and where board rules defined “guest” as a person temporarily visiting a unit owner for a period not to exceed 30 days, other board rule which prohibited guests from occupying a unit unless one member of the owner’s household was in residence, while harsh in application in this instance, was not in conflict with declaration.

- Board rule prohibiting guests from occupying unit in absence of unit owner held not unreasonable. Having unit owners present when their guests are staying enables the unit owners to be responsible for the guest’s conduct, an issue of importance in a large community.

Skylake Gardens No. 4 v. Gonzalez,

Case No. 95-0101 (Scheuerman / Arbitration Final Order / October 31, 1995)

- Where there was no written lease, no aspect of consideration, money, or rent found to exist, and where occupants of unit had no estate in property, association failed to establish any traditional indicia of a tenancy and no tenancy found to exist within the meaning of the documents regulating tenants. Documents did not define the words “guest” or “tenant.”

Thompson v. Quail Hollow,

Case No. 92-0115 (Grubbs / Final Order / October 30, 1992)

- Where father planned to purchase unit for daughter, when parent didn’t live in unit, daughter considered a tenant and not a guest or family member for purposes of declaration prohibiting lease of unit without association approval.

Tivoli Trace Condo. Assn., Inc. v. Seibert,

Case No. 95-0452 (Goin / Summary Final Order / July 23, 1996)

- Where unit owner and one son lived in Fort Myers and wife and two sons lived at the condominium in Deerfield Beach, and where husband and son would return to the condominium during the weekends and periodically throughout the week, unit owners

were in violation of declaration prohibiting more than four persons from occupying a two bedroom unit. Unit owner and son could not be considered temporary guest visiting their family in the family home.

Village on the Green Condo. II Assn., Inc. v. Knaus,
Case No. 93-0388 (Richardson / Final Order / April 7, 1995)

- Board rule providing that unit owners, or owners' approved lessees, shall be permitted to have visitor occupants of any age for up to three weeks during any six month period, or a maximum of six weeks in any twelve-month period, interpreted to impose limitations on the length of each guest visit, and not the number of guest visits in each year, and accordingly unit owner who had several visitors for a few days to a week throughout the year did not violate the rule.

Hurricane Shutters

Hecht v. Country Club of Miami Condo., Inc.,
Case No. 93-0240 (Scheuerman / Arbitration Final Order / March 22, 1994)

- Rule of association, which required consent of contiguous neighbor for unit owner to install awnings/shutters, was unenforceable and invalid from April 1, 1992 onward, that date being the effective date of the amendments to section 718.113(5), Florida Statutes, giving unit owners the right to install hurricane shutters conforming to specifications adopted by the board without first obtaining a vote of the unit owners.
- Where awnings, which were installed, were intended, and did in fact, provide a measure of hurricane protection, the awnings may be equated with hurricane shutters for purposes of section 718.113(5), Florida Statutes, providing that a board shall not refuse to improve the installation or replacement of hurricane shutters conforming to specifications, and further providing that the installation of such shutters shall not be deemed a material alteration.
- Patio extension undertaken by unit owner was necessary to provide adequate support for awning/shutter structure, and as such, patio extension would be considered part and parcel of the awning/shutter.

L'Ambiance at Longboat Key Club Condo. Assn., Inc. v. Isaac,
Case No. 96-0334 (Scheuerman / Summary Final Order / August 5, 1997)

- Rule of association which permitted any unit owner to use another's unit for purposes of the installation and maintenance of hurricane shutters held to impermissibly modify the appurtenances to the unit in violation of s.718.110(4), F.S. Statute did not authorize owners to occupy the units or limited common element terraces of another owner. However, where shown to be necessary to protect the common elements and residents, association has broad right of access to the units and was authorized to

undertake the installation and maintenance of shutters even where it required entry into the units and limited common elements.

Mallory v. Ballantrae Condo. Assn., Inc.,

Case No. 93-0265 (Scheuerman / Arbitration Final Order / January 23, 1995)

- Where unit owner filed petition seeking declaration that association's refusal to permit installation of roll-down hurricane shutters was arbitrary, affirmative defenses of estoppel, waiver, and selective enforcement could not be asserted by the unit owner as these defenses are protective shields only and are not to be invoked as offensive weapons. However, some of the same considerations which apply in these defenses are relevant to a determination of whether the board acted reasonably in denying the requests of the unit owners to install roll-down shutters.
- Hurricane shutter specifications adopted by the board should be adopted in consideration of, among other things, the likelihood that the shutters could be closed effectively in the time after issuance of a hurricane warning. Hurricane shutters which require extensive specialized closure operations and which may consequently not be reasonably expected to be closed in the timely fashion, are less likely to afford the protection which they were designed to offer.
- Where association adopted hurricane shutter specifications including the design of shutters which are difficult, if not impossible, and exceedingly hazardous for unit owners to close absent specialized tools and training, it is not unfair to condition a determination of reasonableness of the specifications upon an implied duty of the association to reasonably provide for closure of the shutters in the event of a hurricane.
- Where documents delegated to the board the authority to approve certain modifications including the installation of hurricane shutters, it need not be determined whether the addition of shutters would constitute a material alteration requiring a vote of the unit owners.
- Board acted arbitrarily in denying permission to unit owners to install roll-down hurricane shutters, where board based its decision on aesthetics but had permitted over the years the installation of roll-down shutters at different times over major portions of the property.

Slater v. Palm Beach Towers Condo. Assn., Inc.,

Case No. 94-0418 (Scheuerman / Summary Final Order / April 3, 1995)

- Amendment to section 718.113(5) providing that the board may install hurricane shutters with the approval of the majority of the total voting interests, which

amendment was effective October 1, 1994, did not apply to board decision in April of 1994 to require unit owners to install hurricane shutters on the openings of units.

- Where there is interplay between the maintenance function of the association and the provisions of the documents or statute specifying a procedure to accomplish material alterations to the common elements, the courts have under certain circumstances permitted the association through its board to perform the maintenance duty even if the activity would at the same time constitute a material alteration to the common elements.
- Where declaration delegated to board of administration the authority to approve material alterations to the common elements, and where no spending limitation on the board was imposed by the condominium documents, consistent with its duty to maintain and protect the common elements, board had authority, prior to 1994 amendment to statute, without a vote of the unit owners, to require the installation of hurricane shutters on all openings to the units.
- Where documents gave the board the authority to approve alterations without a vote of the unit owners, except where the change would prejudice the rights of the owner of any unit, board decision to require installation of hurricane shutters on the units was not prejudicial to a unit owner within the meaning of the documents. First, prejudice is not equated with monetary impact. If the drafters of the document had sought to impose a monetary restriction, such provision should have been included in the declaration. The word “prejudice” suggests some disproportionate impact or bias upon an individual or group of individuals. Here, the board had required the owners of all units to install hurricane shutters; there was no effect upon one owner which was not shared by every other unit owner. Neither did prejudice occur where unit owners’ balconies were blocked when the shutters were closed, or that they were no longer entitled to choose a contractor of their own choosing. These restrictions are inherent in the condominium lifestyle.

Yacht Harbour Condo. Assn., Inc. v. Seikman,

Case No. 94-0167 (Scheuerman / Summary Final Order / November 2, 1994)

- 1979-board rule, which permitted unit owners to install storm shutters, was inconsistent with section 718.113, Florida Statutes, which requires that the declaration, and not mere board rules, address the subject of material alterations.
- Ambiguous hurricane shutter rule passed in 1979 by board providing that storm shutters are to be used only for protection from hurricanes, will be construed against association which interpreted rule as prohibiting closure of shutters except when a storm is imminent. Rule is more reasonably interpreted as only prohibiting closure of shutters by unit owners not during the hurricane season.

- 1994 board rule prohibiting closure of hurricane shutters except when hurricane is imminent is inconsistent with both the 1991 and the 1994 amendments to the statute regarding hurricane shutters. The 1994 amendments deliberately limit the authority of the board in the area of shutter operations, and the board rule was inconsistent with the right of unit owners to install hurricane shutter protection. Moreover, board rule was unreasonable and arbitrary in its potential application where there is no assurance in any given case that shutters of non-resident owners can or would be closed in the limited time available after issuance of a storm warning.
- 1994 amendments to statute permitting the board to operate hurricane shutters only when necessary to protect the common elements would invalidate rule, prohibiting closure except when a hurricane was imminent.
- Section 718.113(5), Florida Statutes, which permits the board to adopt “specifications” for hurricane shutters, refers to the physical components and materials of the shutters, as opposed to requirements for the closure of shutters. Hence, board did not have authority pursuant to section 718.113(5), to promulgate rule prohibiting closure as an aspect of “specifications.”

Injunctive Type Relief (See Dispute-Relief granted)

Insurance

Lathrop v. The Cove at South Beaches Condo. Assn., Inc.,

Case No. 95-0147 (Goin / Final Order Denying Petition for Arbitration / October 27, 1995)

- Unit owner failed to state a basis for relief where he alleged that amendment to declaration which required all owners to obtain insurance on their units was invalid. Amendment was not wholly arbitrary in its application, in violation of public policy, and did not abrogate some fundamental constitutional right.

Shore Haven Condo. Assn. v. Drake,

Case No. 92-0136; 92-0137 (Price / Final Order / January 15, 1993)

- Portion of declaration providing that upon casualty to common elements, insurance proceeds to be used for reconstruction, did not authorize reconstruction of storage sheds which were originally constructed in violation of statute and documents prohibiting material alteration to common elements except with unit owner vote.

Jurisdiction (See Dispute)

Laches (See also Estoppel; Waiver)

Cypress Bend Condo. I Assn., Inc. v. Dexner,
Case No. 95-0145 (Goin / Arbitration Final Order / May 19, 1997)

- The defense of laches not successful where association waited four years after tile was installed to file action. Unit owner who installed tile lived in Sweden and used unit only two to three weeks per year. Therefore, noise was not constant and the delay was not unreasonable. Once association determined that the unit owner would continue to use unit, it filed a petition for arbitration.

Forest Villas Condo. Apartments, Inc. v. Malicoat,
Case No. 97-0086 (Draper / Summary Final Order / July 31, 1997)

- Fact that unit owner did not try to hide his dog, yet association waited one year before notifying him of violation, does not give rise to estoppel, waiver, or laches.

Gardens at Palm-Aire Country Club Assn., Inc. v. Lee,
Case No. 94-0533 (Richardson / Final Order / May 16, 1995)

- Where unit owners built a patio/lanai that was larger than what had been approved by the board, unit owners failed to prove laches because board acted within 3 months of alteration.

Heisner v. Bimini Village Condo. Assn., Inc.,
Case No. 94-0130 (Goin / Final Order / May 11, 1995)

- In case, which was referred to arbitration by circuit court judge, where complaining unit owner became aware of tile violation in 1986, but failed to institute enforcement action against other owner until 1993, laches barred enforcement action.

Klopstad v. Park West Condo. Assn., Inc.,
Case No. 95-0084 (Draper / Final Order / December 13, 1995)

- Laches will not bar claim where unit owners never gave any indication they would not assert their claim; in fact, letters to association clearly indicated they planned to pursue legal action if flooding not remedied.

Lake Tippecanoe Owners Assn., Inc. v. Talierco,
Case No. 95-0462 (Scheuerman / Final Order / April 3, 1996)

- Laches not applied where delay of a few months passed while new manager began work for the association.

Payne v. Hillsboro Windsor Apartments, Inc.,
Case No. 92-0231 (Scheuerman / Summary Final Order / June 4, 1993)

- Laches not applicable to fourteen month delay between adoption of board rule imposing rental restrictions and filing of Petition for Arbitration.

Pelican ef. Condo. Assn., Inc. V. Caban,

Case No. 95-0504 (Scheuerman / Final Order / November 14, 1996)

- Laches not applied to relieve owner where association waited 15 months to commence enforcement action and where owner failed to establish prejudice or injury during this period.

Schiffman v. Golden Isles Towers Condo. Assn., Inc.,

Case No. 93-0360 (Richardson / Summary Final Order / October 3, 1994) (Arbitrator's decision overturned. Golden Isles Towers Condo. Assn., Inc. v. Schiffman, / Case No. 94-13059(18) 17th Jud. Cir. Ct. / Feb. 22, 1996 (Plaintiffs were entitled to ownership and use of parking space 2-A and association had duty to enforce that right, where prior owner of space conveyed unit by warranty deed to defendants (Schiffman) but conveyed parking space by warranty deed to plaintiffs (Singers) and where declaration allowed such conveyance.)

- Unit owner not barred by doctrine of laches from instituting arbitration against association and other unit owners seeking to challenge the owner's transfer of limited common element parking garage separately from the transfer of the unit 19 years earlier.

Lien

Marina

Meetings

Board meetings

Committee meetings

Aldrich v. Tahitian Gardens Condo. Assn., Inc.,

Case No. 96-0472 (Draper / Summary Final Order / May 22, 1997)

- Where three board members got together on their own and later recommended action to the full board, and board members were not appointed by board or members of board to take action, notice of their meetings not required pursuant to Section 718.112(2) as group of board members does not constitute a "committee" under the statute.

Donnelly v. Boca Cove Condo. Assn., Inc.,

Case No. 93-0010 (Scheuerman / Final Order / December 21, 1993)

- Where fining committee was composed of board members, section 718.303, Florida Statutes, was violated.

Rebholz v Beau Mond, Inc.,

Case No. 93-0178 (Scheuerman / Summary Final Order / January 31, 1994)

- Legal committee, which made recommendations to the board, is required to maintain minutes and post notice of its meetings conspicuously on the condominium property at least 48 continuous hours in advance. Also, association is required to maintain official minutes of committee meetings.

EmergencyGaring v. Sugar Creek Country Club Travel Trailer Park Assn., Inc.,

Case No. 93-0153 (Goin / Final Order / March 23, 1994)

- Meeting held for purpose of passing an emergency special assessment did not require fourteen-day notice. Association presented specific evidence which supported its conclusion that it was facing an acute cash shortage, and would be unable to pay its payroll, its sewer, water, and trash bill, and its mortgage payment.

Mait v. Flanco Condo. Assoc., Inc.,

Case No. 92-0131 (Scheuerman / Final Order / December 17, 1992)

- No “emergency” found to exist which would otherwise obviate the necessity for 48 hours prior notice where events contributing to need for meeting were foreseeable; moreover, future unavailability of board members not an excuse because the board meetings could be held via telephone conference with adequate notice.
- Board member who voted in favor of conducting “emergency” meeting was estopped from later challenging the lack of notice given for the meeting.

Petito v. Greenglades Condo. Assn. II, Inc.,

Case No. 93-0239 (Scheuerman / Summary Final Order / January 13, 1994)

- Emergency which would otherwise obviate the necessity for posting advance notice of board meeting not found to exist where unforeseen combination of circumstances calling for immediate action not found. General allegations regarding the subjective belief of board members not sufficient to establish emergency, where general allegations are unaccompanied by specific facts which objectively tend to establish that the association, whether financially or otherwise, will be placed in immediate jeopardy.

GenerallyAldrich v. Tahitian Gardens Condo. Assn., Inc.,

Case No. 94-0497 (Draper / Summary Final Order / May 3, 1995)

- Condominium Act does not prohibit a director with a conflict of interest as to a matter from voting on the matter. Chapter 617 provides that a director may vote so long as the

conflict is disclosed and there are sufficient votes to approve the action without counting the vote of the interested director or if the contract or transaction is fair and reasonable.

- Board member who abstained from voting due to asserted conflict of interest would not be counted for purposes of determining the number of directors constituting a majority. Abstention is not considered a vote.

Cuervo v. West Lake Village II Condo. Assn., Inc.,

Case No. 94-0182 (Scheuerman / Partial Summary Final Order / May 31, 1994)

- A valid board meeting did not occur for purposes of accepting additional nominations pursuant to section 718.112(2)(d)3., Florida Statutes, where no board members attended the meeting. Accordingly, nominations received by the manager during the meeting were not effective.
- Where bylaws provided that the board shall consist of “five members together with the officers of the association,” and where the articles provided that the affairs of the corporation shall be managed by a board composed of not less than three nor more than nine persons, with the number to be determined in accordance with the provisions of the bylaws, the board appropriately consisted of five seats notwithstanding the association’s historical interpretation that there were nine seats on the board.

Dehne v. Ocean Club III Condo. Assn., Inc.,

Case No. 93-0137 (Scheuerman / Summary Final Order / January 31, 1994)

- Verbal resignation of board member occurring in context of official board meeting, where the tape of the meeting leaves no doubt as to the intent of the board member, deemed effective.
- Action of the board in purporting to remove person as director violated the condominium documents and statute.

Lake Emerald Owner's Assn., Inc. v. Moore,

Case No. 95-0232 (Scheuerman / Summary Final Order / September 12, 1995)

- Section 718.111(1)(b), Florida Statutes, interpreted to prohibit board members from voting by secret ballot. Board vote taken by secret ballot to fill vacancy on board violated the statute. However, since the statute and rules authorize the board to fill vacancies, but simply prohibit the procedure of voting by secret ballot, the decision of the board is one which may be properly ratified.

Ray v. Center Court Condo. Assn., Inc.,

Case No. 93-0275 (Goin / Summary Final Order / March 15, 1995)

- Petition dismissed where unit owner petitioned for arbitration to force association to amend minutes of meeting when there was no present controversy surrounding the alleged inaccuracies contained in the minutes. Dispute was not ripe for consideration.

Taromonia Apartments, Inc. v. Hammond,

Case No. 93-0129 (Scheuerman / Final Order / March 14, 1994)

- Proxy vote of director was void as in contravention to section 719.104(8)(b)
- Director who abstained for other than a conflict of interest is, by the operation of section 719.104(8)(b) presumed to have assented to the action taken to amend pet rule. Evidence did not overcome rebuttable presumption contained in statute, and director was not permitted to, in effect, change his vote.

Winkler v. Tristan Towers Homeowners Assn., Inc.,

Case No. 95-0285 (Goin / Final Order Dismissing Petition for Arbitration / September 29, 1995)

- Even if association had accepted a proxy from one director, in violation of section 718.111(1)(b), Florida Statutes, the remaining directors present at the meeting voted unanimously to extend manager's contract, so contract would not be invalidated simply because one proxy vote was accepted.

Notice/agenda

Aldrich v. Tahitian Gardens Condo. Assn., Inc.,

Case No. 96-0472 (Draper / Summary Final Order / May 22, 1997)

- Where bylaws empowered board to contract for management and to employ personnel, president should not have hired and fired people first and sought board's approval second.

Dehne v. Ocean Club III Condo. Assn., Inc.,

Case No. 93-0137 (Scheuerman / Summary Final Order / January 31, 1994)

- Board violated section 718.112(2)l, Florida Statutes, by appointing replacement board members at board meeting where replacement of directors was not an item listed on the agenda. Replacement of board members deemed void.
- Replacement of board members caused by vacancy must occur at a duly noticed board meeting.

Hutchinson Island Club Condo. Assn., Inc. v. Scialabba,

Case No. 96-0089 (Scheuerman / Partial Summary Order / November 1, 1996/ Final Order / November 15, 1996))

- Agenda for board meeting held in 1985 adequately disclosed fact that pet rule changes would be voted upon where agenda indicated that changes to rules previously discussed at prior board meeting would be considered.

Palmer v. Bellamy Forge Assn., Inc.,

Case No. 94-0111 (Richardson / Summary Final Order / July 28, 1994)

- Since use fee was not an assessment, board only required to provide notice of board meeting posted 48 hours in advance to consider the imposition of a use fee. A use fee is not an assessment.
- Where agenda listed only “committee reports” as an item where the board was considering adopting a use fee for use of the clubhouse, agenda and notice were insufficient to give unit owners notice and an opportunity to present their opinions on the imposition of a use fee. Accordingly, the use fee was not lawfully adopted.

Stephens v. Townhouses at Nova 1,

Case No. 93-0203 (Goin / Partial Summary Final Order and Order to Show Cause Regarding Count I of Petition / November 20, 1995)

- Association ordered to provide 48 hours notice of all board meetings, including an identification of agenda items where association admitted that it did not post such notice and its policy is to entertain, discuss and respond to any matters brought up at the board meetings by a board member or unit owner.

Quorum

Hennessee v. Eden Owners' Assn., Inc.,

Case No. 94-0269 (Richardson / Summary Final Order / September 20, 1994)

- Where bylaw provided that if any meeting of the members cannot be organized because a quorum is not present, the members present may adjourn the meeting, was interpreted as permissive and not restrictive such that even where a quorum of the membership was present, the meeting may be properly adjourned.

James v. Perdido Towers Owners Assn., Inc.,

Case No. 96-0424 (Goin / Summary Final Order / March 4, 1997)

- The board should have adjourned its meeting where only four of eleven directors were present even though board did not make any decisions and meeting was only informational in nature.

Ratification

Cramer v. Riverwoods Plantation RV Resort Condo. Assn., Inc.,
Case No. 94-0082 (Scheuerman / Order on Motion to Dismiss / June 28, 1994)

- Board of Administration may properly ratify previous action illegally taken, and in such case, the petition for arbitration may be rendered moot. However, dismissal of those issues as moot does not support an inference that the association under such circumstances is the prevailing party as the petitioning unit owner obviously was the moving force behind the board resolution and ratification.

Garing v. Sugar Creek Country Club Travel Trailer Park Assn., Inc.,
Case No. 93-0153 (Goin / Final Order / March 23, 1994)

- In order to ratify prior acts, ratification must be made a specific agenda item. However, even if ratification is not designated on the agenda, directors meeting irregularly convened or conducted may be cured by acquiescence or subsequent ratification.

Lake Emerald Owner's Assn., Inc. v. Moore,
Case No. 95-0232 (Scheuerman / Summary Final Order / September 12, 1995)

- A corporation cannot ratify a void and an ultra vires act. An illegal act which cannot be ratified is an act which is prohibited by a corporate charter or a controlling statute. Since the statute permits a board to fill vacancies, but prohibits boards from voting by secret ballot, board vote taken by secret ballot to fill vacancies not void, but was decision of board which could be properly ratified.
- Individual board members properly ratified their earlier vote taken in manner prohibited by statute by presenting affidavits to secretary indicating manner in which they had earlier voted by secret ballot.
- Ratification occurred when, after illegal vote by closed ballot, seven board members verbally announced their vote prior to seating of candidate.

Lorenzini v. Eaglewood West Condo. Assn., Inc.,
Case No. 93-0061 (Price / Arbitration Summary Final Order / August 26, 1993)

- Installation of screen doors on limited common elements appurtenant to the units did not result in a violation of the documents or Section 718.113(2), Florida Statutes, where the declaration prohibited the installation of screen doors without the prior approval of the association, and where the board ratified the installation of the screen doors.

Palmer v. Bellamy Forge Assn., Inc.,
Case No. 94-0111 (Richardson / Summary Final Order / July 28, 1994)

- Board did not ratify adoption of a use fee at a later board meeting where ratification was not an item on the agenda and the minutes of the meeting did not clearly indicate a vote on ratification.

Petito v. Greenglades Condo. Assn. II, Inc.,

Case No. 93-0239 (Scheuerman / Summary Final Order / January 13, 1994)

- Board properly ratified earlier acts taken where a prior meeting was conducted in an illegal fashion.

Pomeranz v. Quadomain Condo. III Assn., Inc.,

Case No. 94-0365 (Scheuerman / Order on Motion to Dismiss / September 27, 1994)

- Where, in response to petition alleging the conduct of closed board meetings at which vacancies on the board were filled, association claimed that subsequent board meeting at which confirmation of prior appointments was confirmed mooted out dispute, arbitrator determined that dispute was not moot because petition also alleged that notice of subsequent board meeting was posted without incorporating agenda items. If this is what occurred, the subsequent reappointment of the previously appointed board members was again illegal and the dispute was not moot.

Smith v. Brittany Court Condo. Assn., Inc.,

Case No. 95-0256 (Draper / Summary Final Order / August 2, 1996)

- Board attempt to ratify contract for maintenance services at subsequent meeting in response to charges that action was not taken at properly conducted meeting held ineffective and contract was set aside, where original action violated requirements of section 718.3025, Florida Statutes. Unauthorized or illegal act cannot be corrected by ratification or acquiescence.

Recall (See separate index on recall arbitration)

Dehne v. Ocean Club III Condo. Assn., Inc.,

Case No. 93-0137 (Scheuerman / Summary Final Order / January 31, 1994)

- Action of the board in purporting to remove person as director violated the condominium documents and statute.

Hernandez v. Pinebark Condo. Assn., Inc.,

Case No. 94-0531 (Scheuerman / Summary Final Order / May 17, 1995)

- Where bylaws permitted directors voting as a board to remove individual directors “when sufficient cause exists for such removal,” and where bylaws contemplated a removal hearing at which the member to be removed could attend and be represented by counsel, board violated bylaws by summarily removing board member who was absent for two consecutive meetings without giving the board member an opportunity to be heard.

- Board of administration in general has no authority to remove a board member by board action. Statute provides that it is the unit owners who elect board members and unit owners are given the right to recall a board member. Giving the board the authority to remove a board member would infringe upon the right of the unit owners to elect the representative of their choosing and give the board the opportunity to substitute its judgment for that of the owners on the issue of representation on the board.

- Condominium documents (as opposed to board action) may properly impose qualifications upon board members such as automatic removal from the board of a member who, without proper justification, misses a stated number of consecutive meetings. Such a provision contained in the condominium documents would appear to be a qualification consistent with the condominium act and corporation not-for-profit statute, which permit the bylaws to specify the manner of removal and qualifications of officers and directors.

Right to tape record

Boettger v. Ocean Palms Condo. Assn., Inc.,

Case No. 92-0269 (Goin / Final Order / May 17, 1993; Order on Motion for Clarification / June 7, 1993)

- No prior notice was required to be given by a unit owner desiring to tape record the annual meeting where the board, by written rule, did not require advance notice.
- As a “proxy” is a grant of authority by a shareholder/member to someone else to vote the former’s shares, the authority conferred on a proxy holder does not extend to include the authority to tape record meetings on behalf of the unit owner simply by virtue of the proxy.

Unit owner meetings

Generally

Evans v. Raintree Village Condo., Inc.,

Case No. 96-0440 (Draper / Summary Final Order / April 7, 1997)

- Association authorized to continue collecting proxies for vote on document amendment after unit owner meeting adjourned and up to continuation of meeting. Adjournment of meeting at which quorum was in attendance was permissible. Bylaw provision permitting adjournment where quorum lacking is an expansion of power rather than a restriction on it.

Lansing v. The Decolplage Condo. Assn., Inc.,

Case No. 96-0373 (Scheuerman / Summary Final Order / August 25, 1997) (motion for rehearing pending)

- Bylaws, providing that meeting at which quorum of membership was not present “may” be adjourned to a date within 15 days of the meeting, interpreted as imposing a limitation on the length of time between the initial meeting and the rescheduled meeting.
- 15-day provision must be given some effect and could not be applied in a way to render the provision meaningless. The “may” modifies the decision of the association on whether to adjourn the meeting, and does not give the association the option of whether to follow the procedures required by its bylaws.

Oakwood Court Condo. Assn., Inc. v. Ellis,

Case No. 94-0249 (Grubbs / Order Denying Motion to Dismiss Amended Petition and Order Denying Motion for Default / February 8, 1995)

- Where complaint stated association revoked a conditional license provided to unit owner to keep a pet, but only facts alleged concerning action taken by association regarding pet referred to annual meetings and vote of the unit owners, association ordered to file copies of minutes of board meeting(s) where board revoked the unit owners conditional license or cite provisions in documents, statutes, etc. that establishes authority of unit owners to take association action by vote at a meeting.

Pisz v. Holiday Out At St. Lucie, a Condo.,

Case No. 96-0186 (Goin / Summary Final Order / October 23, 1996)

- Where by-laws provided that all unit owners’ “general park welfare” correspondence not exceeding 1 page shall be included in board meeting minutes, rule adopted by board defining the phrase “general park welfare” and requiring that the correspondence be received seven days before meeting did not contravene the by-laws. However, portion of rule providing that president would have the final decision as to whether to print the correspondence did contravene the by-laws; if it was unclear whether the correspondence should be printed, it should be the decision of the board at the meeting.

Windward Isle Homeowners, Inc. v. Birchler,

Case No. 95-0424 (Scheuerman / Final Order / January 17, 1997)

- Method of determining presence of quorum by determining fullness of room rather than actual counting not shown to be inherently unreliable.

Notice

Sun Resort, Inc. v. Jellystone Park Condo.,

Case No. 96-0007 (Scheuerman / Order On Motion For Clarification / June 21, 1996)

- Failure to properly notice annual meeting does not invalidate election where election was properly noticed.

Quorum

Hennessee v. Eden Owners' Assn., Inc.,

Case No. 94-0269 (Richardson / Summary Final Order / September 20, 1994)

- Where bylaw provided that if any meeting of the members cannot be organized because a quorum is not present, the members present may adjourn the meeting, was interpreted as permissive and not restrictive such that even where a quorum of the membership was present, the meeting may be properly adjourned.

Recall (See separate index on recall arbitration)

Moot

Mortgagee

Gate Condo. Assn., Inc. v. Finkel,

Case No. 95-0344 (Scheuerman / Final Order of Dismissal / December 9, 1996)

- Declaration could be amended to prohibit all future rental of units, and such an amendment did not affect the security of mortgages on the unit.

Ross v. El Dorado Towers Condo. Assn., Inc.,

Case No. 93-0005 (Scheuerman / Summary Final Order / July 2, 1993)

- Exemption from rental restrictions in the declaration for first mortgagee foreclosing on unit mortgage did not extend to purchaser at foreclosure sale where foreclosure action was initiated by a first mortgagee but where the mortgage in action was assigned to a non-institutional corporation which completed the foreclosure sale.

Tortuga Club, Inc. V. Szarek,

Case No. 95-0274 (Goin / Final Order / February 13, 1997)

- Unit owners had standing to raise as a defense the failure of the association to obtain the consent of all institutional first mortgages. Association's argument that only an institutional first mortgagee would have standing to challenge the validity of the amendment based on the failure to obtain the written consents of all institutional first mortgagees was rejected.

Nuisance

Big Pass Assn., Inc. v. Aaron,

Case No. 94-0324 (Price / Final Order / June 6, 1995)

- Where association filed petition seeking the removal of dog asserted to be a nuisance, whether nuisance existed must be viewed in light of the habits and way of living of complaining party who had hypertension and gastrointestinal problems, and other health problems. No other unit owners had complained about noise emanating from the unit, and the noises complained of were not unusual noises but the kind of noises that one occupying a condominium unit would expect to hear periodically.

Cypress Bend Condo. I Assn., Inc. v. Dexner,
Case No. 95-0145 (Goin / Arbitration Final Order / May 19, 1997)

- Unit owner who installed tile in unit was ordered to remove tile because it was causing unreasonable noises to be heard in downstairs unit. Evidence presented showed that unit owner had not properly soundproofed tile and that was the cause of the disturbing noise.

Cypress Woods, Inc. v. Larger,
Case No. 93-0076 (Scheuerman / Final Order / October 21, 1993)

- Where documents prohibited unit owners from maintaining a nuisance, and where screened patio failed to conform to applicable building codes and showed evidence of wood rot and termite infestation, unit owner ordered to upgrade structure to specifications adopted by the board.

Egret's Walk III Condo. Assn., Inc. v. Athans,
Case No. 96-0356 (Draper / Final Order / April 3, 1997)

- Where unit owner's dog barked fiercely for several minutes at a time and four or more times per night, especially during late night and early morning hours, over a period of 10 months, with no cause, unit owner ordered to remove the dog permanently from the unit.

Fairview of the California Club Condo. Assn., Inc. v. Rosenfeld,
Case No. 92-0181 (Player / Final Order / February 9, 1993)

- Evidence established that unit owner who was loud, created frequent disturbances, failed to properly secure trash, and flushed objects down commode was a nuisance; unit owner ordered to cease and desist from document violations and forced to pay damages to association; fine enforced.

Gonzales v. Horizons West Condo. No. 3 Assn., Inc.,
Case No. 93-0183 (Draper / Final Order / February 17, 1994)

- Ticking and scraping noises and sound of children running, while annoying to the occupant of the unit, do not rise to the level of a nuisance, where use of the unit which was allegedly the source of the noises is not shown to be unreasonable. The tile was not prohibited by the documents and the building was overall noisy regardless. Declaration interpreted to prohibit unreasonable noises under circumstances which would disturb or annoy the average person.

J-Mar Condo. Assn., Inc. V. Owen,
Case No. 97-0038 (Goin / Arbitration Final Order / July 17, 1997)

- Tenants, who had lived at condominium for seven years, had engaged in two isolated incidents in which they disturbed other owners with their domestic discord. Also, husband on four occasions engaged in a yelling and screaming fight with one particular board member over various condominium matters. However, tenants' overall behavior was not offensive or improper.

Josephs v. Lancaster at Century Village Condo. No. 1,
Case No. 93-0071 (Price / Summary Final Order / February 9, 1994)

- Association's installation of security light on patio railing of Petitioner's constituted a nuisance, where Petitioner unit owners showed that bugs became more numerous after installation, bird droppings spattered on their screens, and light shone directly onto their patios, preventing them from using the patios. Ordinary persons with reasonable dispositions and in reasonable health would be annoyed and disturbed by these factors.

Kingswood E Condo. Assn., Inc. v. Ruffin,
Case No. 96-0122 (Scheuerman / Final Order / October 14, 1996)

- Tenant/occupant who was son of owner ordered to refrain from entering the condominium property due to series of threatening letters to association.

Lamar v. La Arboleda Condo. Assn., Inc.,
Case No. 93-0229 (Goin / Final Order / September 14, 1993)

- Unreasonable noise coming into a unit owners' unit which was caused by the air conditioner of another unit owner constituted a nuisance thereby obligating the association to relieve the unacceptable noise levels. Association ordered to require non-party unit owner who installed the air conditioner to install vibration springs and vibration muffler on unit. Association further ordered to separate and replace refrigerant lines passing through Petitioner unit owners' unit.

Mission Hills Condo. Assn., Inc. v. Messina,
Case No. 95-0484 (Scheuerman / Final Order / October 29, 1996)

- Where daughter of non-resident owner set fires within the unit and engaged in other disruptive or dangerous activity, daughter ordered to vacate unit.

Ocean Towers Condo. Assn., Inc. v. O'Brien,
Case No. 94-0143 (Richardson / Final Order / November 21, 1994)

- A nuisance is established where one property owner's use of her property is found to be unreasonable and where the disturbance created results in an injury to the legal rights of the complaining party. Where unit owner appeared partially nude in the hallways, telephoned her neighbors in the early morning hours, smoked in bed causing fire, and appeared in the common areas in an inebriated state, association established private nuisance and order entered directing unit owner to cease offensive behavior.

Oceania II Condo. Assn., Inc. v. Itzler,

Case No. 95-0426 (Scheuerman / Final Order / September 12, 1996)

- Where owner cut into fire wall to install speakers and noise from speakers prevented adjoining owners from using units, owner's actions constituted a nuisance.

Parkview Plaza Condo. Assn., Inc. v. Benayon,

Case No. 96-0346 (Oglo / Final Order / May 28, 1997)

- Evidence found sufficient to conclude that dog's barking constituted a nuisance.

Parkview Point Condo. Assn., Inc. v. Romash,

Case No. 93-0130 (Goin / Final Order / November 1, 1994)

- Unit owner's son found to be a nuisance and annoyance to other unit owners where he drove his car at excessive speeds, squealed his tires, and cursed and insulted the security guards. Also, son continuously parked in guest parking for more than the allowed fifteen minutes.

Sandy Cove of Lakeland, a Condo., Inc. v. Richards,

Case no. 96-0092 (Scheuerman / Final Order / January 30, 1997)

- An association is not entitled to enforce its substantive restrictions in a retroactive manner. Where dogs were given to owner and resided in unit for a short time prior to new pet restriction, restriction could not be enforced against pre-existing dog.
- Nuisance not established where it was only shown that dogs lunged and barked when on a leash on the common elements. The facts did not warrant the conclusion that the duration, frequency and the degree of interference to property rights was sufficient to show a private nuisance.

Villa Sonrisa One Condo. Assn., Inc. V. Nierenberg,

Case No. 94-0424 (Scheuerman / Order Granting Interim Relief / November 29, 1994)

- As temporary emergency relief, owners required to immediately install padding and carpet over tiled areas where association presented expert and other witness testimony establishing that level of noise constituted a nuisance.

Official RecordsAlan v. Boca Cove Home Condo. Assn., Inc.,

Case No. 92-0263 (Scheuerman / Partial Summary Final Order / March 22, 1993)

- Statute does not impose good faith requirement where unit owner seeks to obtain access to official records.

- Right of access to official records is violated where access is contingent upon agreement of the unit owner not to share official record with any third person; restriction imposed by association is not a limitation on the manner of inspection and is, therefore, invalid.

Alrich v. Tahitian Gardens Condo. Assn., Inc.,

Case No. 96-0055 and 96-0070 (Consolidated) (Scheuerman / Summary Final Order / August 5, 1996)

- Records in possession of association relating to fountain approved by board were official records subject to inspection rights of owners where association was obligated to repair/maintain fountain and where fountain impacted upon the operation of the association.
- No damages awarded owner where association failed to timely produce records where request of owner was confusing; owner must bear the risk of choosing a method of requesting records which was likely to generate confusion and administrative error.

Bazak v. Windermere Condo. Assn., Inc.,

Case No. 96-0019 (Draper / Final Order / December 4, 1996)

- Unit owner's claim that association denied him access to insurance records dismissed where unit owner asked association to provide "insurance information" (name of insurer and policy number) but did not request access to insurance policies of the association or to any other document. Section 718.111(12) provides a right of access to official records rather than information.

Boettger v. Ocean Palms Condo. Assn., Inc.,

Case No. 92-0269 (Goin / Final Order May 17, 1993; Order on Motion for Clarification / June 7, 1993)

- Evidence supported finding that association's refusal to honor proxy-holder's request to view official records was intentional.
- Where request for access to records was not made in writing, association waived any writing requirement where it waited until initiation of arbitration proceeding to demand that the request be put in writing.

Brown v. Wellington L Condo. Assn., Inc.,

Case No. 94-0363 (Scheuerman / Final Order / February 20, 1995)

- Association did not have reasonable access to a copy machine for purposes of producing copies of official records upon unit owner request, where the association did

not have a copy machine, where a board member would have to cross busy eight-lane boulevard to obtain access to a copy machine, or where a board member would have to take a bus trip taking one hour to obtain copies. However, reasonable access was found in that association was specifically advised that a bank located in a strip mall adjacent to the condominium had a public copy machine.

- Association did not willfully fail to provide access to the official records, where unit owner requested copies of the records, and, although association had reasonable access to a copy machine, association in good faith believed it was under no legal obligation to produce copies. During this time, association had written to the division to obtain advice on issue of whether it must produce copies, and during this time it continuously offered unit owner opportunity to inspect books and records.

- Where an association fails to maintain certain required records, the precise violation of the statute involved is the failure to maintain a specific record, and in the ordinary case, the failure to maintain a certain record would not give rise to a claim of money damages for failure to grant access to the non-existent record, although this factor may in an appropriate case bear upon the issue of willfulness of the failure to produce.

- Where the only recorded copies of the condominium documents were unreadable because they were only contained on microfilm and satisfactory copies could not be made from microfilm, no violation of the statute or rule requiring the association to maintain recorded copies of the condominium documents occurred where the association maintained form documents which substantially set forth the requirements of the recorded documents.

- Where, at the time of filing of petition for arbitration, all violations claimed by the petitioning unit owner had been cured by association, an award of injunctive relief was not warranted, and the petition was dismissed.

Cheffo v. Condo. Owners Assn. of Governors Island,

Case No. 96-0044 (Scheuerman / Final Order Dismissing Amended Petition / June 10, 1996)

- Association rule upheld as reasonable which required owner who requested copies of official records to sign form promising to pay any sums incurred by association and not prepaid by owner.

Coventry Place Condo. Assn., Inc. v. Little,,

Consolidated Case Nos. 95-0044, 95-0045 (Scheuerman / Final Order / February 21, 1996)

- Evidence did not support finding that association willfully failed to provide access to the books and records. Due to the frequency and scope of the owners' requests for copies of the records, with new requests crossing in the mail with copies of documents from the association in response to prior requests, and with the owners also interacting with the association on a multitude of maintenance issues, it was likely that the association's performance in responding to requests would be less than perfect. Fact that an occasional document was left out by board did not warrant conclusion of willful violation.

Cunningham v. Neptune Villas of Pompano Beach Waterfront Co-op Apts. On the Intercoastal,

Case No. 95-0207 (Scheuerman / Final Order / February 6, 1996)

- Reference in cooperative statute requiring association to maintain and distribute upon request copies of declaration of cooperative inadvertently and in error copied from condominium statute, and no violation of access to records provision occurred unless it was shown that a declaration of servitudes or covenants and restrictions was recorded against the cooperative property.
- Association violated coop law by not providing recorded copies of bylaws and articles of incorporation within 10 working days, entitling owner to statutory damages of \$500.00.
- It was not a violation of the access to records provision where association failed to cull through all records to produce records which within its judgment fit within a loosely-defined set of sought records. Proper procedure would be for owner to request access to the records and to find the sought records himself.
- It was not a violation of the access to records provision where association failed to answer interrogatories directed to it by an owner.

Glen Cove Apartments Condo. Master Assn., Inc. v. Weit,

Case No. 93-0075 (Scheuerman / Final Order / May 30, 1995)

- Where unit owner requested access to unit payment cards in February, and did not receive the information until June, unit owner demonstrated that association denial of access to records was willful; testimony produced by association that requested records were inadvertently lost was discounted.

Greenlee v. Oceanside Terrace Condo. Assn., Inc.,

Case No. 95-0497 (Goin / Final Order / March 26, 1997)

- Where unit owner reviewed records and made a list of specific minutes and letters that he wanted copied and gave files that documents were in to staff person, the association's failure to make copies was a willful violation of s. 718.111(12), F.S. However, the association's failure to copy certain letters that petitioner believed existed but could not find did not result in a violation because petitioner did not prove that the records existed. Regarding petitioner's request for "further access" to certain documents, petitioner did not prove that the association willfully failed to provide access to the records where unit owner did not attempt to make another appointment to view the records.

Juback v. Viewpointe of Margate Condo., Inc.,

Case No. 93-0028 (Scheuerman / Final Order / December 8, 1993)

- Where no direct evidence was presented that association willfully failed to produce official records upon proper request of unit owner, presumption contained in section 718.111(12), Florida Statutes, to the effect that the failure of an association to produce records within ten days shall create a rebuttable presumption of willfulness, operated to support the finding of a willful violation, and the association was accordingly fined \$500.00 for each of two violations.

Licker v. Lauderdale West Community Assn. No. 1, Inc.,

Case No. 95-0186 (Richardson / Final Order / October 6, 1996)

- Where association failed to allow unit owner access to requested records, it violated section 718.111(12), Florida Statutes. Association failed to overcome presumption of willfulness. Association failed to produce portion of requested records during eight scheduled inspection sessions.

Llopiz v. Sterling Condo. Assn., Inc.,

Case No. 96-0458 (Draper / Final Order / July 30, 1997)

- Association did not willfully deny access to official records where manager was sick and unable to meet with unit owner at the time scheduled to review records and unit owner never called manager back to set up another appointment.

MacClary v. Carlton Towers Condo. Assn., Inc.,

Case No. 94-0355 (Draper / Order Dismissing Counterclaims / October 18, 1994)

- Arbitrator lacked authority to entertain counterclaim filed by association alleging that unit owner was using the provisions of the statute ensuring access to the association records, in a bad faith attempt to punish the association for prior acts. The statute does not condition access to only those individuals who are acting in good faith and counter petition failed to state a cause of action. Parenthetically, association had failed to take advantage of its ability to place reasonable restrictions on the right of access to books and records.

MacClary v. Carlton Towers Condo. Assn., Inc.,

Case No. 94-0355 (Draper / Partial Summary Order / February 27, 1995)

- Association not required, pursuant to condominium statute, to create or generate a document or a report for a unit owner that it does not maintain in the form requested by an owner, or that it is not required by the statute or the documents to maintain.
- If the unit owner files of the association contain confidential material concerning unit owners, the association should block out the confidential material and provide unit owner access to the documents.
- Although an association is not required to generate a report or cull out records pursuant to a unit owner's request, if the unit owner requests official records which the association files along with confidential materials, the association is required to allow access to the records even if it means culling out the requested records or isolating the requested information.
- Under statute, unit owner denied access to official records may be awarded minimum damages of \$500.00 or may be awarded actual damages. If represented by an attorney, an award of attorney's fees, in addition to minimum or actual damages, would be appropriate. If owner decides to seek actual damages instead of minimum damages, he must prove his damages.

MacClary v. Carlton Towers Condo. Assn., Inc.,

Case No. 94-0355 (Draper / Final Order / February 27, 1995)

- Where unit owner who was deprived of access to the official records sought actual damages instead of statutory minimum damages in the amount of \$500.00 pursuant to section 718.111(12), recovery of unit owner limited to \$500.00 minimum damages where items of actual damages claimed were more in the nature of costs and fees which may properly be claimed as prevailing party costs and attorney's fees, but which are not recoverable as items of damage in the main action.

Parkview Plaza Condo. Assn., Inc. v. Benayon,

Case No. 96-0346 (Oglo / Final Order / May 28, 1997)

- Despite the unit owners' testimony that they never received a reply to their request for copies of association documents, the arbitrator found that a letter sent by the association's attorney to them, replying to their voluminous documents request, was authentic and was a reasonable response to the request. The association's letter suggested that the respondents review the documents and indicate which ones they wanted, or in the alternative, remit \$250 for the anticipated cost of copying.

Poitier Corporation v. Fountainview Unified Committee,
Case No. 93-0238 (Goin / Order on Petitioner's Emergency Motion for Immediate Hearing and Motion to Conduct Discovery / August 24, 1993)

- Unit owner does not have the right to remove official records from the condominium property for copying.

Quinn v. Soundwind Condo. Assn., Inc.,
Case No. 95-0137 (Richardson / Final Order / August 31, 1995) (Appeal voluntarily dismissed / Southwind Condo. Assn., Inc. v. Quinn / Case No. 95-703CC, Santa Rosa County Court / December 20, 1995)

- Where association willfully refused to permit access to books and records under section 718.111(12), attorney's fees incurred in pre-petition attempt to secure records are not an element of damages under statute and could not therefore be included as an element of actual damages. The statute provides for a mandatory award of attorney's fees in addition to actual damages.

Steiner v. Hollywood Beach Resort Condo. Assn., Inc.,
Case No. 92-0311 (Goin / Final Order / May 19, 1993)

- Association violated Section 718.111(12), Florida Statutes, by willfully failing to provide unit owner with requested copies of the official records. The unit owner had requested the first 18 pages of the declaration and the Association would only provide the entire declaration for a fee of \$75.00. This violated Rule 7D-23.002(9), Florida Administrative Code, permitting an association to charge no more than \$.25 per page.
- The failure of the Association to provide unit owners with the requested unit owner roster within 10 days was not willful where the Association provided it to the unit owner within 13 days.

Stephens v. Townhouses at Nova 1
Case No. 93-0203 (Goin / Partial Summary Final Order and Order to Show Cause Regarding Count I of Petition / November 20, 1995)

- Association failed to provide unit owner with association records after unit owner made oral requests in 1990 and 1991; at the time of oral requests, statute did not require an owner to make a written request and did not provide for money damages.

The Trails at Royal Palm Beach, Inc. v. Wargovich,
Case No. 93-0320 (Goin / Final Order / May 31, 1995)

- Association did not willfully violate section 718.111(12) where it provided unit owner with original recorded documents which did not contain amendments, where the manager was not aware of the missing amendments, and where the association

provided the owner with a complete set of documents the day after the association was notified of discrepancy.

- Association did not willfully violate section 718.111(12) where the unit owner's attorney gave the association an open-ended extension of time to provide him with certain documents, and where the extension of time was never revoked.

Wise v. Parker Tower Condo. Assn., Inc.,

Case No. 94-0246 (Draper / Final Order / December 9, 1994)

- Association found to have violated section 718.111(12), regarding access to the official records, where simple request to see certain invoices was not granted for nine months. Association failed to rebut presumption created by statute that failure was willful.
- Unit owner's request to see "invoices" held not sufficient to require association to provide access to the "general ledger" of the association. However, after owner clarified his request in a meeting with the association president and manager, association's failure thereafter to provide access to the ledger found to be willful and association fined \$1,000.00 for two violations.

Young-Ling v. Ebb Tide Condo. Assn., Inc.,

Case No. 93-0212 (Scheuerman / Summary Final Order / February 16, 1994)

- Where association refused to accept registered mail requesting access to records, but where arbitrator served a copy of the letter on the association in conjunction with arbitration Order Requiring Answer, failure of the association to provide copies of the documents during pendency of arbitration over the course of a period of months supported finding of willful violation of section 718.112(2)l.

Parking/Parking Restrictions

Alvares v. Las Olas Condo.,

Case No. 93-0114 (Player / Final Order / April 6, 1994)

- Association's practice of enforcing rule prohibiting boats on the condominium property as to open parking spaces, but not as to enclosed garages was contrary to plain language of the rule and constituted selective enforcement against petitioner who parked his boat in an open parking space.

Biscayne Development Limited v. Venetian Isle Condo., Inc.,

Case No. 95-0517 (Scheuerman / Final Order / October 21, 1996)

- Where neither documents nor statute guaranteed right to covered parking, final order entered denying relief requested as there was no basis for concluding that parking assignment was arbitrary.

Brazlavsky v. Admiral Towers Condo., Inc.,

Case No. 95-0460 (Draper / Final Order / November 1, 1996)

- Common element parking space, once assigned by association for the exclusive use of a unit owner, does not become a limited common element appurtenant to the unit where declaration did not designate space as limited common element and provided only that once assigned the space would remain a part of the common area but used by the unit owner.
- Association held to have unreasonably acted when it took away assigned parking space from unit and did not replace it with another, where it did so without reference to any policy or procedure on parking, such action had never been taken before, and it did so without notice, explanation or opportunity to be heard on the matter.

Childress v. Beacon Point Condo. Assn., Inc.,

Case No. 93-0002 (Price / Amended Final Order / April 29, 1993)

- Board had the authority to reassign unit owner's parking space where parking area was part of the common elements and subject to assignment by the board.

Donnelly v. Boca Cove Condo. Assn., Inc.,

Case No. 93-0010 (Scheuerman / Final Order / December 21, 1993)

- Where declaration prohibited the parking of trucks or other commercial vehicles, application of the well-known doctrine of the last antecedent required conclusion that only the parking of commercial trucks was prohibited.

Dostis v. Mar Del Plata Condo. Assn., Inc.,

Case No. 95-0250 (Scheuerman / Final Order / December 16, 1996)

- Where owner filed petition seeking declaration of entitlement to use of 4 limited common element parking spaces, and where association filed counterclaim seeking to collect use fees for the parking spaces, dispute primarily concerned limited common element parking spaces made an appurtenance to the unit, and the fee aspect of the dispute was secondary. Hence arbitrator had authority over dispute described in petition and counterclaim.
- Where declaration authorized the developer to assign limited common element parking and guaranteed penthouse owners 2 spaces, declaration did not create an absolute limitation on the number of spaces which could be assigned an owner except

to the extent of the number of extra spaces left after minimum entitlements to spaces was satisfied.

- Agent for developer shown to possess sufficient authority to assign parking spaces to purchaser.
- Parking spaces duly assigned by the developer created vested rights in purchaser, which could not be divested by unilateral action of the association in purporting to reassign spaces.

Epstein v. Bel-Aire, Inc.,

Case No. 92-0260 (Price / Order Denying Motion to Dismiss / December 22, 1992)

- Issue of reassignment of parking space by board is a “dispute” subject to arbitration.

Esposito v. Camelot Oaks Condo. Assn., Inc.,

Case No. 95-0061 (Richardson / Summary Final Order / September 26, 1995)

- Petitioner’s claim that he was entitled to a covered parking space because he owned the penthouse unit and paid more in common expenses than some other unit owners who had been assigned covered parking was legally insufficient to prove entitlement to a covered space where neither statute nor document supported position.

Florida Shores Condo., Inc. V. Haynie,

Case No. 92-0303 (Player / Final Order / May 11, 1993)

- The unit owner’s installation of posts around his designated parking space constituted a material alteration to the common elements without prior board approval.
- The Association’s failure to enforce the parking rules constitutes poor management practices; however, this failure to consistently enforce the rules does not demonstrate a clear intent to waive the right to enforce the parking restrictions.
- The Association’s failure to enforce its parking restrictions does not provide sufficient justification for a unit owner to violate the documents prohibiting material alterations to the common elements by the installation of wooden posts around his designated parking space.
- The relief sought by the Association, that the unit owner be ordered to remove the wooden posts, was granted; simultaneously, the Association was ordered to enforce, in the future, its parking restrictions. The Association was ordered to take whatever

additional action was necessary to ensure that the parking space was available to the unit owner at all times.

Goodman v. Mayfair Condo. in Park West Condo. Assn., Inc.,

Case No. 94-0144 (Richardson / Summary Final Order / August 10, 1994) (Appeal dismissed. Goodman v. Mayfair Condo. in Park West Condo. Assn., Inc., Case No. 94-5204-CI-19, 6th Jud. Cir. Ct., March 14, 1995) (Unit owner's appeal dismissed with prejudice for failure to present prima facie case. Amendment to declaration did not alter or modify appurtenances to unit and was validly passed)

- Amendment to declaration which redesignated the covered parking spaces from common elements to limited common elements did not change the appurtenances to Petitioner's unit because Petitioner did not have use of a carport when he purchased the unit. Moreover, parking spaces, by their very nature, are exclusive. Also, the spaces were originally intended to constitute limited common elements as evidenced by the developer's deeds of sale.

Graham v. Shady Dell Riverview South Owners' Assn., Inc.,

Case No. 93-0027 (Price / Arbitration Final Order / June 8, 1993)

- Where provision in declaration did not prohibit certain types of vehicles but allowed the board, in the exercise of its discretion, to decide whether a particular vehicle will be permitted to park on the common elements, board's decision to prohibit a motor home from parking on the common elements was unreasonable where owner had a disability and needed to have a bed and toilet when she traveled. Also, association's reasons for prohibiting vehicle were not reasonably related to the fulfillment of a legitimate objective, i.e., the health, happiness and peace of mind of the unit owners.

Green Terrace Condo. Assn., Inc. v. Bevan,

Case No. 92-0291 (Scheuerman / Summary Final Order / July 19, 1993)

- Where a declaration prohibited the parking of "trucks," board rule which defined "truck" to include vans with no perimeter windows or rear seats was reasonable, as a truck is a vehicle designed or used primarily for the transportation of goods. The authority of a board to regulate parking derives from its statutory authority to regulate the use of the common elements. The board has the authority to promulgate rules regulating parking so long as such rules do not conflict with a right given under the declaration of condominium, if within the scope of authority delegated to the board, and if not arbitrary and capricious.

Harbor Lights, Inc., of Naples v. Smith,

Case No. 96-0099 (Scheuerman / Final Order / February 4, 1997)

- Selective enforcement of parking restrictions shown where although the association sought to enforce rule requiring owners to park in their designated spots against the

respondent, association permitted another owner and the manager to park in spots assigned to other owners.

Hobbs v. Chateau Tower, Inc.,

Case No. 93-0047 (Scheuerman / Summary Final Order / July 8, 1993)

- Association will not be permitted to, in ostrich-like fashion, ignore facts readily observable in the operation of the condominium. The association in this case had actual awareness of the vehicle type and is not permitted to take refuge behind an erroneous certificate of title.
- Where the board rules prohibited the parking of a van which was not a passenger vehicle but permitted station wagons, the Chevy Astro Van was in fact a “van” despite the designation given to it by the Division of Motor Vehicles’ Certificate of Title indicating the vehicle was a “station wagon.”
- The arbitrator was not estopped from determining the true identity of the vehicle where the Division of Motor Vehicles, in response to the affidavit of the vehicle owner, had recently changed the body type designation to station wagon. Estoppel against the state is not favored, and to justify a claim of estoppel, there must be a representation by the party estopped to the party claiming estoppel as to some material fact, reliance on the representation, and a change in position. Here, the only representation was made by the vehicle owner through its affidavit to the Division of Motor Vehicles attesting that the vehicle was in fact a station wagon. Moreover, estoppel does not lie in favor of a stranger to the transaction, and hence, the association cannot claim estoppel because it was not a party to the transaction between the vehicle owner and the Division of Motor Vehicles. Also, under no circumstances may this state be estopped by the unauthorized acts or representations of its officers. Administrative officers are not estopped through mistaken statements of fact.

Hollingsworth v. Royal Richey Village II Condo. Assn., Inc.,

Case No. 94-0151 (Scheuerman / Summary Final Order / August 2, 1994)

- Where board had authority to promulgate rules, rule prohibiting trucks except in a designated parking area not shown to be inconsistent with the declaration where declaration limits assigned parking to “automobiles.”
- Board’s interpretation of prohibition on the parking of “trucks” not shown to be unreasonable where board permitted the parking of jeeps, vans, explorers, and Broncos on the condominium property while prohibiting the parking of pickup trucks. Association’s position that a vehicle is a truck for purposes of enforcement if it is adapted to carry cargo, as opposed to passengers, not shown to be irrational, and defense of selective enforcement was unsuccessful.

Hunt v. Half Moon Bay by K. Hovnanian Condo. Assn., Inc.,
Case No. 95-0183 (Scheuerman / Final Order / March 11, 1996)

- Where in separate litigation against a different owner, association rule banning trucks was declared to be invalid on its face and as applied, and where association had subsequently adopted new parking rule, association could not be permitted to enforce new rule against owner of truck which had been acquired by petitioner unit owner before the original parking rule had been declared invalid but before adoption by association of new parking rule. To attempt to enforce the new truck rule against a vehicle parked on the property before the new rule was in effect is tantamount to an unlawful retroactive application of the new rule to a pre-existing truck.

Lake Tippecanoe Owners Assn., Inc. v. Talierco,
Case No. 95-0462 (Scheuerman / Final Order / April 3, 1996)

- Estoppel not proved where owner was made specifically aware of motorcycle restriction at purchase and no representation was made that the restriction could be ignored. Neither was there a change in position; motorcycle was purchased prior to the purchase of the unit.

Lessne v. Family Townhouses of the Lakes of Emerald Hills, Inc.,
Case No. 92-0235 (Goin / Summary Final Order / July 28, 1993)

- In case brought by unit owners claiming that assigned parking space collected rainwater, association ordered to repave parking space to alleviate condition.

Lester v. Pine Ridge at Delray Beach Condo. Assn., Inc.,
Case No. 94-0112 (Scheuerman / Summary Final Order / October 28, 1994)

- Where documents permitted the parking of automobiles, vans, and other vehicles commonly used as private passenger vehicles, but prohibited in the next sentence other types of vehicles including, but not limited to, trucks and boats, documents construed to prohibit the parking of all trucks even where truck was used as private passenger vehicle.
- Selective enforcement determined not to exist where association enforced its anti-truck parking rule against pickup trucks, but not against jeeps and rangers, which are vehicles designed to transport persons.

Lott v. The Moorings of Pinellas County Condo. Assn., Inc.,
Case No. 93-0179 (Scheuerman / Arbitration Final Order / January 14, 1994)

- Selective enforcement determined to exist where board only enforced bylaw prohibition against trucks at night; result of enforcement policy is selective enforcement against unit owners parking at night.

Lott v. The Moorings of Pinellas County Condo. Assn., Inc.,
Case No. 95-0190 (Draper / Order Dismissing Petition / May 30, 1995)

- Petition alleging association was arbitrarily or selectively enforcing its parking policies dismissed where petition alleged that association was enforcing its pickup truck prohibition but had permitted a motorcycle to park on the condominium property, and a commercial truck had been given permission to park on the property, and where the association had permitted a Bronco and Blazer to park on the property. Type of violations alleged to have been permitted by board are not comparable to the parking of a pickup truck.

Maurer v. Summerlin Woods Condo. Assn., Inc.,
Case No. 94-0362 (Scheuerman / Final Order / April 7, 1995)

- Where recorded rule prohibited trucks larger than one-half ton capacity, trucks with dual rear wheels, or pickup trucks without a covered bed, facts did not demonstrate selective enforcement where it was not shown that the few violations of the parking rules shown at the final hearing by the unit owner were within the knowledge of the board. Moreover, it was shown that several of the asserted violations involved vehicles which had been grandfathered-in by the association; other claimed violations have in fact been ticketed by the association, and none of the other violations involved dual rear wheels or one-ton capacity truck.

Najafzadeh v. Rossmoor Bahama Village Assn., Inc.,
Case No. 93-0089 (Player / Final Order / December 13, 1993)

- Unit owner not entitled to additional parking decals where only one of 300 unit owners had a second decal and no special circumstances were shown to warrant granting additional decal.

Nettles Island, Inc. v. Barrett,
Case No. 93-0224 (Player / Final Order / May 3, 1994)

- Rule prohibiting boats, boat trailers, and utility trailers, held to contravene the declaration. The ban on permanent and semi-permanent structure in the declaration suggested a recreation-oriented style of living. Therefore, it would be logical to assume that vehicles associated with recreational activities, and the trailers needed to move them, would be permitted to be kept at the condominium.
- Rule was also held to be unreasonable. Rule did not further the objectives of aesthetics, preservation of view and air flow, management of crowded conditions, and safety because rules allowed a second RV-type vehicle to be parked (if the resident's only form of transportation); board had allowed large permanent and semi-permanent residences to be constructed; it would be substantially more hazardous to back a car out of a driveway where the view is blocked by a second RV-type vehicle than it would

be to back out where the only visual obstacle is a boat or small trailer; and the second mobile homes and the golf carts covered and stored in the driveways, which are not prohibited by rules, are more unsightly than the various boats and trailers which are prohibited.

Park Lake Village Condo. Assn., Inc. v. Gonzalez,

Case No. 94-0453 (Richardson / Final Order / March 30, 1995)) (Appeal to circuit court dismissed due to settlement.)

- Where association approved transfer of unit to new owner with knowledge that new owner would be driving dealer cars, which would be frequently changed, on the common elements, association may not require unit owner to permanently affix the decals to the bumper of the cars. Association had previously accepted laminated tag arrangement, whereby owner laminated the parking decals and placed them in the front windshield, and such acceptance operated as a waiver of its right to enforce the bumper rule.

Plaza Del Prado Condo. Assn. V. Peleg,

Case No. 96-0291 (Scheuerman / Summary Final Order / July 25, 1997)

- Where association sought to enforce new rule banning trucks against pre-existing truck in compliance with then-existing rules, association's efforts amounted to a retroactive application of new rule which is prohibited.

Powers v. Voyager Condo. Assn., Inc.,

Case No. 93-0223 (Player / Final Order / December 3, 1993)

- Arbitrator had jurisdiction over dispute alleging that association was failing to enforce the right of a unit owner under the documents to exclusive use of an assigned parking space appurtenant to the unit where another unit owner was asserting the right to use the same parking space. The dispute involves the use of an appurtenance to the unit, which is a limited common element parking space.

Rice v. Windrush Condo. Assn., Inc.,

Case No. 94-0321 (Richardson / Summary Final Order / April 7, 1995)

- Petitioner was entitled to exclusive use of limited common element parking space, which was made an appurtenance to his unit upon the sale of the unit. The unit could not be separated from its appurtenances, and accordingly, transfer of parking space to a different unit was invalid.

Schiffman v. Golden Isles Towers Condo. Assn., Inc.,

Case No. 93-0360 (Player / Order Denying Respondent's Motion to Dismiss / January 5, 1994) (Arbitrator's decision overturned. Golden Isles Towers Condo. Assn., Inc., v. Schiffman, / Case No. 94-13059(18) 17th Jud. Cir. Ct. / Feb. 22, 1996 (Plaintiffs were

entitled to ownership and use of parking space 2-A and association had duty to enforce that right, where prior owner of space conveyed unit by warranty deed to defendants (Schiffman) but conveyed parking space by warranty deed to plaintiffs (Singers) and where declaration allowed such conveyance.)

- Where unit owner brought arbitration against association and alleged that the association had failed to ensure the owner's exclusive use of a parking space appurtenant to the unit, dispute was not dismissed because title to the unit and its appurtenances was not involved. Under section 718.107, the separate conveyance of a unit and the appurtenances thereto is prohibited, and accordingly, the conveyance of the subject parking space to a different unit owner separately from conveyance of the unit was void as a matter of law. The dispute instead involved the association's authority with regard to a unit and the appurtenances thereto.

Schiffman v. Golden Isles Towers Condo. Assn., Inc.,

Case No. 93-0360 (Player / Order Denying Respondent's Motion to Dismiss / January 5, 1994) (Arbitrator's decision overturned. Golden Isles Towers Condo. Assn., Inc., v. Schiffman, / Case No. 94-13059(18) 17th Jud. Cir. Ct. / Feb. 22, 1996 (Plaintiffs were entitled to ownership and use of parking space 2-A and association had duty to enforce that right, where prior owner of space conveyed unit by warranty deed to defendants (Schiffman) but conveyed parking space by warranty deed to plaintiffs (Singers) and where declaration allowed such conveyance.)

- Original owner's transfer of limited common element parking garage separately from the transfer of a unit was void as a matter of law. The undivided share in the common elements appurtenant to a unit shall not be separated from the unit and shall pass with title to the unit.

Shenandoah Estates, Inc. v. Canady,

Case No. 93-0161 (Goin / Final Order / January 10, 1994)

- Unit owner violated declaration where he parked his commercial truck and trailer at the condominium daily for one to two hours to eat lunch. Truck is used in connection with spa service business. The fact that unit owners owned a spa which they used daily does not activate exception in declaration for service vehicles where there was no evidence presented that large equipment must be brought on the premises daily in order to service the spa.

Sionne v. Pell Manor Condo. II Assn.,

Case No. 94-0195 (Draper / Order Requiring Joinder / August 17, 1994)

- In arbitration alleging that association had wrongfully reassigned parking spaces, where parking space claimed by Petitioners was occupied by another unit owner, and where that owner's space was occupied by yet a third unit owner, etc., owners whose parking spaces may be affected by the arbitration ordered to be joined as parties.

Sionne v. Pell Manor Condo. II Assn.,

Case No. 94-0195 (Draper / Summary Final Order / June 22, 1995)

Although survey attached to original declaration designated parking area as limited common elements and contained numbered spaces, where text of declaration did not refer to limited common elements and did not indicate that particular numbered parking space was appurtenant to any particular unit, arbitrator concluded that no particular parking space was reserved for a particular unit, and the only appurtenance to the Petitioner's unit was the exclusive right to use a parking space as later assigned by the association.

Southpointe Villas Condo. Phase IV Assn., Inc. v. Lowry,

Case No. 93-0400 (Grubbs / Final Order / February 27, 1995)

- Where association approved sale of unit to purchaser who had truck, and where purchaser/owner told the association of the existence of the truck and inquired whether there would be any problem concerning approval of the truck, association made representation that truck was permissible and was estopped to enforce truck regulation against owner.
- Where board voted not to enforce truck prohibition against small trucks as reflected in minutes of board meeting, board expressly waived its right to enforce the vehicle restrictions against those identified pickup trucks.

Tanglewood Environmental Preservation Assn., Inc. v. Thomason,

Case No. 96-0308 (Goin / Order Denying Motion to Set Aside Default / April 4, 1997)

- Motion to set aside default denied where unit owner failed to show a meritorious defense. The petition had alleged that unit owner was in violation of parking rules by continuing to parallel park on street rather than driveway. Unit owner did not have a meritorious selective enforcement defense because examples given by unit owner had occurred in the past and had subsequently been corrected and other examples did not involve parallel parking on street. In addition, defense that unit owner did not have room in her driveway and garage to park up to four vehicles was without basis; there was an adequate number of guest spaces available.

Thorpe v. Vista Gardens Assn., Inc.,

Case No. 94-0403 (Goin / Order to Show Cause / November 18, 1994)

- Unit owner ordered to show cause why dispute, alleging that board violated declaration by reassigning visitor parking spaces, should not be dismissed. Spaces involved were not assigned to a particular unit owner; declaration did not designate the parking spaces as limited common elements. Court in Juno by the Sea, 397 So. 2d 297 (Fla. 4th DCA 1981), held that the association's assignment of parking spaces did not constitute a material alteration to the common elements, and that the association had

the authority to assign individual parking spaces. Accordingly, arbitrator concluded that association did not violate declaration.

Villa Condo. I Assn., Inc. v. Bardy,

Case No. 94-0305 (Price / Final Order / April 19, 1995)

- Where association sought to rescind a variance from parking rules given in 1985 to permit unit owner to park vehicle in turn-around area, arbitrator determined that association had waived its ability to enforce the parking restriction. Variance on its face permitted unit owner to park in turn-around so long as she owned two cars; waiver cannot be withdrawn by unilateral act of the board.

Vista Gardens Condo. Assn., Inc. V. Civalo,

Case No. 95-0005 (Scheuerman / Summary Final order / August 4, 1995)

- A truck is a vehicle designed or used for the transportation of goods. Where a particular vehicle, here, a Chevrolet Suburban, did not appear to be one designed for the transportation of goods, in that it had non-removable seats, windows around the entire perimeter, no flat bed, or other traditional indicia of a truck, but where the vehicle was used regularly in connection with the trade and business for the transportation of goods and debris to and from a job site for construction purposes, use of the vehicle for such purpose rendered the vehicle a truck within the meaning of the prohibition contained in the condominium documents.

Voyager Condo. Assn., Inc. v. Mattera,

Case No. 94-0062 (Richardson / Summary Final Order / August 4, 1994)

- Unit owner had no authority to transfer, separate from the transfer of the unit, the use rights to a covered parking space to another unit owner where declaration designated the space as an exclusive space, which had been sold by the developer to the original purchaser. Space was an appurtenance that passed with title to the unit upon resale pursuant to sections 718.106(2) and 718.107, Florida Statutes.

Wallace v. Shady Dell Riverview South Owners' Assn., Inc.,

Case No. 94-0073 (Price / Summary Final Order / October 4, 1994)

- Where board's refusal to allow unit owner to park his boat and trailer on the common elements is based on consideration such as increased risk of accidents; possible damage or injury to persons or property; and would detract from the aesthetics of the property, refusal was based on legitimate objectives in furtherance of promoting health, happiness, and peace of mind of the unit owners.

Parties (See Arbitration – parties)

Pets

Bayview at the Township Condo. Assn., Inc. v. Greenberg,

Case No. 96-0230 (Oglo / Final Order / May 22, 1997)

- The association generally enforced the rule prohibiting pets in excess of twenty pounds. However, the current board present maintained a dog in excess of the weight limit, which was tolerated by the board after turnover in violation of rules. The maintenance of this dog by the board president established that the association was unequally and arbitrarily enforcing its rule and the respondent unit owner's dog was permitted to stay.

The Beaches of Longboat Key-South Owners Assn., Inc. v. Goldreyer,
Case No. 96-0158 (Oglo / Partial Summary Final Order / September 9, 1996)

- The unit owners admitted keeping a pet dog that was not their original pet when they purchased from the developer, in violation of the documents, but alleged that other unit owners maintained a cat and a dog, respectively. Based upon the cat being found not to be a comparable violation, and the association showing that it required the other unit owner to remove his dog, the arbitrator concluded that the respondents failed to establish their affirmative defense of selective enforcement.

Board of Trustees of Bel Fontaine v. Caruso,
Case No. 94-0116 (Richardson / Final Order / September 14, 1994) (currently on appeal)

- Unit owner, who was a board member, violated no-pet restriction in declaration by knowingly leasing unit to tenants who owned dog.

Brodka v. Sunset Cove Condo. Assn., Inc.,
Case No. 93-0293 (Player / Order on Issue of Law and Notice of Formal Hearing / March 1, 1994)

- Board rule permitting pets, including birds, at the discretion of the board, was inconsistent with provision of declaration permitting the keeping of caged birds with no mention made of board approval. Board rule was, accordingly, invalid.

Casa La Quinta Condo. Assn., Inc. V. La Rochelle,
Case No. 96-0235 (Scheuerman / Final Order on Default / November 15, 1996)

- Where dog was not walked on leash, accosted young residents without provocation, defecated at random but continuous intervals inside building's common areas, and made noises at night, dog was a nuisance and ordered removed.

Cascades of Lauderhill Condo. Assn. v. Denker,
Case No. 92-0127 (Helton / Final Order / December 15, 1992)

- Dog entitled to take advantage of grandfather" clause in restriction prohibiting certain pets after its effective date even where dog not registered as required by clause.

Cascades of Lauderdale Condo. Assn. v. Feingold,
Case No. 93-0050 (Price / Summary Final Order / September 14, 1993)

- Unit owner and tenant who failed to obtain prior board approval of cat violated documents; unit owner required to submit request for permission to keep the cat to the board, and the board was required to approve or disapprove the application using the same criteria as it applied in other circumstances involving other unit owners whose applications to keep a cat were approved.

Chateau Chaumont of Ibis Isle Assn., Inc. v. Williams,
Case Nos. 93-0327; 93-0326 (Draper / Case Management Order / August 16, 1994)

- Where association filed arbitration petition against unit owners seeking removal of unauthorized dogs, affirmative defense of unit owners that there is a lack of security on the premises, and that crimes occur with frequency in the surrounding community, struck.

Chateau Chaumont of Ibis Isle Assn., Inc. v. Williams,
Case Nos. 93-0327; 93-0326 (Draper / Case Management Order / August 16, 1994)

- Selective enforcement not shown where other unit owner in condominium permitted to harbor nephew and dog for one year due to family emergency.
- Selective enforcement not shown where it was not demonstrated that association had knowledge of other violations asserted by unit owner. Other dog in condominium as transported about the common elements hidden in a tennis bag.
- Defense of medical necessity not shown where no competent evidence established handicapped status. Witness testified that she had a little nervous condition, and the letter from her daughter, a psychologist, was unsupported hearsay where daughter did not testify regarding mental impairments that substantially limit a major life activity.
- Lack of security at condominium did not justify keeping a pet for protection in violation of the documents.

Country Condo. Assn., Inc. v. Mathesie,
Case No. 96-0378 (Scheuerman / Summary Final Order / January 7, 1997)

- Even though original dogs were grandfathered in and could not be removed under new rule, where original dogs died, owner not entitled to replacement dogs.

Country Pines of North Fort Myers Condo. Assn., Inc. v. Marlow,

Case No. 96-0309 (Goin / Arbitration Final Order / May 7, 1997)

- Rule requiring that dogs be “curbed” only in designated dog walk areas was reasonable. In addition, location of dog walk areas not unreasonable. Unit owner could walk dog in an area near her unit and even though the area was not completely covered with lush thick grass, there was adequate green space for dogs to be curbed. In addition, there was a large grassy area right outside the condominium property where unit owner could walk dogs.

Country Pines of North Fort Myers Condo. Assn., Inc. v. Ward,
Case No. 94-0145 (Draper / Summary Final Order / August 15, 1994)

- Declaration amendment restricting dogs to twenty-five pounds or less could not be properly applied to dog possessed by unit owners prior to amendment, even where periodically the dog would vacate the unit.

Cypress Court of Oak Terrace v. Lingbloom,
Case No. 92-0179 (Grubbs / Final Order Determining Jurisdiction / July 29, 1992)

- Arbitrator had authority to hear dispute alleging unauthorized occupants in unit with dog; involves the use of unit.

Cypress Court of Oak Terrace Condo. Assn., Inc. v. Lingblom,
Case No. 93-0107 (Grubbs / Final Order / December 16, 1994)

- Fact that dog left unit, along with unit owner’s fiancé, who also lived in the unit, and went to New Jersey for about four months, and then returned to unit with fiancé, did not mean that dog could no longer reside in the unit under new restriction barring dogs from condominium. Since dog had lived in unit prior to passage of the restriction, temporary separation from unit did not change its status.
- Although dog was purchased by unit owner as a gift for fiancé, dog was a family dog and the unit owner and his fiancé were a family for purposes of construing pet restrictions contained in declaration.

Cypress Lakes Estates Condo. Assn., Inc. v. Jursinski,
Case No. 94-0359 (Grubbs / Prehearing Order / October 28, 1994)

- Provision in declaration permitting small dogs weighing 25 pounds or under construed to refer to weight as fully grown adult dog. Where dog weighed less than 25 pounds was initially approved by association but years later became old and fat, association not authorized to remove dog. Board cannot later withdraw its approval because puppy turned out to be the “Baby Huey” of its breed. Unit owner permitted to file veterinarian affidavit verifying that normal adult weight of that breed is 25 pounds or less, and that dog is simply overweight due to age or other factors.

Cypress Lakes Estates Condo. Assn., Inc. v. Jursinski,
Case No. 94-0359 (Grubbs / Summary Final Order / July 7, 1995)

- Dog which was residing in unit at the time the enforcement policy of the association changed would be grandfathered in even though the dog was not registered at the time as required by new rules.

Cypress Lake Estates Condo. Assn., Inc. v. Snyder,
Case No. 94-0288 (Scheuerman / Summary Final Order / December 27, 1994)

- Failure of the developer to enforce pet rules and regulations does not preclude the unit owner controlled association from determining to enforce the documents after turnover.
- Selective enforcement will not lie where the association has failed to have an opportunity to observe the violations.
- Where association was shown not to have knowledge of other oversized dogs in the condominium, and where this information was not contradicted by unit owner or tenant, and where other large dogs in the complex were permitted by developer and grandfathered in by unit owner controlled association, selective enforcement not established.

Digialcomo v. Seascape Condo. Management Assn., Inc.,
Case No. 96-0436 (Goin / Summary Final Order / April 1, 1997)

- Amendment to declaration recorded in 1993 prohibiting pets was invalid where unit owners passed amendment by general proxy. Board rule adopted in December 1996 prohibiting pets was valid because declaration was silent regarding pets. However, rule could be only prospectively applied to pets acquired after December 1996. board could not enforce rule against unit owner, who acquired pet after invalid 1993 amendment but before December 1996.

Egret's Walk III Condo. Assn., Inc. v. Athans,
Case No. 96-0356 (Draper / Final Order / April 3, 1997)

- Where unit owner's dog barked fiercely for several minutes at a time and four or more times per night, especially during late night and early morning hours, over a period of 10 months, with no cause, unit owner ordered to remove the dog permanently from the unit.

The Estuary at North River Shores Condo. Assn., Inc. v. Matijak,
Case No. 97-0187 (Scheuerman / Summary Final Order / July 29, 1997)

- Selective enforcement not shown where only other dog on the property resided at the condominium prior to the amendment to the declaration which prohibits dogs.

Fiddler's Green Condo. Assn., Inc. v. Clements,

Case No. 93-0233 (Grubbs / Final Order / August 8, 1994)

- Fact that two other people had "after acquired" pets, four years before and seven years before respondent unit owner obtained her pet, was not sufficient to establish selective enforcement or estoppel where the only other two pets permitted on the property had been permitted by the developer-controlled association.

Forest Villas Condo. Apartments, Inc. v. Malicoat,

Case No. 97-0086 (Draper / Summary Final Order / July 31, 1997)

- Selective enforcement not shown in dog removal case where unit owner alleged other unit owners had cats which were also in violation of "not pet" provision.

Four Seasons Condo. Assn. of Winter Park, Inc. v. Torres,

Case No. 92-0308 (Grubbs / Arbitration Final Order / January 28, 1994)

- Injunctive type order issued requiring unit owners to keep their cat inside unit unless on a leash, as required by rule, even in absence of showing of irreparable injury, where evidence demonstrated aggressive nature of animal which had destroyed other personal property, attacked other cats, and had been given free access to the common elements through construction of a "doggie door."

Glens Condo. v. Nelson,

Case No. 92-0163 (Player / Final Order / December 29, 1992)

- Dog that resided in unit for five years entitled to remain in unit despite no-pet restriction in declaration.
- Knowledge of dog's presence in unit acquired by board members in social setting rather than at board meeting, will be attributed to the association.

Grove Isle Condo. Assn., Inc. v. Levy,

Case No. 96-0172 (Draper / Summary Final Order / November 19, 1996)

- Declaration provision prohibiting pets in units except for those kept by unit owners construed to mean unit owners but not tenants could have pets. This differential treatment of tenants is acceptable as it is not wholly arbitrary, and does not violate public policy or abrogate a fundamental constitutional right.

Harbor Lights, Inc., of Naples v. Smith,

Case No. 96-0099 (Scheuerman / Final Order / February 4, 1997)

- Selective enforcement of parking restrictions shown where although the association sought to enforce rule requiring owners to park in their designated spots against the respondent, association permitted another owner and the manager to park in spots assigned to other owners.
- Where the conflicting evidence showed that the dog had been removed from the unit prior to the filing of the petition, the relief requested by the association was denied.

Hillcrest East No. 26, Inc. v. Weinberg,

Case No. 96-0432 (Draper / Summary Final Order / March 26, 1997)

- Bylaw prohibiting dogs in unit determined to be invalid where declaration provided unit owner could keep dogs in the unit. Association's argument that failure to amend declaration to prohibit dogs constituted a scrivener's error and should, therefore, be overlooked, rejected. Fact that bylaw amendment to prohibit dogs was approved by 75% of unit owners, the same number required to amend declaration, also rejected as rationale for recognition of restriction. Fact that unit owner signed application to purchase unit in which he agreed to be bound by bylaws does not require him to be bound by invalid bylaw.

Hutchinson Island Club Condo. Assn., Inc. v. Scialabba,

Case No. 96-0089 (Scheuerman / Partial Summary Order / November 15, 1996)

- Where declaration was silent on issue of pets, and where board given authority to promulgate rules regarding unit use, rule prohibiting pets was authorized.
- Where new rule prohibiting pets was not recorded nor required to be recorded in the public record, owners as purchasers not entitled to rely on fact of no-recording when they signed interview form.
- Declaration not required to contain pet restrictions, and hence rule restricting pets not invalid on this basis.
- Rule prohibiting dogs not unreasonable but related to happiness and welfare of residents.
- Agenda for board meeting held in 1985 adequately disclosed fact that pet rule changes would be voted upon where agenda indicated that changes to rules previously discussed at prior board meeting would be considered.

Indian Pines Village Condo. Assn., Inc. v. Venables,

Case No. 96-0132 (Scheuerman / Final Order / September 23, 1996)

- Where animal secretly brought back on the property twice in violation of rules, final order entered requiring permanent removal of dog and compliance with documents.

The Lakes of Inverrary Condo., Inc. v. Goldberg,

Case No. 93-0125 (Price / Summary Final Order / October 5, 1993)

- Where a declaration did not prohibit pets, but permitted board to adopt reasonable regulations governing the use of the units, board rule prohibiting pets did not contravene either an expressed provision of the declaration or a right reasonably inferred therefrom, and the rule was accordingly reasonable.

Laurel Oaks at Pelican Bay Condo. Assn., Inc. v. Athans,

Case No. 93-0172 (Goin / Final Order / October 21, 1993)

- Where declaration only granted to board rule making authority pertaining to use of the common elements not including the units, board rule prohibiting the possession of pets exceeding 20 pounds was invalid as it exceeding the rule making authority of the board.

Le Club At Kendale Lakes Condo. Assn., Inc. v. Ruiz,

Case No. 95-0430 (Draper / Summary Final Order / June 28, 1996)

- Where declaration prohibited pets without association approval, defense by unit owner that no one from association had adequately explained rules and regulations held inadequate.

Leisure Living Estates Condo. Assn., Inc. v. Sippell,

Case No. 92-0295 (Player / Final Order / September 23, 1993)

- Unit owner with hearing impairment that substantially limits her ability to hear may keep hearing guide dog in her unit despite no pet restriction in the declaration; permitting unit owner to keep dog is reasonable accommodation to her disability; hearing guide dog is not a "pet."

Lowe v. Englewood Isles I Assn., Inc.,

Case No. 93-0237 (Goin / Summary Final Order / November 15, 1993)

- Where declaration permitted pets so long as there were kept on the leash and were not permitted to litter on the common elements, board rule prohibiting all pets was invalid because it contravened and express provision in the declaration

MacClary v. Carlton Towers Condo. Assn., Inc.,

Case No. 94-0355 (Draper / Partial Summary Order / February 27, 1995)

- Where declaration permitted dogs owned at the time of closing, and where unit owner purchased a unit in 1988 and his new wife subsequently moved into the unit with dog in 1994, exception under documents did not find application as wife did not purchase unit.

Melaleuca Gardens Condo., Inc. v. Montak,

Case No. 95-0096 (Evans / Final Order / October 9, 1995)

- Where unit owner obtained a cat and where two of the association's board members regularly visited unit for approximately one year of the cat's residency, board members knew or should have known that there was a cat. Where declaration gave board the authority to approve or disapprove pets, and where neither board member ever expressed disapproval to the unit owners or suggested that the cat's presence violated the condominium documents, unit owners took the board members' acquiescence as approval of the presence of the cat. Association estopped from enforcing restriction against pets.

Naples Four Winds, Inc. v. Twiddy,

Case No. 93-0069 (Goin / Summary Final Order / September 15, 1993)

- Where a declaration of condominium permitted only original purchasers from developer to keep dogs on the condominium property, and further extended that right only to dogs owned by the original purchasers at the time of purchase, replacement dogs were not permitted to be kept even by original purchasers.
- Provision in declaration restricting the right to possess dogs, and prohibiting replacement dogs, is clothed with a strong presumption of validity and will be upheld even if unreasonable.
- Selective enforcement determined not to exist where declaration prohibited the keeping of dogs except under certain conditions, did not prohibit the keeping of cats, and where cats were shown to have been kept on the condominium property.

Oaks Unit III Condo. Assn., Inc. v. Hedges,

Case No. 93-0307 (Grubbs / Arbitration Final Order / March 29, 1994)

- In usual case, when pet violation has been cured by removal of dog, the case becomes moot and would be dismissed; however, where violation was willful and knowing, where unit owner made no attempt to cure the violation despite eight months of warnings by the association, and future violations are probable, injunctive type order, and not dismissal, entered.

Ormondy Condo. Management Assn., Inc. v. Street,
Case No. 94-0534 (Grubbs / Summary Final Order / August 14, 1995)

- When interpreting the sentence “no dog, cat, or other pet which normally requires access to the outside shall be kept in the condominium,” the clause “which normally requires access to the outside” must be construed as modifying only “any other pet” both as a matter of the plain language of the restriction and under the doctrine of the last antecedent. Accordingly, owner not permitted to have a cat even if cat did not require access to the outside.

Parkview Plaza Condo. Assn., Inc. v. Benayon,
Case No. 96-0346 (Oglo / Final Order / May 28, 1997)

- Evidence found sufficient to conclude that dog's barking constituted a nuisance.

The Plum at Boca Pointe Condo. Assn., Inc. v. Pales,
Case No. 92-0224 (Player / Final Order / May 24, 1993)

- Where developer approved exception to pet rule, Association estopped from requiring removal of pets already approved; unit owner controlled Association could enforce pet restrictions prospectively.

Racquet Club Apts. At Bonaventure 4 North Condo. Assn., Inc. v. Boehle-Nelson,
Case No. 96-0037 (Goin / Final Order / October 29, 1996)

- Where unit owners brought in a 70-pound dog after they bought their unit, in violation of declaration, and association waited 18 months before filing petition for arbitration, unit owners did not establish estoppel; passage of time, standing alone, not sufficient to establish estoppel.

Regency Owner's Assn., Inc. v. Riech,
Case No. 95-0113 (Grubbs / Summary Final Order / July 14, 1995)

- A new pet restriction may be applied prospectively only. Authorized dog living in the unit on the date of passage of rule prohibiting dogs did not have to be removed, but second dog, acquired after passage of restriction, had to be removed from unit.

Sandy Cove of Lakeland, a Condo., Inc. v. Richards,
Case no. 96-0092 (Scheuerman / Final Order / January 30, 1997)

- An association is not entitled to enforce its substantive restrictions in a retroactive manner. Where dogs were given to owner and resided in unit for a short time prior to new pet restriction, restriction could not be enforced against pre-existing dog.
- Nuisance not established where it was only shown that dogs lunged and barked when on a leash on the common elements. The facts did not warrant the conclusion

that the duration, frequency and the degree of interference to property rights was sufficient to show a private nuisance.

Southport at Hunters Run Condo. Assn., Inc. v. Gilson,
Case No. 94-0013 (Goin / Summary Final Order / April 19, 1994)

- Defense that unit owner could not live in Chicago during the winter because of compressed vertebrae did not excuse unit owner from keeping three dogs in her unit, each in excess of the twenty-five pound weight limit established by documents.

Spring Lake Condo. Assn., Inc. v. Bruce,
Case No. 94-0271 (Grubbs / Summary Final Order / October 21, 1994)

- Fact that dog in unit actually belongs to tenant's boyfriend and only visit a few days a week is not relevant when rules prohibit any dogs weighing over twenty-five pounds from being kept on the condominium property.

Taromonia Apartments, Inc. v. Hammond,
Case No. 93-0129 (Scheuerman / Final Order / March 14, 1994)

- Association estopped from enforcing new pet exclusion rule against unit owner where unit owner relied on former pet rule permitting house cats, and where association attorney expressed opinion that promulgation of pet rule was correct.

Terraces Condo. Assn., Inc. v. Morgenstern,
Case No. 93-0318 (Draper / Final Order / August 2, 1994)

- Statement by developer's sales agent that pet restriction would never be enforced cannot bind the association and estop it from enforcing pet restriction.
- Delay of four months between acquisition of pet and enforcement efforts by association does not constitute waiver.
- Where board of directors has for four years knowingly permitted a former board member to keep a pet in violation of the documents, selective enforcement has been shown. Although the association enforced the restriction against numerous pet owners, the failure to do so against the former board member, who acquired illegal dog while on the board, is particularly odious and shows inconsistent enforcement.

Terraverde II Condo. Assoc. V. Schulz,
Case No. 92-0135 (Grubbs / Final Order / December 3, 1992)

- One pet per unit with 20-pound maximum weight deemed reasonable.

Timberwoods Condo. Assn., Inc. v. Parker,

Case No. 93-0328 (Draper / Summary Final Order / October 7, 1993)

- Association rule limiting height of dog to eighteen inches held invalid where declaration provided that pets could be kept on the premises provided they were leashed while outside the unit. The right to have a dog of any size is inferable from the declaration, and the board rule contravened this right.

Tivoli Trace Condo. Assn., Inc. v. Ng,

Case No. 96-0021 (Scheuerman / Final Order / July 9, 1996)

- Case filed by association seeking removal of dogs not moot where although dogs were removed from unit, owners intended to return the dogs during vacation periods.
- Dogs held to be a nuisance where facts supported finding that barking interfered with owners' free use and enjoyment of the property.
- Where parking and pet disputes had inexplicably continued for two years despite efforts by association to warn owner of violations, owner ordered to comply with requirements of documents.

The Towers of Quayside No. 4 Condo. Assn., Inc. v. Mui,

Case No. 95-0358 (Goin / Final Order / October 15, 1996)

- Tenant who was keeping a pet in violation of declaration did not show estoppel where association did not seek removal of pet until 2½ years after she acquired pet; when tenant was first seen with dog and questioned about it, tenant lied and told manager that dog belonged to unit owners who lived in another unit; association's inaction was caused by tenant's misrepresentation and tenant could not have reasonably relied on the association's failure to take action against her.

Vanencia Village Condo. Assn., Inc. v. Aloof,

Case No. 96-0251 (Scheuerman / Order Granting Motion for Emergency Temporary Injunctive Relief / July 5, 1996 and Final Order / August 9, 1996)

- Interim temporary injunctive relief awarded requiring owner to remove dog during pendency of arbitration where rottweiler kept in unit had bitten a child, where dog had an abusive prior owner, and was prone to bite when excited.

Versailles Gardens Condo. Assn., Inc. v. Rego,

Case No. 96-0076 (Goin / Final Order / February 13, 1997)

- Where declaration provided that no pets larger than 20 pounds and 14 inches in length and height were allowed; unit owner disclosed on application that dog weighed 22 pounds; and association failed to act on application, unit owner was approved with a 22 pound dog. However, the dog that the unit owner actually moved into the unit was

larger than 14 inches in height and length and weighed more than 22 pounds. Because unit owner did not disclose dog's true size on application and because he knew of the height and weight limitations, unit owner failed to establish estoppel and dog ordered removed.

Young-Ling v. Ebb Tide Condo. Assn., Inc.,

Case No. 93-0212 (Scheuerman / Summary Final Order / February 16, 1994)

- Pet rule prohibiting dogs, passed by a unit owner vote, was void where documents vested exclusive authority in the board to pass rules concerning use of the units and of the common elements.

Prevailing Party (See separate index on attorney's fees cases)

Purchase Contracts

Quorum (See Meetings)

Ratification (See Meetings-Board meetings-Ratification)

Recall of Board Members (See Meetings-Board meetings-Recall) (See separate index on recall arbitration)

Recreation Leases

Relief Requested (See Dispute-Relief granted or requested)

Rental Restrictions/Rental Program (See Tenants-Rental Restrictions/Rental Program)

Reservation Agreements

Reserves

Restraints on Alienation (See Unit-Restraints on alienation)

Sanctions (See Arbitration-Sanctions)

Security Deposits (See Purchase Contracts)

Selective Enforcement (See also Estoppel; Waiver)

Aldea Mar Condo. Assn., Inc. V. Jamak, Inc.,

Case No. 92-0294 (Grubbs / Final Order / February 19, 1996)

- Where association brought suit against corporate unit owner because it was not using its unit as a residence, but as hotel accommodations for a series of guests that rotated in and out of the unit on a weekly basis, unit owner did not establish the defense of selective enforcement even though it did establish that other unit owners had allowed

persons to use their units without having them approved in advance by the association. The evidence established that these incidents were primarily oversights or misunderstandings which occurred only once and no other unit owner routinely allowed guests to rotate in and out on a weekly basis or repeatedly had persons in the unit that had not been approved.

Alvares v. Las Olas Condo.,

Case No. 93-0114 (Player / Final Order / April 6, 1994)

- Association's practice of enforcing rule prohibiting boats on the condominium property as to open parking spaces, but not as to enclosed garages was contrary to plain language of the rule and constituted selective enforcement against petitioner who parked his boat in an open parking space.

Aspenwood at Grenelefe Condo. Owner's Assn., Inc. v. Schifano,

Case No. 94-0190 (Richardson / Summary Final Order / January 27, 1995)

- In arbitration commenced by association seeking removal of metal roof over patio which had replaced screen roof, allegation that association had failed to take enforcement action against a unit owner who had installed a window did not show selective enforcement as a window is not comparable to a metal roof installed over a patio.

Bayview at the Township Condo. Assn., Inc. v. Greenberg,

Case No. 96-0230 (Oglo / Final Order / May 22, 1997)

- The association generally enforced the rule prohibiting pets in excess of twenty pounds. However, the current board present maintained a dog in excess of the weight limit, which was tolerated by the board after turnover in violation of rules. The maintenance of this dog by the board president established that the association was unequally and arbitrarily enforcing its rule and the respondent unit owner's dog was permitted to stay.

The Beaches of Longboat Key-South Owners Assn., Inc. v. Goldreyer,

Case No. 96-0158 (Oglo / Partial Summary Final Order / September 9, 1996)

- The unit owners admitted keeping a pet dog that was not their original pet when they purchased from the developer, in violation of the documents, but alleged that other unit owners maintained a cat and a dog, respectively. Based upon the cat being found not to be a comparable violation, and the association showing that it required the other unit owner to remove his dog, the arbitrator concluded that the respondents failed to establish their affirmative defense of selective enforcement.

Board of Trustees of Bel Fontaine v. Caruso,

Case No. 94-0116 (Richardson / Final Order / September 14, 1994) (currently on appeal)

- Selective enforcement not shown to exist where association, in seeking to enforce no-pet restriction against dog, had failed in the past to enforce no-pet restriction against a unit owner with a parakeet, which is not similar to a dog but is quiet and kept in an indoor cage.

Chateau Chaumont of Ibis Isle Assn., Inc. v. Williams,
Case Nos. 93-0327 (Draper / Final Order / May 30, 1995)

- Selective enforcement not shown where other unit owner in condominium permitted to harbor nephew and dog for one year due to family emergency.
- Selective enforcement not shown where it was not demonstrated that association had knowledge of other violations asserted by unit owner. Other dog in condominium as transported about the common elements hidden in a tennis bag.

Condo. on the Bay Tower I Assn., Inc. v. Bonanno,
Case No. 93-0066 (Price / Arbitration Final Order / February 24, 1994)

- Where unit owner extended sliding glass doors and exterior wall onto the balcony, evidence that other unit owners have screens or hurricane shutters on the balconies, installed a spa inside the unit, installed decorative trimming to the entrance doors to the unit and tiling on the balcony wall, were not of the same type of alteration made by respondents, and selective enforcement did not apply.

Cravitz v. Lake Laura Condo. Assn., Inc.,
Case No. 93-0277 (Player / Final Order / June 27, 1994)

- Where deck and trellis construction was approved by the association, and where facts revealed that illegal decks and trellises abounded on the condominium property, association's defense of selective enforcement was not justified where particular deck and trellis approved were not comparable in dimensions to the previously existing decks and trellises existing on the condominium property.

Cypress Lake Estates Condo. Assn., Inc. v. Snyder,
Case No. 94-0288 (Scheuerman / Summary Final Order / December 27, 1994)

- Selective enforcement will not lie where the association has failed to have an opportunity to observe the violations.
- Where association was not shown to have had knowledge of other illegal oversize dogs in the condominium, and where other large dogs in the complex were permitted by developer and grandfathered in by the association, selective enforcement has not been established.

Cypress Woods, Inc. v. Robineau,

Case No. 93-0389 (Draper / Final Order / January 12, 1995)

- Selective enforcement of document provisions requiring association approval for tenants not shown to exist where corporate unit owners not prosecuted by association for failing to gain prior approval for occupancy of units by their vendors. It was not shown that corporate occupants were allowed to reside in the unit in exchange for payment of a valuable consideration, an essential element of a lease under the applicable documents. Also, occupancy in the case of the corporations was relatively brief.

Eldorado Towers Condo. Assn., Inc. v. Kurtz,

Case No. 96-0094 (Goin / Arbitration Final Order / January 17, 1997)

- Where association showed that it sought the removal of other pets at same time it was seeking the removal of respondent's cats and where respondent did not show that these other pets were still on the premises, respondent did not establish selective enforcement.

The Estuary at North River Shores Condo. Assn., Inc. v. Matijak,

Case No. 97-0187 (Scheuerman / Summary Final Order / July 29, 1997)

- Selective enforcement not shown where only other dog on the property resided at the condominium prior to the amendment to the declaration which prohibits dogs.

Galleon Condo. Apartments, Inc. v. Rappaport,

Case No. 92-0297 (Player / Final Order / April 8, 1993)

- Selective enforcement of no-carpet rule not shown where only unit owners permitted to install carpeting after adoption of rule had already purchase carpet before rules was enacted.

The Harborage II Condo. Assn., Inc. v. Keenan,

Case No. 96-0253 (Oglo / Final Order / March 5, 1997) (Arbitrator's decision overturned, Keenan v. Harborage II Condo. Assn., Inc., / Case No. 97-4828-CI-20, 6th Jud. Cir. Ct. / March 6, 1998) (Rule limiting installation of certain floor coverings within unit invalid and unenforceable, as it is arbitrary and unreasonable. Association is enjoined from requiring removal of tile from owner's unit.)

- The fact that other units had tile installed in prohibited areas did not constitute selective enforcement because association showed that it was delaying enforcement on some units pending the results of this case and that other units had tile installed by the developer.

Harbor Lights, Inc., of Naples v. Smith,

Case No. 96-0099 (Scheuerman / Final Order / February 4, 1997)

- Selective enforcement not shown in action to remove dog where although cat was seen to hover about the common elements, ownership of a cat was not established, and where only dogs shown to be on the condominium property lived outside the condominium.
- Selective enforcement of parking restrictions shown where although the association sought to enforce rule requiring owners to park in their designated spots against the respondent, association permitted another owner and the manager to park in spots assigned to other owners.

James v. Perdido Towers Owners Assn., Inc.,

Case No. 96-0424 (Goin / Summary Final Order / March 4, 1997)

- Where unit owner sought board's approval to install a boat lift on the common element dock, board's decision to deny approval not selective and arbitrary even though in the past it had allowed alterations because board had decided after Hurricanes Erin and Opal not to allow further alterations to dock area. In addition, the other alterations were not comparable to the type of alteration proposed by petitioner.

Karr v. Spyglass Walk Condo. Assn. Inc.,

Case No. 94-0411 (Draper / Final Order / October 10, 1996)

- Board's approval of installation of stepping stones and rock gardens by other unit owners in common element areas and disapproval of floor tile in similar area outside petitioner's unit, not arbitrary where former areas were not shown to be accessible to general visitors and workmen were not required to frequent the area.

Landmark Place Condo. Assn., Inc. v. Bergdorf Holdings, Inc.,

Case No. 93-0029 (Grubbs/Order on Motions to Strike and Motion to Compel / February 17, 1994)

- Consistent with selective enforcement defense, where association instituted arbitration alleging that unit owner had violated leasing restrictions, allegations of selective enforcement in that association had failed to enforce sign and parking restrictions, were not allowed to stand.

Lester v. Pine Ridge at Delray Beach Condo. Assn., Inc.,

Case No. 94-0112 (Scheuerman / Summary Final Order / October 28, 1994)

- Selective enforcement determined not to exist where association enforced its anti-truck parking rule against pickup trucks, but not against jeeps and rangers, which are vehicles designed to transport persons.

Lott v. The Moorings of Pinellas County Condo. Assn., Inc.,

Case No. 93-0179 (Scheuerman / Arbitration Final Order / January 14, 1994)

- Selective enforcement determined to exist where board only enforced bylaw prohibition against trucks at night; result of enforcement policy is selective enforcement against unit owners parking at night.

Lott v. The Moorings of Pinellas County Condo. Assn., Inc.,

Case No. 93-0179 (Scheuerman / Order Dismissing Petition / May 30, 1995)

- Instances of selective enforcement raised by owner to enforcement of anti-truck provision by association, including fact that motorcycle was allowed to park on the condominium property, and that a commercial electrician's truck is parked on the property, both in violation of parking rules, insufficient to show selective enforcement.

MacClary v. Carlton Towers Condo. Assn., Inc.,

Case No. 94-0355 (Draper / Partial Summary Order / February 27, 1995)

- Where defense of selective enforcement failed to allege knowledge of other pets by the association, defense disregarded. Where association, through arbitration, sought removal of unauthorized dog, fact that cockatoo and cat were permitted by the association to reside in a unit does not demonstrate selective enforcement where documents only prohibit the acquisition of pets after closing which are in excess of 15 pounds, and where owner fails to allege that the cockatoo or the cat exceeded 15 pounds and were not in unit at time of closing.

Mallory v. Ballantrae Condo. Assn., Inc.,

Case No. 93-0265 (Scheuerman / Arbitration Final Order / January 23, 1995)

- Where unit owner filed petition seeking declaration that association's refusal to permit installation of roll-down hurricane shutters was arbitrary, affirmative defenses of estoppel, waiver, and selective enforcement could not be asserted by the unit owner as these defenses are protective shields only and are not to be invoked as offensive weapons. However, some of the same considerations which apply in these defenses are relevant to a determination of whether the board acted reasonably in denying the requests of the unit owners to install roll-down shutters.

Maurer v. Summerlin Woods Condo. Assn., Inc.,

Case No. 94-0362 (Scheuerman / Final Order / April 7, 1995)

- Where recorded rule prohibited trucks larger than one-half ton capacity, trucks with dual rear wheels, or pickup trucks without a covered bed, facts did not demonstrate selective enforcement where it was not shown that the few violations of the parking rules shown at the final hearing by the unit owner were within the knowledge of the board. Moreover, it was shown that several of the asserted violations involved vehicles which had been grandfathered-in by the association; other claimed violations have in fact been ticketed by the association, and none of the other violations involved dual rear wheels or one-ton capacity truck.

- Where documents prohibit trucks larger than one-half ton capacity, and where association had unwittingly permitted certain one-half/three-quarter ton capacity trucks to park on the common elements, selective enforcement not shown where an ordinary person is not likely to be able to distinguish between a one-half tone and a one-half/three-quarter ton capacity truck.

Misty Lake South Condo. Assn., Inc. v. Caron,
Case No. 94-0113 (Scheuerman / Order / April 28, 1995)

- Where association, through arbitration petition, sought entry of an order requiring unit owner to remove satellite dish, as a matter of law, certain proffered examples of selective enforcement rejected as irrelevant and not comparable, including allegations that association permitted the grilling of food on the patios; motorcycles on the patios; changes to patio door; parking violations, and the existence of weight-lifting equipment. Fact that hamburgers are cooked on the balconies is not comparable to the violation sought to be remedied by the association and did not show selective enforcement.

Nettles Island, Inc. v. Barrett,
Case No. 93-0224 (Player / Final Order / May 3, 1994)

- Rule prohibiting boats, boat trailers, and utility trailers could not be enforced because of selective enforcement. Evidence showed that numerous other boats, boat trailers, and other types of trailers were being parked in driveways.

Oceanside Plaza Condo. Assn., Inc. v. Salussolia,
Case No. 95-0384 (Scheuerman / Order Striking Certain Defenses / September 4, 1996 and Order on Request for Clarification / October 9, 1996)

- Where owner accused of installing exterior balcony doors with non-conforming paint color, selective enforcement not shown where no other non-conforming balcony doors alleged to exist, but where it was merely alleged that non-conforming balcony lights had been installed by other owners, that some doors were screen doors and others were glass; that some patio doors had religious symbols affixed thereto; and that non-conforming hurricane shutters had been installed. Hurricane shutters are inherently unreliable indicators of selective enforcement given that statutory amendments in the area permitting owners to install shutters, and given the board's authority to change specifications. In order to show selective enforcement such that the association is estopped from selective and arbitrary enforcement, it must be shown that the other violations are comparable to the violation in the instant action.
- Selective enforcement involves the failure of an association to fail to enforce the documents in other instances bearing sufficient similarity to the instant case to warrant the conclusion that it is discriminatory, unfair, or unequal to permit the association to enforce the restriction in the present case.

Olive Glen Condo. Assn., Inc. v. Santa,

Case No. 96-0162 (Draper / Order Striking Certain Affirmative Defenses and Setting Prehearing Procedure / October 15, 1996)

- Selective enforcement defense will not lie where it was alleged that association conducted criminal background check on tenant only after learning the tenant had been arrested before. Under this circumstance, association was not required to have conducted background checks of the same magnitude on all tenants.

Parkview Point Condo. Assn., Inc. v. Romash,
Case No. 93-0130 (Goin / Final Order / November 1, 1994)

- No selective enforcement found where although other owners probable had also violated the parking rules, it was not to the extent that the owner's son had violated the rules.

Platero v. Lighthouse Village Condo. Assn., Inc.,
Case No. 97-0160 (Oglo / Summary Final Order / May 1, 1997)

- Unit owner argued that the association should not be permitted to enforce a rule prohibiting motorcycles against him, when it was enforcing age restrictions or pet restrictions against other owners. While claims of selective enforcement are to be used as a shield rather a sword, the arbitrator reviewed the equitable considerations presented by the unit owner and rejected them on the basis that these examples of the association's failure to enforce the condominium documents are not comparable.

The Plum at Boca Pointe Condo. Assn., Inc. v. Pales,
Case No. 92-0224 (Player / Final Order / May 24, 1993)

- Evidence showed that association selectively enforcement pet restrictions; violations were commonplace and association could not single out unit owner for enforcement.

Quail Hollow Condo. Assn., Inc. v. Eastman,
Case No. 96-0345 (Goin / Summary Final Order / January 2, 1997)

- Unit owner ordered to remove tile from limited common element walkway where owner's examples of selective enforcement (different colored door plates, flags decorating doors and railings, bikes at the railing, bikes at the entrances, plants in the walkways, beach chairs on the sidewalks) were not comparable to the type of alteration made by respondent.

Racquet Club Apts. At Bonaventure 4 North Condo. Assn., Inc. v. Boehle-Nelson,
Case No. 96-0037 (Goin / Final Order / October 29, 1996)

- Where declaration prohibited dogs over 20 pounds, unit owners/respondents did not establish selective enforcement where their dog weighed 73 pounds and other dog weighed 20 pounds but at one time weighed 24 pounds.

The Racquet Club of Fort Lauderdale Assn., Inc. v. Kramer,
Case No. 93-0003 (Goin / Final Order / July 20, 1993)

- Where declaration prohibited unit owners from enclosing balconies and patios, unit owners ordered to remove a fence that had been built enclosing their patio. Unit owners' selective enforcement argument rejected where other structures placed on the patios (wooden storage shed and foot-high planter on surrounding patio) were not comparable to the fence. Unit owners' argument that the fence was necessary for security and privacy also rejected, because self-help measures in violation of documents are prohibited.

Rensen v. Heritage Landings Condo. Assn., Inc.,
Case No. 94-0042 (Scheuerman / Summary Final Order / September 16, 1994)

- In arbitration initiated by unit owners complaining that association had permitted other unit owners to install sliding glass doors and stepping stones, and where other unit owners had not been joined as parties, while arbitrator could not apply estoppel, selective enforcement, or waiver which the other unit owners would have been entitled to assert had they been parties, arbitrator could nonetheless consider the equitable considerations implicit in those defenses in fashioning appropriate relief.

Sarasota Lakes Co-Op, Inc. v. Paoline,
Case No. 95-0317 (Draper / Final Order / September 25, 1996 / Amended Final Order / October 1, 1996)

- Respondent failed to prove selective enforcement of sale screen requirements because association had consistently enforced requirements since turnover.
- Selective enforcement of 40' limit not shown where 40'6" length of park models used in comparison was not shown to be within association's knowledge and even if it was, the violations were so slight that the association should not be charged with knowledge of the violations. Unit owners ordered to cut park model to 40' or remove it from the lot.
- Occupancy restriction invalidated where selectively applied to long-term but not short-term occupancies.

Seaside Resort, Inc. v. Gaddis,
Case No. 92-0154 (Player / Final Order / February 5, 1993)

- Selective enforcement of occupancy limit in the documents found to exist where association previously granted conditional hardship exemption to two persons per unit occupancy limit.

Simon v. High Point of Delray West Condo. Assn. Section II, Inc.,
Case No. 94-0265 (Goin / Summary Final Order / April 3, 1995)

- Selective enforcement not shown where association sought to require unit owner who had placed stone blocks in front of unit to remove the blocks, where the association had not sought to have different owners who placed stone blocks behind their unit to remove them. Board had discretion to make such a distinction.

Southridge Homeowners Assn., Inc. v. Barbieri,

Case No. 94-0382 (Scheuerman / Summary Final Order / December 27, 1994)

- No selective enforcement found to exist where no other chimneys found on the common elements; other protruding pipes were necessary laundry vents which differed in height and width from chimney installed by unit owner.
- in presenting defense of selective enforcement in an enforcement action against a unit owner who added a chimney to the roof of his unit, fact that association permitted unauthorized screen doors, the trimming of a tree, and the installation of a mailbox are irrelevant as a matter of law as they involve violations not comparable to the chimney and lighting issues raised in the petition.
- Where board had previously determined to install lights on the corner units due to history of criminal activity, and where unit owner installed security lights on his unit situated within the middle of a building, selective enforcement not found to exist.

Stoner v. 440 West, Inc.,

Case No. 93-0139 (Scheuerman / Summary Final Order / December 1, 1993)

- Installation of antennas for master cable television system and for association security system is not to be rationally likened to the erection of an antennae by unit owner for purposes of recreation and enjoyment, and defense of selective enforcement and the failure to enforce documents in similar circumstances has not been demonstrated.

Surfside Owners Assn., Inc. v. Desteq, Inc.,

Case No. 92-0238 (Grubbs / Final Order / March 1, 1993) (Decision overturned on appeal)

- No selective enforcement found where association routinely required requests to alter units to be placed in writing for board consideration.

Tanglewood Environmental Preservation Assn., Inc. v. Thomason,

Case No. 96-0308 (Goin / Order Denying Motion to Set Aside Default / April 4, 1997)

- Motion to set aside default denied where unit owner failed to show a meritorious defense. The petition had alleged that unit owner was in violation of parking rules by continuing to parallel park on street rather than driveway. Unit owner did not have a meritorious selective enforcement defense because examples given by unit owner had

occurred in the past and had subsequently been corrected and other examples did not involve parallel parking on street. In addition, defense that unit owner did not have room in her driveway and garage to park up to four vehicles was without basis; there was an adequate number of guest spaces available.

- Occupancy restriction invalidated where selectively applied to long-term but not short-term occupancies.

Terraces Condo. Assn., Inc. v. Morgenstern,

Case No. 93-0318 (Draper / Final Order / August 2, 1994)

- Where board of directors has for four years knowingly permitted a former board member to keep a pet in violation of the documents, selective enforcement has been shown. Although the association had enforced the restriction against numerous pet owners, the failure to do so against the former board member, who acquired illegal dog while on the board, is particularly odious and shows inconsistent enforcement.

The Towers of Quayside No. 4 Condo. Assn., Inc. v. Mui,

Case No. 95-0358 (Goin / Final Order / October 15, 1996)

- Tenant did not show selective enforcement of pet restriction where only testimony came from board member who opposed action against tenant and who testified that other tenants had cats but refused to name the tenants.

The Trails at Royal Palm Beach, Inc. v. Wargovich,

Case No. 93-0320 (Goin / Final Order / May 31, 1995)

- Selective enforcement not shown to exist where only other changes to porches were done prior to turnover of control by developer.

The Village of Stuart Assn., Inc. v. Huff,

Case No. 95-0141 (Draper / Final Order / May 29, 1996)

- Even assuming association was aware of other violations, it cannot be concluded that violative wood flooring in entry way of unit was comparable to installation of wood floor throughout unit.

Villas at Eagles Point Condo. Assn., Inc. v. Kahn,

Case No. 94-0391 (Scheuerman / Arbitration Final Order / July 10, 1995) (aff'd, Kahn v. Villas at Eagles Point Condo. Assn., Inc., Case No. 96-02074 / Fla. 2d DCA May 14, 1997/ 693 So.2d 1029).

- Addition of exterior lighting or screen doors are not comparable to the addition of a patio deck, and thus selective enforcement was not demonstrated.

Wallace v. Shady Dell Riverview South Owners' Assn., Inc.,

Case No. 94-0073 (Price / Summary Final Order / October 4, 1994)

- Association not acting arbitrarily or selectively in permitting vans and motor homes to park on the common elements while refusing to permit boats and boat trailers from parking on the common elements. Board demonstrated that boat and trailer are different from the other vehicles.

Standing (See Dispute-Standing)**State Action (See also Constitution)****Tenants*****Generally***

Cail v. Sebastian Harbor Villas Condo. Owners' Assn., Inc.,

Case No. 94-0084 (Scheuerman / Final Arbitration Order / August 27, 1996)

- Certain owners of units who offered units for lease but not for sale in ordinary course of business were "developers" who were not entitled to vote for a majority of the board.
- Record supported finding that certain owners offered units for lease in ordinary course of business. Units were regularly offered for rent to the public and have been rented except for occasional periods of vacancy.

Calusa Club Village Condo. Building A Assn., Inc. v. Rodriguez,

Case No. 95-0276 (Goin / Summary Final Order / March 5, 1996) (Appeal dismissed as moot. 11th Jud. Cir. Ct. / Case No. 96-6805-CA-02 / July 11, 1997)

- Where unit owner failed to obtain prior approval for her tenant, and where declaration provided that association could approve or disapprove an unauthorized tenant, and that such a lease was voidable and not simply void, tenant was not ordered to immediately vacate unit. Instead, association was ordered to provide unit owner and tenant with an application for lease and association ordered to make a good faith determination to approve or disapprove application, using the same criteria that it applies to other applications for lease.

Cypress Woods, Inc. v. Robineau,

Case No. 93-0389 (Draper / Final Order / January 12, 1995)

- Argument that occupants were house guests of the unit owner instead of tenants required to be approved by the association was specious where individuals occupied unit for over a year, refurbished the premises, performed all maintenance and housekeeping, paid utilities, paid rent, and occupied the premises in the absence of their purported host, the unit owner. Even if no rent paid directly to the unit owner, but paid to owner's friend left in charge of unit, unit owner received valuable consideration in that substantial improvements were made to the property and day-to-day maintenance was performed.

Grove Isle Condo. Assn., Inc. v. Levy.,

Case No. 96-0172 (Draper / Summary Final Order / November 19, 1996)

- Declaration provision prohibiting pets in units except for those kept by unit owners construed to mean unit owners but not tenants could have pets. This differential treatment of tenants is acceptable as it is not wholly arbitrary, and does not violate public policy or abrogate a fundamental constitutional right.

La Costa Brava Condo. Number 1, Inc. v. Lake,

Case No. 93-0124 (Price / Final Order / March 25, 1994)

- Association is authorized to take legal action against unit owner for owner's failure to require their tenant to comply with rules and regulations.
- Injunctive type order requiring future compliance with documents by unit owner issued where future injury is more than a remote possibility but is imminent and probable as determined in case where unit owner failed to advise tenants of the need to comply with parking rules.

The Landings Condo. Assn., Inc. v. Patterson,

Case No. 94-0366 (Scheuerman / Summary Final Order / March 1, 1995)

- Whether a person is a tenant or a guest is a mixed question of law and fact.
- A tenant has an estate in property, while a guest does not, and the tenant may maintain an action to recover possession while a guest may not. Where documents did not define "guest," the term "guest" not construed to require that a visitor occupy the unit along with the unit owner present in order to be considered a guest.
- Tenancy relationship not established where occupants of unit stayed in the unit for periods of two weeks or less, had no lease, paid no rent or consideration, and had no leasehold interest in the property.

Olive Glen Condo. Assoc. v. Perez,

Case No. 92-0126 (Player / Final Order Denying Attorney's Fees and Costs to Petitioner's and to Respondent / October 14, 1992)

- Live-in fiancé of unit owner not a "tenant" under documents.

Park Central Towers Assn., Inc. v. Maikish,

Case No. 95-0030 (Goin / Summary Final Order / May 31, 1995)

- Although owner considered person occupying the unit to be like a son to her, it was determined that he was a tenant where the owner did not live in the unit with him, where the occupant paid maintenance fees, and where occupant was responsible for general

upkeep of the unit. Accordingly, occupant was tenant and not part of the family for purposes of application of declaration requiring association approval for tenants.

Skylake Gardens No. 4 v. Gonzalez,

Case No. 95-0101 (Scheuerman / Arbitration Final Order / October 31, 1995)

- Where there was no written lease, no aspect of consideration, money, or rent found to exist, and where occupants of unit had no estate in property, association failed to establish any traditional indicia of a tenancy and no tenancy found to exist within the meaning of the documents regulating tenants. Documents did not define the words “guest” or “tenant.”

Terraces Condo. Assn., Inc. v. Stephensen,

Case No. 93-0287 (Draper / Default / February 10, 1994)

- Where default entered against owner but where tenant filed timely answer and defended action, tenant permitted to defend action and no final order on default would be entered against owner at that time.

Thompson v. Quail Hollow,

Case No. 92-0115 (Grubbs / Final Order / October 30, 1992)

- Where father planned to purchase unit for daughter, when parent did not live in unit, daughter considered a tenant and not a guest or family member for purposes of declaration prohibiting lease of unit without association approval.

Nuisance (See also Nuisance)

Southpointe Condo. Assn., Inc. v. Saggar,

Case No. 95-0249 (Scheuerman / Final Order / November 17, 1995)

- Final order entered requiring tenant to vacate the unit where evidence established that tenant's presence on property constituted a nuisance. Tenant threatened other residents, assaulted a security guard, and tampered with and destroyed association property and owner property. Her actions did not merely cause annoyance, but substantially interfered with the lawful right of the owners to occupy the property.

Versailles Gardens II Condo. Assn., Inc. v. Cadenas,

Case No. 96-0289 (Oglo / Summary Final Order / January 17, 1997)

- Where unit owners failed to obtain association approval for their lease, as required by condominium documents, and where tenants were exhibiting nuisance behavior such as having loud and obscene arguments, unit owner ordered to remove tenants and tenants ordered to vacate unit.

Rental restriction/rental programs

BPCA Condo. Assn., Inc. V. Capano,

Case No. 93-0251 (Grubbs / Final Order on Default / April 14, 1994)

- Where unit owners intentionally and willfully violated declaration prohibiting leasing during the first year of ownership, legislature intended, by providing arbitration as alternative to court litigation, that arbitrator would have judicial flexibility in fashioning remedies, and final order entered prohibiting unit owner from renting or leasing for a period of ten months after unauthorized tenant vacates unit.

Berlinger v. Carlyle House Assn., Inc.,

Case No. 94-0128 (Scheuerman / Summary Final Order / February 20, 1995)

- Where declaration provided that no lease shall be made for less than a three consecutive month period, nor shall any transient combinations be provided, and bylaw amendment under challenge provided that no unit owner may lease his unit more than once in any two-year period, and that no new lease for the same unit may be permitted or made effective sooner than twelve months from the expiration or termination of the prior lease, bylaw amendment was inconsistent with declaration which permits a unit owner to enter into a series of rental agreements, each with a three consecutive month duration, such that the unit may be occupied by tenants twelve months out of every year, at a maximum of four leases per year. Also, by failing to prohibit, the declaration permitted a unit owner to rent for consecutive periods of time, so long as the leases are not made for less than a three consecutive month period.

Boettger v. Ocean Palms Condo. Assn., Inc.,

Case No. 92-0269 (Goin / Final Order / May 17, 1993 / Order on Motion for Clarification / June 7, 1993)

- The board rule requiring all unit owners to rent their units through the association's designated on-site rental manager is not an improperly restraint on alienation, nor does the rule constitute an unreasonable restriction on the use of the unit.
- The salary of a rental manager, hired by the Association to conduct a rental program for all unit owners desiring to rent out their unit, is not an appropriate common expense under Section 718.115, Florida Statutes. While the salary of a manager providing management services relating to the common elements would be an appropriate common expense, salary for providing rental services cannot be assessed as a common expense. Nothing in the declaration purported to authorize the expense as a common expense.

Cammack v. Ocean Beach Assn., Inc.,

Case No. 93-0290 (Scheuerman / Final Order / March 24, 1995)

- Where declaration required that units be used as a residence, declaration not violated where over half the units in the condominium were rented out pursuant to separate provisions in the declaration permitting leasing.

- Conduct of rental program from the manager's unit did not violate declaration providing that units are to be used as a residence and for no other purpose. Statute defines residential condominium as consisting of units, any of which are intended for use as private, temporary or permanent residence. Furthermore, condominium documents specifically contemplated that units would be rented, and conduct of rental program did not detract from residential nature of the development. Even if use of the manager's unit was found to be non-residential in nature, since the documents permit a resident manager to occupy a unit for purposes of managing, documents interpreted to exempt manager's unit from the residential use restrictions to the extent of management activities, which may properly include rental of units located within the condominium.
- Where manager used association unit as residence, as base of operation for management of condominium, and as center for conduct of rental program, conduct of rental program was ancillary to the unit's main use, and was consistent with the required residential use of the property.
- Where documents prohibited transient occupancy, and where association was found to have permitted violation of documents to have occurred, association permitted to attempt to amend documents with unit owner vote for 120 day period. In the event that amendment removing transient occupancy prohibition, or defining "transient" occupancy, was not successful, association ordered to ensure that the conduct of its rental program occurs within the confines of the condominium documents such that no units are leased to transient tenants.

Forest Hill Gardens East Condo. Assn., Inc. v. Weitz,

Case No. 95-0047 (Scheuerman / Summary Final Order / June 1, 1995)

- Condominium documents were not ambiguous and plainly prohibited unit owner from renting units as a regular practice; documents permitted board to grant hardship exemption so that owner could rent for less than six months nor more than one year. Prohibition on leasing and hardship exemption by implication prohibited renewal to extend beyond period specified in documents, and no separate prohibition on lease renewal was necessary.
- Facts supporting estoppel and waiver not shown to exist where declaration clearly prohibited regularly renting out units and no reliance on any prior board interpretation was warranted under the circumstances. When association granted a hardship exemption to unit owner, hardship exemption was limited in scope and duration, and association did not intend to waive forever its ability to enforce the rental restrictions in the documents.

Gate Condo. Assn., Inc. v. Finkel,

Case No. 95-0344 (Scheuerman / Final Order of Dismissal / December 9, 1996)

- Declaration could be amended to prohibit all future rental of units, and such an amendment did not affect the security of mortgages on the unit.

Glen Cove Apartments Condo. Master Assn., Inc. v. Weit,
Case No. 93-0075 (Scheuerman / Final Order / May 30, 1995)

- Where a subsequent developer who owned approximately 120 units in the condominium utilized one unit as a sales and rental office for the remainder of his units, such use violated restriction in declaration requiring that units be used on for residential purposes.
- Estoppel to enforce rental restrictions and residential use restrictions not shown where association did not represent to the purchasing subsequent developer that these portions of the documents would not be enforced against him. Also, reliance not shown to exist where it was not shown that developer would not have purchased the units but for any representation by the association. Additionally, any reliance would not have been reasonable in any event because restrictions were a matter of public record at the time developer purchased the units.
- Subsequent developer did not enjoy creating developer's exemption from rental restrictions contained in condominium documents where there was no assignment of developer rights to the subsequent developer, and where the documents, viewed in totality, expressed no overall intent that the rights and privileges granted to the original developer were intended to extend to include all remote developers as well, particularly where the original developer completed construction of the condominium.

Inverness Condo. II Assn., Inc. v. Riley,
Case No. 94-0328 (Grubbs / Summary Final Order / February 16, 1995)

- Where association approved purchase application listing as occupants husband and wife, as well as tow daughter aged 19 and 23, where husband and wife never lived in the house, and where two daughters originally approved subsequently moved out and third daughter moved into unit, current occupants were not approved by association and unit owners order to complete application for approval of current occupants and submit \$50.00 screen fee to association.
- Association not estopped from enforcing provision of documents requiring association approval of occupants and \$50.00 screening fee where association originally approved occupancy by two daughters of unit owner, and where subsequent to approval, the two daughters vacated the unit and a third daughter moved in.
- Waiver not established where record showed that association took action as soon as unauthorized occupants moved into the unit by sending a letter. Just because association did not pursue legal action at that point did not establish that association intentionally and knowingly waived its right to subsequently pursue the matter. Association has responsibility to make reasonable and fiscally sound decisions on behalf of owners, and fact that board does not take immediate legal action may indicate the board believed the cost would outweigh the benefit.

Ironwood Villas Condo. Assn., Inc. v. U.S. Cable, Inc.,
Case No. 96-0307 (Goin / Arbitration Final Order / July 28, 1997)

- Corporate unit owner was not prohibited from using unit for short-term occupancy by its employees and guests. Although in one section, the declaration provided that no unit owner may allow his unit to be occupied in his absence without the approval of the association, another section indicated that the approval requirement would only apply to corporations if that requirement was contemplated and agreed to as a condition of ownership at the time that the corporation bought the unit, which was not the case.

Maitland House Management, Inc. v. Martin,
Case No. 93-0242 (Draper / Summary Final Order / May 27, 1994)

- Rule defining “single family residence” as that term is used in the declaration was invalid where definition required use of unit as residence by one or more persons related by blood, marriage, or adoption. The term “family” is one of great flexibility.
- Even if rule was within the board’s scope of authority, the rule prohibiting co-habitation by persons other than persons related by blood, marriage, or adoption was unreasonably restrictive and was invalid.
- Where two men occupied unit and shared the living, dining and cooking areas, they are not in violation of the declaration restriction that units be used only as single family residences.

Neville v. Sand Dollar III, Inc.,
Case No. 94-0452 (Scheuerman / Summary Final Order / April 12, 1995)

- Board rule which set minimum rental period was invalid, as in conflict with rights under declaration, where declaration set forth the right to rent which was unfettered, and where board rule imposed substantive restrictions not found in the declaration, but did not grant to the board the right to pass additional substantive restrictions in the area of leasing. The right to lease the unit for a period desired by the owner is a right reasonably inferred from the declaration.

Payne v. Hillsborough Windsor Apartments, Inc.,
Case No. 92-0231 (Scheuerman / Final Order / June 4, 1993)

- Board rule restricting rentals in the cooperative to ten percent of total units at any one time held invalid, as rules is more restrictive than rental restrictions contained in the bylaws. Bylaws did not give the board the right to add additional substantive restrictions on the right to lease.

Petersile v. Windwood Condo. Assn., Inc.,
Case No. 94-0245 (Draper / Summary Final Order / October 21, 1994)

- Board rule prohibiting owners from leasing their units for a period of less than one year, in conflict with right under declaration to freely lease the unit for a period of not less than three months, is invalid.
- Amendment to bylaws to bar rentals invalid where declaration granted right to the unit owners to lease their units.

Reis v. Siesta Dunes Condo. Assn., Inc.,

Case No. 92-0148 (Grubbs / Final Order / July 2, 1993)

- Board rule establishing a minimum lease term of 2 weeks was invalid where the declaration provided that owners would submit a proposed lease to the Board for approval which specified the terms and conditions; if the board did not approve the lease, the board was required to provide another renter on the same terms and conditions. Thus, under the declaration, the unit owner, and not the board, had the right to set the duration of the lease. The board rule contravened a right reasonably inferred from the declaration--the right of the unit owner to determine the length of a rental agreement.

Ross v. El Dorado Towers Condo. Assn., Inc.,

Case No. 93-0005 (Scheuerman / Summary Final Order / July 2, 1993)

- Exemption from rental restrictions in the declaration for first mortgagee foreclosing on unit mortgage did not extend to purchaser at foreclosure sale where foreclosure action was initiated by a first mortgagee but where the mortgage in action was assigned to a non-institutional corporation which completed the foreclosure sale.

Savannah Condo. Assn., Inc. v. Trans Management Corporation,

Case No. 93-0049 (Grubbs / Final Order / November 16, 1994) (currently on appeal)

- Where declaration was amended placing restrictions on the prospective use or occupancy of the unit by persons other than the owner, such application was not a prohibited retroactive regulation because it only applied to guest visitations occurring after the date of the amendment. An amendment is retroactive when it operates on transactions that have already occurred, not on transactions that have yet to occur.
- Where amendment to declaration eliminated exemption for corporate unit owner from leasing and occupancy restrictions, but where remaining restrictions applicable to all unit owners permitted family members and social guests, officers, directors and employees of the corporate owner could not be considered the corporate owner's "family." As a corporation, the unit owner cannot have an immediate family, and the corporation is a separate and distinct entity from its officers, directors, and employees. However, under a provision in declaration to the effect that unit owners are permitted to have visitor occupants in their "presence," documents interpreted as permitting

corporation to have guests in its "presence" if it designates one particular individual as its "presence."

Shaker Village Condo. Assn., Inc. v. Spoltore,

Case No. 93-0314 (Scheuerman / Summary Final Order / February 21, 1994)

- Rental restriction found in condominium documents is not unlawful restraint on alienation but is a reasonable restraint, limited in scope and duration. Restriction at issue required association approval of proposed tenant, and required that the association accept or reject a proposed tenant within thirty days of receipt of application.
- Association notice of rejection of proposed tenant application is considered effective when actually received by the unit owner.

Sky Lake Gardens No. 2, Inc. v. Gomez,

Case No. 95-0362 (Draper / Summary Final Order / September 25, 1996)

- Ban on leasing adopted by board invalidated where declaration provided that unit was to be used as a residence for the unit owner and his tenants. Because the unit may be used as a residence for a tenant, the right to lease the unit may be inferred from the declaration.

Tamarac Gardens Condo. One Assn., Inc. v. Nathanson,

Case No. 96-0277 (Oglo / Summary Final Order / December 23, 1996)

- The association sought removal of a tenant pursuant to the declaration provision prohibiting rentals. However, the tenant resided in the unit prior to the effective date of the declaration provision. Despite the tenant's failure to obtain association approval of her 4-year lease, that omission only gave the association the right of first refusal at the time the lease was entered into, and not the right to remove the tenant. The arbitrator concluded that it was appropriate for the tenant to reside in the unit until her lease expired, since even if the declaration procedure had been followed, some tenant, whether the owner's or the association's tenant, would have been in the unit for the term of the lease.

Versailles Gardens II Condo. Assn., Inc. v. Cadenas,

Case No. 96-0289 (Oglo / Summary Final Order / January 17, 1997)

- Where unit owners failed to obtain association approval for their lease, as required by condominium documents, and where tenants were exhibiting nuisance behavior such as having loud and obscene arguments, unit owner ordered to remove tenants and tenants ordered to vacate unit.

Unauthorized tenant/association approval

Country Village Condo. Assn., Inc. v. Roderick,

Case No. 94-0311 (Richardson / Order Striking a Claim / August 1, 1994)

- That portion of petition for arbitration claiming that respondent had permitted her boyfriend to move into her unit in violation of the declaration's prohibition against leasing without prior approval of the association was struck. The petition did not state that respondent had actually leased her unit but had merely permitted another person to move into the unit with her. Obtaining a roommate is not the same as leasing a unit pursuant to the declaration; acquiring a roommate may be the equivalent of adding another member to the "family" residing in the unit.

Dudley v. Golf View Condo., Inc.,

Case No. 92-0226 (Player / Final Order / February 18, 1993)

- Facts did not demonstrate the association wrongfully failed to approve tenant application where application only rejected by one board member; documents provided that board approval could be obtained from any two of seven directors and approval of other directors was not sought.

Elan at Calusa Club Condo. Assn., Inc. v. Kletzenbauer,

Case No. 95-0135 (Goin / Summary Final Order / February 14, 1996)

- Where association disapproved lease application solely on the grounds that tenant moved in before being approved, disapproval deemed unreasonable where declaration provided that if notice to association is not given, that association may approve or disapprove lease. Association should have made a good faith determination as to whether tenant was the type of person normally approved or disapproved.

Horizons West Condo. Number 1 Assn., Inc. v. Alpert,

Case No. 95-0364 (Scheuerman / Final Order / March 27, 1996)

- Where owner submitted substantially completed lease application to association which rejected application solely due to fact that tenants were self-employed, association found to have wrongfully rejected application.
- Wrongful rejection of application by association did not justify owners permitting tenants to take possession of the unit.
- Association ordered to update rental application rules and forms to reflect all current requirements.

Kittel-Glass v. Oceans Four Condo. Assn., Inc.,

Case No. 94-0240 (Richardson / Final Order / December 7, 1994)

- Board's disapproval of lease agreement was reasonable where lease was shown not to be a bona fide lease. The lease agreement on its face showed questionable entries and inconsistencies, and the unit owner, in order to insulate herself from association's execution of its judgment against her, mortgaged her unit to her mother an amount

double the unit's value. A unit owner who leases her unit with an intention to avoid financial responsibilities owed to an association has not entered into a bona fide lease. While in a different case it may be argued that it would be unreasonable for the board to refuse to approve the lease, because the association could garnish the rental payments to satisfy the judgment, this argument did not apply because pursuant to the lease, tenant was to pay current monthly assessments directly to the association, with the remainder of the rent to be paid to a party in Germany. Thus, rental agreement would insulate a portion of the rental payments from garnishment, and it was not unreasonable for association to refuse to approve the lease.

Marks v. Oxford Court Condo. Assn., Inc.,
Case No. 92-0189 (Player / Final Order / March 1, 1993)

- Facts did not demonstrate that association failed to approve tenant with children in case brought by unit owner to recover lost rent.

Olive Glen Condo. Assn., Inc. v. Santa,
Case No. 96-0162 (Draper / Order Striking Certain Affirmative Defenses and Setting Prehearing Procedure / October 15, 1996)

- It is unreasonable for association to reject tenant's application merely because she provided inaccurate information; however, where misrepresentation is material to the qualifications of tenant to live in the community and where tenant has criminal record, the misrepresentation may be considered by the association in deciding whether to approve a prospective tenant.

Von Zamft v. Coventry A Condo. Assn., Inc.,
Case No. 94-0078 (Richardson / Final Order / July 6, 1995)

- Unit owner failed to prove that association's denial of proposed lease was unreasonable where no written application to lease was ever presented to the board.

Westlandia Condo. Assn., Inc. v. Miro,
Case No. 93-0106 (Grubbs / Final Order on Default / December 30, 1993)

- In dispute involving unauthorized tenant, where unit owners failed to respond to order requiring answer, failed to respond to interrogatories aimed at ascertaining tenant's identity, and failed to ask that default be set aside, arbitrator ordered them to remove tenant from the unit and not to lease their unit in the future without the association's approval. Their failure to comply with the provisions of the declaration after several requests from the association to do so and blatant refusal to participate in the arbitration proceeding, indicated that respondents would continue to flout the leasing restrictions and justified injunctive-like relief.

Violation of documents

Transfer of Fees

Palmer v. Bellamy Forge Assn., Inc.,

Case No. 94-0111 (Richardson / Summary Final Order / July 28, 1994)

- Where condominium documents only permitted board to impose assessments, and did not specifically permit transfer fees, association could not impose transfer fees pursuant to section 718.112(2)(l), Florida Statutes.

Transfer of Control of Association (See Developer; Election/Vacancies)**Unit*****Access to unit***

1800 Atlantic Condo. Assn., Inc. v. Golan,

Case No. 94-0134 (Player / Final Order / September 17, 1994)

- Association has right pursuant to statute to enter owner's unit to inspect and repair or replace water meter installed by association provided reasonable advance notice is given.

Ainslie at Century Village Condo. Assn., Inc. v. Liebgold,

Case No. 92-0223 (Player / Amended Final Order / August 24, 1993)

- Final Order entered requiring unit owner to provide association with a key to her unit as required by the declaration where the association demonstrated that unit owner keys are kept in a secure and responsible manner.

The Beaches of Longboat Key-South Owners Assn., Inc. v. Goldreyer,

Case No. 96-0158 (Oglo / Partial Summary Final Order / September 9, 1996)

- Unit owner was required to provide code to disarm private security alarm in unit to association so that association could provide pest control services to unit pursuant to association's Section 718.111(5) right of access to the unit.

Brickell Town House Assn., Inc. v. Del Valle,

Case No. 95-0133 (Scheuerman / Final Order / September 12, 1995) (Scheuerman / Order on Motion for Rehearing / December 6, 1995)

- While the right of access to a unit granted under statute and documents was not broad enough in and of itself to provide authority for the association to displace unit owners from their homes for a period of one to two months in order to permit repairs to the common elements, the right of access, when combined with the duty of the association to maintain and protect the common elements, provides sufficient authority for the association to proceed with the project.

Carmel by the Lake Condo. Assn., Inc. v. Mullin,

Case No. 95-0437 (Scheuerman / Summary Final Order / January 31, 1996)

- Owners ordered to provide access to association to unit for purposes of re-piping project to be undertaken by association. Concern that holes in unit wall would not be repaired overruled.

Emerald Seas Condo. Assn., Inc. v. Harvan,

Case Nos. 97-0057 and 97-0125 (Draper / Summary Final Order / July 31, 1997)

- Rule requiring unit owners to provide unit key to association was valid where declaration empowered association to make rules regarding the unit.
- Both declaration and s. 718.115(5), F.S., permit association to enter unit for purposes of repair and maintenance. Unit owner's defense that he kept confidential and proprietary information unsecured in his unit was insufficient justification to overcome association's right of unfettered access.

Jamaica House Assn., Inc. v. Rudolph,

Case No. 94-0110 (Goin / Order on Petitioner's Motion to Strike Answer / August 29, 1994)

- In case where association sought entry of final order requiring unit owner to deliver unit key to the association, fifth amendment concerning deprivation of life, liberty, or property without due process of law is not applicable, and the defense was stricken.
- Section 83.53 of Landlord/Tenant Law, requiring landlord to obtain tenant's consent prior to entering apartment, finds no application to condominium and therefore defense struck.

Jamaica House Assn., Inc. v. Rudolph,

Case No. 94-0110 (Goin / Final Order / February 13, 1995)

- Rule requiring owners to provide association with key to unit reasonably related to the promotion of the health, happiness, and peace of mind of the owners where association required keys for entry for purposes of spraying for insects. Evidence established that association has taken reasonable precautions to ensure security of keys.
- Board rule requiring owners to submit duplicate key to association, which rule was passed after an individual became a unit owner, may be applied to that individual where rule did not contravene declaration and where pre-existing statute provided for access to the unit.

Pine Ridge North Village IV Condo. Assn. v. Gennaro,

Case No. 94-0377 (Draper / Summary Final Order / January 10, 1995)

- Unit owner ordered to give unit key to the association where unit owner did not allege that keys were not kept in a secure place, but only argued that provision in the declaration holding association harmless for property damage or theft caused or occurring on account of entry into unit by association justified withholding key. Clause in declaration does not prevent redress against a thief; does not preclude an award of damages against the association due to negligence, and does not preclude suit for damages against individual officer or board member responsible.

Village on the Green Condo. II Assn., Inc. v. Knaus,
Case No. 93-0388 (Richardson / Final Order / April 7, 1995)

- Unit owner violated association's right of access to the units when he refused to allow termite treatment in the interior of the units. However, since there was expert testimony that the chemicals proposed to be used were toxic and could pose a health hazard to the occupants, association permitted access to unit, but ordered to comply with federally approved health and safety standards for the application of toxins to the interior of residences, and further to use a chemical which will not pose a health hazard to the occupants.

Alteration to unit (See also Fair Housing Act)

Carriage Club North Condo. Assn., Inc. v. Wayne,
Case No. 92-0271 (Goin / Final Order / May 25, 1993)

- Installation of neon lighting within unit violated provision in declaration prohibiting the hanging of objects which are visible from outside the unit.

Earp v. Holiday Village Assn., Inc.,
Case No. 92-0250 (Player / Final Order / October 27, 1993)

- Board unreasonably denied unit owner's request to construct an addition to her mobile home. If board was unsure as to what and where unit owner would be adding, it should have requested additional information from unit owner rather than summarily denying her request.

Inverness II Condo. Assn., Inc. v. Nettestad,
Case No. 95-0165 (Draper / Amended Summary Final Order / May 21, 1996)

- Unit owner who cut doorway through unit wall into adjacent common element space violated declaration prohibition against altering common elements. Also violated provision prohibiting structural modifications. The addition of a door, or any opening, in a room is a modification in the structure of the room. Rather than a single access, the room has two access points; rather than a solid wall, the wall now has a hole in it.

Lake Pointe Owners Assn., Inc. v. Fenelon,
Case No. 93-0297 (Draper / Summary Final Order / February 4, 1994)

- Unit owner's installation of roll-down vinyl shade and removable Plexiglas splatter shield on their already enclosed patio did not constitute an "enclosure" within the meaning of the documents prohibiting balcony enclosure.
- "Enclosure" in this context, where the patios are already screened in, means to fence or place barrier which prevents access and egress to the patio. Similarly, shade and shield did not violate the declaration prohibiting changes to the appearance of the exterior of the apartment building as board has, through rulemaking, interpreted declaration to prohibit attachments to the outside walls.

Palm Court Owners Assn., Inc. v. Palm Bay Development,
Case No. 95-0131 (Scheuerman / Final Order / August 14, 1996) (*aff'd* Palm Bay Development Corp. v. Palm Bay Owners Assn., Inc., / Case No. CA-96-3497 12th Jud. Cir. Ct. / (November 7, 1997) / appeal pending 2d DCA 1998)

- Where declaration permitted original developer to use units as models, such right included the authority to physically modify the units to facilitate their use as a model, including replacing the garage door with French Doors.
- Pursuant to declaration, right of original developer to use units as model or sales office ended at the sale of the last unit, and accordingly subsequent purchaser had no right to use the unit as model or office, or to continue physical modifications to unit designed to enhance sales effort of original developer.

Surfside Owners Assn., Inc. v. Desteg, Inc.,
Case No. 92-0238 (Grubbs / Final Order / March 1, 1993) (Decision overturned on appeal)

- "Structural" modification to unit in violation of documents found to exist; refers to a change in the way the parts of the unit are arranged or put together to form the whole.

Vivienda at Bradenton II Condo. Assn., Inc. v. Brittain,
Case No. 95-0043 (Scheuerman / Partial Summary Order / September 1, 1995)

- Declaration construed to permit subsequent developer of land condominium to change the configuration of unsold units.

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

Alrich v. Tahitian Gardens Condo. Assn., Inc.,
Case No. 96-0055 and 96-0070 (Consolidated) (Scheuerman / Summary Final Order / August 5, 1996)

- Where documents delegated authority to board to approve material alterations and additions, no vote of the owners required to install circulating fountain in lake pursuant to section 718.113(2), Florida Statutes, and the documents. Also, changes did not alter

the appurtenances to the unit within the meaning of section 718.110(4), Florida Statutes, and the documents.

Biscayne Development Limited v. Venetian Isle Condo., Inc.,
Case No. 95-0517 (Scheuerman / Final Order / October 21, 1996)

- Where developer pursuant to right reserved in declaration assigned parking spaces for exclusive use, owner-controlled association could make no re-allocation of developer - assigned cases absent compliance with 718.110(4).

Burrelli v. Ocean at the Bluffs South Condo. Assn., Inc.,
Case No. 95-0292 (Goin / Final Order Denying Petition for Arbitration / October 27, 1995)

- Amendment to the declaration which added provision specifying the procedure for approving alterations and improvements to the recreation area, which was association property, was not an amendment which had to be approved by 100% of the owners because amendment did not alter the appurtenances to the units.

Cravitz v. Lake Laura Condo. Assn., Inc.,
Case No. 93-0277 (Player / Final Order / June 27, 1994)

- Where board, after construction had been completed, approved deck and trellis which had been constructed by a unit owner and which extended onto the common elements, structure constituted a material alteration to the common elements and disturbed the appurtenances to the units in violation of sections 718.110(4) and section 718.113(2), Florida Statutes. Board lacked authority to "give away" portions of the common elements by approving structures which effectively appropriate common areas for the exclusive use and enjoyment of individual unit owners.
- Wooden fence enclosing a grassy limited common element adjacent to a unit constituted a material alteration to the common elements because it changed the original condition and appearance of the lawn next to the unit which was a limited common element. The illegal fence did not implicate section 718.110(4), Florida Statutes, because the area enclosed was a limited common element reserved for the exclusive use of a particular unit owner.

Garing v. Sugar Creek Country Club Travel Trailer Park Assn., Inc.,
Case No. 93-0153 (Goin / Final Order / March 23, 1994)

- Where association razed its old maintenance building and replaced it with a new building but in a different location less prone to flooding, such alteration did not result in a material alteration to the appurtenances thereby requiring 100% approval. Unit owner did not allege that reconstruction of the building at an alternative site resulted in a material alteration to the common areas. Sufficient evidence presented that new maintenance building was constructed pursuant to the association's duty to maintain,

repair and replace the common areas, and therefore association can authorize the building replacement without a vote of the unit owners, citing Tiffany Plaza; Cottrell.

Greenlee v. Oceanside Terrace Condo. Assn., Inc.,

Case No. 95-0497 (Goin / Partial Summary Order / February 9, 1996)

- Where declaration provided that there shall be no alteration nor further improvement to the common elements without the prior approval of not less than 20 unit owners and that such alteration could not interfere with the rights of any owner without their consent, security gate installed by association which was approved by at least 20 unit owners did not violate declaration because the security gate did not "interfere with the rights" of petitioner even though petitioner and his guests would no longer have the same direct access as before.

L'Ambiance at Longboat Key Club Condo. Assn., Inc. v. Isaac,

Case No. 96-0334 (Scheuerman / Summary Final Order / August 5, 1997)

- Rule of association which permitted any unit owner to use another's unit for purposes of the installation and maintenance of hurricane shutters held to impermissibly modify the appurtenances to the unit in violation of s.718.110(4), F.S. Statute did not authorize owners to occupy the units or limited common element terraces of another owner. However, where shown to be necessary to protect the common elements and residents, association has broad right of access to the units and was authorized to undertake the installation and maintenance of shutters even where it required entry into the units and limited common elements.

Kamfjord v. Harbour Green Condo. Assn., Inc.,

Case No. 93-0173 (Scheuerman / Summary Final Order / October 28, 1992)

Proposed expansion of limited common element patio onto the common elements changed the appurtenances to the units for which a 100% affirmative vote of the owners was required. A proposed change may simultaneously change the common elements within the meaning of section 718.113(2), F.S. while also changing the appurtenances to the unit within the meaning of section 718.110(4), F.S. The proposed patio extension would result in a smaller portion of the common elements being available for use by the unit owners, thereby diminishing the common elements appurtenant to the units.

Ladolcetta v. Carlton Condo. Assn., Inc.,

Case No. 94-0499 (Draper / Summary Final Order / April 24, 1995)

- Conversion of game room including pool table, card tables, and furniture into office for manager changed function, use, and appearance of game room and constituted material alteration to the common elements. Similarly, conversion of manager's former office into locked storage room constituted material alteration to the common elements.

Neither change, however, constituted alteration to appurtenances of units as unit owners have not been deprived of the use of any area.

Miami Beach Club Motel Condo. Assn., Inc. v. Escar,

Case No. 93-0162 (Goin / Preliminary Order / December 21, 1993)

- Where unit owner installed central air conditioning unit on common elements, section 718.113, Florida Statutes, was not violated where only the board gave permission for the installation, as the condominium documents delegated the authority to the board to approve alterations to the common elements.
- Since condominium documents failed to address the issue of material alterations to the appurtenances to the unit, section 718.110(4), Florida Statutes, controls in its requirement of unanimous unit owner consent for changes which materially alter or modify the appurtenances to the unit. In this case, the use of the common elements appurtenant to the units was not materially altered or modified where it was neither pled nor proved that the four feet wide space now occupied by the air conditioner had interfered with any significant use of the common elements.

Raska v. The Fountains Assn., Inc.,

Case No. 93-0364 (Goin / Summary Final Order / December 23, 1994)

- Alteration of putting greens by removing artificial turf and placing tables, chairs, and plants on the surface did not result in a material alteration to the appurtenances to the units, but did result in a material alteration of the common elements. While the association changed the use of the common elements from a putting green to a patio and picnicking area, the area remains a recreational area, and the beneficial use of the area has not been diminished, and the appurtenances to the units have not changed. However, the removal of the artificial turf and the placement of furniture resulted in a material alteration of the common elements requiring compliance with section 718.113(2), Florida Statutes, and the documents.

Rice v. Windrush Condo. Assn., Inc.,

Case No. 94-0321 (Richardson / Summary Final Order / April 7, 1995)

Petitioner was entitled to exclusive use of limited common element parking space, which was made an appurtenance to his unit upon the sale of the unit. The unit could not be separated from its appurtenances, and accordingly, transfer of parking space to a different unit was invalid.

Schwartz v. Brickell Townhouse Assn., Inc.,

Case No. 95-0222 (Goin / Arbitration Final Order / December 2, 1996)

- Where structure to house emergency generator and fire pump was constructed on the common elements without a vote of the unit owners, association did not violate section 718.113(2) or 718.110(4) where generator and fire pump (and structure to

house them) was part of an engineered life safety system required by the So. Florida Prevention Code.

Stearns v. Aquavista Owner's Assn. of Panama City Beach,
Case No. 93-0289 (Draper / Final Order / April 29, 1996)

- Installation of carpeting, desks and file cabinets in former laundry room held to be material alteration to the common elements.
- Where video games were removed from game room and room was changed to lunch room/supply room for association personnel, common elements were materially altered.
- General power granted in declaration for association to manage and operate the common elements does not supersede requirement that common element alterations such as changing video game room to lunch room be approved by the unit owners.
- Where unit owners retroactively approved an amendment of the declaration specifically providing for the changes, unit owner approval of alterations no longer required.
- Change in rooms held not to be material alterations to the appurtenances to the unit. While the rooms' purposes have changed, they are still within the ambit of intended uses of the common elements (furnishing services and facilities for the enjoyment of the apartments) and no specific service facility type previously provided was entirely deleted.

Towner v. Aldea Mar Condo. Assn., Inc.,
Case No. 95-0322 (Draper / Summary Final Order / September 24, 1996)

- Association's removal of sundecks to re-roof and failure to replace them constituted a material alteration of the appurtenances to the units served by the sun decks, requiring association to comply with 718.110(4).
- Sundecks were limited common elements. While they were not specifically designated such in the declaration, the way the condominium was constructed, with nine of the units having sundecks accessible only from the inside unit and a tenth unit with a sundeck on the unit's carport and accessible by stairs directly outside the unit, indicates that the sundecks were reserved for the use of those ten units, and thus, were limited common elements.

Villas at Eagles Point Condo. Assn., Inc. v. Kahn,
Case No. 94-0391 (Scheuerman / Arbitration Final Order / July 10, 1995) (aff'd, Kahn v. Villas at Eagles Point Condo. Assn., Inc., Case No. 96-02074 / Fla. 2d DCA May 14, 1997/ 693 So.2d 1029).

- Addition of patio deck constituted material alteration to the common elements and simultaneously altered the appurtenances to the units.

Floor coverings

Boca Center Plaza v. Mull,

Case No. 92-0165 (Helton / Final Order / October 22, 1992)

- Rule requiring carpet or rugs with pads did not require complete coverage, but only coverage in traffic areas.

BPCA Condo. Assn., Inc. v. Huggins,

Case No. 92-0118 (Scheuerman / Final Order / June 21, 1993) (on appeal)

- Ambiguous provision in declaration concerning replacement of carpet was to be construed against the party seeking to enforce the provision.

Cypress Bend Condo. I Assn., Inc. v. Dexner,

Case No. 95-0145 (Goin / Arbitration Final Order / May 19, 1997)

- Unit owner who installed tile in unit was ordered to remove tile because it was causing unreasonable noises to be heard in downstairs unit. Evidence presented showed that unit owners had not properly soundproofed tile and that was the cause of the disturbing noise.

Galleon Condo. Apartments, Inc. v. Rappaport,

Case No. 92-0297 (Player / Final Order / April 8, 1993)

- Selective enforcement of no-carpet rule not shown where only unit owners permitted to install carpeting after adoption of rule had already purchased carpet before rule was enacted.

Heisner v. Bimini Village Condo. Assn., Inc.,

Case No. 94-0130 (Goin / Final Order / May 11, 1995)

- Where case was referred to arbitration by judge, the requirement in the documents that the units be carpeted does not necessarily mean wall-to-wall carpeting, and where unit featured thick rugs over a large majority of the tiled area of the dining room, living room, and hallways, compliance with declaration was established.

Levinson v. Victoria Towers Condo. Assn., Inc.,

Case No. 95-0296 (Draper / Final Order / February 11, 1997)

- Association's argument that unit owners were responsible for repairs because they added floor covering to the balconies without board approval and failed to apply waterproofing to floor, rejected. Evidence failed to show application of floor coverings caused damage; that association had enforced prohibition on alterations to common

elements without board approval; that there was any rule or directive that prohibited installation of balcony floor coverings; or that unit owners were informed by association that waterproofing was necessary maintenance.

Oaks III Condo. Assn., Inc. v. Menuau,

Case No. 95-0418 (Goin / Summary Final Order / June 13, 1996)

- Where declaration required units to contain wall-to-wall carpeting and where unit owner installed tile in living room, dining room, and hallways, but not in bedrooms, unit owner ordered to remove tile and install wall-to-wall carpeting, where unit owner did not allege that she was "handicapped" as defined by Fair Housing Act, but only that she had swelling of the leg and arthritis and it was difficult for her to maintain carpeting.

The Village of Stuart Assn., Inc. v. Huff,

Case No. 95-0141 (Draper / Final Order / May 29, 1996)

- Declaration provision prohibiting "marble, ceramic or other hard flooring tile flooring" (sic) in units above first floor, held to prohibit wood flooring. Though the language is inartful and grammatically incorrect, the obvious intent is to prohibit noise and disturbance created when marble, tile or other hard flooring is placed in units located above the first floor.

Generally; definition

Davidson v. Clearwater Key Assn. Bayside Gardens, Inc.,

Case No. 94-0175 (Grubbs / Summary Final Order / April 10, 1995)

- Where dispute was filed by unit owner requesting reimbursement for repairs to screen door, claiming that the screen doors, located to the outside of the sliding glass doors, constituted a portion of the common elements, and where declaration did not define the boundaries of the unit except to state that the common elements included all external walls of the units, other than the internal surfaces thereof, declaration construed to provide that the doors are a portion of the unit. A "wall" is an erection of stone, brick, or other material, raised to some height, and intended for the purposes of privacy, security, or enclosure. A "door" is not a wall, but is a movable structure used to close off an entrance, typically consisting of a panel that swings out on hinges, slides, or rotates. Accordingly, declaration which included within the concept of unit, internal walls, did not refer to doors. Also, since unit owner has exclusive control over the door, and since the declaration did not provide for limited common elements, the screen door must be part of the unit because the unit is the part of the condominium property subject to exclusive ownership.

Guglielmoni v. Pine Ridge at Sugar Creek Village I Condo. Assn., Inc.,

Case No. 94-0392 (Scheuerman / Summary Final Order / October 17, 1994)

- The "unit" was not enlarged by extension of screened room onto the limited common elements, and accordingly, formula for assessments for each "unit" based upon square

footage, as provided in the declaration, should not change by a virtue of the additional room.

Jones v. Lake Harbour Towers South Condo. Assn., Inc.,
Case No. 93-0266 (Price / Final Order / November 16, 1994)

- Plasterboard is not horizontal plane of lower surface of the ceiling slab, but rather is merely the ceiling covering. Thus, the plasterboard is not common elements.

Vivienda at Bradenton II Condo. Assn., Inc. v. Brittain,
Case No. 95-0043 (Scheuerman / Partial Summary Order / September 1, 1995)

- Where declaration permitted first and subsequent developer to change the size, configuration, and location of all units in the land condominium, unit defined by declaration to include the appurtenances to the unit, and developer had authority to change configuration of the unit to enclose a lanai.

Rental (See also Tenants)

Repair

Brickell Town House Assn., Inc. v. Del Valle,
Case No. 95-0133 (Scheuerman / Final Order / September 12, 1995) (Scheuerman / Order on Motion for Rehearing / December 6, 1995)

- Where association, pursuant to its duty to maintain and repair the common elements, undertook restoration project to the exterior of building damaged by hurricane, where method of reconstruction chosen by association required certain owners to vacate their units for one to two months, the expenses shown to be actually necessary to permit the association to carry out its duty of undertaking maintenance project are, as a matter of law, deemed to be common expenses to be shared by all unit owners, including expenses of securing alternate living arrangements for owners; storage expenses for furniture, moving expenses, expenses of repairing unit damaged by reconstruction effort; and lost income where a tenant was forced to leave the unit.

Desisti v. Landmark at Hillsboro Condo. Assn., Inc.,
Case No. 94-0157 (Grubbs / Partial Summary Final Order / April 17, 1995)

- Where unit owner is given the responsibility for the repair of window panes, and where declaration clearly recognizes the distinction between windows and window panes, the rule of *expressio unius est exclusio alterius* requires the conclusion that the owner is not responsible for any part of the window other than the window panes.
- Where association had duty to repair and replace windows, it cannot successfully argue that owner's replacement of windows without board approval (a violation of the declaration) precluded unit owner from being reimbursed for the cost of the replacement

windows if the owner's action was necessitated by the association's breach of its duty to maintain and replace the windows.

Four Seasons Condo. Assn. of Winter Park, Inc. v. Torres,
Case No. 92-0308 (Grubbs / Arbitration Final Order / January 28, 1994)

- Association not entitled, as a matter of law, to injunctive relief requiring upstairs unit owners to undertake such repairs as are necessary to ensure that no further leaks will occur, where evidence did not establish that unit owners were responsible for the leaking. Leaking could have originated in common elements or area of apartment required to be maintained by the association. Unit owner ordered instead to obtain the services of a professional within a reasonable period of time after becoming aware of leaks within unit owner area of responsibility.

Friesen v. Boca Village Condo. Assn., Inc.,
Case No. 94-0498 (Draper / Order to Show Cause / December 9, 1994)

- Unless a unit owner alleges and proves negligence on the part of the association in failing to maintain the common elements, the unit owner cannot recover for damages caused to her unit by the failure.

Gillett v. The Greens Condo. Assn., Inc.,
Case No. 94-0489 (Scheuerman / Final Order / July 26, 1995)

- Where items of personal property located within the unit were damaged as a result of the association's negligent failure to maintain the common element roof, unit owner entitled to recover the cost of repairs or restoration, or, in the alternative, recovery could be had for the difference between the value of the items of personal property before and after the event.
- The certainty doctrine applies in Florida and requires that fact of damages and the extent of damages must be established with a reasonable degree of certainty in order to permit recovery.
- Unit owner awarded \$4,275.00 for repairs to the unit due to water damage. Owner not awarded any recovery for ancient VCR; for roof patch that was done by an unqualified maintenance person; or for lost rent during a two month period during which certain repairs were being done, due to insufficient evidence.

Hannon v. Shore Plaza Building Assn. of Town Apartment South, No. 101, Inc.,
Case No. 95-0363 (Goin / Summary Final Order / February 28, 1996)

- Air conditioning ducts servicing only petitioners' unit and not part of the common elements determined to be maintenance responsibility of unit owners.

Head v. Gulf Claridge Apartment Assn., Inc.,

Case No. 94-0434 (Richardson / Final Order / March 28, 1995)

- Association found to be negligent in failing to maintain the common condensation lines to the air conditioning system, causing the lines to clog and water to back up into Petitioner's unit, resulting in damages of \$926.00 in repair costs, and \$1,888.00 in property loss. Expert testimony established that the type of condensation lines found in the community required routine maintenance, and association did no maintenance on its common lines for 12 to 17 years.

Lessne v. Family Townhouses of the Lakes of Emerald Hills,
Case No. 92-0235 (Goin / Partial Summary Final Order / June 17, 1993)

- Where declaration provided that each unit owner is responsible for maintenance of windows, the term "window" means the entire window, including the glass and frame, and hence the unit owner was required to maintain the defective frame.
- Exterior decorative wood below window, which is not part of the "defined unit," is the responsibility of the association to maintain. Accordingly, the repair job effectuated by the association was inadequate and the association ordered to re-repair, where the repaired portion of the decorated wood did not resemble the surrounding wood and was of a different texture.

Loperfido v. Vista St. Lucie Assn., Inc.,
Case No. 92-0274 (Goin / Final Order / February 4, 1993)

- According to declaration, exterior door to unit is part of the unit and not the common elements; accordingly, unit owner required to pay for weather-stripping around door.

Marbeya Club Condo. Assn., Inc. v. Benkis,
Case No. 93-0009 (Price / Arbitration Final Order / June 1, 1993)

- Where old air conditioning units were stacked on top of each other and where Association rule required that old a/c units be removed when they were replaced with a new a/c unit (that was not stackable kind), rule was found to be unreasonable because unit owner who owned bottom a/c unit would be forced to remove the top a/c unit that belonged to another unit owner.

Mediterranean Apartments, Inc. v. Rubens,
Case No. 95-0103 (Richardson / Summary Final Order / November 13, 1995)

- Unit owner, who had allowed cooperative unit to fall into grave state of disrepair, was required under terms of lease to repair items on interior of unit.

North Oaks Condo. Assn., Inc. v. Carter,
Case No. 94-0460 (Grubbs / Summary Final Order / April 5, 1995)

- From owner's failure to comply with window covering regulations after several requests from the association to do so and from owner's refusal to participate in the arbitration proceeding, it is apparent that unit owners will continue to flout the restrictions imposed upon them by the declaration, and owners ordered to repair or replace the window coverings and comply with the rules and regulations of the association.

Reilly v. Royal Hawaiian Club Condo. Assn., Inc.,
Case No. 94-0069 (Goin / Final Order / January 27, 1995)

- In order for a unit owner to recover from the association for damages to his or her unit, the owner must prove that the damage was caused by the association's failure to maintain or repair the common elements or other portion of the condominium property which is within the maintenance responsibility of the association. Further, in order to recover damages either for injury to himself or to guests, or for damages caused to the unit by the common elements, an owner must prove that the association was negligent in failing to repair the cause of the damage, or that the association breached its contractual duty under the declaration to maintain the common elements.
- Where termites damaged wood included within the definition of unit, association not responsible for the cost of repairing the damage unless the association was shown to be negligent in failing to spray or protect against termite damage. The elements of actionable negligence include existence of duty to protect unit owner from the injury complained of; the failure to perform the duty; and injury arising from such failure. Here, unit owners failed to prove negligence. Specifically, unit owner never advised board of termite problem until after the damage had already occurred.
- Where unit owners failed to present evidence that termites had infested portions of the common elements of the buildings, or that termites were a threat to the common areas, award of injunctive relief requiring the association to treat the building was not entered. However, association cannot ignore fact that termites have been found in the individual units and is under a duty to investigate the cause of termite infestation.

Rivoli v. Fairways of Tamarac Condo. II Assn., Inc.,
Case No. 94-0125 (Price / Final Order / August 2, 1995)

- In order to prevail on a claim for damages to their unit, owners must prove that the damage was caused by the association's negligent failure to maintain, repair, or replace the common elements, or a portion of the condominium property within the responsibility of the association to maintain. As part of establishing that a duty was owed by the association, unit owners must prove that the source of the water damage to their unit was from the common elements or from a portion of the condominium property within the maintenance responsibility of the association. In this case, the owners failed to prove the source of water intrusion and relief denied.

Schlegel v. Fisherman's Cove Assn., Inc.,

Case No. 93-0123 (Draper / Final Order / April 4, 1996)

- Even if balcony was a part of the unit, association was still authorized to pay cost of balcony repairs because declaration defined common expenses to include repair of "portions of units to be maintained by the association," such as exterior of building, and balcony is an exterior portion of a building.

Restraints on alienation

Smith v. Edgewater Condo. Assn., Inc.,

Case No. 94-0216 (Richardson / Arbitration Final Order Determining Liability / January 12, 1995)

- Provision in the declaration, requiring unit owners to notify the association in advance of transferring their unit and giving the board discretion to reject a prospective purchaser for "good cause," not an invalid restraint on alienation.

Sale

Cail v. Sebastian Harbor Villas Condo. Owners' Assn., Inc.,

Case No. 94-0084 (Scheuerman / Final Arbitration Order / August 27, 1996)

- Record supported finding that certain owners did not offer units for sale in ordinary course of business. Units not listed on MLS; no units had been sold for 5 years; prices for the units were higher than value; and there was the lack of an active and concerted sales effort.

Courtyard Square Condo. Assn., Inc. v. Buchholz,

Case No. 96-0415 (Draper / Final Order on Default / May 1, 1997)

- Declaration restriction prohibiting use of unit for other than single family residence held not to preclude reasonable incidental commercial use.

Seminole Cove Condo. Assn., Inc. v. Enterprise Health Management, Inc.,

Case No. 95-0444 (Goin / Summary Final Order / August 14, 1996)

- Where unit owners failed to obtain approval of association before entering into an agreement for deed with prospective purchaser, which agreement for deed was supposedly entered into before the date of the amendment making condominium housing for older persons, prospective purchaser who moved into the unit after the date of the amendment, and who did not begin payments pursuant to agreement until 1 year later, was ordered to vacate the unit.

Smith v. Edgewater Condo. Assn., Inc.,

Case No. 94-0216 (Richardson / Final Order / February 24, 1995) (Appeal to circuit court dismissed due to settlement.)

- Where investigation and screening of prospective lease/purchaser was negligently performed and board selectively exercised its discretionary authority to reject a buyer, the association found to be liable for the unit owner's actual damages resulting from the loss of sales contract.
- Unit owner awarded \$13,088.00 in damages, which included loss of profit on the sale, loss of rent, and unit owner's payment for maintenance fees and taxes, as well as pre-judgment interest calculated from the date of loss, where association found to have negligently rejected prospective buyer.

Smith v. Edgewater Condo. Assn., Inc.,

Case No. 94-0216 (Richardson / Arbitration Final Order Determining Liability / January 12, 1995)

- Association improperly rejected a unit owner's prospective purchaser where purchaser's confusion over the name of where his place of employment was located (Alton Street instead of Alton Road) was not a material misrepresentation, board's investigator only checked 1 reference, board did not give purchaser a chance to rebut prior landlord's allegations that he failed to pay his last month's rent, and relied on rumors and gossip to make its decision. Board did not follow the same procedures with purchaser's application as it had done with other applications.

Von Zamft v. Coventry A Condo. Assn., Inc.,

Case No. 94-0078 (Richardson / Final Order / July 6, 1995)

- Unit owner failed to prove that association's denial of written sales contract was unreasonable where the declaration authorized the board to use its discretion in approving purchase money mortgage agreements which pose greater financial risk to the association, and where application submitted by buyer did not provide the requested financial information and did not include transfer fee.

Weinberg v. Flanders "B" Condo. Assn., Inc.,

Case No. 95-0404 (Goin / Order Denying Respondent's Motion to Dismiss / February 20, 1996)

- In general, the arbitrator does not have jurisdiction over the cause of action of tortious interference with a business relationship. However, the arbitrator does have jurisdiction to consider whether the association breached the terms of the declaration of condominium and/or acted improperly or unreasonably regarding Petitioner's application for purchase because the declaration specifically gives the association the authority to act regarding an application for purchase.

Use/restrictions on use (See also Nuisance; Fair Housing Act)

Cammack v. Ocean Beach Assn., Inc.,

Case No. 93-0290 (Scheuerman / Final Order / March 24, 1995)

- Conduct of rental program from the manager's unit did not violate declaration providing that units are to be used as a residence and for no other purpose. Statute defines residential condominium as consisting of units, any of which are intended for use as private, temporary or permanent residence. Furthermore, condominium documents specifically contemplated that units would be rented, and conduct of rental program did not detract from residential nature of the development. Even if use of the manager's unit was found to be non-residential in nature, since the documents permit a resident manager to occupy a unit for purposes of managing, documents interpreted to exempt manager's unit from the residential use restrictions to the extent of management activities, which may properly include rental of units located within the condominium.
- Where manager used association unit as residence, as base of operation for management of the condominium, and as center for conduct of rental program, conduct of rental program was ancillary to the unit's main use, and was consistent with the required residential use of the property.

Collins v. Hidden Harbour Estate, Inc.,

Case No. 93-0051 (Player / Final Order / June 4, 1993)

- Amendment to declaration approved by the board and at least 75% of the voting interests which, prospectively, required that at least one person over the age of 55 years must be a permanent occupant, and further provided that persons under the age of 55 and more than 21 could occupy a unit so long as at least one permanent resident is over the age of 55, was valid. After the United States Congress amended the Fair Housing Act in 1988 to prohibit discrimination based on familial status, the association was required either to permit families with children under age 18 to reside in the community or to become a community that qualified for the older persons exemption to the Act.

Filehne v. Gateland Village Condo., Inc.,

Case No. 93-0248 (Player / Final Order / October 20, 1993)

- Where board rule simply required prior notification by an absentee owner that a visitor would occupy his unit, board wrongfully denied approval to guest to occupy unit where board demanded that guest be interviewed in advance of occupation.

Glen Cove Apartments Condo. Master Assn., Inc. v. Weit,

Case No. 93-0075 (Scheuerman / Final Order / May 30, 1995)

- Where a subsequent developer who owned approximately 120 units in the condominium utilized one unit as a sales and rental office for the remainder of his units, such use violated restriction in declaration requiring that units be used only for residential purposes.
- Estoppel to enforce rental restrictions and residential use restrictions not shown where association did not represent to the purchasing subsequent developer that these

portions of the documents would not be enforced against him. Also, reliance not shown to exist where it was not shown that developer would not have purchased the units but for any representation by the association. Additionally, any reliance would not have been reasonable in any event because restrictions were a matter of public record at the time developer purchased the units.

- Subsequent developer did not enjoy exemption of first developer from rental restrictions contained in condominium documents where there was no assignment of developer rights to the subsequent developer, and where the documents, viewed in totality, express no overall intent that the rights and privileges granted to the original developer were intended to extend to include all remote developers as well, particularly where the original developer completed construction of the condominium.

Katz v. Le Chateau Royal Condo. Assn., Inc.,
Case No. 93-0159 (Player / Final Order / February 21, 1994)

- Board-made rule prohibiting clothes washers and dryers in individual units was within board's authority and was reasonable; laundry facilities provided on all except one floor and building was not constructed to accommodate washer and dryer in individual units.

Lakeview Gardens Condo. Assn., Inc. v. Hernandez,
Case No. 92-0158 (Grubbs / Final Order/As Corrected / April 11, 1994)

- Where declaration restricted use of unit to residential purposes and identified persons who could use unit including families, guests, and invitees, board rule which limited number of persons who could occupy the unit in effect amended declaration and was invalid. If, as argued by association, sewage treatment facility required use limitations, declaration could be amended.

The Landings Condo. Assn., Inc. v. Patterson,
Case No. 94-0366 (Scheuerman / Summary Final Order / March 1, 1995)

- Where the documents provided the guests of owners may not occupy the unit for more than two weeks per calendar year without obtaining approval under separate provisions of documents pertaining to tenant approval, declaration construed as permitting each individual guest to stay for two weeks or less per calendar year without obtaining approval in the manner provided for tenant approval. Accordingly, each guest can stay up to two weeks.

Maitland House Management, Inc. v. Martin,
Case No. 93-0242 (Draper / Summary Final Order / May 27, 1994)

- Rule defining "single family residents" as that term is used in the declaration was invalid where definition required use of unit as residents by one or more persons related by blood, marriage, or adoption. The term "family" is one of great flexibility.

- Even if rule was within the board's scope of authority, the rule prohibiting co-habitation by persons other than persons related by blood, marriage, or adoption was unreasonably restrictive and was invalid.
- Where two men occupied unit and shared the living, dining and cooking areas, they are not in violation of the declaration restriction that units be used only as single family residences.

Marbeya Club Condo. Assn., Inc. v. Benkis,
Case No. 93-0009 (Price / Arbitration Final Order / June 1, 1993)

- Where old air conditioning units were stacked on top of each other and where Association rule required that old a/c units be removed when they were replaced with a new a/c unit (that was not stackable kind), rule was found to be unreasonable because unit owner who owned bottom a/c unit would be forced to remove the top a/c unit that belonged to another unit owner.

Mitro v. Leisureville Fairway 8 Assn., Inc.,
Case No. 93-0060 (Player / Final Order / July 21, 1993)

- Where declaration provided that apartments shall be occupied only by the owner and his guests, and where applicable declaration of covenants and restrictions restricted use of unit to a single family home, and where board rules defined "guest" as a person temporarily visiting a unit owner for a period not to exceed 30 days, other board rule which prohibited guests from occupying a unit unless one member of the owner's household was in residence, while harsh in application in this instance, was not in conflict with declaration.
- "Family" means one or more persons occupying premises and living together as a single house keeping unit whether related by blood, adoption or marriage. Unit owner's nephew and his wife did not live with the unit owners and accordingly, these relatives are not part of the unit owner's immediate single family or household, but are "guests."
- Board rule prohibiting guests from occupying unit in absence of unit owner held not unreasonable. Having unit owners present when their guests are staying enables the unit owners to be responsible for the guest's conduct, an issue of importance in a large community.

Olive Glen Condo. Assoc. v. Perez,
Case No. 92-0126 (Player / Final Order / October 14, 1992)

- Where live-in fiancé occupied unit with unit owner, documents allowing only residential use by one family were not violated.

Palm Court Owners Assn., Inc. v. Palm Bay Development Corporation,

Case No. 95-0131 (Scheuerman / Final Order / August 14, 1996) (*aff'd* Palm Bay Development Corp. v. Palm Bay Owners Assn., Inc., / Case No. CA-96-3497 12th Jud. Cir. Ct. / (November 7, 1997) / appeal pending 2d DCA 1998)

- Where declaration permitted original developer to use units as models, such right included the authority to physically modify the units to facilitate their use as a model, including replacing the garage door with French doors.

Palm Royal Apartments, Inc. v. Flaherty,
Case No. 96-0088 (Draper / Summary Final Order / December 12, 1996)

- Current unit owner responsible for removing air conditioner/splash guards installed by previous owner without approval of other unit owners and board of directors. Where restriction against changes to building exterior was contained in the declaration, it was covenant running with the land, enforceable against subsequent owners whether or not they have actual knowledge of restriction. In addition, section 718.104(4)(f), F.S. provides that provisions of declaration are enforceable equitable servitudes that run with the land and are effective until the condominium is terminated.

Pine Ridge at Haverhill Condo. Assn., Inc. v. Zimmer,
Case No. 94-0199 (Price / Summary Final Order / November 22, 1994)

- Provision in declaration restricting use of unit to residential use as a single family residence by the owner, his immediate family, guests, tenants, and invitees construed as not violating the residential use restriction where units used to entertain guests, have tenants and invitees. Such uses are common uses of a residence.
- Provision in declaration restricting use of unit to single family residence by the owner, his immediate family, guests, tenants, and invitees, and further providing occupancy limits for each type of unit, construed to mean that the total number of owners, immediate family members, guests, and tenants residing in unit at any one time collectively may not exceed limits established in the declaration.

Savannah Condo. Assn., Inc. v. Trans Management Corporation,
Case No. 93-0049 (Grubbs / Final Order / November 16, 1994) (currently on appeal)

- Officers, directors and employees of a corporate unit owner could not be considered the owner's "immediate family." The corporation is a separate and distinct entity from its officers, directors, and employees. However, under a provision in declaration to the effect that unit owners are permitted to have visitor occupants in their "presence," purpose of provision would require interpretation permitting corporation to have guests in its "presence" if it designates one particular individual who is its "presence" that would not change from week to week or month to month.

Scottish Highlands Condo. Assn., Inc. v. MacKellar,
Case No. 94-0168 (Scheuerman / Summary Final Order / August 5, 1994)

- Where documents prohibit the conduct of garage or yard sales, and where "sale" of household goods and furniture occurred within the unit, with delivery of the goods purchased being made on or about the yard, a yard sale occurred within the prohibition contained in the documents, considered in conjunction with other language in the documents prohibiting advertising a unit and providing the address as a place in which goods and services are sold or offered.

Seashore Club South Motel Condo. Assn., Inc. v. Galdorise,
Case No. 92-0299 (Price / Final Order / November 24, 1993)

- Provision of declaration prohibiting commercial usage was violated where evidence established that unit owner was conducting a business by making and receiving business telephone calls, receiving business mail, and where business conduct was of an ongoing and permanent nature. Condominium address was also proclaimed as business address in the yellow pages of the telephone book. While these activities may not, in the usual case, rise to the level of conducting a business or using the unit primarily to conduct a business, unit owner prohibited from continuing business activities where the declaration further prohibited any use of the property other than transient rental purposes.

Seaside Resort, Inc. v. Gaddis,
Case No. 92-0154 (Player / Final Order / February 5, 1993)

- Document restriction imposing two-person limit within unit could not be enforced against respondent unit owner where association failed to adequately justify its decision not to grant hardship variance.

Surfside Owners Assn., Inc. v. Desteq, Inc.,
Case No. 92-0238 (Grubbs / Final Order / March 1, 1993) (Decision overturned on appeal)

- Provision contained in declaration requiring use of commercial unit as a restaurant not found to be unreasonable, arbitrary, in violation of public policy, or violative of any fundamental constitutional right.

Tivoli Trace Condo. Assn., Inc. v. Seibert,
Case No. 95-0452 (Goin / Summary Final Order / July 23, 1996)

- Where unit owner and one son lived in Fort Myers and wife and two sons lived at the condominium in Deerfield Beach, and where husband and son would return to the condominium during the weekends and periodically throughout the week, unit owners were in violation of declaration prohibiting more than 4 persons from occupying a two bedroom unit. Unit owner and son could not be considered temporary guest visiting their family in the family home.

Unit Owner Meetings (See Meetings)**Voting Rights (See Developer-Transfer of control; Elections)****Waiver (See also Estoppel; Selective Enforcement)**

Arlen House East Condo. Assn., Inc. v. Olemberg,
Case No. 95-0273 (Draper / Final Order / July 31, 1996)

- Estoppel and waiver held not to apply where association permitted washer and dryer to remain in unit during time that individual who later purchased unit viewed it, where declaration contained restriction against washer/dryer and owner was told of prohibition during screening interview.

Board of Trustees of Bel Fontaine v. Caruso,
Case No. 94-0116 (Richardson / Final Order / September 14, 1994) (currently on appeal)

- Board member/unit owner failed to show that association waived its right to enforce no pet restriction against a dog, where dogs were expressly prohibited, and no dog had ever been permitted in the complex. Association's purported allowance of a prior tenant's housing of a parakeet, did not amount to a conscious acquiescence in a persistent, obvious, and widespread violation, so presence of parakeet did not waive association's right to enforce restriction against dogs.

Condo. on the Bay Tower I Assn., Inc. v. Bonanno,
Case No. 93-0066 (Price / Arbitration Final Order / February 24, 1994)

- Where unit owners extended the sliding glass doors and exterior wall of their unit onto the balcony, and where two board members with knowledge failed to take any action for a period of two years, effective waiver did not occur.

Cypress Bend Condo. I Assn., Inc. v. Dexner,
Case No. 95-0145 (Goin / Arbitration Final Order / May 19, 1997)

- Association did not waive its right to enforce nuisance restriction against unit owner who had installed tile, which was causing unreasonable noises in unit below. When association found out about tile and noise, it attempted to work out a solution. Although the association waited three years before it brought action, its conduct did not constitute the "conscious acquiescence in persistent, obvious, or widespread violations" necessary to prevent enforcement of the restrictions.

Eldorado Towers Condo. Assn., Inc. v. Kurtz,
Case No. 96-0094 (Goin / Arbitration Final Order / January 17, 1997)

- Where association learned of illegal cats and fined unit owner who later brought cats back onto the premises, the fact that association waited approximately 1 year after it

found out unit owner had returned cats to enforce restriction again against him did not establish waiver.

Florida Shores Condo., Inc. v. Haynie,
Case No. 92-0303 (Player / Final Order / May 11, 1993)

The Association's failure to enforce the parking rules constitutes poor management practices; however, this failure to consistently enforce the rules does not demonstrate a clear intent to waive the right to enforce the parking restrictions.

Forest Hill Gardens East Condo. Assn., Inc. v. Weitz,
Case No. 95-0047 (Scheuerman / Summary Final Order / June 1, 1995)

- Facts supporting estoppel and waiver not shown to exist where declaration clearly prohibited regularly renting out units and no reliance on any prior board interpretation was warranted under the circumstances. When association granted a hardship exemption to unit owner, hardship exemption was limited in scope and duration, and association did not intend to waive forever its ability to enforce the rental restrictions in the documents.

Gardens at Palm-Aire Country Club Assn., Inc. v. Lee,
Case No. 94-0533 (Richardson / Final Order / May 16, 1995)

- Where unit owners built a patio/lanai that was larger than what had been approved by the board, unit owners failed to prove estoppel or waiver in that the evidence showed that the board did not approve the type of lanai built by either express approval or conduct, so unit owners could not have reasonably relied upon any representation by the board.

Gavey v. Caxambas Tower Condo. Assn., Inc.,
Case No. 95-0267 (Scheuerman / Final Order / June 29, 1995)

- Owner complaining that board had chosen wrong color of marble replacement on patio could not be heard to complain where association had given owner opportunity to choose color, and owner had inexplicitly failed to make color selection.

Heisner v. Bimini Village Condo. Assn., Inc.,
Case No. 94-0130 (Goin / Final Order / May 11, 1995)

- Where complaining unit owners became aware of tile violation in adjoining unit in 1986, but failed to complain to adjoining unit owners until 1993, complaining unit owners waived their right to enforce the documents.

Inverness Condo. II Assn., Inc. v. Riley,
Case No. 94-0328 (Grubbs / Summary Final Order / February 16, 1995)

- Waiver not established where record showed that association took action as soon as unauthorized occupants moved into the unit by sending a letter. Just because association did not pursue legal action at that point did not establish that association intentionally and knowingly waived its right to subsequently pursue the matter. Association has responsibility to make reasonable and fiscally sound decisions on behalf of owners, and fact that board does not take immediate legal action may indicate the board believed the cost would outweigh the benefit.
- Waiver differs from estoppel in that waiver is a unilateral act, whereas estoppel requires the party asserting the defense to act upon or rely upon the particular act or statement as detriment. Waiver is the intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, or when one in possession of any right, whether conferred by law or by contract, with full knowledge of the material facts, does or forbears to do something which is inconsistent with the right, or his intention to rely upon it.

Inverness At Golfview Condo. Assn., Inc. v. Dunlop,
Case No. 96-0247 (Oglo / Summary Final Order / November 13, 1996)

- The respondents, who altered their screened-in porch by enclosing it with vinyl windows, alleged that the association waived its rights to require them to restore the porch to its original condition, because two board members said that removal of the windows sufficed to cure the violation. Based upon the association's series of board meetings, which consistently took the position of requiring the respondents to remove the windows and restore the unit to its original condition, and the fact that the association filed its petition for arbitration after the alleged conversations with two board members, the arbitrator concluded that the alleged conversations did not show an intent of the association to relinquish its rights to require the respondents to restore their porch to its original condition.

Klopstad v. Park West Condo. Assn., Inc.,
Case No. 95-0084 (Draper / Final Order / December 13, 1995)

- Delay in bringing petition for arbitration did not constitute waiver where association made some efforts to remedy conditions giving rise to claim. It was reasonable to assume unit owners were trying to work with board, rather than giving up their claim. Neither did delay bar claim on grounds of estoppel or laches where association did not change its position based on representation of unit owners and unit owners continued to threaten legal action if board did not remedy conditions giving rise to claim.

Ladolcetta v. Carlton Condo. Assn., Inc.,
Case No. 94-0499 (Draper / Summary Final Order / April 24, 1995)

- Unit owners did not waive their right to contest conversion of game room into manager's office by failing to replace board in subsequent election.

Madden v. Tiffany Lake Assn., Inc.,

Case No. 96-0085 (Draper / Final Order / November 14, 1996)

- Unit owner petitioner seeking relief against pet weight rule denied relief on grounds of waiver. Waiver may not be used as a sword; rather, it is to be used defensively. In addition, only ground asserted to support waiver was passage of time.

Mallory and Giacalone v. Ballantrae Condo. Assn., Inc.,

Case No. 93-0265 (Scheuerman / Arbitration Final Order / January 23, 1995)

- Where unit owner filed petition seeking declaration that association's refusal to permit installation of roll-down hurricane shutters was arbitrary, affirmative defenses of estoppel, waiver, and selective enforcement could not be asserted by the unit owner as these defenses are protective shields only and are not to be invoked as offensive weapons. However, some of the same considerations which apply in these defenses are relevant to a determination of whether the board acted reasonably in denying the requests of the unit owners to install roll-down shutters.

Miami Beach Club Motel Condo. Assn., Inc. v. Escar,

Case No. 93-0162 (Goin / Final Order / July 28, 1994)

- It was not reasonable for the association to wait four years after installation of air conditioner by unit owner to challenge installation of the air conditioner. Air conditioner was in plain sight, and easily discoverable, and fact that unit owner who installed air conditioner was a member of the board for three of the four years did not preclude waiver argument.

Palm Royal Apartments, Inc. v. Flaherty,

Case No. 96-0088 (Draper / Summary Final Order / December 12, 1996)

- To show waiver of a restrictive covenant there must be a long continual waiver or acquiescence in violation of the covenant and conscious acquiescence in persistent, obvious and widespread violations for waiver or abandonment to occur. Thus, association's delay of a year and a half after unit owner acquired unit to notify her to rectify alterations to unit does not constitute waiver.

Park Lake Village Condo. Assn., Inc. v. Gonzalez,

Case No. 94-0453 (Richardson / Final Order / March 30, 1995) (Appeal to circuit court dismissed due to settlement.)

- Where association approved transfer of unit to new owner with knowledge that new owner would be driving dealer cars, which would be frequently changed, on the common elements, association may not require unit owner to permanently affix the decals to the bumper of the cars. Association had previously accepted laminated tag arrangement, whereby owner laminated the parking decals and placed them in the front

windshield, and such acceptance operated as a waiver of its right to enforce the bumper rule.

Pelican Reef Condo. Assn., Inc. v. Caban,

Case No. 95-0504 (Scheuerman / Final Order / November 14, 1996)

- Owners waived any right to maintain common element door where they voluntarily agreed to remove the unauthorized addition, and later changed their mind. There is no requirement that a waiver under these circumstances be in writing.

Rensen v. Heritage Landings Condo. Assn., Inc.,

Case No. 94-0042 (Scheuerman / Summary Final Order / September 16, 1994)

- In arbitration initiated by unit owners complaining that association had permitted other unit owners to install sliding glass doors and stepping stones, and where other unit owners had not been joined as parties, while arbitrator could not apply estoppel, selective enforcement, or waiver which the other unit owners would have been entitled to assert had they been parties, arbitrator could nonetheless consider the equitable considerations implicit in those defenses in fashioning appropriate relief.

Savoy East Assn., Inc. v. Janssen,

Case No. 92-0133 (Player / Final Order / January 4, 1994)

- In order to prove a valid waiver, it must be shown that at the time of the waiver, a right, privilege, advantage or benefit existed that may be waived; actual or constructive knowledge thereof is required, and an intent to relinquish that right must be demonstrated. Waiver not established where two months before dock lease was to expire, the association notified the unit owner that he was in violation of the rules and that the lease would not be renewed. The fact that the association did not assert the violation for nine or ten months does not require a finding of waiver. The mere passage of time does not establish waiver.

Schiffman v. Golden Isles Towers Condo. Assn., Inc.,

Case No. 93-0360 (Richardson / Summary Final Order / October 3, 1994) (Arbitrator's decision overturned. Golden Isles Towers Condo. Assn., Inc., et al., v. Schiffman, / Case No. 94-13059(18) 17th Jud. Cir. Ct. / Feb. 22, 1996 (Plaintiffs were entitled to ownership and use of parking space 2-A and association had duty to enforce that right, where prior owner of space conveyed unit by warranty deed to defendants (Schiffman) but conveyed parking space by warranty deed to plaintiffs (Singers) and where declaration allowed such conveyance.)

- Where 19 years elapsed between invalid transfer of limited common element parking garage separately from the transfer of unit, record did not demonstrate an intent to relinquish a known right, and waiver did not apply.

Southpointe Villas Condo. Phase IV Assn., Inc. v. Lowry,

Case No. 93-0400 (Grubbs / Final Order / February 27, 1995)

- Where board voted not to enforce truck prohibition against small trucks as reflected in minutes of board meeting, board expressly waived its right to enforce the vehicle restrictions against those identified pickup trucks.

Terraces Condo. Assn., Inc. v. Morgenstern,

Case No. 93-0318 (Draper / Final Order / August 2, 1994)

- Delay of four months between acquisition of pet and enforcement efforts by association does not constitute waiver.

Thompson v. Silver Pines Assn., Inc.,

Case No. 92-0239 (Grubbs / Final Order / March 31, 1994)

- While waiver may be invoked as an affirmative defense to a petition or counter-claim, it may not be used as an offensive weapon in a petition for arbitration brought by unit owner alleging that the association was estopped from accusing unit owner of violating the declaration by painting fence adjacent to her unit.
- Unlike the concepts of selective enforcement or estoppel, where the action or lack of action by the association against other unit owners may be asserted, the defense of waiver primarily arises out of the action or lack of action taken against the violator by the one holding the right to enforce the restriction and occurs when there is an intent to tolerate the specific violation.

Villa Condo. I Assn., Inc. v. Bardy,

Case No. 94-0305 (Price / Final Order / April 19, 1995)

- Where association sought to rescind a variance from parking rules given in 1985 to permit unit owner to park vehicle in turn-around area, arbitrator determined that association had waived its ability to enforce the parking restriction. Variance on its face permitted unit owner to park in turn-around so long as she owned two cars; waiver cannot be withdrawn by unilateral act of the board.

Windward Isle Homeowners, Inc. v. Birchler,

Case No. 95-0424 (Scheuerman / Final Order / January 17, 1997)

- Where owner was present at meeting and voted at meeting and did not object to notice given, owner waived notice defect and was estopped from challenging sufficiency of notice.