

## Table of Contents

<b>Subject Headings</b>	<b>Page No.</b>
Age-Restrictions (See Fair Housing Act).....	5
Alienation (See Unit-Restraints on alienation).....	5
Annual Meeting (See Meetings-Unit owner meetings) .....	5
Arbitration.....	5
Affirmative defenses .....	5
Evidence.....	16
Generally .....	17
Jurisdiction (See Dispute).....	20
Misarbitration .....	20
Parties (See also Dispute-Standing).....	21
Prevailing party (see separate index on attorney’s fees cases).....	23
Sanction.....	24
Assessments for Common Expenses (See Common Expenses).....	24
Associations, Generally (For association records, See Official Records).....	24
Attorney-Client Privilege.....	24
Board of Administration.....	26
Business judgment rule .....	26
Ratification (See Meetings-Board meetings-Ratification).....	29
Resignation.....	29
Term limitations (See Elections/Vacancies-Term limitations) .....	30
Vacancies (See Elections/Vacancies) .....	30
Board Meetings (See Meetings-Board meetings).....	30
Boats.....	30
Budget.....	30
Bylaws.....	30
Amendments .....	30
Generally .....	31
Interpretation .....	31
Cable Television.....	33
Common Elements/Common Areas.....	33
Generally .....	33
Hurricane shutters (See Hurricane Shutters).....	34
Limited common elements.....	34
Maintenance and protection .....	38
Material alteration or addition (See also Fair Housing Act).....	52
Right to use .....	70
Common Expenses.....	71
Constitution .....	72
Corporation.....	72
Due process .....	72
Equal protection.....	72
Free speech.....	72

Generally .....	72
State action.....	72
Covenants (See Declaration-Covenants/restrictions).....	73
Declaration .....	73
Alteration to appurtenances to unit (See Unit-Appurtenances).....	73
Amendments .....	73
Covenants/restrictions .....	76
Exemptions.....	78
Generally .....	78
Interpretation .....	78
Validity .....	91
Default.....	92
Generally .....	92
Sanctions (See Arbitration-Sanctions) .....	92
Developer.....	92
Disclosure.....	92
Exemptions (See also Declaration-Exemptions).....	92
Filing.....	92
Generally .....	93
Transfer of control (See also Elections/Vacancies) .....	94
Disability, Person with (See Fair Housing Act) .....	94
Discovery .....	94
Attorney-client privilege (See Attorney-Client Privilege) .....	94
Generally .....	94
Dispute.....	96
Considered dispute.....	96
Generally .....	100
Jurisdiction.....	100
Moot.....	101
Not considered dispute .....	103
Not ripe/bona fide dispute / live controversy .....	128
Pending court or administrative action / abatement / stay .....	129
Relief granted or requested .....	132
Standing .....	140
Easements .....	143
Elections/Vacancies .....	143
Candidate information sheet.....	143
Generally .....	144
Master association.....	154
Notice of election .....	154
Term limitations .....	156
Voting certificates .....	156
Estoppel (See also Selective Enforcement; Waiver) .....	156
Evidence (See Arbitration-Evidence).....	167
Fair Housing Act.....	167
Family (See also Fair Housing Act; Guest; Tenant) .....	171

Financial Reports/Financial Statements .....	173
Fines .....	173
Guest (See also Family; Tenant).....	173
Hurricane Shutters .....	174
Injunctive Type Relief (See Dispute-Relief granted).....	176
Insurance .....	176
Jurisdiction (See Dispute) .....	177
Laches (See also Estoppel; Waiver) .....	177
Lien .....	179
Marina .....	179
Meetings.....	179
Board meetings.....	179
Committee meetings .....	179
Emergency .....	180
Generally.....	180
Notice/agenda.....	181
Quorum .....	183
Ratification .....	183
Recall (See separate index on recall arbitration) .....	183
Right to tape record.....	183
Unit owner meetings .....	183
Generally.....	183
Notice .....	186
Quorum .....	186
Recall (See separate index on recall arbitration) .....	186
Moot .....	186
Mortgagee .....	186
Nuisance .....	187
Official Records.....	191
Parking/Parking Restrictions .....	203
Parties (See Arbitration-Parties).....	213
Pets .....	213
Prevailing Party (See separate index on attorney's fees cases) .....	226
Purchase Contracts.....	226
Quorum (See Meetings) .....	226
Ratification (See Meetings-Board meetings-Ratification) .....	226
Recall of Board Members (See Meetings-Board meetings-Recall) (See separate index on recall arbitration).....	226
Recreation Leases .....	226
Relief Requested (See Dispute-Relief granted or requested) .....	226
Rental Restrictions/Rental Program (See Tenants-Rental Restrictions/Rental Program) .....	226
Reservation Agreements.....	226
Reserves .....	226
Restraints on Alienation (See Unit-Restraints on alienation).....	227
Sanctions (See Arbitration-Sanctions).....	227

Security Deposits (See Purchase Contracts) ..... 227

Selective Enforcement (See also Estoppel; Waiver) ..... 227

Standing (See Dispute-Standing) ..... 240

State Action (See also Constitution)..... 240

Tenants ..... 240

    Generally ..... 240

    Nuisance (See also Nuisance) ..... 244

    Rental restriction/rental programs..... 244

    Unauthorized tenant/association approval..... 246

    Violation of documents ..... 248

Transfer Fees..... 248

Transfer of Control of Association (See Developer; Election/Vacancies) ..... 248

Unit..... 248

    Access to unit ..... 249

    Alteration to unit (See also Fair Housing Act) ..... 252

    Appurtenances; changes to the appurtenances; section 718.110(4) ..... 253

    Floor coverings ..... 255

    Generally; definition ..... 256

    Rental (See also Tenants) ..... 257

    Repair ..... 257

    Restraints on alienation ..... 259

    Sale ..... 259

    Use/restrictions on use (See also Nuisance; Fair Housing Act)..... 260

Unit Owner Meetings (See Meetings)..... 263

Voting Rights (See Developer-Transfer of control; Elections) ..... 263

Waiver (See also Estoppel; Selective Enforcement) ..... 263

**Age-Restrictions (See Fair Housing Act)****Alienation (See Unit-Restraints on alienation)****Annual Meeting (See Meetings-Unit owner meetings)****Arbitration*****Affirmative defenses***Bay Colony Club Condo., Inc. v. Leggett,

Case No. 98-4233 (Cowan / Final Order Dismissing Petition / July 21, 1998)

- Where unit owner/board member was made aware of association's intent to bring arbitration petition against him at a board meeting but where association never gave owner written notice required by Section 718.1255 (4)(b), F.S., petition was dismissed without prejudice.

Belle Plaza Condo. Assn., Inc. v. Rubell / Rubell v. Belle Plaza Condo. Assn., Inc.,

Case Nos. 99-2168 and 99-2395 (Consolidated) (Powell / Final Order / February 18, 2000)

- Unit owner's defense and claim (that board's inaction regarding her request to remove a ceiling should be considered consent for removal) was rejected, where declaration required her to seek prior approval of the alteration and she did not seek approval until after the alteration and the board's complaint.

B.H.C., Inc., a Condo. Corp. v. Berninger,

Case No. 96-0295 (Oglo / Final Order / April 14, 1998)

- Unit owner raised the defense that she complied with the terms of a settlement agreed to by the parties earlier in the case, where she was to place room-sized area rugs and padding over the tile in the rooms of her unit required by the association rule to be carpeted. As the evidence showed that the unit owner did not comply with the agreement in all respects, such as carpeting did not extend to within 6 to 12 inches of the walls in each room and no padding was installed under the carpeting, the defense failed.

Bumpus v. Harbor Point Condo. Assn., Inc.,

Case No. 99-0616 (Draper / Order on Jurisdiction / March 24, 1999)

- Where petitioner merely wrote the bureau of condominiums concerning the association's actions and tried to deal with board of directors, notice requirements of Section 718.1255(4)(b), F.S., have not been met. Petitioner given an opportunity to

provide additional information and documentation, failing which petition would be dismissed.

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

Case No. 99-1391 (Draper / Order on Motion to Dismiss / November 22, 1999)

- Five-year limitation period of s. 95.11(2), F.S., for action on a contract, obligation, or liability founded on a written instrument applied to unit owner's claim that association arbitrarily assigned parking spaces.

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

Case No. 99-1391 (Draper / Order Denying Motion for Reconsideration/Motion for More Definite Statement / December 23, 1999)

- Limitation period begins to run when an individual knew of a claim. Violation of the statute of limitations does not constitute a basis for dismissal of a complaint unless the complaint affirmatively and clearly shows the conclusive applicability of the defense.

Cypress Bend IV Condo. Assn., Inc. v. Pepper,

Case No. 00-0417 (Pasley / Summary Final Order / June 26, 2000)

- Where unit does not have a patio or other limited common element suitable for placement of a satellite dish, association is not required pursuant to the Telecommunications Act of 1996 to permit owner to install satellite dish on the general common elements.

Cypress Chase North Condo. Assn., Inc. v. Huc,

Case No. 97-0093 (Scheuerman / Final Order / March 25, 1998)

- Where owner was absent from condominium much of the year, and failed to pick up certified letters from association demanding compliance with declaration's prescreening requirements, requirement of statute and documents that owner be given advance notice of violation prior to legal action being commenced is satisfied where owner was verbally advised of such violations and where letter was hand-delivered to owner advising of violations.

Crystal Lake Condo. Assn., Inc. v. Denny,

Case No. 01-2427 (Draper / Final Order of Dismissal / March 14, 2001)

- Where owners but not tenant had been given notice of the association's intention to take legal action, as required by s.718.1255(4)(b), F.S., notice was deemed insufficient. The petition must show that **all** respondents, not just the unit owners, were given the required notice.

Czajkowski v. Spinnaker Cove Condo. Assn., Inc.,

Case No. 98-4695 (Anderson-Adams / Order Dismissing Petition for Arbitration / September 15, 1998)

- Petition dismissed without prejudice because unit owner failed to comply with the notice requirements of Section 718.1255(4)(b), F.S. Unit owner had invited the vice president of the board to view the alterations to his unit, had asked the board for written specifications and guidance on making alterations to the unit, and had retained an attorney to attend board meetings in an attempt to obtain clarification of the condominium documents and an explanation of why the board believed petitioner had violated the documents as they pertained to alterations of units, but had given no written notice to the association that he intended to pursue legal remedies. The notice requirement in Section 718.1255(4)(b), F.S., is jurisdictional in nature, and cannot be waived at the request of a party. The notice requirement cannot be met by giving notice after the petition has been filed. Petition dismissed without prejudice to re-file after giving proper notice.

The Decoplage Condo. Assn., Inc. v. Kreitman,

Case No. 98-4820 (Draper / Final Order Striking Respondents' Defense and Granting Relief / July 23, 1999)

- Where unit owners/respondents' answers to interrogatories admitted facts constituting an admission to the violation alleged by the association and their affirmative defense was stricken, relief requested by association would be granted.

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

Case No. 98-5011 (Pine / Final Order Dismissing Petition / December 9, 1998)

- Pre-litigation notice requirements of Section 718.1255(4)(b), F.S., not complied with. Petition and supporting documents reflect that petitioners discussed litigation or arbitration with each other but did not reflect any such communication with respondent, and petitioners did not respond to arbitrator's request for information regarding any such pre-petition communication with respondent. Case dismissed pursuant to Section 718.1255(4)(b), F.S.

4000 Island Blvd. Condo. Assn., Inc. v. DeBeer,

Case No. 99-1038 (Powell / Entry of Default / February 18, 2000)

- Affirmative defenses should, within the contemplation of Rule 61B-45.019, F.A.C., include specific facts supporting those defenses. Unit owners asserted, in response to arbitrator's request for specific supporting facts, that the request violated the unit owners' due process rights under the Fifth Amendment of the U.S. Constitution and Article One, Section 4 of the Constitution of Florida. The arbitrator held that the constitutional provisions found no application and the arbitrator's request was consistent with the pleading requirements of the F.A.C.

Four Sea Suns Condo. Assn., Inc. v. Pariseau,

Case No. 00-0559 (Scheuerman / Order Following Status Conference / June 8, 2000)

- Board rule requiring all internal disputes between an owner and the association be heard and determined by an ad hoc committee of residents, where decision of committee was made binding on the parties, violated the constitutional guarantee of access to the courts and was, therefore, invalid. The right of the parties to pursue an action in the courts is sought to be eliminated by the rule, and there is no provision for judicial review of the committee action.

Garcia v. Promenade at Kendale Lakes Condo., Inc.,

Case No. 98-5273 (Powell / Final Order Dismissing Petition for Arbitration / December 30, 1998)

- Petition did not evince pre-arbitration warning of intent to file petition for arbitration or bring other legal action. Unit owners' letter to association that they were filing an arbitration petition, sent after petition was filed, was insufficient, as the purpose of giving advance notice is to allow settlement and avoid litigation. Petition was dismissed without prejudice for non-compliance with Section 718.1255(4)(b), F.S.

Giorgi v. 7 East Condo. Assn., Inc.,

Case No. 98-3965 (Draper / Final Order of Dismissal / June 30, 1998)

- Petition alleging improper conduct of meetings and elections dismissed where petitioner was unable to show advance written notice of the dispute, demand for compliance and notice of intent to file an arbitration petition per Section 718.1255(4), F.S., (1997). Demand letter sent after petition filed. Case would not be abated to give respondent time to provide relief.

Gulf Island Beach and Tennis Club Condo. Assn., Inc. v. Gold,

Case No. 00-1367 (Pine / Order Denying Motion for Rehearing or Reconsideration / September 7, 2000)

- Pursuant to Section 718.1255(4)(b), F.S., notice of dispute must be tendered to prospective respondent before petition is filed; lack of notice or failure to provide adequate notice cannot be cured by simply holding up service of petition/order requiring answer while petitioner hastily dispatches notice.

Hubner v. Seawatch at Marathon Condo. Assn., Inc.,

Case No. 00-0643 (Scheuerman / Final Order Dismissing Petition / April 24, 2001)

- Statute of limitations applicable to action filed by owners attempting to challenge the validity of a 1993 amendment to the declaration giving the owners of the boat slip units voting rights in the association was the four or five-year statute provided by s. 95.11(2),(3), F.S. Although the dilution of voting rights experienced by the nonslip owners as a result of the amendment was quite arguably a protected property interest



within the meaning of Section 718.110(4), F.S., which protects the voting rights appurtenant to a unit, the violation of Section 718.110(4), F.S., would not take the dispute out of the ordinary four or five year statute of limitations.

- Even assuming, as argued by the owners/petitioners, that the amendment to the declaration, in addition to granting voting rights to the slip owners, also granted the slip unit owners a percentage ownership interest in the common elements that did not exist prior to the amendment, the seven-year statute applicable to adverse possession did not apply. Title in a condominium is indivisible in nature and does not lend itself to an adverse possession analysis. There can be no “adverse” possession of the common elements where ownership and use is in common, both in law and fact, and where there has been no allegations of an actual ouster or exclusive use of the common elements.

Islandia Condo. Assn., Inc. v. Simoes,

Case No. 96-0261 (Powell / Summary Final Order / May 21, 1999)

- Unit owners’ defense, that tenting building would create risk of mishap or loss, was rejected by arbitrator where such risk did not outweigh the possibility of damage if tenting for termites was not carried out and where security measures planned by association were reasonable.

Johns v. Willowbrook Condo. Assn., Inc.,

Case No. 98-4715 (Scheuerman / Final Order Dismissing Petition / September 28, 1998)

- Petition dismissed where petitioner failed to give advance written notice of intent to file for arbitration. Letter sent to association after petition was filed did not satisfy notice requirement of statute.

Johnson v. The Alexandria Condo. Assn., Inc.,

Case No. 98-4006 (Draper / Order on Motion to Dismiss and Order to Show Cause / September 8, 1998)

- Three petitioning unit owners provided written notices to the association detailing serious structural problems in the condominium, and demanding that the association correct the problems. A fourth petitioning owner filed an action in court which was dismissed and referred to arbitration. This combination of written complaints and prior court filing satisfies the advance notice/demand requirements of Section 718.1255(4)(b), F.S., the purpose of which is to prevent needless arbitrations and the waste of resources of the state and the parties.

Karanda Village III Condo. Assn., Inc. v. Cannizzaro,

Case No. 99-1180 (Draper / Final Order Transferring Case / July 16, 1999)

- Where answer raised, as a defense to pet violation claim, that the dog is a companion animal to owner's disabled girlfriend/roommate, case would be transferred to Florida Commission on Human Relations for resolution of fair housing issues.

Kreitman v. The Decoplage Condo. Assn., Inc.,

Case No. 98-3495 (Draper / Order Striking Affirmative Defenses / July 9, 1998)

- Association's defense to unit owner's claims, that the claims were grounded on mere technical violations of the law and documents, was stricken. Claims that the association had materially altered the common elements without unit owner approval, failed to provide adequate notice of board meetings, and failed to provide access to official records may involve technicalities (as does much of the Condominium Act), yet violations are not excused on this basis.
- Association altered the common element hallway of the penthouse floor by installing marble flooring and removing an entrance doorway, among other things. Association's defense, that it would be inequitable to require demolition and removal of the betterments at additional costs to the association members, rejected.

Lamar v. Peppertree Village Townhouse Condo. Assn., Inc.,

Case No. 00-1849 (Scheuerman / Final Order / June 1, 2001)

- Where the owner included 15 new issues in amended petition that were not included in the original petition, and failed as to the new issues to give the pre-arbitration notice required by Section 718.1255, F.S., but instead included the issues for the first time in a letter sent to the association one day prior to service of the amended petition, the 15 issues were dismissed for the failure to provide the pre-arbitration notice required by statute.

Leisure Living Estates Condo. Assn., Inc. v. Grieve,

Case Nos. 97-0277 and 98-3285 (consolidated) (Oglo / Final Order / May 14, 1998)

- Unit owners' defense, that the board's petition represented the animosity of one board member and not the action of the majority, failed as minutes of the board meeting showed that a majority of the board discussed the litigation.

The Little Mermaid Condo. Assn., Inc. v. Hogan,

Case No. 98-5449 (Scheuerman / Summary Final Order / May 7, 1999)

- Respondent/owner claimed that board members who had approved balcony restoration project had been elected at an earlier invalid election, and requested entry of an order halting the construction project. Even assuming the board members were not qualified to hold office or were elected illegally, board members were de facto board members, and actions taken within the scope of the board's responsibility as set forth in

the documents were valid unless and until the board members were removed by appropriate legal process. Defense of illegal election struck.

Loulourgas v. Ultimar II Condo. Assn., Inc.,  
Case No. 99-2291 (Scheuerman / Final Order / August 3, 2000)

- Where association permitted erection of cell tower atop condominium building without compliance with requirements of documents pertaining to material alterations, Telecommunications Act of 1996 did not supersede or preempt private covenants and permit association to disregard the requirements of its documents.

Marlow v. Country Pines of North Fort Myers Condo. Assn., Inc.,  
Case No. 98-4179 (Draper / Final Order of Dismissal / December 4, 1998)

- Claim that association manager was asking unit owners to put in writing their complaints regarding the petitioning unit owners' dogs did not constitute a cause of action for which relief could be granted. Petition failed to allege any provision of the documents, Chapter 718, or the rules of the division which would preclude the practice. In fact, practice would appear to be a sound management practice. Petition failed to state a cause of action.

Martinez v. The Village Condo. Assn., Inc.,  
Case No. 00-1681 (Scheuerman / Order Dismissing Petition / October 25, 2000)

- The statute contemplates that the advance pre-litigation notice required be given prior to the commencement of the arbitration proceeding. Notice sent after the commencement of the proceeding is not effective.
- Where owner sent letter to association prior to the commencement of his arbitration proceeding challenging the conduct of an election, and where letter made demand for "mediation" pursuant to Section 718.1255, F.S., but did not include a demand for relief with regards to the election, notice did not comply with the pre-litigation notice requirements of statute, and petition was dismissed.

McKenna v. Hammock Pine Village II Assn., Inc.,  
Case No. 98-3594 (Anderson-Adams / Order Dismissing Petition for Arbitration / June 11, 1998)

- Petition dismissed for failure to comply with the notice requirements of Section 718.1255(4)(b), F.S., where petitioner/unit owner gave verbal notice but failed to give written notice to association, prior to filing the petition for arbitration, of the specific nature of the dispute, the relief demanded, and of the intention to file an arbitration petition or to take other legal action in the absence of resolution of the dispute.

Nacy v. Ocean Riviera Assn., Inc.,

Case No. 98-4912 (Pine / Final Order of Dismissal / October 5, 1998)

- Where petitioner/unit owner wrote to the association stating that he intended “to exercise his rights to the fullest extent allowed by law,” pre-litigation notice requirements of Section 718.1255, F.S., not satisfied. Statute requires that petitioner give to the respondent advance written notice of the specific nature of the dispute, a demand for relief and reasonable opportunity for compliance, and notice of intent to file an arbitration or commence another legal action; the latter requirement has not been complied with.
- Petition filed by unit owner alleging that association was selective enforcing pet restriction dismissed; selective enforcement is a defense to enforcement action and is not a cause of action.

Nassif v. Continental Towers Condo. Assn., Inc.,

Case No. 99-1789 (Pine / Summary Final Order / December 16, 1999)

- Association claimed insufficient pre-arbitration notice. However, between petitioner's letter suggesting specific board action in order to avoid "future arbitration on this issue," and petitioner's certified letter citing an intent to take action pursuant to Ch. 718, F.S., with regard to election irregularities, and considering three years of constant arbitration involving these two parties, the petitioner gave sufficient notice of both her dissatisfactions and her intent, and respondent had no reason to be surprised by filing of petition.

Oakes v. Vera Cruz Condo. Assn., Inc.,

Case No. 00-0638 (Draper / Order Commemorating Status Conference / July 7, 2000)

- Defense to fair housing claim, that wheelchair-bound unit owner had other alternatives to installing a chair lift to access his second floor unit, such as moving to a first floor unit or moving out of the condominium altogether, would be stricken. One purpose of the Fair Housing Amendments Act is to provide the disabled with an equal opportunity to live in the housing of their choice. The suggestion that the disabled owner could live somewhere else does not constitute a viable affirmative defense to a fair housing claim.

Osprey Point at Dolphin Kay Owners Assn., Inc. v. Gaudin,

Case No. 99-1158 (Draper / Final Order of Dismissal / October 21, 1999)

- Where notice of violation warned only that association would take "further action," notice held to be inadequate per Section 718.1255(4)(b), F.S. Association required to state that arbitration or legal action would be pursued.

Petit v. Trianon Park Condo. Assn., Inc.,

Case No. 98-5482 (Cowal / Final Order Dismissing Petition / January 18, 1999)

- Where unit owners wrote letters to board members and spoke to them, generally, about records requests and election issue, but did not advise association in writing prior to filing petition that they intended to take legal action in the absence of a resolution to the dispute, petitioner failed to give required pre-litigation notice and petition for arbitration was dismissed pursuant to Section 718.1255(4)(b), F.S.

Philistin v. Shaker Village Condo. Assn., Inc.,

Case No. 98-5026 (Scheuerman / Final Order Acknowledging Dismissal / January 11, 1999)

- Allegation that petitioner had pursued dispute for two years in circuit court prior to seeking arbitration not factually accurate where petitioner had instead defended unrelated action in circuit court for two years, and had filed similar counterclaim in court within the last six months of filing for arbitration. Moreover, court and not arbitrator should determine whether arbitration requirement had been waived.

Pine Ridge at Palm Harbor Condo. Assn., Inc. v. Mouradian,

Case No. 97-0045 (Scheuerman / Final Order Dismissing Petition / December 28, 1998)

- Petition dismissed where association failed to comply with the order of the arbitrator requiring the filing of additional information, and for failure to give prior notice to the tenant of the intent of the association to pursue arbitration. Although petition was filed prior to October 1, 1997, statutory amendment expressly requiring pre-litigation written notice, statutory amendment codified pre-existing case law requiring notice prior to suit for injunction.

Quatrain Condo. II Assn., Inc. v. Getz,

Case No. 97-0352 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / July 20, 1998)

- Petition dismissed where association sought to amend its claim at the final hearing to apply a more stringent one pet/30-pound restriction, targeted at non-original owners, rather than the more lenient two pet/70-pound restriction, targeted at original owners referenced in the petition. Association's amendment of its claim was based on a title search done the day before hearing, which revealed that unit owner was not the original owner of his unit. The notice (demand letter) given to unit owner had referenced the 70-pound weight restriction. Thus, the unit owner had not received adequate notice of the restrictions sought to be enforced against him, nor had he been afforded a reasonable opportunity to comply.

Sanders v. Ancient Oaks R.V. Resort Condo. Assn., Inc.,

Case No. 97-0083 (Draper / Summary Final Order / October 8, 1997)

- Fact that association amended documents after awnings were installed, to specifically prohibit installation of certain awnings, does not indicate such awnings were previously permitted.

Santana v. La Playa De Varadero II Motel Condo. Assn., Inc.,

Case No. 98-5095 (Powell / Order Dismissing Claim, Order Requiring Amended Petition and Order Denying Motion to Conduct Discovery / November 25, 1998)

- Where unit owners notified association, prior to filing petition for arbitration, that if their demands were not met, they would file a complaint with the proper authorities in the state of Florida, the notice satisfied the intent of Section 718.1255(4)(b) F.S. It could reasonably be inferred that the unit owners intended to file a complaint with the Bureau of Condominiums, which could result in the Bureau's bringing legal action against the association, or that the unit owners intended to file a petition for arbitration.

Scalese v. The Wittington Condo. Apts., Inc.,

Case No. 99-0939 (Powell / Order Dismissing Claim and Striking Defenses / January 21, 2000)

- Economic loss rule did not bar a claim that the association unreasonably withheld permission to complete a remodeling project and that the association failed to repair a common-element water shut-off valve, where the association's actions allegedly prevented remodeling from proceeding and resulted in losses to the unit owner.

Spencer v. Sun and Surf 100 Assn., Inc.,

Case No. 98-5147 (Draper / Final Order of Dismissal / March 30, 1999)

- Claim that association's balcony repair contractor had damaged the petitioner's unit and furnishings was barred by the statute of limitations. The claim, which was based on the association's responsibility to maintain the common elements, and its failure to perform the maintenance in a workman-like manner, was a blend of contract and tort theories of liability, therefore the longer limitations period - the five year period for claims based on contract - was applied.
- Accrual of the claim and the beginning of the statute's running occurred when the damage was reported to the association, not when the association explicitly denied the claim five years later.

South Paula Point Condo. Assn., Inc. v. Schnepf,

Case No. 00-2043 (Pasley / Final Order of Dismissal / January 22, 2001)

- Since the association sought removal of a tenant's dog, the tenant was an indispensable party. The petition was dismissed because the association failed to name the tenant as a party and failed to provide proof that it had given the tenant advance written notice of the dispute, as is required by Section 718.1255(4)(b), F.S.

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor, (currently on appeal)

Case No. 98-3662 (Powell / Order on Motion to Strike Affirmative Defenses, Order on Motion to Strike Proposed Exhibits, and Order on Motion to Compel Discovery / November 20, 1998)

- Affirmative defenses of selective enforcement and waiver must, within the contemplation of Rule 61B-45.019, F.A.C., include any facts forming the basis for the affirmative defenses. Arbitrator rejected unit owner's assertion that the rule does not require a statement of facts.

Tomlinson v. P.B.M., Inc., Gulf Mariner Condo. Assn., Inc.,

Case No. 99-0328 (Anderson-Adams / Final Order Dismissing Petition / March 22, 1999)

- Petition dismissed because notice given by petitioner prior to filing petition for arbitration did not meet the requirements of Section 718.1255(4)(b), F.S. Petitioner had given only oral notice of the dispute to the association.

Trafalgar Towers Assn. #2, Inc. v. Miller,

Case No. 99-1071 (Pine / Final Order / November 30, 1999)

- An equitable defense need not be specifically cited if the facts as pled support a conclusion that a specific equitable defense applies.

Tropical Park Villas Condo. Assn., Inc. v. Santana,

Case No. 99-2303 (Pine / Final Order Dismissing Petition / January 21, 2000)

- Respondents' denial of having received notice of dispute prior to petition filing can rebut presumption of routine mail delivery, but where petition needs substantial revision anyway, it is a better use of resources to dismiss the petition without prejudice than to convene a hearing to adduce testimony bearing on actual notice.

Valencia Condo. Residences Assn., Inc. v. Banoub,

Case No. 99-2302 (Pine / Summary Final Order / April 17, 2000)

- Where the petition in part seeks payment of damages including drywall repair and plumbing expenses, but the petitioner admits not having submitted bills to the respondent for reimbursement prior to the filing of the petition for arbitration, then in accordance with Section 718.1255(4)(b), F.S., which requires that pre-arbitration notice be given, those counts must be dismissed.

Williamson v. Sabine Yacht & Racquet Club Condo. Assn., Inc.,

Case No. 99-1337 (Powell / Summary Final Order / March 1, 2000)

- Where issue of who was responsible for paying for replacement doors was already decided in the association's favor in a previous arbitration case, unit owner's attempt to re-arbitrate the same issue on a different legal theory in the present case was inappropriate. If he disagreed with the holding in the earlier case, he had the option at that time of filing a complaint for a trial de novo in circuit court.

Woods v. Beacon Point Condo. Assn.,

Case No. 00-1321 (Pasley / Final Order of Dismissal / July 27, 2000)

- Petition dismissed without prejudice because unit owner failed to provide the respondents with advance written notice of his intent to file a petition for arbitration or other legal claim as is required by Section 718.1255(4)(b), F.S. The unit owner's assertion that he gave advance verbal notice does not satisfy the written notice requirement.

***Evidence***

Camelot Two Condo. Assn., Inc. v. Dirse,

Case No. 00-0951 (Powell / Final Order / May 10, 2001)

- Unit owners contended that they were singled out for enforcement of dog weight limit due to an earlier conflict with the association regarding the roof of the unit. The arbitrator held that the necessary elements of a defense of selective enforcement were whether comparable violations existed of which the association through its board was aware, yet the association took no action. These elements would be dispositive and any motive for the selective enforcement was immaterial; thus, evidence regarding the roof would be inadmissible.

Miller v. Olive Glen Condo. Assn., Inc., (currently on appeal)

Case No. 00-0360 (Powell / Order on Motion for Rehearing / September 14, 2000)

- Evidence of intent in amending bylaws would be immaterial since the plain wording of the bylaws would control. Parol evidence is inadmissible to contradict, vary, defeat or modify a complete and unambiguous instrument.

Oakridge A Condo. Assn., Inc. v. Hammer,

Case No. 00-0195 (Scheuerman / Summary Final Order / June 23, 2000)

- Under simplified procedure used, association by the submission of its affidavits failed to prove allegation that owner yelled, was disorderly and disruptive at board meetings and about the common elements. No minutes or tape recording were submitted and the affidavits did not state what was said, the context of the statements, on how many occasions this occurred, the duration of the outbursts, and the like. There was also no indication of when the incidents had occurred and there was no evidence of continuing violations that would otherwise warrant a grant of injunctive relief. Association denied relief on this count.



Pine Ridge at Lake Tarpon Village I Condo. Assn., Inc. v. Darwin,  
Case No. 98-5245 (Powell / Final Order / June 30, 1999)

- Where association did not dispute veterinarian's certificate presented by unit owner, reflecting that dog weighed less than 25 pounds, association's claim that dog exceeded declaration's 25-pound limit was dismissed.

Ravosa v. Sea Mesa, Inc.,  
Case No. 99-1630 (Pasley / Final Order / March 2, 2001)

- Testimony regarding the proposed transferee's present financial status could not be considered by the arbitrator when reviewing the reasonableness of the decision made by the association in rejecting a proposed purchaser. The arbitrator is required to look at the circumstances as they existed at the time that the board made its decision.

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor, (currently on appeal)  
Case No. 98-3662 (Powell / Order on Motion to Strike Affirmative Defenses, Order on Motion to Strike Proposed Exhibits, and Order on Motion to Compel Discovery / November 20, 1998)

- Proposed exhibits are not entered into evidence until they are accepted as evidence by arbitrator; arbitrator denied motion to strike exhibits, where other party complained that they were "improper, prejudicial, and improperly submitted."

Sunset Grove Condo. Assn., Inc. v. Finney,  
Case No. 98-4817 (Powell / Final Order / January 8, 1999)

- Where witnesses testified regarding what others told them concerning whether dog bite was provoked by the victim, the evidence was hearsay, which was insufficient to independently support a finding of fact, pursuant to Rule 61B-45.039(5)(a), F.A.C.

### ***Generally***

Brickell Place Condo. Assn., Inc. v. Swezy,  
Case No. 99-2359 (Pine / Order Denying Motion for Rehearing / April 21, 2000)

- Pursuant to Rule 61B-45.044, F.A.C., a final order shall be modified only if based on demonstrated error. The petitioner indicated that the dismissal order was based on an error in that the respondent was constructively served by publication. Where the only service is by publication, however, the respondent has not been served as required and the dismissal order was not based on an error. Neither Rule 1.410 (Fla. Rules of Civil Procedure), nor Chapter 48, Florida Statutes, permits service by publication. Service by publication as described in Chapter 49, Florida Statutes, does not establish jurisdiction over the person of the respondent for the purposes of Section 718.1255, F.S.

Collins View Condo., Inc. v. Wonneberger,  
Case No. 99-0750 (Pine / Final Order of Dismissal / August 9, 1999)

- Where neither arbitrator nor petitioner is able to effect service of petition and Order Requiring Answer upon respondent, arbitrator obtains no personal jurisdiction over respondent and case must be dismissed.

Grimaldi v. The Balmoral Condo. Assn., Inc.,  
Case No. 98-3791 (Anderson-Adams / Order Striking Claims and Requiring Response / May 15, 1998)

- Unit owner/petitioner claimed association had failed to allow her access to certain official records of the condominium. Unit owner later claimed during course of arbitration that association had not allowed her access to additional association records that she had asked to see after the petition was filed. Additional claims stricken where these claims were not included in petition for arbitration and petitioner had not requested to amend petition.

Horan v. Lakeview of Largo Condo. Assn., Inc.,  
Case No. 97-1888 (Draper / Order Dismissing Petition / May 26, 1998)

- No jurisdiction where petition, which was filed prior to October 1997, alleged unit owner suffered water damage to his unit as a result of leak in water pipes to his unit. Petition failed to allege leak was result of association's negligence or that association was otherwise responsible for damage.

Kreitman v. The Decoplage Condo. Assn., Inc., (appeal filed October 1998)  
Case No. 98-3332 (Draper / Summary Final Order / July 30, 1998)

- Despite the filing of a complaint for trial de novo, an arbitration final decision is effective upon its issuance and association may act in accordance with the decision, unless stay is entered per Rule 61B-45.043(9), F.A.C., and Section 718.1255(4)(m), F.S.

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

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

Margate Village Condo. Assn., Inc. v. Arghrou,

Case No. 98-4742 (Powell / Order Denying Respondent's Motion to Set Aside Default, Order Denying Motion to Set Aside Final Order After Default, and Order Denying Motion for Rehearing / December 4, 1998)

- Unit owner's "answer," filed six days after the final order after default was entered, was accepted as a motion for rehearing for the purposes of the time to file a complaint for a hearing de novo, since the unit owner would logically be expected to anticipate a response to the pleading before filing a complaint for a trial de novo. No error of fact or law in the final order after default was alleged by the unit owner; consequently, the motion for rehearing was denied. The unit owner was granted a new 30-day period to file a complaint for a trial de novo dating from the entry of the order denying the motion for rehearing, per Rule 61B-45.044, F.A.C.

Nargi v. Ocean Harbor Condo. Assn., Inc.,

Case No. 99-1133 (Draper / Amended Final Order on Attorney's Fees / November 8, 1999)

- Final order would be reissued in order to re-open the 30-day period afforded the parties to file a petition for a trial de novo. One party alleged that the copy of the final order entered and mailed on September 30 was not received by the party until November 1.

Sholty v. The Villages of Emerald Bay Condo. Assn., Inc.,

Case No. 98-4430 (Draper / Final Order / April 28, 1999)

- Fact that the division had previously investigated the petitioner's complaint regarding the conduct of the vote, and division investigator had closed the file without finding a violation of the statute, does not estop the unit owner from filing a petition for arbitration on the same matter. Closure of investigative file does not constitute a finding that the association has **not** violated the statute. In addition, the action taken by the division does not bind the arbitrator; as the division and the arbitrator may well address a separate set of facts. In addition, pursuant to Section 718.1255(4), F.S., the arbitrator's decision is not considered final agency action.

Star Lakes Assn., Inc. v. Terborg,

Case No. 99-1733 (Draper / Order Requiring Election / October 27, 1999)

- Respondent/unit owner, a dark-skinned Indian, alleged in his answer that the petitioner/association was selectively enforcing its age restrictions against him on the basis of his race, color, religion and national origin. Unit owner was given opportunity to elect to have his discrimination claim considered by the Florida Commission on Human Relations.

Stockett v. Lake Shore Condo. Assn., Inc.,

Case No. 99-0338 (Powell / Final Order Dismissing Petitioner for Lack of Jurisdiction / February 26, 1999)

- Where arbitrator lacked subject matter jurisdiction, arbitrator could not order parties to mediate dispute, since mediation is incident to arbitration under Section 718.1255(4), F.S.

***Jurisdiction (See Dispute)***

***Misarbitration***

Pollak v. Bay Colony Club Condo. Inc.,

Case No. 99-1176 (Draper / Order on Motion to Disqualify Arbitrator / December 3, 1999)

- Arbitrator's statement in a letter to non-party unit owner was not grounds for disqualification of arbitrator upon motion filed by association. Unit owner sought to intervene as a petitioner in a dispute concerning the validity of the no-pet provision of declaration. Arbitrator denied request and stated that if the pet prohibition were declared invalid, the association most likely would not enforce the rule and the unit owner would most likely obtain the benefit, if any, of the final order regardless of whether she was a party to the case or not. Statements would not cause a reasonably prudent person to be in fear of not receiving a fair trial, which is the standard for granting a motion for disqualification.
- Request to stay arbitration proceedings, to permit party to appeal denial of motion to disqualify the arbitrator and opposing counsel, denied. Decisions of arbitrators pursuant to Section 718.1255, F.S., are specifically excluded from provisions of Chapter 120, F.S., the Administrative Procedure Act.

Pollak v. Bay Colony Club Condo. Inc.,

Case No. 99-1176 (Draper / Order on Motion to Strike Exhibits and Witnesses and to Disqualify Counsel and the Arbitrator / December 7, 1999)

- Proposed exhibits, consisting of minutes of attorney/client conference conducted between board members and attorney, undated draft letter from attorney to president of association, and letter drafted by attorney for president's signature, would be barred from evidence as confidential attorney-client communications. However, petitioner's counsel would not be disqualified because the disclosure did not afford an unfair advantage to petitioner. Nor would arbitrator disqualify herself because of her exposure to the materials.

Star Lakes Assn., Inc. v. Terborg,

Case No. 99-1733 (Draper / Order on Motion for Rehearing and Motion to Disqualify / December 27, 1999)

- Motion for disqualification of arbitrator denied because motion failed to allege that movant fears that it will not receive a fair and impartial hearing. The fact that arbitrator

failed to refer the case to mediation fails to allege a well-grounded fear that the moving party will not receive a fair trial.

***Parties (See also Dispute-Standing)***

Altizer v. Redington Towers No. 3, Inc.,

Case No. 00-0817 (Scheuerman / Order Denying Request to Intervene and Final Order Adopting Settlement Agreement and Closing Case File / March 6, 2001) (currently on appeal)

- Where a prolonged period of negotiation between the association and a group of owners ultimately resulted in a settlement concerning the appropriate placement of hurricane shutters on the condominium building, the motion of a nonparty unit owner filed after the filing of the settlement agreement seeking to intervene as a party was denied.
- Intervention would disrupt the main proceeding which for all practical purposes was dismissed by the time that intervention was sought. Also, there was no showing that the association, in its defense of an action that is uniquely situated within the area of its primary responsibility, was not adequately representing all unit owners. Finally, the interest of the intervenor was not shown to be directly impacted where the intervenor alleged that the value of his unit in the future may be impacted by the settlement agreement.

Barrera and Bleau Fontaine Condo. Number Two, Inc. v. Bleau Fontaine Community Assn., Inc.,

Case No. 00-1570 (Draper / Order on Respondent's Motion / October 20, 2000)

- Petition alleging that master association failed to properly conduct an election for positions on its board of directors was dismissed because the petition did not on its face assert that either of the petitioners--a subassociation and the president of the subassociation--were unit owners. A "dispute" subject to arbitration pursuant to s.718.1255, F.S. necessarily involves a unit owner and a condominium (or cooperative) association. Rule 61B-45.013, FAC. If an amended petition is filed asserting that one of the petitioners is a unit owner, then the subassociation may participate in the action since the outcome of the arbitration will affect its voice on the board of the master association.

Brickell Place Condo. Assn., Inc. v. Swezy,

Case No. 99-2359 (Pine / Order Denying Motion for Rehearing / April 21, 2000)

- Pursuant to Rule 61B-45.044, F.A.C., a final order shall be modified only if based on demonstrated error. The petitioner indicated that the dismissal order was based on an error in that the respondent was constructively served by publication. Where the only service is by publication, however, the respondent has not been served as required and the dismissal order was not based on an error. Neither Rule 1.410 (Fla. Rules of Civil

Procedure), nor Chapter 48, Florida Statutes, permits service by publication. Service by publication as described in Chapter 49, Florida Statutes, does not establish jurisdiction over the person of the respondent for the purposes of Section 718.1255, F.S.

Brickell Townhouse Assn., Inc. v. Bagdan,

Case No. 00-0780 (Scheuerman / Final Order on Jurisdiction / June 29, 2000)

- Where association named as respondent unit owner who had voiced disapproval of window replacement project and had circulated petition expressing disapproval, there did not appear to be an actual and present dispute ripe for adjudication. Typically owner seeking to challenge association action would be petitioner.

Henschel v. Jupiter River Park, Inc.,

Case No. 00-1882 (Draper / Final Order of Dismissal / December 29, 2000)

- Claim that the association wrongfully certified the petitioner's recall from the board of directors, failed to maintain a current roster of unit owners and to enforce voting certificate requirements, resulting in unauthorized ballots being counted in the recall effort would be dismissed. A former board member lacks standing to challenge his own recall.

Kensington Walk Master Assn., Inc. v. Kensington Walk Master Assn., Inc.,

Case No. 98-3996 (Scheuerman / Final Order Dismissing Petition / June 4, 1998)

- Where case style of petition showed that association was suing itself in its own name, and where body of petition suggested that dispute existed between a majority of the board and a minority of the board concerning whether the board was authorized to pass a rule defining "trucks" as that term appeared in the declaration, petition was dismissed. Corporation cannot sue itself, and arbitration can only proceed between an owner and an association. Moreover, petitioner should have been an owner seeking to contest the action of the board as board members either individually or in their official capacities are not proper parties in arbitration.

Rock v. Point East Three Condo. Corp., Inc.,

Case No. 99-0220 (Powell / Order on Motion to Dismiss / July 2, 1999)

- Association manager and management company were not proper parties to arbitration proceedings, pursuant to Section 718.1255(1), F.S., and Rule 61B-45.015(1), F.A.C.

South Paula Point Condo. Assn., Inc. v. Schnepf,

Case No. 00-2043 (Pasley / Final Order of Dismissal / January 22, 2001)

- Since the association sought removal of a tenant's dog, the tenant was an indispensable party. The petition was dismissed because the association failed to

name the tenant as a party and failed to provide proof that it had given the tenant advance written notice of the dispute, as is required by Section 718.1255(4)(b), F.S.

The Townes of Southgate, Inc. v. Hopkins,

Case No. 00-0840 (Powell / Summary Final Order / December 19, 2000)

- Damages not awarded where association sought money damages for repairs made due to unit owner's failure to properly maintain a faucet and air conditioner line. Damage occurred to interior of unit below and the association did not assert it had repaired the unit below or incurred liability for such damage. Additionally, an award of damages which would inure to the benefit of the downstairs neighbor was not available, since the owner of that unit was not a party to this action.

Ultimar Homeowners Assn., Inc. v. Yarbrough,

Case No. 00-2160 (Draper / Order on Respondent's Motion for Rehearing / March 22, 2001)

- Petition alleged that the unit owner, her tenant, and the owner's son, an occasional visitor to the unit, threatened and intimidated the association's employees, etc., and that the tenant and the owner's son drove their cars dangerously on the condominium property. Among other things, the claim involves and seeks to control the respondents' behavior on and off the property, which the arbitrator cannot consider. In addition, the arbitrator does not have jurisdiction over the unit owner's son, who is not a tenant/occupant of the unit or a unit owner. Because only partial relief against the respondents can be obtained through arbitration, severing the nonarbitratable claim and arbitrating the remaining issues would be a poor use of the parties' time and resources and improper.

Woodglen Homeowner's Assn., Inc. v. Pever,

Case No. 98-4519 (Cowal / Final Order Dismissing Petition for Arbitration / October 6, 1998)

- Where condominium is situated within geographical boundaries of 4th DCA and petition was filed after 4th DCA issued decision limiting jurisdiction involving third parties, such as tenants, petition was dismissed for lack of jurisdiction.

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

The Decoplage Condo. Assn., Inc. v. Kreitman,

Case No. 98-4820 (Draper / Final Order Striking Respondents' Defense and Granting Relief / July 23, 1999)

- Where respondents/unit owners failed to completely answer interrogatory questions association was authorized to ask, and then refused to attend deposition scheduled by association, and advised other witnesses at deposition not to answer non-privileged questions, respondents' defense to association claim was stricken per Rule 61B-

45.036(2), F.A.C. Information sought by association was central to association's ability to investigate and oppose respondents' defense to association's claim.

The Francis Condo. Assn., Inc. v. Palmieri,

Case No. 98-4074 (Powell / Final Order Dismissing Petition / December 23, 1998)

- Association sought removal of a nuisance dog. Because the petition alleged no facts which would establish that the dog was, in fact, a nuisance warranting removal, the arbitrator ordered the association to file an amended petition setting forth the facts with specificity. When it failed to submit the amended petition, and also did not respond to an order to show cause, the arbitrator dismissed the petition due to the association's failure to follow the orders of the arbitrator and its failure to plead sufficient facts to state a cause of action against the unit owner.

Meyer v. South Seas Northwest Condo. Apts. of Marco Island, Inc.,

Case No. 99-0232 (Draper / Final Order of Dismissal / October 19, 1999)

- Where petitioning unit owner refused to cooperate with association in scheduling a mediation session, petition was dismissed.

Pine Ridge at Palm Harbor Condo. Assn., Inc. v. Mouradian,

Case No. 97-0045 (Scheuerman / Final Order Dismissing Petition / December 28, 1998)

- Petition dismissed where association failed to comply with the order of the arbitrator requiring the filing of additional information, and for failure to give prior notice to the tenant of the intent of the association to pursue arbitration. Although petition was filed prior to October 1, 1997, statutory amendment expressly requiring pre-litigation written notice, statutory amendment codified pre-existing case law requiring notice prior to suit for injunction.

### ***Sanction***

#### **Assessments for Common Expenses (See Common Expenses)**

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

Valencia Condo. Residences Assn., Inc. v. Banoub,

Case No. 99-2302 (Pine / Summary Final Order / April 17, 2000)

- The association is required to follow its own policies for maintaining custody and control of keys to units, and is required to take due care to prevent damage to and theft of unit owners' property by use of those keys. The association is answerable in damages for negligence and is financially responsible for the destruction or disappearance of the unit owners' personal property at the hands of workers hired by the association and let into the units by the association.

#### **Attorney-Client Privilege**



Accardi v. Leisure Beach South, Inc.,

Case No. 00-0955 (Scheuerman / Final Order / June 19, 2001)

- While opinion letter of association counsel to the board was initially exempt from disclosure under the statute, once the letter was shown to other owners, the letter was no longer privileged and must be disclosed.

Nassif v. Continental Towers, Inc., (currently on appeal)

Case No. 96-0403 (Draper / Amended Final Order / September 18, 1998)

- Association was not required to provide access to correspondence from its attorney offering legal advice on a specific question; privileged attorney-client correspondence is not subject to disclosure pursuant to Section 718.111(12), F.S.

Philistin v. Shaker Village Condo. Assn., Inc.,

Case No. 98-2858 (Scheuerman / Order Following Status Conference / April 9, 1998)

- A condominium association, which must be either a corporation for profit or a corporation not-for-profit, is entitled to assert the attorney-client privilege provided by s. 90.502, F.S. The privilege protects both oral and written communications between the lawyer and the client intended to be confidential. A communication is confidential if it is not intended to be disclosed to third persons.
- Separate from the attorney-client privilege is the broader work product privilege, which protects certain written materials of an attorney or client prepared in anticipation of litigation regardless of whether they pertain to confidential communications between an attorney and a client.
- The Florida Rules of Civil Procedure codify a limited privilege for "fact" work product, that is, factual information pertaining to a client's case, if the attorney prepares the documents in preparation for litigation or for trial. These materials are discoverable in civil litigation only if there is a need for the materials and if the party is unable to obtain them without undue hardship.
- Separate from "fact" work product is "opinion" work product, which is work product that reflects the mental impressions, conclusions, or theories of an attorney. Even if need and undue hardship are shown, opinion work product is not discoverable in civil litigation.
- Exemption from discovery of fact and opinion work product provided in rule 1.280, Fla.R.Civ.P., applies only to civil litigation and finds no application in arbitration proceeding conducted under Section 718.1255, F.S.
- 1991 amendment to official records provision set forth in Section 718.111(12), F.S., which added to the list of official records required to be made available to members for

inspection, "all other records of the association not specifically included in the foregoing, which are related to the operation of the association," was broad enough to include closed litigation files maintained by the association, which must be open for inspection unless protected by privilege.

- Under the current statute, an association is not required, pursuant to Section 718.111(12), F.S., to disclose its work product during the pendency of the case to which the work product pertains. However, materials which are in the possession of the association relating to concluded litigation, even if they would have been protected by the statutory work product privilege during the pendency of the civil litigation, must be made available to an owner upon proper request, unless the materials are also protected by the attorney-client privilege, which survives litigation.
- Documents which would constitute official records but which are protected by the attorney-client privilege are not required to be produced for inspection by association. In order to give meaning to legislative intent that association be entitled to an attorney-client privilege, materials protected by the attorney-client privilege are deemed exempt from disclosure under Section 718.111(12), F.S., even where the documents would otherwise constitute official records.
- Association ordered to file with the arbitrator those documents as to which it asserts attorney-client privilege for an in-camera inspection by the arbitrator.

## **Board of Administration**

### ***Business judgment rule***

A.N. Inc. v. Seaplace Assn., Inc.,

Case No. 98-4251 (Powell / Summary Final Order / November 19, 1998)

- Where association undertook substantial window replacement project, unit owner approval was not required because the documents stated the association was responsible for maintaining, repairing, or replacing the windows. Also, the arbitrator would not substitute his judgement for that of the board, where the board determined not to repair the existing window system, or to merely replace the windows, but determined to substantially upgrade the windows to include heavier glass, tilt-out cleaning, and tint.
- The fact that the law requires in many instances, a vote of the owners for material changes, does not require that the association remain frozen in technological time. In many instances, a board in the exercise of its well-reasoned and documented judgement could and should take advantage of changes in technology, building materials, and improved designs.

Baran v. Ro-Mont South Condo. "K", Inc.,

Case No. 99-1563 (Powell / Order on Motion to Dismiss / January 7, 2000)

- Association may make day-to-day decision on landscaping questions, such as allowing a unit owner to plant a garden behind his unit, without bringing into play Section 718.113(2), F.S., or declaration provision regarding unit owner approval for material alterations to common elements.

Brickell Townhouse Assn., Inc. v. Bagdan,

Case No. 00-1683 (Scheuerman / Summary Final Order / November 21, 2000)

- Where the board in its discretion upon consultation with experts determined to replace instead of merely repair windows damaged by hurricane, board is acting pursuant to its duty to preserve the common elements, and it is entitled to use and rely on its business judgment.

Capistrano Condo. Assn., Inc. v. Jochim,

Case No. 98-4376 (Scheuerman / Final Order / September 14, 2000)

- Where board, in furtherance of its duty to protect the common elements, determines that landscaping stones are needed to address erosion problems, board's statutory duty to preserve the common elements overrides any requirement of unit owner consent that may be otherwise required by the documents or statute. A unit owner does not share this immunity because an owner is not charged with the duty of maintaining or repairing the common elements.

Continental Towers, Inc. v. Nassif,

Case No. 99-0866 (Draper / Summary Final Order / November 24, 1999)

- Unit owners' defense to association's action to require unit owners to remove tile on common element balcony for repairs, that the maintenance was not necessary and that less intrusive means were available was rejected. Business judgment rule insulates board's maintenance decisions from judicial scrutiny.

Feigenheimer v. Venetian Village Condo. Assn., Inc.,

Case No. 99-1292 (Anderson-Adams / Summary Final Order / October 11, 1999)

- Where the declaration gives the board sole discretion to permit or refuse to permit the installation of awnings based on aesthetic reasons, and the board has articulated the fact that an awning cannot be centered over the unit owners' door as its reason for refusing to permit its installation, the arbitrator may not substitute her judgment for that of the board as to whether an off-center awning would be unattractive.

Gill v. Surf Dweller Owners Assn., Inc.,

Case No. 97-0051 (Scheuerman / Final Arbitration Order / March 10, 1998)

- Association is the entity having the authority to collect and distribute insurance proceeds, in conjunction with the insurance trustee identified in the documents. The

association owes the owners and their mortgagees a duty of reasonable care in the management of insurance proceeds which are held for the benefit of the owners and mortgagees. The association, and presumably the trustee, may be sued in negligence for mishandling the funds; however, the board, in making decisions regarding the funds, would be entitled to the deference afforded by the business judgment rule.

Girsch v. Whisper Walk Section E Assn., Inc.,

Case No. 97-0305 (Scheuerman / Order Dismissing Arbitration Petition / November 26, 1997)

- Board decisions regarding what shrubbery to plant, or how to replace existing shrubs, particularly implicate the business judgment of the board, and rarely grow to the dimensions necessary to implicate the provision of the documents or statute regarding material alterations to the common elements. To permit the arbitrator to substitute his judgment for the board in this range of business decisions would add great instability to the presumption of normalcy attending ordinary day-to-day decisions, and the arbitrator has no proper role in adjudging whether hibiscus is preferable to ficus.

Houseman v. Spinnaker Cove Condo. Assn., Inc.,

Case No. 99-0255 (Scheuerman / Agreed Final Order / December 23, 1999)

- Where association ordered to reconstruct dock facility removed in violation of Section 718.113(2), F.S., and was further ordered to maintain and repair pool and surrounding area, specifications relating to materials, design, layout, and other details shall be left to the business judgment of the board, which shall not be disturbed absent a manifest abuse of discretion.

Islandia Condo. Assn., Inc. v. Simoes,

Case No. 96-0261 (Powell / Summary Final Order / May 21, 1999)

- Where unit owners refused to vacate units to allow building to be tented for termites, arbitrator ordered unit owners to cooperate with tenting because maintenance of the common elements is the responsibility of the association, and the board's decision on method of carrying out its responsibility is presumed correct under the business judgment rule.

The Little Mermaid Condo. Assn., Inc. v. Hogan,

Case No. 98-5449 (Scheuerman / Summary Final Order / May 7, 1999)

- Where respondent/owner claimed that board members who had approved balcony restoration project had been elected at an earlier invalid election, and requested entry of an order halting the construction project, even assuming the board members were not qualified to hold office or were elected illegally, board members were de facto board members, and actions taken within the scope of the board's responsibility as set forth in the documents were valid unless and until the board members were removed by appropriate legal process. Defense of illegal election struck.

MacMillan v. Greenway Village South Management, Inc.,  
Case No. 01-2747 (Scheuerman / Summary Final Order / June 1, 2001)

- Where the association set a schedule whereby the recreation facility was open 11 hours per day on weekdays, six hours on Saturdays, and five hours on Sundays, schedule was not shown to be unreasonable and did not operate to deprive the owners of their right to use the common elements. The association is entitled to make rules regarding the use of the common element facilities, including a rule setting the hours of operation. The schedule adopted by the board here rivaled the schedules of some athletic or health clubs, and the desire of the association to have a paid or volunteer attendant available in the facility during open hours was not shown to be unreasonable and was therefore protected by the business judgment rule.

Mueller v. La Renaissance Condo. Assn., Inc.,  
Case No. 96-0193 (Oglo / Order on Respondent's Motion for Rehearing and Motion for Extension of Time / March 31, 1998)

- Claim that the association was lining deck chairs up in such a manner as to intentionally block the owner's view of the ocean was dismissed as the owner did not have a right to an unobstructed view of the ocean.

Pennwood Manor Condo., Inc. v. Buchansky,  
Case No. 99-1858 (Powell / Summary Final Order / March 30, 2000)

- Where unit owners contended that the association improperly pruned a tree, resulting in sap and bird droppings falling on their assigned parking space, the arbitrator refused to intervene to instruct the association on how to prune a tree. Routine landscape maintenance methods are considered to be exercises of business judgment.

Trio Englewood, Inc. v. Fantasy Island Condo. Assn., Inc.,  
Case No. 98-4670 (Powell / Notice of Communication, Order on Motion for Summary Disposition, Order Acknowledging Substitution of Counsel, Order Accepting Amended Petition, and Order Requiring Answer / April 16, 1999)

- Where there is evidence suggesting that the removal of two prominent Norfolk Island Pine trees may constitute a material alteration due to the setting and the type of trees, which were distinct from the other landscaping, the arbitrator cannot hold, as a matter of law, that the petition fails to state a cause of action as urged by association, or find that it requires the arbitrator to substitute his judgment for that of the board regarding routine maintenance.

***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**

Lill v. Rock Harbor Club, Inc.,

Case No. 99-0594 (Powell / Summary Final Order / August 18, 1999)

- Where declaration provided that adequate provision shall be made for storage of unit owners' boats in storage sections of the premises, and unit owner had been storing his 19-foot boat on trailer in trailer yard for three years, the unit owner was entitled to store his boat. Rules permitted boats up to 26 feet long. The association's rule requiring that a sailboat fit on a rack was invalid in that it contravened the declaration, and could not be invoked to require removal of this boat. A rule stating boats will be assigned spaces in boat shed was intended to evenly distribute covered spaces, not to prohibit sailboats that do not fit within those spaces.

Quiroli v. Spanish Trail Condo. Assn., Inc.,

Case No. 99-0641 (Draper / Final Order on Dismissal / June 10, 1999)

- Dispute concerning association's failure to assign the petitioner dock space for his boat dismissed as moot where association assigned unit owner the requested space. Unit owner's fear that dock space would be taken away once another unit owner's boat returned was not supported by any facts.

**Budget****Bylaws*****Amendments***

Fourth Gulfstream Garden Apts. Condo., Inc. v. Manno,

Case No. 99-0648 (Scheuerman / Final Order / January 19, 2000)

- Fact that owner did not have actual knowledge of the adoption of a rule amendment did not invalidate amendment where owner did not establish any defect in the rule adoption process. There is no requirement that the association prove that each and every owner actually received a notice of the rule change or the text of the rule amendment.

Sholty v. The Villages of Emerald Bay Condo. Assn., Inc.,

Case No. 98-4430 (Draper / Final Order / April 28, 1999)

- Association failed to properly notice and conduct a meeting of unit owners for the purpose of amending the condominium documents where the board noticed a meeting

of the board of directors, rather than a meeting of the unit owners. Amendments to declaration and articles of incorporation held to be invalid as a result. However, amendment to bylaws was declared valid where the bylaws permitted amendments to be effected by written agreement of the unit owners and the ballots and proxies submitted by the unit owners were deemed to constitute an agreement of the owners.

### ***Generally***

Franklin v. Vista Verde North Condo. Assn., Inc.,

Case No. 00-0129 (Scheuerman / Summary Final Order / July 26, 2000)

- Where bylaw amendment provided for \$50 transfer fee for renters, not applicable to nonresident family members of owners temporarily staying in the unit, requirement that owner claiming family member exemption from fee fill out form identifying family members and stating the city and street address of the family member was held to be reasonable. Association's desire to enforce its rules, collect its fees, and keep assessments low constitute legitimate goals. Privacy interest in this information does not outweigh the legislative pronouncement in Section 718.111(12), F.S., that information of this kind is included among the official records.

### ***Interpretation***

Blau v. Martinique 2 Owners' Assn., Inc.,

(Case No. 99-1880 (Scheuerman / Summary Final Order / January 6, 2000))

- Where bylaws provided that vacancies occurring on the board shall be filled by the person or body having the right to originally elect or appoint the position, and also provided that vacancies on the board occurring between elections shall be filled by the remaining directors, where board member resigned in the face of an impending recall, bylaws interpreted as permitting the board and not the membership to fill the vacancy. General rule in bylaws that vacancies shall be filled by person electing position originally construed to refer to vacancies caused by expiration of term.
- Where bylaws purported to give the membership the authority to fill vacancies where less than a majority of the board is recalled, this portion of the bylaw conflicts with Section 718.112(2)(j), F.S. and administrative rule authorizing the board to fill vacancies where less than a majority of the board is recalled, and was therefore invalid.

Hepp v. South Seas Northwest Condo. Apts. of Marco Island, Inc.,

Case No. 96-0448 (Goin / Summary Final Order / June 13, 1997)

- Where articles of incorporation provided that directors were to be elected to one-year terms and where amendment to the bylaws permitted the board members to be elected for three, two and one-year terms, the articles of incorporation controlled over the provisions in the bylaws and board members ordered to all stand for re-election at the next annual meeting and all the terms would be for one year.

Miller v. Olive Glen Condo. Assn., Inc., (currently on appeal)

Case No. 00-0360 (Powell / Order on Motion for Rehearing / September 14, 2000)

- Evidence of intent in amending bylaws would be immaterial since the plain wording of the bylaws would control. Parol evidence is inadmissible to contradict, vary, defeat or modify a complete and unambiguous instrument.

Moreno v. The Hemispheres Condo. Assn., Inc.,

Case No. 98-5527 (Scheuerman / Final Arbitration Order / March 1, 1999)

- Where bylaws required that the association provide advance notice of board meeting to all board members in writing, bylaw did not conflict with notice provision of Section 718.112(2)(c), F.S., which requires posting of notice of board meetings. Statute addressed notice of board meetings to be given to the membership, and bylaws addressed notice to be given to the board members. Hence, association must comply with both the statute and the bylaws. The failure to give board member advance notice in writing invalidated board action taken where board voted to remove board member for missing three consecutive board meetings.

Pollak v. Bay Colony Club Condo. Inc.,

Case No. 99-1176 (Draper / Case Management Order / November 12, 1999)

- Bylaw provision concerning unit owner votes held to conflict with declaration and was therefore ruled invalid. Bylaw required that "votes" of unit owners who did not vote in an election would be counted toward the candidate or question otherwise receiving the largest number of actual votes. Declaration requires that the approval of 75% of the unit owners be obtained. Counting "non-votes" as votes conflicts with declaration's requirement.

Santana v. La Playa De Varadero II Motel Condo. Assn., Inc.,

Case No. 98-5095 (Powell / Order Dismissing Claim, Order Requiring Amended Petition and Order Denying Motion to Conduct Discovery / November 25, 1998)

- Bylaw permitting proxies predated the election statutory amendments of 1991 (providing that after January 1, 1992, proxies shall not be used in electing the board) and of 1995 (the year the current provision, allowing associations to adopt bylaws permitting elections by proxy, became effective). Where association did not amend bylaws in response to the permitted statutory exception permitting proxies for elections, it was concluded that the provision in the bylaws was not intended to apply to elections conducted after January 1, 1992.

Spett v. Ambassador South Development Corp.,

Case No. 00-2087 (Draper / Summary Final Order / March 6, 2001)



- Where the articles of incorporation of cooperative association provided for not less than three nor more than seven directors, and bylaws provided for between seven and nine directors, arbitrator held that the articles of incorporation would prevail; thus, the board consists of seven directors. See s. 617.0206, F.S.

## **Cable Television**

### **Common Elements/Common Areas**

#### ***Generally***

##### Continental Towers, Inc. v. Nassif,

Case No. 99-0866 (Draper / Summary Final Order / November 24, 1999)

- Balcony held to constitute common element, rather than a part of the unit. Declaration was silent as to whether the boundaries of the unit included the balcony; however, declaration placed responsibility for maintenance of common elements on association except for periodic sweeping and cleaning of balcony, which unit owner was made responsible for. Therefore, balcony held to constitute common element.
- Unit owners were responsible for removing and replacing tile on their common element balcony in order to permit association to effect needed repairs where the tile was not part of the original construction.

##### Lieberman v. La Mirage of Harbor Village Condo. Assn., Inc., (currently on appeal)

Case No. 97-0355 (Anderson-Adams / Summary Final Order / March 11, 1999)

- Association is not responsible to repair termite and water damage to the exterior wall of a patio enclosure which was installed by unit owner, where association had approved the unit owner's request to build the enclosure but no agreement was made as to who would bear the cost of its maintenance. Mere approval of the improvement by the association does not obligate association to maintain it – especially where the unit owner is the sole beneficiary of the improvement.

##### Paradise Towers, Inc. v. Thibeault,

Case No. 00-1242 (Draper / Summary Final Order / October 11, 2000)

- Cooperative unit owner's installation of a satellite dish on the roof of the cooperative building did not violate prohibition against "structural changes." A satellite dish does not add to or detract from the framework or construction of the building on which it is installed, therefore, the change is not a structural one.
- Federal Telecommunications Act does not prohibit an association from enacting a restriction against placing satellite dish on building's roof. The Act only permits the placement of certain telecommunication devices on limited common areas. Fact that air conditioning unit, installed on the roof, upon which the satellite dish was affixed, serves

only one unit does not render it an area of exclusive use on which unit owner is entitled to install dish.

The Van Lee Management Corp., Inc. v. Sanders, (currently on appeal)  
Case No. 00-0359 (Draper / Summary Final Order / September 6, 2000)

- Association's claim, that screen door installed by unit owners constituted a safety hazard because it opened outward and blocked the corridor of the building, was rejected. Double doors on the unit's laundry room, situated across the hall from the unit's front door, also open outward into the same corridor. In addition, the screen door is open only momentarily; the association did not allege that the respondents leave the door open for long periods.

***Hurricane shutters (See Hurricane Shutters)***

Sand Dollar Shores Condo. Assn., Inc. v. Kelling,  
Case No. 00-0998 (Pasley / Summary Final Order / January 11, 2001)

- The unit owners' contention that the association's alleged failure to have hurricane shutter specifications in place allowed the unit owners to install hurricane shutters of their choosing without board approval was rejected. Regardless of whether the association had hurricane shutter specifications, the unit owners still had to obtain board approval prior to installing their hurricane shutters. Section 718.113(5), F.S., prohibits the board from denying approval of hurricane shutters conforming to the specifications adopted by the board; however, it does not nullify the board's authority to require approval prior to installation of alterations, including hurricane shutters.
- Where owners installed hurricane shutters without obtaining prior written approval from the board as required by the declaration of condominium, the owners were ordered to submit an application and obtain approval of a set of shutters that complies with the association's hurricane shutter specifications.

***Limited common elements***

Captain's Way at Admiral's Cove Condo. Assn., Inc. v. Hafer,  
Case No. 00-0158 (Powell / Summary Final Order / August 31, 2000)

- Association sought removal of enclosure of limited common element patio prohibited by the declaration. The unit owner contended that because the enclosure was hurricane proof, it should be permitted. Defense stricken because the glass enclosed a patio area which was not intended to be part of the living area. Also, absent showing that the board had adopted such enclosure as an approved hurricane shutter specification pursuant to Section 718.113(5), F.S., erection of nonconforming hurricane protection is a violation of Section 718.113(2), F.S.

Cypress Bend IV Condo. Assn., Inc. v. Pepper,  
Case No. 00-0417 (Pasley / Summary Final Order / June 26, 2000)

- Where unit does not have a patio or other limited common element suitable for placement of a satellite dish, association is not required pursuant to the Telecommunications Act of 1996 to permit owner to install satellite dish on the general common elements.

Deaugustinis v. Harbor East House Condo. Assn., Inc.,  
Case No. 00-0132 (Pine / Summary Final Order / July 7, 2000)

- Where the declaration allows a separate conveyance of appurtenant limited common elements, the appurtenance is created with reference to that possibility and subject to that possibility. However, where the declaration sets out a specific procedure as an exception to a general prohibition on separate conveyances, such conveyances may only be accomplished by use of that specific procedure. If an attempted conveyance is invalid pursuant to the declaration, the association has no authority to cure the defect. Moreover, if an attempted conveyance is invalid on its face, the application of equitable defenses will not make it valid.

Gulf Island Beach and Tennis Club Condo. Assn. II, Inc. v. Dabkowski,  
Case No. 99-1839 (Powell / Final Order / March 26, 2001)

- Assignment of parking spaces to unit as a limited common element allows the right to use the spaces, but the assignment is not a conveyance of an interest in land subject to the formalities required of a deed. Thus, s. 689.01, F.S., requiring an instrument in writing signed in the presence of two subscribing witnesses, did not apply.

Intracoastal Riviera, Inc. v. Limoli,  
Case No. 96-0357 (Scheuerman / Final Order / June 25, 1997)

- Dock spaces constituted limited common elements as contemplated in initial rules recorded with the declaration.
- Rules which prohibited owner from using limited common element dock space where unit was leased, regardless of whether tenant executed waiver of use of dock, not rationally related to goal of preserving common elements, and was thus invalid.
- Rule which prohibited owners from using dock where unit was leased unfairly discriminated against class of owners in violation of declaration.

Island Sun Condo. Assn., Inc. v. Olsen,  
Case No. 99-1070 (Scheuerman / Final Order / March 29, 2000)

- Rule of association that sought to regulate personal use of common element electricity in limited common element storage rooms had laudable goal of seeking to keep assessments lower.

- Rule of association that regulated, and in some instances prohibited, use of electricity in limited common element storage room, but did not address personal electrical consumption in other parts of the common elements, declared invalid where other uses of common element electricity by board members and unit owners alike was common and unregulated, and often resulted in a greater consumption of electricity than respondent's 40 watt light bulb that was illuminated a few hours each day. Rule gave board the authority to ignore larger sources of the problem and focus on a relatively minor source of use, and was suggestive of an arbitrary application.
- While an association is not required to identify and address all aspects of a problem simultaneously, where over three years had passed since the identification of problem of the personal consumption of common element electricity and the subsequent adoption of the rule limiting the use of electricity in the storage sheds, failure of board to address additional significant source of problem rendered rule invalid. Outside the boundaries of the shed, the rule found no application, and board members and owners alike were free to consume large quantities of power for their personal use at the expense of the association without fear of penalty or reprisal. The rule is arbitrary and permits disparate treatment for identical activities, without a rational basis for the unequal application.
- Board's unwritten policy interpreting board rule regulating use of common element electricity in storage sheds violated substantive due process where interpretation ignored literal language of rule and failed to fairly inform membership concerning the proscribed conduct. Board policy also failed to apply the specific language over the rule's general proscriptions where specific language found explicit application.
- Where rule stated that small devices using electricity should be turned off when not in use, and further provided that at no time shall storage room lights be left on 24 hours a day, 40 watt bulb attached to timer allowing light to turn on for several hours a day did not result in violation of rule. Light was not left on 24 hours a day, and the timer, although a small device using electricity, uses negligible electricity, was intended for continuous and not intermittent use, and permits light bulb to come into compliance with 24-hour rule.

Leopold v. Waterview Condo. Assn., Inc.,

Case No. 98-5122 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / November 2, 1998)

- Where rule prohibiting unit owners from allowing others to use their assigned limited common element parking spaces without board approval was challenged, rule found consistent with the declaration of condominium, which grants the board authority to permit temporary use of vacant spaces while the unit owners are away for extended periods of time.

Nejedly v. Evelyn Floyd and Bellair Condo. Assn., Inc.,  
Case No. 00-0676 (Draper / Summary Final Order / October 6, 2000)

- Parking space which was designated by declaration as an appurtenant limited common element could not be sold by unit owner to another unit owner. The declaration indicated that the owner of an apartment to which a parking space was appurtenant could lease the space to the occupant of another unit; thus, while lease of a space was authorized by the original declaration, the sale of a space was not.
- Lease by unit owner of a limited common element parking space to another owner for a term of 99 years terminates upon sale of the unit to which the parking space is appurtenant. Logically the right to lease the space is granted subject to the designation of the space as a limited common element, such that the lease of necessity must end upon transfer of the unit. The former owner could only transfer the interest possessed—the exclusive right to use the space for the period of ownership.

Ocean Inlet Yacht Club Condo. Assn., Inc. v. Cordy,  
Case No. 99-2405 (Scheuerman / Summary Final Order / April 24, 2000)

- Where statute in Section 718.113(1), F.S., permits declaration to apportion costs of maintaining limited common elements among those using the limited common elements, statute and documents interpreted to require those granted exclusive use of limited common element docks the obligation to maintain and replace the structures. The definition of “maintain” includes elements of repair, rebuilding, and replacing. Statute should be given effect considering obvious legislative intent that those entitled to exclusive use of improvements should pay for the improvements if so provided in the declaration. Obligation to maintain includes obligation to fund reserves as well, unless waived, or unless replacement cost is less than statutory minimum for required reserves.
- Where survey and declaration indicate that boat basin connected to Intracoastal Waterway is a common element, and where declaration did not define basin as limited common element, basin constituted common element with the costs of maintenance to be shared by all owners and not simply those with a limited common element boat slip. Fact that not all owners used the basin is not ground for excusing those owners from their share of the common expenses.
- Limited common element boat slips, shown as airspace within which a boat would be secured to the finger pier, deemed to include finger pier for purposes of determining maintenance obligation for the finger pier, where declaration provided that maintenance of the boat slips was the obligation of those entitled to exclusive use of the slips. Declaration should not be interpreted to create an illusory obligation. Therefore, “slips” includes the physical structure permitting the slips to operate as boat slips.

Stegeman v. Harbor Towers Owners Assn., Inc.,

Case No. 99-1036 (Draper / Summary Final Order / August 24, 1999)

- Lease by association of common element parking spaces, upon which carports were to be built by lessee/unit owner for exclusive use of lessee/unit owner and for a term of years, did not require 100% unit owner approval per Section 718.110(4), F.S., as a material alteration of the unit's appurtenances. Area upon which carports were to be built was already used for parking, and action of board did not convert area into limited common element. Construction of carports would result in material alteration to the common elements requiring compliance with Section 718.113(2), F.S., and the declaration.

***Maintenance and protection***

A.N. Inc. v. Seaplace Assn., Inc.,

Case No. 98-4251 (Powell / Summary Final Order / November 19, 1998)

- Where declaration provided a \$25,000 ceiling on board expenditures for certain projects without an owner vote, declaration construed to refer not to ordinary maintenance within the meaning of the dicta contained in *Cottrell v. Thornton*, but instead to refer to those expenditures provided by the current Section 718.114, F.S. Declaration provided that the initial cost of installation of additions, alterations or improvements, or additional lands, leaseholds, or other possessory or use rights in lands or facilities or memberships in recreational facilities, purchased as part of the common elements, are common expenses unless the cost exceeds \$25,000, in which case a vote of a majority of the owners must be secured.
- Where association undertook substantial window replacement project, even if the new windows were deemed to constitute a material alteration to the common elements, such alteration would not require a vote of the owners where the replacement of the windows is reasonably necessary to maintain and protect the common elements, despite the fact that the new windows were a substantial upgrade to the existing windows.
- Replacement of existing asphalt tennis court with a clay surface tennis court accompanied by an irrigation system constituted a material alteration to the common elements and went well beyond the maintenance function of the board, thereby necessitating a vote of the owners. The changes to the tennis courts resulted in a markedly different appearance and playing experience, and were not necessary in order to protect the common elements or residents.
- Remodeling of clubhouse, with additional windows, new kitchen pass-through, and the replacement of a wood burning fireplace with a gas fireplace, were material alterations to association property requiring a vote of the owners.

Banana Bay Condo. Assn., Inc. v. Valdes,

Case No. 99-0463 (Scheuerman / Order Granting Motion for Temporary Injunction / April 29, 1999)

- Where owner refused access to unit by association for purpose of inspecting construction undertaken by owner without association approval, temporary injunction entered permitting association access to unit. In performing its statutorily-mandated duties to repair, replace, and protect the common elements, it is necessary for the board, from time to time, to have access to the unit.

Berger v. Island's End Condo. Assn., Inc.,

Case No. 96-0341 (Scheuerman / Summary Final Order / December 18, 1997)

- A mere change from a dock to a fishing pier would normally constitute a material alteration to the common elements and would not disturb the appurtenances to the units; no dock space had been assigned to any owner as a limited common element. The appurtenances to the units were not disturbed within the meaning of Section 718.110(4), F.S. The change doubtless altered the function, use, and appearance of the structure within the meaning of Section 718.113(2), F.S., unless it could be shown that such action was required by the Department of Environmental Protection or if natural action of the tide had altered the facility, making it useless as a boating pier and there was no corresponding duty of the association to dredge the area.

Bergman v. Crystal Landing Condo. Assn., Inc.,

Case No. 00-0010 (Scheuerman / Summary Final Order / June 15, 2000)

- Where association negligently failed to clean out gutters, and rainwater from overflowing gutters intruded onto outdoor patio, damaging an indoor/outdoor carpet, association held responsible for replacing the carpet.
- Where owner sued for damage to carpet on limited common element outdoor patio caused by gutter overflowing, association was correct in its observation that outdoor patio by its very nature is intended to form part of an outdoors environment and may be expected to take on water under ordinary conditions. The duty of the association under these circumstances is exceedingly slight, such that the association would face no liability absent a negligent act that exacerbates the ordinary damage that would attend an outdoor patio.

Brickell Townhouse Assn., Inc. v. Bagdan,

Case No. 00-1683 (Scheuerman / Summary Final Order / November 21, 2000)

- Board decision to replace and not merely repair windows damaged by hurricane upheld. Old damaged windows were not airtight, resulting in accumulation of mildew in the units, and there was no assurance that windows

would provide protection in the event of another storm. The decision of the board, upheld by the arbitrator, would ensure structural safety and soundness.

- Irrespective of considerations of structural integrity and safety, proposal by board to replace damaged windows for aesthetic reasons found support in the documents, which emphasized the need for uniformity of structure and design within the condominium. New windows would conform to the specifications of windows previously replaced by the association after storm damage, such that all windows in the condominium would now share the same appearance and structure.

Brown v. The Village of Kings Creek Condo. Assn., Inc.,  
Case No. 00-0456 (Draper / Order on Motion to Dismiss / April 11, 2000)

- Jurisdiction exists to hear the unit owner's petition alleging that the association failed to maintain the flat concrete roof over the balcony to the petitioner's unit resulting in water intrusion into the unit and damage to the interior of the unit and its contents. The effect of the 1997 amendment to the definition of "dispute" was to exclude only a subset of the claims concerning maintenance of the common elements--those claims primarily seeking money damages for damage to the unit. In the instant case, the petition seeks as relief an order requiring the association to repair the roof so that water stops coming into the petitioner's unit.

Capistrano Condo. Assn., Inc. v. Jochim,  
Case No. 98-4376 (Scheuerman / Final Order / September 14, 2000)

- Where board, in furtherance of its duty to protect the common elements, determines that landscaping stones are needed to address erosion problems, board's statutory duty to preserve the common elements overrides any requirement of unit owner consent that may be otherwise required by the documents or statute. A unit owner does not share this immunity because an owner is not charged with the duty of maintaining or repairing the common elements.

Carriage House Condo. Assn., Inc. v. Bacon,  
Case No. 95-0475 and 95-0477 (consolidated) (Scheuerman / Amended Final Order / January 13, 1998)

- Where the improvements constructed on limited common element terrace were not part of the original construction, and where there was no evidence that the association had agreed to remove and replace the improvements when it became necessary to repair or replace the common element roof over the terrace area, the improvements must be removed and replaced at the expense of the owner.



Continental Towers, Inc. v. Nassif,

Case No. 99-0866 (Draper / Summary Final Order / November 24, 1999)

- Unit owners' defense to association's action to require unit owners to remove tile on common element balcony for repairs, that the maintenance was not necessary and that less intrusive means were available was rejected. Business judgment rule insulates board's maintenance decisions from judicial scrutiny.

Cosby v. Wellington Assn., Inc.,

Case No. 00-0013 (Draper / Order on Motion to Dismiss and Request for Mediation / April 28, 2000)

- Where the association is responsible for performing repairs to the common elements, it cannot refuse to make repairs on the ground that another unit owner caused the damage or condition. The association should make the repairs and seek reimbursement from the owner who caused the damage or condition.

Cote D'Azur Condo. Assn., Inc. v. Hammond,

Case No. 00-1648 (Scheuerman / Summary Final Order / February 21, 2001)

- Where the declaration did not give unit owners the duty or authority to repair or replace the structure of the balcony serving the units, owner was not authorized to extend his balcony onto the common elements in order to address a drainage problem that was bringing mud and rain water into the unit.
- The failure of the association to address drainage problem on patio that resulted in mud and rainwater entering the unit did not permit the unit owner to apply self-help remedy of enlarging patio in order to counter the flooding. Remedy of unit owner was to commence litigation to force association to maintain the common elements.

Crouch v. Commodore Condo. Assn., Inc.,

Case No. 98-3591 (Anderson-Adams / Final Order of Dismissal for Lack of Jurisdiction / April 17, 1998)

- Effective October 1, 1997, Section 718.1255(1), F. S., excludes from jurisdiction of arbitrators those disputes that primarily involve claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property. Petition dismissed where the unit owner was seeking damages resulting from water intrusion into the unit caused by the association's alleged failure to repair/maintain an exterior wall and plumbing which apparently serviced the unit above.

Cundiff v. Flamingo Cay Apartments Assn., Inc.,

Case No. 97-0259 (Draper / Final Order / May 19, 1998)

- Installation of sprinkler system did not require unit owner approval where association showed that the area in question had a system in place, although it was inoperable, and vegetation in the area was dying out. Accordingly, replacement of existing sprinkler system, and its expansion into areas previously not irrigated, and the addition of flowers and shrubbery in previously un-irrigated sections, was necessary to repair and maintain common elements and did not constitute an alteration within the meaning of Section 718.113(2), F.S.

Davila v. International Park Condo. II Assn., Inc.,

Case No. 97-0142 (Draper / Final Order / February 5, 1998)

- Where declaration provided that association was responsible for conduits and ducts for the furnishing of utilities within the interior walls of a unit, and such facilities that serve parts of the condominium other than the unit within which those facilities are contained, association was responsible for water leak resulting from roof top air-conditioning pan housing common air-conditioning refrigerant lines.

Ellis v. Phoenix Towers Condo. Assn., Inc.,

Case No. 00-1236 (Draper / Summary Final Order / December 12, 2000)

- The association was responsible for replacing worn out windows in 22-story condominium building. Declaration did not specify whether unit owner or association was responsible for replacing windows, although it provided that “where applicable...windows, screening and glass” were to be repaired by unit owner. Declaration placed responsibility for maintenance of building’s exterior on the association generally and prohibited unit owner from making repairs to the exterior of the building. The only construction that gives effect to all these provisions and prevents an unreasonable result is that unit owner is required to repair broken glass, damaged screening and to keep windows clean, while association is responsible for replacing worn out windows.
- Regardless of whether window replacement could be effected from within the building, as alleged by the association in its motion for rehearing, the association held responsible for replacing deteriorated windows in condominium building.

Farnham v. Vista Harbor Assn., Inc.,

Case No. 97-0214 (Draper / Final Order / January 27, 1998)

- Unit owner approval not required for installation of chain link fence where fence provided security from activities occurring in adjacent public parking lot. Type of fence -- chain link -- and placement of 2-3 feet from property line was shown to be reasonable and necessary. Trees and bushes on property line

would have to be cut down or drastically trimmed if fence were situated on property line.

Feit v. Cloister Beach Towers Assn., Inc.,

Case No. 97-0234 (Oglo / Final Order / April 24, 1998)

- Association policy of prohibiting ex-employees terminated for negative reasons from entering condominium found to be reasonable; ex-manager was, therefore, appropriately barred from house-sitting for a unit owner. Policy was not required to be adopted as a rule.

Four Sea Suns Condo. Assn., Inc. v. Pariseau,

Case No. 00-0559 (Scheuerman / Summary Final Order / August 24, 2000)

- Where original unit owners installed awnings on the exterior of the building and where the awnings were not part of the original construction, the individual owners and not the association are responsible for removal of the awnings where such removal is necessary to accomplish roof repairs or repainting of the building. The fact that the association approved installation does not create a maintenance obligation in the association. If the association desired to voluntarily assume this maintenance function, and to bill the owner for the costs, it may do so because the awnings touch and concern the common elements, an area of primary association responsibility.

Gethin v. Villa Vista Management, Inc.,

Case No. 99-1336 (Draper / Final Order / November 30, 1999)

- Where original plans for condominium indicated the common element hallways would be air-conditioned, and air conditioning was in fact installed, association was obligated to repair/replace nonfunctioning air-conditioning unit serving the hallway. Even assuming that the unit owners *could*, consistent with the statute, vote not to replace air conditioning pursuant to Section 718.113(2), F.S. (assuming that air conditioning was not necessary for the maintenance and preservation of the common elements), informal inquiry conducted by board was insufficiently formal to meet statute's requirement.

Girsch v. Whisper Walk Section E Assn., Inc.,

Case No. 97-0305 (Scheuerman / Order Dismissing Arbitration Petition / November 26, 1997)

- Board decisions regarding what shrubbery to plant or how to replace existing shrubs particularly implicate the business judgment of the board, and rarely grow to the dimensions necessary to implicate the provision of the documents or statute regarding material alterations to the common elements. To permit the arbitrator to substitute his judgment for the board in this range of business decisions would add great instability to the presumption of normalcy attending

ordinary day-to-day decisions, and the arbitrator has no proper role in adjudging whether hibiscus is preferable to ficus.

Habitat II Condo. Assn., Inc. v. Smith,

Case No. 00-0535 (Draper / Summary Final Order / August 25, 2000)

- Association claimed that unit owner was responsible for repairing floor joist of balcony, because it was a part of the unit. Relief was denied because the balcony was determined to be a limited common element and, therefore, the association's maintenance responsibility. Additionally, unit owner's maintenance responsibility extends only to the surface of the floor; joist was located below the surface of the floor.

Horan v. Lakeview of Largo Condo. Assn., Inc.,

Case No. 97-1888 (Draper / Order Dismissing Petition / December 12, 1997)

- No jurisdiction where petition, which was filed prior to October 1997, alleged unit owner suffered water damage to his unit as a result of leak in water pipes to his unit. Petition failed to allege leak was result of association's negligence or that association was otherwise responsible for damage.

Houseman v. Spinnaker Cove Condo. Assn., Inc.,

Case No. 99-0255 (Scheuerman / Agreed Final Order / December 23, 1999)

- Where association ordered to reconstruct dock facility removed in violation of Section 718.113(2), F.S., and was further ordered to maintain and repair pool and surrounding area, specifications relating to materials, design, layout, and other details shall be left to the business judgment of the board, which shall not be disturbed absent a manifest abuse of discretion.
- Association was required to reconstruct and maintain dock facility taken down without unit owner vote in violation of Section 718.113(2), F.S. Also, association was ordered to repair and maintain common element swimming pool that had fallen into a state of disrepair.

Islandia Condo. Assn., Inc. v. Simoes,

Case No. 96-0261 (Powell / Summary Final Order / May 21, 1999)

- Where unit owners refused to vacate units to allow building to be tented for termites, arbitrator ordered unit owners to cooperate with tenting because maintenance of the common elements is the responsibility of the association, and the board's decision on method of carrying out its responsibility is presumed correct under the business judgment rule.

- Where unit owners argued that issue was moot because building was not currently infested with termites, arbitrator rejected argument and ordered them to comply with tenting because lack of present infestation would not defeat association's right of access to units for pest control.
- Unit owners' defense, that tenting building would create risk of mishap or loss, was rejected by arbitrator where such risk did not outweigh the possibility of damage if tenting for termites was not carried out and where security measures planned by association were reasonable.

Katchen v. Braemer Isle Condo. Assn., Inc.,  
Case No. 98-5485 (Scheuerman / Final Order / August 5, 1999)

- Where former president promised purchaser, under contract to purchase unit, that landscaped area adjacent to unit's patio would remain lush with trees and vegetation, and that the association would not trim the area except as directed by or allowed by the owner, verbal agreement was unenforceable. President did not have the authority to bind the association, as the statute and the documents place maintenance responsibility on the board as a whole and not on the president. In addition, since purchaser had already signed purchase agreement when the promise was made, no element of reliance was present. Also, purchaser did not promise to do anything under the agreement since the contract had already been signed, and the owner supplied no consideration for the agreement. Finally, the agreement was so lacking in details as to be indefinite and unenforceable.
- Where declaration required vote of the owners for structural changes and improvements to the common elements costing more than \$25,000, series of landscaping contracts entered into by association not required to be considered in the aggregate or collectively to determine if spending limit was reached. Although all the contracts concerned landscaping, each contract provided for landscaping services in different area of the community, and each project was to be performed sequentially such that at the time the petition was filed phase 1 was complete, the plans for phase 2 were being drawn, and phase 3 was in the conceptual phase.
- Where landscaping plan called for the association to remove aged, poorly managed, and noxious plants and trees, and to replace the plants and trees with species other than the original plantings, although there were some aspects of change in the plan, the overall thrust of the planned changes was more in the nature of maintenance and preservation functions, and hence no material alteration or improvement resulted within the meaning of the documents or statute.

- Even if planned landscaping changes of removing poorly maintained and nuisance trees and shrubs resulted in material alteration to the common elements, board was permitted to proceed without vote of the owners since the board was acting under its obligation to maintain and protect the common elements.

Kemp v. Island Village Condo. of Holmes Beach, Inc.,  
Case No. 96-0179 (Scheuerman / Final Order / May 27, 1998)

- Board not shown to be negligent in failing for a term of years to rectify flooding into unit, where board had determined to assign higher priority to other projects involving life-safety issues. Ultimately, however, association was responsible for maintaining and repairing all the common elements, and board ordered to repair roof and lanai.

Kreitman v. The Decoplage Condo. Assn. Inc.,  
Case No. 98-3495 (Draper / Amended Final Order / September 14, 1999)

- Board's replacement of common element acoustical ceiling tiles with drywall and ceramic floor tiles with marble was determined to be necessary maintenance and did not require unit owner approval. The acoustical ceiling tiles and their supporting foundation needed to be replaced and the evidence showed that drywall is a more durable, cost-effective ceiling material. In addition, existing ceramic floor tiles could not be cleaned. Association should not be required to replace a material that has performed poorly with the identical material, which may also be expected to perform poorly, when it has an alternative that is comparable in function.
- Where board changed color of common element hallway walls from salmon/peach to a cream color and permanently removed door and wall moldings, the change constituted a material alteration of the common elements. Board ordered to restore walls to their original condition unless unit owners approved the alterations. The fact that replacement of damaged wall moldings would be very expensive does not relieve the board of its duty to maintain and replace the common elements.

Lamar v. Peppertree Village Townhouse Condo. Assn., Inc.,  
Case No. 00-1849 (Scheuerman / Final Order / June 1, 2001)

- Where the board determined to replace deteriorated wood siding with stucco siding, no vote of the owners was required. The change was primarily maintenance related; wood siding is particularly inappropriate in south Florida where it attracts insects and is vulnerable to frequent tropical rains.

- Evidence supported the association's assertion that in order to replace deteriorated wooden siding of building, the association was required to remove all window frames and assemblies. It would not make sense from a prudent repair perspective to leave the windows intact with wood rot and mold around the frames, and to replace the siding thereby encapsulating these forces inside the walls where they would continue to interact with the building components contained in the new siding materials.
- Evidence supported the association's position that once the window assemblies were removed in order to replace the siding of the building, building code required that replacement windows meet current building code requirements.
- Where the board replaced black window frames with white frames, evidence supported finding that the change in paint color did not constitute a material alteration to the common elements but was instead related to the duty of the board to protect and preserve the common elements. White frames were recommended by the association's contractor because black frames to the maximum extent possible absorb heat and radiate heat into the walls. The heat can operate to accelerate the deterioration of the building materials and components of the walls and windows. White paint, on the other hand, to the maximum extent possible reflects the heat, forcing it to remain outside where it cannot act upon the internal components of the wall and window assembly. The board chose white frames for energy efficiency, because of its heat dissipation qualities, and because it promotes to the maximum extent possible the protection and preservation of the building components it protects. In this respect, the board did not view the color change as an element primarily related to aesthetics or outward appearance, but instead viewed the white paint as a functional alternative among competing building materials.

Liberman v. La Mirage of Harbor Village Condo. Assn., Inc., (currently on appeal)  
Case No. 97-0355 (Anderson-Adams / Summary Final Order / March 11, 1999)

- Association is not responsible to repair termite and water damage to the exterior wall of a patio enclosure which was installed by unit owner, where association had approved the unit owner's request to build the enclosure but no agreement was made as to who would bear the cost of its maintenance. Mere approval of the improvement by the association does not obligate association to maintain it – especially where the unit owner is the sole beneficiary of the improvement.

Luber v. Ocean Club Townhomes Condo. Assn., Inc.,  
Case No. 94-0334 (Scheurman / Final Order / December 19, 1997)

- Evidence supported finding that the association had acted negligently in failing to replace window frame assembly after years of complaints by owner. Damages to personal property of \$894.00 awarded.

Martinez v. Islands Martinique Condo. Assn.,

Case No. 99-0375 (Draper / Summary Final Order / June 15, 1999)

- Association held responsible for repairing leak in air-conditioning conduit carrying freon from the condenser unit on the roof of the building to petitioner's fourth floor unit. Association is responsible for repairing common elements, which are defined by the declaration to include all "conduits and utility lines." Association's argument that the leaky air-conditioning element is a "pipe" rather than a "conduit" is rejected. A "conduit" is a channel or pipe for conveying fluids, and freon is found in a liquid state. In addition, the declaration defines "utility services" to include air-conditioning.
- Despite the fact that the conduit serves only the petitioner's unit, association is responsible for repairing it. It is unreasonable for an individual unit owner to be held responsible for repairing air-conditioning conduits within the common elements, traversing several levels of the building, and which repair might require opening large holes in the building through the ceilings and floors of the units between the petitioner's unit and the roof, absent some clear expression of responsibility in the documents.

Midman v. Sun Valley East Condo. Assn., Inc.,

Case No. 99-0537 (Draper / Final Order / August 26, 1999)

- Repair of pool deck accomplished by removal of existing, deteriorated chatahoochee deck and replacement with paver bricks held to be necessary repair, not a material alteration, where paver bricks required less maintenance and had a service life of two to three times that of the chatahoochee decking.

Miller Villas Condo. Assn., Inc. v. Lichtenstein,

Case No. 99-1545 (Pasley / Partial Summary Final Order and Order Setting Prehearing Procedure / December 17, 1999)

- Where the condominium documents explicitly prohibit unit owners from performing the maintenance functions designated by the documents to the association, a unit owner's defense that she removed a tree from the common elements because it was dead did not bar the association's enforcement action to require the unit owner to replace the tree.

Molokai Villas Condo. Assn., Inc. v. Symes,

Case No. 00-1320 (Pine / Summary Final Order / December 13, 2000)



- When the documents reflect that the balcony is part of the unit, and that the unit owner is responsible for the flooring above the slab of the unit, then the unit owner is responsible for the cost of repair of the balcony flooring. The unit owner is not responsible for repair to any part of the balcony that is a support structure, however, and the unit owner cannot rebuild the support structure to his own design. The responsibility for repairing support structures is on the association rather than on the unit owner.

Myer v. Lakeshore Village South Condo. Assn., Inc.,

Case No. 98-4608 (Draper / Final Order of Dismissal / August 19, 1998)

- No jurisdiction over claim that association had failed to adequately maintain the exterior of the building by not painting it frequently enough and not cleaning the roof well enough, and that association required unit owner to remove plant trimmings resulting when unit owner pruned some plants which he alleged were not being maintained properly. Claims involved the failure of the association to properly maintain the common elements and unit owner failed to allege any direct effect on him or his unit.

Rough Creek Condo. Assn., Inc. v. Pope,

Case No. 98-5031 (Cowan / Final Order / July 15, 1999)

- Where board authorized unit owner to install several stepping stones on area adjacent to patio, unit owner exceeded authorization when she installed concrete patio.

Sandpiper Condo. Assn., Inc. v. Lagrossi,

Case No. 99-2266 (Scheuerman / Summary Final Order / August 4, 2000)

- Documents interpreted as showing a general intent that the balconies were to be part of the units, and that the association was responsible for the maintenance of the exterior portions of the building. Therefore, association deemed responsible for repairing and replacing the balcony slabs, and was authorized to enter upon the balcony and effectuate repairs.

Senek v. The Riverside Club of Ft. Myers, Inc.,

Case No. 99-0306 (Pasley / Summary Final Order / May 12, 1999)

- Replacing the condominium's swimming pool heater without taking a vote of the unit owners in advance did not constitute a violation of Section 718.113(2), F.S., which requires approval of 75% of the voting interests for a material alteration, where the evidence showed that the pool had once had a pool heater. The association's delay for a period of years in replacing the pool heater did not relieve it of its right or responsibility to replace it. The replacement of the pool

heater in the present case fell within the association's duty to maintain, repair, and replace the common elements and, therefore, was not a material alteration.

Swyers v. Palma Del Mar Condo. Assn. No. 1 of St. Petersburg, Inc.,  
Case No. 00-0159 (Draper / Summary Final Order / April 6, 2000)

- Association was responsible for repairing deteriorated concrete slab floor of balconies adjacent to units and reversing the pitch of those slabs that were not draining rainwater properly. Arbitrator rejected contention that the balcony floor slab was a part of the unit and that an individual unit owner whose unit the balcony served was responsible for maintaining/repairing it. First, floor slab falls outside the "horizontal plane of the undecorated finished floor" which the declaration defines as the lower boundary of the unit. Second, declaration refers to certain limited common elements appurtenant to each unit, "such as...balconies" (indicating that balconies constitute part of the common elements, not a part of the unit) and provides that the expense of maintenance of the interior surfaces of such limited common elements is the individual unit owner's responsibility while the expense of maintenance relating to the exterior surfaces, or involving structural maintenance, is to be treated as part of the common expenses of the association. Balcony is an "outside" or "exterior" portion of the building, and correction of the negative slope of the balcony and repair of columns supporting the balconies involves structural maintenance, repair and replacement. Furthermore, declaration prohibits unit owners from making any alteration or repair to the common elements or to any outside or exterior portion of the building without the association's consent. Owner cannot be held responsible for maintaining portions of property that the declaration prohibits him from repairing or replacing.

Williamson v. Sabine Yacht & Racquet Club Condo. Assn., Inc.,  
Case No. 99-1552 (Draper / Final Order / January 31, 2000)

- Replacing refrigerator, stove, carpet, and tile, and repainting walls and ceilings of unit constitute repair, rather than alteration of unit, and therefore unit owner approval required for "improvements" was not needed. Unit owned by association and used for manager's residence did not constitute a common element, alteration of which required unit owner approval. Fact that association purchased unit did not transform it to association property or common element absent appropriate amendments to declaration.
- Enlargement and renovation of equipment room to secure flammable materials contained in the room, in response to order of the Fire Marshal, held to be necessary to protect the common elements and to be within the maintenance and protection responsibility of the board. Therefore, unit owner approval of the changes was not necessary.

- Unit owner approval was not required for association's installation of chair railings and corner guards. Purpose was to repair existing marks on walls caused by renters using luggage carts, and maintain appearance of walls without additional damage. Fact that the installation also constitutes an "improvement" does not defeat the rule that the board may make necessary repairs without unit owner approval.
- Association's installation of finger decks off the main pier did not require unit owner approval where evidence showed that boarding boats at the bow from main pier was unsafe. At least one older resident had fallen trying to board a boat at the bow. The finger piers permit owners to walk to midship and board from midship rather than the bow.
- Unit owner approval was not required to replace worn charcoal grills with sturdier models that were bolted to the concrete foundation and to cover wooden benches with a protective coating. Board changed and upgraded the grills and benches as necessary to withstand the harsh Gulf environment and winds.
- Alteration of drainage pipe, necessary to prevent shore erosion, did not require unit owner approval. Alteration constituted necessary maintenance.

Wittenberg v. Poinciana Island Yacht and Racquet Club Condo. Assn., Inc.,  
Case No. 96-0042 (Scheuerman / Summary Final Order / March 4, 1998)

- Where improvements to patio added by prior owner were required to be removed in order to permit the association to repair and replace the common element roof over the patio, owner is required to remove the improvements, failing which the association was authorized to remove them. Additionally, the owner, at his expense, is permitted to re-install the improvements after roof repairs completed unless the association can convincingly demonstrate that reinstallation of the improvements will injure the new roof. Also, if the association is required to upgrade the current roof in order to permit the improvements to be re-installed, the difference in cost between nontreadable roof and a roof usable as a terrace may be charge to the owner.

Wolfenson v. Huntington Lakes Section Three Assn., Inc.,  
Case No. 97-2446 (Draper / Summary Final Order / May 22, 1998)

- Resurfacing of cement pool deck did not constitute material alteration to the common elements. Even if cracks and deterioration were not so extensive that they were dangerous or placed the surface at risk of further deterioration, resurfacing deemed necessary to provide a visually pleasing, flawless surface, as certainly existed when the condominium was first created. Unit owner did not dispute need for removal and replacement of expansion joint material, but balked at resurfacing work that he saw as merely cosmetic.

***Material alteration or addition (See also Fair Housing Act)***

A.N. Inc. v. Seaplace Assn., Inc.,

Case No. 98-4251 (Powell / Summary Final Order / November 19, 1998)

- Where association undertook substantial **window replacement project**, even if the new windows were deemed to constitute a material alteration to the common elements, such alteration would not require a vote of the owners where the replacement of the windows is reasonably necessary to maintain and protect the common elements, despite the fact that the new windows were a substantial upgrade to the existing windows.
- **Replacement of existing asphalt tennis court with a clay surface tennis court** accompanied by an irrigation system constituted a material alteration to the common elements and went well beyond the maintenance function of the board, thereby necessitating a vote of the owners. The changes to the tennis courts resulted in a markedly different appearance and playing experience, and were not necessary to protect the common elements or residents.
- **Remodeling of clubhouse**, with additional windows, new kitchen passthrough, and the replacement of a woodburning fireplace with a gas fireplace, were material alterations to association property requiring a vote of the owners.

Baran v. Ro-Mont South Condo. "K", Inc.,

Case No. 99-1563 (Powell / Order on Motion to Dismiss / January 7, 2000)

- Association's decision to allow unit owner to **plant garden** behind his unit was not a material alteration of the common elements requiring a vote of unit owners per Section 718.113(2), F.S., and declaration. An association may make day-to-day decisions on landscaping questions without seeking unit owner approval.

Barenscheer v. Marina Tower Condo. Assn., Inc.,

Case No. 99-0559 (Scheuerman / Final Order on Motions for Attorney's Fees / April 26, 1999)

- Where association permitted **installation of cellular communications tower** on top of condominium building, tower materially changed the common elements by changing the appearance, form, shape, specifications, function, and use of the roof requiring compliance with Section 718.113(2), F.S. Change may be material and substantial even where visual impact is not immediate and obvious.
- Association cannot rely on its authority to lease the common elements to justify material alteration to the common elements constructed by association without membership vote. Where lease has the effect of creating material alteration to the

common elements, association must comply both with the leasing requirements of the statute and documents as well as the requirements pertaining to material alterations.

- Association cannot rely on its authority to enter into easements to excuse noncompliance with material alteration provision of statute and documents. Easement authority contained in the documents permitted association to grant easements for utilities to be utilized directly by members. Cellular communications tower was erected to facilitate communications for all cellular customers and did not directly benefit the association's members.

Bayside Terraces Owners' Assn., Inc. v. Cusumono,  
Case No. 96-0293 (Oglo / Summary Final Order / October 22, 1997)

- Where association sought removal of **full terrace enclosure**, selective enforcement not found where other owners permitted to have partial terrace enclosures; partial enclosures found not to be comparable to full enclosures.

Belardo v. Four Sea Suns Condo., Inc.,  
Case No. 97-2186 (Scheuerman / Summary Final Order / February 24, 1998)

- Association, by adding **pool heater** without a vote of the membership, violated Section 718.113(2), F.S., and the declaration requiring a membership vote for material alterations to the common elements. Heater changed the existing pool in such a manner as to appreciably affect its function and use. The use of the pool will increase. Association given 90 days to secure owner approval failing which heater must be removed.
- Board's concern that **replacing a shrubbery or a tree, or purchasing office supplies**, constitutes material alteration is unfounded. Landscaping decisions would rarely grow to the level of a material alteration due to the wide variance typically existing in this setting. Also, there is less expectation of the status quo in gardening decisions. As to the purchase of office supplies, an association is required to operate and maintain the condominium, and office supplies are common expense purchased pursuant to that duty. Finally, the purchase of lawn chairs may or may not constitute a material alteration depending on the facts of a particular case.

Belle Plaza Condo. Assn., Inc. v. Rubell / Rubell v. Belle Plaza Condo. Assn., Inc.,  
Case Nos. 99-2168 and 99-2395 (Consolidated) (Powell / Final Order / February 18, 2000)

- Unit owner's **removal of drywall ceiling in unit** was an alteration of the common elements requiring approval of the board, where declaration provided that upper boundary of the unit was the unfinished lower surface of the structural ceiling.

Berger v. Island's End Condo. Assn., Inc.,

Case No. 96-0341 (Scheuerman / Summary Final Order / December 18, 1997)

- A mere **change from a dock to a fishing pier** would normally constitute a material alteration to the common elements and would not disturb the appurtenances to the units; no dock space had been assigned to any owner as a limited common element. The appurtenances to the units were not disturbed within the meaning of Section 718.110(4), F.S. The change doubtless altered the function, use, and appearance of the structure within the meaning of Section 718.113(2), F.S., unless it could be shown that such action was required by the Department of Environmental Protection or if natural action of the tide had altered the facility, making it useless as a boating pier and there was no corresponding duty of the association to dredge the area.
- Amendment to declaration adding provision governing material changes to the common elements as provided for by Section 718.113(2), F.S., does not conflict with portion of pre-existing declaration providing procedure for changing the appurtenances to the units as described by Section 718.110(4), F.S. Amendment did not intrude into areas governed by Section 718.110(4), F.S., and a vote of 100% of the members was not required for the passage of the amendment.
- Amendment to declaration adding procedure for approving material alterations to the common elements, and providing that normal maintenance of the common elements required no vote of the owners but was within the responsibility of the board, merely codified case law and did not conflict with the declaration or the statute.
- Amendment to declaration approved by the membership authorizing the board to **convert the existing boating dock into a fishing pier** incapable of supporting boating did not violate Section 718.113(2), F.S., as the declaration may properly delegate this function to the board consistent with the statute. In addition, amendment to declaration delegating to the board the authority to abandon the conversion process if deemed infeasible does not violate the statute or governing documents.

Bogikes v. Windmill Village by the Sea Condo. No. 1 Assn., Inc., (currently on appeal)  
Case No. 97-0159 (Scheuerman / Final Order / June 12, 1998)

- Rule permitting board to approve applications to **construct docks on common elements** adjoining canal violated both Section 718.113(2), F.S., and Section 718.110(4), F.S. The docks changed the appearance and function of the common elements, and simultaneously changed the right to use the common elements appurtenant to all units by permitting certain owners to, in effect, colonize portions of the common elements for their exclusive use.

Capistrano Condo. Assn., Inc. v. Jochim,  
Case No. 98-4376 (Scheuerman / Final Order / September 14, 2000)

- Where declaration prohibited alterations to the common elements absent approval of 75% of the owners, and did not on its face distinguish between material or nonmaterial changes, given that the board over the years had permitted the placement of patio stones at the rear entrances to a majority of the ground level units, association over the years had thereby interpreted the declaration to prohibit only material changes to the common elements, which changes did not include the placement of patio stones.
- The **placement of patio stones** by an owner at the entryway to the unit would generally be considered to constitute a material alteration to the common elements, requiring compliance with Section 718.113(2), F.S., and any applicable portion of the documents, in the absence of any provision to the contrary in the documents or other countervailing circumstance or defense.
- Where over half of the ground floor units featured patio stones placed outside the rear exit to the units, no material change to the common elements occurred where respondent placed patio blocks outside her unit. The area occupied by the stones, 48 square feet, was similar to the area occupied by other installed stones.
- Where board, in furtherance of its duty to protect the common elements, determines that landscaping stones are needed to address erosion problems, board's statutory duty to preserve the common elements overrides any requirement of unit owner consent that may be otherwise required by the documents or statute. A unit owner does not share this immunity because an owner is not charged with the duty of maintaining or repairing the common elements.

Captain's Way at Admiral's Cove Condo. Assn., Inc. v. Hafer,  
Case No. 00-0158 (Powell / Summary Final Order / August 31, 2000)

- Association sought **removal of enclosure of limited common element patio** prohibited by the declaration. The unit owner contended that because the enclosure was hurricane proof, it should be permitted. Defense stricken because the glass enclosed a patio area which was not intended to be part of the living area. Also, absent showing that the board had adopted such enclosure as an approved hurricane shutter specification pursuant to Section 718.113(5), F.S., erection of nonconforming hurricane protection is a violation of Section 718.113(2), F.S.

Carbone v. Seawatch at Jupiter Island Condo. Assn., Inc.,  
Case No. 99-0941 (Scheuerman / Summary Final Order / August 31, 1999)

- Placement of **satellite dish** on general common elements resulted in impermissible change to common elements in violation of declaration. Owner, pursuant to Telecommunications Act of 1996 as implemented by FCC, only had right to install satellite dish on limited common elements over which owner had exclusive possession and control.

Cascades of Falling Waters, Inc. v. Rafuse,  
Case No. 00-1625 (Scheuerman / Summary Final Order / May 4, 2001)

- Where the **owner installed concrete pavers forming a patio** 10' by 14' formed by paver stones on the common elements outside the glass sliding door of the unit, the owner violated both sSection 718.113(2) and 718.110(4), F.S. Even if other owners did not generally use the area occupied by the patio, the respondent owner by his actions has asserted permanent dominion and control over the area. The placement of the stones along with items of personal property has made it less likely that the use rights granted to other owners to pass through or in close proximity to the area will be exercised.
- In determining whether a change to the appurtenances is a *material* change demanding compliance with Section 718.110(4), F.S., materiality will depend on the factors involved in each situation including the intended use of the property, the relative size and significance of the parcel involved, whether the intended or actual use will change significantly and permanently, whether the owners have a legitimate basis for expecting that the current use of the property will remain unchanged, whether the property at issue constitutes limited common elements or other circumstances exist such that the other owners should have no expectation of use rights in the property, and whether overall, the beneficial use of the property will change.

Cernosia v. Amblewood. Condo. Assn., Inc.,  
Case No. 00-1803 (Draper / Final Order / July 5, 2001)

- Association unreasonably withheld approval of **three-foot expansion of screened-in area situated on patio** where other unit owners had been permitted to build similar and varied additions and the association did not have any written de facto guidelines that would put an owner on notice of the criteria to be employed in architectural control decision-making.

Cote D'Azur Condo. Assn., Inc. v. Hammond,  
Case No. 00-1648 (Scheuerman / Summary Final Order / February 21, 2001)

- Where the declaration prohibited construction of any nature "with respect to any Dwelling Unit" and further prohibited "exterior addition to or change or alteration therein," arbitrator construed language as prohibiting **modifications to the balcony area** outside the unit including the extension of the balcony onto the common elements.
- Where the owner **extended his balcony onto the common elements**, declaration provision prohibiting owner from using any part of the condominium property other than his own unit, except as permitted by the board, deemed violated.
- Where the declaration did not give unit owners the duty or authority to repair or replace the structure of the balcony serving the units, owner was not authorized to



extend his balcony onto the common elements in order to address a drainage problem that was bringing mud and rain water into the unit.

Cundiff v. Flamingo Cay Apartments Assn., Inc.,  
Case No. 97-0259 (Draper / Final Order / May 19, 1998)

- **Installation of sprinkler system** did not require unit owner approval where association showed that the area in question had a system in place, although it was inoperable, and vegetation in the area was dying out. Accordingly, replacement of existing sprinkler system, and its expansion into areas previously not irrigated, and the addition of flowers and shrubbery in previously un-irrigated sections, was necessary to repair and maintain common elements and did not constitute an alteration within the meaning of Section 718.113(2), F.S.

Cypress Bend IV Condo. Assn., Inc. v. Pepper,  
Case No. 00-0417 (Pasley / Summary Final Order / June 26, 2000)

- Where unit does not have a patio or other limited common element suitable for placement of a **satellite dish**, association is not required pursuant to the Telecommunications Act of 1996 to permit owner to install satellite dish on the general common elements.

Egret Pointe Condo. Assn., Inc. v. Luciano,  
Case No. 99-0598 (Scheuerman / Summary Final Order / August 13, 1999)

- Unit owner, pursuant to rules of FCC and Telecommunications Act of 1996, only had right to install **satellite dish** on limited common elements over which he had exclusive control; the Act does not prevent the association from enforcing its restrictions on changes to the common elements where the dish is installed on regular common element property, despite claim by owner that installation on limited common element patio would not provide clear reception.

Fair Oaks North, Inc. v. Manista,  
Case No. 98-4855 (Pine / Final Order / May 21, 1999)

- Where declaration did not delegate to the board the authority to approve material alterations, as permitted by Section 718.113(2), F.S., rule which purported to grant to the board the authority to approve the installation of awnings at the request of a unit owner was invalid as inconsistent with Section 718.113(2) permitting the declaration, and not board rules, to delegate such authority to the board.

- **Addition of awning** constituted a material change/addition to the common elements.

Farnham v. Vista Harbor Assn., Inc.,

Case No. 99-0107 (Scheuerman / Summary Final Order / April 12, 1999)

- Membership properly voted after the fact to approve **construction of recycling facility** at one time thought to be required by local ordinance and hence installed by board. Membership meeting at which less than 75% approval was achieved was properly adjourned to another date held within two weeks of the initial meeting, where the proxies and ballots from first meeting, combined with the newly cast votes, combined to exceed the 75% approval requirement of the documents.
- Ballot or consent form to approve material alteration to the common elements, which contained a designation for the unit number and name of the owner, did not render the ballot or consent form illegal. There is no assurance of secrecy on a vote taken to approve a change to the common elements, unlike the statutory guarantee of secrecy during the conduct of elections for the board of directors.

Fourth Gulfstream Garden Apts. Condo., Inc. v. Manno,

Case No. 99-0648 (Scheuerman / Final Order / January 19, 2000)

- Where petition for arbitration only charged owner with violating provision in declaration prohibiting structural changes in units and common elements, where **owner installed washer and dryer in unit**, association could not, without amending petition, in post-hearing memorandum claim violation of Section 718.113 prohibiting material alterations to the common elements. A “material change,” given its expansive treatment in the case law, is obviously a broader term than a “structural” change that may be considered a subset of material changes.

Gethin v. Villa Vista Management, Inc.,

Case No. 99-1336 (Draper / Final Order / November 30, 1999)

- Where original plans for condominium indicated the common element hallways would be air-conditioned, and air conditioning was in fact installed, association was obligated to repair/replace nonfunctioning air-conditioning unit serving the hallway. Even assuming that the unit owners *could*, consistent with the statute, vote not to replace **air conditioning** pursuant to Section 718.113(2), F.S. (assuming that air conditioning was not necessary for the maintenance and preservation of the common elements), informal inquiry conducted by board was insufficiently formal to meet statute’s requirement.

Girsch v. Whisper Walk Section E Assn., Inc.,

Case No. 97-0305 (Scheuerman / Order Dismissing Arbitration Petition / November 26, 1997)

- Board decisions regarding what **shrubbery** to plant or how to replace existing shrubs particularly implicate the business judgment of the board, and rarely grow to the dimensions necessary to implicate the provision of the documents or statute regarding

material alterations to the common elements. To permit the arbitrator to substitute his judgment for the board in this range of business decisions would add great instability to the presumption of normalcy attending ordinary day-to-day decisions, and the arbitrator has no proper role in adjudging whether hibiscus is preferable to ficus.

Gulf Island Beach and Tennis Club Condo. Assn. II, Inc. v. Dabkowski,  
Case No. 99-1839 (Powell / Final Order / March 26, 2001)

- Where the declaration provided that unit owners may make no alteration to the common elements without the prior written consent of the association, the association, acting through its board, had the right to approve **parking space enclosure and improvements to boat dock** consisting of paving of sidewalk and installation of water utility lines and meter. Where the board approves an alteration subject to its authority granted in the declaration, the unit owner vote required in Section 718.113(2)(a), F. S., is not required.

Harbour Boat Club Condo. Assn., Inc. v. Garbinski,  
Case No. 00-1744 (Powell / Final Order / May 10, 2001)

- The unit owners were on notice at the time of the purchase of the unit of boundaries of the unit as reflected in plat recorded in the public records of the county. Since the attic was not shown to be a part of the unit, it was within the common elements. The unit owners' action in **extending air-conditioned living space** of their unit into the attic violated the declaration requiring approval of 75% of unit owners for alterations to common elements.

Harbour East Condo. Assn., Inc. v. Morrissey,  
Case No. 97-2204 (La Plante / Final Order / July 9, 1998)

- Unit owners who materially altered common element plumbing by attaching **clothes washers** ordered to return plumbing to its original condition.

Houseman v. Spinnaker Cove Condo. Assn., Inc.,  
Case No. 99-0255 (Scheuerman / Agreed Final Order / December 23, 1999)

- **Removal of the dock facility** constituted a material alteration to the common elements requiring compliance with Section 718.113(2), F.S. The concurrence of 75% of the total voting interests was required in order to remove the facility. The association did not obtain this vote, and hence the association was obliged to replace the dock structure and to continue to maintain the facility in the future.

Katchen v. Braemer Isle Condo. Assn., Inc.,  
Case No. 98-5485 (Scheuerman / Final Order / August 5, 1999)

- Where **landscaping plan** called for the association to remove aged, poorly managed, and noxious plants and trees, and to replace the plants and trees with species other than the original plantings, although there were some aspects of change in the plan, the overall thrust of the planned changes were more in the nature of maintenance and preservation functions, and hence no material alteration or improvement resulted within the meaning of the documents or statute.
- Even if planned landscaping changes of removing poorly maintained and nuisance trees and shrubs resulted in material alteration to the common elements, board was permitted to proceed without vote of the owners since the board was acting under its obligation to maintain and protect the common elements.

Kreitman v. The Decoplage Condo. Assn., Inc.,  
Case No. 98-4711 (Cowal / Final Order / July 30, 1999)

- Where association **replaced worn carpet with new carpet** similar in color and design to that originally installed by developer, association not required to obtain approval of unit owners because no material alteration of common elements occurred despite the fact that the new carpet differed from carpet installed at the time of the purchase of petitioner's unit, and regardless of the fact that, technically, the new carpet represented an upgrade.

Kreitman v. The Decoplage Condo. Assn. Inc.,  
Case No. 98-3495 (Draper / Amended Final Order / September 14, 1999)

- Board's **replacement of common element acoustical ceiling tiles with drywall and ceramic floor tiles with marble** was determined to be necessary maintenance and did not require unit owner approval. The acoustical ceiling tiles and their supporting foundation needed to be replaced and the evidence showed that drywall is a more durable, cost-effective ceiling material. In addition, existing ceramic floor tiles could not be cleaned. Association should not be required to replace a material that has performed poorly with the identical material, which may also be expected to perform poorly, when it has an alternative that is comparable in function.
- Where board changed **color of common element hallway walls from salmon/peach to a cream color and permanently removed door and wall moldings**, the change constituted a material alteration of the common elements. Board ordered to restore walls to their original condition unless unit owners approved the alterations. The fact that replacement of damaged wall moldings would be very expensive does not relieve the board of its duty to maintain and replace the common elements.
- Where evidence presented at final hearing established that penthouse owners rather than association carried out alterations to the hallways of the penthouse, the arbitrator determined that the dispute concerned the association's failure to take action with

respect to alterations performed by other owners, and was outside her jurisdiction per Section 718.1255, F.S.

- Association did not alter the common elements by permitting an area, previously used as a valet parking space, to be used as a parking space for one owner. No physical change was made to the area; rather, it was essentially leased by the owner. In addition, association did not turn hallway of the penthouse floor into limited common elements by installing key mechanism in elevator and giving keys to penthouse owners only. Other unit owners could access the hallway by identifying themselves to front desk security personnel who would escort the owner to the penthouse floor. Section 718.123(1), F.S., providing that common elements shall be available to unit owners "for the use intended," was not violated because penthouse floor housed only penthouse units; there were no recreational facilities or other amenities located on the penthouse floor.

Lake Emerald Owners' Assn., Inc. v. Fitzgerald,  
Case No. 00-1104 (Draper / Final Order / January 22, 2001)

- **French doors installed by owners in place of sliding glass doors** do not constitute a change to the appearance of an entry door to the unit, where the doors are located on the inside of a screened porch and, pursuant to the documents, are within the boundaries of the unit. The phrase "entry door" does not include interior doors.

Lamar v. Peppertree Village Townhouse Condo. Assn., Inc.,  
Case No. 00-1849 (Scheuerman / Final Order / June 1, 2001)

- Where the board determined to **replace deteriorated wood siding with stucco siding**, no vote of the owners was required. The change was primarily maintenance related; wood siding is particularly inappropriate in south Florida where it attracts insects and is vulnerable to frequent tropical rains.

- Evidence supported the association's assertion that in order to **replace deteriorated wooden siding of building**, the association was required to remove all window frames and assemblies. It would not make sense from a prudent repair perspective to leave the windows intact with wood rot and mold around the frames, and to replace the siding thereby encapsulating these forces inside the walls where they would continue to interact with the building components contained in the new siding materials.

- Evidence supported the association's position that once the window assemblies were removed in order to replace the siding of the building, building code required that replacement windows meet current building code requirements.

- Where the board **replaced black window frames with white frames**, evidence supported finding that the change in paint color did not constitute a material alteration to the common elements but was instead related to the duty of the board to protect and

preserve the common elements. White frames were recommended by the association's contractor because black frames to the maximum extent possible absorb heat and radiate heat into the walls. The heat can operate to accelerate the deterioration of the building materials and components of the walls and windows. White paint, on the other hand, to the maximum extent possible reflects the heat, forcing it to remain outside where it cannot act upon the internal components of the wall and window assembly. The board chose white frames for energy efficiency, because of its heat dissipation qualities, and because it promotes to the maximum extent possible the protection and preservation of the building components it protects. In this respect, the board did not view the color change as an element primarily related to aesthetics or outward appearance, but instead viewed the white paint as a functional alternative among competing building materials.

La Tour Condo. Assn., Inc. v. Christensen,  
Case No. 00-2015 (Pasley/ Summary Final Order / June 13, 2001)

- Although 47 C.F.R. § 1.4000(a)(1) preempts certain restrictions that impair a viewer's ability to receive television broadcast signals, that preemption is limited to rules restricting the placement of satellite dishes and other devices of this sort on property within the exclusive use or control of the device user.
- Where a unit owner's **satellite dish** extends beyond the owner's balcony over a part of the common elements which is not a limited common element, the Telecommunication Act of 1996 does not preempt association rules prohibiting placement of this type of device on the common elements.

Leisure Beach South, Inc. v. Wigo,  
Case No. 97-0157 (Scheuerman / Summary Final Order / November 13, 1997)

- Where owner installed **hurricane panels** not conforming to specifications adopted by the board for hurricane **shutters**, owner ordered to remove the devices. If the panels are considered hurricane shutters, they did not conform to adopted shutter specifications and therefore became unauthorized modifications to the common elements. If the panels are **not** considered hurricane shutters, their installation modified the appearance of the common elements in violation of Section 718.113(2), F.S. Even if the panels were installed in a portion of the exterior of the unit, their addition changed the appearance of the common elements.

Loulourgas v. Ultimar II Condo. Assn., Inc.,  
Case No. 99-2291 (Scheuerman / Final Order / August 3, 2000)

- Where association permitted **erection of cell tower atop condominium building** without compliance with requirements of documents pertaining to material alterations, Telecommunications Act of 1996 did not supersede or preempt private covenants and permit association to disregard the requirements of its documents.

Loveland Courtyards Condo. Assn., Inc. v. Mulvey,  
Case No. 00-1396 (Draper / Summary Final Order / December 8, 2000)

- The unit owner who **placed a sign with the name of his security company** on the common elements outside his unit violated a rule prohibiting posting of signs on the common elements. In addition, by placing satellite dish on common elements, the owner violated rule prohibiting erection of “antennas or other equipment or structures” on the common elements unless approved by the board. A satellite dish is a type of antenna; also, it constitutes “equipment” or “other structure” under the rule. Owner ordered to remove sign and satellite dish.

Midman v. Sun Valley East Condo. Assn., Inc.,  
Case No. 99-0537 (Draper / Final Order / August 26, 1999)

- **Repair of pool deck accomplished by removal of existing, deteriorated chattahoochee deck and replacement with paver bricks** held to be necessary repair, not a material alteration, where paver bricks required less maintenance and had a service life of two to three times that of the chattahoochee decking.

Mueller v. La Renaissance Condo. Assn., Inc.,  
Case No. 96-0193 (Oglo / Final Order / February 23, 1998)

- Material alteration occurred where board replaced **metal splash guard** with blue awning. Association ordered to restore metal splash guard or obtain approval of owners. Bylaw permitting board to install betterments costing less than \$500 found inapplicable.

Nassif v. Continental Towers, Inc., (currently on appeal)  
Case No. 96-0403 (Draper / Partial Summary Order / January 14, 1998)

- Association’s **discontinuance of on-site office with paid staffer** does not constitute material alteration to the common elements. Change to services, as contrasted to physical structure, does not implicate Section 718.113(2), F.S., nor does it result in material alteration to appurtenances, as the space is still available for the use intended under the declaration.

Oakes v. Vera Cruz Condo. Assn., Inc.,  
Case No. 00-0638 (Draper / Order Commemorating Status Conference / July 7, 2000)

- Defense to fair housing claim, that wheelchair-bound unit owner had other alternatives to **installing a chair lift to access his second floor unit**, such as moving to a first floor unit or moving out of the condominium altogether, would be stricken. One purpose of the Fair Housing Amendments Act is to provide the disabled with an equal opportunity to live in the housing of their choice. The suggestion that the disabled owner could live somewhere else does not constitute a viable affirmative defense to a fair housing claim.

Oakridge A Condo. Assn., Inc. v. Hammer,

Case No. 00-0195 (Scheuerman / Summary Final Order / June 23, 2000)

- Unit owner violated documents prohibiting **displaying signs in the unit which were visible from common elements**, by posting notice in her window that certain board members were thieves and vandals. Owner ordered to cease displaying signs.

The Palm Club Assn., Inc. v. Bocchino, (currently on appeal)

Case No. 98-3993 (Anderson-Adams / Summary Final Order / January 15, 1999)

- Association claimed unit owners made unauthorized alterations to the common elements by **installing “sun tunnel”** skylights in their unit. Declaration, read in conjunction with Section 718.113, F.S., prohibits any alterations to the common elements without the consent of at least 75% of the voting interests in the condominium. Prior members of board of directors purportedly gave permission to install the skylights. Waiver may not be allowed to infringe upon the rights of others, and estoppel cannot be raised against acts which are void *ab initio*. The board had no authority to give permission to alter the common elements—this right belonged collectively to the unit owners. Additionally, one who seeks equitable remedy of estoppel must come with clean hands. Where unit owner had been former president of board and had been involved in board’s granting him permission to install skylights, his claim of estoppel will not stand.

Parliament Towers Condo. Assn., Inc. v. Stettin,

Case No. 96-0437 (Scheuerman / Summary Final Order / March 19, 1998)

- The **wiring and connections** passing through the exterior walls of the building in order to facilitate signal transmission of a satellite dish mounted on the exterior patio constitute a material alteration to the common elements requiring compliance with Section 718.113(2), F.S., and the documents.

Pathways Condo. Assn., Inc. v. Medina,

Case No. 97-0172 (Draper/ Partial Summary Order / September 15, 1997) (Order on Request for Clarification of Partial Summary Order / November 4, 1997)

- Where owners of adjoining upstairs and downstairs units installed **spiral staircase between the units**, change was a material alteration of the common elements requiring approval of 75% of unit owners per Section 718.113(2), F.S.
- Installation of spiral staircase between upstairs and downstairs units violated declaration provision prohibiting structural modifications or alterations in condominium unit. Any opening in room, such as door, modifies the structure of the room.



- Installation of spiral stairs between upstairs and downstairs units did not violate prohibition against adding to or incorporating one unit to another.
- Declaration provision that board could approve changes to exterior of unit was not applicable to installation of **spiral staircase** between upstairs and downstairs units; Section 718.113(2), F.S., requirement of 75% unit owner approval applicable.

Pelican Cove Condo. Assn., Inc. v. Demar,  
Case No. 01-2467 (Powell / Summary Final Order / May 10, 2001)

- **Boatlift with inflated air chambers** attached to dock by ropes was deemed a material alteration of association property boat slip, requiring approval by the board pursuant to the declaration. The alteration was deemed material because it changed the use of the boat slip, converting it from wet to dry storage.

Pines of Delray Condo. Assn., Inc. v. Wallace,  
Case No. 98-4530 (Powell / Summary Final Order / January 29, 1999)

- Where declaration required approval of 75% of all unit owners, and approval was not obtained, **wall erected in attic** above unit was ordered removed. Argument by unit owners who built the wall that they were harassed by neighbors and needed the wall for their health, safety, and welfare was insufficient to justify taking matters into their own hands to alter the common elements.

The Pointe at Pelican Bay II Condo. Assn., Inc. v. Wilton,  
Case No. 00-0922 (Pasley / Summary Final Order / January 12, 2001)

- Installation of a **satellite dish** on the roofing fascia, which is a part of the common elements, constituted a material alteration to the common element, which was prohibited by the declaration except with the board's approval.
- An alteration to the common elements does not have to be immediately visible to constitute a material alteration.
- Although unit owners are permitted to use the common elements for the purpose for which they are intended, they are required to do so in compliance with the condominium documents.

Sabal Chase Condo. Assn., Inc. v. Summers,  
Case No. 98-3846 (La Plante / Summary Final Order / June 25, 1998)

- Unit owner materially altered common elements when she **installed an air conditioning line** running under the door of her unit to a compressor on the common elements. Even though air conditioning line was hidden under some flower pots, the use and/or function of the common elements was changed. Unit owner's argument that

alteration was not material because it could not be seen was rejected, as such an interpretation would lead to the conclusion that unit owners could materially alter the common elements as long as the alteration was hidden from view.

Sabine Yacht and Racquet Club Condo. Assn., Inc. v. Williamson,  
Case No. 97-0217 (Anderson-Adams / Final Order / November 25, 1998)

- Board cannot waive the rights belonging to unit owners collectively. Where the declaration prohibited alteration to the common elements unless approval is obtained from the board of directors and from a majority of the unit owners, board could not waive the rights of unit owners to approve or disapprove alterations.

Seawatch at Marathon Condo. Assn., Inc. v. Hubner,  
Case No. 00-1447 (Scheuerman / Final Order / December 4, 2000)

- Unit owner had no right under Federal Telecommunications Act of 1996 to install **satellite dish** on the roof of the condominium building even if the signal generated from the limited common element patio produced an unsatisfactory result.

Senek v. The Riverside Club of Ft. Myers, Inc.,  
Case No. 99-0306 (Pasley / Summary Final Order / May 12, 1999)

- **Replacing the condominium's swimming pool heater** without taking a vote of the unit owners in advance did not constitute a violation of Section 718.113(2), F.S., which requires approval of 75% of the voting interests for a material alteration, where the evidence showed that the pool had once had a pool heater. The association's delay for a period of years in replacing the pool heater did not relieve it of its right or responsibility to replace it. The replacement of the pool heater in the present case fell within the association's duty to maintain, repair, and replace the common elements and, therefore, was not a material alteration.

Shore Colony Condo. Assn., Inc. v. Greife, (currently on appeal)  
Case No. 97-2341 (Scheuerman / Final Order / February 19, 1999)

- Where declaration contained general language prohibiting changes to the common elements absent a membership vote, and contained a separate provision addressing circumstances under which unit owner could **remove common element walls within the unit**, specific provision dealing with removal of interior walls found application to project whereby owner sought to remove interior load bearing walls.
- Provision in declaration requiring membership vote for changes to the common elements performed by association did not address procedure required where owner sought to change the common elements, and hence the provisions of Section 718.113(2), F.S., applied and required approval of not less than 75% of the total voting interests.

- Where declaration interpreted as prohibiting **removal of load-bearing wall** by an owner regardless of board approval, board was powerless to approve project, and any approval expressed was contrary to documents and of no effect.
- Where declaration prohibited "removal" of a load-bearing wall within in a unit, declaration interpreted as prohibiting removal of either the entire wall or a portion of the wall.

Smokehouse Harbor Condo. Assn., Inc. v. Linsenmeyer,  
Case No. 98-4244 (Draper / Final Order / December 9, 1999)

- Where documents did not otherwise address the issue, **installation of portable hot tub** on screened porch did not constitute alteration of a limited common element as porch was a part of the unit and no modifications to the walls or floor were required. Tub plugged into regular 110-volt outlet and required no plumbing connections. Hot tub did not constitute a nuisance or interfere with other residents' use of their property. Evidence failed to show that use of a hot tub is unreasonable use of the property. Evidence did not show that the motor was excessively loud, the hot tub users were excessively raucous, or that the chemicals used to clean and sanitize the tub and water were harmful to the building or its occupants.

Stegeman v. Harbor Towers Owners Assn., Inc.,  
Case No. 99-1036 (Draper / Summary Final Order / August 24, 1999)

- **Lease by association of common element parking spaces**, upon which carports were to be built by lessee/unit owner for exclusive use of lessee/unit owner and for a term of years, did not require 100% unit owner approval per Section 718.110(4), F.S., as a material alteration of the unit's appurtenances. Area upon which carports were to be built was already used for parking, and action of board did not convert area into limited common element. Construction of carports would result in material alteration to the common elements requiring compliance with Section 718.113(2), F.S., and the declaration.

Surfside South Condo. Assn., Inc. v. Heard,  
Case Nos. 98-4157 and 98-4158 (consolidated) (Scheuerman / Summary Final Order / December 14, 1998)

- Where owners **installed white screen doors at main doorway** to unit without approval of the owners or of the board, owners ordered to remove the doors. Selective enforcement not shown where other owners permitted to have storm panels within their screen doors instead of exclusively screening material, where some owners permitted to have differing hardware on unit's main door, where some unit owners permitted to have black steel security gates instead of screen doors, and where the main doors were white. There were no other white screen doors in the community and the board could

properly focus upon and seek to preserve the darker color scheme within the community.

Tradewinds East Condo. Assn., Inc. v. Thibeau,  
Case No. 97-0009 (Scheuerman / Final Order / June 13, 1997)

- **Addition of glass enclosure** to limited common element patio constituted material alteration to common elements requiring compliance with Section 718.113(2), F.S., and documents; however, there was no change to appurtenances to unit and therefore Section 718.110(4), F.S., was not violated.
- Where general amendment to declaration required approval of 66-2/3% of owners present at a meeting, and where declaration required approval of 75% of all owners for changes to the common elements, amendment to material alteration provision that decreased the percentage membership vote required for material alterations, required only 66-2/3% approval.

Trio Englewood, Inc. v. Fantasy Island Condo. Assn., Inc.,  
Case No. 98-4670 (Powell / Notice of Communication, Order on Motion for Summary Disposition, Order Acknowledging Substitution of Counsel, Order Accepting Amended Petition, and Order Requiring Answer / April 16, 1999)

- Where there is evidence suggesting that the **removal of two prominent Norfolk Island Pine trees** may constitute a material alteration due to the setting, and the type of trees, which were distinct from the other landscaping, the arbitrator cannot hold, as a matter of law, that the petition fails to state a cause of action as urged by association, or find that it requires the arbitrator to substitute his judgment for that of the board regarding routine maintenance.

The Van Lee Management Corp., Inc. v. Sanders, (currently on appeal)  
Case No. 00-0359 (Draper / Summary Final Order / September 6, 2000)

- Declaration that is silent on material alterations to the common elements should not be construed to prohibit such changes by owners. Where the declaration is silent, Section 718.113(2), F.S., comes into play and permits such changes upon the approval of not less than 75% of the total voting interests.
- Association would be barred from enforcing restriction against changes to the exterior appearance of the building where unit owners who installed **screen door on their entrance door** demonstrated that the restriction had been selectively enforced. The association permitted another unit owner to install a screen door, and other owners have removed their solid doors and replaced them with windowed doors. These modifications all had the effect of changing the appearance of the building, and all involved the front doors to the units.

Vista Del Mar Assn., Inc. v. Scott,

Case No. 97-0316 (Scheuerman / Summary Final Order / February 16, 1998)

- The board, several years prior, had approved the design and installation of a specific **patio enclosure** by an owner. Where it became necessary for association to remove patio enclosure for purposes of renovating underlying concrete slab, and where in the meantime the association had adopted new patio enclosure specifications as part of a patio restoration project, and where it was possible to re-attach old patio enclosure structure to new slab, association in attempting to prohibit re-attachment of old structure was attempting to improperly and retroactively enforce its new rules. There is no case law brought to light that the duty of the association to act consistently with its earlier approval ended where the improvements, approved for installation earlier, were removed as part of routine maintenance and were capable of being reinstalled. Association approval survives such maintenance. The fact that the removal of the improvement was prompted by replacement of the underlying slabs makes no difference, where the old enclosure is not shown to compromise the integrity of the new slabs.

Wekiva Country Club Villas Homeowners' Assn., Inc. v. Hurd,

Case No. 97-0138 (La Plante / Summary Final Order / December 18, 1997)

- Installation of **glass block sidelight** in area around front door did not change the outward appearance of the common elements when dozens of other types of sidelights had been allowed by board in similar locations. Board found to be unreasonable in failing to approve glass block sidelights. Unit owner ordered to remove glass block bathroom window, however, because all other bathroom windows were uniform in appearance.

Williamson v. Sabine Yacht & Racquet Club Condo. Assn., Inc.,

Case No. 99-1552 (Draper / Final Order / January 31, 2000)

- **Replacing refrigerator, stove, carpet, and tile, and repainting walls and ceilings of unit** constitute repair, rather than alteration of unit, and therefore unit owner approval required for "improvements" was not needed. Unit owned by association and used for manager's residence did not constitute a common element, alteration of which required unit owner approval. Fact that association purchased unit did not transform it to association property or common element absent appropriate amendments to declaration.

- **Erection of antenna on building roof** constitutes an improvement to the common elements.

- Where more than 75% of unit owners (the percentage required to approve improvements) signed ballots indicating "approval to grant [communication company] the right to place **telecommunication relay panels**" on the building's roof,

improvement was properly approved. Documents required "prior approved in writing" by the owners.

- Petitioner's claim that Section 718.112(2)(d)4., F.S., required vote to be conducted at a meeting of unit owners, rejected. Section 718.112(2)(d)4., F.S. requires that "any approval by unit owners called for . . . shall be made at a duly noticed meeting of unit owners . . . except unit owner may take action by written agreement, without meetings, [where] expressly allowed by [the documents]." Arbitrator determined that written agreement was specifically allowed by documents.

Wolfenson v. Huntington Lakes Section Three Assn., Inc.,  
Case No. 97-2446 (Draper / Summary Final Order / May 22, 1998)

- **Resurfacing of cement pool deck** did not constitute material alteration to the common elements. Even if cracks and deterioration were not so extensive that they were dangerous or placed the surface at risk of further deterioration, resurfacing deemed necessary to provide a visually pleasing, flawless surface, as certainly existed when the condominium was first created. Unit owner did not dispute need for removal and replacement of expansion joint material, but balked at resurfacing work that he saw as merely cosmetic.

### ***Right to use***

Bortko v. Canterbury Village Condo. Assn., Inc.,  
Case No. 97-2238 (Cowl / Summary Final Order / May 14, 1998)

- Where declaration provided that common areas should not be obstructed or littered and also provided that porches, walkways, and stairways should not be used for hanging garments, outdoor cooking, or storing bicycles or other personal property, peculiar declaration provision construed such that unit owner did not violate declaration by maintaining small patio chair by front door of unit, when chair did not block path to any unit and did not otherwise fall within list of excluded items or uses.

Frasca v. Sabal Palm Condo. of Pine Island Ridge Assn., Inc.,  
Case No. 98-3389 (La Plante / Summary Final Order / July 16, 1998)

- Rule which prohibited the use of floating inner tubes in pool, but permitted the use of swimming noodles, found to be irrational and lacking reasonableness, contributing nothing to the health, happiness, and peace of mind of the owners. Unit owner's inner tube occupied same area as a noodle, and did not pose a disparate risk of drowning, based on the size of the pool that was quite large. Association's claim that the inner tube "consumed" the pool is inflated where, based on dimensions of tube and pool, 180 tubes could fit in the pool.

Kreitman v. The Decoplage Condo. Assn. Inc.,  
Case No. 98-3495 (Draper / Amended Final Order / September 14, 1999)

- Association did not alter the common elements by permitting an area, previously used as a valet parking space, to be used as a parking space for one owner. No physical change was made to the area; rather it was essentially leased by the owner. In addition, association did not turn hallway of the penthouse floor into limited common element by installing key mechanism in elevator and giving keys to penthouse owners only. Other unit owners could access the hallway by identifying themselves to front desk security personnel who would escort the owner to the penthouse floor. Section 718.123(1), F.S., providing that common elements shall be available to unit owners "for the use intended," was not violated because penthouse floor housed only penthouse units; there were no recreational facilities or other amenities located on the penthouse floor.

MacMillan v. Greenway Village South Management, Inc.,  
Case No. 01-2747 (Scheuerman / Summary Final Order / June 1, 2001)

- Where the association set a schedule whereby the recreation facility was open 11 hours per day on weekdays, six hours on Saturdays, and five hours on Sundays, schedule was not shown to be unreasonable and did not operate to deprive the owners of their right to use the common elements. The association is entitled to make rules regarding the use of the common element facilities, including a rule setting the hours of operation. The schedule adopted by the board here rivaled the schedules of some athletic or health clubs, and the desire of the association to have a paid or volunteer attendant available in the facility during open hours was not shown to be unreasonable and was therefore protected by the business judgment rule.

Paradise Towers, Inc. v. Thibeault,  
Case No. 00-1242 (Draper / Summary Final Order / October 11, 2000)

- Section 719.105, F.S., which entitles a unit owner to use the common areas in accordance with the purposes for which they are intended, does not authorize unit owner to place a satellite dish on the roof of the building or to otherwise use the common areas in a way that presents a safety hazard.

Reuther v. 400 Beach Road Condo. Assn., Inc.,  
Case No. 98-4959 (Draper / Final Order / January 29, 1999)

- Owner of two contiguous units may not acquire right to exclusive use of a foyer located between the units and an outdoor, common hallway because the previous owners of the units had the only key to the door of the foyer for over 20 years and decorated and furnished the area as if it were a part of the units. Foyer was a common element, not a limited common element.

### **Common Expenses**

Cote D'Azur Condo. Assn., Inc. v. Hammond,

Case No. 00-1648 (Scheuerman / Summary Final Order / February 21, 2001)

- Where the declaration was amended to provide that owners were responsible for maintaining *the surface* of their balconies, amendment was construed as merely clarifying the original declaration since original declaration did not clearly speak to the responsibility for replacement of the *structure* of the balconies, and since under the general scheme of the declaration, the association was given the duty to provide exterior maintenance. If the amendment was interpreted and applied in a manner so as to change the maintenance responsibilities of the parties in a material manner, a substantial question would be presented concerning the validity of the amendment pursuant to Section 718.110(4), F.S. A declaration should be construed in a manner that preserves its validity.

## **Constitution**

### ***Corporation***

### ***Due process***

Island Sun Condo. Assn., Inc. v. Olsen

Case No. 99-1070 (Scheuerman / Final Order / March 29, 2000)

- Board's unwritten policy interpreting board rule regulating use of common element electricity in storage sheds violated substantive due process where interpretation ignored literal language of rule and failed to fairly inform membership concerning the proscribed conduct. Board policy also failed to apply the specific language over the rule's general proscriptions where specific language found explicit application.

### ***Equal protection***

### ***Free speech***

### ***Generally***

Four Sea Suns Condo. Assn., Inc. v. Pariseau,

Case No. 00-0559 (Scheuerman / Order Following Status Conference / June 8, 2000)

- Board rule requiring all internal disputes between an owner and the association be heard and determined by an ad hoc committee of residents, where decision of committee was made binding on the parties, violated the constitutional guarantee of access to the courts and was, therefore, invalid. The right of the parties to pursue an action in the courts is sought to be eliminated by the rule, and there was no provision for judicial review of the committee action.

### ***State action***

Four Sea Suns Condo. Assn., Inc. v. Pariseau,

Case No. 00-0559 (Scheuerman / Order Following Status Conference / June 8, 2000)



- Board rule requiring all internal disputes between an owner and the association be heard and determined by an ad hoc committee of residents, where decision of committee was made binding on the parties, violated the constitutional guarantee of access to the courts and was, therefore, invalid. The right of the parties to pursue an action in the courts is sought to be eliminated by the rule, and there was no provision for judicial review of the committee action.

### **Covenants (See Declaration-Covenants/restrictions)**

#### **Declaration**

##### ***Alteration to appurtenances to unit (See Unit-Appurtenances)***

Deaugustinis v. Harbor East House Condo. Assn., Inc.,  
Case No. 00-0132 (Pine / Summary Final Order / July 7, 2000)

- Where the declaration allows a separate conveyance of appurtenant limited common elements, the appurtenance is created with reference to that possibility and subject to that possibility. However, where the declaration sets out a specific procedure as an exception to a general prohibition on separate conveyances, such conveyances may only be accomplished by use of that specific procedure. If an attempted conveyance is invalid pursuant to the declaration, the association has no authority to cure the defect. Moreover, if an attempted conveyance is invalid on its face, the application of equitable defenses will not make it valid.

##### ***Amendments***

Berger v. Island's End Condo. Assn., Inc.,  
Case No. 96-0341 (Scheuerman / Summary Final Order / December 18, 1997)

- Amendment to declaration adding provision governing material changes to the common elements as provided for by Section 718.113(2), F.S., does not conflict with portion of pre-existing declaration providing procedure for changing the appurtenances to the units as described by Section 718.110(4), F.S. Amendment did not intrude into areas governed by Section 718.110(4), F.S., and a vote of 100% of the members was not required for the passage of the amendment.
- Amendment to declaration adding procedure for approving material alterations to the common elements, and providing that normal maintenance of the common elements required no vote of the owners but was within the responsibility of the board, merely codified case law and did not conflict with the declaration or the statute.

Capistrano Condo. Assn., Inc. v. Wheeler,  
Case No. 97-2231 (Cowal / Summary Final Order / May 14, 1999)

- Where declaration of condominium required that notice of the subject matter of any proposed amendment was to be included in notice for the meeting at which amendment

would be considered, and notice failed to provide any reference to the subject matter of the proposed amendment, amendment was deemed invalid.

Cote D'Azur Condo. Assn., Inc. v. Hammond,  
Case No. 00-1648 (Scheuerman / Summary Final Order / February 21, 2001)

- Where the declaration was amended to provide that owners were responsible for maintaining *the surface* of their balconies, amendment was construed as merely clarifying the original declaration since original declaration did not clearly speak to the responsibility for replacement of the *structure* of the balconies, and since under the general scheme of the declaration, the association was given the duty to provide exterior maintenance. If the amendment was interpreted and applied in a manner so as to change the maintenance responsibilities of the parties in a material manner, a substantial question would be presented concerning the validity of the amendment pursuant to Section 718.110(4) F.S. A declaration should be construed in a manner that preserves its validity.

Kreitman v. The Decoplage Condo. Assn., Inc., (appeal filed October 1998)  
Case No. 98-3332 (Draper / Summary Final Order / July 30, 1998)

- Association could enforce occupancy restriction contained in the original declaration even though the provision had been superceded by amendment. "New" occupancy restrictions were adopted pursuant to an amendment procedure that was invalidated in another arbitration proceeding; in light of the fact that enforcement of the new occupancy provision was subject to attack as being invalidly adopted, the association's only course of action was to return to the occupancy provision in effect prior to the change.
- Where there was a suggestion that the association had not uniformly enforced the occupancy restrictions previously in effect, association could still rely on the restrictions by notifying unit owners that the restrictions would be strictly enforced in the future and by consistently enforcing the restrictions.

Lake Clarke Gardens Condo., Inc. v. Nilson, (currently on appeal)  
Case No. 99-0947 (Pasley / Summary Final Order / April 11, 2000)

- Where association failed to comply with Section 718.110(1)(b), F.S., in its efforts to amend an article of the declaration by not striking through text to be deleted pursuant to Section 718.110(1)(c), F.S., a determination must be made as to whether the error or omission was material. When an article of the declaration is amended pursuant to Section 718.110(1), F.S., all of the original language that is not struck through continues to be a part of the article. The portion of the original language that remains and the newly added language constitute the new article. When the resulting article contains conflicting language that creates confusion as to who is permitted to own and occupy a unit, the association has committed a material error and/or omission in violation of Section 718.110(1)(c), F.S., and the amendment is, therefore, invalid.

Molokai Villas Condo. Assn., Inc. v. Symes,

Case No. 00-1320 (Pine / Summary Final Order / December 13, 2000)

- Where the documents reflect that the balcony is part of the unit, and that the unit owner is responsible for the flooring above the slab of the unit, the association's attempt to make the unit owner responsible to repair to support structures under the balcony's floor by passing a rule or "guideline" is ineffective. To shift responsibility from the association to the unit owner, the declaration itself must be amended by whatever process is delineated by the terms of the declaration; this cannot be accomplished by fiat of the board.

Mozzone v. Country Club Manor Condo. Assn., Inc.,

Case No. 01-2401 (Draper / Summary Final Order / July 23, 2001)

- Where an amendment to the declaration required approval of 2/3rds of voting interests "present & voting in person or by proxy at a meeting," undated and therefore invalid limited proxies would be excluded for all purposes (i.e., determining the number of voting interests present or voting "for" the amendment.) A voting interest represented by an invalid proxy cannot be said to be present and voting.

Pollak v. Bay Colony Club Condo. Inc.,

Case No. 99-1176 (Draper / Final Order / January 7, 2000)

- Where evidence showed that amendment to declaration prohibiting pets had not been approved by 75% of the unit owners, as required, amendment held invalid. Petitioner carries the burden of proving claim that amendment was not properly enacted. It is presumed, in the absence of evidence to the contrary, that amendment was properly adopted, but the presumption of validity may be rebutted. When the presumption is rebutted, the court must determine the issue on the evidence as though no presumption had ever existed.

Sholty v. The Villages of Emerald Bay Condo. Assn., Inc.,

Case No. 98-4430 (Draper / Final Order / April 28, 1999)

- Association failed to properly notice and conduct a meeting of unit owners for the purpose of amending the condominium documents where the board noticed a meeting of the board of directors, rather than a meeting of the unit owners. Amendments to declaration and articles of incorporation held to be invalid as a result. However, amendment to bylaws was declared valid where the bylaws permitted amendments to be effected by written agreement of the unit owners and the ballots and proxies submitted by the unit owners were deemed to constitute an agreement of the owners.

Siesta Breakers Condo. Assn., Inc. v. Lehnert,

Case No. 98-3475 (La Plante / Order Striking Affirmative Defenses and Requiring Parties to Confer / June 12, 1998)

- The failure to include recording data identifying the declaration which has been amended did not constitute a material error which would invalidate an otherwise properly recorded amendment.

Tradewinds East Condo. Assn., Inc. v. Thibeau,  
Case No. 97-0009 (Scheuerman / Final Order / June 13, 1997)

- Addition of glass enclosure to limited common element patio constituted material alteration to common elements requiring compliance with Section 718.113(2), F.S., and documents; however, there was no change to appurtenances to unit and therefore Section 718.110(4), F.S., was not violated.
- Where general amendment to declaration required approval of 66-2/3% of owners present at a meeting, and where declaration required approval of 75% of all owners for changes to the common elements, amendment to material alteration provision that decreased the percentage membership vote required for material alterations, required only 66-2/3% approval.

#### ***Covenants/restrictions***

Bent Tree Parcel Six Condo. Assn., Inc. v. Barberena,  
Case No. 99-0475 (Draper / Final Order / September 8, 1999)

- Where unit owner was constantly repairing vehicles on the common elements, and repairs involved removal of tires and brakes, among other things; resulted in tools, auto parts and auto parts boxes lying around sometimes the entire day, unit owner found to have violated rule prohibiting unit owners from performing major repairs to vehicles, outside of the garages.

Biscayne Lake Gardens Building "B", Inc. v. Azran,  
Case No. 97-0252 (Draper / Final Order / February 9, 1998)

- Where requirement of association approval of occupant specifically exempted "immediate family members such as a member's children, grandchildren, parents, grandparents, siblings and spouses," occupancy by cousin required board approval.

The Carriage House Condo. Assn., Inc. v. Solomon, (currently on appeal)  
Case No. 99-2396 (Scheuerman / Summary Final Order / September 1, 2000)

- Rule which restricted the number of party guests to 40 persons per unit sought to promote the health and welfare of the residents. More guests translates into increased noise and nuisance potential, more pedestrian and vehicular traffic, and greater use of the common elements. Objective of association to address these concerns was legitimate.

- Rule which restricted the number of party guests to 40 persons per unit regardless of unit size was reasonable and not arbitrary or capricious. While the association could have specified a guest occupancy level that changed with unit size, rule addressed existing problem of noise nuisance in large penthouse units and was not shown to be arbitrary. In addition, considered from the standpoint of wear and tear on the common elements and the additional strain on association resources and employees, the burden imposed by 40 guests is the same regardless of the size of the unit.

Frasca v. Sabal Palm Condo. of Pine Island Ridge Assn., Inc.,  
Case No. 98-3389 (La Plante / Summary Final Order / July 16, 1998)

- Rule which prohibited the use of floating inner tubes in pool, but permitted the use of swimming noodles, found to be irrational and lacking reasonableness, contributing nothing to the health, happiness, and peace of mind of the owners. Unit owner's inner tube occupied same area as a noodle, and did not pose a disparate risk of drowning, based on the size of the pool that was quite large. Association's claim that the inner tube "consumed" the pool is inflated where, based on dimensions of tube and pool, 180 tubes could fit in the pool.

Kreitman v. The Decoplage Condo. Assn., Inc., (appeal filed October 1998)  
Case No. 98-3332 (Draper / Summary Final Order / July 30, 1998)

- Association would be permitted to enforce occupancy restrictions of declaration in effect prior to amendment to the restrictions that was adopted pursuant to an amendatory provision of declaration, which reduced the percentage of voting interests required for approval, that was invalidated in another arbitration proceeding.
- Where there was a suggestion that the association had not uniformly enforced the occupancy restrictions previously in effect, association could still rely on the restrictions by notifying unit owners that the restrictions would be strictly enforced in the future and by consistently enforcing the restrictions.

Mainlands of Tamarac by the Gulf Unit No. Three, Assn., Inc. v. Levin, (affirmed in trial de novo, June 30, 1998)  
Case No. 96-0412 (Draper / Final Order / September 8, 1997)

- Requirements that family room addition to unit be constructed of same materials/design and supervised by licensed contractor were reasonable where purpose was to preclude hazardous structures and sustain or improve the quality, appearance and property value of community.

Seaside Resort, Inc. v. Clapp, (currently on appeal)  
Case No. 97-0136 (La Plante / Summary Final Order / March 9, 1998)

- In case where no more than two persons were allowed to occupy unit in travel trailer community, unit owners failed to qualify for a hardship exception to allow their infant daughter to be the third person in the unit. Unit owner's request that his infant daughter reside with him in his unit each year for a few months until she reached school age found not to constitute a hardship.

Sievers v. Ancient Oaks R.V. Resort Condo. Assn., Inc.,  
Case No. 97-0084 (Draper / Summary Final Order / October 16, 1997)

- Unit owner violated regulation in recreational vehicle condominium, to the effect that all RVs be situated in a uniform manner, when he extended slide-out on RV. Prohibition on use of slide-out is reasonable given its goal is to limit interference with landscape crews, ensure proper distance between each unit for fire safety, and to maintain general appearance of the park.

Smith v. Ocean Villas Condo. Assn., Inc.,  
Case No. 98-5429 (Draper / Final Order / July 1, 1999)

- Association would not be permitted to apply new prohibition against dogs to owner who had lived in the unit with the dog prior to adoption of the prohibition but had leased her unit and was not in residence when the prohibition was adopted, and had not registered the dog. Fact that the "chain of occupancy" was broken by the owner's lease of the unit did not permit retroactive application of this restriction. Nor would owner's failure to register the dog eliminate protection against retroactive restrictions where it was clear that the dog resided at the condominium prior to the adoption of the restriction.

Tierra Del Sol Condo., Inc. v. Merlucci,  
Case No. 98-5006 (Pine / Final Order / July 6, 1999) (currently on appeal)

- Federal Fair Housing Act allows otherwise-vacant unit occupied by elder person on part-time or timeshare basis to be counted as a unit occupied by person aged 55 or older. However, where any owner who was under age 55 lived continuously in unit, occasional visits by elder co-owner did not cure violation of requirement that at least one person over age 55 occupy unit.

### ***Exemptions***

#### ***Generally***

#### ***Interpretation***

A.N. Inc. v. Seaplace Assn., Inc.,  
Case No. 98-4251 (Powell / Summary Final Order / November 19, 1998)

- Where declaration provided a \$25,000 ceiling on board expenditures for certain projects without an owner vote, declaration construed to refer not to ordinary

maintenance within the meaning of the dicta contained in *Cottrell v. Thornton*, but instead to refer to those expenditures provided by the current Section 718.114, F.S. Declaration provided that the initial cost of installation of additions, alterations or improvements, or additional lands, leaseholds, or other possessory or use rights in lands or facilities or memberships in recreational facilities, purchased as part of the common elements, are common expenses unless the cost exceeds \$25,000, in which case a vote of a majority of the owners must be secured.

Applegreen Condo. Apts. I Assn., Inc. v. Moorhead,  
Case No. 96-0282 (Goin / Summary Final Order / June 10, 1997)

- Where declaration stated that rental restrictions did not apply to “immediate family (viz: parents, spouses or children)” arbitrator determined that the declaration was ambiguous as to whether the term “viz” was used to show examples of the types of relatives that could be considered “immediate family” or whether the term was used to describe the only relatives that could be considered “immediate family,” to the exclusion of other relatives. Therefore, the definition of “immediate family” given by the board in its rules and regulations could be considered. As the rules and regulations defined “immediate family” as parents, children, grandchildren or siblings, the arbitrator determined that unit owner did not have to obtain the approval of the association before letting her brother occupy the unit while she was in Germany.

Bell v. Destin Towers Condo. Owners' Assn., Inc., (currently on appeal)  
Case No. 97-0050 (La Plante / Final Order / June 23, 1998)

- Location of spa seven feet from unit owner’s window not found to prejudice rights of unit owners in the use and enjoyment of their unit. Proper noise insulation had been used in the walls, and noise occasionally generated by screaming children using spa did not prejudice unit owners in the use and enjoyment of their unit. No evidence presented that spa use generated noise late at night, and spa area not used by owners for individual activities.

Bennett v. The Atrium Assn., Inc.,  
Case No. 99-1967 (Pasley / Amended Final Order / November 30, 2000)

- The unit owner’s contention that a rule prohibiting unit owners from permitting or allowing anything in their unit that annoys other members by unreasonable noises should extend to actions taken by the association when maintaining the common elements was rejected where the rule is plain, unambiguous, and clearly refers to the conduct taken by unit owners within their units.

Biscayne Lake Gardens Building “B”, Inc. v. Azran,  
Case No.97-0252 (Draper / Final Order / February 9, 1998)

- Where requirement of association approval of occupant specifically exempted “immediate family members such as a member’s children, grandchildren, parents, grandparents, siblings and spouses,” occupancy by cousin required board approval.

Bordeaux Village Assn. No. 1, Inc. v. Black,  
Case No. 00-1000 (Scheuerman / Summary Final Order / August 28, 2000)

- Considering that other specific types of vehicles were outlawed, if drafter of declaration intended to prohibit all trucks, trucks would have been specifically prohibited.
- Where declaration prohibited boats, trailers, campers, golf carts, motorcycles or vehicles larger than passenger automobiles, but failed to address trucks specifically, and in another section of the documents permitted use of parking spaces for automobile parking only, second section would not be interpreted to prohibit the parking of trucks. The first section addressed and controlled issues relating to the types of vehicles allowed, and there was no indication that the second section was intended to supplement and substantively enlarge upon the list provided in the first section.
- Where declaration prohibited the parking of certain specific types of vehicles and did not specifically address the parking of trucks, and in another section permitted use of parking spaces for automobile parking only, but did not define "automobile," operative definition of “automobile” did not necessarily preclude parking of small pickup truck used primarily for personal transportation.

Capistrano Condo. Assn., Inc. v. Jochim,  
Case No. 98-4376 (Scheuerman / Final Order / September 14, 2000)

- Where declaration required approval of 75% of the owners for changes to the common elements, board rule that prohibited such changes without the prior approval of the board, and which did not require a vote of the owners, was inconsistent with declaration and was void. The rule purports to disenfranchise the owners from their right to approve alterations as set forth in the declaration.

Caristi v. Gleneagles I Condo. Assn., Inc.,  
Case No. 96-0168 (Draper / Summary Final Order / June 18, 1997)

- Amendment to declaration prohibiting unit owner from renting more than twice to the same individual upheld; right to lease unit not absolute.

Continental Towers, Inc. v. Nassif,  
Case No. 99-0866 (Draper / Summary Final Order / November 24, 1999)

- Balcony held to constitute common element, rather than a part of the unit. Declaration was silent as to whether the boundaries of the unit included the balcony;



however, declaration placed responsibility for maintenance of common elements on association except for periodic sweeping and cleaning of balcony, which unit owner was made responsible for. Therefore, balcony held to constitute common element.

- Unit owners were responsible for removing and replacing tile on their common element balcony in order to permit association to effect needed repairs where the tile was not part of the original construction.

Cote D'Azur Condo. Assn., Inc. v. Hammond,

Case No. 00-1648 (Scheuerman / Summary Final Order / February 21, 2001)

- Where the declaration prohibited construction of any nature "with respect to any Dwelling Unit" and further prohibited "exterior addition to or change or alteration therein," arbitrator construed language as prohibiting modifications to the balcony area outside the unit including the extension of the balcony onto the common elements.
- Where the owner extended his balcony onto the common elements, declaration provision prohibiting owner from using any part of the condominium property other than his own unit, except as permitted by the board, deemed violated.
- Where the declaration was amended to provide that owners were responsible for maintaining *the surface* of their balconies, amendment was construed as merely clarifying the original declaration since original declaration did not clearly speak to the responsibility for replacement of the *structure* of the balconies, and since under the general scheme of the declaration, the association was given the duty to provide exterior maintenance. If the amendment was interpreted and applied in a manner so as to change the maintenance responsibilities of the parties in a material manner, a substantial question would be presented concerning the validity of the amendment pursuant to Section 718.110(4), F.S. A declaration should be construed in a manner that preserves its validity.

DBAC, Inc. v. Dangard,

Case No. 98-4607 (Draper / Final Order / August 30, 1999)

- Sounds of domestic altercation, including breaking of window glass, constitute a violation of declaration restriction prohibiting unit owners from making noises that may tend to disturb others.

Davila v. International Park Condo. II Assn., Inc.,

Case No. 97-0142 (Draper / Final Order / February 5, 1998)

- Where declaration provided that association was responsible for conduits and ducts for the furnishing of utilities within the interior walls of a unit, and such facilities that serve parts of the a condominium other than the unit within which contained, association

was responsible for water leak resulting from roof top air-conditioning pan housing common air-conditioning refrigerant lines.

Ellis v. Phoenix Towers Condo. Assn., Inc.,

Case No. 00-1236 (Draper / Summary Final Order / December 12, 2000)

- The association was responsible for replacing worn out windows in 22-story condominium building. Declaration did not specify whether unit owner or association was responsible for replacing windows, although it provided that “where applicable...windows, screening and glass” were to be repaired by unit owner. Declaration placed responsibility for maintenance of building’s exterior on the association generally and prohibited unit owner from making repairs to the exterior of the building. The only construction that gives effect to all these provisions and prevents an unreasonable result is that unit owner is required to ` broken glass, damaged screening and to keep windows clean, while association is responsible for replacing worn out windows.

- Regardless of whether window replacement could be effected from within the building, as alleged by the association in its motion for rehearing, the association held responsible for replacing deteriorated windows in condominium building.

Feit v. Cloister Beach Towers Assn., Inc.,

Case No. 97-0234 (Oglo / Final Order / April 24, 1998)

- Association policy of prohibiting ex-employees terminated for negative reasons from entering condominium found to be reasonable; ex-manager was, therefore, appropriately barred from house-sitting for a unit owner. Policy was not required to be adopted as a rule.

Four Sea Suns Condo. Assn., Inc. v. Pariseau,

Case No. 00-0559 (Scheuerman / Summary Final Order / August 24, 2000)

- Where original unit owners installed awnings on the exterior of the building and where the awnings were not part of the original construction, the individual owners and not the association are responsible for removal of the awnings where such removal is necessary to accomplish roof repairs or repainting of the building. The fact that the association approved installation does not create a maintenance obligation in the association. If the association desired to voluntarily assume this maintenance function, and to bill the owner for the costs, it may do so because the awnings touch and concern the common elements, an area of primary association responsibility.

Fourth Gulfstream Garden Apts. Condo., Inc. v. Manno,

Case No. 99-0648 (Scheuerman / Final Order / January 19, 2000)

- Where declaration did not prohibit outright the installation of washers and dryer in the units but did prohibit structural changes to the units and common elements, it was not necessary to decide whether addition of laundry machines in the unit constituted structural change, where rule passed by board prior to installation of machines clearly prohibited laundry machines in the units.
- Where petition for arbitration only charged owner with violating provision in declaration prohibiting structural changes in units and common elements, where owner installed washer and dryer in unit, association could not, without amending petition, in post-hearing memorandum claim violation of Section 718.113 prohibiting material alterations to the common elements. A “material change,” given its expansive treatment in the case law, is obviously a broader term than a “structural” change that may be considered a subset of material changes.

Green Lakes Condo. Assn., Inc. v. Nozetz,

Case No. 97-0006 (Draper / Summary Final Order / June 10, 1997)

- Where association approved lease beginning “January 1, 1997 (approx.)” and tenants moved in December 16, 1996, association not estopped from acting against unit owners for unapproved occupancy. Documents permitted only two rentals per year and the unit owners had already rented their unit twice. It was unreasonable for unit owners to assume that December 16 was “approximately” January 1.
- Unit owner’s father’s brother’s son was not member of immediate family, exempt from rental limitations, where rules defined immediate family as “spouses, parents, children, sisters, brothers and associated in-laws (parents, children, sisters, brothers).”
- Despite tenants moving from unit, case not moot where unit owners had repeatedly violated rental restrictions. Probable future violations warranted injunctive-type relief.

Kamhi v. Pine Island Ridge Condo. F Assn., Inc.,

Case No. 98-4155 (Draper / Summary Final Order / December 4, 1998)

- Where declaration provided that an owner may “keep a pet in his unit, but only under regulations promulgated by the association,” rule prohibiting pets unless written permission of association was obtained and found to conflict with the declaration, as it was being applied to prohibit pets. Also, application for approval of purchase, that required prospective owners to affirm that they did not have a pet and could not acquire one, conflicted with pet ownership right conferred in the declaration.

Kreitman v. The Decoplage Condo. Assn., Inc., (appeal filed October 1998)

Case No. 98-3332 (Draper / Summary Final Order / July 30, 1998)

- Restriction limiting unit rentals to periods of six months or longer does not conflict with provision that units may only be used for “residential or resort transient purposes.”

A requirement that units be leased for six months or longer is consistent with “residential” use of the unit; furthermore, under declaration, units may be rented for a shorter period of time if the association’s designated, exclusive, on-site rental agent arranges the rental, permitting the units to be used for “resort transient” purposes.

Lakeshore 11 Condo. Assn., Inc. v. Thurman,  
Case No. 98-5264 (Cowan / Summary Final Order / August 19, 1999)

- Where declaration required all units to maintain "fully carpeted floors" (except in kitchens and bathrooms) and where unit owner utilized area rugs that left substantial areas of tile flooring exposed, unit owner was in violation of condominium documents. Provision in declaration was construed not to require wall-to-wall carpeting (although this would suffice), and since declaration did not address the type of carpeting required, area rugs could have been used so long as complete coverage was achieved and so long as quiet was maintained.

Lill v. Rock Harbor Club, Inc.,  
Case No. 99-0594 (Powell / Summary Final Order / August 18, 1999)

- Where declaration provided that adequate provision shall be made for storage of unit owners’ boats in storage sections of the premises, and unit owner had been storing his 19-foot boat on trailer in trailer yard for three years, the unit owner was entitled to store his boat. Rules permitted boats up to 26 feet long. The association’s rule requiring that a sailboat fit on a rack was invalid in that it contravened the declaration, and could not be invoked to require removal of this boat. A rule stating boats will be assigned spaces in boat shed was intended to evenly distribute covered spaces, not to prohibit sailboats that do not fit within those spaces.

Luce v. Tiara East Condo., Inc.,  
Case No. 98-4861 (Draper / Partial Summary Final Order / February 19, 1999)

- Declaration provided that prior to leasing or selling a unit, the owner was required to give notice and proof of a bona fide lease or sale offer, at which point association could exercise its right of first refusal to lease or purchase the unit. Association argued that it could block lease without having to provide a substitute tenant where unit owner’s tenant was unqualified. Arbitrator rejected the argument, noting that under the declaration the owner had the right to lease the unit 14 days after giving the required notice unless the association exercised its right of first refusal. The right to be free from any other constraints on leasing, such as board prior approval requirement, was inferable from the declaration.

Mainlands of Tamarac by the Gulf Unit No. Three Assn., Inc. v. Levin, (affirmed in trial de novo, June 30, 1998)  
Case No. 96-0412 (Draper / Final Order / September 8, 1997)

- Association's application of construction code to preclude wood frame addition to unit was not ambiguous when read as a whole. Code required all additions to substantially conform to the design and construction of the original structure, which was masonry.
- Fact that association amended code to specifically require masonry construction, after dispute erupted with unit owner over proposed wood frame addition, not indicative that code was ambiguous where evidence showed only confusion was in unit owner/petitioner's mind.

Mandell v. Sutton Place Condo. Assn., Inc.,  
Case No. 01-2783 (Scheuerman / Summary Final Order / August 7, 2001)

- Where the declaration provided for both residential units and cabana units, and further provided that each unit shall have one vote, the arbitrator concluded that both cabana units and residential units were entitled to one vote. While it perhaps would have been more equitable for the developer to provide in the declaration for fractional votes for the cabana units, there is nothing in the Condominium Act that compels this result. As a general proposition the drafter of a declaration is given great latitude in assigning voting rights to the various units and unit types, so long as consistency with Section 718.301, F.S. is maintained.

Martinez v. Islands Martinique Condo. Assn.,  
Case No. 99-0375 (Draper / Summary Final Order / June 15, 1999)

- Association held responsible for repairing leak in air-conditioning conduit carrying freon from the condenser unit on the roof of the building to petitioner's fourth floor unit. Association is responsible for repairing common elements, which are defined by the declaration to include all "conduits and utility lines." Association's argument that the leaky air-conditioning element is a "pipe" rather than a "conduit" is rejected. A "conduit" is a channel or pipe for conveying fluids, and freon is found in a liquid state. In addition, the declaration defines "utility services" to include air-conditioning.
- Despite the fact that the conduit serves only the petitioner's unit, association is responsible for repairing it. It is unreasonable for an individual unit owner to be held responsible for repairing air-conditioning conduits within the common elements, traversing several levels of the building, and which repair might require opening large holes in the building through the ceilings and floors of the units between the petitioner's unit and the roof, absent some clear expression of responsibility in the documents.

Midman v. Sun Valley East Condo. Assn., Inc.,  
Case No. 99-0537 (Draper / Final Order / August 26, 1999)

- Where declaration provided that board was authorized to make structural changes and improvements to the common elements, unless the cost exceeded \$18,000, unit

owner approval of subdivision of card room to yield office space for the board was not required. Change would cost \$10,000 and would be paid for with existing funds. Declaration also provided that amounts needed for capital improvements required approval of 75% of the unit owners. This provision, read in conjunction with the clause authorizing board to make structural changes, held to require unit owner approval of structural changes costing less than \$18,000 only where special assessment is required to generate funds for the change.

- Subdivision of card room into office and card room did not prejudice unit owners' rights. Petitioner didn't even play cards and while size of card room would be diminished by 25%, the number of card tables would not be reduced.

Molokai Villas Condo. Assn., Inc. v. Symes,  
Case No. 00-1320 (Pine / Summary Final Order / December 13, 2000)

- When the documents reflect that the balcony is part of the unit, and that the unit owner is responsible for the flooring above the slab of the unit, then the unit owner is responsible for the cost of repair of the balcony flooring. The unit owner is not responsible for repair to any part of the balcony that is a support structure, however, and the unit owner cannot rebuild the support structure to his own design. The responsibility for repairing support structures is on the association rather than on the unit owner.

New Hampton at Century Village Condo. III Assn., Inc. v. Brocato,  
Case No. 98-3187 (Draper / Final Order on Default / May 27, 1998)

- Where declaration prohibited any alteration to the unit without association approval and any modification or installation of electric wiring or any material puncture or break in the boundaries of the unit, installation of a central air conditioning system without board approval, which involved a cut through the fire safety wall in the unit's ceiling, violated the provision.

O.R.A. at Melbourne Beach, Inc. v. Mashke, (currently on appeal)  
Case No. 98-2737 (Anderson-Adams / Partial Summary Final Order and Order Requiring Response / December 4, 1998)

- Where condominium documents require screen-room roofs to be made of canvas or pliable vinyl fabric supported by an aluminum frame, merely slapping a canvas cover over an aluminum roof does not necessarily transform the formerly impermissible aluminum roof into a "ceiling" and make it permissible.

Ocean Inlet Yacht Club Condo. Assn., Inc. v. Cordy,  
Case No. 99-2405 (Scheuerman / Summary Final Order / April 24, 2000)

- Limited common element boat slips, shown as airspace within which a boat would be secured to the finger pier, deemed to include finger pier for purposes of determining maintenance obligation for the finger pier, where declaration provided that maintenance of the boat slips was the obligation of those entitled to exclusive use of the slips. Declaration should not be interpreted to create an illusory obligation. Therefore, "slips" includes the physical structure permitting the slips to operate as boat slips.

The Palm Club Assn., Inc. v. Bocchino, (currently on appeal)

Case No. 98-3993 (Anderson-Adams / Summary Final Order / January 15, 1999)

- Association claimed unit owners made unauthorized alterations to the common elements by installing "sun tunnel" skylights in their unit. Declaration, when ordinary rules of grammar are applied, prohibits any alterations to the common elements or to the exterior portion of the building.

Paradise Towers, Inc. v. Thibeault,

Case No. 00-1242 (Draper / Summary Final Order / October 11, 2000)

- Cooperative unit owner's installation of a satellite dish on the roof of the cooperative building did not violate prohibition against "structural changes" to the building. A satellite dish does not add to or detract from the framework or construction of the building on which it is installed, therefore, the change is not a structural one.

Pathways Condo. Assn., Inc. v. Medina,

Case No. 97-0172 (Draper/ Partial Summary Order / September 15, 1997) (Order on Request for Clarification of Partial Summary Order / November 4, 1997)

- Installation of spiral staircase between upstairs and downstairs units violated declaration provision prohibiting structural modifications or alterations in condominium unit. Any opening in room, such as door, modifies the structure of the room.
- Installation of spiral stairs between upstairs and downstairs units did not violate prohibition against adding to or incorporating one unit to another.
- Declaration provision that board could approve changes to exterior of unit was not applicable to installation of spiral staircase between upstairs and downstairs units; Section 718.113(2), F.S., requirement of 75% unit owner approval applicable.

Paradise Towers, Inc. v. Thibeault,

Case No. 00-1242 (Draper / Summary Final Order / October 11, 2000)

- Cooperative unit owner's installation of a satellite dish on the roof of the cooperative building did not violate prohibition against "structural changes" to the building. A satellite dish does not add to or detract from the framework or construction of the building on which it is installed, therefore, the change is not a structural one.

Philbin v. Shore Manor Building of Town Apts. South, No. 102, Inc.,  
Case No. 97-1875 (Powell / Summary Final Order / April 1, 1998)

- The condominium documents, although not specifically referring to unit doors, reflected that it was the intent of the drafters that the exterior surface of the building would be the maintenance responsibility of the association. The documents excluded from the maintenance responsibility of the association the interior wall surfaces of the unit. A basic principle of construction holds that the mention of one thing implies the exclusion of the other. Logically, doors would have been mentioned if they were to be excluded also. Accordingly, replacement of the door and repair of the frame of an exterior Florida room door was held to be the responsibility of the association.

Pollak v. Bay Colony Club Condo. Inc.,  
Case No. 99-1176 (Draper / Case Management Order / November 12, 1999)

- Bylaw provision concerning unit owner votes held to conflict with declaration and was therefore ruled invalid. Bylaw required that "votes" of unit owners who did not vote in an election would be counted toward the candidate or question otherwise receiving the largest number of actual votes. Declaration requires that the approval of 75% of the unit owners be obtained. Counting "non-votes" as votes conflicts with declaration's requirement.

Rolland v. Coral Sun Townhomes Condo., Assn., Inc.,  
Case No. 97-0003 (Scheuerman / Final Order on Default / January 21, 1999)

- Policy of board which required an owner to submit a tenant application 30 days in advance of the intended occupancy was inconsistent with declaration provision which requires board to accept or reject tenant application within 15 days of receipt. Policy amounted to illicit amendment to declaration.

Sandpiper Condo. Assn., Inc. v. Lagrossi,  
Case No. 99-2266 (Scheuerman / Summary Final Order / August 4, 2000)

- Documents interpreted as showing a general intent that the balconies were to be part of the units, and that the association was responsible for the maintenance of the exterior portions of the building. Therefore, association deemed responsible for repairing and replacing the balcony slabs, and was authorized to enter upon the balcony and effectuate repairs.

Sandpointe Bay Condo. Assn., Inc. v. Milligan, (currently on appeal)  
Case No. 00-0522 (Draper / Summary Final Order / October 3, 2000)

- Declaration requiring that carpeting be installed in all areas except the kitchen, bathrooms, and entrance foyer was not vague and ambiguous as to the definition of



areas that can be tiled. The only areas that must be understood with clarity are the areas that do not have to be carpeted, as the declaration specifies that all areas must be carpeted except those areas. Kitchen and bathrooms are labeled on the unit diagram included with the declaration, and are bounded by walls and, in most cases, a door; therefore, there can be no question where these rooms begin and end. In addition, a foyer is an entrance hall or vestibule, and clearly does not encompass the hallways leading to the opposite ends of the unit.

Shore Colony Condo. Assn., Inc. v. Greife, (currently on appeal)  
Case No. 97-2341 (Scheuerman / Final Order / February 19, 1999)

- Where declaration contained general language prohibiting changes to the common elements absent a membership vote, and contained a separate provision addressing circumstances under which unit owner could remove common element walls within the unit, specific provision dealing with removal of interior walls found application to project whereby owner sought to remove interior load bearing walls.
- Provision in declaration requiring membership vote for changes to the common elements performed by association did not address procedure required where owner sought to change the common elements, and hence the provisions of Section 718.113(2), F.S., applied and required approval of not less than 75% of the total voting interests.
- Where declaration interpreted as prohibiting removal of load-bearing wall by an owner regardless of board approval, board was powerless to approve project, and any approval expressed was contrary to documents and of no effect.
- Where declaration prohibited "removal" of a load-bearing wall within in a unit, declaration interpreted as prohibiting removal of either the entire wall or a portion of the wall.

Smarro v. Esplanade Condo. Assn., Inc.,  
Case No. 00-0815 (Draper / Final Order on Default / August 3, 2000)

- Declaration was amended to prohibit pets, but grandfather-in existing pets. Unit owners with dog decided to sell their existing unit and buy another unit in the same condominium. The association refused to approve their application to buy the unit unless they agreed not to house their same dog in the new unit. The amendment provided that unit owners housing a pet in the condominium which was approved by the association when the amendment was recorded shall be permitted to house the pet in the condominium property. Arbitrator ruled that the dog could stay because the amendment permitted pets housed in the **condominium** at the time the amendment was recorded.

Smokehouse Harbor Condo. Assn., Inc. v. Linsenmeyer,

Case No. 98-4244 (Cowl / Partial Summary Final Order / June 2, 1999)

- Screened porch abutting unit held to constitute part of the unit rather than limited common element. Declaration states that a unit shall include a screened porch and each screened porch is part of the unit which it abuts.

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor, (currently on appeal)

Case No. 98-3662 (Powell / Order on Motion to Strike Affirmative Defenses, Order on Motion to Strike Proposed Exhibits, and Order on Motion to Compel Discovery / November 20, 1998)

- Where declaration prohibited animals without written consent, rule prohibiting dogs was not inconsistent with declaration.

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor,

Case No. 98-3662 (Powell / Final Order / September 28, 1999) (currently on appeal)

- Even if rule prohibiting dogs was not in effect when the unit owner first brought a dog onto the condominium property, the association was entitled to enforce the rule against a subsequently acquired dog.

Tierra Del Sol Condo., Inc. v. Merlucci, (currently on appeal)

Case No. 98-5006 (Pine / Final Order / July 6, 1999)

- Federal Fair Housing Act allows otherwise-vacant unit occupied by elder person on part-time or timeshare basis to be counted as a unit occupied by person aged 55 or older. However, where any owner who was under age 55 lived continuously in unit, occasional visits by elder co-owner did not cure violation of requirement that at least one person over age 55 occupy unit.

Villa Dilancia Condo. Assn., Inc. v. Hydro Agri North America, Inc., (currently on appeal)

Case No. 98-3731 (Draper / Summary Final Order / July 6, 1998)

- Declaration conditioned unit ownership by a corporation on the prior designation by the corporation of a single family or individual who would occupy the unit and further provided that the designated occupant could not be changed more than twice during any calendar year except in connection with the approved sale, transfer or lease of the unit. Rental restrictions applicable to all units prohibited terms greater than 60 days and more than two rentals per calendar year. Declaration interpreted to prohibit occupancy of the corporately owned unit by persons other than the designated occupant or his family for periods more frequent or shorter than the declaration allows for unit rentals.
- Declaration provision which states that corporately-owned units are subject to the same restrictions and limitations contained in the documents for leasing of units that are applicable to the other units construed did not prohibit different treatment of

occupancies of corporately-owned units; rather it required that the same rental restrictions would apply to all units.

- “Guests” of designated occupant of corporately-owned unit, who occupied unit in the absence of the designated occupant, would be treated as tenants, subject to leasing restrictions in the documents. Fact that declaration did not prohibit a unit owner from having a guest in his unit in his absence did not invalidate provision of the declaration dealing with corporately-owned units which provided that use of the unit by others than the designated occupant would be subject to the leasing provisions of the declaration. Guests of a residential owner are not the same as guests of a corporate owner. They are generally less frequently present, less varied and fewer in number so as not to contribute to the transient or hotel nature, as would the corporate guest. Therefore, it is reasonable for such occupancies to be treated differently.

West Winds Estates Condo. Assn., Inc. v. Miller,  
Case No. 97-1872 (La Plante / Summary Final Order / January 14, 1998)

- Under declaration, where owner has the right to set the terms and conditions of the lease, rule which seeks to create additional substantive restrictions on the right to rent by requiring leases of at least 90 days but not more than 180 days contravenes the right of the owner to set these variables, and rule is thus invalid as it is in direct conflict with the declaration.

### ***Validity***

Franklin v. Vista Verde North Condo. Assn., Inc.,  
Case No. 00-0129 (Scheuerman / Summary Final Order / July 26, 2000)

- Where bylaw amendment provided for \$50 transfer fee for renters, not applicable to nonresident family members staying in the unit, requirement that owner claiming family member exemption from \$50 transfer fee fill out form identifying family members and stating the city and street address of the family members was held to be reasonable. Association's desire to enforce its rules, collect its fees, and keep assessments low constitute legitimate goals. Privacy interest in this information does not outweigh the legislative pronouncement that information of this kind is included among the official records.

Lake Clarke Gardens Condo., Inc. v. Nilson, (currently on appeal)  
Case No. 99-0947 (Pasley / Summary Final Order / April 11, 2000)

- Where association failed to comply with Section 718.110(1)(b), F.S., in its efforts to amend an article of the declaration by not striking through text to be deleted pursuant to Section 718.110(1)(c), F.S., a determination must be made as to whether the error or omission was material. When an article of the declaration is amended pursuant to Section 718.110(1), F.S., all of the original language that is not struck through continues to be a part of the article. The portion of the original language that remains and the

newly added language constitute the new article. When the resulting article contains conflicting language that creates confusion as to who is permitted to own and occupy a unit, the association has committed a material error and/or omission in violation of Section 718.110(1)(c), F.S., and the amendment is, therefore, invalid.

## **Default**

### ***Generally***

Eastfield Slopes Condo. Assn., Inc. v. Tolliver,  
Case No. 98-3224 (Pine / Final Order After Default / December 11, 1998)

- When neither of the respondents placed any pleading in the record, failure to respond to arbitrator's orders deemed willful and intentional. Pursuant to Rule 61B-45.020, F.A.C., arbitrator shall enter a default when a party fails to file or serve any responsive document in the action or has failed to follow the rules or a lawful order of the arbitrator, and where failure deemed willful, intentional or a result of neglect. Respondent's telephone call stating that he was leaving condominium deemed insufficient to constitute a response to arbitrator's orders.

Margate Village Condo. Assn., Inc. v. Arghrou,  
Case No. 98-4742 (Powell / Order Denying Respondent's Motion to Set Aside Default, Order Denying Motion to Set Aside Final Order After Default, and Order Denying Motion for Rehearing / December 4, 1998)

- Entry of default would not be set aside where unit owner's "answer" was filed six days after final order after default was entered. The pleading was accepted as a motion to set aside the default and to set aside the final order after default. The answer alleged that the unit owner had been looking for rules. The unit owner did not establish any legal excuse for failure to respond timely to the order requiring answer and the entry of default. Because due diligence had not been shown, it was not necessary for the arbitrator to address the defense alleged by unit owner in his answer. The arbitrator noted that, even if considered, the unit owner's defense would not be sufficient for him to prevail. Unit owner alleged no facts sufficient to explain why he was not able to respond timely to the order requiring answer or to the entry of default. In the absence of a legal excuse for failure to comply with the rules, unit owner's motion to set aside the final order after default was also denied.

### ***Sanctions (See Arbitration-Sanctions)***

## **Developer**

### ***Disclosure***

### ***Exemptions (See also Declaration-Exemptions)***

### ***Filing***

***Generally***

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

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

The Regency of St. Petersburg, Inc. v. Unit Owners Voting for Recall,  
Case No. 97-0192 and 97-2047 (consolidated) (Draper / Final Order on Attorney's Fees / December 24, 1997)

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

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

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

Seiden v. Roals, Inc.,  
Case No. 99-1235 (Powell / Final Order Dismissing Petition for Lack of Jurisdiction / June 25, 1999)

- Petition filed by unit owners against a developer, claiming that the developer impliedly warranted that the unit was fit for its intended purpose and merchantable, and

where unit owners alleged that their unit was not merchantable, was dismissed. Section 718.1255(1)(b), F.S., specifically exempts from the arbitrator's authority disputes involving the interpretation or enforcement of any warranty.

***Transfer of control (See also Elections/Vacancies)***

The Gables Condo. and Club Assn., Inc. v. Bass,  
Case No. 99-2099 (Scheuerman / Final Order / February 11, 2000)

- Where declaration for phase condominium provided for turnover of control within specified period of time after 50% or 90% of the "units" had been conveyed to purchasers, and where declaration further defined "units" as units contained in phase I, declaration interpreted as providing for turnover after specified percentage of units that may ultimately be included in the phase plan. Nothing in declaration evinced developer's supposed intent to gratuitously relinquish control of the association earlier than the date provided by statute for a phase condominium.
- Right to control the operation of a condominium association is a substantive vested right. Turnover of control substantially affects developers and nondeveloper-owners alike.

The Gables Condo. and Club Assn., Inc. v. Bass,  
Case No. 99-2099 (Scheuerman / Order on Motion for Rehearing / February 23, 2000)

- Nothing in phase statute or documents supported owners' assertion that the developer was required to relinquish control of the association where, in between adding future phases to the condominium, developer was neither constructing the buildings to contain future phases or offering units for sale in the future phases. Turnover in a phase condominium, assuming a developer is operating within the parameters of the phase plan, is triggered within the time provided by statute where 50% or 90% of the total units to be contained within all phases are sold to purchasers, when all units to be included in the future phases have been completed and the developer is not offering any units for sale, or seven years after recordation of the initial phase.

**Disability, Person with (See Fair Housing Act)**

**Discovery**

***Attorney-client privilege (See Attorney-Client Privilege)***

***Generally***

Carriage Hills Condo. Inc. v. Guarrasi,  
Case No. 99-1862 (Powell / Final Order Acknowledging Settlement / May 30, 2000)

- Motion for leave to depose witnesses denied pursuant to Rule 61B-45.024, F.A.C., where reason for seeking depositions was so that witnesses would not be inconvenienced. Their testimony could be presented by telephone at the hearing.
- Motion to present affidavits of witnesses in lieu of testimony denied where the evidence sought pertained to disputed issues. Unless affidavits are stipulated to by both parties, they are of limited evidentiary value and would be subject to hearsay challenge. The individuals may be subpoenaed to testify at the hearing.

The Decoplage Condo. Assn., Inc. v. Kreitman,

Case No. 98-4820 (Draper / Final Order Striking Respondents' Defense and Granting Relief / July 23, 1999)

- Where respondents/unit owners failed to completely answer interrogatory questions association was authorized to ask, and then refused to attend deposition scheduled by association, and advised other witnesses at deposition not to answer non-privileged questions, respondents' defense to association claim was stricken per Rule 61B-45.036(2), F.A.C. Information sought by association was central to association's ability to investigate and oppose respondents' defense to association's claim.

Stover v. The Avalon Assn., Inc.,

Case No. 99-0404 (Powell / Order on Motion for Continuance/Discovery / October 4, 1999)

- Motion to conduct discovery denied where unit owner sought documents which she could obtain under Section 718.111(12)(b), F.S., requiring the association to make official records of the association available to a unit owner.

Stover v. The Avalon Assn., Inc.,

Case No. 99-0404 (Powell / Order on Motion / October 19, 1999)

- Where association had not responded to unit owner's written request for access to official records, motion for discovery granted with respect to certain official records.

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor, (currently on appeal)

Case No. 98-3662 (Powell / Order on Motion to Strike Affirmative Defenses, Order on Motion to Strike Proposed Exhibits, and Order on Motion to Compel Discovery / November 20, 1998)

- Where documents sought in motion to compel discovery were official records which may be obtained under Section 718.111(12)(b), F.S., discovery of the records as part of the arbitration proceeding was unnecessary and the motion to conduct discovery was denied.

Sunset Grove Condo. Assn., Inc. v. Finney,

Case No. 98-4817 (Powell / Order Denying Respondent's Motion / October 21, 1998)

- Where association alleged that unit owner's dog was a nuisance because it had attacked two persons, unit owner's motion for discovery regarding the association's 25-pound rule was denied by the arbitrator as not necessary for the disposition of the petition, pursuant to Rule 61B-45.024, F.A.C.

## Dispute

### *Considered dispute*

Branscomb v. Martinique 2 Owners' Assn., Inc.,

Case No. 99-0248 (Draper / Order on Jurisdiction / February 12, 1999)

- Arbitrator had jurisdiction over claim that association failed to call special meeting of its members after receiving a written request by 10% of the members for the purpose of a unit owner vote on the removal of certain directors.

Brickell Townhouse Assn., Inc. v. Bagdan,

Case No. 00-0780 (Scheuerman / Final Order on Jurisdiction / June 29, 2000)

- Where request for expedited determination of jurisdiction did not indicate whether owner named as respondent disagreed with window replacement project on basis of special assessment or alteration to the common elements, arbitrator could not determine whether jurisdiction existed to hear the case. Arbitrator has no authority to hear assessment issue but can determine whether replacement windows constituted necessary maintenance or instead constituted alteration to common elements.

Brown v. The Village of Kings Creek Condo. Assn., Inc.,

Case No. 00-0456 (Draper / Order on Motion to Dismiss / April 11, 2000)

- Jurisdiction exists to hear unit owner's petition alleging that the association failed to maintain the flat concrete roof over the balcony to the petitioner's unit resulting in water intrusion into the unit and damage to the interior of the unit and its contents. The effect of the 1997 amendment to the definition of "dispute" was to exclude only a subset of the claims concerning maintenance of the common elements--those claims primarily seeking money damages for damage to the unit. In the instant case, the petition seeks as relief an order requiring the association to repair the roof so that water stops coming into the petitioner's unit.

Bumpus v. Harbor Point Condo. Assn., Inc.,

Case No. 99-0616 (Draper / Order on Jurisdiction / March 24, 1999)

- Jurisdiction exists over claim that association's executive committee held an unnoticed, closed meeting, that the association did not give unit owners enough time to consider whether to approve proposed sale of the building and construction of additional units, and that the board failed to notice and hold the annual meeting of unit owners and



election of directors on the proper date, thereby extending the term of the incumbent directors. No jurisdiction over disagreement alleging that the association's lawyer, who purchased units and negotiated the sale of the building, was involved in a conflict of interest situation. "Dispute" specifically excludes any disagreement that primarily involves an alleged breach of fiduciary duty by one or more directors.

Circle Woods Owners Assn., Inc. of Venice v. Balazs,  
Case No. 00-0696 (Draper / Final Order of Dismissal / April 21, 2000)

- Arbitrator has jurisdiction over claim that unit owner's son drives his car recklessly on the condominium property, endangering other owners and interfering with the peace and quiet of the condominium.

Cosby v. Wellington Assn., Inc.,  
Case No. 00-0013 (Draper / Order on Motion to Dismiss and Request for Mediation / April 28, 2000)

- Arbitrator has jurisdiction over petition alleging that water is leaking into the petitioners' unit as a result of the association's failure to repair the common elements. Petition claims that the water leaks into the unit through the bottom track of the sliding window in the unit above, and through the space between the units into the petitioners' unit. Under the declaration, the association is responsible for maintaining the concrete slab through which the water is alleged to be moving, and the window through which the water first invades the building. Because the association refuses to remedy the leak, the claim involves the authority of the association to require the unit owners to do something with their unit, i.e. repair the leak themselves or suffer continuing water intrusion.
- Arbitrator rejected association's argument that dispute was between the petitioning unit owners and the owner of the unit above who allegedly caused the leak by installing a faulty porch enclosure, and therefore, outside her jurisdiction. Even if it is determined that the other owner caused the leak, the association is responsible for performing repairs to the common elements (for which it may seek indemnification from the unit owner who caused the leak).

Davis v. Paragon Condo. Assn., Inc.,  
Case No. 99-2370 (Powell / Summary Final Order / February 28, 2001)

- Florida Tower Condominium, Inc. v. Mindes, 770 So. 2d 210 (Fla. 3rd DCA 2000), holding that a dispute over use of parking spaces was not subject to arbitration, decided during the pendency of case did not require dismissal of present arbitration case concerning parking spaces. Present dispute was instituted before decision in Florida Tower case, present dispute arose in Fourth DCA, in which it had previously been held that parking cases were subject to arbitration, and Florida Tower case was in Third DCA. Also, a portion of the present dispute had previously been brought in circuit court

where it was stayed for the plaintiff to seek arbitration, and none of the parties in the arbitration case sought dismissal.

Deaugustinis v. Harbor East House Condo. Assn., Inc.,  
Case No. 00-0132 (Pine / Summary Final Order / July 7, 2000)

- Contrary to argument that parking dispute is one primarily involving title to a unit or common element, dispute is over use of a limited common element. Since use of a limited common element for the purpose intended is an appurtenance to the unit, arbitrator has jurisdiction.

Delekta v. Hibiscus Pointe Condo. Assn., Inc.,  
Case No. 99-2364 (Draper / Order on Jurisdiction / December 16, 1999)

- Arbitrator has jurisdiction over claim by unit owners that association constructed a recreation building on the common elements that obstructs their view and constitutes a nuisance; claim involves allegation that board altered the common elements.

The Diplomat Apartments Assn., Inc. v. Lunn,  
Case No. 98-5269 (Powell / Final Order on Attorney's Fees / March 19, 1999)

- Unit owners' defense, that arbitrator had no jurisdiction over dispute in underlying case because it involved the federal Fair Housing Act, was rejected by the arbitrator and fees were awarded to the association.

Inverrary Gardens Condo. I Assn., Inc. v. Inverrary Gardens Limited,  
Case No. 99-2026 (Draper / Order Determining Jurisdiction / October 14, 1999)

- Arbitrator has jurisdiction over claim by association that unit owner should be required to take remedial action to control mold and mildew in unit, and pay damages or restore common element property damaged by mold/mildew infiltration. Punitive damages claim may not be heard, however.

Islandia Condo. Assn., Inc. v. Simoes,  
Case No. 96-0261 (Powell / Order on Respondents' Motion Contesting Jurisdiction and to Dismiss / December 12, 1998)

- In dispute where association sought unit owners' compliance with tenting, arbitrator had authority under Section 718.1255(1)(a)1., F.S., even though a termite warranty was involved, because the dispute did not primarily involve the interpretation or enforcement of a warranty.

Loulourgas v. Ultimar II Condo. Assn., Inc.,  
Case No. 99-2291 (Scheuerman / Final Order / August 3, 2000)

- Where owners sought injunction requiring condominium association to obtain requisite approvals or remove cell phone tower, and where declaration required approval of both the owners and of the homeowners' association, fact that approval of homeowners' association was required did not create a dispute between associations and thereby divest the arbitrator of jurisdiction. Since requirement of homeowner association approval was located in the declaration of condominium, and since the unit owner sought enforcement of the documents, dispute was between an owner and the condominium association.

Martinez v. Islands Martinique Condo. Assn.,

Case No. 99-0375 (Draper / Order Denying Motion to Dismiss / March 19, 1999)

- Arbitrator has jurisdiction over disagreement involving whether the unit owner or the association is responsible for repairing a leaky air-conditioning conduit. Association's reliance on Woodlake Redevelopment Corporation, 671 So.2d 253 (Fla. 2d DCA 1996) is misplaced as s.718.1255, F.S., was amended subsequent to Woodlake to specifically exclude from the definition of "dispute" claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property. Thus, claims involving the association's failure to maintain the common elements **are** included within the definition of dispute, however, a subset of those claims, seeking money damages for damage to the unit caused by the association's failure to maintain the common elements, is excluded.

Miller v. Olive Glen Condo. Assn., Inc., (currently on appeal)

Case No. 00-0360 (Powell / Order on Motion to Dismiss / May 17, 2000)

- Arbitrator had jurisdiction over dispute where unit owners contended that association failed to properly conduct elections, that directors perpetuated themselves in office beyond the term specified in the bylaws, and where petition sought as relief an order requiring proper elections, and setting the number of persons on the board.

Nargi v. Ocean Harbor Condo. Assn., Inc.,

Case No. 98-4821 (Draper / Order on Jurisdiction / September 17, 1998)

- Arbitrator had jurisdiction over dispute involving unit owner's right to exclusive use of parking space. Dispute involved the authority of the board to require the unit owner not to use the common element parking space that was claimed to be an appurtenance to the unit.

Sabal Chase Condo. Assn., Inc. v. Zuckerman,

Case No. 98-4007 (Powell / Order / July 14, 1999)

- Although Section 718.1255, F.S., as amended effective October 1, 1997, removed from the jurisdiction of the arbitrator those cases seeking eviction of tenants, the division continues to handle tenant cases not involving eviction, as this was the intent of the

legislature. An exception is made for cases arising in the 4th District, where all tenant cases must be filed in court, regardless of the relief requested.

- Arbitrator had authority, under Section 718.1255(1)(a)1., F.S., to hear dispute concerning the authority of the board to enforce the declaration with regard to color of garage door, which forms part of the common elements, an undivided share of which is appurtenant to the unit at issue.

Sigismondi v. Kendall Acres West Condo. Assn., Inc.,

Case No. 99-0247 (Powell / Order on Request for Expedited Determination of Jurisdiction / February 12, 1999)

- Petition alleging water intrusion into unit and seeking an order requiring the association to replace common element roof was within the arbitrator's jurisdiction, pursuant to Rule 61B-45.013(1), F.A.C., as the dispute involved use of unit. An award of damages was not requested.

Stover v. The Avalon Assn., Inc.,

Case No. 99-0404 (Powell / Order on Motion to Dismiss/Strike / August 13, 1999)

- Unit owner's claim seeking an order requiring the association to remedy her low water pressure problem was within the arbitrator's jurisdiction under Section 718.1255(1)(a)1., F.S., where association had notified unit owner that the repair was her responsibility. The dispute concerned the authority of the association to require the unit owner to take action involving her unit. Because the claim sought an order requiring the association to remedy the problem, and did not seek money damages, the dispute was within the authority of the arbitrator.

Swenson v. Pilot House Condo. Assn., Inc.,

Case No. 00-1515 (Powell / Final Order of Dismissal / April 5, 2001)

- Arbitrator had authority to hear claim that the association proposed to reconstruct limited common element deck so that spa would not be in same position in relation to floor level of the deck as the spa was when originally installed. SECTION 718.1255(1)(a)2., F.S.
- Arbitrator retained jurisdiction over claim seeking to void an assessment against those units with decks attached, where the assessment claim was intertwined with the claim that the association as a whole rather than this unit owner in particular was responsible for the expense of the replacement of the deck.

***Generally***

***Jurisdiction***

***Moot***Abraham v. Sara-Sea Owners Assn., Inc.,

Case No. 98-3683 (Powell / Order Dismissing Petition for Arbitration / July 9, 1998)

- Where association scheduled and conducted a new unit owner meeting regarding tree removal, dispute regarding original meeting's defects became moot because defects in procedure of original meeting were cured.

Abraham v. Sara-Sea Owners Assn., Inc.,

Case No. 98-3683 (Powell / Final Order Dismissing Amended Petition / September 14, 1998)

- The attempted interjection of a new claim by unit owner will not prevent an otherwise moot arbitration petition from being dismissed.

Bent Tree Villas East Condo. Assn., Inc. v. Dolan,

Case No. 99-2393 (Pasley / Summary Final Order / May 10, 2000)

- The issues involving the removal of the pet bird from the premises, displaying current license tags and inspection certificates for overnight vehicles and obtaining proper permits before permitting vehicles to park overnight in the respondent's driveway were dismissed as moot because the unit owner provided the relief requested and the association failed to allege facts that would indicate or substantiate that a prospective injury was more than a mere possibility.

Boca Terrace Condo. Assn., Inc. v. Grecco,

Case No. 97-2403 (Draper / Final Order of Dismissal / June 3, 1998)

- In dispute over parking of commercial van on the condominium property, case was moot and would be dismissed where unit owner removed the van from the property. Association's objection to dismissal, that the unit owner had not signed a stipulation would not be returned, rejected as inadequate bar to dismissal. Association failed to allege facts to support a finding that return of the vehicle was probable.

Branscomb v. Martinique 2 Owners' Assn., Inc.,

Case No. 99-0248 (Draper / Order Denying Respondent's Motion to Stay and/or Abate Arbitration Proceedings / April 7, 1999)

- Claim by unit owners, that association had failed to call a special meeting of members for the purpose of allowing unit owners a vote on the removal of certain directors after receiving written requests for the meeting from 10% of the members, would not be dismissed as moot when board received written agreement for recall of the directors. Board had not yet decided whether to certify the recall and unit owners wanted to preserve all of their options for removing the directors.

Cypress Isle at the Polo Club Condo. Assn., Inc. v. Shelton,  
Case No. 98-4090 (Scheuerman / Order Requiring Status Report / July 22, 1998)

- In case brought by association to gain entry into unit to fix plumbing, where owner had initially resisted entry with violence or threats of violence, answer of owner announcing plumbing had been fixed, but not offering access to association, did not render dispute moot, as issue of access to the unit was capable of repetition.

The Gardens at Pembroke Lakes Condo. Assn., Inc. v. Clementi,  
Case No. 00-1594 (Pine / Summary Final Order / December 14, 2000)

- Where owners did not rebut association's claim that illegal dog previously was removed and then returned, petition to permanently remove dog is not rendered moot by the respondent's claim that dog has been removed.

Hitching Post Co-Op, Inc. v. Ryan,  
Case No. 98-3906 (Anderson-Adams / Final Order Dismissing Claim and Closing File / November 17, 1998)

- Issue of excessive noise dismissed as moot because partial summary final order found unit owner to be in violation of association's age and occupancy restrictions. Since it was unlikely unit owner would remain in unit without her minor child, noise issue was presumed moot as association filed no response to Order to Show Cause why it should not be dismissed as moot.

Islandia Condo. Assn., Inc. v. Simoes,  
Case No. 96-0261 (Powell / Summary Final Order / May 21, 1999)

- Where unit owners argued that issue was moot because building was not currently infested with termites, arbitrator rejected argument and ordered them to comply with tenting because lack of present infestation would not defeat association's right of access to units for pest control.

La Brisa Assn., Inc. v. Boeckeler,  
Case No. 00-0402 (Pine / Summary Final Order / April 24, 2000)

- When respondent admits having repeatedly violated pet regulations, petition is not moot even though respondent is, at the moment, in compliance. Association is entitled to order prohibiting future violations instead of dismissal.

Quiroli v. Spanish Trail Condo. Assn., Inc.,  
Case No. 99-0641 (Draper / Final Order on Dismissal / June 10, 1999)

- Dispute concerning association's failure to assign the petitioner dock space for his boat dismissed as moot where association assigned unit owner the requested space.

Unit owner's fear that dock space would be taken away once another unit owner's boat returned was not supported by any facts.

Rolling Green Condo. "D", Inc. v. Burke,

Case No. 00-1833 (Powell / Final Order of Dismissal / February 27, 2001)

- Dispute was ruled moot where unit owner filed a response to petition that violation, use of pool by child under the age of three years, had not occurred since before the petition was filed and where association did not present any facts to show a continuing violation. An independent basis for dismissing the petition was that the unit owner had sold and vacated the unit, thus the arbitrator no longer had jurisdiction over the dispute.

Shields v. Versailles Gardens I Condo. Assn., Inc.,

Case No. 98-3087 (Draper / Summary Final Order / July 15, 1998)

- Dispute involving access to records was not moot where records had been provided to unit owner/petitioner, but damages issue was yet unresolved.

Sigismondi v. Kendall Acres West Condo. Assn., Inc.,

Case No. 99-0247 (Powell / Final Order Dismissing Petition / August 11, 1999)

- Where petitioners/unit owners filed a notice that the leaky roof problem, which was the subject of the petition, had been cured, the petition was dismissed as moot.

The Trellises Condo. Assn., Inc. v. Steir,

Case No. 00-0866 (Pasley / Summary Final Order / January 22, 2001)

- Dispute moot where the association did not dispute the unit owner's assertion that her rabbit had died.

Ultimar Three Condo. Assn., Inc. v. Schryver,

Case No. 00-0814 (Pasley / Summary Final Order / August 1, 2000)

- Although the unit owner removed his gas grill from the patio and propane tanks from the garage, the case was not moot and injunctive relief was appropriate because of the respondent's history of multiple violations of the relevant rule which date back to March 1997.

***Not considered dispute***

Accardi v. Leisure Beach South, Inc.,

Case No. 00-0584 (Draper / Final Order of Dismissal / April 3, 2000)

- Petitioning unit owner claimed that another unit owner cut the balcony railing adjacent to the second owner's balcony and installed a gate to gain a means of egress to the adjacent pool deck, and that association had prepared a covenant purporting to

give permission for the alteration. Arbitrator did not have jurisdiction over the claim because it did not involve the association's authority to require the petitioning owner to do, or not do, something with the unit. Also, disagreement is one between unit owners.

Alford v. Laurel Lake Condo. Assn., Inc.,

Case No. 00-1666 (Draper / Final Order of Dismissal / November 13, 2000)

- No jurisdiction over claim brought by beneficial owner that association refused to permit developer of condominium to enter the common elements to construct exterior wall between single family dwellings as depicted in the documents. The claim does not question the association's authority to require the unit owner to take action, or not take action, involving her unit, does not allege that the association has altered or added to the common elements, nor allege a failure of the association over which the arbitrator has jurisdiction.

Alvarez v. Harding Tower Condo. Assn., Inc.,

Case No. 99-0007 (Cowan / Order Dismissing Claims / February 24, 1999)

- No jurisdiction over claims that association president misused funds and failed to pay bills, and no jurisdiction over claim that association's bank certificate of deposit did not list a proper holder.

Applewood Village IV Condo. Assn., Inc. v. Greenspan,

Case No. 99-2169 (Pine / Final Order Dismissing Case / May 22, 2000)

- The arbitrators do not accept (or retain) jurisdiction over cases that involve any necessary party which is neither an association nor a unit owner. Therefore, due to sale of unit by sole respondent, petition dismissed.

Arbours of the Palm Beaches Assn., Inc. v. Clarke,

Case No. 98-4766 (Draper / Final Order of Dismissal / September 4, 1998)

- Arbitrator did not have jurisdiction over claim against unit owner alleging that tenants had not been approved, that tenants were under age 55, and that tenants were creating a nuisance. The association sought an order prohibiting the unit owner from renewing the lease, and the eviction of the two unapproved tenants. While petition, filed after October 1, 1997, ostensibly sought an order primarily to require the unit owner to control her tenants' nuisance behavior, and to limit the age of unit occupants in the future, the disagreement primarily involves the "eviction or other removal of a tenant from a unit."

Barnes v. Treasure Bay Condo. Assn., Inc.,

Case No. 99-1736 (Scheuerman / Final Order of Dismissal / November 3, 1999)

- In petition filed by owner to recover damages for association's wrongful rejection of prospective purchaser, petition dismissed when association ultimately approved



purchaser and title to the unit was transferred. Petitioner was no longer a unit owner and arbitrator was divested of jurisdiction. Arbitrator is powerless to do anything further in case, including awarding costs and fees.

Barrera and Bleau Fontaine Condo. Number Two, Inc. v. Bleau Fontaine Community Assn., Inc.,

Case No. 00-1570 (Draper / Order on Respondent's Motion / October 20, 2000)

Petition alleging that master association failed to properly conduct an election for positions on its board of directors was dismissed because the petition did not on its face assert that either of the petitioners--a subassociation and the president of the subassociation--were unit owners. A "dispute" subject to arbitration pursuant to s.718.1255, F.S. necessarily involves a unit owner and a condominium (or cooperative) association. Rule 61B-45.013, FAC. If an amended petition is filed asserting that one of the petitioners is a unit owner, then the subassociation may participate in the action since the outcome of the arbitration will affect its voice on the board of the master association.

Bawi v. Inverrary Resort Hotel Condo. Assn., Inc.,

Case No. 97-2113 (Draper / Final Order of Dismissal / January 5, 1998)

- No jurisdiction over petition brought by residential unit owners claiming: 1) that commercial owners had altered the common element lobby by placing a bar and restaurant furniture there; 2) that board had permitted cellular tower to be installed on an area appurtenant to a commercial unit; and 3) that association had permitted rental agent to have access to unit keys and units were rented without authorization. Rule 61B-45.013(8), F.A.C., limits jurisdiction to dispute involving residential condominium and residential units.

Bayshore-on-the-Lake Condo. Apts., Phase III Owners Assn., Inc. v. Cavalcante,

Case No. 98-3474 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / March 26, 1998)

- Petition dismissed for lack of jurisdiction where association sought to enforce bylaw prohibiting occupancy by anyone under 55 years old against the son of an owner and his female companion. Effective on October 1, 1997, Division lacks jurisdiction of tenant disputes where association seeks eviction.

Bayshore-on-the-Lake Condo. Apts., Phase II, Owners Assn., Inc. v. Cochran,

Case No. 97-3020 (Draper / Order to Show Cause / February 25, 1998)

- Arbitrator lacked jurisdiction over petition filed after October 1, 1997, seeking to evict unit owners' adult son because his presence violated over-55-year-old age requirement. Petition, in a broad sense, involved removal of a tenant, a class of disputes removed from the arbitrator's jurisdiction by 1997 amendment to statute.

Bennett v. Sandpiper Condo. Assn., Inc.,

Case No. 99-0521 (Cowal / Final Order Dismissing Petition for Arbitration / March 10, 1999)

- Where unit owner alleged that association has failed to enforce condominium documents by allowing other unit owners to alter exterior appearance of units without the required approval from the required percentage of unit owners, arbitrator was without jurisdiction over dispute.

Berg v. Lincolnwood Towers Condo., Inc.,

Case No. 98-5029 (Powell / Order Dismissing Claims and Order Requiring Additional Documents / October 29, 1998)

- Where unit owner alleged that: the board attempted to collect special assessments not properly passed pursuant to a properly noticed and duly called meeting of the board; the board failed to provide the required statutory notice for a meeting at which a special assessment was to be considered; the budget did not provide for reserves as required by statute and no vote was taken to provide for such a budget; the board did not receive competitive bids; these were claims outside the jurisdiction of the arbitrator.
- Unit owner claimed that two of the five board members held a meeting and illegally passed the budget. The arbitrator held that, as there was no quorum, there was no board meeting; thus, no valid claim existed that board failed to properly conduct a meeting. In addition, the arbitrator would only have jurisdiction over a dispute between the unit owner and the board, but not between the unit owner and the board's individual members.

Boca Office and Warehouse Park, Inc. v. I E M, Inc.,

Case No. 97-0395 (Scheuerman / Final Order of Dismissal / November 19, 1997)

- Arbitrator lacked jurisdiction over petition involving a commercial unit owner installing an air conditioner in a commercial condominium.

Borger v. Oceancrest Condo. Apts., Inc.,

Case No. 97-0273 (Oglo / Order on Jurisdiction / December 10, 1997)

- Claim challenging special assessment imposed by board, without owner vote, to fund renovation project, and challenge to notice given for meeting at which assessment considered, dismissed for lack of jurisdiction.
- Claim that board members harassed and coerced owners into changing recall votes is claim between owner and board member individually, and is not within the jurisdiction of the arbitrator.

Brickell Biscayne Condo. Assn., Inc. v. Bernstein,

Case No. 99-1657 (Draper / Final Order on Jurisdiction / September 3, 1999)

- Arbitrator did not have jurisdiction over disagreement involving the size of dock unit, and the portion of common elements owned by the dock unit. Dispute primarily involves title to a unit and common elements.

Brickell Key II Condo. Assn., Inc. v. Bonatti,

Case No. 99-0831 (Scheuerman / Final Order on Jurisdiction / May 4, 1999 / Amended Final Order / May 18, 1999)

- Where association sought to prevent unit owner from offering units for rent in contravention of the documents, and further sought eviction of the existing tenants, petition dismissed for lack of jurisdiction.

Brickell Townhouse Assn., Inc. v. Bagdan,

Case No. 00-0780 (Scheuerman / Final Order on Jurisdiction / June 29, 2000)

- Where request for expedited determination of jurisdiction did not indicate whether owner named as respondent disagreed with window replacement project on basis of special assessment or alteration to the common elements, arbitrator could not determine whether jurisdiction existed to hear the case. Arbitrator has no authority to hear assessment issue but can determine whether replacement windows constituted necessary maintenance or instead constituted alteration to common elements.

Brooks v. Delvista "B" Condo. Assn., Inc.,

Case No. 98-5367 (Powell / Order Dismissing Claims and Order to Show Cause / January 7, 1999)

- Claim that association harassed the unit owner and that he has been slandered by board members was dismissed as outside the authority of the arbitrator.
- Claim seeking an order lifting liens placed on unit by association was dismissed as outside the arbitrator's authority.

Brooks v. Delvista "B" Condo. Assn., Inc.,

Case No. 98-5367 (Powell / Order / June 9, 1999)

- Petition sought order requiring association to make official records available for review. After certain records were provided, the unit owner sought to amend his petition because the records reflected a discrepancy between assessment expenses and the amount of the checks issued by the association for those expenses. The unit owner sought to amend his petition to seek an explanation for the discrepancy, accompanied by audit trail documentation. Leave to amend was denied where the unit owner was requesting an accounting, since this claim was outside the jurisdiction of the arbitrator.

- Claim seeking itemization statement showing revenue and expenditures failed to state a cause of action for which arbitrator could grant relief; Section 718.111(12), F.S. does not require the association to generate a report upon request of a unit owner.

Bumpus v. Harbor Point Condo. Assn., Inc.,  
Case No. 99-0616 (Draper / Order on Jurisdiction / March 24, 1999)

- Jurisdiction exists over claim that association's executive committee held an unnoticed, closed meeting, that the association did not give unit owners enough time to consider whether to approve proposed sale of the building and construction of additional units, and that the board failed to notice and hold the annual meeting of unit owners and election of directors on the proper date, thereby extending the term of the incumbent directors. No jurisdiction over disagreement alleging that the association's lawyer, who purchased units and negotiated the sale of the building, was involved in a conflict of interest situation. "Dispute" specifically excludes any disagreement that primarily involves an alleged breach of fiduciary duty by one or more directors.

Cash v. Outdoor Resorts at Orlando, Inc.,  
Case No. 97-2511 (Draper / Order on Jurisdiction / March 10, 1998)

- No jurisdiction over claim that association purchased a parcel of real property and obtained a mortgage on it without unit owner approval. Dispute involves the acquisition of property rather than an alteration or addition to the common elements.

Castle Beach Club Condo. Assn., Inc. v. Welcome Food & Drink Corp.,  
Case No. 00-1818 (Draper / Final Order on Jurisdiction / October 27, 2000)

- No jurisdiction over claim by association that commercial unit owners were operating their unit in violation of applicable deed restrictions. In proceeding pursuant to Section 718.1255, F.S., only the owners of residential units may be parties. See Rule 61B-45.013, F.A.C.

Celebration Point Master Assn., Inc. v. Torres,  
Case No. 00-1876 (Draper / Final Order of Dismissal / November 15, 2000)

- No jurisdiction over claim seeking removal of unauthorized guest from unit. Second claim alleging that unit owner and guest caused a nuisance by engaging in parking violations and physical and verbal attacks on security staff, and seeking to enjoin the unit owner from any contact with staff, would not be severed. Unit owner's behavior is tied in large part to that of her guest. In addition, pre-arbitration notice pursuant to s.718.1255(4)(b), F.S., on this second claim was not given.

Chelsea Bayview Condo. Assn., Inc. v. Arias,  
Case No. 00-1875 (Draper / Final Order of Dismissal / November 17, 2000)

- No jurisdiction over claim seeking an order requiring the unit owner to terminate the lease of the unit. While the petition does not seek outright eviction or removal of the occupant of the unit, an order requiring termination of the lease would have the effect of an eviction. Thus, the claim falls outside the definition of “dispute” subject to arbitration.

Cinnamon Cove Villas Condo. Assn., Inc. v. Ray,  
Case No. 00-0949 (Pine / Summary Final Order / October 13, 2000)

- Grandchild cannot be evicted from unit shared with unit owners despite over 55/no children declaration provision. If there is no way for respondents to come into compliance with declaration provision without removing child from their unit, relief is not available in arbitration pursuant to Section 718.1255, F.S., because the case involves the eviction or other removal of a non-owner resident.

Cohen v. Summit Owners Assn., Inc.,  
Case No. 00-1867 (Draper / Final Order Dismissing Petition / January 26, 2001)

- Disagreements involving timeshare condominium association are not subject to arbitration pursuant to Section 718.1255, F.S.

Collins View Condo., Inc. v. Wonneberger,  
Case No. 99-0750 (Pine / Final Order of Dismissal / August 9, 1999)

- Where neither arbitrator nor petitioner is able to effect service of petition and Order Requiring Answer upon respondent, arbitrator obtains no personal jurisdiction over respondent and case must be dismissed.

The Condo. on the Bay Marina Suites Assn., Inc. v. The Condo. on the Bay Management Corp., Inc.,  
Case No. 97-1877 (Draper / Final Order on Jurisdiction / November 24, 1997)

- No jurisdiction over dispute between association and management company as to whether management company is responsible for landscaping costs for the entire development or whether costs should be apportioned among different condominiums. Dispute is not between unit owner and association.

Conley v. 1004 Pine Drive Assn., Inc.,  
Case No. 00-0895 (Powell / Final Order Dismissing Petition for Arbitration / May 25, 2000)

- No jurisdiction, per Section 718.1255(1), F.S., over petition alleging that directors had breached their fiduciary duty. Also, the arbitrator was without authority to hear claims requesting that a receiver be appointed and that an accounting be performed.

Contractor’s Showcase Owner’s Assn., Inc. v. Nisair Partnership,

Case No. 99-1115 (Draper / Final Order Dismissing Petition for Arbitration / June 3, 1999)

- No jurisdiction over claim arising in a commercial condominium, that commercial unit owner had placed a dumpster on common element property in violation of condominium documents.

Crouch v. Commodore Condo. Assn., Inc.,

Case No. 98-3591 (Anderson-Adams / Final Order of Dismissal for Lack of Jurisdiction / April 17, 1998)

- Effective October 1, 1997, Section 718.1255(1), F. S., excludes from jurisdiction of arbitrators those disputes that primarily involve claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property. Petition dismissed where the unit owner was seeking damages resulting from water intrusion into the unit caused by the association's alleged failure to repair/maintain an exterior wall and plumbing which apparently serviced the unit above.

D'Angelo v. Southwind Condo. Assn., Inc.,

Case No. 99-0265 (Powell / Final Order Dismissing Petition for Lack of Jurisdiction / February 24, 1999)

- Arbitrator lacked jurisdiction over petition from unit owner alleging that another unit owner installed a patio on the common elements without association approval. Petitioner did not allege that the association had changed the common elements, but that another unit owner had done so and the association failed to take action against him. This was a dispute between unit owners which alleged that the association has failed to enforce the association's documents.

The Decoplage Condo. Assn., Inc. v. Diaz,

Case No. 98-4713 (Powell / Final Order Dismissing Petition for Arbitration / September 2, 1998)

- No jurisdiction under Section 718.1255 (1), F.S., where association sought removal of tenant. In addition, association's other request for relief, that the arbitrator prohibit the unit owner from violating the six-month minimum leasing restriction, was inextricably interwoven with the eviction issue.

DiPasquale v. Gleneagles Country Club, Inc.,

Case No. 99-0258 (Draper / Final Order on Jurisdiction / February 12, 1999)

- No jurisdiction over disagreement involving recreation association's new member fee, which unit owner alleged interfered with the sale of his unit. Association was not a condominium or cooperative association subject to Section 718.1255, F.S. arbitration

because unit owner membership was not composed exclusively of condominium (or cooperative) unit owners. In addition, disagreement involved fee.

Emory Master Assn., Inc. and Cresthaven Villas No. 31 Condo., Inc. v. Walker,  
Case No. 00-0237 (Powell / Final Order Dismissing Petition / February 24, 2000)

- No jurisdiction over petition seeking a declaration that transfer of title to an individual under 55 was invalid, unless the written approval of associations was received.

FAS International, L.C. v. Castle Beach Club Condo. Assn., Inc.,  
Case No. 97-2126 (Oglo / Final Order of Dismissal for Lack of Jurisdiction / December 31, 1997)

- Condominium building contained residential units, a few commercial units, and a hotel program whereby unit owners could lease their unit to the hotel for transient use. Corporate owner of five units, which was related entity to the condominium and hotel operator, sued the association for breach of fiduciary duty for its failure to pay for maintenance services provided by the operator and for failing to maintain the infrastructure of the building. The petition was dismissed for lack of jurisdiction on the grounds that it contained a dispute involving the refund of assessments, that a critical element of one of the claims involved a party that was neither a unit owner nor an association, that breach of fiduciary duty is not normally eligible for arbitration, that petition did not allege how the failure of the association to maintain the common elements directly affected the petitioner, and that a similar action was already pending in circuit court.

Fernandez v. Versailles Hotel Condo. Assn., Inc.,  
Case No. 97-2408 (Draper / Order Dismissing Case Without Prejudice / February 20, 1998)

- No jurisdiction over unit owner's claim that president of association had used her position to set up her business in an area of mixed use condominium where commercial activities are not permitted. Breach of fiduciary duty claims are outside the arbitrator's jurisdiction.

Fernandez v. Versailles Hotel Condo. Assn., Inc.,  
Case No. 97-2408 (Draper / Final Order of Dismissal / March 16, 1998)

- No jurisdiction over unit owner's claim that association has failed to enforce restrictions against commercial unit owner; dispute is between unit owners. In addition, unit owner/petitioner owns a commercial unit and the dispute is related to his business interests (i.e., his commercial unit). Arbitrator does not have jurisdiction over disputes involving commercial units per 61B-45.013(8).

The Florida Tower Condo. Assn., Inc. v. Mindes,  
Case No. 00-0594 (Pine / Final Order on Jurisdiction / March 29, 2000)

- When two actions based on the same cause of action are pending, jurisdiction rests in the court from which service of process is first perfected. Therefore, since this matter is currently before the Circuit Court of the Eleventh Judicial Circuit, the arbitrator declined to make any attempt to pre-empt the court's jurisdiction.

Garden-Aire Village Sea Haven, Inc. v. Norris,

Case No. 98-3092 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / June 8, 1998)

- Arbitrator lacked jurisdiction over petition filed after October 1, 1997, seeking to enforce prohibition of occupancy by children under the age of 15. Unit owners, who were both under the age of 55, had been approved for occupancy by association despite fact that condominium documents required at least one occupant to be age 55 or older. When a child was born to unit owners, association sought to prohibit child from residing in the unit. Petition, in a broad sense, involved removal of a tenant, a class of disputes removed from the arbitrators' jurisdiction by 1997 amendment to statute.

Garden Isles Apts. #1, Inc. v. Paduda,

Case No. 99-1932 (Pine / Final Order Dismissing Petition for Arbitration / September 27, 1999)

- Petition dismissed for lack of jurisdiction where petitioner asserted that owners' "boarders" or guests or tenants violated documents and where petitioner requested eviction of everyone and a return of unit to the cooperative. In cases filed after Oct 1, 1998, division declines jurisdiction over any tenant eviction.

Garrett's Run Condo. Assn., Inc. v. Gayle,

Case No. 99-0595 (Powell / Final Order Dismissing Petition for Arbitration / March 29, 1999)

- The petition and motion for temporary injunction alleged that unit owner and other occupants, totaling seven persons, have exceeded the occupancy limitation of four persons, and relief sought was an order to limit the occupants to immediate family members and to four people. The arbitrator dismissed the petition due to Section 718.1255(1), F.S., removing from the arbitrator's jurisdiction disagreements involving the eviction of tenants.

Global Yachts International, Inc. v. Venetia Condo. Assn., Inc.,

Case No. 00-0771 (Draper / Final Order of Dismissal / May 4, 2000)

- Arbitrator did not have jurisdiction over claim by commercial unit owner in a residential condominium alleging that association unreasonably withheld approval to construct improvements on limited common element parking spaces, use of which is appurtenant to the commercial unit. See Rule 61B-45.013(8), F.A.C.



- Arbitrator did not have jurisdiction over claim by commercial unit owner in a residential condominium alleging that association refused to permit it to utilize limited common element areas appurtenant to its unit for parking.

Goldenberg v. Courtyard Village at Kings Lake Condo. Assn., Inc.,  
Case No. 97-0167 (Goin / Final Order / June 19, 1997)

- Petition for arbitration brought by unit owner against his association, recreation association, and neighboring condominium association was dismissed for lack of jurisdiction. Dispute involved the planting of shrubbery by the recreation association on the individual condominium's property, which unit owner believed should have been paid by the individual condominiums rather than as a recreation association expense. Therefore, dispute primarily involved the authority of the recreation association to maintain the property and also the levy of a fee or assessment because unit owner disputed the manner in which the assessment was apportioned. In addition, allegation stating that unit owner's association was paying for some of the neighboring association's expenses and the recreation association's expenses involved the manner in which assessments were calculated and also involved a dispute between the various associations.

Goldsmith v. Delray Racquet Club Assn., Inc.,  
Case No. 97-0318 (Draper / Final order on Jurisdiction and Motion for Immediate Temporary Injunctive Relief / June 27, 1997)

- Claim that association was using funds raised by special assessment, imposed for purpose of renovating lobbies of condominium buildings, to instead make structural changes, such as removing bathrooms and moving mail boxes, not a "dispute" subject to arbitration under Section 718.1255(1), F.S. Disagreement involving the levy of an assessment excluded from definition of dispute.

Goodman v. The Ambassador Condo. of Bonita Beach Assn., Inc.,  
Case No. 00-0624 (Draper / Final Order of Dismissal / April 12, 2000)

- No jurisdiction over claims that board failed to conduct required audit of accounts and that budget failed to give full details of association's insurance coverage.

Gordon v. Cypress Creek Villas of Coral Springs II Condo. Assn., Inc.,  
Case No. 99-1094 (Draper / Final Order Dismissing Petition for Arbitration / June 4, 1999)

- Arbitrator did not have jurisdiction over claim that association failed to enforce noise restrictions against owner of unit directly above petitioners' unit who was creating excessive noise with his boots on a wooden floor and by operation of an air purification

system within his unit. Dispute was in essence between two neighboring unit owners and involved the failure of the association to enforce the documents.

Greentree Condo. Assn., Inc. v. Fernandez,

Case No. 97-0271 (Draper / Final Order on Jurisdiction and Motion for Emergency Temporary Injunctive Relief / June 5, 1997)

- Arbitrator lacked jurisdiction over association's claim against six holdover board members. Association was not trying to require unit owner/respondents to do, nor not do anything with their units. It was not alleged that association had conducted election improperly only that old board members refused to give up seats.

Greenway Village South Assn., No. 3, Inc. v. Blair,

Case No. 99-1531 (Powell / Final Order Dismissing Petition for Arbitration / July 30, 1999)

- Petition alleged that tenant was parking a pickup truck on condominium property in violation of the condominium documents. Due to Ruffin v. Kingswood E. Condo. Assoc., Inc., 719 So.2d 951 (Fla. 4th DCA 1998), in which the court appeared to hold that the arbitrator lacked statutory power to enter an order directly addressed to a third party (not an association or unit owner), petition was dismissed for lack of jurisdiction because the condominium was within the geographic confines of the 4th DCA.

Grenadier Lakes at Welleby Condo., Inc. v. Cameron,

Case No. 00-0160 (Scheuerman / Final Order Dismissing Petition / February 7, 2000)

- Where association initiated proceeding against a former owner and current owner seeking entry of a final order reversing an unapproved transfer of title to a unit, arbitrator lacked jurisdiction over dispute because it involved parties other than an association and a current owner, and because the dispute primarily involved title.

Harpster v. Venetian Condo., Inc.,

Case No. 98-4271 (Powell / Final Order Dismissing Petition for Lack of Jurisdiction / July 6, 1998)

- Unit owners in arbitration petition complained of unit owner above them who installed marble floors without required soundproofing and they also complained that the association has not responded to their complaint. The petition was dismissed for lack of jurisdiction because it is in essence a dispute between unit owners, and not against the association.

Henschel v. Jupiter River Park, Inc.,

Case No. 00-1882 (Draper / Final Order of Dismissal / December 29, 2000)

- Claim that the association wrongfully certified the petitioner's recall from the board of directors, failed to maintain a current roster of unit owners and to enforce voting certificate requirements, resulting in unauthorized ballots being counted in the recall effort would be dismissed. A former board member lacks standing to challenge his own recall.

Hillcrest East No. 27, Inc. v. Rodriguez,

Case No. 98-3384 (Draper / Final Order Dismissing Amended Petition for Arbitration / May 27, 1998)

- Arbitrator did not have jurisdiction over claims alleging that unit occupancy limit was exceeded and that minor children were living in the unit with owner and roommate in violation of prohibition against permanent occupancy of unit by children. Petition was filed after the effective date of the 1997 amendment to Ch. 718, F.S., excluding from the definition of "dispute" claims primarily involving eviction or other removal of a tenant. Also included in petition was a claim that the occupants were a nuisance, a claim over which the arbitrator did have jurisdiction; however, since it was impractical to sever this claim from the other claim, the entire petition was dismissed.

Horan v. Lakeview of Largo Condo. Assn., Inc.,

Case No. 97-1888 (Draper / Order Dismissing Petition / December 12, 1997)

- No jurisdiction where petition alleged unit owner suffered water damage to his unit as a result of leak in water pipes to his unit. Petition failed to allege that the leak was result of association's negligence or that the association was responsible for damage regardless of an allegation of negligence.

Indian Pines Village Condo. Assn., Inc. v. Innocent,

Case No. 98-3485 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / May 1, 1998)

- Petition alleged that unit owners have exceeded the maximum occupancy allowed by the declaration. The unit owners had five persons residing in the unit--at least one of whom is the unit owners' child. Section 718.1255(1), F.S. (as amended effective 10/1/97), does not give the division jurisdiction over cases which primarily involve the eviction or other removal of a tenant from a unit. The term "tenant" is defined broadly enough to encompass unapproved non-owner occupants whose presence violates the association's restrictions as to occupancy of the unit--even where it is not alleged that a formal lease agreement exists or that consideration is being paid for the use of the unit. Therefore the petition was dismissed for lack of jurisdiction.

International Princess Condo. Assn., Inc. v. Martinez,

Case No. 00-0822 (Draper / Final Order Dismissing Petition for Arbitration / May 10, 2000)

- Arbitrator was without jurisdiction over association's claim that three board members, named as respondents, conducted a meeting improperly. Claims by an association against a unit owner must involve the authority of the association to (1) require the unit owner to do something with his unit, or (2) alter or add to the common elements.

Inverrary Gardens Condo. I Assn., Inc. v. Inverrary Gardens Limited,  
Case No. 99-2026 (Draper / Order Determining Jurisdiction / October 14, 1999)

- Arbitrator has jurisdiction over claim by association that unit owner should be required to take remedial action to control mold and mildew in unit, and pay damages or restore common element property damaged by mold/mildew infiltration. Punitive damages claim may not be heard, however.

Jaques v. Lakeshore 9 Condo. Assn., Inc.,  
Case No. 97-0203 (Goin / Final Order Dismissing Petition for Arbitration / June 18, 1997)

- Arbitrator did not have jurisdiction over dispute filed by unit owners against upstairs neighbors who installed tile in the unit and the condominium association which had failed to take action to enforce the restriction against tile. Case involved the failure of the association to enforce condominium documents so no jurisdiction pursuant to Rule 61B-45.013(6), F.A.C. Also, case was between unit owners so no jurisdiction existed pursuant to Rule 61B-45.013(2), F.A.C.

Johnson v. The Alexandria Condo. Assn., Inc.,  
Case No. 98-4006 (Draper / Order on Motion to Dismiss and Order to Show Cause / September 8, 1998)

- Claim contained in petition, filed after effective date of 1997 amendment to definition of "dispute" subject to arbitration (which amendment removed from jurisdiction of the arbitrator petitions seeking money damages for the failure of the association to maintain the common elements) alleging that association failed to maintain the common elements, and seeking an order requiring the association to stop water intrusion into the units was within arbitrator's jurisdiction. Claim was contrasted to corresponding claim for money damages for physical damage to the units which resulted from the association's failure to maintain common elements. However, because claim for money damages was pending in circuit court, arbitrator declined to hear maintenance claim separately, as claims should be heard in a single forum.

Jupiter Lakes Townhomes Condo. Assn., Inc. v. Bello  
Case No. 99-2280 (Powell / Final Order Dismissing Petition for Arbitration / December 10, 1999)

- Petition alleged that tenant was keeping an oversized dog in unit in violation of the declaration. Due to Ruffin v. Kingswood E. Condo. Assoc. Inc., 719 So.2d 951 (Fla. 4th DCA 1998), in which the court appeared to hold that the arbitrator lacked statutory power to enter an order directly addressed to a third party (not an association or unit owner), petition was dismissed for lack of jurisdiction because the condominium was within the geographic confines of the 4th DCA.

Kalif v. Pebble Creek Condo. Assn.,

Case No. 98-5009 (Pine / Final Order Dismissing Petition for Arbitration / October 22, 1998)

- Petitioners sought final order requiring removal of tile in unit above theirs, naming as respondents the association, the former owners of upstairs unit who installed tile, and the current unit owners. The only disputes eligible for arbitration are those existing between a unit owner or administration. Pursuant to this rule, petitioners' dispute with former owner of condominium unit above petitioners' unit and petitioners' dispute with current owners of unit above petitioners' unit are both ineligible for arbitration. Moreover, pursuant to Rule 61B-45.013(6), F.A.C., an arbitrator cannot accept a petition primarily designed to require an association to enforce the condominium documents.

Karanda Village III Condo. Assn., Inc. v. Cannizzaro,

Case No. 99-1180 (Draper / Final Order Transferring Case / July 16, 1999)

- Where answer raised, as a defense to pet violation claim, that the dog is a companion animal to owner's disabled girlfriend/roommate, case would be transferred to Florida Commission on Human Relations for resolution of fair housing issues.

Keck v. Country Aire Village, Inc.,

Case No. 97-0207 (Oglo / Summary Final Order / December 2, 1997)

- Where association imposed on petitioner a \$20 bagging fee for collecting loose leaves, charge involved a fee, not a fine, and was therefore outside the jurisdiction of the arbitrator.

Klaber v. Avant Garde Condo. Assn., Inc.,

Case No. 97-0430 (Scheuerman / Final Order Dismissing Petition / November 14, 1997)

- Dispute challenging special assessment to reconstruct lobby area dismissed for lack of jurisdiction.

Koganovsky v. 49th Street Townhouse Condo., Inc.,

Case No. 98-3496 (Draper / Final Order Closing Case File / May 4, 1998)

- No jurisdiction over claim filed after October 1, 1997, that association failed to properly maintain common elements resulting in damages to the unit and a general

diminution in its value on account of poor maintenance of the condominium property and failed to properly spend maintenance funds. Disagreement primarily involved breach of fiduciary duty and damages for failure to maintain common elements, subjects excluded from definition of "dispute," as changed effective October 1, 1997.

Kohut v. Palm Lake Condo., Inc.,

Case No. 00-0996 (Powell / Final Order of Dismissal for Lack of Jurisdiction / June 13, 2000)

- No jurisdiction over claim seeking money damages for damage to unit caused by association's alleged failure to repair common element sewer line, causing backup into unit. Section 718.1255(1), F.S.

Kreitman v. The Decoplage Condo. Assn. Inc.,

Case No. 98-3495 (Draper / Amended Final Order / September 14, 1999)

- Where evidence presented at final hearing established that penthouse owners rather than association carried out alterations to the hallways of the penthouse, the arbitrator determined that the dispute concerned the association's failure to take action with respect to alterations performed by other owners, and was outside her jurisdiction per Section 718.1255, F.S.

Lake Clarke Gardens Condo., Inc. v. Nilson, (currently on appeal)

Case No. 99-0947 (Pasley / Final Order Transferring Case / July 2, 1999)

- Where association initiated case seeking removal of unit owner who was under 55 years of age, who had acquired unit through inheritance, and unit owner asserted age discrimination as an affirmative defense, case was transferred to Florida Commission on Human Relations.

Lakeside Point Apartment No. 5. Assn., Inc. v. Hanner,

Case No. 98-4178 (Anderson-Adams / Final Order Determining Jurisdiction / July 2, 1998)

- No jurisdiction over dispute where association alleges that unit owner is permitting two occupants who are under the age of 55 to reside in his unit, and the declaration of condominium prohibits occupancy by any person who is less than 55 years of age. The underage occupants are not owners of record of the subject unit, and case was filed subsequent to the October 1, 1997 amendments to Section 718.1255 (1) (a), F.S., which removed from the arbitrators' jurisdiction those disputes involving the eviction or removal of a tenant.

Lakeview Townhomes at the California Club Condo. Assn., Inc. v. Figueras,

Case No. 00-0126 (Powell / Final Order Dismissing Petition for Arbitration / January 28, 2000)

- Where petition alleged that tenant was maintaining a group home and association sought order which would require removal of unrelated and excess occupants, it was essentially seeking an eviction of tenants. Therefore, this disagreement did not fall within the definition of “dispute” subject to arbitration pursuant to Section 718.1255, F.S.

Le Maisonnueve Condo. Assn., Inc. v. Bernier,

Case No. 00-0476 (Pine / Final Order of Dismissal / April 10, 2000)

- If the relief the petitioner seeks is an order requiring the unit owner to remove some occupant from the unit, then for the purposes of Section 718.1255, F.S., the matter primarily involves "the eviction or other removal of a tenant" and the dispute is outside the arbitrator's jurisdiction. Petitioner in this case argued that petition is against the unit owner, that it primarily seeks an order finding unit owner in violation, and that it only indirectly seeks removal of tenant, but argument was rejected.

Ludlum Lakes Townhouses Section One Assn., Inc.,

Case No. 97-2424 (Draper / Order to Show Cause / February 24, 1998)

- No jurisdiction over dispute between two associations over rental of caretaker's apartment in jointly managed recreation area. In the absence of allegation that the apartment is a “unit” and one of the associations is a “unit owner,” the dispute is one between two associations, over which arbitrator does not have jurisdiction.

Mandia v. Hyman and Kaplan Law Firm,

Case No. 99-0189 (Pine / Summary Final Order of Dismissal / February 26, 1999)

- Unit owner may not file petition naming law firm of association as respondents. “Dispute” means dispute between unit owner(s) and association.

McElligott v. Sabal Point Apartment Assn., Inc.,

Case No. 98-5322 (Draper / Final Order Dismissing Petition for Lack of Jurisdiction / December 9, 1998)

- No jurisdiction over petition filed by unit owners alleging that another unit owner/respondent installed non-conforming windows on his unit without submitting the required application; that respondents/board members slandered and discredited the petitioners; that respondents spent association funds unnecessarily and inappropriately; and that the respondents accepted minutes of a board meeting although they were inaccurate. Disagreement between non-unit owner corporation and condominium association is not a dispute between an association and a unit owner subject to arbitration pursuant to Section 718.1255, F.S. Further, disagreement between petitioning unit owners and individual board members is one between unit owners and is not subject to arbitration. Finally, allegation that inaccurate minutes were kept failed to show how any statute, rule, or document was violated, or that dispute was otherwise relevant.

Meadowridge East Assn., Inc. v. Pepe,

Case No. 00-0952 (Pine / Final Order of Dismissal / May 26, 2000)

- The relief requested in this case was an order requiring the unit owner to permanently remove from the unit her 12-year-old grandchild, who lives in the unit with the respondent. If the petitioner seeks an order requiring the unit owner to remove some non-owner occupant from the unit, then for the purposes of Section 718.1255, F.S., the matter primarily involves "the eviction or other removal of a tenant," and the disagreement is outside the jurisdiction of the arbitrator.

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

Case No. 99-2230 (Powell / Order to Show Cause / December 1, 1999)

- The request for an order requiring establishment of reserve accounts raises an issue outside the arbitrator's authority.

Monetta v. Naples Sunrise III Condo. Assn., Inc.,

Case No. 98-3719 (Draper / Final Order Dismissing Petition for Arbitration / April 15, 1998)

- Arbitrator lacked jurisdiction over claim that association permitted other unit owners to construct patios on the common elements and conducted a poll, which purported to approve construction of patios.

Morales v. Bay Park Towers Condo. Assn., Inc.,

Case No. 98-3539 (La Plante / Order Rescinding Order Requiring Answer and Final Order Dismissing Case / April 16, 1998)

- No jurisdiction to hear case seeking damages for association's failure to maintain roof, which allowed water to leak through dining and living room ceilings, damaging unit, where petition filed after October 1, 1997.

Mueller v. La Renaissance Condo. Assn., Inc.,

Case No. 96-0193 (Oglo / Final Order / February 23, 1998)

- Rule imposing \$50 charge where association employees forced to remove furnishings on a balcony in event of weather or repair found to involve a fee and not a fine; petition dismissed for lack of jurisdiction.

Myer v. Lakeshore Village South Condo. Assn., Inc.,

Case No. 98-4608 (Draper / Final Order of Dismissal / August 19, 1998)

- No jurisdiction over claim that association had failed to adequately maintain the exterior of the building by not painting it frequently enough and not cleaning the roof well



enough, and that association required unit owner to remove plant trimmings resulting when unit owner pruned some plants which he alleged were not being maintained properly. Claims involved the failure of the association to properly maintain the common elements and unit owner failed to allege any direct effect on him or his unit.

Nassif v. Continental Towers, Inc.,

Case No. 99-1933 (Powell / Order Determining Parties / February 25, 2000)

- Petition seeking access to official records also sought damages against individuals responsible for failure to make records available, citing Section 718.111(12)(c), F.S., providing for individual liability of the records custodian. Claim seeking damages against individuals other than the association stricken because jurisdiction of arbitrator is limited to disputes between unit owners and associations, under Section 718.1255(1), F.S.

National Ventures, Inc. v. Water Glades 300 Condo. Assn., Inc.,

Case No. 97-0353 (Draper / Final Order of Dismissal / November 26, 1997)

- No jurisdiction over claims for damages by former unit owner alleging that unit use restrictions were invalid, causing diminution in value of unit and diminishing its usefulness to corporate owner requiring sale of unit. Corporation had sold unit and, therefore, was without standing to bring claims.

Number One Condo. Assn. - Village Green, Inc. v. Torres,

Case No. 00-1398 (Draper / Final Order on Jurisdiction / August 21, 2000)

- No jurisdiction over association's petition claiming that unit owner is allowing underage, nuisance child to reside in unit in adult community. Association seeks an order requiring the owner to remove the child from the unit. Therefore, claim is exempt from arbitration requirement of Section 718.1255, F.S., as an eviction.

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

Case No. 97-2560 (Anderson-Adams / Final Order Dismissing Petition / April 27, 1998)

- Petition dismissed for lack of jurisdiction where petition alleged that owner was permitting unapproved non-family members/tenants to occupy unit in violation of the declaration. Effective on October 1, 1998, Division lacks jurisdiction over tenant eviction disputes. Association authorized to file tenant eviction action in court in its own name.

Oriole Gardens Condo. Two Assn., Inc. v. Gelman,

Case No. 97-2111 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / March 2, 1998)

- Petition dismissed for lack of jurisdiction where association sought to enforce bylaw prohibiting occupancy by anyone under 55 years old against the son of an owner and

his female companion. Effective on October 1, 1997, Division lacks jurisdiction of tenant disputes where association seeks eviction.

Pagano v. Deerfield Beach Gardens Condo. Assn., Inc.,  
Case No. 00-0644 (Draper / Final Order on Jurisdiction / April 12, 2000)

- No jurisdiction over claim that association failed to return \$55,907.00 operating fund surplus to unit owners at end of year.

Pine Ridge at Palm Harbor Condo. Assn., Inc. v. Alexopoulos,  
Case No. 97-2277 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / April 27, 1998)

- Petition dismissed for lack of jurisdiction where association sought to enforce leasing restrictions prohibiting occupancy by any person under the age of 25 years. Effective on October 1, 1997, Division lacks jurisdiction over tenant eviction cases. Association authorized to commence eviction action in court in its own name.

Pratt v. Coral Springs Tower Club II,  
Case No. 97-2240 (Draper / Order Requiring Amended Petition / January 6, 1998)

- Petition describing scores of examples of the association's failure to maintain the common elements dismissed because petitioner failed to explain how his use of common elements had been directly affected, as required by Rule 61B-45.013(7), F.A.C.

Promenade at Kendale Lakes Condo., Inc. v. Martinez,  
Case No. 98-4786 (Powell / Final Order Dismissing Petition for Arbitration / September 11, 1998)

- No jurisdiction under Section 718.1255(1), F.S., where association, in petition filed after October 1, 1997, sought removal of tenant. In addition, the association's other requests for relief, removal of tenant's dog and fines, were related to the eviction issue and were dismissed as well.

Reuther v. 400 Beach Road Condo. Assn., Inc.,  
Case No. 98-4959 (Draper / Final Order / January 29, 1999)

- Claim that unit owner had the right to exclusive use of common element foyer located between her contiguous units and outdoor, common hallway, based on "adverse possession" of the area, is outside the arbitrator's jurisdiction as it involves title to property.

Rinella v. Gulf Cove Trailer Park, Inc.,  
Case No. 99-2138 (Scheuerman / Final Order Dismissing Petition / November 2, 1999)

- Arbitrator lacked authority to hear complaint by owner that other owners, with approval of the board, had installed boat lifts on the common elements. Board, by its approval is not deemed to have altered the common elements. Also, the failure of the board to enforce documents against other owners does not state a dispute subject to arbitration.
- Arbitrator lacked authority to consider claim by owner that other owners had transferred their interest in cooperative without approval of association. Dispute involves failure of the board to enforce the documents.

Riverside Estates Condo. Assn., Inc. v. Diliberto,

Case No. 99-2421 (Pine / Final Order Dismissing Petition / January 20, 2000)

- Arbitrator cannot take jurisdiction over complaints in geographic confines of 4th DCA where relief requested is eviction of tenant and removal of tenant's dog.

Ross v. Cloister Beach Towers Assn., Inc.,

Case No. 98-5153 (Draper / Order on Respondent's Motion to Dismiss / February 10, 1999)

- No jurisdiction over claim that association deposited funds in uninsured accounts. The alleged failure is not one of the board "failures" cognizable under Section 718.1255(1)(b), F.S. The fact that the claim was framed as a failure to properly conduct a meeting does not transform it into one within the arbitrator's jurisdiction. In addition, the claim involves an alleged breach of fiduciary duty.
- Claim that association was required under association documents to limit term of bulk cable television contract to three years is outside arbitrator's jurisdiction. The dispute primarily involves a determination of contractual rights between the association and a third party.

Rumaker v. Pine Island Ridge Condo. Assn., Inc.,

Case No. 97-2051 (Oglo / Final Order of Dismissal for Lack of Jurisdiction / October 28, 1997)

- Claim by indigent owner seeking to challenge monthly \$20 cable bill dismissed for lack of jurisdiction as it involved assessment. In any event, present statute permits association to enter into a bulk contract for cable services and does not authorize association to excuse owner based on ability to pay.

Sabler v. Casarina Condo. Assn., Inc.,

Case No. 00-0987 (Draper / Final Order of Dismissal / June 8, 2000)

- Arbitrator lacked authority over petition alleging that board erred by approving special assessment for restoring, replacing and repairing various parts of the condominium building without unit owner approval. The work as described does not constitute an improvement or material alteration, as alleged. The only remaining claim involves imposition of a special assessment, which is also beyond the arbitrator's jurisdiction.

Sanchez v. Pine Island Ridge Phase "A" Condo. Assn., Inc.,  
Case No. 00-2177 (Pine / Order Dismissing Petition / January 29, 2001)

- Unit owner's petition stating that other unit owner has colonized part of the common elements, to the detriment of the petitioner's enjoyment of own unit, does not state a dispute within jurisdiction of arbitrator.

Scalese v. The Wittington Condo. Apts., Inc.,  
Case No. 99-0939 (Powell / Order on Motion to Dismiss / August 6, 1999)

- Petition alleged that the association failed to repair the valve in the common elements which shut off water to unit and that association withheld approval to complete renovation project. These actions held up the renovation, causing unit owner to suffer inconvenience and financial loss. Petition sought as relief an order requiring the association to approve the project and repair the valve, and petition also sought money damages. Petition was held not barred by Section 718.1255(1)(a), F.S. where request for damages was not the primary thrust of the petition and was closely related to, and flowed from the other primary claims.

Schneck v. Timber Lake Estates, Inc.,  
Case No. 97-1838 (La Plante / Final Order Dismissing Petition for Arbitration / November 26, 1997)

- Petition alleged that the board of directors failed to return the common surplus for 1995 and 1996. Petition dismissed for lack of jurisdiction, as the issues raised primarily relate to the levy of a fee or assessment.

Seiden v. Roals, Inc.,  
Case No. 99-1235 (Powell / Final Order Dismissing Petition for Lack of Jurisdiction / June 25, 1999)

- Petition filed by unit owner against owner of unit upstairs, claiming that floor covering and soundproofing violated the declaration, was dismissed because it was a dispute between unit owners.
- Petition filed by unit owners against a developer, claiming that the developer impliedly warranted that the unit was fit for its intended purpose and merchantable, and where unit owners alleged that their unit was not merchantable, was dismissed. Section

718.1255(1)(b), F.S., specifically exempts from the arbitrator's authority disputes involving the interpretation or enforcement of any warranty.

Selsman v. Buckingham at Century Village Condo. #II Assn., Inc.,

Case No. 98-5059 (Powell / Final Order Dismissing Petition for Lack of Jurisdiction / October 22, 1998)

- Petition filed by unit owner against association claiming that association had not enforced its bylaws against unit owner upstairs, who had installed tile floors, was dismissed for lack of jurisdiction. Petition alleged dispute between unit owners. Arbitrator also had no jurisdiction to hear dispute brought by unit owner alleging that association is failing to enforce condominium documents against another unit owner.

Slama v. Costa Del Rey North Condo. Assn., Inc.,

Case No. 00-1078 (Draper / Final Order of Dismissal / June 25, 2000)

- No jurisdiction over claim that board approved installation of waterfall on the common elements by petitioners' neighbors without approval of the unit owners as required by the documents, and that board failed to take action against waterfall builders even though the noise created by the waterfall pump was unbearable to the petitioners. Petitioners are seeking to require the association to enforce the documents. The controversy is also one between unit owners.

Spencer v. Sun and Surf 100 Assn., Inc.,

Case No. 98-4603 (Draper / Order Dismissing Petition / August 10, 1998)

- Arbitrator did not have jurisdiction to hear petition seeking money damages or repair of the unit which was damaged during repairs to balcony. Dispute primarily involved claim for damages. Claim for damages based on obstruction of the unit owner's view, light and sun caused by the plywood left over the sliding glass doors to his balcony during the repairs, failed to state a cause of action.

Stockett v. Lake Shore Condo. Assn., Inc.,

Case No. 99-0338 (Powell / Final Order Dismissing Petitioner for Lack of Jurisdiction / February 26, 1999)

- Arbitrator lacked jurisdiction over petition from unit owner alleging that other unit owner placed furniture in the common element hallway. This was essentially a dispute between unit owners which alleges that the association has failed to enforce the association's documents.

Sullivan v. Board of Directors Gateland Village Condo. Assn., Inc.,

Case No. 98-5191 (Anderson-Adams / Final Order Determining Jurisdiction / January 21, 1999)

- No jurisdiction to accept case under Section 718.1255, F.S., where petitioning unit owner who is not a member of board of directors alleges that board failed to hold a meeting on whether to certify recall, and seeks as relief a determination that the recall should **NOT** have been certified pursuant to Section 718.112(2)(j)4., F.S.

Sunbird of Panama City Beach Owners Assn., Inc. v. Walker,

Case No. 99-1378 (Scheuerman / Final Order Dismissing Petition / November 19, 1999)

- Arbitrator lacked authority over petition alleging that respondents had taken title to their unit and created a timeshare by the manner in which title was taken, where relief demanded included request for order divesting respondents of title. Dispute primarily involved title.

Taras v. Commodore Club South, Inc.,

Case No. 00-1836 (Draper / Final Order Closing Case File / December 12, 2000)

- No jurisdiction over claims that the association imposed a special assessment in excess of \$749,000 for a balcony restoration project, undertook \$1,000,000 in repairs to the garage, and undertook lobby improvements costing in excess of \$750,000, without unit owner approval. While the claims tangentially concern the authority of the association to alter or add to the common elements, in this case the claims involve the levy of assessments, a class of disagreement specifically excluded from the definition of "dispute."

Taylor v. Atlantic Ocean Club Condo. Assn., Inc.,

Case No. 97-0244 (Oglo / Final Order of Dismissal / March 19, 1998)

- Where unit sold in course of arbitration, case seeking damages against association for failing to approve purchaser dismissed as case no longer involved an owner and an association.

Tilley v. Spinnaker Cove Condo. Assn., Inc.,

Case No. 00-1076 (Draper / Final Order of Dismissal / June 23, 2000)

- No jurisdiction over petition claiming that association permitted petitioners' neighbor to install a boat lift on the common elements adjacent to neighbor's dock without first obtaining approval of the petitioners and the association board as required by the condominium documents. The lift obstructs the petitioners' view of the waterway and prevents installation of a boat dock behind the petitioners' unit. Disagreement basically involves the alleged failure of the board to enforce the documents.

Turtle Lake Golf Colony Condo. Apts., Inc., No. 1 v. Stead,

Case No. 97-0183 (Oglo / Final Order of Dismissal / June 18, 1997)

- Suit filed by association seeking to nullify unapproved conveyance of unit to nuisance son of former owner dismissed for lack of jurisdiction as dispute involved title to the unit.

Ultimar Homeowners Assn., Inc. v. Yarbrough,

Case No. 00-2160 (Draper / Order on Respondent's Motion for Rehearing / March 22, 2001)

- Petition alleged that the unit owner, her tenant, and the owner's son, an occasional visitor to the unit, threatened and intimidated the association's employees, etc., and that the tenant and the owner's son drove their cars dangerously on the condominium property. Among other things, the claim involves and seeks to control the respondents' behavior on and off the property, which the arbitrator cannot consider. In addition, the arbitrator does not have jurisdiction over the unit owner's son, who is not a tenant/occupant of the unit or a unit owner. Because only partial relief against the respondents can be obtained through arbitration, severing the nonarbitratable claim and arbitrating the remaining issues would be a poor use of the parties' time and resources and improper.

Villa v. Trianon Park Condo. Assn., Inc.,

Case No. 99-0571 (Draper / Order Dismissing Claim and Striking Request for Relief / August 26, 1999)

- Claim that the board failed to respond to unit owner's letters asking a series of questions, such as who are the board members and when are they available for questions, dismissed. Though asserted to be an official records claim pursuant to Section 718.111(12), F.S., this part of the statute does not require the association to answer interrogatories from unit owners or to create records desired by unit owners. Another part of the petition, complaining about the board's failure to generate a response to her letters, fails to state a claim within the jurisdiction of the arbitrator.

West Wind Estates Condo. Assn., Inc. v. Volino,

Case No. 99-2118 (Draper / Final Order of Dismissal / November 19, 1999)

- Arbitrator lacked jurisdiction over claim by association that unit owner was violating declaration by permitting an individual less than 16 years of age to occupy the unit. Even though the petition only sought an order requiring the unit owner to abide by the documents, did not name the underage occupant as a respondent, and did not seek eviction against the occupant, disagreement still involved eviction of a tenant or other occupant, since relief requested was entry of order requiring owner not to allow the occupant to stay in the unit.

Williamson v. Sabine Yacht & Racquet Club Condo. Assn., Inc.,

Case No. 99-1337 (Anderson-Adams / Order Dismissing Claim and Requiring Mediation / July 28, 1999)

- Claim alleging that association failed to establish a reserve fund for door and window maintenance dismissed for lack of jurisdiction.

Williamson v. Sabine Yacht & Racquet Club Condo. Assn., Inc.,  
Case No. 99-1552 (Draper / Final Order / January 31, 2000)

- Arbitrator did not have jurisdiction over claim that association permitted another unit owner to move air conditioner condenser unit to the roof of building. Arbitrator has jurisdiction over disputes involving the authority of the board of directors to alter or add to a common area or element. Disagreement is actually between unit owners rather than the association and a unit owner.

Windemere Condo., Inc. v. Gerzina,  
Case No. 97-2009 (Draper / Final Order of Dismissal / October 20, 1997)

- No jurisdiction over claim by association that respondent/unit owners were acting as a renegade board of directors. Petition does not allege that the association failed to properly conduct an election, therefore, jurisdiction does not lie under Section 718.1255(1)(b), F.S.

Wood v. Park Place, Inc.,  
Case No. 00-1432 (Draper / Final Order of Dismissal / October 12, 2000)

- Claim by cooperative unit owner, that association had voted to terminate her lease and her tenancy, involved title to the unit. Therefore, arbitrator did not have jurisdiction over the petition.

Zwirn v. Karanda Village V Condo. Assn., Inc.,  
Case No. 99-0419 (Draper / Order Determining Jurisdiction / February 26, 1999)

- Claim that association improperly paid the association president's legal fees in a criminal matter does not constitute a "dispute" within the arbitrator's jurisdiction as it involves the levy of an assessment.

***Not ripe/bona fide dispute / live controversy***

Sigismondi v. Kendall Acres West Condo. Assn., Inc.,  
Case No. 99-0247 (Powell / Final Order Dismissing Petition / August 11, 1999)

- The arbitrator dismissed the petition as moot where the association complied with the relief sought by replacing a leaky roof. The arbitrator refused the unit owners' request to name them as prevailing party on the basis that this was an issue which would become ripe only upon the timely filing of a motion for fees.

Stover v. The Avalon Assn., Inc.,  
Case No. 99-0404 (Powell / Order on Motion / October 19, 1999)



- Unit owner filed a petition to require association to repair low hot water problem in unit. During the pendency of the proceeding, the unit owner requested certain official records from the association, which it did not provide. The unit owner then filed a motion with the arbitrator, requesting an order granting injunctive relief, requiring the association to produce the records, and imposing \$50 per day as damages against the association for failure to timely produce the documents. The arbitrator held that an order granting injunctive relief and an award of damages were inappropriate where the petition did not allege a violation of Section 718.111(12), F.S., regarding access to official records, nor had the unit owner sought leave to amend the petition to include such a claim.

***Pending court or administrative action / abatement / stay***

Fareham Square Condo. Assn., Inc. v. Hobbs,

Case No. 98-4088 (Powell / Order on Motion to Dismiss and Order on Motion to Conduct Discovery / August 14, 1998)

- Where unit owner filed motion to dismiss arbitration on the basis that a circuit court action was pending, the arbitrator denied the motion because the dispute was properly before the division, per Section 718.1255, F.S., and any court decision on the subject matter of this arbitration may be void if entered in excess to the circuit court's subject matter jurisdiction. The arbitrator directed the association to present proof that the circuit court action had been abated pending arbitration. Alternatively, the parties could obtain an agreed order in circuit court referring the subject matter of the petition to arbitration.

Fareham Square Condo. Assn., Inc. v. Hobbs,

Case No. 98-4088 (Powell / Final Order Dismissing Petition for Arbitration / November 25, 1998)

- Petition dismissed where parties did not respond to order directing them to present proof that pending circuit court action had been abated or that the subject matter of the petition was referred to arbitration. Arbitration proceeding could not go forward while another proceeding concerning the same subject matter was active in another forum.

The Florida Tower Condo. Assn., Inc. v. Mindes,

Case No. 00-0594 (Pine / Final Order on Jurisdiction / March 29, 2000)

- When two actions based on the same cause of action are pending, jurisdiction rests in the court from which service of process is first perfected. Therefore, since this matter is currently before the Circuit Court of the Eleventh Judicial Circuit, the arbitrator declined to make any attempt to pre-empt the court's jurisdiction.

4000 Island Blvd. Condo. Assn., Inc. v. DeBeer,

Case No. 99-1038 (Powell / Order Denying Motion for Stay / February 10, 2000)

- Motion filed Feb. 9, 2000, for stay of arbitration proceedings to seek emergency injunction in circuit court denied where most recent incidents of dog's misbehavior occurred in October 1999, and the misbehavior consisted of getting loose in the condominium hallway. The motion did not demonstrate irreparable harm or injury existed or would result, as required by Rule 61B-45.011(2), F.A.C.

Islandia Condo. Assn., Inc. v. Simoes,

Case No. 96-0261 (Goin / Order on Respondents' Emergency Verified Motion to Dismiss for Lack of Jurisdiction / February 21, 1997)

- Motion to dismiss arbitration on basis of ongoing circuit court suit denied where there was no substantial duplication of causes of action and where the relief sought was different in the circuit court complaint as opposed to the arbitration.

Johnson v. The Alexandria Condo. Assn., Inc.,

Case No. 98-4006 (Draper / Order on Motion to Dismiss and Order to Show Cause / September 8, 1998)

- Claim contained in petition, filed after effective date of 1997 amendment to definition of "dispute" subject to arbitration (which amendment removed from jurisdiction of the arbitrator petitions seeking money damages for the failure of the association to maintain the common elements) alleging that association failed to maintain the common elements, and seeking an order requiring the association to stop water intrusion into the units was within arbitrator's jurisdiction. Claim was contrasted to corresponding claim for money damages for physical damage to the units which resulted from the association's failure to maintain common elements. However, because claim for money damages was pending in circuit court, arbitrator declined to hear maintenance claim separately, as claims should be heard in a single forum.

Lincolnwood Towers v. Unit Owners Voting For Recall,

Case No. 99-2047 (Draper / Order Striking Motion for Stay / December 21, 1999)

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

Marlow v. Country Pines of North Fort Myers Condo. Assn., Inc.,

Case No. 98-4179 (Draper / Final Order of Dismissal / December 4, 1998)

- Arbitrator will not accept jurisdiction over a dispute that is pending before a court.

Philistin v. Shaker Village Condo. Assn., Inc.,

Case No. 98-5026 (Scheuerman / Final Order Acknowledging Dismissal / January 11, 1999)

- Allegation that petitioner had pursued dispute for two years in circuit court prior to seeking arbitration not factually accurate where petitioner had instead defended unrelated action in circuit court for two years, and had filed similar counterclaim in court within the last six months of filing for arbitration. Moreover, court and not arbitrator should determine whether arbitration requirement had been waived.
- Where dispute was pending in the circuit court and there was no indication that court had relinquished jurisdiction to permit arbitration to be filed, petitioner ordered to show cause why arbitrator had jurisdiction over dispute.

Regal Palms Condo. Assn., Inc. v. D'Angelo,

Case No. 99-2179 (Pine / Final Order Dismissing Petition / November 24, 1999)

- Where pleadings reflect that subject matter of the petition was identical to subject matter of a previously filed Fair Housing complaint, petition dismissed.

Riverside Estates Condo. Assn., Inc. v. Diliberto,

Case No. 99-2421 (Pine / Final Order Dismissing Petition / January 20, 2000)

- Where arbitrator cannot take jurisdiction over two of the three intertwined complaints stated in petition, petitioner's motion to relinquish jurisdiction over third complaint as well is reasonable and was granted.
- Arbitrator cannot take jurisdiction over complaints in geographic confines of 4th DCA where relief requested is eviction of tenant and removal of tenant's dog.

San Marino Bay Condo. 4 Assn., Inc. v. Mendez,

Case No. 98-3894 (Cowal / Order Acknowledging Bankruptcy Proceeding, Staying Arbitration and Deactivating Case File / March 31, 1999)

- Where unit owner filed notice of bankruptcy proceeding and thereby invoked automatic stay provisions of Bankruptcy Code, arbitration case stayed and file closed. Association given opportunity to file order of bankruptcy judge stating that automatic stay was inapplicable to arbitration case.

Scalese v. The Wittington Condo. Apts., Inc.,

Case No. 99-0939 (Powell / Order on Motion to Dismiss / August 6, 1999)

- Ongoing circuit court case did not require dismissal of petition where the circuit court case no longer included the association as a party, where another unit owner, not a party to the arbitration, was the plaintiff in the court case, and where the subject matter of the two actions was not identical.

Sunrise Landing Condo. Assn., of Brevard, Inc. v. Reisinger,

Case No. 99-0540 (Pasley / Order Acknowledging Bankruptcy Proceeding, Staying Arbitration and Deactivating Case File / May 19, 1999)

- Where unit owner filed notice of bankruptcy proceeding thereby invoking the automatic stay, arbitration case stayed and file closed. Association given opportunity to seek and file order of bankruptcy judge stating that automatic stay is not applicable to the arbitration matter or that the stay has been lifted.

Wood v. Park Place, Inc.,

Case No. 00-1432 (Draper / Final Order of Dismissal / October 12, 2000)

- Where petitioning unit owner filed her complaint in circuit court, arbitrator would not accept jurisdiction until and unless circuit court stayed or dismissed complaint before it.

***Relief granted or requested***Banana Bay Condo. Assn., Inc. v. Valdes,

Case No. 99-0463 (Scheuerman / Order Granting Motion for Temporary Injunction / April 29, 1999)

- Where owner refused access to unit by association for purpose of inspecting construction undertaken by owner without association approval, temporary injunction entered permitting association access to unit. In performing its statutorily-mandated duties to repair, replace, and protect the common elements, it is necessary for the board, from time to time, to have access to the unit.

Bavarian Village Condo. Assn., Inc. v. Hedgepeth,

Case No. 99-0073 (Anderson-Adams / Summary Final Order / March 25, 1999)

- Respondent ordered to remove oversized dog from unit within 90 days, where respondent did not dispute that dog exceeded size restrictions contained in declaration but requested 90 days to prepare unit for sale and to vacate, and dog was not alleged to be a nuisance.

Bogikes v. Windmill Village by the Sea Condo. No. 1 Assn., Inc., (currently on appeal)

Case No. 97-0159 (Scheuerman / Final Order / June 12, 1998)

- Where association over a period of years had illegally permitted certain owners to construct docks on the common elements, and where petitioning unit owners had acquiesced in the addition of the docks for years, association ordered to cease approving docks prospectively. Docks approved by official board action prior to the date of filing of the petition for arbitration were permitted to stand.

Braemer Isle Condo. Assn., Inc. v. Propis,

Case No. 98-4424 (Draper / Order Granting Emergency Relief / March 25, 1999)

- Unit owners ordered to refrain from interfering with equipment used in condominium balcony restoration project. Where use of unit owners' balcony was necessary as a staging area for operation of the swing stage used in the work, and for storing the equipment at night, unit owners would be required to allow the use. In addition, association permitted to disable the door to their balcony to ensure unit owners' compliance with order.
- Emergency relief was required where balconies of building were deteriorated, hurricane shutters had been removed to facilitate restoration project and hurricane season was approaching. The unit owners' action of throwing swing stage equipment off their balcony threatened to prevent completion of project and reinstallation of hurricane shutters prior to commencement of hurricane season and further threatened safety of workers using the equipment.

Branscomb v. Martinique 2 Owners' Assn., Inc.,

Case No. 99-0248 (Draper / Order on Motion for Clarification / Amendment of Summary Final Order / June 18, 1999)

- Where association failed to call a special meeting of unit owners as it was required to do under the bylaws, order requiring the association to provide notice to the unit owners within 10 days of being provided text of the notice and date chosen by owners was appropriate.

Brown-Myrtil v. Oakland Forest Club Condo. Assn., Inc.,

Case No. 00-1039 (Pasley / Summary Final Order / October 23, 2000)

- Where owner filed petition for arbitration seeking statutory damages for the alleged failure by the association to produce official records for inspection upon request, and where records requested were not maintained by the association as required by law, damages not awarded against association but arbitrator instead ordered association to obtain missing record and make it available for inspection.
- The failure by the association to maintain a record required to be maintained under the statute does not, in the ordinary case, give rise to a violation of the access to records provision of Section 718.111(12), F.S., where the association fails to produce the record in response to a request to inspect submitted by an owner. If the association does not maintain a document required to be maintained, violation of Section 718.111(12)(a), F.S., has occurred, and no violation of Section 718.111(12)(b), F.S., has occurred.

Colony Point 6 Condo. Assn., Inc. v. Kaplan,

Case No. 98-3905 (La Plante / Final Order / June 24, 1998)

- Unit owner's unit found to be filthy and potential breeding ground for cockroaches which travel to adjacent unit and thus constitutes a nuisance. Temporary and then permanent injunctive relief granted requiring unit owner to have unit cleaned and to allow association to inspect unit bi-weekly for two years.

Country Manors Assn., Inc. v. Pira,

Case No. 97-2389 (Anderson-Adams / Summary Final Order / April 9, 1998)

- Where a violation of a covenant pertaining to age restrictions contained in the condominium documents is shown, no independent showing of irreparable harm is required to obtain injunctive type relief. The conditions precedent to filing a petition for arbitration are contained in Section 718.1255(4)(b), F.S. Association has no legal obligation to provide special accommodations to unit owners, such as permitting them to reside in the condominium unit with their newborns, while they are attempting to sell their unit.

Deaugustinis v. Harbor East House Condo. Assn., Inc.,

Case No. 00-0132 (Pine / Summary Final Order / July 7, 2000)

- Upon finding that the transfer of parking space to unit owner/respondent's predecessor in title was invalid as a matter of law, the arbitrator held that the petitioner has the exclusive right to use the parking space in question. The association/respondent was directed to enforce the petitioner's exclusive rights to use this space. The unit owner/respondent was ordered to respect the petitioner's exclusive rights to the use of the space and to execute a deed, prepared at the petitioner's expense, acknowledging the same.
- The arbitrator declined to order petitioner to relinquish another parking space, as requested in association/respondent's counterclaim, because counterclaims are not entertained.

Desoto Park Condo. Assn., Inc. v. Fehervary,

Case No. 00-1180 (Draper / Summary Final Order / September 18, 2000)

- Permanent injunctive relief would be granted to require unit owner to permanently remove her dog from the condominium, despite her assertion that the dog was removed shortly after the filing of the petition. The association had repeatedly directed the owner to remove the dog, and then the owner represented to the association's attorney that the dog had been removed, when it had not. The unit owner's conduct evidenced a knowing and willful violation of the documents and rendered it probable that she would repeat the violation unless enjoined.

Ellis v. Phoenix Towers Condo. Assn., Inc.,

Case No. 00-1236 (Draper / Summary Final Order / December 12, 2001)

- Final order would not be stayed merely because complaint for trial de novo was filed. Final order required association to replace the windows in the unit, at the association's expense. In light of the fact that the windows are in hazardous condition and represent a threat to property and other owners' safety, and unit owners are unable to bear the cost of replacement, the stay would not be granted.

Green Lakes Condo. Assn., Inc. v. Nozetz,

Case No. 97-0006 (Draper / Summary Final Order / June 10, 1997)

- Despite tenants moving from unit, case not moot where unit owners had repeatedly violated rental restrictions. Probable future violations warranted injunctive-type relief.

La Brisa Assn., Inc. v. Boeckeler,

Case No. 00-0402 (Pine / Summary Final Order / April 24, 2000)

- When respondent admits having repeatedly violated pet regulations, petition is not moot even though respondent is, at the moment, in compliance. Association is entitled to order prohibiting future violations instead of dismissal.

Lake Colony Apartments Three, Inc. v. Hills,

Case No. 00-1419 (Pine / Final Order Dismissing Petition for Lack of Jurisdiction / August 31, 2000)

- Petitioner's request to have cooperative member's proprietary lease terminated and her occupancy surrendered is outside arbitrator's jurisdiction. Respondent is a unit owner, and the relief requested would impact her title.

Lands End of Perdido Key Condo. Assn., Inc. v. Beumer,

Case No. 97-0309 (Oglo / Order on Petitioner's Motion for Ex-Parte Temporary Prohibitive Injunction / June 26, 1997)

- Where association sought to enjoin owner from renting unit for period of less than the 30-day minimum requirement imposed by declaration, motion for temporary injunction denied where only injury complained of was profit generated by owner illegally renting unit.

Lill v. Rock Harbor Club, Inc.,

Case No. 99-0594 (Powell / Summary Final Order / August 18, 1999)

- Where association improperly excluded unit owner's boat from condominium property, unit owner awarded requested relief of reimbursement for off-site storage. The association was ordered to reimburse the unit owner for 12 months of storage at \$40 monthly, or \$480.

Loulourgas v. Ultimar II Condo. Assn., Inc.,

Case No. 99-2291 (Scheuerman / Final Order / August 3, 2000)

- Objection that arbitrator could not order injunctive-type relief was overruled based on language of rules and statutory intent, both of which contemplate that arbitration process would function as alternative to court.

Luce v. Tiara East Condo., Inc.,

Case No. 98-4861 (Draper / Final Order / June 2, 1999)

- Association would not be required to pay as an item of damages pre-arbitration attorney's fees—that is, fees incurred by the unit owner in negotiating a settlement with tenant wrongfully evicted from unit by association. Under Florida law, each party generally pays its own attorney's fees unless specifically authorized by statute or contract. An exception arises where a party is drawn into court to defend its interests or protect its rights; however, the exception does not apply where a party expends attorney's fees merely for general representation and negotiation and is not forced into court.

Marlow v. Country Pines of North Fort Myers Condo. Assn., Inc.,

Case No. 98-4179 (Draper / Final Order of Dismissal / December 4, 1998)

- Claim seeking an order that association be required to amend pet regulations to provide a right-of-way from units to dog walk areas dismissed as arbitrator cannot provide such relief.

McHale v. Lakes of Newport Condo. I Assn., Inc.,

Case No. 00-0997 (Draper / Final Order / November 6, 2000)

- In conducting this special election, the association would not give 60-day notice of election, since the candidates in the special election consist of the same candidates who ran in the original election. Association ordered to conduct an election within 35 days of the entry of the final order, and to state in the notice that the election is being repeated because the association committed violations of the division's elections rules.

McKenna v. Hammock Pine Village II Assn., Inc.,

Case No. 98-4256 (Anderson-Adams / Summary Final Order / February 17, 1999)

- Where association had held its annual election for all members of the board of directors during the pendency of the arbitration proceeding, it was unnecessary to order a new election because the "new" election had already been held. The petitioner could have run for a seat on the board at that time.

Oakes v. Vera Cruz Condo. Assn., Inc.,

Case No. 00-0638 (Draper / Order Commemorating Status Conference / July 7, 2000)



- Arbitrator did not have authority to award compensatory damages for pain and suffering and emotional distress resulting from housing discrimination, and claim for such damages would be stricken.

Oakland Shores Condo. #1, Inc. v. Bediant,  
Case No. 98-3643 (Scheuerman / Order Granting Motion for Temporary Injunction / April 29, 1998)

- Temporary injunction entered where evidence showed that owner stored trash and excess clutter within unit, creating a fire hazard and breeding ground for plague of insects and vermin. Owner required to hire cleaning service and extermination service, to immediately discard all trash, and to refrain from storing clutter during the pendency of the case.

Oakland Shores Condo. #1, Inc. v. Bediant,  
Case No. 98-3643 (Scheuerman / Final Order / May 4, 1998)

- Permanent injunction entered requiring owner, for a period of two years, to hire cleaning service and exterminator where unit used for storage of garbage and excess clutter, creating a nuisance, a fire hazard, and a breeding ground for plagues of insects and vermin.

Oakridge A Condo. Assn., Inc. v. Hammer,  
Case No. 00-0195 (Scheuerman / Summary Final Order / June 23, 2000)

- Where owner shown to have removed an official notice on one occasion, whereupon association purchased glass-enclosed bulletin board for \$350, owner ordered to cease tampering with the official bulletin board, and to pay \$50 to the association representing the estimated value of the old bulletin board.

Palm Beach Hampton Condo. Assn., Inc. v. Masters, (currently on appeal)  
Case No. 99-0942 (Scheuerman / Order Denying Motion for Emergency Relief / June 16, 1999)

- The intimidation of the residents by a large Collie dog does not constitute a nuisance where it is unaccompanied by threatening and aggressive behavior. Moreover, one episode of barking in the night does not establish that the dog is a nuisance. Fact that adjacent owner has developed severe allergic reaction also insufficient where owner had been diagnosed with emerging allergies to multiple substances, where dogs were permitted in the complex, and where there was no testimony that the reaction was caused by a dog, or by this dog. Where the behavior complained of is only shown to be offensive or annoying to one of many residents, no finding of nuisance made.

Pine Ridge at Lake Tarpon Village I Condo. Assn., Inc. v. Darwin,  
Case No. 98-5245 (Powell / Final Order / June 30, 1999)

- Although association initially requested removal of dog, arbitrator ordered unit owner to ensure that dog wore bark control training collar when left alone on condominium property where this solution was shown to be effective in resolving the barking problem.

Sandpiper Condo. Assn., Inc. v. Parsons,

Case No. 00-2147 (Powell / Summary Final Order / March 16, 2001)

- Where the association sought to enforce provision of the declaration requiring unit owner to apply for association approval of sale of unit and to pay a \$100 fee, defense that association failed to show irreparable harm was insufficient to bar enforcement. Provisions of a declaration are analogous to covenants running with the land, and an injunction is a proper remedy for violation of a restrictive covenant. For such enforcement, violation of the declaration was tantamount to irreparable harm.

Sarasota Village Gardens Condo. Assn., Inc. v. Guastavino,

Case No. 97-1869 (Draper / Final Order / May 8, 1998)

- Where unit owner was the primary batterer in domestically violent relationship, his companion would not be ordered to vacate the unit as the two functioned as a family unit and it would be unfair to evict the occupant who is less responsible for the nuisance.

Senek v. The Riverside Club of Ft. Myers, Inc.,

Case No. 99-0306 (Pasley / Order Denying Request for Temporary Injunction/ Order Taking Official Recognition / February 19, 1999)

- The petitioner's request for an injunction prohibiting the association from purchasing a pool heater and enjoining the association from entering into any contract to purchase a pool heater was denied. The petitioner failed to demonstrate that in the absence of the issuance of a temporary injunction he would suffer irreparable harm. To demonstrate irreparable harm, the movant must show potential harm that cannot be redressed by a legal or equitable remedy. If the petitioner were to succeed on his claim, remedies exist that could redress the potential injury. The association could have been ordered to remove the pool heater and to reimburse the unit owners for the amount of any special assessments levied to pay for the pool heater and other expenses arising therefrom.

Stover v. The Avalon Assn., Inc.,

Case No. 99-0404 (Powell / Order on Motion to Dismiss/Strike / August 13, 1999)

- The request for an award of prevailing party attorney's fees as part of petition was not considered a claim for "damages" within the meaning of Section 718.1255, F.S.

The Townes of Southgate, Inc. v. Hopkins,

Case No. 00-0840 (Powell / Summary Final Order / December 19, 2000)

- Damages not awarded where association sought money damages for repairs made due to unit owner's failure to properly maintain a faucet and air conditioner line. Damage occurred to interior of unit below and the association did not assert it had repaired the unit below or incurred liability for such damage. Additionally, an award of damages which would inure to the benefit of the downstairs neighbor was not available, since the owner of that unit was not a party to this action.

Victoria Shores Condo. Assn., Inc. v. Cox,

Case No. 99-1975 (Draper / Final Order of Dismissal / December 29, 1999)

- Petition alleging that unit owner parked a vehicle with commercial lettering on the common elements dismissed as moot after unit owner ceased violation. Injunctive relief not warranted merely because violation is one that could be repeated in the future. Association must allege facts that would show future violations are probable.

Vista Del Mar Assn., Inc. v. Scott,

Case No. 97-0316 (Scheuerman / Order Following Conference Call / September 2, 1997)

- Association filed motion for temporary injunction to prevent owner/respondent from reconstructing patio enclosure during the pendency of the arbitration proceeding. Although it appeared from the pleadings that association would argue that patio enclosure replacement would damage the recently reconstructed concrete slab, no evidence was offered at hearing on this point. Instead, association argued that enclosure would adversely affect the aesthetics of the community. However compelling aesthetic considerations may be, they do not, in this case, rise to the level required to justify issuance of an injunction. Community already exhibited great diversity in enclosure styles; thus irreparable injury was not shown.

The Vistas of Boca Lago Condo. Assn., Inc. v. Handelsman,

Case No. 99-0030 (Pasley / Order Granting Preliminary Injunction / February 3, 1999)

- Temporary injunction entered where evidence showed that unit owners' use of their treadmill resulted in significant damage to the downstairs neighbor's unit and created a risk of irreparable harm due to falling objects.

Warren v. Springwood Village Condo. Assn. of Longwood, Inc.,

Case Nos. 00-0177 and 00-2153 (Scheuerman / Final Arbitration Order on Rehearing / August 28, 2001)

- Where the bylaws require that board members be unit owners, where the association permitted an individual to occupy the board who had previously quitclaimed

title to his unit to his children, individual removed from the board by the arbitrator during the pendency of the arbitration proceeding.

Williamson v. Sabine Yacht & Racquet Club Condo. Assn., Inc.,

Case No. 99-1337 (Anderson-Adams / Partial Summary Final Order and Order Requiring Response / October 22, 1999)

- Unit owner's claim requesting reimbursement for his replacement of common element sliding glass door denied where he altered the original doors without the permission of the board and the other unit owners in the building as required by the declaration. Thus, the board had no obligation to reimburse him for the cost of either the unapproved door or for restoring the building to its original configuration.

Williamson v. Sabine Yacht & Racquet Club Condo. Assn., Inc.,

Case No. 99-1337 (Powell / Summary Final Order / March 1, 2000)

- Unit owner's claim requesting reimbursement for his replacement of a common element window denied where window was part of unit owner's discretionary remodeling project. He had not asked association to replace or repair it prior to doing so as part of his project and he did not claim window was defective or leaking.

Wolfenson v. Huntington Lakes Section Three Assn., Inc.,

Case No. 97-2446 (Draper / Summary Final Order / May 22, 1998)

- Temporary injunction would not be issued against association which was planning to resurface concrete pool deck following removal and replacement of expansion joint material. The association was removing and replacing the expansion joint material on the deck, work that the unit owner agreed was necessary. However, unit owner disputed the necessity of resurfacing the deck as it was aimed at creating a beautiful appearance. As it appeared that the resurfacing might be necessary maintenance, clear legal right to relief not shown.

***Standing***

Altizer v. Redington Towers No. 3, Inc.,

Case No. 00-0817 (Scheuerman / Order Denying Request to Intervene and Final Order Adopting Settlement Agreement and Closing Case File / March 6, 2001) (currently on appeal)

- Where a prolonged period of negotiation between the association and a group of owners ultimately resulted in a settlement concerning the appropriate placement of hurricane shutters on the condominium building, the motion of a nonparty unit owner filed after the filing of the settlement agreement seeking to intervene as a party was denied. Intervention would disrupt the main proceeding which for all practical purposes was dismissed by the time that intervention was sought. Also, there was no showing that the association, in its defense of an action that is uniquely situated within the area

of its primary responsibility, was not adequately representing all unit owners. Finally, the interest of the intervenor was not shown to be directly impacted where the intervenor alleged that the value of his unit in the future may be impacted by the settlement agreement.

Bayshore-on-the-Lake Condo. Apts., Phase III Owners Assn., Inc. v. Cavalcante,  
Case No. 98-3474 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / March 26, 1998)

- Dismissing the petition seeking tenant eviction does not leave the association without a remedy. Section 718.303(1), F.S., authorizes the association to commence an action in court for injunctive or other relief against a tenant or invitee, to require them to comply with the governing statutes or condominium documents. The association may therefore file directly in court to evict tenant even where the association is not a party to the lease.

Bogikes v. Windmill Village by the Sea Condo. No. 1 Assn., Inc., (currently on appeal)  
Case No. 97-0159 (Scheuerman / Amended Order Following Conference Call / May 20, 1998)

- Owners who lived in RV park for five years in violation of declaration prohibiting mobile homes could not challenge the validity of a board rule that, in contravention of declaration, permitted mobile homes and detached single family residences. Owners waived and were estopped to challenge the rule when they resided in a structure violating the declaration, when they continued to reside in prohibited structure after rules were amended to legitimize their living arrangement, and when they waited so long to challenge the rule.

Cooper v. 1231 Penn, Inc., a Condo.,  
Case No. 00-0103 (Scheuerman / Summary Final Order / October 23, 2000)

- Owner who was not an owner at the time that board amended declaration to allocate 10 parking spaces among 12 unit owners, and who was told at the time of purchase that no spaces were assigned to the unit, nonetheless had standing to challenge the amendment. Owner was directly affected by the amendment and is entitled to challenge it.

Deaugustinis v. Harbor East House Condo. Assn., Inc.,  
Case No. 00-0132 (Pine / Summary Final Order / July 7, 2000)

- Contrary to association's argument that it was not a proper party to parking dispute between two units owners, disagreement is actually one over the use of a limited common element appurtenant to unit. As provided in the documents, association has duty and authority to enforce parking space assignments as part of its duty to maintain and operate the condominium property; consequently, association is a proper party to this dispute.

Gabriel v. Parkway Towers Building No. 1 Condo. Assn., Inc.,

Case No. 98-4974 (Draper / Final Order Dismissing Petition / November 12, 1998)

- Recalled directors who alleged that the association failed to adequately notice and properly conduct its board meeting concerning whether to certify the recall of the petitioners and that the recall lacked majority approval, lacked standing to bring the claim.

Indian Pines Village Condo. Assn., Inc. v. Innocent,

Case No. 98-3485 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / May 1, 1998)

- Dismissing the petition does not leave the association without a remedy. Section 718.303(1), F.S., authorizes the association to commence an action in court for injunctive or other relief against a tenant or invitee, to require them to comply with the governing statutes or condominium documents. The association may therefore file directly in court to evict tenant even where the association is not a party to the lease.

National Ventures, Inc. v. Water Glades 300 Condo. Assn., Inc.,

Case No. 97-0353 (Draper / Final Order of Dismissal / November 26, 1997)

- No jurisdiction over claims for damages by former unit owner alleging that unit use restrictions were invalid, causing diminution in value of unit and diminishing its usefulness to corporate owner requiring sale of unit. Corporation had sold unit and, therefore, was without standing to bring claims.

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

Case No. 97-2560 (Anderson-Adams / Final Order Dismissing Petition / April 27, 1998)

- Petition alleges that unit owner is allowing non-family members/tenants to occupy the unit without approval of the board of directors of the association, and in violation of the declaration of condominium. The declaration prohibits leasing of a unit unless the tenant has been approved by the association. Section 718.1255(1), F.S. (as amended effective 10/1/97), does not give the division jurisdiction over cases which primarily involve the eviction or other removal of a tenant from a unit. Dismissing the petition does not leave the association without remedy. Section 718.303(1), F.S., authorizes the association to commence an action in court for injunctive or other relief against a tenant or invitee, to require them to comply with the governing statutes or condominium documents. Therefore, the petition dismissed for lack of jurisdiction.

Oriole Gardens Condo. Two Assn., Inc. v. Gelman,

Case No. 97-2111 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / March 2, 1998)

- Section 718.1255(1), F.S. (as amended effective 10/1/97), does not give the Division jurisdiction over cases which primarily involve the eviction or other removal of a tenant from a unit. Dismissing the petition does not leave the association without a remedy. Section 718.303(1), F.S., authorizes the association to commence an action in court for injunctive or other relief against a tenant or invitee, to require them to comply with the governing statutes or condominium documents. The association may therefore file directly in court to evict tenant even where the association is not a party to the lease.

Sanchez v. Pine Island Ridge Phase "A" Condo. Assn., Inc.,  
Case No. 00-2177 (Pine / Order Dismissing Petition / January 29, 2001)

- Unit owner's petition stating that other unit owner has colonized part of the common elements, to the detriment of the petitioner's enjoyment of own unit, does not state a dispute within jurisdiction of arbitrator.

### **Easements**

Barenscheer v. Marina Tower Condo. Assn., Inc.,  
Case No. 99-0559 (Scheuerman / Final Order on Motions for Attorney's Fees / April 26, 1999)

- Association cannot rely on its authority to enter into easements to excuse noncompliance with material alteration provision of statute and documents. Easement authority contained in the documents permitted association to grant easements for utilities to be utilized directly by members. Cellular communications tower was erected to facilitate communications for all cellular customers and did not directly benefit the association's members.

### **Elections/Vacancies**

#### ***Candidate information sheet***

Rose v. The Village of Kings Creek Condo. Assn., Inc.,  
Case No. 00-1996 (Draper / Summary Final Order / March 14, 2001)

- Where the association permitted owner's candidate information sheet to be marred by a thin vertical line running through the text and fax markings across the top, action did not constitute a violation of Rule 61B-23.021, Florida Administrative Code, which prohibits an association from editing, altering or otherwise modifying the content of an information sheet. The text of the information sheet was still legible.
- Association that circulated two-page information sheets for some candidates who submitted an English version on the front of an 8½ x 11 inch sheet, and a Spanish translation on the back, violated Section 718.112(2)(d)3., F.S. and Rule 61B-23.021, Florida Administrative Code (2000), which provides that an information sheet shall be no larger than one side of a 8½ x 11 inch sheet. Election would not be set aside, however, as there was substantial compliance by association with the Condo. Act & the

administrative rules. It is implausible that the appearance & length of a candidate's information sheet, as contrasted to its substance, would prevent the voters from freely exercising their right to vote.

### ***Generally***

Aldecoa v. Bahia Mar of Key Biscayne Condo. Assn., Inc.,  
Case No. 98-2732 (Oglo / Summary Final Order / March 30, 1998)

- A unit owner claimed that the association improperly conducted the annual election by failing to seat seven candidates when there were seven vacancies; the board maintained that the proper board size was five directors. The articles of incorporation provided that the association's affairs shall be managed by a board, as provided in the bylaws, consisting of not less than three members. The bylaws provided that the size of the board shall be no less than three and no more than seven directors. As the bylaws failed to provide the specific number of board members, Section 718.112(2)(a)(1), F.S., applies, which states that the board shall be composed of five members in the absence of a provision in the bylaws.

Barrera and Bleau Fontaine Condo. Number Two, Inc. v. Bleau Fontain Community Assn., Inc.,  
Case No. 00-1570 (Draper / Partial Summary Final Order of Dismissal / November 21, 2000)

- Condominium association improperly failed to accept a large number of ballots submitted by two owners on behalf of other unit owners who did not attend the election meeting. As a result, the 20 per cent participation requirement of s.718.112(2)(d)3., F.S., was not met and the incumbent board members continued in office. The arbitrator rejected the association's argument that it could reject ballots where the individuals who delivered them to the meeting did not make any showing that the unit owners actually voted the votes or that the votes were cast in that manner because the absent unit owners were under a disability as defined in Rule 61B-23.0021(11), FAC, which permits a voter who requires assistance to vote because of a disability, etc., to obtain the assistance of another owner or board member. Nothing in the Condominium Act or administrative rules requires that the voter deliver his or her ballot and envelopes to the association personally.

Blau v. Martinique 2 Owners' Assn., Inc.,  
Case No. 99-1880 (Scheuerman / Summary Final Order / January 6, 2000)

- Where bylaws provided that vacancies occurring on the board shall be filled by the person or body having the right to originally elect or appoint the position, and also provided that vacancies on the board occurring between elections shall be filled by the remaining directors, where board member resigned in the face of an impending recall, bylaws interpreted as permitting the board and not the membership to fill the vacancy.



General rule in bylaws that vacancies shall be filled by person electing position originally construed to refer to vacancies caused by expiration of term.

- Where bylaws purported to give the membership the authority to fill vacancies where less than a majority of the board is recalled, this portion of the bylaw conflicts with Section 718.112(2)(j), F.S. and administrative rule authorizing the board to fill vacancies where less than a majority of the board is recalled, and was therefore invalid.
- In accordance with Ch. 617, F.S., a director may resign with a delayed effective date and may generally, during the period between tendering the resignation and the effective date of the resignation, continue to exercise the authority conferred upon board members. However, where a board member resigns in the face of an impending recall of less than a majority of the board, such board member is not authorized to participate in the board vote to fill the anticipated vacancy. Restricting the board member's ability to select his replacement is inherent in the concept of recall, and this interpretation of the statute and rules is the only one which will give meaning and effect to the statutory right of the owners to recall board members. Accordingly, where statute provides that "remaining board members" may fill vacancy caused by recall of less than a majority of the board, statute interpreted to refer to board members not subject to the recall effort. To permit the resigned member to vote under these circumstances would go far towards assisting the board members sought to be ousted in providing the very legacy that the owners sought to avoid by the recall, and would further encourage an endless procession of recall efforts, with the owners always one step behind their adroitly stepping and dodging board.
- Where board member resigned with a delayed effective date in order to attempt to participate in the board vote to appoint his successor, vacancy was created as a result of the recall, and the filling of the board position would be governed by the recall provisions of the statute and rules, and not by the provisions governing regular vacancies.

Brown v. Palm Bay Assn., Inc.,

Case No. 97-0411 (Scheuerman / Final Order Dismissing Petition / October 28, 1997)

- Where unit owner sought to contest election by claiming that ballots were opened up in an open area contiguous to the main meeting room, petition failed to state a cause of action upon which relief could be granted where area was open to owners, no allegations existed that ballots were improper, and where there are no allegations of other wrongdoings.

Coletta v. The Bayshore Yacht & Tennis Club Condo. Assn., Inc.,

Case No. 99-1256 (Scheuerman / Summary Final Order / September 14, 1999)

- Section 718.112(2)(d)3., F.S., requires that a candidate for the board give notice of intent to run not less than 40 days prior to a scheduled election. Thus, where election

was scheduled for July 23, 1999, prospective candidate required to deliver notice to the association not later than Sunday, June 13. Time for delivering notice was not extended as a matter of law to Monday or the next day that was not a legal holiday, regardless of whether delivery by personal delivery or otherwise on the association was possible on Saturday or Sunday. There is no support in the statute or procedural rules for extending the time beyond 40 days, and the statute does not specify 40 *business* days.

- Where notice of election prepared by association erroneously advised the membership that notices of intent to run for the board must be delivered to the association one day prior to actual deadline imposed by operation of the statute, prospective candidate was not prejudiced by earlier deadline and the error was not actionable. In any event, association lacked authority to alter deadlines provided by statute, and even if the deadline as reported by association was 1 day later than actual statutory deadline, statute controlled over notice.
- Notwithstanding the fact that the notice of election purported to restrict delivery of notices of candidacy to attorney for the association, owner desiring to become candidate for board seat could nonetheless deliver notice of intent to the secretary, the president, any board member, counsel as stated in the notice, or any other authorized agent of the association.
- Personal delivery on the association, although the preferred method of delivery of notice of intent to become a candidate, was not exclusive method of delivery. However, if owner/candidate chooses a less reliable and less verifiable method of delivery, such as leaving the notice under the door of the closed office of the association, the owner bears the risks associated with choice of delivery, and the owner has the burden of presenting convincing evidence of such delivery.
- Less reliable forms of delivery of notice to association are insufficient in most cases, to overcome presumption of normalcy attending the operation of the association.

Darconte v. Gulf Island Beach & Tennis Club Condo. Assn., Inc.,  
Case No. 00-0493 (Scheuerman / Final Order Dismissing Petition / May 15, 2000)

- Election dispute was dismissed as moot where curative election was held several months after contested election and where petitioner was elected to the board. Petitioner was in fact currently the president. In any event, relief requested--that arbitrator tally the ballots used in contested election--was not possible where ballots and envelopes were in a complete state of disarray and would not support reliable tally.

The Gables Condo. and Club Assn., Inc. v. Bass,  
Case No. 99-2099 (Scheuerman / Final Order / February 11, 2000)

- Where declaration for phase condominium provided for turnover of control within specified period of time after 50% or 90% of the "units" had been conveyed to purchasers, and where declaration further defined "units" as units contained in phase I, declaration interpreted as providing for turnover after specified percentage of units that may ultimately be included in the phase plan. Nothing in declaration evinced developer's supposed intent to gratuitously relinquish control of the association earlier than the date provided by statute for a phase condominium.
- Right to control the operation of a condominium association is a substantive vested right. Turnover of control substantially affects developers and nondeveloper-owners alike.

The Gables Condo. and Club Assn., Inc. v. Bass,

Case No. 99-2099 (Scheuerman / Order on Motion for Rehearing / February 23, 2000)

- Nothing in phase statute or documents supported owners' assertion that the developer was required to relinquish control of the association where, in between adding future phases to the condominium, developer was neither constructing the buildings to contain future phases or offering units for sale in the future phases. Turnover in a condominium, assuming a developer is operating within the parameters of the phase condominium plan, is triggered within the time provided by statute where 50% or 90% of the total unit to be contained within all phases are sold to purchasers, when all units to be included in the future phases have been completed and the developer is not offering any units for sale, or seven years after recordation of the initial phase.

Greentree Condo. Assn., Inc. v. Fernandez,

Case No. 97-0271 (Draper / Final Order on Jurisdiction and Motion for Emergency Temporary Injunctive Relief / June 5, 1997)

- Arbitrator lacked jurisdiction over association's claim against six holdover board members. Association was not trying to require unit owner/respondents to do, nor not do anything with their units. It was not alleged that association had conducted election improperly only that old board members refused to give up seats.

Grossman v. Bonavida Condo. Assn., Inc., (currently on appeal)

Case No. 00-0367 (Draper / Summary Final Order / August 8, 2000)

- The association was not required to carry out an entirely new election when the only flaw in the original election was the association's failure to include one individual's name on the ballot. Association ordered to dispense with the first notice of election (the purpose of which is to give individuals an opportunity to indicate their desire to run), as this was done previously. Candidates previously included on the 2000 election ballot, plus the petitioner, a candidate who was improperly omitted from the ballot originally, should stand for election for the positions that they initially ran for. If any of these individuals do not wish to run for a board position, then they need not be made

candidates. Since the identity of the candidates already is known, only the second Notice of Election and a ballot required by the statute needs to be delivered within the time periods provided by the statute, along with copies of any candidate information sheets provided by the candidates. The ballot shall state that the election is being repeated because the association erred in not including the petitioner's name on the ballot in the previous election.

Henschel v. Jupiter River Park, Inc.,

Case No. 00-1882 (Draper / Final Order of Dismissal / December 29, 2000)

- Claim that the association wrongfully certified the petitioner's recall from the board of directors, failed to maintain a current roster of unit owners and to enforce voting certificate requirements, resulting in unauthorized ballots being counted in the recall effort would be dismissed. A former board member lacks standing to challenge his own recall.

Johns v. Willowbrook Condo. Assn., Inc.,

Case No. 98-5133 (Scheuerman / Summary Final Order / February 5, 1999)

- Where board appointed replacement board member after board member resigned, and subsequently included that position in next scheduled election for any position, person elected at that election was entitled to hold the board seat for the remainder of the term, despite bylaw providing that a board member appointed by board to vacant board seat shall fill the seat for the remainder of the term. Vacancy and election occurred prior to effective date of amendment to s.718.112(2)(d) providing that a board member appointed to fill a vacancy shall fill the vacancy for the entire remaining term. At the time of the appointment and election, Rule 61B-23.0021 provided that a board member appointed to fill the vacancy shall fill the vacancy until the next regularly scheduled election for any position. Rule was procedural in nature and controlled the dispute over the bylaw provision.

Lattomus v. The Palm Beach House Condo. Assn., Inc.,

Case No. 97-0147 and 97-0191 (consolidated) (La Plante / Notice of Communication, Request for Supplemental Information and Summary Final Order / December 30, 1997)

- Owner submitted notice of intent to be a candidate to board on January 23, 1997, 39 days before election, relying on the notice of election sent out by the board, which erroneously stated that all requests to be a candidate must be received by January 23, 1997. January 23, 1997, was 39 days before election, which was to be held on March 3, 1997. Typographical error in date of notice of election was superseded by Section 718.112(2)(d)3., F.S., which states that notice of candidacy for board of directors must be given not less than 40 days prior to election. Therefore, notice of intent to be a candidate to board of directors found untimely, and petition dismissed.

The Little Mermaid Condo. Assn., Inc. v. Hogan,

Case No. 98-5449 (Scheuerman / Summary Final Order / May 7, 1999)

- Where respondent/owner claimed that board members who had approved balcony restoration project had been elected at an earlier invalid election, and requested entry of an order halting the construction project, even assuming the board members were not qualified to hold office or were elected illegally, board members were de facto board members, and actions taken within the scope of the board's responsibility as set forth in the documents were valid unless and until the board members were removed by appropriate legal process. Defense of illegal election struck.

Lopez v. Sailboat Cay Condo. Assn., Inc.,

Case No. 97-0133 (Oglo / Amended Summary Final Order / February 25, 1998)

- Owners who delivered their notices of candidacy forms to the condominium security desk at 10:00 p.m. on the cut off date properly rejected as untimely. The statutory cut off date, which was 40 days in advance of the election, was actually a day earlier than the owners' alleged delivery of their forms. As the owners had not met the statutory prerequisite to be a candidate, the notices were untimely. The owners cannot reasonably rely on the association's error, which runs contrary to the statute. In addition, the association prevailed on its affirmative defense that delivery on security desk was not delivery on the association, as the owners failed to plead that the security desk was authorized to accept notices on behalf of the association or that it was the association's practice for the security guards to accept notices on behalf of the association.

Mandell v. Sutton Place Condo. Assn., Inc.,

Case No. 01-2783 (Scheuerman / Summary Final Order / August 7, 2001)

- Where the declaration provided for both residential units and cabana units, and further provided that each unit shall have one vote, the arbitrator concluded that both cabana units and residential units were entitled to one vote. While it perhaps would have been more equitable for the developer to provide in the declaration for fractional votes for the cabana units, there is nothing in the Condominium Act that compels this result. As a general proposition the drafter of a declaration is given great latitude in assigning voting rights to the various units and unit types, so long as consistency with Section 718.301, F.S. is maintained.

Marott Partnership v. Maracay Assn., Inc.,

Case No. 00-0461 (Draper / Summary Final Order / June 28, 2000)

- Election for directors was improperly conducted where ballots and envelopes were handled by candidates in the election who were also current board members. Association improperly disregarded ballot cast on behalf of unit where individual who cast the ballot, though not properly authorized per association's rules, has been permitted to cast unit's vote in previous elections. New election would not be ordered, however, where petition did not allege that outcome of election would have differed if ballot had been counted.

McHale v. Lakes of Newport Condo. I Assn., Inc.,  
Case No. 00-0997 (Draper / Final Order / November 6, 2000)

- Where unit owners were prohibited from entering the area outside the meeting room where the election envelopes were opened and the ballots tallied, where list of qualified voters was not maintained or utilized by association in election, and where some but not all ballots were disqualified because the unit number was not indicated on the outer envelope, association would be ordered to conduct another, special election for the board of directors.
- In conducting this special election, the association would not give 60-day notice of election, since the candidates in the special election consist of the same candidates who ran in the original election. Association ordered to conduct an election within 35 days of the entry of the final order, and to state in the notice that the election is being repeated because the association committed violations of the division's elections rules.
- Arbitrator is empowered to order association to conduct a special election in which the first notice of election, normally required pursuant to Section 718.112(2)(d)3., F.S., is omitted as unnecessary. Association was found to have committed several major errors in the way it conducted the election meeting and vote tally. The only sensible remedy was to conduct the election meeting again, giving owners the opportunity to vote again on the same slate of candidates previously offered. It was not necessary to give owners an opportunity to submit notices of candidacy.

McKenna v. Hammock Pine Village II Assn., Inc.,  
Case No. 98-4256 (Anderson-Adams / Summary Final Order / February 17, 1999)

- Where association had held its annual election for all members of the board of directors during the pendency of the arbitration proceeding, it was unnecessary to order a new election because the "new" election had already been held. The petitioner could have run for a seat on the board at that time.

Miller v. Olive Glen Condo. Assn., Inc., (currently on appeal)  
Case No. 00-0360 (Powell / Amended Summary Final Order / August 22, 2000)

- Where bylaws provided no quorum requirement for the specific purpose of an election of directors, the association was deemed not to have opted out of the voting procedure provided in the statute. Therefore, Section 718.112(2)(d)3., F.S., applied, providing that there shall be no quorum requirement for an election; however, at least 20 percent of the eligible voters must cast a ballot to have a valid election. The fact that the association's bylaws established a quorum requirement for members' meetings did not imply a concomitant requirement that a quorum was necessary for an election.

- Where the bylaws provided that the board shall consist of not less than three nor more than 15 directors, and that the board may increase or decrease the number of positions on the board so long as there was an odd number of members, the board could fix the number of directors because there was a procedure in place to do so; therefore, Section 718.112(2)(a)1., F.S., did not apply to fix the number of directors at five.

Moreno v. The Hemispheres Condo. Assn., Inc.,

Case No. 98-5527 (Scheuerman / Final Arbitration Order / March 1, 1999)

- Where bylaws required that the association provide advance notice of board meeting to all board members in writing, bylaw did not conflict with notice provision of Section 718.112(2)(c), F.S., which requires posting of notice of board meetings. Statute addressed notice of board meetings to be given to the membership, and bylaws addressed notice to be given to the board members. Hence, association must comply with both the statute and the bylaws. The failure to give board member advance notice in writing invalidated board action taken where board voted to remove board member for missing three consecutive board meetings.

Mozzone v. Country Club Manor Condo. Assn., Inc.,

Case No. 01-2401 (Draper / Summary Final Order / July 23, 2001)

- Where an amendment to the declaration required approval of 2/3rds of voting interests "present & voting in person or by proxy at a meeting," undated and therefore invalid limited proxies would be excluded for all purposes (i.e., determining the number of voting interests present or voting "for" the amendment.) A voting interest represented by an invalid proxy cannot be said to be present and voting.

Nassif v. Continental Towers Condo. Assn., Inc.,

Case No. 99-1789 (Pine / Summary Final Order / December 16, 1999)

- Where only four candidates applied to fill four vacancies, no election is needed and the four candidates should take their seats without question. Board cannot reduce number of seats (in violation of bylaws) merely in order to make a vote necessary.
- Where bylaws state that members of the association shall elect a director to fill unexpired term of resigning board member at next annual election, the board must include that board seat in the next annual election; board may not hold annual election for other seats and later appoint someone to fill seat vacated by resignation occurring before annual election.

The Oasis II at Ventura Condo. Assn., Inc. v. Unit Owners Voting for Recall,

Case No. 99-1562 (Anderson-Adams / Final Order / September 17, 1999)

- Recall votes cast by rental agent (a corporation) via a limited power of attorney should not have been rejected.
- Where a unit is jointly owned and has no voting certificate on file but all joint owners have signed a power of attorney authorizing a leasing corporation to vote in their behalf, the lack of a voting certificate is not sufficient reason to reject the vote.
- The requirement of voting certificates for jointly owned units should not be waived on the basis of association's alleged violation of other unrelated provisions in the bylaws during the last annual election.
- The association's rejection of recall agreements signed by employees of two leasing corporations acting pursuant to powers of attorney from their unit-owner clients, because the employees had not provided proof, in the form of a corporate resolution, that they were authorized to cast votes as agents of their corporation and that the corporate documents permitted it to act under a power of attorney was not reasonable. Association made no request for this information from the rental agents and it was readily ascertainable that one of the agents was the sole corporate officer of her leasing company, and both rental agents were already known to board.

Pollak v. Bay Colony Club Condo. Inc.,

Case No. 99-1176 (Draper / Case Management Order / November 12, 1999)

- Bylaw provision concerning unit owner votes held to conflict with declaration and was therefore ruled invalid. Bylaw required that "votes" of unit owners who did not vote in an election would be counted toward the candidate or question otherwise receiving the largest number of actual votes. Declaration requires that the approval of 75% of the unit owners be obtained. Counting "non-votes" as votes conflicts with declaration's requirement.

Rose v. The Village of Kings Creek Condo. Assn., Inc. and Astrid Buttari, President,

Case No. 00-1996 (Draper / Summary Final Order / March 14, 2001)

- Unit owner's claim that the ballot for election of directors was confusing and would result in disqualification of ballots on the ground that too many candidates were selected was stricken where the election had occurred and the unit owner did not allege that any ballots were disqualified on this ground.

Santana v. La Playa De Varadero II Motel Condo. Assn., Inc.,

Case No. 98-5095 (Powell / Order Dismissing Claim, Order Requiring Amended Petition and Order Denying Motion to Conduct Discovery / November 25, 1998)

- Bylaw permitting proxies predated the election statutory amendments of 1991 (providing that after January 1, 1992, proxies shall not be used in electing the board) and of 1995 (the year the current provision, allowing associations to adopt bylaws



permitting elections by proxy, became effective). Where association did not amend bylaws in response to the permitted statutory exception permitting proxies for elections, it was concluded that the provision in the bylaws was not intended to apply to elections conducted after January 1, 1992.

- Unit owners complained that proxies were excluded in vote on budget, that correct procedures were not followed regarding ballot envelopes, outer envelopes, an impartial committee and verification of signatures. However, where petition did not allege that the outcome would have been different if different procedures had been followed, petition had not alleged sufficient facts to establish a claim on which relief could be granted.

Smith v. Ocean View Assn., Inc.,

Case No. 97-0040 (Goin / Summary Final Order / June 27, 1997)

- Where bylaws provided that the board would be composed of no less than three or more than nine directors, the exact number to be determined at the time of election, it was determined that association's decision to limit the number of directors to five was valid. The phrase "at the time of the election" did not mean that the number of directors would fluctuate depending on the number of candidates willing to serve on the board, but instead referred to a vote of the membership setting the number of positions. However, the association could not determine the number of directors "at the time of election" because, pursuant to Section 718.112, F.S., ballots must be sent to all members prior to the time of election with instructions regarding how many candidates they may vote for and because Rule 61B-23.0021, F.A.C., provides that the election must be the first order of business at an annual meeting. Therefore, because the bylaws did not provide a valid method for determining the number of board members, pursuant to Section 718.112(2)(a)1, F.S., the board of directors must be set at five.

Spett v. Ambassador South Development Corp.,

Case No. 00-2087 (Draper / Summary Final Order / March 6, 2001)

- Cooperative association improperly conducted election for its board of directors when it conducted an election for five board positions when all seven should have been up for election. Section 719.106(1)(d), F.S., requires all directors to be elected at the annual meeting unless the bylaws proved otherwise. The bylaws in this case proved that the election of directors "shall follow the procedures set forth by the laws of the State of Florida." Holdover directors were ordered by the arbitrator to vacate their seats and the remaining directors were authorized to fill the resulting two vacancies. In addition, where the articles of incorporation of cooperative association provided for not less than three nor more than seven directors, and bylaws provided for between seven and nine directors, arbitrator held that the articles of incorporation would prevail; thus, the board consists of seven directors. See s. 617.0206, F.S.

Warren v. Springwood Village Condo. Assn. of Longwood, Inc.,

Case Nos. 00-0177 and 00-2153 (Scheuerman / Final Arbitration Order on Rehearing / August 28, 2001)

- Where the bylaws require that board members be unit owners, where the association permitted an individual to occupy the board who had previously quitclaimed title to his unit to his children, individual removed from the board by the arbitrator during the pendency of the arbitration proceeding.
- Where the outer envelopes were opened, removing the inner envelopes containing the ballots, and the inner envelopes were immediately opened such that it was possible for observers to see how individual owners voted, the association placed in jeopardy the confidentiality of the balloting procedure and violated Rule 61B-23.0021, F.A.C., requiring that all outer envelopes be separated from the inner envelope which should be placed in a receptacle; then all of the inner envelopes as a group are opened and the ballots removed.
- Where the association failed to verify the accuracy of the signatures contained on the outer envelopes against association records, the association found to have violated Rule 61B-23.0032.

***Master association***

***Notice of election***

Coletta v. The Bayshore Yacht & Tennis Club Condo. Assn., Inc.,  
Case No. 99-1256 (Scheuerman / Summary Final Order / September 14, 1999)

- Section 718.112(2)(d)3., F.S., requires that a candidate for the board give notice of intent to run not less than 40 days prior to a scheduled election. Thus, where election was scheduled for July 23, 1999, prospective candidate required to deliver notice to the association not later than Sunday, June 13. Time for delivering notice was not extended as a matter of law to Monday or the next day that was not a legal holiday, regardless of whether delivery by personal delivery or otherwise on the association was possible on Saturday or Sunday. There is no support in the statute or procedural rules for extending the time beyond 40 days, and the statute does not specify 40 *business* days.
- Where notice of election prepared by association erroneously advised the membership that notices of intent to run for the board must be delivered to the association one day prior to actual deadline imposed by operation of the statute, prospective candidate was not prejudiced by earlier deadline and the error was not actionable. In any event, association lacked authority to alter deadlines provided by statute, and even if the deadline as reported by association was 1 day later than actual statutory deadline, statute controlled over notice.

Crescent Heights XLIII, Inc. v. Venetia Condo. Assn., Inc.,

Case No. 99-0468 (Draper / Summary Final Order / September 28, 1999)

- Election for directors which was postponed for 19 days in order to resolve disagreement over number of director slots the developer could vote for in the election would not be invalidated. Association was not required by Section 718.112(2)(d)2, F.S., to re-notice the election beginning with the 60-day notice. Purpose of election notice requirements of Chapter 718 is to give equal access to all owners to the election process and to give all unit owners the opportunity to become a candidate if they wish. Once the 60-day notice is given by the association and the period has closed for candidates to notify the association of their intention to run for a position, postponing the election for 19 days does not conflict with this purpose.

Frederick v. Naples Bath & Tennis Club, Unit H, Inc.,

Case No. 97-0072 (La Plante / Final Order / January 26, 1998)

- Where documents required notice of election candidacy notices to be delivered to secretary of the association, c/o the management company, notices of candidacy delivered to the secretary were sufficient to cause persons to be legitimate candidates since Rule 61B-23.0021(5)(b), F.A.C., requires written notices of candidacy to be sent to the association, and there is no statutory requirement that such notices are to be delivered to the management company address.

McHale v. Lakes of Newport Condo. I Assn., Inc.,

Case No. 00-0997 (Draper / Final Order / November 6, 2000)

- Where unit owners were prohibited from entering the area outside the meeting room where the election envelopes were opened and the ballots tallied, where list of qualified voters was not maintained or utilized by association in election, and where some but not all ballots were disqualified because the unit number was not indicated on the outer envelope, association would be ordered to conduct another, special election for the board of directors.
- In conducting this special election, the association would not give 60-day notice of election, since the candidates in the special election consist of the same candidates who ran in the original election. Association ordered to conduct an election within 35 days of the entry of the final order, and to state in the notice that the election is being repeated because the association committed violations of the division's elections rules.

McKenna v. Hammock Pine Village II Assn., Inc.,

Case No. 98-4256 (Anderson-Adams / Summary Final Order / February 17, 1999)

- Notice of election was inadequate on its face where street number printed on notice did not coincide with street number of the building where election/annual meeting was held, association had never held meetings in that building before, and approximately 20

of the 84 persons eligible to vote in the election had so much trouble finding the building where the election was held that they showed up too late to cast their ballots.

### ***Term limitations***

Hepp v. South Seas Northwest Condo. Apts. of Marco Island, Inc.,  
Case No. 96-0448 (Goin / Summary Final Order / June 13, 1997)

- Where articles of incorporation provided that directors were to be elected to one-year terms and where amendment to the bylaws permitted the board members to be elected for three, two and one-year terms, the articles of incorporation controlled over the provisions in the bylaws and board members ordered to all stand for re-election at the next annual meeting and all the terms would be for one year.

### ***Voting certificates***

The Oasis II at Ventura Condo. Assn., Inc. v. Unit Owners Voting for Recall,  
Case No. 99-1562 (Anderson-Adams / Final Order / September 17, 1999)

- Recall votes cast by rental agent (a corporation) via a limited power of attorney should not have been rejected.
- Where a unit is jointly owned and has no voting certificate on file but all joint owners have signed a power of attorney authorizing a leasing corporation to vote in their behalf, the lack of a voting certificate is not sufficient reason to reject the vote.
- The requirement of voting certificates for jointly owned units should not be waived on the basis of association's alleged violation of other unrelated provisions in the bylaws during the last annual election.
- The association's rejection of recall agreements signed by employees of two leasing corporations acting pursuant to powers of attorney from their unit-owner clients, because the employees had not provided proof, in the form of a corporate resolution, stating that they were authorized to cast votes as agents of their corporation and that the corporate documents permitted it to act under a power of attorney, was not reasonable. Association made no request for this information from the rental agents and it was readily ascertainable that one of the agents was the sole corporate officer of her leasing company, and both rental agents were already known to board.

### **Estoppel (See also Selective Enforcement; Waiver)**

Admiral Towers Condo., Inc. v. Rodriguez,  
Case No. 97-0222 (Draper / Summary Final Order / October 8, 1997)

- Where unit owner claimed association secretary had approved the rental, unit owner's defense to association's claim that unit was illegally rented rejected as insufficient where documents prohibited all renting. Where documents prohibited rental of unit under any circumstances, claim of unit owner that tenant was a relative held

insufficient. Relative and unit owner did not occupy unit together; therefore, they did not constitute a family.

B.H.C., Inc., A Condo. Corp. v. Berninger,  
Case No. 96-0295 (Oglo / Final Order / April 14, 1998)

- Unit owner could not claim reasonable reliance where president had allegedly approved installation of tile in violation of rules. Owner was aware of rule requiring carpeting, knew that tile required approval of the board, and had knowledge of minutes whereby board disapproved request to install tile.

Balmoral Condo. Assn., Inc. v. Goldstein,  
Case No. 97-0153 (Anderson-Adams / Summary Final Order / September 2, 1998)

- Unit owners not exempt from declaration's pet restrictions where they had obtained written approval from the developer to keep pets in the unit while they were *leasing* the unit prior to purchase, but no permission to keep pets was obtained from the developer when they actually *purchased* the unit.

Beach Haven Gardens Condo. Assn., Inc. v. Puchalski,  
Case No. 97-0004 (Goin / Final Order / June 29, 1997)

- Where unit owners purchased unit directly from unit owner and not developer, where seller did not give them the condominium documents and rules and regulations, and where unit owners who owned large dog in violation of the rules and regulations bought unit, it was determined that the dog would have to be removed because the association did not have a duty to provide prospective unit owners with a copy of the condominium documents or to meet with them to ensure that they understood the rules and regulations. The duty to provide the condominium documents belonged to the selling unit owner pursuant to Section 718.503(2), F.S., not to the association. Therefore, the association did not have a duty to speak or act, and unit owners were unable to establish estoppel.

Carbone v. Seawatch at Jupiter Island Condo. Assn., Inc.,  
Case No. 99-0941 (Scheuerman / Summary Final Order / August 31, 1999)

- Estoppel not found to exist where owner had requested advice of association for over a year on placement of satellite dish and association had never responded.

Country Manors Assn., Inc. v. Pira,  
Case No. 97-2389 (Anderson-Adams / Summary Final Order / April 9, 1998)

- Unit owners' argument stricken that association impliedly consented to unit owners' not-yet-conceived children living in the unit when association approved unit owners for occupancy in 1994, knowing that they were recently married. Unit owners argued board

knew or should have known that they might one day have children. Condominium documents including age restrictions were recorded as public record and board was not alleged to have made representations to unit owners that children were allowed in contravention of the published restrictions.

Cypress Bend IV Condo. Assn., Inc. v. Pepper,  
Case No. 00-0417 (Pasley / Summary Final Order / June 26, 2000)

- Where the documents explicitly prohibit antennas and aerials, not only did the property manager lack authority to approve installation of a satellite dish, the association lacked the authority to approve the installation of the dish on the common elements.
- Where the documents require written permission for changes to the common elements, the unit owners could not have reasonably relied on verbal permission of the property manager.

Fair Oaks North, Inc. v. Manista,  
Case No. 98-4855 (Pine / Final Order / May 21, 1999)

- Estoppel cannot apply where unit owners acted in defiance of board's stated wishes (or in face of board's express disapproval), and installed awning.

Four Sea Suns Condo. Assn., Inc. v. Pariseau,  
Case No. 00-0559 (Scheuerman / Order Following Status Conference / June 8, 2000)

- Where association for a period of years had assumed maintenance responsibility for awnings installed by the original owners, estoppel did not bar association from reexamining the issue and determining that the individual owners properly had the maintenance responsibility for the awnings. The association did not make any representation to the individual owners; there was nothing done in reliance of any supposed representation; and no one was injured by any representation.

Garden Isles Apts. No. 2, Inc. v. Ferrara,  
Case No. 99-0679 (Pine / Final Order / December 1, 1999) (currently on appeal)

- Where pet prohibition is included in proprietary lease, purchasers are placed on notice of such prohibition and cooperative need not explicitly advise owner that prohibition will be enforced. In such case, silence of board members does not give rise to estoppel.

Green Lakes Condo. Assn., Inc. v. Nozetz,  
Case No. 97-0006 (Draper / Summary Final Order / June 10, 1997)

- Where association approved lease beginning “January 1, 1997 (approx.)” and tenants moved in December 16, 1996, association not estopped from acting against unit owners for unapproved occupancy. Documents permitted only two rentals per year and the unit owners had already rented their unit twice. It was unreasonable for unit owners to assume that December 16 was “approximately” January 1.

Grossman v. Bonavida Condo. Assn., Inc., (currently on appeal)

Case No. 00-0367 (Draper / Order on Motion for Rehearing / September 7, 2000)

- Where association had previously accepted the petitioner's husband as eligible to be a member of the board of directors, and had in fact even permitted him to serve as president, the association was found to have represented to the petitioner's husband that he was eligible to be a director, who subsequently relied on this representation by filing his notice of candidacy without also filing a power of attorney, and to his detriment was prevented from running for a director position. Thus, finding of estoppel would not be altered.

Grossman v. Bonavida Condo. Assn., Inc., (currently on appeal)

Case No. 00-0367 (Draper / Summary Final Order / August 8, 2000)

- Election held null and void where association failed to include name of candidate on ballot because he had not filed with the association a power of attorney from the unit owner authorizing him to act on owner's behalf with regard to the condominium and a statement that he will be responsible for care of unit and payment of assessments, etc. Bylaws did not require documents to be filed in order to be eligible to run; rather documents only had to be filed prior to taking office. Also, even if filing of documents was a condition of eligibility, fact that association had previously permitted him to run and serve on the board without the documents and failed to timely notify him of its change in position, foreclosed association from requiring the documents in order to be eligible to run.

Ironwood First Condo. Assn., Inc. v. Sorvick,

Case No. 97-1882 (Anderson-Adams / Summary Final Order / May 21, 1999)

- Fact that association took no action to remove unit owner's previous dog, which lived in the unit from 1972 to 1976, and again from 1987 until its death in 1988 is not sufficient to establish either estoppel or waiver, where association seeks to remove unit owner's new dog which was obtained nine years later in 1997.

Island House Apartments, Inc. v. Noller,

Case No. 97-0220 (Scheuerman / Final Order / October 28, 1998)

- Where owner's proposed plan as approved by the board did not reference a planned modification to the patio, to-wit: a patio enclosure, and where board was otherwise unaware of this aspect of the plan, association not estopped from seeking removal of

the enclosure. Board made no representation concerning the enclosure, and fact that president was aware of the enclosure but failed to communicate fact of enclosure to board did not amount to a representation to the owner. Also, even assuming that the president had acted in a representational manner, and assuming reliance on such conduct, reliance would have been unreasonable since the documents clearly required the approval of the entire board for the change.

Loulourgas v. Ultimar II Condo. Assn., Inc.,  
Case No. 99-2291 (Scheuerman / Order / January 5, 2000)

- Fact that owner did not object during period of negotiation between cell phone company and association which resulted in a lease allowing placement of cell tower on roof of condominium building, did not give rise to estoppel.

Newcastle Condo. Assn., Inc. v. Greger,  
Case No. 00-0243 (Pasley / Final Order / January 26, 2001)

- Where the realtor made a representation to the unit owner that the board was not enforcing its pet-size limitation, estoppel was not found because the realtor lacked the authority to bind the board.
- Where the unit owner wrote on her application that her pet was “medium” and the documents permit small pets only, the association’s approval of the application was not found to have been a representation to the unit owner that her pet was permitted.

Oak Harbour Section Four Condo. Assn., Inc. v. Dooley,  
Case No. 00-1633 (Powell / Summary Final Order / April 6, 2001)

- Assertions by realtors do not bind the association and the unit owner was not entitled to rely on realtors’ statements amounting to an assertion that pet weight limit in the declaration would not be enforced.

Palm Beach Hampton Condo. Assn., Inc. v. Masters, (currently on appeal)  
Case No. 99-0942 (Scheuerman / Final Order / January 12, 2000)

- A finding of laches, waiver, or estoppel shown by the facts to apply to the earlier years of a dog’s presence on the property, is not undone when the presence of the dog is shown to be less prevalent on the property in more recent years. These defenses are not deactivated when the dog ceased living at the condominium but only visited.

The Palm Club Assn., Inc. v. Bocchino, (currently on appeal)  
Case No. 98-3993 (Anderson-Adams / Summary Final Order / January 15, 1999)

- Association claimed unit owners made unauthorized alterations to the common elements by installing “sun tunnel” skylights in their unit. Declaration, read in



conjunction with Section 718.113, F.S., prohibits any alterations to the common elements without the consent of at least 75% of the voting interests in the condominium. Prior members of board of directors purportedly gave permission to install the skylights. Waiver may not be allowed to infringe upon the rights of others, and estoppel cannot be raised against acts, which are void *ab initio*. The board had no authority to give permission to alter the common elements—this right belonged collectively to the unit owners. Additionally, one who seeks equitable remedy of estoppel must come with clean hands. Where unit owner had been former president of board and had been involved in board's granting him permission to install skylights, his claim of estoppel will not stand.

Paquette v. Victoria Manor Condo. Assn., Inc.,

Case No. 00-1952 (Scheuerman / Summary Final Order / January 12, 2001)

- Even assuming that the board failed to enforce its parking restrictions against trucks and vans, such failure did not amount to selective enforcement and would not preclude the association from maintaining an action to cause the removal of a motorcycle. The violations are not comparable and do not support a finding of selective enforcement. A motorcycle is different from a truck or van in terms of appearance, function, size, and accompanying noise level and safety risk.

Pine Island Condo. "B" Assn., Inc. v. Levitt,

Case No. 98-5303 (Cowan / Final Order / September 10, 1999)

- Where association board, at board workshop, gave unit owners verbal authorization for certain portions of planned patio enclosure, board was estopped from requiring owners to obtain written approval. Portions of planned patio enclosure not presented to board at any time could not have been approved by board and must be removed or modified as deemed necessary by the board in order to comply with condominium documents.

The Pointe at Pelican Bay II Condo. Assn., Inc. v. Wilton,

Case No. 00-0922 (Pasley / Summary Final Order / January 12, 2001)

- To successfully assert the affirmative defense of selective enforcement the respondent must prove that the association has failed to enforce the condominium documents in other instances bearing sufficient similarity to the instant case. The alleged existence of visually clashing pots, potted plants, benches, footwear, cleaning devices, garden hose devices, non-matching ceramic tiles, flags etc, does not constitute a comparable violation to the installation of a satellite dish on the roofing fascia.

Portside Villas Owners Assn. v. Kutina,

Case No. 97-0019 (Oglo / Final Order / April 8, 1998)

- Owner who lengthened her garage without board approval not permitted to rely on alleged statement by former president that owners could do as they pleased, as president cannot bind board on issue of material alterations.

Reuther v. 400 Beach Road Condo. Assn., Inc.,  
Case No. 98-4959 (Draper / Final Order / January 29, 1999)

- Claim that association was estopped from reasserting its right to common element foyer because it failed for 20 years to take action against the previous owners of the units, and failed to take action against the petitioning unit owner for a period of four months, rejected. Estoppel based on silence, or failure to act, will not lie unless the party asserting estoppel is ignorant of the truth. Because declaration clearly designates the foyer as a common element, rather than a limited common element, the petitioning unit owner could not have been misled as to the character of the area.

Sabine Yacht and Racquet Club Condo. Assn., Inc. v. Williamson,  
Case No. 97-0217 (Anderson-Adams / Order Striking Claims and Affirmative Defenses and Order to Show Cause / October 9, 1998)

- The fact that association has historically required unit owners to bear the cost of replacing damaged windows and doors does not give unit owners carte blanche to replace them with different styles and sizes.
- Estoppel requires *reasonable* reliance. Where the declaration prohibits alteration to the common elements unless approval is obtained from the board and from a majority of the unit owners, it was not reasonable for unit owners to rely on statements of approval from the association's property manager or from individual board members.

Sabine Yacht and Racquet Club Condo. Assn., Inc. v. Williamson,  
Case No. 97-0217 (Anderson-Adams / Final Order / November 25, 1998)

- Estoppel requires *reasonable* reliance. A settlement committee comprised of representatives of the board of directors and other unit owners had no authority to approve respondent/unit owners' alterations of the common elements where the declaration prohibits alteration of the common elements unless approval is obtained from the board and from the unit owners, and no showing was made that settlement authority was delegated to the committee by the board, or by a majority of the unit owners, or that the committee represented itself as having such authority. Association is not estopped from enforcing declaration's restriction on altering the common elements against unit owners.
- Board cannot waive the rights belonging to unit owners collectively. Where the declaration prohibited alteration to the common elements unless approval is obtained from the board of directors and from a majority of the unit owners, board could not waive the rights of unit owners to approve or disapprove alterations.

Sanders v. Ancient Oaks R.V. Resort Condo. Assn., Inc.,  
Case No. 97-0083 (Draper / Summary Final Order / October 8, 1997)

- Even if estoppel defense were permitted, fact that contractor was permitted on condominium property and that addition to R.V. was undertaken in the open did not constitute representation by board that awning addition was approved.
- Unit owner could not assert affirmative defenses of estoppel and waiver in action against association for enforcing requirement of board approval for additions to R.V. These defenses are to be used as shields not swords.

Sandpointe Bay Condo. Assn., Inc. v. Milligan, (currently on appeal)  
Case No. 00-0522 (Draper / Summary Final Order / October 3, 2000)

- Unit owners' argument, that the association should be estopped from applying tile prohibition against them because they relied on board approval to install tile in prohibited areas, was rejected. Estoppel requires that the party seeking to employ estoppel as a defense have reasonably relied on a prior representation of the party they seek to estop. Since the declaration contained an absolute prohibition against floor covering other than carpet except in the kitchen, bathrooms, and entrance foyer, unit owners could not have reasonably relied on board approval to put tile in the hallways and vanity area.

Sea Horse Park Homeowners Assn., Inc. v. Brucker,  
Case No. 00-2185 (Pine / Final Order / March 21, 2001)

- Any reliance on a single board member's advice that a motor home could be parked on the premises would not be reasonable where unit owners knew that the vehicle was a motor home and that the rules explicitly prohibited parking motor home on premises for more than 72 hours on two occasions per year.

Seaside Villas Condo. Assn., Inc. v. Gerson,  
Case No. 00-0324 (Pine / Final Order / February 23, 2001)

- Estoppel requires reasonable reliance. Reliance on verbal statements or silence/inaction with regard to enforcement of condominium documents cannot be reasonable where documents explicitly prohibit action engaged in.

Sholty v. The Villages of Emerald Bay Condo. Assn., Inc.,  
Case No. 98-4430 (Draper / Final Order / April 28, 1999)

- Fact that the division had previously investigated the petitioner's complaint regarding the conduct of the vote, and division investigator had closed the file without finding a violation of the statute, does not estop the unit owner from filing a petition for arbitration

on the same matter. Closure of investigative file does not constitute a finding that the association has **not** violated the statute. In addition, the action taken by the division does not bind the arbitrator; as the division and the arbitrator may well address a separate set of facts. In addition, pursuant to Section 718.1255(4), F.S., the arbitrator's decision is not considered final agency action.

Shore Colony Condo. Assn., Inc. v. Greife, (currently on appeal)  
Case No. 97-2341 (Scheuerman / Final Order / February 19, 1999)

- Where association approval of project involving removal of interior load bearing wall within a unit was conditioned upon licensed contractor performing work, association not estopped from requiring restoration of the wall where owner acted as her own contractor instead of hiring a licensed contractor.
- Where declaration interpreted as prohibiting removal of lead-bearing wall by an owner regardless of board approval, board was powerless to approve project, and any approval expressed was contrary to documents and of no effect.

Siesta Breakers Condo. Assn., Inc. v. Lehnert,  
Case No. 98-3475 (Powell / Final Order / February 26, 1999)

- Unit owners pled estoppel because outdated declaration furnished by association's management company permitted small pets and association subsequently asserted later amendment prohibiting pets. Estoppel defense rejected because reliance on outdated declaration was no longer reasonable once prospective unit owners received from association, purchaser application and question and answer sheet, providing actual notice of substance of pet prohibition contained in amendment to declaration.
- Where association is required by statute to maintain current copies of the condominium documents, which shall be the official records, and when such records are then provided to the selling unit owner's broker, and then to a prospective purchaser, as required by statute, the prospective purchaser should be able to rely on such records. However, in this case, where purchaser learned, prior to closing, of conflicting information, such reliance was no longer reasonable.

Spanish Trace Condo. Assn., Inc. v. Buttari,  
Case No. 97-0213 (La Plante / Summary Final Order / February 20, 1998)

- Unit owner installed tile throughout second floor unit, despite restriction in declaration that tile was only authorized in the bathroom, foyer, and kitchen. Unit owner's reliance on board members' statement that she could tile her unit was not reasonable when unit owner was on constructive notice of the prohibition but had never read the declaration. Moreover, the two board members' statements that she could tile her unit did not bind the association or constitute a regulation by the board permitting tiling of units.

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor, (currently on appeal)  
Case No. 98-3662 (Powell / Order on Motion to Strike Affirmative Defenses, Order on Motion to Strike Proposed Exhibits, and Order on Motion to Compel Discovery / November 20, 1998)

- Where unit owner asserted that the association is estopped from enforcing its documents to remove her dog because it has allowed the condition to exist for 16 years, the facts pled were insufficient to establish estoppel. Unit owner has not established any representation by the association, reliance upon such representation, or a change of position on the basis of any representation.

Terra Mar West Condo. Assn., Inc. v. Leavell,  
Case No. 00-0878 (Powell / Summary Final Order / June 30, 2000)

- Unit owner's defense, that he advised the condominium manager that he would make available a key by appointment and that the manager agreed, was stricken. The manager did not have the authority to waive the association's right under Section 718.111(5), F.S., and the condominium documents to permanently keep a key to gain access to the unit as necessary. Also, the unit owner was on notice of the statute and was on notice of the condominium documents by reason of their recordation in the public records. Therefore, reliance upon any statement by the manager was not reasonable. Unit owner was ordered to provide a key to the unit for the association to keep.

Trafalgar Towers Assn. #2, Inc. v. Miller,  
Case No. 99-1071 (Pine / Final Order / November 30, 1999)

- Estoppel requires a showing that: the party to be estopped made a representation of material fact and later took a position contrary to that representation; that the party claiming estoppel reasonably relied upon this representation; and that the party suffered a detrimental change in position as a result of this reliance.
- Where declaration permitted structural alterations with advance written permission of board, and respondent effected structural alteration (replacing windows and half wall with sliding glass doors) with advance written permission from board, a later board is estopped from requiring restoration of original structure on grounds that appearance of building has also been altered by the alterations previously approved.
- An equitable defense need not be specifically cited if the facts as pled support a conclusion that a specific equitable defense applies.

Venetian Condominium, Inc. v. Cohen,  
Case No. 97-0037 (Draper / Summary Final Order / December 3, 1997)

- Where documents and policy supported by association's engineer required approval of association prior to reinstallation of balcony tile removed to permit inspection of, and repairs to, the underlying surface, verbal approval by manager would not give rise to defense of estoppel. It was not reasonable for unit owners to rely on such a representation in light of requirement of association approval contained in documents.

Vista Del Mar Assn. Inc. v. Lloyd,

Case No. 97-0399 (La Plante / Order Striking Affirmative Defenses and Summary Final Order / February 20, 1998)

- Estoppel not found where unit owner relied on fact that two other doors had been slightly modified in drawing conclusion that he could modify his door. No reasonable reliance found and no representation of material fact found under these circumstances.

Vista Del Mar Assn., Inc. v. Scott,

Case No. 97-0316 (Scheuerman / Summary Final Order / February 16, 1998)

- The board, several years prior, had approved the design and installation of a specific patio enclosure by an owner. Where it became necessary for association to remove patio enclosure for purposes of renovating underlying concrete slab, and where in the meantime the association had adopted new patio enclosure specifications as part of a patio restoration project, and where it was possible to re-attach old patio enclosure structure to new slab, association in attempting to prohibit re-attachment of old structure was attempting to improperly and retroactively enforce its new rules. There is no case law brought to light that the duty of the association to act consistently with its earlier approval ended where the improvements, approved for installation earlier, were removed as part of routine maintenance and were capable of being reinstalled. Association approval survives such maintenance. The fact that the removal of the improvement was prompted by replacement of the underlying slabs makes no difference, where the old enclosure is not shown to compromise the integrity of the new slabs.

Wild Oak Bay Vista V Owners Assn., Inc. v. Mintz,

Case No. 97-0110 (Powell / Order Striking Certain Defenses and Requiring Supplemental Information / March 18, 1998)

- Estoppel and waiver held not to apply where the unit owners have not shown that the association approved the installation of the tile. Also, since association previously attempted to encourage unit owners to correct the problem of noise caused by bare tile floors, it did not relinquish its right to enforce the declaration provision barring nuisances.

Windrush North - IV Condo. Assn., Inc. v. Tucci,

Case No. 99-1859 (Draper / Order Striking Affirmative Defense and Requiring Supplemental Information / October 20, 1999)

- Defense of estoppel was stricken despite allegation that two board members saw the tile being installed and said it enhanced the building's appearance, and that other unit owners had installed shrubbery, birdbaths, etc., without obtaining board approval. Where documents required unit owner and board approval of alterations, reliance on such "representations" is not reasonable.

### **Evidence (See Arbitration-Evidence)**

#### **Fair Housing Act**

B.H.C., Inc., a Condo. Corp. v. Berninger,  
Case No. 96-0295 (Oglo / Final Order / April 14, 1998)

- In case initiated by association seeking order requiring owner to remove tile from unit, evidence sustained finding that owner was handicapped as she had experienced severe allergic reaction to carpeting that had kept her bedridden several days at a time which medication did not prevent. Final order required her to install area rugs and padding covering only high traffic areas as an accommodation.

Balmoral Condo. Assn., Inc. v. Goldstein,  
Case No. 97-0153 (Anderson-Adams / Summary Final Order / September 2, 1998)

- Unit owner sought to keep two dogs in unit, where declaration prohibited all pets except fish and birds. Unit owner did not show entitlement to keep two dogs as a reasonable accommodation for his handicap under Fair Housing Act, where he submitted letter from his doctor saying the presence of his dog would be beneficial to his medical condition. Doctor's letter did not specify that two dogs were necessary, or that one particular dog would be more medically beneficial than the other. Moreover, the association had acquiesced during the course of the proceedings to the presence of the smaller of the two dogs as a reasonable accommodation.

Bayshore-on-the-Lake Condo. Apts., Phase III Owners Assn., Inc. v. Cavalcante,  
Case No. 98-3474 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / March 26, 1998)

- Petition dismissed for lack of jurisdiction where association sought to enforce bylaw prohibiting occupancy by anyone under 55 years old against the son of an owner and his female companion. Effective on October 1, 1997, Division lacks jurisdiction of tenant disputes where association seeks eviction.

Country Manors Assn., Inc. v. Pira,  
Case No. 97-2389 (Anderson-Adams / Summary Final Order / April 9, 1998)

- In case where association sought to enforce 55 and over age restrictions by seeking to remove newborn quadruplets from the unit, unit owners' argument that an inchoate interest in the unit was passed to quadruplets upon their birth struck for lack of legal support.

4000 Island Blvd. Condo. Assn., Inc. v. DeBeer,  
Case No. 99-1038 (Powell / Entry of Default / February 18, 2000)

- Where arbitrator's order required the pleading of specific facts, unit owners' vague response regarding fair housing defense was insufficient. To prove discrimination under the fair housing laws, a unit owner must establish the four elements of a prima facie case: that he is disabled; that the housing provider has knowledge of the unit owner's condition; that an accommodation may be necessary to afford him an equal opportunity to enjoy his dwelling; and that the association has refused to make a reasonable accommodation.

4000 Island Blvd. Condo. Assn., Inc. v. DeBeer,  
Case No. 99-1038 (Powell / Final Order After Default / March 31, 2000)

- Fair housing defense stricken where unit owners did not respond adequately to arbitrator's order requiring them to: a) furnish specific, detailed facts regarding a disability and the nature of the life function which the dog is necessary to assist; and b) to supply a detailed doctor's statement.

Garden-Aire Village Sea Haven, Inc. v. Norris,  
Case No. 98-3092 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / June 8, 1998)

- Arbitrator lacked jurisdiction over petition filed after October 1, 1997, seeking to enforce prohibition of occupancy by children under the age of 15. Unit owners, who were both under the age of 55, had been approved for occupancy by association despite fact that condominium documents required at least one occupant to be age 55 or older. When a child was born to unit owners, association sought to prohibit child from residing in the unit. Petition, in a broad sense, involved removal of a tenant, a class of disputes removed from the arbitrators' jurisdiction by 1997 amendment to statute.

Half Moon Bay Condo. Assn., Inc. v. Kanerva,  
Case No. 99-0113 (Cowl / Summary Final Order / October 22, 1999)

- Statement of clinical psychologist treating owner that, without pet dog, unit owner might suffer a depressive episode at some future time does not state an adequate defense under the fair housing laws. Unit owner not shown to have current disability.

Number One Condo. Assn. - Village Green, Inc. v. Torres,  
Case No. 00-1398 (Draper / Final Order on Jurisdiction / August 21, 2000)

- No jurisdiction over association's petition claiming that unit owner is allowing underage, nuisance child to reside in unit in adult community. Association seeks an



order requiring the owner to remove the child from the unit. Therefore, claim is exempt from arbitration requirement of Section 718.1255, F.S.

Oakes v. Vera Cruz Condo. Assn., Inc.,

Case No. 00-0638 (Draper / Order Commemorating Status Conference / July 7, 2000)

- Defense to fair housing claim, that wheelchair-bound unit owner had other alternatives to installing a chair lift to access his second floor unit, such as moving to a first floor unit or moving out of the condominium altogether, would be stricken. One purpose of the Fair Housing Amendments Act is to provide the disabled with an equal opportunity to live in the housing of their choice. The suggestion that the disabled owner could live somewhere else does not constitute a viable affirmative defense to a fair housing claim.

Oriole Gardens Condo. Two Assn., Inc. v. Gelman,

Case No. 97-2111 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / March 2, 1998)

- Petition dismissed for lack of jurisdiction where association sought to enforce bylaw prohibiting occupancy by anyone under 55 years old against the son of an owner and his female companion. Effective on October 1, 1997, Division lacks jurisdiction of tenant disputes in which the association seeks eviction.

Palm Beach Hampton Condo. Assn., Inc. v. Masters, (currently on appeal)

Case No. 99-0942 (Scheuerman / Final Order / January 12, 2000)

- Where condominium board became aware of dog on premises in violation of the documents in the later 1980's, but failed to institute enforcement action until 1999, laches precluded recovery by the association where owner had since, to her prejudice, trained dog to become a service animal to owner with disability.
- Evidence supported finding that owner suffered from chronic fatigue immune dysfunction. Owner had been under care of physician for 10 years for this condition that was progressive and manifested itself in increasing inability to stand, walk, and balance. Condition was therefore a disability within the meaning of the fair housing laws.
- Due to disability, owner shown to need assistance in rising up, walking, getting into and out of the bed and the bathroom, and in summoning help when needed. Evidence showed that dog was trained to provide beneficial services and to provide assistance with these functions. Only a dog in excess of 30 pounds could appreciably assist the owner, and a walker provides no forward momentum but relies on the efforts of the user to propel forward. Where dog able to affirmatively pull, push, and otherwise provide momentum, and where dog not shown to increase the costs of the association, keeping of dog in the unit found to be reasonable and necessary accommodation.

- Where animal had received no formal training from state or federally-recognized service animal training facility, but where dog had been trained by owner who was a recognized trainer of dogs, and where dog shown to perform beneficial learned activities that enable the owner to use and enjoy the premises, dog is a service animal.

Palm Beach Harbour Club v. Blum,

Case No. 97-0064 (Oglo / Summary Final Order / September 29, 1997)

- An 80-year-old unit owner raised the affirmative defense that she was entitled to her dog under the Fair Housing Act. If proven, her illnesses of severe asthmatic bronchitis and diabetes would constitute a “handicap” under the Fair Housing Act. However, the unit owner did not make legally sufficient allegations that the dog was an accommodation necessary to afford her equal opportunity to enjoy her dwelling, so her defense was stricken. Notwithstanding the fact that the dog may have been a source of contentment to her, the dog was not an accommodation to her illnesses in the manner that a seeing eye dog would have been an accommodation to a blind person’s condition. There were other reasonable accommodations available to her, such as stress reducing activities and medicine to control her illnesses.

Regal Palms Condo. Assn., Inc. v. D'Angelo,

Case No. 99-2179 (Pine / Final Order Dismissing Petition / November 24, 1999)

- Where pleadings reflect that subject matter of the petition was identical to subject matter of a previously filed Fair Housing complaint, petition dismissed.

Siesta Breakers Condo. Assn., Inc. v. Lehnher,

Case No. 98-3475 (Powell / Final Order / February 26, 1999)

- Unit owners ordered to remove dog where declaration amendment prohibited pets. Unit owner’s claim that she was handicapped and unable to work was not a valid claim under the Fair Housing act where there was no activity unit owner could not do without dog.

Tierra Del Sol Condo., Inc. v. Merlucci, (currently on appeal)

Case No. 98-5006 (Pine / Final Order / July 6, 1999)

- Federal Fair Housing Act allows otherwise-vacant unit occupied by elder person on part-time or timeshare basis to be counted as a unit occupied by person aged 55 or older. However, where any owner who was under age 55 lived continuously in unit, occasional visits by elder co-owner did not cure violation of requirement that at least one person over age 55 occupy unit.

West Bay Plaza Condo. Assn., Inc. v. Weiss,

Case No. 98-5457 (Cowl / Final Order / September 13, 1999)

- Where unit owner established that she was physically unable to comply with rule's requirement that she carry her pet while inside the building, association is required by fair housing laws to make reasonable accommodations for her, including allowing her to walk pet through lobby and hallways. Offered accommodation of allowing owner to pull dog through lobby on wagon not reasonable as owner unable to lift dog to place it in wagon, nor could she pull the wagon.

**Family (See also Fair Housing Act; Guest; Tenant)**Admiral Towers Condo., Inc. v. Rodriguez,

Case No. 97-0222 (Draper / Summary Final Order / October 8, 1997)

- Where unit owner claimed association secretary had approved the rental, unit owner's defense to association's claim that unit was illegally rented rejected as insufficient where documents prohibited all renting. Where documents prohibited rental of unit under any circumstances, claim of unit owner that tenant was a relative held insufficient. Relative and unit owner did not occupy unit together; therefore, they did not constitute a family.

Applegreen Condo. Apts. I Assn., Inc. v. Moorhead,

Case No. 96-0282 (Goin / Summary Final Order / June 10, 1997)

- Where declaration stated that rental restrictions did not apply to "immediate family (viz: parents, spouses or children)" arbitrator determined that the declaration was ambiguous as to whether the term "viz" was used to show examples of the types of relatives that could be considered "immediate family" or whether the term was used to describe the only relatives that could be considered "immediate family," to the exclusion of other relatives. Therefore, the definition of "immediate family" given by the board in its rules and regulations could be considered. As the rules and regulations defined "immediate family" as parents, children, grandchildren or siblings, the arbitrator determined that unit owner did not have to obtain the approval of the association before letting her brother occupy the unit while she was in Germany.

Bayshore-on-the-Lake Condo. Apts., Phase III Owners Assn., Inc. v. Cavalcante,

Case No. 98-3474 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / March 26, 1998)

- Petition dismissed for lack of jurisdiction where association sought to enforce bylaw prohibiting occupancy by anyone under 55 years old against the son of an owner and his female companion. Effective on October 1, 1997, Division lacks jurisdiction of **tenant disputes**.

Garden-Aire Village Sea Haven, Inc. v. Norris,

Case No. 98-3092 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / June 8, 1998)

- Arbitrator lacked jurisdiction over petition filed after October 1, 1997, seeking to enforce prohibition of occupancy by children under the age of 15. Unit owners, who were both under the age of 55, had been approved for occupancy by association despite fact that condominium documents required at least one occupant to be age 55 or older. When a child was born to unit owners, association sought to prohibit child from residing in the unit. Petition, in a broad sense, involved removal of a tenant, a class of disputes removed from the arbitrators' jurisdiction by 1997 amendment to statute.

Indian Pines Village Condo. Assn., Inc. v. Innocent,

Case No. 98-3485 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / April 17, 1998)

- No jurisdiction over petition alleging that unit owner has allowed the number of persons occupying their unit to exceed the maximum occupancy allowed by the declaration of condominium by permitting five persons to reside in the unit--at least one of whom is the unit owners' child. Section 718.1255(1), F.S. (as amended effective 10/1/97), does not give the division jurisdiction over cases which primarily involve the eviction or other removal of a tenant from a unit. The term "tenant" is defined broadly enough to encompass unapproved non-owner occupants whose presence violates the association's restrictions as to occupancy of the unit--even where it is not alleged that a formal lease agreement exist or that consideration is being paid for the use of the unit. Petition dismissed for lack of jurisdiction.

Oriole Gardens Condo. Two Assn., Inc. v. Gelman,

Case No. 97-2111 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / March 2, 1998)

- Petition dismissed for lack of jurisdiction where association sought to enforce bylaw prohibiting occupancy by anyone under 55 years old against the son of an owner and his female companion. Effective on October 1, 1997, Division lacks jurisdiction of tenant disputes where association seeks eviction.

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor, (currently on appeal)

Case No. 98-3662 (Powell / Order on Motion to Strike Affirmative Defenses, Order on Motion to Strike Proposed Exhibits, and Order on Motion to Compel Discovery / November 20, 1998)

- Unit owner asserted that she is emotionally attached to and dependent upon her dog, could not afford to sell her unit and could not live in the unit without the love and affection of the dog. The arbitrator reasoned that such attachment to the dog would not, standing alone, bar the association from enforcing its documents to remove the dog. The unit owner did not assert that she has a handicap or that the association's insistence that the dog be removed is a failure to accommodate her handicap.

The Towers of Quayside No. 4 Condo. Assn., Inc. v. Garami,

Case No. 00-1097 (Powell / Summary Final Order / March 9, 2001)

- Occupant of unit claimed that his father was a part owner of the unit, and therefore the son was a family member and not a tenant. Son was deemed a tenant and not a family member for purposes of declaration prohibiting tenant from keeping pets since son occupied the unit on his own and not as part of father's household.

## **Financial Reports/Financial Statements**

### **Fines**

Kreitman v. The Decoplage Condo. Assn. Inc.,

Case No. 98-3495 (Draper / Amended Final Order / September 14, 1999)

- Letter to unit owners, notifying them that a meeting would be held to permit them to present reasons why they should be exonerated from paying a \$100 fine, did not meet requirements of Section 718.303(3), F.S., that unit owner be given notice and an opportunity for a hearing. The notice implied that a fine had already been imposed, thus discouraging their participation.

Mueller v. La Renaissance Condo. Assn., Inc.,

Case No. 96-0193 (Oglo / Final Order / February 23, 1998)

- Rule imposing \$50 charge where association employees forced to remove furnishings on a balcony in event of weather or repair found to involve a fee and not a fine; petition dismissed for lack of jurisdiction.

### **Guest (See also Family; Tenant)**

The Carriage House Condo. Assn., Inc. v. Solomon, (currently on appeal)

Case No. 99-2396 (Scheuerman / Summary Final Order / September 1, 2000)

- Rule which restricted the number of party guests to 40 persons per unit sought to promote the health and welfare of the residents. More guests translates into increased noise and nuisance potential, more pedestrian and vehicular traffic, and greater use of the common elements. Objective of association to address these concerns was legitimate.
- Rule which restricted the number of party guests to 40 persons per unit regardless of unit size was reasonable and not arbitrary or capricious. While the association could have specified a guest occupancy level that changed with unit size, rule addressed existing problem of noise nuisance in large penthouse units and was not shown to be arbitrary. In addition, considered from the standpoint of wear and tear on the common elements and the additional strain on association resources and employees, the burden imposed by 40 guests is the same regardless of the size of the unit.

Villa Dilancia Condo. Assn., Inc. v. Hydro Agri North America, Inc., (currently on appeal)

Case No. 98-3731 (Draper / Summary Final Order / July 6, 1998)

- Arbitrator upheld as equitable restriction contained in declaration which required that a corporately-owned unit could be occupied only by an individual/family designated by the corporation (which designation could not be changed more than twice per calendar year) or that the unit be occupied pursuant to a lease complying with the limitations on rentals contained in the documents, that is, a term of not more than 60 days and permitting only two rentals per calendar year. Intended use of the unit by the corporation, as accommodation for visiting clients of the corporation and its president, would not be permitted.
- “Guests” of designated occupant of corporately-owned unit, who occupied unit in the absence of the designated occupant, would be treated as tenants, subject to leasing restrictions in the documents. Fact that declaration did not prohibit a unit owner from having a guest in his unit in his absence did not invalidate provision of the declaration dealing with corporately-owned units which provided that use of the unit by others than the designated occupant would be subject to the leasing provisions of the declaration. Guests of a residential owner are not the same as guests of a corporate owner. They are generally less frequently present, less varied and fewer in number so as not to contribute to the transient or hotel nature, as would the corporate guest. Therefore, it is reasonable for such occupancies to be treated differently.

### **Hurricane Shutters**

Captain's Way at Admiral's Cove Condo. Assn., Inc. v. Hafer,  
Case No. 00-0158 (Powell / Summary Final Order / August 31, 2000)

- Association sought removal of enclosure of limited common element patio prohibited by the declaration. The unit owner contended that because the enclosure was hurricane proof, it should be permitted. Defense stricken because the glass enclosed a patio area which was not intended to be part of the living area. Also, absent showing that the board had adopted such enclosure as an approved hurricane shutter specification pursuant to Section 718.113(5), F.S., erection of nonconforming hurricane protection is a violation of Section 718.113(2), F.S.

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 Section 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.

Leisure Beach South, Inc. v. Wigo,

Case No. 97-0157 (Scheuerman / Summary Final Order / November 13, 1997)

- Where owner installed hurricane **panels** not conforming to specifications adopted by the board for hurricane **shutters**, owner ordered to remove the devices. If the panels are considered hurricane shutters, they did not conform to adopted shutter specifications and therefore became unauthorized modifications to the common elements. If the panels are **not** considered hurricane shutters, their installation modified the appearance of the common elements in violation of Section 718.113(2), F.S. Even if the panels were installed in a portion of the exterior of the unit, their addition changed the appearance of the common elements.

Mueller v. La Renaissance Condo. Assn., Inc.,

Case No. 96-0193 (Oglo / Final Order / February 23, 1998)

- The board cannot apply its rule on hurricane shutters, which permits only a uniform shutter style, against a unit owner who possessed non-conforming shutters prior to the rule.

Seascope Club Condo. Assn., Inc. v. Frankel,Seascope Club Condo. Assn., Inc. v. Trammell,

Case Nos. 98-3541 and 98-3543 (Consolidated) (Scheuerman / Summary Final Order / February 7, 1999)

- Board officially adopted hurricane shutters where resolution was adopted at board meeting to the effect that the board was adopting as its specifications, the specifications of those shutters presently on the building. There was no claim of ambiguity or uncertainty by owners concerning the import of the resolution. The statute does not require that specifications be set forth with technical certainty in amendment to the condominium documents, although as a practical matter the board may be advised to list the technical specifications in the minutes of the meeting or within a formal board resolution.
- Where pursuant to a vote of the board and the membership, all unit owners were required to install hurricane shutters, owner did not have the right to install laminated glass or film, as the statute only confers this right on owners where such was installed prior to vote to require the installation of shutters.
- Hurricane shutter specifications adopted by board were not invalid because they failed to specify that shutters must conform to the applicable building code; statute required such conformance and does not require that the specifications themselves reiterate this requirement.

- Statute contains no requirement that shutters previously installed conform to future building code requirements. Shutters must conform to the building code in effect at the time of their installation.
- Local ordinance prohibiting the installation of any shutters not flush with the exterior walls of the building was not expressly pre-empted by the various provisions of the Condominium Act. However, ordinance did conflict with that portion of the Act permitting owners to install hurricane shutters conforming to specifications adopted by the board, permitting board to install or require the installation of shutters in accordance with specifications adopted by the board, and permitted the board to adopt specifications on color, style, and other factors deemed relevant by the board. Accordingly, ordinance could not be used to bar board from requiring the installation of shutters by owner.

### **Injunctive Type Relief (See Dispute-Relief granted)**

#### **Insurance**

Gill v. Surf Dweller Owners Assn., Inc.,

Case No. 97-0051 (Scheuerman / Final Arbitration Order / March 10, 1998)

- Association is the entity having the authority to collect and distribute insurance proceeds, in conjunction with the insurance trustee identified in the documents. The association owes the owners and their mortgagees a duty of reasonable care in the management of insurance proceeds which are held for the benefit of the owners and mortgagees. The association, and presumably the trustee, may be sued in negligence for mishandling the funds; however, the board, in making decisions regarding the funds, would be entitled to the deference afforded by the business judgment rule.
- Neither the statute nor the documents required the association to award to the individual unit owners all sums allocated by the insurance company to the association on account of damages to that unit. Rather, the association is given a measure of discretion in administering the fund.
- Where owner was disruptive of re-building effort such that general contractor hired by the association to rebuild the units refused to repair her unit, and where owner determined to act as her own contractor and to hire sub-contractors to perform the work, amount allocated by insurance company for markups and profits to contractors not required to have been given to the owner.
- Where owner declined to re-install the same improvements within the unit ruined by the hurricane, neither statute nor documents required that proceeds from the association policy representing the amount allocated by the insurance company as damages on account of the specific unit be given to that owner. Association was faced with losses in excess of coverage and used these funds to contribute to the rebuilding of the pool and landscaping which were not insured items. If the owner prevailed on this



issue, the owners could simply demand the full allocation from the insurance company and refuse to rebuild their unit; under the association's posture, rapid rebuilding is encouraged.

Higdon v. Seaspray Condo. Assn., Inc.,

Case No. 96-0430 (Scheuerman / Summary Final Order / March 24, 1998)

- Where association, through its contractor and manager, entered unit for purpose of removing items damaged by hurricane, association's entry into the unit was lawful and authorized. Cleanup of damage caused by a hurricane would, in the usual case, implicate the association's maintenance, repair, or replacement responsibilities under sSection 718.113 and 718.115, F.S. Even if the association was not responsible for repairing or replacing specific items within a unit, removal of damaged items furthered the association's function of preventing additional damage to the common elements. The statutory right of access provided for by Section 718.111(5), F.S., is not restricted to emergencies but includes all necessary maintenance. The issues of timing of the entry and notification to the owner are a function of good business judgment, prudence, and civility, which are concepts resisting further enunciation and definition in the Florida Statutes.

- Association, in hiring general contractor to repair hurricane-damaged portions of the condominium property, was not required to obtain competitive bids. An exception to the bidding requirements of Section 718.3026, F.S., exists which permits associations to enter into contracts during an emergency. During the aftermath of a hurricane, it may be necessary for an association to make emergency repairs in order to mitigate further damage and to protect the residents, and association was therefore exempted from compliance with the bidding requirements.

Portside Villas Owners Assn. v. Kutina,

Case No. 97-0019 (Oglo / Final Order / April 8, 1998)

- Association filed petition to require a unit owner, who enlarged her garage during repairs after a hurricane, to restore her garage to its original length. Based upon the declaration provisions that required repairs after casualty damage to be substantially in accordance with the original improvements and that required board approval for changes to the exterior of the building, owner was ordered to restore her garage to its original length.

**Jurisdiction (See Dispute)**

**Laches (See also Estoppel; Waiver)**

Newcastle Condo. Assn., Inc. v. Greger,

Case No. 00-0243 (Pasley / Final Order / January 26, 2001)

- Where the unit owner was informed on the day she moved into the unit that her dog was not permitted, the association wrote violation letters and ultimately filed a petition for arbitration, the association did not unreasonably delay in asserting its right.

Palm Beach Hampton Condo. Assn., Inc. v. Masters, (currently on appeal)  
Case No. 99-0942 (Scheuerman / Final Order / January 12, 2000)

- Where condominium board became aware of dog on premises in violation of the documents in the later 1980's, but failed to institute enforcement action until 1999, laches precluded recovery by the association where owner had since, to her prejudice, trained dog to become a service animal to owner with disability.
- A finding of laches, waiver, or estoppel shown by the facts to apply to the earlier years of a dog's presence on the property, is not undone when the presence of the dog is shown to be less prevalent on the property in more recent years. These defenses are not deactivated when the dog ceased living at the condominium but only visited.

Pennwood Manor Condo., Inc. v. Buchansky,  
Case No. 99-1858 (Powell / Summary Final Order / March 30, 2000)

- The span of 14 months before seeking to enforce the condominium documents regarding parking would not establish laches. In addition, there was no allegation that the unit owners were prejudiced by the association's delay in instituting enforcement or arbitration.

Sea Horse Park Homeowners Assn., Inc. v. Brucker,  
Case No. 00-2185 (Pine / Final Order / March 21, 2001)

- A one-year delay in issuing a notice of violation does not support laches, especially where only one board member resided on premises for first several months that violation existed.

Seaside Villas Condo. Assn., Inc. v. Gerson,  
Case No. 00-0324 (Pine / Final Order / February 23, 2001)

- A two-year delay in enforcing rule, especially where unit owner is seasonal resident, is insufficient to establish laches.

South Bay Club Condo. Assn., Inc. v. Dublino, (currently on appeal)  
Case No. 97-0096, 97-0097 and 97-0098 (consolidated) (La Plante / Final Order / March 31, 1998)

- Defense of laches struck where association found not to have notice of respondents' overweight dogs brought into the condominium in 1993, 1994, and 1995, until shortly

before petition for arbitration was filed. Owners of unapproved dogs used alternate elevators and were discreet.

Sudol v. Tampa Racquet Club Assn., Inc.,

Case No. 98-3962 (Cowan / Summary Final Order / May 17, 1999)

- Laches would not bar claim where unit owner brought petition for arbitration less than one year after his demand for assignment of parking space was refused by association.

### **Lien**

Brooks v. Delvista "B" Condo. Assn., Inc.,

Case No. 98-5367 (Powell / Order / June 9, 1999)

- Claim seeking an order lifting liens placed on unit by association was dismissed as outside the arbitrator's authority.

### **Marina**

### **Meetings**

#### ***Board meetings***

#### **Committee meetings**

Corbo v. Versailles Hotel Condo. Assn., Inc.,

Case No. 97-2301 (La Plante / Summary Final Order / March 19, 1998)

- Finance committee meeting properly noticed when notice posted 48 hours prior to meeting, as required by Section 718.112(2)(c), F.S.
- Even if claimed signature of committee member was a forgery, a quorum of undisputed votes still existed to vote to cancel rental agreement.
- President's unilateral decision to dissolve finance committee was an ultra vires act. Committee may not be dissolved absent vote of a majority of the board of directors.

Kreitman v. The Decoplage Condo. Assn. Inc.,

Case No. 98-3495 (Draper / Amended Final Order / September 14, 1999)

- Where evidence showed that a single director coordinated renovation of building by meeting with the architect and designer, meetings were not required to be noticed per Section 718.112(2)(c), F.S. Notice requirement for committee meetings is applicable only where a group of unit owners, directors, or unit owners and directors, meets. Presence of a second director at such meetings, who just stopped by the association office on other business, does not elevate the meeting to one requiring notice because a quorum of the board was not present.

**Emergency**

Nassif v. Continental Towers, Inc., (currently on appeal)

Case No. 96-0403 (Draper / Partial Summary Final Order / March 24, 1998)

- Meeting of board at which paid staff member was fired and management company was hired was not adequately noticed. Board members' supposition that staff member might not cooperate with the transition to management services and that her letter to unit owners regarding her dismissal might undermine the authority of the board was purely speculation, and was insufficient to support finding of emergency and failure to provide 48-hour notice.
- Board meeting at which special assessment for legal fees was considered should have been noticed for 14 days per Section 718.112(2)(c), F.S. Fact that association was merely running low on funds did not constitute an emergency permitting board to meet without notice.

**Generally**

Gulf Island Beach and Tennis Club Condo. Assn. II, Inc. v. Dabkowski,

Case No. 99-1839 (Powell / Final Order / March 26, 2001)

- Board action voted on by developer board member concerning developer-assigned parking spaces was not void on the basis that developer board member had a conflict of interest, where the board action was fair and reasonable. S. 617.0832(1)(c), F.S.
- Such a minor technical aberration as failure to second a motion would not render the vote approving a motion a nullity.

Miller v. Olive Glen Condo. Assn., Inc., (currently on appeal)

Case No. 00-0360 (Powell / Amended Summary Final Order / August 22, 2000)

- It was improper for association's counsel, who was neither a unit owner nor a director, to preside at board meetings where the bylaws provided that the presiding officer shall be chairman of the board or the president, and it was clear that the intention of the bylaws was that the presiding officer was required to be a member of the board.

Nassif v. Continental Towers, Inc., (currently on appeal)

Case No. 96-0403 (Draper / Partial Summary Order / May 28, 1997)

- Prior to statutory amendment permitting closed meetings between the board and its attorney, meeting between board of directors and association's attorney, for the purpose of discussing strategy in threatened litigation, was required to be noticed pursuant to Section 718.112(2)(c), F.S. (1995). Attorney-client privilege provided by s. 90.502, F.S., did not permit board to meet secretly with attorney. Nor does Section 718.111(12)(c)(1), F.S., providing an exemption from disclosure for attorney-board work product, permit such meetings.

Pollak v. Bay Colony Club Condo. Inc.,

Case No. 99-1176 (Draper / Case Management Order / November 12, 1999)

- Bylaw provision concerning unit owner votes held to conflict with declaration and was therefore ruled invalid. Bylaw required that “votes” of unit owners who do not vote in an election would be counted toward the candidate or question otherwise receiving the largest number of actual votes. Declaration requires that the approval of 75% of the unit owners be obtained. Counting “non-votes” as votes conflicts with declaration's requirement.

Seascape Club Condo. Assn., Inc. v. Frankel,Seascape Club Condo. Assn., Inc. v. Trammell,

Case Nos. 98-3541 and 98-3543 (Consolidated) (Scheuerman / Summary Final Order / February 7, 1999)

- Board officially adopted hurricane shutters where resolution was adopted at board meeting to the effect that the board was adopting as its specifications, the specifications of those shutters presently on the building. There was no claim of ambiguity or uncertainty by owners concerning the import of the resolution. The statute does not require that specifications be set forth with technical certainty in amendment to the condominium documents, although as a practical matter the board may be advised to list the technical specifications in the minutes of the meeting or within a formal board resolution.

**Notice/agenda**Capistrano Condo. Assn., Inc. v. Wheeler,

Case No. 97-2231 (Cowan / Summary Final Order / May 14, 1999)

- Where declaration of condominium required that notice of the subject matter of any proposed amendment was to be included in notice for the meeting at which amendment would be considered, and notice failed to provide any reference to the subject matter of the proposed amendment, amendment was deemed invalid.

Kreitman v. The Decoplage Condo. Assn., Inc., (appeal filed October 1998)

Case No. 98-3332 (Draper / Summary Final Order / July 30, 1998)

- Board adoption of a resolution suspending amendments to the declaration regarding unit rentals, which was adopted pursuant to an amendatory provision that was subsequently invalidated in another arbitration proceeding, was adequately noticed where agenda included as an item “enforcement of condominium documents regarding rentals.” In addition, the petitioning unit owner waived any objections regarding notice by attending and participating in the meeting.

Kreitman v. The Decoplage Condo. Assn. Inc.,

Case No. 98-3495 (Draper / Amended Final Order / September 14, 1999)

- Where evidence showed that a single director coordinated renovation of building by meeting with the architect and designer, meetings were not required to be noticed per Section 718.112(2)(c), F.S. Notice requirement for committee meetings is applicable only where a group of unit owners, directors, or unit owners and directors, meets. Presence of a second director at such meetings, who just stopped by the association office on other business, does not elevate the meeting to one requiring notice because a quorum of the board was not present.

Leisure Living Estates Condo. Assn., Inc. v. Grieve,

Case Nos. 97-0277 and 98-3285 (consolidated) (Oglo / Final Order / May 14, 1998)

- As the architectural review committee appointed by the board can take final action to disapprove unit owners' requests to make alterations to the exterior of their mobile home units, such committee meetings must be properly noticed and must be open to the members pursuant to Section 718.112(2)(c), F.S.

Moreno v. The Hemispheres Condo. Assn., Inc.,

Case No. 98-5527 (Scheuerman / Final Arbitration Order / March 1, 1999)

- Where bylaws required that the association provide advance notice of board meeting to all board members in writing, bylaw did not conflict with notice provision of Section 718.112(2)(c), F.S., which requires posting of notice of board meetings. Statute addressed notice of board meetings to be given to the membership, and bylaws addressed notice to be given to the board members. Hence, association must comply with both the statute and the bylaws. The failure to give board member advance notice in writing invalidated board action taken where board voted to remove board member for missing three consecutive board meetings.

Mueller v. La Renaissance Condo. Assn., Inc.,

Case No. 96-0193 (Oglo / Final Order / February 23, 1998)

- The association prohibited an individual holding a power of attorney for a corporate unit owner from attending two board meetings. As the corporate unit owner had voting rights, and since as a practical matter a corporation would have to designate an individual to represent it, the board's action violated Section 718.112(2)(c), F.S., which requires board meetings to be open to all members, and the board was ordered to permit individuals holding powers of attorney for corporate owners to attend board meetings.

Nassif v. Continental Towers, Inc., (currently on appeal)

Case No. 96-0403 (Draper / Partial Summary Order / May 28, 1997)

- Prior to statutory amendment permitting closed meetings between the board and its attorney, meeting between board of directors and association's attorney, for the purpose of discussing strategy in threatened litigation, was required to be noticed pursuant to Section 718.112(2)(c), F.S. (1995). Attorney-client privilege provided by s. 90.502, F.S., did not permit board to meet secretly with attorney. Nor does Section 718.111(12)(c)(1), F.S., provide an exemption from disclosure for attorney-board work product, permit such meetings.

Nassif v. Continental Towers, Inc., (currently on appeal)

Case No. 96-0403 (Draper / Partial Summary Final Order / March 24, 1998)

- Meeting of board at which paid staff member was fired and management company was hired was not adequately noticed. Board members' supposition that staff member might not cooperate with the transition to management services and that her letter to unit owners regarding her dismissal might undermine the authority of the board was purely speculation, and was insufficient to support finding of emergency and failure to provide 48-hour notice.

Nassif v. Continental Towers, Inc., (currently on appeal)

Case No. 96-0403 (Draper / Amended Final Order / September 18, 1998)

- Notice of meeting at which special assessments were adopted was adequate where mailing was metered and delivered to the post office 14 days prior to the meeting. The fact that the mailings were postmarked a day later did not constitute competent evidence to rebut the affidavit of mailing maintained in the official records of the association.

### **Quorum**

### **Ratification**

### **Recall (See separate index on recall arbitration)**

Henschel v. Jupiter River Park, Inc.,

Case No. 00-1882 (Draper / Final Order of Dismissal / December 29, 2000)

- Claim that the association wrongfully certified the petitioner's recall from the board of directors, failed to maintain a current roster of unit owners and to enforce voting certificate requirements, resulting in unauthorized ballots being counted in the recall effort would be dismissed. A former board member lacks standing to challenge his own recall.

### **Right to tape record**

### ***Unit owner meetings***

### **Generally**

Abraham v. Sara-Sea Owners Assn., Inc.,

Case No. 98-3683 (Powell / Final Order Dismissing Amended Petition / September 14, 1998)

- By participating in the meeting, unit owner waived notice and objection to the manner in which the meeting was convened.

Bell v. Destin Towers Condo. Owners' Assn., Inc., (currently on appeal)

Case No. 97-0050 (La Plante / Final Order / June 23, 1998)

- Contested proxies used to obtain 75% unit owner approval for addition of spa, relocation of club house adjacent to unit owners' unit, and relocation of pool determined to be valid votes. Proxies found to be valid when voting certificate signed only by wife, when voter authorization certificates indicated that "husband/wife ownership is considered one owner, a certificate is not necessary," and when testimony of manager was received that if unit owners are husband and wife, a voting certificate is not required.

Branscomb v. Martinique 2 Owners' Assn., Inc.,

Case No. 99-0248 (Draper / Summary Final Order / June 8, 1999)

- Association was required under its bylaws to provide notice to unit owners of a special meeting of members even though the purpose of the meeting was to vote to recall certain directors. Unit owners' right under the bylaws to have association call and provide notice of the meeting was in addition to owners' right pursuant to Section 718.112(2)(j), F.S., and Rule 61B-23.0027, F.A.C., to call and notice a meeting to recall directors on their own.

Branscomb v. Martinique 2 Owners' Assn., Inc.,

Case No. 99-0248 (Draper / Order on Motion for Clarification / Amendment of Summary Final Order / June 18, 1999)

- Where association failed to call a special meeting of unit owners as it was required to do under the bylaws, order requiring the association to provide notice to the unit owners within 10 days of being provided text of the notice and date chosen by owners was appropriate.

Farnham v. Vista Harbor Assn., Inc.,

Case No. 97-0214 (Draper / Final Order / January 27, 1998)

- Board properly noticed and conducted its meetings on the installation of a fence. Question of whether board properly decided in emergency meeting to place fence two feet back from property line did not need to be addressed. Board had previously approved installation of fence, leaving exact placement to manager; subsequent to emergency meeting, board amended minutes from meeting at which fence installation



was approved to specify that fence could be placed within two feet of property line, effectively ratifying the manager's decision.

Farnham v. Vista Harbor Assn., Inc.,

Case No. 99-0107 (Scheuerman / Summary Final Order / April 12, 1999)

- Membership properly voted after the fact to approve construction of recycling facility at one time thought to be required by local ordinance and hence installed by board. Membership meeting at which less than 75% approval was achieved was properly adjourned to another date held within two weeks of the initial meeting, where the previous proxies and ballots, combined with the newly cast votes, combined to exceed the 75% requirement of the documents.
- Ballot or consent form to approve material alteration to the common elements, which contained a designation for the unit number and name of the owner, did not render the ballot or consent form illegal. There is no assurance of secrecy on a vote taken to approve a change to the common elements, unlike the statutory guarantee of secrecy during the conduct of elections for the board of directors.

Katchen v. Braemar Isle Condo. Assn., Inc.,

Case No. 00-1350 (Powell / Final Order of Dismissal / January 30, 2001)

- Unit owner meeting at which less than two-thirds approval was achieved was properly adjourned to another date, at which time additional votes were cast sufficient to approve the special assessment. A merely procedural violation of Robert's Rules of Order at the first meeting, in announcing the result of the vote prior to a motion to adjourn, would not render void the action taken by the association.

Nassif v. Continental Towers, Inc., (currently on appeal)

Case No. 96-0403 (Draper / Partial Summary Order / May 28, 1997)

- Association was required to call special meeting of the members upon request of sufficient number of members, as set out in bylaws, regardless of whether or not the referendum owners intended to conduct at the meeting would have any effect.

Sholty v. The Villages of Emerald Bay Condo. Assn., Inc.,

Case No. 98-4430 (Draper / Final Order / April 28, 1999)

- Association failed to properly notice and conduct a meeting of unit owners for the purpose of amending the condominium documents where the board noticed a meeting of the board of directors, rather than a meeting of the unit owners. Amendments to declaration and articles of incorporation held to be invalid as a result. However, amendment to bylaws was declared valid where the bylaws permitted amendments to be effected by written agreement of the unit owners and the ballots and proxies submitted by the unit owners were deemed to constitute an agreement of the owners.

Unit Owners Voting for Recall v. Sunrise Towne Preferred Condo. Assn., Inc.,  
Case No. 01-2864 (Draper / Summary Final Order / May 15, 2001)

- Where the board of association failed to hold meeting on whether to certify written agreement for recall served on it, and recall agreement was facially valid, association violated Section 718.112(2)(j), F.S. Recall was certified and directors ordered to turn over records of association to remaining board members.

Williamson v. Sabine Yacht & Racquet Club Condo. Assn., Inc.,  
Case No. 99-1552 (Draper / Final Order / January 31, 2000)

- Where more than 75% of unit owners (the percentage required to approve improvements) signed ballots indicating "approval to grant [communication company] the right to place telecommunication relay panels" on the building's roof, improvement was properly approved. Documents required "prior approved in writing" by the owners. Petitioner's claim that Section 718.112(2)(d)4., F.S., required vote to be conducted at a meeting of unit owners, rejected. Section 718.112(2)(d)4., F.S. requires that "any approval by unit owners called for . . . shall be made at a duly noticed meeting of unit owners . . . except unit owner may take action by written agreement, without meetings, [where] expressly allowed by [the documents]." Arbitrator determined that written agreement was specifically allowed by documents.

### **Notice**

### **Quorum**

### **Recall (See separate index on recall arbitration)**

### **Moot**

Dolphin Cove Condo. Assn., Inc. v. Hagen,  
Case No. 00-1799 (Pine / Summary Final Order / May 16, 2001)

- Case is not moot where unit owner acquiesced to a single inspection of her unit (after seven months of arbitration) because unit owner has not agreed to permit future inspections when the association demonstrates a need for them.

The Gardens at Pembroke Lakes Condo. Assn., Inc. v. Clementi,  
Case No. 00-1594 (Pine / Summary Final Order / December 14, 2000)

- Where owners did not rebut association's claim that illegal dog previously was removed and then returned, petition to permanently remove dog is not rendered moot by the respondent's claim that dog has been removed.

### **Mortgagee**

**Nuisance**

The Alexander Condo. Assn., Inc. v. Caniggia,  
Case No. 99-0146 (Pine / Final Order / May 20, 1999)

- Where condominium has no place set aside to curb dogs, and no published rule governing curbing of dogs, respondents' insistence on curbing dogs in grassy area near pool, despite sign on door to that area and over protests of condominium employees, may be discourteous, but is neither an actionable nuisance nor a violation of condominium documents.
- Where dogs' excrement is sluiced off balcony such that it routinely falls on balconies below, and situation continues after respondents are notified of complaint, dog owners are maintaining a nuisance.
- Where dogs are left unattended on balcony in violation of rule and bark at all hours of day and night, dog owners are maintaining a nuisance as well as violating condominium documents.
- Where petition only requested removal of two Rottweilers, but subsequent argument included complaints about a third dog as well, and respondents' counsel did not protest inclusion of argument and testimony regarding third dog, and where third dog may have been obtained after filing of petition, arbitrator deemed petition amended to include third dog, and ordered removal of third dog. There was no indication that third dog was not contributing to the nuisances complained of.

The Barbados IV at Tarpon Cove Condo. Assn., Inc. v. Mak,  
Case No. 00-2017 (Pasley / Summary Final Order / March 13, 2001)

- Where the rules require the removal of pets that are nuisances or unreasonably disturbing in the opinion of the board, and the board found the respondent's dogs had become a nuisance and were excessively disturbing due to excessive barking, and the respondent does not deny that her dogs bark for prolonged periods of time, a violation of the rule has occurred, and dogs ordered removed.

Bell v. Destin Towers Condo. Owners' Assn., Inc., (currently on appeal)  
Case No. 97-0050 (La Plante / Final Order / June 23, 1998)

- Location of spa seven feet from unit owners' window not found to prejudice rights of unit owners in the use and enjoyment of their unit. Proper noise insulation had been used in the walls, and noise occasionally generated by screaming children using spa did not prejudice unit owners in the use and enjoyment of their unit. No evidence presented that spa use generated noise late at night, and spa area not used by owners for individual activities.

Bennett v. The Atrium Assn., Inc.,

Case No. 99-1967 (Pasley / Amended Final Order / November 30, 2000)

- The petitioner did not establish a prima facie case of nuisance where he failed to prove that the noise emanating from the pool heater resulted in an appreciable, tangible injury resulting in actual, physical discomfort to him; where he failed to prove that having a commonly used gas pool heater that meets all code specifications several yards from a unit constitutes a nuisance to a person possessing the average and normal sensibilities to gas; and where he failed to prove that the pool heater constituted a safety hazard.
- The unit owner's contention that a rule prohibiting unit owners from permitting or allowing anything in their unit that annoys other members by unreasonable noises should extend to actions taken by the association when maintaining the common elements was rejected where the rule is plain, unambiguous, and clearly refers to the conduct taken by unit owners within their units.

Bent Tree Parcel Six Condo. Assn., Inc. v. Barberena,  
Case No. 99-0475 (Draper / Case Management Order / June 10, 1999)

- In pending arbitration case, association refused to provide unit owners asserting selective enforcement defense access to violation letters directed to other owners unless those other owners approved. In addition, association demanded \$200.00 to cover the cost of delivery of the records from storage. Association ordered to make the requested records available, which were official records, within five days and not to charge for the records except for copies, not to exceed 25 cents per page.

Colonial Club Condo. Assn., Section I, Inc. v. Grunberg,  
Case No. 99-0147 (Powell / Final Order / April 6, 2000)

- Operation of washing machine in unit for 40 minutes weekly, where there was no evidence that neighbors' sleep was habitually disturbed, held not to constitute a nuisance.

Colony Point 6 Condo. Assn., Inc. v. Kaplan,  
Case No. 98-3905 (La Plante / Final Order / June 24, 1998)

- Unit owner's unit found to be filthy and potential breeding ground for cockroaches which travel to adjacent unit and thus constitutes a nuisance. Temporary and then permanent injunctive relief granted requiring unit owner to have unit cleaned and to allow association to inspect unit bi-weekly for two years.

Cordova Greens III Condo. Assn., Inc. v. McGowan,  
Case No. 97-2453 (Cowan / Summary Final Order / May 20, 1999)

- Tenant's feeding of stray cat on outside areas of condominium property could attract other wild animals, which could cause harm to property or residents; therefore, behavior deemed to be a nuisance and enjoined.

Cypress Chase North Condo. Assn., Inc. v. Huc,  
Case No. 97-0093 (Scheuerman / Final Order / March 25, 1998)

- Owner who shouts profanities at fellow owners and board members, and who pounds on floor, declared to be a nuisance and ordered to desist.

DBAC, Inc. v. Dangard,  
Case No. 98-4607 (Draper / Final Order / August 30, 1999)

- Sounds of domestic altercation, including breaking of window glass, constitutes a violation of declaration restriction prohibiting unit owners from making noises that may tend to disturb others.

Grenadier Lakes at Welleby Condo. Assn., Inc. v. Patnaude,  
Case No. 96-0296 (Scheuerman / Final Order / June 16, 1997)

- Owner deemed a nuisance where guests engaged in a pattern of abusive and disruptive activities. Owner ordered to prevent nuisance guests from entering the unit.

Juno Ocean Walk Condo. Assn., Inc. v. Rhodes,  
Case No. 97-2436 (La Plante / Summary Final Order / April 22, 1998)

- Unit owners' recreational vehicle stained by mold and mildew and shed rusted, in contravention of declaration which stated that no nuisance shall be allowed upon the condominium property. Unit owners ordered to clean recreational vehicle and paint shed.

Lake Lawn Condo. Assn., Inc. v. Walls,  
Case No. 99-0855 (Powell / Final Order / January 14, 2000)

- Where unit owner's operation of CB radio equipment caused interference in other residents' telephones and televisions, unit owner was ordered to remove the CB equipment from his unit. The declaration prohibited any practice interfering with the peaceful possession of the property.

Mueller v. La Renaissance Condo. Assn., Inc.,  
Case No. 96-0193 (Oglo / Final Order / February 23, 1998)

- The unit owner claimed that the association, by refusing to trim the sea grapes bordering the ocean, was causing a nuisance by interfering with his view of the ocean.

The nuisance claim was dismissed for failure to state a cause of action, since the owner did not establish an injury to his legal rights.

Palm Beach Hampton Condo. Assn., Inc. v. Masters, (currently on appeal)

Case No. 99-0942 (Scheuerman / Order Denying Motion for Emergency Relief / June 16, 1999)

- The intimidation of the residents by a large Collie dog does not constitute a nuisance where it is unaccompanied by threatening and aggressive behavior. Moreover, one episode of barking in the night does not establish that the dog is a nuisance. Fact that adjacent owner has developed severe allergic reaction also insufficient where owner had been diagnosed with emerging allergies to multiple substances, where dogs were permitted in the complex, and where there was no testimony that the reaction was caused by a dog, or by this dog. Where the behavior complained of is only shown to be offensive or annoying to one of many residents, no finding of nuisance made.

Palm Beach Hampton Condo. Assn., Inc. v. Masters, (currently on appeal)

Case No. 99-0942 (Scheuerman / Final Order / January 12, 2000)

- Where evidence showed that only one barking complaint had been registered against dog, evidence insufficient to conclude that dog constituted a nuisance. In addition, fact that adjoining owner developed severe allergic reaction to dogs was also insufficient to have dog removed, where dogs were allowed at the condominium, where owner had been diagnosed with allergic reactions to multiple substances and where there was no showing that the dog had caused the reaction.

Pine Island Ridge Condo. G Assn., Inc. v. Delguidice,

Case No. 00-0128 (Pine / Final Order / June 30, 2000)

- Respondent's repeated disturbance of community by verbal altercations including vulgar utterances that could be heard throughout the building constitutes a nuisance.
- Respondent's sons' repeated violation of bicycle-related rules, and action of blocking other residents' use of elevators and roadways, caused sufficient nuisance to justify permanent removal of those children's bikes.
- Respondent's oldest son's behavior in terrorizing other residents by threatening them with bullwhip, by uttering obscene and abusive language, by trapping them on elevator for several minutes at a time, and numerous other actions, many in violation of condominium rules, justified requiring constant adult supervision of child.
- Respondent's sons' behavior in certain areas of common elements was sufficient to justify barring the children from entering those areas without adult supervision.

Porta Bella Yacht & Tennis Club v. Mechler,

Case No. 98-3476 (Scheuerman / Final Order Dismissing Petition / April 17, 1998)

- Petition dismissed for failure to state a cause of action where association alleged that owner was making excessive requests to review the records, calling the manager too often, and filing too many written complaints. Since owner has the right of access to the official records and may direct written inquires to the board, owner is acting within her rights and may not be declared a nuisance. Association had failed to adopt rules regulating right of access to records and addressing written inquiries.

Smokehouse Harbor Condo. Assn., Inc. v. Linsenmeyer,  
Case No. 98-4244 (Draper / Final Order / December 9, 1999)

- Where documents did not otherwise address the issue, installation of portable hot tub on screened porch did not constitute alteration of a limited common element as porch was a part of the unit and no modifications to the walls or floor were required. Tub plugged into regular 110-volt outlet and required no plumbing connections. Hot tub did not constitute a nuisance or interfere with other residents' use of their property. Evidence failed to show that use of a hot tub is unreasonable use of the property. Evidence did not show that the motor was excessively loud, the hot tub users were excessively raucous, or that the chemicals used to clean and sanitize the tub and water were harmful to the building or its occupants.

Tennis Club Davis Condo. Assn., Inc. v. Cedola,  
Case No. 97-0155 (Draper / Final Order / December 16, 1997)

- Barking noise determined not to rise to level of nuisance where most other owners did not complain and most vocal complainant was shown to be easily annoyed and more sensitive to noise than average person.

Tivoli Trace Condo. Assn., Inc. v. Jurcik,  
Case No. 00-0567 (Scheuerman / Final Order / January 3, 2001)

- Where the association at the final hearing produced a large volume of competent and substantial evidence substantiating its claim that the owner's dog has caused a nuisance with its constant barking, including the testimony of virtually all owners of adjoining units, dog found to be a nuisance and was ordered removed from the property.

### **Official Records**

Accardi v. Leisure Beach South, Inc.,  
Case No. 00-0955 (Scheuerman / Final Order / June 19, 2001)

- Where the association was required, pursuant to the declaration to either approve or disapprove leases of certain duration, the association was required to maintain among its official records copies of the leases it had approved or disapproved because the

leases related to the operation of the association within the meaning of Section 718.111(12)(a)15, F.S.

- As a general proposition, where an association is under a duty to maintain a certain record among its official records and fails to do so, the association cannot be held liable for the minimum damages provided by Section 718.111(12), F.S., for a willful failure to offer access to the official records. The violation involved is the failure to maintain the required record, not a willful failure to offer access to the records. However, where the association is made aware that a particular document is required to be maintained and nonetheless fails to use its best efforts to acquire the document and place it among its official records, such a failure may be considered tantamount to a willful failure to produce the record for inspection, subjecting the association to damages under the statute.
- While an opinion letter of association counsel to the board was initially exempt from disclosure under the statute, once the letter was shown to other owners, the letter was no longer privileged and must be disclosed.

Berg v. Lincolnwood Towers Condo., Inc.,

Case No. 98-5029 (Powell / Summary Final Order / March 5, 1999)

- The association's attempt to make access to the records conditional upon payment by the unit owner of sewage repair fees was not sanctioned by statute; consequently, the arbitrator ordered the association to make the records available within five days of the order.

Bindewald v. Ashley Hall Condo. Assn., Inc.,

Case No. 00-1096 (Pasley / Final Order / July 11, 2001)

- The existence of a contract between an association and a third party does not by itself extend the provisions of section 718.111(12), F.S., to the third party's record. Nevertheless, a unit owner does have a right of access to his association's official records even when an agent of the association is maintaining those records.

Blanco v. The Village of Kings Creek Condo. Assn., Inc.,

Case No. 00-1960 (Draper / Final Order of Dismissal / March 21, 2001)

- Where evidence showed that the association after diligent search could not locate minutes from a meeting that occurred approximately six years ago, and where the association offered a tape of the meeting, the failure to produce minutes upon request of an owner did not give rise to statutory damages pursuant to Section 718.111(12), F.S., for a willful failure to produce books and records.

Brin v. Nobel Point Condo. Assoc., Inc.,

Case No. 01-2354 (Scheuerman / Summary Final Order / July 20, 2001)



- Where owner requested to see the official records on three occasions, and was told the matter had been referred to association counsel, the association denied access on three occasions. Where owner clearly requested access to records but where association erroneously treated his request for records with a written inquiry pursuant to Section 718.112(2)(a)(2)., there was no reasonable basis for the board to have confused the straightforward request for access, and a willful failure to provide access to the official records was found to exist.
- If an owner requested access to all official records, and if association deems request to include privileged or protected documents, the association is obligated to produce all non-exempt records and cannot simply deny access to all records.

Brooks v. Delvista "B" Condo. Assn., Inc.,  
Case No. 98-5367 (Powell / Order / June 9, 1999)

- Petition sought order requiring association to make official records available for review. After certain records were provided, the unit owner sought to amend his petition because the records reflected a discrepancy between assessment expenses and the amount of the checks issued by the association for those expenses. The unit owner sought to amend his petition to seek an explanation for the discrepancy, accompanied by audit trail documentation. Leave to amend was denied where the unit owner was requesting an accounting, since this claim was outside the jurisdiction of the arbitrator.
- Claim seeking itemization statement showing revenue and expenditures failed to state a cause of action for which arbitrator could grant relief; Section 718.111(12), F.S. does not require the association to generate a report upon request of a unit owner.

Brown-Myrtill v. Oakland Forest Club Condo. Assn., Inc.,  
Case No. 00-1039 (Pasley / Summary Final Order / October 23, 2000)

- Section 718.111(12)(a)8, F.S., only requires that the association maintain copies of current insurance policies, and therefore the association is not required by statute to maintain policies from prior years. Further, the association is not deemed to have violated the access-to-records statute where it fails to produce for inspection past years' policies not in its possession.

Di Renzo v. Concord Village Condo. XII Assn., Inc.,  
Case No. 96-0387 (Scheuerman / Final Order / February 24, 1998)

- Association failed to successfully rebut evidence that it had willfully failed to grant access to the official records where association president had received and opened envelope containing request to view the records which he recognized and read, and had later lost, but failed to follow up on the request.

- Statute does not require that owner identify all records sought to be examined where the owner requests to review all records required to be maintained by Section 718.111(12), F.S. Where the owner requests to review all association records, the association is required to produce all non-privileged and non-exempt records required to be maintained by the association, regardless of whether the owner is able to actually regurgitate the actual list of documents specified in the statute.
- Association failed to rebut presumption of willfulness in statute where request to view records received February 17 and where letter offering access was sent on March 16. In the meantime, there was evidence that the association had referred the request to its attorney, but no evidence on the timing of the referral was introduced by the association, and it is possible that the matter was not referred to the attorney for one to two weeks after receipt of the request. It was incumbent upon the association to present this type of evidence to overcome the presumption of willfulness. Also, there was no bona fide and reasonable state of confusion over the legal rights of the association vis a vis the request; there was no obscure legal issue presented for consideration in the request. Where the association refers a matter such as this to counsel, it must bear the risk of an untimely result where the statute provides for a deadline.

Ellington v. Summerhouse Beach & Racquet Club Condo. Assn., Inc.,  
Case No. 99-2188 (Draper / Summary Final Order / January 14, 2000)

- Reservation calendar on boards (large sheets of oilcloth used to make and track rental reservations) held to constitute "official records" per Section 718.111(12)(a)13., F.S., because they were rental records where the association was acting as rental agent.
- Association did not willfully fail to provide access to rental reservation boards where unit owner asked for permanent *possession* of them because association planned to destroy them. Second request, this time to copy and *inspect* the boards, or in the alternative, to take possession of the originals, was granted within six business days. Therefore, association did not willfully fail to provide access to the records.

Farnham v. Vista Harbor Assn., Inc.,  
Case No. 97-0396 (Draper / Summary Final Order / November 14, 1997)

- Unit owner failed to show that association willfully denied access to all contracts and bids of association, where unit owner refused to narrow records request. Considering breadth of request and fact that unit owner sought copies, association was not required to make copies without first receiving advance payment for copying. Association could not estimate cost of duplication where unit owner refused to be more specific as to records sought.

- Association refused to comply with request for a copy of an audio tape of board meeting because minutes had been transcribed; however, Rule 61B-23.002(5)(b), F.A.C., requires audio recordings be maintained as official records at least until the minutes are approved, and arbitrator found the association had willfully failed to provide records. Damages of \$500.00 levied against the association.

Franklin v. Vista Verde North Condo. Assn., Inc.,

Case No. 00-0129 (Scheuerman / Summary Final Order / July 26, 2000)

- Where association is acting as a rental agent, rental records are subject to inspection pursuant to Section 718.111(12), F.S., unless specific records are exempted from disclosure. If association is not acting as rental agent, but is nonetheless requiring owners to fill out association form identifying family members staying in unit, records are related to operation of the association and are therefore official records. Exemption from disclosure provided in statute for information obtained by association in connection with the approval of a lease or other transfer only applies where association is required to approve or disapprove the transfer. Approval or rejection by association does not occur where an owner permits a family member to occupy unit, and the exemption finds no application, even assuming that the legislature intended to protect this type of information.

Jones v. Sierra Condo. Apts., Inc.,

Case No. 98-5177 (Cowal / Final Order / October 21, 1999)

- Association did not violate records access requirements of Section 718.111(12)(c), F.S., when it failed to mail copies of documents to requesting owner. Statute does not place mailing burden on association. In addition, association has the right to charge a fee for reproduction of the records and could require payment of the fee in advance of making the copies. Nor did association violate this section when it did not schedule a viewing of the same records; unit owner was advised that she needed to contact the manager if she wanted an appointment. The unit owner failed to make a request for an appointment.

Kavalec v. Continental Inn Condo. of Key Colony Beach, Inc.,

Case No. 98-5271 (Draper / Summary Final Order / December 3, 1998)

- Association did not violate official records statute when president refused to mail copies of requested records to unit owner. Section 718.111(12), F.S., provides that the association's records shall be maintained within the state and shall be "made available" to a unit owner within five working days after receipt of a written request by the board or its designee. This requirement may be complied with by having a copy of the records available for inspection or copying on the condominium property. The statute does not require the association to mail copies of records requested by a unit owner or to arrange for their delivery by other means. Rule 61B-23.002(5)(c), F.A.C., pertaining to copying and delivery of copies does not require association to mail copies of records. Rule merely provides that the association may, if requested by the unit owner or his

representative, mail the copies and may charge the unit owner the actual cost of mailing or other delivery.

Kilgore v. Ciega Verde Unit Owners Assn., Inc.,  
Case No. 00-0747 (Draper / Summary Final Order / July 3, 2000)

- Absent a rule limiting access to official association records, an association may not refuse access to its records on the ground that the unit owner has already seen the records once.
- Association found to have willfully failed to provide access to its records. Fact that association believed that unit owners who requested access to the records were part of a campaign to show other unit owners that the board wasn't following the law does not rebut the presumption of willfulness that arises 10 days after the association fails to honor a unit owner's request. Association may not condition access to its records on the unit owners granting blanket immunity to the association for past transgressions or specifying exactly which documents they want to see.

Kreitman v. The Decoplage Condo. Assn. Inc.,  
Case No. 98-3495 (Draper / Amended Final Order / September 14, 1999)

- Where association provided access to its official records on the ninth working day following receipt of unit owner's request, a presumption of willfulness does not arise, per Section 718.111 (12)(c), F.S. Because the time period included Christmas Eve, Christmas Day and New Years Eve, a few day's delay in providing access was held to be excusable, and the failure to provide access within five working days was held to be not willful. Where unit owner failed to prove that attorney opinion letter ever existed, no violation of records access statute would be found. Even if such a letter existed, it would be protected by attorney-client privilege. However, association's failure to provide access to documents supporting special assessment violated Section 718.111 (12)(c), F.S. Unit owner awarded \$500 in damages.

Lattomus v. The Palm Beach House Condo. Assn., Inc.,  
Case No. 97-0147 (La Plante / Summary Final Order / January 22, 1998)

- Association found in violation of Section 718.111(12)(a)(7), F. S., for failing to maintain a complete roster which includes unit owners' mailing addresses or voting certificates, if applicable. Association ordered to prepare and maintain a complete roster.
- Unit owner awarded \$2500 in damages comprised of \$500 in damages for each of five failures to provide records within the statutory time limit, pursuant to Section 718.111(12)(c), F.S.

Malone v. Pebble Springs Condo. Assn., Inc.,

Case No. 00-0558 (Pine / Final Order / October 9, 2000)

- Where request for access to records was hand-delivered to all unit owners, including all board members, on a date certain, the date on which the association's management company received the mailed copy is not material to the calculation of the date by which access must be granted.
- The fact that the custodian of the records is ignorant of the provisions of Section 718.111(12)(c), F.S., does not preclude a finding that failure to grant timely access was willful within the meaning of the statute. A unit owner's timely access to the records of the association cannot be made contingent on the legal sophistication of the association's management company's employees.
- A unit owner must be provided access within five working days of the date she gives the association or its designee written notice that access is desired, not within ten working days of the date on which she successfully convinces a third party of the statutory access requirement.
- While association may adopt reasonable rules governing owners' access to records, it cannot adopt rules that substantially erode or eliminate the right of access. Where appointments for access are limited to one hour, and where it is clear that not all the records can be accessed in less than three hours, access is unreasonably restricted and access pursuant to the statute has not been granted.
- Unit owner's letter stating "I would like to review, inspect and/or copy the following records of the association. . . Within the time period allowed, please let me know when I can inspect the records." is not ambiguous and cannot be disregarded as merely a response to an offer to settle a case pursuant to s. 90.408, F.S.
- Access to the official records cannot be made contingent on the unit owner's supplying security -- a deputy sheriff to attend the inspection -- at her own expense. Should the association determine that a certain security measure is necessary or desirable, the association must arrange and pay for it.
- Access to the official records cannot be refused on the ground that the information to be accessed, or any part of it, is available by other means. Even if all pertinent monthly financial reports are delivered to a unit owner, she has the right to see the actual records, the raw material from which the reports are distilled.
- Barring the adoption of a rule regarding the frequency of access to the official records, the association may not refuse to grant access on the ground that the unit owner has seen the requested records previously.

- The unit owner does not need to explain why access to the official records is requested, nor may access be denied on the ground that the unit owner's motives for requesting access are suspect.
- A request for access that merely repeats the list of records set out in the statute is not so vague that access can be denied or postponed pending clarification of what unit owner actually wants to see.

Mueller v. La Renaissance Condo. Assn., Inc.,  
Case No. 96-0193 (Oglo / Final Order / February 23, 1998)

- Statute violated where association failed to provide current copy of rules to owner upon request even where owner was in possession of current rules.

Nassif v. Continental Towers, Inc., (currently on appeal)  
Case No. 96-0403 (Draper / Partial Summary Order / May 28, 1997)

- Association erred in refusing to provide access to candidate information sheets until the second notice of election was sent out to owners. Once the information sheets are received by the association, they are official records subject to disclosure.

Nassif v. Continental Towers, Inc., (currently on appeal)  
Case No. 96-0403 (Draper / Amended Final Order / September 18, 1998)

- Association did not willfully withhold access to the unit owner roster where access to the roster was offered on the 11th working day following receipt of the request. Although roster did not comply completely with statutory requirements because phone numbers were not included, even though they were known to the association, where association provided the phone numbers soon after the petitioner/unit owner made known the omission, failure was not willful.
- Presumption that association had willfully failed to provide access to a single item relating to carpet replacement was rebutted where association secretary did not understand what the unit owner was requesting. In assessing whether a failure to provide access to records is willful, the context in which the requests for records were made and processed must be considered. Where unit owner's requests were generally voluminous, in which owner sought several specific records or types of records; the requests were frequently tied to inquiries, requiring the association to first research the question asked by the owner in order to then produce the records; and the requests were often contained in lengthy letters, mixed in with complaints to the association and management company concerning management of the condominium, confusion on the part of the association could be expected.
- Unit owner access to "May financial information" which, according to the management company contract had to contain several different financial documents,

was not refused where board provided access to a copy of the draft May financial report when it was prepared. The association was not required to submit separate components of the report before it was completed because the unit owner did not request that the separate components be provided. In addition, a document does not become an official record until it is received by the association and the association is not required to maintain mailing lists of unit owners who want access to future records.

- Association was not required to provide access to correspondence from its attorney offering legal advice on a specific question; privileged attorney-client correspondence is not subject to disclosure pursuant to Section 718.111(12), F.S.
- Association refused to provide access to records because of an alleged conflict of interest on the part of the unit owner's attorney who requested the records. While there is nothing in the statute permitting the association to refuse access to records because of a conflict of interest on the part of the requesting party or its representative, association's refusal was held not to be willful because the refusal was based on advice received from its attorney.

Neil v. Kingswood Assn. No. 2., Inc.,

Case No. 98-3422 (Anderson-Adams / Order Striking and Dismissing Claims, Requiring Supplemental Information, and Partial Summary Final Order / September 16, 1998)

- Where association did not have possession of a copy of its manager's license, the association was not required to produce it pursuant to Section 718.111(12), F.S.

Olds v. Piper Village West, Inc.,

Case No. 00-0639 (Powell / Summary Final Order / October 20, 2000)

- Where owner requested to inspect bylaws and financial records, and association only offered to provide a copy of the bylaws at the expense of the owner, violation of Section 718.111(12), F.S., which guarantees a right of access to official records, was violated. The owner was awarded statutory damages for the failure by the association to provide access.

Philistin v. Shaker Village Condo. Assn., Inc.,

Case No. 98-2858 (Scheuerman / Order Following Status Conference / April 9, 1998)

- 1991 amendment to official records provision set forth in Section 718.111(12), F.S., which added to the list of official records required to be made available to members for inspection, "all other records of the association not specifically included in the foregoing which are related to the operation of the association," was broad enough to include closed litigation files maintained by the association, which must be open for inspection unless protected by privilege.

- Exemption from discovery of fact and opinion work product provided in rule 1.280, Florida Rules of Civil Procedure, applies only to civil litigation and finds no application in arbitration proceeding conducted under Section 718.1255, F.S.
- Section 718.111(12)(c), F.S., although containing no specific exemption from disclosure for materials protected by the attorney-client privilege, was amended in 1992 to provide an exemption from disclosure for material traditionally associated with the separate work product privilege. Prior to the 1992 amendment to the statute, the Division had held that work product privilege set forth in rules of civil procedure was inapplicable to the disclosure rights provided by Section 718.111(12), F.S.
- Under the current statute, an association is not required pursuant to Section 718.111(12), F.S., to disclose its work product during the pendency of the case to which the work product pertains. However, materials which are in the possession of the association relating to concluded litigation, even if they would have been protected by the statutory work product privilege during the pendency of the civil litigation, must be made available to an owner upon proper request, unless the materials are also protected by the attorney-client privilege, which survives litigation.
- Documents which would constitute official records but which are protected by the attorney-client privilege are not required to be produced for inspection by association. In order to give meaning to legislative intent that association be entitled to an attorney-client privilege, materials protected by the attorney-client privilege are deemed exempt from disclosure under Section 718.111(12), F.S., even where the documents would otherwise constitute official records.
- Association ordered to file with the arbitrator those documents as to which it asserts attorney-client privilege for an in-camera inspection by the arbitrator.

Porta Bella Yacht & Tennis Club v. Mechler,

Case No. 98-3476 (Scheuerman / Final Order Dismissing Petition / April 17, 1998)

- Where owner is making excessive demands to view the official records, association is authorized by statute to make rules regarding the frequency, timing, location, notice, and manner of records inspection and copying. For example, an association might adopt a rule restricting access to three or four times per month, for no more than four hours per viewing, during enumerated times of the day, at the offices of the manager, upon the owner giving three days advance notice.

Richardson v. Sierra Condo. Apartments Assn., Inc., (currently on appeal)

Case No. 99-0262 (Pine / Summary Final Order / March 22, 1999)

- Association's refusal to provide access to records deemed willful where unit owner made repeated written requests over four-plus month period of time and association admittedly refused access due to ongoing litigation with owner and due to president's



inability to arrange a time to oversee inspection of records. Request does not have to be made for a proper purpose and access cannot be made contingent upon absence of litigation or otherwise upon a lack of ill will between the unit owner and the association or any officer thereof.

Rittlinger v. Martinique 2 Owners' Assn., Inc., (currently on appeal)  
Case No. 98-3185 (Powell / Final Order / January 21, 1999)

- Where association failed to provide access to previous rules, failure was not willful and unit owner was not entitled to damages under Section 718.111(12)(c) F.S., because association was only required to maintain in its official records a copy of the current rules under Section 718.111(12)(a)5., F.S.

Shields v. Versailles Gardens I Condo. Assn., Inc.,  
Case No. 98-3087 (Draper / Summary Final Order / July 15, 1998)

- Dispute involving access to records was not moot where records had been provided to unit owner/petitioner, but damages issue was yet unresolved.
- Association's failure to provide access to association records was deemed willful and \$500 in damages awarded where records provided only after 20 months had elapsed from the date of the written request. In addition, the unit owner made a written complaint to the association and raised the records access issue as a counterclaim in the association's foreclosure action. Records were provided only in response to unit owner's discovery request in the foreclosure action.
- Attorney's fees incurred by unit owner defending lien foreclosure action, in which access to records claim was raised by the unit owner as a counterclaim (which counterclaim was abated pending arbitration), cannot be awarded as damages in arbitration action alleging violation of right to access records.

Siesta Breakers Condo. Assn., Inc. v. Lehnert,  
Case No. 98-3475 (Powell / Final Order / February 26, 1999)

- Where association is required by statute to maintain current copies of the condominium documents, which shall be the official records, and when such records are then provided to the selling unit owner's broker, and then to a prospective purchaser, as required by statute, the prospective purchaser should be able to rely on such records. However, in this case, where purchaser learned, prior to closing, of conflicting information, such reliance was no longer reasonable.

Silva-Fernandez v. Arlen House West Condo. Assn., Inc.,  
Case No. 00-0130 (Draper / Summary Final Order / June 7, 2000)

- Association ordered to pay \$500 in damages for failing to make association records available for unit owner's review and copying. Fact that unit owner's requests are allegedly made to harass association, and are made frequently does not state a legally adequate defense or rebut the presumption of willfulness that arises when an association fails to grant access within 10 working days after receipt of a request.

Slovenski v. Paradise Shores Apartments, Inc.,

Case No. 98-3493 (Cowan / Summary Final Order / February 22, 1999)

- By enacting rule limiting official records requests to one per unit owner per month and limiting number of documents to be inspected to 20 records and also limiting viewing time to two hours, association essentially nullified statutory requirement that official records be open to inspection by any association member at all reasonable times, and rule was invalid.

Stover v. The Avalon Assn., Inc.,

Case No. 99-0404 (Powell / Order on Motion / October 19, 1999)

- Where association had not responded to unit owner's written request for access to official records, motion for discovery granted with respect to certain official records.
- Unit owner filed a petition to require association to repair low hot water problem in unit. During the pendency of the proceeding, the unit owner requested certain official records from the association, which it did not provide. The unit owner then filed a motion with the arbitrator, requesting an order granting injunctive relief, requiring the association to produce the records, and imposing \$50 per day as damages against the association for failure to timely produce the documents. The arbitrator held that an order granting injunctive relief and an award of damages were inappropriate where the petition did not allege a violation of Section 718.111(12), F.S., regarding access to official records, nor had the unit owner sought leave to amend the petition to include such a claim.

Villa v. Trianon Park Condo. Assn., Inc.,

Case No. 99-0571 (Draper / Order Dismissing Claim and Striking Request for Relief / August 26, 1999)

- Claim that the board failed to respond to unit owner's letters asking a series of questions, such as who are the board members and when are they available for questions, dismissed. Though asserted to be an official records claim pursuant to Section 718.111(12), F.S., this part of the statute does not require the association to answer interrogatories from unit owners or to create records desired by unit owners. Another part of the petition, complaining about the board's failure to generate a response to her letters, fails to state a claim within the jurisdiction of the arbitrator.

Warren v. Springwood Village Condo. Assn. of Longwood, Inc.,

Case Nos. 00-0177 and 00-2153 (Scheuerman / Partial Summary Final Order / September 21, 2000)

- Board policy limiting access to the official records to one hour during each 30-day period was invalid and inconsistent with statutory right of access to official records.

Warren v. Springwood Village Condo. Assn. of Longwood, Inc.,

Case Nos. 00-0177 and 00-2153 (Scheuerman / Final Arbitration Order on Rehearing / August 28, 2001)

- Where the association, in the face of direct knowledge of both the statutory requirements and of the deficiencies contained in its official unit owner roster, over a period of time failed to correct and update its roster, arbitrator concluded that the association willfully failed to provide access to the books and records within the meaning of Section 718.111(12), F.S.
- Where the association maintained audio recordings of meetings of the board among its official records, and did not produce them for inspection pursuant to bona fide request to review the tapes, the association violated Section 718.111(12), F.S., by willfully failing to produce official records. Even though the statute only requires an association to maintain recordings until the official written minutes are approved, fact that association kept the recordings made them official records subject to inspection.
- Where the association voluntarily maintained records of past elections for a period in excess of the one year required by statute, the association was free to discard the records at any time prior to a unit owner request to view the election records. However, for such time as the association maintained these records, the election records constituted official records and the association was not free to discard the records after receipt of a unit owner request to view those election records. Where the association did so, a willful denial of access occurred.
- Where the board members in the course of a duly scheduled inspection of the official records popped off flash cameras in the faces of the reviewing owners, attempted to audio record the review session without the permission of the owners, argued with the owners, and ultimately terminated the review session, association willfully failed to provide access to the official records and could be fined therefor. The conduct of the association was such that it impeded the right of the owners to gain access to the records. The conduct also infringed on the right of the owners to use the common element clubhouse for a proper use.

### **Parking/Parking Restrictions**

Bent Tree Parcel Six Condo. Assn., Inc. v. Barberena,

Case No. 99-0475 (Draper / Final Order / September 8, 1999)

- Where unit owner was constantly repairing vehicles on the common elements, and repairs involved removal of tires and brakes, among other things; resulted in tools, auto parts and auto parts boxes lying around sometimes for the entire day, unit owner found to have violated rule prohibiting unit owners from performing major repairs to vehicles, outside of the garages.

Bordeaux Village Assn. No. 1, Inc. v. Black,

Case No. 00-1000 (Scheuerman / Summary Final Order / August 28, 2000)

- Where declaration simply prohibited the parking of vehicles larger than a passenger automobile and did not specifically address the parking of trucks, rule that prohibited the parking of all trucks regardless of size was inconsistent with declaration and was thus invalid. Evidence showed that compact pickup truck was no larger than, and is significant smaller than, many typical passenger automobiles.
- Considering that other specific types of vehicles were outlawed, if drafter of declaration intended to prohibit all trucks, trucks would have been specifically prohibited.
- Where declaration prohibited boats, trailers, campers, golf carts, motorcycles or vehicles larger than passenger automobiles, but failed to address trucks specifically, and in another section of the documents permitted use of parking spaces for automobile parking only, second section would not be interpreted to prohibit the parking of trucks. The first section addressed and controlled issues relating to the types of vehicles allowed, and there was no indication that the second section was intended to supplement and substantively enlarge upon the list provided in the first section.
- Where declaration prohibited the parking of certain specific types of vehicles and did not specifically address the parking of trucks, and in another section permitted use of parking spaces for automobile parking only, but did not define "automobile," operative definition of "automobile" did not necessarily preclude parking of small pickup truck used primarily for personal transportation.

Cooper v. 1231 Penn, Inc., a Condo.,

Case No. 00-0103 (Scheuerman / Summary Final Order / October 23, 2000)

- Where declaration did not designate parking spaces as limited common elements, board was free to assign and re-assign their use to the owners, so long as the assignment was not arbitrary or capricious.
- Where condominium had only 10 parking spaces and 12 total units, any method of assignment would of necessity leave some owners without assigned parking spaces. Where board allocated spaces to those fortunate owners in attendance at a particular meeting, it would have been more equitable to assign spaces based on need or other

relevant factor, but since reasonableness of the method of assignment was not challenged, arbitrator made no findings on reasonableness of assignments.

Davis v. Paragon Condo. Assn., Inc.,

Case No. 99-2370 (Powell / Summary Final Order / February 28, 2001)

- Where the declaration provided that each unit had a right to a parking space in the first floor parking area and there was only one space for each unit, assignment to one unit of a second space was voided because such assignment would necessarily deny another unit of its rightful space.
- Provision for “uncovered parking” in the declaration and depiction of spaces on site plan attached as an exhibit to the declaration and filed therewith demonstrated that two spaces by the pool were considered uncovered parking which under the declaration became limited common elements upon assignment by the developer. The fact that the spaces were, after assignment, covered by pool cabanas did not change their character in the parking scheme.
- Florida Tower Condominium, Inc. v. Mindes, 770 So. 2d 210 (Fla. 3rd DCA 2000), holding that a dispute over use of parking spaces was not subject to arbitration, decided during the pendency of case did not require dismissal of present arbitration case concerning parking spaces. Present dispute was instituted before decision in Florida Tower case, present dispute arose in Fourth DCA, in which it had previously been held that parking cases were subject to arbitration, and Florida Tower case was in Third DCA. Also, a portion of the present dispute had previously been brought in circuit court where it was stayed for the plaintiff to seek arbitration, and none of the parties in the arbitration case sought dismissal.

Deaugustinis v. Harbor East House Condo. Assn., Inc.,

Case No. 00-0132 (Pine / Summary Final Order / July 7, 2000)

- Where the declaration allows a separate conveyance of appurtenant limited common elements, the appurtenance is created with reference to that possibility and subject to that possibility. However, where the declaration sets out a specific procedure as an exception to a general prohibition on separate conveyances, such conveyances may only be accomplished by use of that specific procedure. If an attempted conveyance is invalid pursuant to the declaration, the association has no authority to cure the defect. Moreover, if an attempted conveyance is invalid on its face, the application of equitable defenses will not make it valid.

Garden Isles Apts. No. 2, Inc. v. Ferrara, (currently on appeal)

Case No. 99-0679 (Pine / Final Order / December 1, 1999)

- Where parking space is neither a limited common element nor assigned to a particular apartment in condominium’s documents, parking space is a common element

and, except where change is arbitrary and capricious, the association may change parking space assignments as it sees fit.

Gulf Island Beach and Tennis Club Condo. Assn. II, Inc. v. Pardy,  
Case No. 00-1368 (Pine / Summary Final Order / November 29, 2000)

- Considering the declaration provision permitting the developer to assign covered parking spaces as limited common elements, which provision has no limitation on the number of spaces the developer may assign, the assignment of two covered spaces to a single unit is not barred by the declaration. Where the parking spaces assigned are limited common elements, the right to use parking spaces assigned by the developer is an appurtenance to the unit so assigned, and the association may not divest the unit's owners of their exclusive right to use those spaces. Juno by the Sea North Condominium Association, Inc., v. Manfredonia, 397 So.2d 297 (Fla. 4th DCA 1980) on petition for rehearing.

Gulf Island Beach and Tennis Club Condo. Assn. II, Inc. v. Dabkowski,  
Case No. 99-1839 (Powell / Final Order / March 26, 2001)

- Assignment of parking spaces to unit as a limited common element allows the right to use the spaces, but the assignment is not a conveyance of an interest in land subject to the formalities required of a deed. Thus, s. 689.01, F.S., requiring an instrument in writing signed in the presence of two subscribing witnesses, did not apply.
- Six parking spaces shown on plat recorded with declaration were subsequently re-stripped as four spaces and assigned to a unit, the owners of which enclosed the four spaces with a wall, with the permission of the association. Association's claim that six spaces had actually been enclosed and, therefore the unit owners enclosed more area than that to which they were entitled, was rejected by the arbitrator. Purchasers of units are on notice as to the number of actual spaces, by their viewing of the spaces and by the recordation of the contract showing the dimension of the area enclosed and listing four spaces assigned here at issue. Therefore, a change to conform to the original recorded plat was not warranted.
- Where the applicable provision of the declaration placed no limitation on the number of spaces the developer could assign, multiple parking spaces assigned to one unit could not be divested by the association.

Landmark Oaks Condo. Assn., Inc. v. Smith,  
Case No. 97-0063 (Scheuerman / Order Setting Final Hearing / January 30, 1998)

- Where declaration permits only light trucks, and where vehicle sought to be removed by the association is a Ford F250 pickup truck, where owner alleges that association permitted Dodge Ram 1500 pickup truck on property, arbitrator concluded that Dodge

1500 is more comparable to the Ford F150, and that the Ram 1500 is in a separate class from the Ford F250 for purposes of selective enforcement.

- Vans are not comparable to light trucks and therefore can not serve as the basis for a selective enforcement argument in a case initiated by the association seeking removal of a pickup truck.

Leisure Living Estates Condo. Assn., Inc. v. Grieve,  
Case Nos. 97-0277 and 98-3285 (consolidated) (Oglo / Final Order / May 14, 1998)

- Unit owners' vehicle was manufactured by Winnebago, was larger than a van, and had devices permitting a hook-up for electrical power and gas cooking. It was found to be a "camper" in violation of the declaration, which prohibited the parking of campers on the mobile home unit lot. Board's action, which prohibited the storage of motorized campers on condominium property based upon higher insurance costs, found to be reasonable.

Leisure Living Condo. Assn., Inc. v. Grieve,  
Case No. 99-0238 (Pine / Final Order / August 9, 2000)

- Where condominium documents precluded parking of "campers" but did not define term "camper," respondents' vehicle was permitted where it lacked water or sewer port or hookup, electrical outlets, sink or sanitary facilities, stove, refrigerator, tank for propane or bottled gas, cooking vents, exterior-mounted heater or air conditioner, or generator for the rear of the vehicle. Despite exterior camper-type appearance of vehicle, it was not equipped or furnished for camping and was not designed to be lived in; therefore, it does not fit common meaning of term "camper" and cannot be excluded from condominium premises.

Leopold v. Waterview Condo. Assn., Inc.,  
Case No. 98-5122 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / November 2, 1998)

- Where rule prohibiting unit owners from allowing others to use their assigned limited common element parking spaces without board approval was challenged, rule found consistent with the declaration of condominium, which grants the board authority to permit temporary use of vacant spaces while the unit owners are away for extended periods of time.

Massachusetts Condo. Assn., Inc. v. Shashaty,  
Case No. 99-1185 (Scheuerman / Final Order / September 15, 1999)

- Declaration prohibiting "commercial vehicles or trucks" and defining same so as to exclude pickup trucks with extended cabs or with a capacity in excess of one-half-ton used only for family transportation, construed to permit parking of F150 Ford truck with

extended cab, so long as magnetic commercial signs are removed upon entry to the condominium property.

Morton Village Condo. Assn., Inc. v. Lucas,

Case No. 97-2321 (Anderson-Adams / Summary Final Order / June 11, 1999)

- Rule prohibiting passenger vans conflicts with bylaws, which allow parking of "conventional passenger automobiles" because by modern standards, a passenger van is a conventional passenger automobile. Rule interpreted to prohibit only windowless utility vans.

Mueller v. La Renaissance Condo. Assn., Inc.,

Case No. 96-0193 (Oglo / Final Order / February 3, 1998)

- Meeting at which board adopted rule requiring owners to obtain written permission from other owner prior to using owner's covered parking space required only 48-hour advance notice pursuant to Section 718.112(2)(c), F.S., and does not constitute a rule affecting unit use which would otherwise require a minimum of 14 days notice. Validity of rule upheld.
- Rule prohibiting backing into parking spaces deemed valid.

Nargi v. Ocean Harbor Condo. Assn., Inc.,

Case No. 98-4821 (Draper / Final Order / April 21, 1999)

- Garage parking space was not appurtenant to petitioning unit owner's unit, nor was owner entitled to have a space assigned for his exclusive use. Declaration providing that the "right to use one parking space shall be an appurtenance to each apartment" does not require association to assign a parking space to each owner for the unit owner's exclusive use. Further, use of additional parking space assigned by developer to previous owner of petitioner's unit was not an appurtenance to unit; as such use was not designated by declaration as appurtenant to the unit nor was space designated a limited common element.

Neil v. Kingswood Assn. No. 2., Inc.,

Case No. 98-3422 (Anderson-Adams / Summary Final Order / June 21, 1999)

- Unit owner ordered to refrain from parking his van on condominium property where association rule prohibits vans except those which are registered as station wagons with the Division of Motor Vehicles. Unit owner's van is not registered as a station wagon, and it does not have passenger seats, full side windows, or other features typical of passenger vans.
- Where declaration permits "automobile" parking, a rule which prohibits utility type vans but permits passenger vans does not conflict with declaration.



Nejedly v. Evelyn Floyd and Bellair Condo. Assn., Inc.,

Case No. 00-0676 (Draper / Summary Final Order / October 6, 2000)

- Parking space which was designated by declaration as an appurtenant limited common element could not be sold by unit owner to another unit owner. The declaration indicated that the owner of an apartment to which a parking space was appurtenant could lease the space to the occupant of another unit; thus, while lease of a space was authorized by the original declaration, the sale of a space was not.
- Lease by unit owner of a limited common element parking space to another owner for a term of 99 years terminates upon sale of the unit to which the parking space is appurtenant. Logically the right to lease the space is granted subject to the designation of the space as a limited common element, such that the lease of necessity must end upon transfer of the unit. The former owner could only transfer the interest possessed—the exclusive right to use the space for the period of ownership.

Paquette v. Victoria Manor Condo. Assn., Inc.,

Case No. 00-1952 (Scheuerman / Summary Final Order / January 12, 2001)

- Where the declaration only permitted the parking of “private passenger automobiles,” owner demonstrated no entitlement to park the motorcycle on the property. An “automobile” has 4 wheels while a motorcycle is defined as a motor vehicle with 2 or 3 wheels.
- Even assuming that the board failed to enforce its parking restrictions against trucks and vans, such failure did not amount to selective enforcement and would not preclude the association from filing an action to cause the removal of a motorcycle. The violations are not comparable and do not support a finding of selective enforcement. A motorcycle is different from a truck or van in terms of appearance, function, size, and accompanying noise level and safety risk.

Pennwood Manor Condo., Inc. v. Buchansky,

Case No. 99-1858 (Powell / Summary Final Order / March 30, 2000)

- The fact that a tree near unit owners’ assigned parking space resulted in sap and bird droppings falling on their vehicle did not justify unit owners’ refusal to park in their space where the declaration provided that unit owners agree to park in assigned space and that the parking assignment plan shall not be changed absent a 90% unit owner vote.
- The unit owners’ contention that the association did not properly maintain a tree cannot justify the unit owners’ taking matters into their own hands and changing their parking space without the approval of 90% of the voting interests as required by the declaration.

- Where unit owners contended that the association improperly pruned a tree, resulting in sap and bird droppings falling on their assigned parking space, the arbitrator refused to intervene to instruct the association on how to prune a tree. Routine landscape maintenance methods are considered to be exercises of business judgment.

Poinciana Place Condo. Assn., Inc. v. Black,

Case No. 01-2414 (Scheuerman / Summary Final Order / May 2, 2001) (currently on appeal)

- Allegation that the association had failed to enforce rules against the parking of trucks but had determined to take enforcement action to remove a limousine does not establish selective enforcement. The association may properly decide that limousines, given their overall length, pose particular problems in parking, driving, and storage, and that these problems exist apart from any problems that may arise from allowing trucks on the property.
- Where at the time of purchase, the respondent/owner agreed in writing that limousine would not be brought on the property, owner foreclosed from later arguing that rules did not prohibit limousines.

Royal Park Condo. Assn., Inc. v. Lynn,

Case No. 00-1600 (Scheuerman / Summary Final Order / January 20, 2001)

- Parking policy of board in requiring identifying decal to be placed on the windshield found to have valid objectives of permitting association to control persons entering grounds and permitting association to enforce its restrictions on leasing and timesharing.
- Parking policy of board in requiring identifying decal to be placed on the windshield did not violate part of vehicle and traffic code prohibiting the placement of items on the windshield that materially obstructs the driver's vision, as sticker not shown to materially obstruct the average driver's field of vision. In addition, s. 316.2952, F.S. regulating materials that may be placed on the windshield, and making certain exceptions for certificates or papers *required by law or a governmental entity*, was not offended by the decal requirement as the requirement of a small parking sticker fell within the ambit of the exceptions to the statute. The provisions of the documents may be enforced in the courts, and the role of the governing association was similar to that of a governmental entity.
- An association must act reasonably in fashioning a parking decal policy. It is unreasonable to require that a large or distracting sticker be placed on the windshield that obscures the driver's vision or unduly distracts the driver. If in a particular instance, the sticker obscures the vision of a more diminutive driver, the association is required to

exhibit flexibility in its enforcement efforts and must offer alternate placement options, whether on the bumper or other location.

- Where the association offered to permit owner of shorter stature to place the parking decal on the upper region of the windshield as contrasted with placement on the lower driver's side portion of the windshield where it interferes with the driver's line of vision, association decision to enforce its parking decal policy upheld by the arbitrator.
- Where the association sought to enforce requirement that identifying parking sticker be placed on the windshield of the vehicles belonging to owners, for purposes of selective enforcement, fact that some owners were permitted to have car covers, that some automobiles did not have license plates or had expired tags, that some are backed into spaces or are commercial vehicles prohibited by the documents, and that visitors were not required to have affixed stickers, deemed not sufficient to establish selective enforcement due to dissimilarity of other violations.
- Fact that 2 or 3 other vehicles were parked on the property without the required sticker over a 6 month period in a condominium containing 670 units did not establish selective enforcement where it was not shown that board had knowledge of other violations or that current violations were occurring. It cannot be said that this minimum number of violations shows an intent, express or implied, by the board to ignore the parking violations other than respondent's.

Sabal Pine Condo., Inc. v. Felling,

Case No. 99-1326 (Scheuerman / Summary Final Order / November 1, 1999)

- In proceeding where association seeks to remove a pickup truck from the property, fact that association failed to take simultaneous enforcement action against the owner of a Suburban and a Ford Bronco did not show selective enforcement. First, Suburbans were specifically permitted by the documents and hence did not involve a violation of the parking regulations. As such, there was no violation upon which to base a selective enforcement defense. Secondly, even assuming the documents did not provide the Suburban as an exemption from the truck prohibition, the Suburban is a vehicle primarily designed and used for the transportation of persons, and not cargo, and was not therefore, a "truck." Similarly, the Bronco, the forerunner of today's SUVs in appearance, function, and design, was also designed primarily to transport persons and as such, did not resemble the pickup truck in such a manner as to conclude that enforcement in this case would be discriminatory, unfair, or unequal.

Sea Horse Park Homeowners Assn., Inc. v. Brucker,

Case No. 00-2185 (Pine / Final Order / March 21, 2001)

- Fact that the unit owners use a motor home for everyday transportation does not change the character of the vehicle--it is still a motor home.

Sessler v. Beachwood Villas Condo., Inc.,

Case No. 98-2734 (Anderson-Adams / Summary Final Order / September 23, 1998)

- Association violated provision of declaration which prohibited reassignment of parking spaces without unit owner's consent, where association's maintenance man transposed signs designating two unit owners' parking spaces at the request of one of the unit owners, and association would not replace the signs in their original positions when the second unit owner complained about the unauthorized change.
- Association's argument that this is purely a dispute between unit owners rejected. Although association claimed its maintenance man acted without authority in transposing the parking signs, association ratified his actions by refusing to crosscut the error when they were made aware of it.

Stegeman v. Harbor Towers Owners Assn., Inc.,

Case No. 99-1036 (Draper / Summary Final Order / August 24, 1999)

- Lease by association of common element parking spaces, upon which carports were to be built by lessee/unit owner for exclusive use of lessee/unit owner and for a term of years, did not require 100% unit owner approval per Section 718.110(4), F.S., as a material alteration of the unit's appurtenances. Area upon which carports were to be built was already used for parking, and action of board did not convert area into limited common element. Construction of carports would result in material alteration to the common elements requiring compliance with Section 718.113(2), F.S., and the declaration.

Sudol v. Tampa Racquet Club Assn., Inc.,

Case No. 98-3962 (Cowan / Summary Final Order / May 17, 1999)

- Where condominium documents provided that association shall be required to assign, or reserve until assigning, one parking space for each condominium apartment, the relief sought by unit owner (the assigning of a parking space) was granted. Assignment would not, as claimed by association, require 100% approval of the membership.
- Unit owner's claim to be assigned a particular parking space denied where condominium documents required only that one parking space be assigned to each unit, and did not guarantee any particular space or type of space.

Victoria Shores Condo. Assn., Inc. v. Cox,

Case No. 99-1975 (Draper / Final Order of Dismissal / December 29, 1999)

- Petition alleging that unit owner parked a vehicle with commercial lettering on the common elements dismissed as moot after unit owner ceased violation. Injunctive relief

not warranted merely because violation is one that could be repeated in the future. Association must allege facts that would show future violations are probable.

Vista Del Mar Assn., Inc. v. Lloyd,  
Case No. 97-2055 (Oglo / Final Order / May 22, 1998)

- As there was no evidence that covered parking space was made a limited common element appurtenant to the unit either in the declaration or by assignment by the developer, parking space used by former unit owner was not a limited common element space and the right to use it did not pass as an appurtenance to the subsequent owner/respondent.

### **Parties (See Arbitration-Parties)**

#### **Pets**

The Alexander Condo. Assn., Inc. v. Caniggia,  
Case No. 99-0146 (Pine / Final Order / May 20, 1999)

- Where condominium has no place set aside to curb dogs, and no published rule governing curbing of dogs, respondents' insistence on curbing dogs in grassy area near pool, despite sign on door to that area and over protests of condominium employees, may be discourteous, but is neither an actionable nuisance nor a violation of condominium documents.
- Where dogs' excrement is sluiced off balcony such that it routinely falls on balconies below, and situation continues after respondents are notified of complaint, dog owners are maintaining a nuisance.
- Where dogs are kept unattended on balcony in violation of rule and where unattended dogs bark at all hours of day and night, dog owners are maintaining a nuisance as well as violating condominium documents.
- Where petition only requested removal of two Rottweilers, but subsequent argument included complaints about a third dog as well, and respondents' counsel did not protest inclusion of argument and testimony regarding third dog, and where third dog may have been obtained after filing of petition, arbitrator deemed petition amended to include third dog, and ordered removal of third dog. There was no indication that third dog was not contributing to the nuisances complained of.

Anglers Cove Condo. Assn., Inc. v. Gianacaci,  
Case No. 99-1021 (Pasley / Summary Final Order / January 28, 2000)

- Where a unit owner's mother and the mother's dog intermittently visit the unit and the dog was not shown to have been grandfathered-in, the unit owner was found to be

in violation of the no-pet restriction and was ordered to remove the dog from the unit and to not permit the dog to visit the unit in the future.

Balmoral Condo. Assn., Inc. v. Goldstein,

Case No. 97-0153 (Anderson-Adams / Summary Final Order / September 2, 1998)

- Unit owner did not show entitlement to keep two dogs as a reasonable accommodation for his handicap under Fair Housing Act, where he submitted letter from his doctor saying the presence of his dog would be beneficial to his medical condition. Doctor's letter did not specify that two dogs were necessary or that one particular dog would be more medically beneficial than the other. Moreover, the association had acquiesced during the course of the proceedings to the presence of the smaller of the two dogs as a reasonable accommodation. Nor were unit owners exempt from declaration's pet restrictions where they had obtained written approval from the developer to keep pets in the unit while they were leasing the unit prior to purchase, but no permission to keep pets was obtained from the developer when they actually purchased the unit.

Bavarian Village Condo. Assn., Inc. v. Hedgepeth,

Case No. 99-0073 (Anderson-Adams / Summary Final Order / March 25, 1999)

- Respondent ordered to remove oversized dog from unit within 90 days, where respondent did not dispute that dog exceeded size restrictions contained in declaration but requested 90 days to prepare unit for sale and to vacate, and dog was not alleged to be a nuisance.

The Barbados IV at Tarpon Cove Condo. Assn., Inc. v. Mak,

Case No. 00-2017 (Pasley / Summary Final Order / March 13, 2001)

- Where the rules require the removal of pets that are nuisances or unreasonably disturbing in the opinion of the board, and the board found the respondent's dogs had become a nuisance and were excessively disturbing due to excessive barking, and the respondent does not deny that her dogs bark for prolonged periods of time, a violation of the rule has occurred, and dogs ordered removed.

Beach Haven Gardens Condo. Assn., Inc. v. Puchalski,

Case No. 97-0004 (Goin / Final Order / June 29, 1997)

- Where unit owners purchased unit directly from unit owner and not developer, where seller did not give them the condominium documents and rules and regulations, and where unit owners who owned large dog in violation of the rules and regulations bought unit, it was determined that the dog would have to be removed because the association did not have a duty to provide prospective unit owners with a copy of the condominium documents or to meet with them to ensure that they understood the rules and regulations. The duty to provide the condominium documents belonged to the selling unit owner pursuant to Section 718.503(2), F.S., not to the association. Therefore, the

association did not have a duty to speak or act, and unit owners were unable to establish estoppel.

Bent Tree Villas East Condo. Assn., Inc. v. Dolan,  
Case No. 99-2393 (Pasley / Summary Final Order / May 10, 2000)

- Although the dog had been removed from the unit at the time of issuance of the summary final order, the fact that the dog had been present in the unit after the respondent asserted that the dog had been permanently removed indicated that injunctive relief, requiring permanent removal of the dog, was appropriate and necessary.

Camelot Two Condo. Assn., Inc. v. Dirse,  
Case No. 00-0951 (Powell / Final Order / May 10, 2001)

- The burden was on the unit owner asserting defense of selective enforcement to show that there were other dogs over the weight limit of which the board was aware.

Carriage House of Fairfield Condo. Assn., Inc. v. Ott,  
Case No. 98-3120 (Draper / Final Order / August 7, 1998)

- Selective enforcement of one-dog limitation not shown where the only other situation arguably comparable to the respondents' violation of keeping two dogs in their unit, was an owner who kept one dog permanently in her unit and, on occasion, kept her boyfriend's two dogs in the unit during the day. In addition, to prove selective enforcement, proffered violation must be of like kind and of the same degree. It was within the association's business judgment to refrain from enforcing the one-dog rule against the owner who occasionally babysat her boyfriend's dogs. Evidence showed association had taken enforcement action against unit owners who housed more than one dog in their units and had notified all unit owners that the pet restrictions would be strictly enforced.

Catalina at High Point Condo. Assn., Inc. v. Furches,  
Case No. 98-3794 (Cowal / Summary Final Order / October 27, 1998)

- Where unit owner periodically allowed houseguest to bring unauthorized dog into unit, unit owner violated condominium documents which prohibited dogs in the unit.

Crystal Lake Condo. Assn., Inc. v. Denny,  
Case No. 99-1937 (Pine / Summary Final Order / December 7, 1999)

- Dog that periodically returns to "visit" has not been "permanently removed." Accordingly, respondents who had agreed to remove illegal dog in order to resolve dispute was ordered not to bring dog back onto grounds for bathing or other visits, even though condominium documents do not specifically prohibit "visits" by dogs.

4000 Island Blvd. Condo. Assn., Inc. v. DeBeer,

Case No. 99-1038 (Powell / Final Order After Default / March 31, 2000)

- Fair housing defense stricken where unit owners did not respond adequately to arbitrator's order requiring them to: a) furnish specific, detailed facts regarding a disability and the nature of the life function which the dog is necessary to assist; and b) to supply a detailed doctor's statement.

Half Moon Bay Condo. Assn., Inc. v. Kanerva,

Case No. 99-0113 (Cowl / Summary Final Order / October 22, 1999)

- Statement of clinical psychologist treating owner that, without pet dog, unit owner might suffer a depressive episode at some future time does not state an adequate defense under the fair housing laws. Unit owner not shown to have current disability.

Inverness Condo. V Assn., Inc. v. Papageorgiou,

Case No. 97-0188 (Powell / Summary Final Order / January 22, 1999)

- Where declaration permitted only dog owned by unit owner at time of purchase of unit, dog which belonged to unit owner's fiancée, and which had lived in the unit since purchase of the unit, was considered to have been owned by the unit owner at purchase and was not ordered removed.

Ironwood First Condo. Assn., Inc. v. Sorvick,

Case No. 97-1882 (Anderson-Adams / Order Striking Affirmative Defenses and Requiring Supplemental Information / May 18, 1998)

- Where declaration reads "Domestic dogs and cats will be permitted if they can be carried . . ." unit owner's 70-pound dog not permitted. The clear intent of the declaration restriction is to ensure that only small dogs, which are easily carried, are allowed.

Ironwood First Condo. Assn., Inc. v. Sorvick,

Case No. 97-1882 (Anderson-Adams / Summary Final Order / May 21, 1999)

- Fact that association took no action to remove unit owner's previous dog, which lived in the unit from 1972 to 1976, and again from 1987 until its death in 1988 is not sufficient to establish either estoppel or waiver, where association seeks to remove unit owner's new dog which was obtained nine years later in 1997.

Kamhi v. Pine Island Ridge Condo. F Assn., Inc.,

Case No. 98-4155 (Draper / Summary Final Order / December 4, 1998)

- Where declaration provided that an owner may "keep a pet in his unit, but only under regulations promulgated by the association," rule prohibiting pets unless written



permission of association was obtained was found to conflict with the declaration, as it was being applied to prohibit pets. Also, application for approval of purchase that required prospective owners to affirm that they did not have a pet and could not acquire one, conflicted with pet ownership right conferred in the declaration.

The King Cole Condo. Assn., Inc. v. Richardson,  
Case No. 00-0976 (Pine / Final Order / August 25, 2000)

- An association that decides to begin enforcing a long-disregarded rule, which may only be applied prospectively, must give actual, explicit notice before beginning enforcement. If association simply begins enforcement without notice of its intent to begin enforcing the rule prospectively, the association is practicing selective enforcement even if the association limits its enforcement actions to new violations.

Majorca Towers v. Gonzalez-Barrera,  
Case No. 99-1127 (Powell / Summary Final Order / November 3, 2000)

- Dog not ordered removed where dog was in condominium prior to date that the association announced its intention to begin enforcing restriction banning all pets except fish and birds. The association's contention, that it had never allowed dogs but had previously allowed cats, would not change the result since nowhere in the documents was any distinction made between cats and dogs.
- The association announced on November 4, 1998 that it intended to begin enforcing a pet restriction allowing only fish and birds. Board's action, which evinced an intention to make its enforcement retroactive to January 1, 1998, was improper to the extent that it was retroactive where association had previously failed to enforce its set restriction, board could only enforce the restriction against cats and dogs brought into the building after the announcement date, November 4, 1998.

Miramar Club Condo. Assn., Inc. v. Acevedo,  
Case No. 01-2355 (Draper / Final Order / May 15, 2001)

- The association barred from enforcing 25-pound weight limit for dogs where unit owner proved that association permitted numerous dogs exceeding the weight limit to live in the condo.
- Where the dog escaped its leash by breaking its collar, jumped up on condominium resident and scratched her, dog was not shown to be dangerous or a nuisance. Removal of dog would not be ordered. Evidence showed that the dog was no more excitable than other dogs when around other pets and there was no evidence that the dog was vicious or otherwise dangerous.

Oak Harbour Section Four Condo. Assn., Inc. v. Dooley,  
Case No. 00-1633 (Powell / Summary Final Order / April 6, 2001)

- Defenses, that getting rid of dog was cruel, an abuse of board's power and that prohibition against pets over 30 pounds was arbitrary, capricious, and unrelated to rational benefit, were rejected. Restrictions contained in declaration are clothed with strong presumption of validity; pet restrictions in condominium documents have been repeatedly upheld in prior cases.
- Assertions by realtors do not bind the association and the unit owner was not entitled to rely on realtors' statements amounting to an assertion that pet weight limit in the declaration would not be enforced.

Ocean One at 194<sup>th</sup> Condo. Assn., Inc. v. Medvedev,  
Case No. 00-1256 (Powell / Final Order / November 14, 2000)

- Unit owner's dog (a 130-pound bullmastiff) attacked and seriously injured a 14-pound poodle on the common elements and acted aggressively toward dogs in a second incident. It was held that maintenance of the bullmastiff in the condominium violated the provision of the declaration prohibiting interference with the peaceful possession or proper use of the condominium or association property, and the bullmastiff was ordered removed.
- Where the unit owner offered to muzzle the dog while on the condominium property and take it to the public street to be walked, appropriate remedy was to order removal of dog which had attacked and acted aggressively toward other dogs. If the dog were to remain, it might come near other dogs when being brought to the street or might run out of the unit when the door was opened and there was a risk that it would again attack other pets.

Ocean Riviera Assn., Inc. v. Nacy, (currently on appeal)  
Case No. 99-0385 (Pasley / Order Striking Examples of Selective Enforcement and Setting Prehearing Procedures / October 25, 1999)

- Sufficient differences exist between dogs and cats such that a past failure by the association to enforce a no-pet restriction against the owner of a bird or a cat will not bar the association from enforcing the no-pet restriction against the owner of a dog.

Ocean Riviera Assn., Inc. v. Nacy, (currently on appeal)  
Case No. 99-0385 (Pasley / Final Order / January 21, 2000)

- Where the association possessed neither actual nor constructive knowledge of one past comparable violation, and a second alleged comparable violation was not proved to have ever occurred, the association could not be said to have selectively enforced the relevant no-pet restriction. Where a unit owner has admitted maintaining two dogs in violation of the declaration of condominium and has presented no viable defense, the

relief requested by the association, an order requiring permanent removal of the dogs, shall be granted.

Outdoor Resorts at Long Key, Inc. v. Kelly,

Case No. 96-0429 (Scheuerman / Final Order / May 22, 1997) (Order on Rehearing / June 13, 1997)

- Dogs ordered to be removed where evidence showed two prior incidents where the dogs attacked or bit other dogs. While the dogs have shown no propensity to injure persons, it was possible that persons attempting to save their dog would be injured. Other owners have the right to walk their pets on the common elements without fear of molestation or predation.

Palm Beach Hampton Condo. Assn., Inc. v. Masters, (currently on appeal)

Case No. 99-0942 (Scheuerman / Order Denying Motion for Emergency Relief / June 16, 1999)

- The intimidation of the residents by a large Collie dog does not constitute a nuisance where it is unaccompanied by threatening and aggressive behavior. Moreover, one episode of barking in the night does not establish that the dog is a nuisance. Fact that adjacent owner has developed severe allergic reaction also insufficient where owner had been diagnosed with emerging allergies to multiple substances, where dogs were permitted in the complex, and where there was no testimony that the reaction was caused by a dog, or by this dog. Where the behavior complained of is only shown to be offensive or annoying to one of many residents, no finding of nuisance made.

Palm Beach Hampton Condo. Assn., Inc. v. Masters, (currently on appeal)

Case No. 99-0942 (Scheuerman / Final Order / January 12, 2000)

- Where condominium board became aware of dog on premises in violation of the documents in the later 1980's, but failed to institute enforcement action until 1999, laches precluded recovery by the association where owner had since, to her prejudice, trained dog to become a service animal to owner with disability.
- Evidence supported finding that owner suffered from chronic fatigue immune dysfunction. Owner had been under care of physician for 10 years for this condition that was progressive and manifested itself in increasing inability to stand, walk, and balance. Condition was therefore a disability within the meaning of the fair housing laws.
- Due to disability, owner shown to need assistance in rising up, walking, getting into and out of the bed and the bathroom, and in summoning help when needed. Evidence showed that dog was trained to provide beneficial services and to provide assistance with these functions. Only a dog in excess of 30 pounds could appreciably assist the owner, and a walker provides no forward momentum but relies on the efforts of the user to propel forward. Where dog able to affirmatively pull, push, and otherwise provide

momentum, and where dog not shown to increase the costs of the association, keeping of dog in the unit found to be reasonable and necessary accommodation.

- Where animal had received no formal training from state or federally-recognized service animal training facility, but where dog had been trained by owner who was a recognized trainer of dogs, and where dog shown to perform beneficial learned activities that enable the owner to use and enjoy the premises, dog is a service animal.
- Where evidence showed that only one barking complaint had been registered against the dog, evidence presented insufficient evidence to conclude that the dog constituted a nuisance. In addition, fact that adjoining owner developed severe allergic reaction to dogs was also insufficient to have dog removed, where dogs were allowed at the condominium, where owner had been diagnosed with allergic reactions to multiple substances and where there was no showing that the dog had caused the reaction.
- Selective enforcement, which involves a board's failure to enforce the documents in similar circumstances, not shown in action seeking removal of dog, where it was shown that cats were also possessed in violation of documents. A board may rationally decide to concentrate its enforcement resources against dogs that are larger, more nuisance-prone, generally louder, more dangerous and aggressive, with greater curbing needs, than cats.
- A finding of laches, waiver, or estoppel shown by the facts to apply to the earlier years of a dog's presence on the property, is not undone when the presence of the dog is shown to be less prevalent on the property in more recent years. These defenses are not deactivated when the dog ceased living at the condominium but only visited.
- The doctrine that knowledge acquired in social settings cannot be imputed to directors in their official capacities finds diminished application in condominiums.
- A finding of laches, waiver, or estoppel shown by the facts to apply to the earlier years of a dog's presence on the property, is not undone when the presence of the dog is shown to be less prevalent on the property in more recent years. These defenses are not deactivated when the dog ceased living at the condominium but only visited.

Palm Beach Harbour Club v. Blum,

Case No. 97-0064 (Oglo / Summary Final Order / September 29, 1997)

- Where declaration prohibited all pets, except and to the extent permitted by the board, and further conferred rule making authority on the board, board rule which prohibited all pets was valid.

Palm Beach Yacht Club Condo. Assn., Inc. v. Berezdivin, (currently on appeal)

Case No. 97-1893 (La Plante / Final Order / March 16, 1998)

- Pet Rottweiler found not to be a nuisance despite the fact that he had bitten someone four years prior. Dog's actions of leaping excitedly at people while on leash, growling at other dogs, and jumping on unit owners in a friendly manner found not to constitute a nuisance where dog was consistently walked on a leash and under voice control and no evidence exists that owner does not have complete control over dog. Dog ordered to be muzzled while on condominium property.

Pine Ridge at Lake Tarpon Village I Condo. Assn., Inc. v. Darwin,  
Case No. 98-5245 (Powell / Final Order / June 30, 1999)

- Although association initially requested removal of dog, arbitrator ordered unit owner to ensure that dog wore bark control training collar when left alone on condominium property where this solution was shown to be effective in resolving the barking problem.
- Where association did not dispute veterinarian's certificate presented by unit owner, reflecting that dog weighed less than 25 pounds, association's claim that dog exceeded declaration's 25-pound limit was dismissed.

The Pinebark Condo. No. 3., Inc. v. Salabarría,  
Case No. 99-1550 (Cowal / Final Order / October 21, 1999)

- In action brought by association to remove dog exceeding weight restrictions, unit owners failed to prove selective enforcement of pet weight restriction with evidence that stray dogs and cats reside in condominium and that unknown persons leave food out for them. Selective enforcement must include similar violations. Stray animals, by their very nature, are not pets.

Quatrain Condo. II Assn., Inc. v. Bradley,  
Case No. 97-2185 (La Plante / Summary Final Order / April 28, 1998)

- Where declaration stated that original owners could have pets and rule stated that other owners could have pets but lessees could not, rule found to be valid where declaration specifically allows board to promulgate rules and prohibitions on the keeping of pets. The fact that lessees, who kept the dog, sold part interest in dog to owners was a ruse to circumvent the plain intent of the declaration, and dog ordered removed.

Rittlinger v. Martinique 2 Owners' Assn., Inc., (currently on appeal)  
Case No. 98-3185 (Powell / Final Order / January 21, 1999)

- Where declaration permitted pets and went on to provide that such pets shall be maintained and kept pursuant to rules promulgated by the association, 20-pound weight limit rule was held valid because drafters of declaration contemplated additional, specific provisions regarding pets.

- Twenty-pound pet weight limit rule found reasonable as bearing a relationship to the health, happiness and enjoyment of life of unit owners. When viewed in conjunction with the rule that pets must be carried, the rule would enable owners to better control their dogs, both to prevent frightening confrontations and to promote the cleanliness of the common elements.

River Oaks Apts. Condo. Owners' Assn., Inc. v. Knapp,  
Case No. 97-2241 (Cowan / Summary Final Order / January 27, 1998)

- Requirement that pets be "no longer than 15 inches in height and 20 pounds in weight" interpreted to prohibit dog who is either higher than 15 inches or weighs more than 20 pounds, or both.

The Riviera at Coral Lakes Condo. Assn., Inc. v. Torra,  
Case No. 97-0280 (Draper / Final Order / February 5, 1998)

- Dogs confined to garage, who barked at passing cars, bicycles and people on foot, whose excrement caused a foul smell in surrounding area and who sometimes ran loose in the condominium, deemed a nuisance and unit owner required to remove dogs from condominium.

Seaside Villas Condo. Assn., Inc. v. Gerson,  
Case No. 00-0324 (Pine / Final Order / February 23, 2001)

- Even if respondent had been able to establish pattern of allowing two pets to unit owners who own two units, selective enforcement is not shown where the respondent only owns one unit in subject condominium.
- Examples of multiple pets being permitted by other condominiums that are part of same master association can not be used to establish selective enforcement by subject condominium.
- Establishing the existence of a single similar violation, which is permitted because the board is in a quandary over that violation, does not, standing alone, establish a pattern of selective enforcement.

Siesta Breakers Condo. Assn., Inc. v. Lehnert,  
Case No. 98-3475 (Powell / Final Order / February 26, 1999)

- Unit owners ordered to remove dog where declaration amendment prohibited pets. Unit owner's claim that she was handicapped and unable to work was not a valid claim under the Fair Housing act where there was no activity unit owner could not do without dog.

Smarro v. Esplanade Condo. Assn., Inc.,

Case No. 00-0815 (Draper / Final Order on Default / August 3, 2000)

- Declaration was amended to prohibit pets, but grandfather-in existing pets. Unit owners with dog decided to sell their existing unit and buy another unit in the same condominium. The association refused to approve their application to buy the unit unless they agreed not to house their same dog in the new unit. The amendment provided that unit owners housing a pet in the condominium which was approved by the association when the amendment was recorded shall be permitted to house the pet in the condominium property. Arbitrator ruled that the dog could stay because the amendment permitted pets housed in the **condominium** at the time the amendment was recorded.

South Bay Club Condo. Assn., Inc. v. Dublino, (currently on appeal)

Case No. 97-0096, 97-0097 and 97-0098 (consolidated) (La Plante / Final Order / March 31, 1998)

- Defense of laches struck where association found not to have notice of respondents' overweight dogs brought into the condominium in 1993, 1994, and 1995, until shortly before petition for arbitration was filed. Owners of unapproved dogs used alternate elevators and were discreet.

South Bay Club Condo. Assn., Inc. v. Melick,

Case No. 97-0099 (La Plante / Summary Final Order / February 18, 1998)

- 1988 amendment stating that only one cat was allowed applied by arbitrator to disallow dog brought into unit in 1989. Fact that declaration was subsequently amended in 1991 to allow one domesticated pet not in excess of 26 pounds found not to apply to dog, who was brought in prior to the 1991 amendment. Additionally, dog weighed in excess of 26 pounds.

Smith v. Ocean Villas Condo. Assn., Inc.,

Case No. 98-5429 (Draper / Final Order / July 1, 1999)

- Association would not be permitted to apply new prohibition against dogs to owner who had lived in the unit with the dog prior to adoption of the prohibition but had leased her unit and was not in residence when the prohibition was adopted, and had not registered the dog. Fact that the "chain of occupancy" was broken by the owner's lease of the unit did not permit retroactive application of this restriction. Nor would owner's failure to register the dog eliminate protection against retroactive restrictions where it was clear that the dog resided at the condominium prior to the adoption of the restriction.

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor, (currently on appeal)

Case No. 98-3662 (Powell / Order on Motion to Strike Affirmative Defenses, Order on Motion to Strike Proposed Exhibits, and Order on Motion to Compel Discovery / November 20, 1998)

- Where declaration prohibited animals without written consent, rule prohibiting dogs was not inconsistent with declaration.
- Unit owner asserted that she is emotionally attached to and dependent upon her dog, could not afford to sell her unit and could not live in the unit without the love and affection of the dog. The arbitrator reasoned that such attachment to the dog would not, standing alone, bar the association from enforcing its documents to remove the dog. The unit owner did not assert that she has a handicap or that the association's insistence that the dog be removed is a failure to accommodate her handicap.

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor, (currently on appeal)  
Case No. 98-3662 (Powell / Final Order / September 28, 1999)

- Where unit owner had dog when moving into unit in 1982, dog died in January 1995, and a new dog was acquired in February 1995, the defense of waiver failed as to the second dog where the association instituted action to enforce its documents against the second dog soon after learning of its existence, and such enforcement was commenced 17 months after second dog was acquired.
- Even if rule prohibiting dogs was not in effect when the unit owner first brought a dog onto the condominium property, the association was entitled to enforce the rule against a subsequently acquired dog.

Sunset Grove Condo. Assn., Inc. v. Finney,  
Case No. 98-4817 (Powell / Final Order / January 8, 1999)

- Unit owner's Rottweiler, which had bitten two persons on the condominium property, was ordered removed because it was a nuisance and violative of the declaration. Although the unit owner presented evidence that the dog was gentle, the evidence as a whole reflected that the dog might bite when playing and that the unit owner was not always able to control the Rottweiler sufficiently to prevent persons from approaching it.

Tennis Club Davis Condo. Assn., Inc. v. Cedola,  
Case No. 97-0155 (Draper / Final Order / December 16, 1997)

- Unit owner's defense of selective enforcement of pet weight restriction rejected where his dog exceeded 12-pound restriction four-fold and examples of other overweight dogs were not comparable. One dog weighed 14 pounds, another weighed 15 pounds.
- Barking noise determined not to rise to level of nuisance where most other owners did not complain and most vocal complainant was shown to be easily annoyed and more sensitive to noise than average person.



Tivoli Trace Condo. Assn., Inc. v. Jurcik,  
Case No. 00-0567 (Scheuerman / Final Order / January 3, 2001)

- Where the association at the final hearing produced a large volume of competent and substantial evidence substantiating its claim that the owner's dog has caused a nuisance with its constant barking, including the testimony of virtually all owners of adjoining units, dog found to be a nuisance and was ordered removed from the property.

Trellises Condo. Assn., Inc. v. Steir,  
Case No. 00-0866 (Pasley / Summary Final Order / January 22, 2001)

- The "Pets" section of the rules and regulations, providing among other things that each unit is allowed a maximum of two domestic animals, does not conflict with section 17(B) of the declaration of condominium, which provides that unit owners shall not keep pets or other animals in his unit or within the common elements unless prior written approval of the Board of Directors. The pet rule serves as prior written approval for those pets that fit within the categories outlined in the rule.

Tropic Schooner Condo. Apartments of Marco, Inc. v. Cygenhagen,  
Case No. 98-3537 (Powell / Summary Final Order / February 12, 1999)

- Where declaration amendment prohibited canines except those already grandfathered-in, the plain meaning was that any dogs already living in the condominium would be exempt. Since this unit owner did not purchase her unit until after the adoption and recording of the amendment, her dog was not grandfathered-in.

West Bay Plaza Condo. Assn., Inc. v. Weiss,  
Case No. 98-5457 (Cowan / Final Order / September 13, 1999)

- Where unit owner established that she was physically unable to comply with rule's requirement that she carry her pet while inside the building, association is required by fair housing laws to make reasonable accommodations for her, including allowing her to walk pet through lobby and hallways. Offered accommodation of allowing owner to pull dog through lobby on wagon not reasonable as owner unable to lift dog to place in it in the wagon and could not pull wagon.

Wimbledon at Jacaranda Condo. No. 1, Inc. v. Gormley,  
Case No. 98-3427 (La Plante / Summary Final Order / July 28, 1998)

- Selective enforcement not shown when, although respondent was only unit owner arbitrated against, association had sent violation letters to over a dozen other owners whose dogs were overweight stating that legal proceedings would be initiated if the violations were not corrected.

The Wittington Condo. Apartments, Inc. v. Connor, (currently on appeal)

Case No. 97-0408 (Anderson-Adams / Order on Motion to Strike Response to Order Requiring Supplemental Information and Reply, and Order Striking Affirmative Defense / February 23, 1998)

- Small caged birds are not comparable to cats for the purpose of establishing defense of selective enforcement. Small caged birds are generally quiet and do not emit noises which could be disturbing to other unit owners. Furthermore, the minimal noises they emit are normally confined to daylight hours.
- Cats, contrary to popular belief, are not all inherently quiet creatures. They may meow loudly and repeatedly, and when playing may run wildly throughout the unit, leaping on and off furniture, knocking over items in their path, creating a reverberation of footsteps, thumps and crashes which can be audible and disturbing to those living in proximal units. Being semi-nocturnal, cats are often most active in the evening or early dawn hours.

Woodside Village Condo. Assn., Inc. v. Lenz,

Case No. 00-1807 (Pasley / Final Order / April 25, 2001)

- When in 1997 the association republished its intent to enforce its no-pet rule and at that same time announced its intent to grandfather all existing violations, the respondent's pet that was brought into the unit for the first time in 1998 was not grandfathered and the respondent's maintaining of that pet in the unit constitutes a violation of the no-pet rule.

**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**

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

Case No. 99-2230 (Powell / Order to Show Cause / December 1, 1999)

- The request for an order requiring establishment of reserve accounts raises an issue outside the arbitrator's authority.

**Restraints on Alienation (See Unit-Restraints on alienation)****Sanctions (See Arbitration-Sanctions)****Security Deposits (See Purchase Contracts)****Selective Enforcement (See also Estoppel; Waiver)**Baran v. Ro-Mont South Condo. "K", Inc.,

Case No. 99-1563 (Powell / Summary Final Order / July 27, 2000)

- Where condominium association and master association removed unit owner's garden from common elements, but allowed other similar individual owners' gardens to remain, there was no rational basis for associations' action and they were ordered to pay for reinstallation of unit owner's garden.

Bay Shore Cooperative, Inc. v. Procacci,

Case No. 97-0275 (Anderson/Adams / Final Order / July 7, 1999)

- Selective enforcement refers to unequal enforcement of restrictions against other unit owners. Fact that association itself leases a unit owned by the association does not establish selective enforcement of restrictions on subleasing where association has diligently pursued other unit owners' violations of the subleasing restrictions.

Bayside Terraces Owners' Assn., Inc. v. Cusumono,

Case No. 96-0293 (Oglo / Summary Final Order / October 22, 1997)

- Where association sought removal of full terrace enclosure, selective enforcement not found where other owners permitted to have partial terrace enclosures; partial enclosures found not to be comparable to full enclosures.

Camelot Two Condo. Assn., Inc. v. Dirse,

Case No. 00-0951 (Powell / Final Order / May 10, 2001)

- The burden was on the unit owner asserting defense of selective enforcement to show that there were other dogs over the weight limit of which the board was aware.
- Unit owners contended that they were singled out for enforcement of dog weight limit due to an earlier conflict with the association regarding the roof of the unit. The arbitrator held that the necessary elements of a defense of selective enforcement were whether comparable violations existed of which the association through its board was

aware, yet the association took no action. These elements would be dispositive and any motive for the selective enforcement was immaterial; thus, evidence regarding the roof would be inadmissible.

Canaveral Sands Condo. Assn., Inc. v. Tricard,  
Case No. 98-3826 (La Plante / Summary Final Order / July 22, 1998)

- Selective enforcement not shown, and unit owner ordered to remove tile from balcony, because examples of selective enforcement cited by unit owner were tiled patios, which are not comparable to tiled balconies. Patios do not contain rebar, whereas balconies do.

Capistrano Condo. Assn., Inc. v. Jochim,  
Case No. 98-4376 (Scheuerman / Final Order / September 14, 2000)

- Where owner installed patio stones that did not differ in material aspect from the stones installed by other owners in the area outside a majority of the ground-level units, board was engaging in selective enforcement is taking action seeking removal of stones. Respondent's stone patio was found comparable in terms of size, shape, and function, such that the arbitrator determined that it would be unfair to allow the other patios to exist while singling out respondent's patio.

Carbone v. Seawatch at Jupiter Island Condo. Assn., Inc.,  
Case No. 99-0941 (Scheuerman / Summary Final Order / August 31, 1999)

- No selective enforcement found to exist in case initiated by association to remove satellite dish installed on general common elements where only other examples of violations not addressed by association included fans, furniture, and stereo speakers on the limited common element porches. Examples differed in location, function, and appearance such that it could not be said that to require compliance with the declaration in the instant case would be discriminatory, unfair, or unequal.

Carriage House of Fairfield Condo. Assn., Inc. v. Ott,  
Case No. 98-3120 (Draper / Final Order / August 7, 1998)

- Selective enforcement of one-dog limitation not shown where the only other situation arguably comparable to the respondents' violation of keeping two dogs in their unit, was an owner who kept one dog permanently in her unit and, on occasion, kept her boyfriend's two dogs in the unit during the day. In addition, to prove selective enforcement, proffered violation must be of like kind and of the same degree. It was within the association's business judgment to refrain from enforcing the one-dog rule against the owner who occasionally babysat her boyfriend's dogs. Evidence showed association had taken enforcement action against unit owners who housed more than one dog in their units and had notified all unit owners that the pet restrictions would be strictly enforced.

Catalina at High Point Condo. Assn., Inc. v. Furches,  
Case No. 98-3794 (Cowan / Summary Final Order / October 27, 1998)

- Where unit owner alleged that other owners maintained pets in units, but failed to respond to arbitrator's order to provide substantiating facts, selective enforcement defense stricken.

Cypress Bend IV Condo. Assn., Inc. v. Pepper,  
Case No. 00-0417 (Pasley / Summary Final Order / June 26, 2000)

- Where unit owner/respondents submitted an affidavit signed by the only other unit owner who had committed a comparable violation, stating that the association initiated enforcement action against the other unit owner several months prior to the filing of the petition in the present case, the unit owners' defense of selective enforcement must fail. Although the unit owners had shown that a comparable violation once existed, they did not show that the association had failed to enforce the documents against the other unit owner.

Fair Oaks North, Inc. v. Manista,  
Case No. 98-4855 (Pine / Final Order / May 21, 1999)

- Neither the fact that neighboring condominium's board allowed awnings, nor the fact that the petitioner/condominium allowed installation of awning while still controlled by developer, could be used to establish that owner-controlled board routinely permitted awnings and therefore was selectively enforcing prohibition when it refused to authorize respondents' awning.

Feigenheimer v. Venetian Village Condo. Assn., Inc.,  
Case No. 99-1292 (Anderson-Adams / Summary Final Order / October 11, 1999)

- Selective enforcement is an affirmative defense which may only be asserted as a protective shield and may not be used offensively.
- An awning installed or permitted to be installed by the developer cannot be used to establish selective enforcement by a subsequently elected owner-controlled board.

Fourth Gulfstream Garden Apts. Condo., Inc. v. Manno,  
Case No. 99-0648 (Scheuerman / Final Order / January 19, 2000)

- Where association, prior to commencing arbitration proceeding against owner who had installed washer and dryer in violation of rules, wrote letters to all known owners demanding the removal of their washers and dryer, and where other owners had acquiesced and had removed their facilities, no selective enforcement shown even though association in spirit of compromise had paid one owner for costs of removal. The fact that the association, upon legal advice, paid for the costs of removal and restoration

in one case does not give rise to a claim of selective enforcement where similar offer not extended to respondent unit owner. Because legitimate legal concerns leading to the offer in the one case were determined to exist, no disparate treatment found.

Hitching Post Co-Op, Inc. v. Ryan,

Case No. 98-3906 (Anderson-Adams / Partial Summary Final Order and Order to Show Cause / October 20, 1998)

- Where unit owner claimed association was selectively enforcing its age and occupancy restrictions against her family, but failed to comply with order requiring her to submit specific examples of other units which are not in compliance with these restrictions, defense stricken.

Island House Apartments, Inc. v. Noller,

Case No. 97-0220 (Scheuerman / Final Order / October 28, 1998)

- Where association sought to require the removal of a glass patio enclosure that increased the living space of the unit, fact that other owner had extended his front doorway into the common element hallway and in effect annexed a portion of the interior hallway not deemed comparable for purposes of establishing selective enforcement, given the differences in location, function, and appearance.

The King Cole Condo. Assn., Inc. v. Richardson,

Case No. 00-0976 (Pine / Final Order / August 25, 2000)

- An association that decides to begin enforcing a long-disregarded rule, which may only be applied prospectively, must give actual, explicit notice before beginning enforcement. If association simply begins enforcement without notice of its intent to begin enforcing the rule prospectively, the association is practicing selective enforcement even if the association limits its enforcement actions to new violations.

Landmark Oaks Condo. Assn., Inc. v. Smith,

Case No. 97-0063 (Scheuerman / Order Setting Final Hearing / January 30, 1998)

- Where declaration permits only light trucks, and where vehicle sought to be removed by the association is a Ford F250 pickup truck, where owner alleges that association permitted Dodge Ram 1500 pickup truck on property, arbitrator concluded that Dodge Ram 1500 is more comparable to the Ford F150, and that the Ram 1500 is in a separate class from the Ford F250 for purposes of selective enforcement.
- Vans are not comparable to light trucks and therefore can not serve as the basis for a selective enforcement argument in a case initiated by the association seeking removal of a pickup truck.

Leisure Beach South, Inc. v. Wigo,

Case No. 97-0157 (Scheuerman / Summary Final Order / November 13, 1997)

- In action where association sought removal of non-conforming hurricane panels installed by owner, owner alleged that other owners had non-conforming front doors, fences, and central air-conditioning, and that the association was not enforcing the restriction against them. The defense of selective enforcement was rejected, as the examples differed in location, effect, and nature and thus were not comparable.

Lyme Bay Colony Condo. Assn., Inc. v. Forget,

Case No. 97-1884 (La Plante / Order Striking Affirmative Defenses and Requiring Supplemental Information / August 10, 1998)

- Selective enforcement with regard to restrictions on balcony use would not be shown where the unit owner asserting the defense was the only unit owner who had been served with a petition for arbitration, but where other unit owners with violations had been notified of their violations by the association.
- Selective enforcement of restrictions on balcony use, prohibiting balcony hangings and shades, not shown where the examples of other violations proffered by the respondent/unit owner, burglar bars on a patio window and oversized, tinted windows on a balcony, were not comparable.

Lyme Bay Colony Condo. Assn., Inc. v. Forget,

Case No. 97-1884 (Draper / Summary Final Order / October 15, 1998)

- Unit owner's defense of selective enforcement was rejected where violations of balcony use restrictions proffered by him were not as extensive as his. In order to show selective enforcement, the proffered violation must be of like kind and degree.
- Association may, consistent with the principles of business judgement, refrain from enforcing a restriction against an insignificant violation as contrasted to a significant violation. Selective enforcement not shown in this situation.

Mariners Pass Homeowners' Assn., Inc. v. Marzocca,

Case No. 97-0215 (Cowal / Final Order / July 29, 1998)

- Where unit owner established that neighboring units violated restriction regarding setbacks or moved air conditioning unit, selective enforcement defense not established when unit owner violated more than five different building restrictions or declaration provisions, as violations were different in scope and number.

Miller Villas Condo. Assn., Inc. v. Lichtenstein,

Case No. 99-1545 (Pasley / Final Order / June 28, 2000)

- Although other unit owners had gates that extended beyond the anterior wall of their respective units, which constitute violations of the rule, the other violations were not found to be comparable because the respondent/unit owner's gate was the only gate that blocked access to a fire alarm, which was located behind the stairwell.

Miramar Club Condo. Assn., Inc. v. Acevedo,  
Case No. 01-2355 (Draper / Final Order / May 15, 2001)

- The association barred from enforcing 25-pound weight limit for dogs where unit owner proved that association permitted numerous dogs exceeding the weight limit to live in the condo.

Nacy v. Ocean Riviera Assn., Inc.,  
Case No. 98-4912 (Pine / Final Order of Dismissal / October 5, 1998)

- Petition filed by unit owner alleging that association was selective enforcing pet restriction dismissed; selective enforcement is a defense to enforcement action and is not a cause of action.

Newcastle Condo. Assn., Inc. v. Greger,  
Case No. 00-0243 (Pasley / Final Order / January 26, 2001)

- When asserting the affirmative defense of selective enforcement, the unit owner has the burden of proving the existence of other comparable violations against which the association has not taken enforcement action. The fact that other unit owners had received violation letters showed that the association had begun enforcement action against those unit owners.

O.R.A. at Melbourne Beach, Inc. v. Donnelly,  
Case No. 98-2736 (Anderson-Adams / Summary Final Order / July 2, 1999)

- Unit owner's defense of selective enforcement rejected where other allegedly non-conforming screen-room roofs had canvas or vinyl covers (materials which were permissible under condo documents) installed over non-conforming roof materials, but unit owner's screen-room roof was made of exposed non-conforming aluminum without a cover made of conforming materials.

O.R.A. at Melbourne Beach, Inc. v. Mashke, (currently on appeal)  
Case No. 98-2737 (Anderson-Adams / Partial Summary Final Order and Order Requiring Response / December 4, 1998)

- Where association knowingly allowed five other unit owners to install various building materials such as ceiling tiles, vinyl soffit, and insulated Styrofoam panels directly beneath canvas roof-covering of their screen-rooms, and condominium documents required screen-room roofs to be made of canvas or pliable vinyl,



association must also allow the respondent unit owners to keep the aluminum-clad Styrofoam panels that they installed under their canvas screen room roof.

- Association's own installation of a screen-room similar to that of unit owners' cannot be used to establish selective enforcement where the screen-room restrictions sought to be enforced against unit owners appeared in that portion of declaration pertaining to use and occupancy of units (rather than common elements); these restrictions did not necessarily apply to the association or to a screen-room installed on the common elements.

Ocean Riviera Assn., Inc. v. Nacy, (currently on appeal)

Case No. 99-0385 (Pasley / Order Striking Examples of Selective Enforcement and Setting Prehearing Procedures / October 25, 1999)

- Sufficient differences exist between dogs and cats such that a past failure by the association to enforce a no-pet restriction against the owner of a bird or a cat will not bar the association from enforcing the no-pet restriction against the owner of a dog.

Palm Beach Hampton Condo. Assn., Inc. v. Masters, (currently on appeal)

Case No. 99-0942 (Scheuerman / Final Order / January 12, 2000)

- Where evidence showed that only one barking complaint had been registered against the dog, evidence presented insufficient evidence to conclude that the dog constituted a nuisance. In addition, fact that adjoining owner developed severe allergic reaction to dogs was also insufficient to have dog removed, where dogs were allowed at the condominium, where owner had been diagnosed with allergic reactions to multiple substances and where there was no showing that the dog had caused the reaction.

The Palm Club Assn., Inc. v. Bocchino, (currently on appeal)

Case No. 98-3993 (Anderson-Adams / Summary Final Order / January 15, 1999)

- Association claimed unit owners made unauthorized alterations to the common elements by installing "sun tunnel" skylights in their unit. Declaration, read in conjunction with 718.113, F.S., prohibits any alterations to the common elements without the consent of at least 75% of the voting interests in the condominium. Selective enforcement is inapplicable where the only example cited by unit owners is the board's installation of a similar skylight on the common elements. The board's authority to alter the common elements is governed by different provisions in the declaration than those which apply to unit owners, even if the board's installation of a skylight may constitute a separate violation of the declaration. Selective enforcement refers to unequal enforcement of restrictions against other unit owners or tenants.

Paquette v. Victoria Manor Condo. Assn., Inc.,

Case No. 00-1952 (Scheuerman / Summary Final Order / January 12, 2001)

- Even assuming that the board failed to enforce its parking restrictions against trucks and vans, such failure did not amount to selective enforcement and would not preclude the association from maintaining an action to cause the removal of a motorcycle. The violations are not comparable and do not support a finding of selective enforcement. A motorcycle is different from a truck or van in terms of appearance, function, size, and accompanying noise level and safety risk.

Parliament Towers Condo. Assn., Inc. v. Stettin,

Case No. 96-0437 (Scheuerman / Summary Final Order / March 19, 1998)

- In proceeding instituted by association seeking modification of satellite dish placement and installation, claim of selective enforcement by owner to the effect that decorative items were permitted to be maintained on patios used by other owners was discarded, due to the differences between a hole bored entirely through the building exterior to accommodate antenna wires and a fastener holding a plant hanger.
- In proceeding instituted by association seeking modification to satellite dish placement and installation, where association had permitted another owner to install a dish subject to certain mounting requirements, no selective enforcement shown where same mounting options also made available to the respondent owner.

Pathways Condo. Assn., Inc. v. Medina,

Case No. 97-0172 (Draper/ Amended Final Order / March 6, 1998)

- Selective enforcement not shown where board was not aware of violation, a doorway cut between two units, during its existence, and doorway was closed up by the time the board became aware of it.

The Pinebark Condo. No. 3., Inc. v. Salabarría,

Case No. 99-1550 (Cowan / Final Order / October 21, 1999)

- In action brought by association to remove dog exceeding weight restrictions, unit owners failed to prove selective enforcement of pet weight restriction with evidence that stray dogs and cats reside in condominium and that unknown persons leave food out for them. Selective enforcement must include similar violations. Stray animals, by their very nature, are not pets.

Poinciana Place Condo. Assn., Inc. v. Black,

Case No. 01-2414 (Scheuerman / Summary Final Order / May 2, 2001)

- Allegation that the association had failed to enforce rules against the parking of trucks but had determined to take enforcement action to remove a limousine does not establish selective enforcement. The association may properly decide that limousines, given their overall length, pose particular problems in parking, driving, and storage, and

that these problems exist partly from any problems that may arise from allowing trucks on the property.

- Where at the time of purchase, the respondent/owner agreed in writing that limousine would not be brought on the property, owner foreclosed from later arguing that rules did not prohibit limousines.

The Pointe at Pelican Bay II Condo. Assn., Inc. v. Wilton,  
Case No. 00-0922 (Pasley / Summary Final Order / January 12, 2001)

- To successfully assert the affirmative defense of selective enforcement the respondent must prove that the association has failed to enforce the condominium documents in other instances bearing sufficient similarity to the instant case. The alleged existence of visually clashing pots, potted plants, benches, footwear, cleaning devices, garden hose devices, non-matching ceramic tiles, flags etc, does not constitute a comparable violation to the installation of a satellite dish on the roofing fascia.

Rough Creek Condo. Assn., Inc. v. Pope,  
Case No. 98-5031 (Cowan / Final Order / July 15, 1999)

- Selective enforcement not shown to exist in action brought by association seeking removal of cement slab poured over patio area, where other unit owners shown to have patio blocks.

Royal Park Condo. Assn., Inc. v. Lynn,  
Case No. 00-1600 (Scheuerman / Summary Final Order / January 20, 2001)

- Where the association sought to enforce requirement that identifying parking sticker be placed on the windshield of the vehicles belonging to owners, for purposes of selective enforcement, fact that some owners were permitted to have car covers, that some automobiles did not have license plates or had expired tags, that some are backed into spaces or are commercial vehicles prohibited by the documents, and that visitors were not required to have affixed stickers, deemed not sufficient to establish selective enforcement due to dissimilarity of other violations.
- Fact that 2 or 3 other vehicles were parked on the property without the required sticker over a 6 month period in a condominium containing 670 units did not establish selective enforcement where it was not shown that board had knowledge of other violations or that current violations were occurring. It cannot be said that this minimum number of violations shows an intent, express or implied, by the board to ignore the parking violations other than respondent's.

Sabal Pine Condo., Inc. v. Felling,  
Case No. 99-1326 (Scheuerman / Summary Final Order / November 1, 1999)

- In proceeding where association seeks to remove a pickup truck from the property, fact that association failed to take simultaneous enforcement action against the owner of a Suburban and a Ford Bronco did not show selective enforcement. First, Suburbans were specifically permitted by the documents and hence did not involve a violation of the parking regulations. As such, there was no violation upon which to base a selective enforcement defense. Secondly, even assuming the documents did not provide the Suburban as an exemption from the truck prohibition, the Suburban is a vehicle primarily designed and used for the transportation of persons, and not cargo, and was not therefore, a “truck.” Similarly, the Ranger, the forerunner of today’s SUVs in appearance, function, and design, was also designed primarily to transport persons and as such, did not resemble the pickup truck in such a manner as to conclude that enforcement in this case would be discriminatory, unfair, or unequal.

Sabine Yacht and Racquet Club Condo. Assn., Inc. v. Williamson,  
Case No. 97-0217 (Anderson-Adams / Order Striking Claims and Affirmative Defenses and Order to Show Cause / October 9, 1998)

- Selective enforcement requires a showing of other *comparable* alterations to the common elements which the association has tolerated. Where the unit owners removed two six-foot sliding glass doors leading to the balcony and replaced them with one twelve-foot sliding glass door, examples of non-conforming wall hangings, shelves, electrical outlets, air-conditioning units, hurricane doors, light fixtures, wall brackets, doorbells and knockers, picture holders, peep-holes, doorstops, and windows with varying numbers and colors of glass panes are not *comparable* to the alterations to unit owners’ doors.

Sabine Yacht and Racquet Club Condo. Assn., Inc. v. Williamson,  
Case No. 97-0217 (Anderson-Adams / Final Order / November 25, 1998)

- Selective enforcement requires a showing of other *comparable* alterations to the common elements which the association has tolerated. The fact that the board has never before initiated an enforcement action against a unit owner for alteration of the common elements, and has actively sought retroactive approval of the membership for existing violations, does not, standing alone, prove that the board is selectively enforcing the condominium documents against respondent/unit owners. The other alterations to the common elements cited by respondent/unit owners are not of the same type or magnitude as the respondent/unit owners’ alterations. Installation of a piece of masonite in place of the glass in the bottom panel of a window does not change the overall dimensions of the window frame, and is not comparable to replacing two six-foot sliding glass doors with one twelve-foot sliding glass door.

Seaside Villas Condo. Assn., Inc. v. Gerson,  
Case No. 00-0324 (Pine / Final Order / February 23, 2001)

- Even if respondent had been able to establish pattern of allowing two pets to unit owners who own two units, selective enforcement is not shown where the respondent only owns one unit in subject condominium.
- Examples of multiple pets being permitted by other condominiums that are part of same master association can not be used to establish selective enforcement by subject condominium.
- Establishing the existence of a single similar violation, which is permitted because the board is in a quandary over that violation, does not, standing alone, establish a pattern of selective enforcement.

Sievers v. Ancient Oaks R.V. Resort Condo. Assn., Inc.,  
Case No. 97-0084 (Draper / Summary Final Order / October 16, 1997)

- Petitioner may not raise selective enforcement; in any event, examples of air-conditioners installed by other unit owners which extend out from RV are not comparable to extension of slide-out on RV (slide-out is portion of RV which slides out to create a larger interior living space within RV).

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor, (currently on appeal)  
Case No. 98-3662 (Powell / Order on Motion to Strike Affirmative Defenses, Order on Motion to Strike Proposed Exhibits, and Order on Motion to Compel Discovery / November 20, 1998)

- Where unit owner argued that the association's effort to enforce its prohibition against dogs was "a selectively enforced pretext" to discriminate against her because she is Roman Catholic and under 55, the arbitrator noted that, in order to establish selective enforcement, the unit owner would need to present specific facts which demonstrate that the association had failed to enforce its documents against other dogs of which it was aware. If she can demonstrate such facts, selective enforcement would be established; consequently, the motive for such selective enforcement, be it age or religion, would be immaterial to this action.

Surfside South Condo. Assn., Inc. v. Heard,  
Case Nos. 98-4157 and 98-4158 (consolidated ) (Scheuerman / Summary Final Order / December 14, 1998)

- Where owners installed white screen doors at main doorway to unit without approval of the owners or of the board, owners ordered to remove the doors. Selective enforcement not shown where other owners permitted to have storm panels within their screen doors instead of exclusively screening material, where some owners permitted to have differing hardware on unit's main door, where some unit owners permitted to have black steel security gates instead of screen doors, and where the main doors were white. There were no other white screen doors in the community and the board could

properly focus upon and seek to preserve the darker color scheme within the community.

Tennis Club Davis Condo. Assn., Inc. v. Cedola,  
Case No. 97-0155 (Draper / Final Order / December 16, 1997)

- Unit owner's defense of selective enforcement of pet weight restriction rejected where his dog exceeded 12-pound restriction four-fold and examples of other overweight dogs were not comparable. One dog weighed 14 pounds, another weighed 15 pounds.

Tradewinds East Condo., Assn., Inc. v. Bliss,  
Case No. 96-0402 (Scheuerman / Final Order / December 12, 1997)

- Where owner admitted installing nonconforming kickplate on balcony enclosure, and claimed selective enforcement, defense rejected where no examples of other nonconforming features were proffered. Only other nonconforming kickplate had been installed 15 years ago and blended in color with the surrounding color scheme, unlike white kickplate of respondent.

The Van Lee Management Corp., Inc. v. Sanders, (currently on appeal)  
Case No. 00-0359 (Draper / Summary Final Order / September 6, 2000)

- Association would be barred from enforcing restriction against changes to the exterior appearance of the building where unit owners who installed screen door on their entrance door demonstrated that the restriction had been selectively enforced. The association permitted another unit owner to install a screen door, and other owners have removed their solid doors and replaced them with windowed doors. These modifications all had the effect of changing the appearance of the building, and all involved the front doors to the units.

Vista Del Mar Assn., Inc. v. Scott,  
Case No. 97-0316 (Scheuerman / Summary Final Order / February 16, 1998)

- In community which exhibited great diversity in patio enclosures, where association, in undertaking extensive concrete renovation project, due to financial considerations divided the community into two phases and determined to complete phase I involving the most damaged slabs prior to undertaking the slab restoration in phase II, owner in phase I failed to show selective enforcement where nonconforming balconies existed as to phase II units where renovation had not yet occurred. In conjunction with the project, the association had adopted new patio enclosure rules and specifications, and as to those phases of the restoration project that were being undertaken, the association was enforcing the new patio enclosure rules. So long as owners within the same phase were treated equally while the project is ongoing, no selective enforcement exists. The association, given financial considerations, may properly divide a community up into

phases and proceed step-by-step. Also, there was no intent by the board to tolerate violations, but only to phase-in its enforcement.

Vista Del Mar Assn. Inc. v. Lloyd,

Case No. 97-0399 (La Plante / Order Striking Affirmative Defenses and Summary Final Order / February 20, 1998)

- Without requisite approval of 75% of the unit owners, unit owner installed ornate penthouse door which was a different color from all other unit doors, had a glass insert where others did not, and contained no unit number, just "PH" for penthouse. Selective enforcement found not to apply where two other slightly modified doors received after-the-fact approval.

Wekiva Country Club Villas Homeowners' Assn., Inc. v. Hurd,

Case No. 97-0138 (La Plante / Summary Final Order / December 18, 1997)

- Installation of glass block sidelight in area around front door did not change the outward appearance of the common elements when dozens of other types of sidelights had been allowed by board in similar locations. Board found to be unreasonable in failing to approve glass block sidelights. Unit owner ordered to remove glass block bathroom window, however, because all other bathroom windows were uniform in appearance.

Wimbledon at Jacaranda Condo. No. 1, Inc. v. Gormley,

Case No. 98-3427 (La Plante / Summary Final Order / July 28, 1998)

- Selective enforcement not shown when although respondent was only unit owner arbitrated against, association had sent violation letters to over a dozen other owners whose dogs were overweight, stating that legal proceedings would be initiated if the violations were not corrected.

Windrush North - IV Condo. Assn., Inc. v. Tucci,

Case No. 99-1859 (Draper / Summary Final Order / February 15, 2000)

- Existence of birdbaths, shrubbery, vents, rain gutters and painted walkways held not to show selective enforcement of documents against unit owners who installed tile on balcony and exterior entrance walk. Most examples offered by respondents were not comparable to installation of tile. Closest example, painted walkways, was not comparable because walkways were painted concrete gray and tile was mottled pink. In addition, tile presents potential liability issue for association, as well as maintenance concern.

The Wittington Condo. Apartments, Inc. v. Connor, (currently on appeal)

Case No. 97-0408 (Anderson-Adams / Order on Motion to Strike Response to Order Requiring Supplemental Information and Reply, and Order Striking Affirmative Defense / February 23, 1998)

- Small caged birds are not comparable to cats for the purpose of establishing defense of selective enforcement. Small caged birds are generally quiet and do not emit noises which could be disturbing to other unit owners. Furthermore, the minimal noises they emit are normally confined to daylight hours.
- Cats, contrary to popular belief, are not all inherently quiet creatures. They may meow loudly and repeatedly, and when playing may run wildly throughout the unit, leaping on and off furniture, knocking over items in their path, creating a reverberation of footsteps, thumps and crashes which can be audible and disturbing to those living in proximal units. Being semi-nocturnal, cats are often most active in the evening or early dawn hours.

**Standing (See Dispute-Standing)**

Sanchez v. Pine Island Ridge Phase "A" Condo. Assn., Inc.,  
Case No. 00-2177 (Pine / Order Dismissing Petition / January 29, 2001)

- Unit owner's petition stating that other unit owner has colonized part of the common elements, to the detriment of the petitioner's enjoyment of own unit, does not state a dispute within jurisdiction of arbitrator.

**State Action (See also Constitution)****Tenants*****Generally***

Biscayne Lake Gardens Building "B", Inc. v. Azran,  
Case No. 97-0252 (Draper / Final Order / February 9, 1998)

- Where unit owners were specifically apprised during screening meeting of restriction on guest occupancy, they would not be permitted to argue that they never received a copy of the cooperative documents containing the restriction.
- Where requirement of association approval of occupant specifically exempted "immediate family members such as a member's children, grandchildren, parents, grandparents, siblings and spouses," occupancy by cousin required board approval.



Cinnamon Cove Villas Condo. Assn., Inc. v. Ray,

Case No. 00-0949 (Pine / Summary Final Order / October 13, 2000)

- Grandchild cannot be evicted from unit shared with unit owners despite over 55/no children declaration provision. If there is no way for respondents to come into compliance with declaration provision without removing child from their unit, relief is not available in arbitration pursuant to Section 718.1255, F.S., because the case involves the eviction or other removal of a non-owner resident.

Cypress Chase North Condo. Assn., Inc. v. Huc,

Case No. 97-0093 (Scheuerman / Final Order / March 25, 1998)

- Evidence showed that owner had habitually refused to comply with declaration requiring pre-approval of tenants. Final order entered requiring owner to seek association approval of tenants.

Franklin v. Vista Verde North Condo. Assn., Inc.,

Case No. 00-0129 (Scheuerman / Summary Final Order / July 26, 2000)

- Where association is acting as a rental agent, rental records are subject to inspection pursuant to Section 718.111(12), F.S., unless specific records are exempted from disclosure. If association is not acting as rental agent, but is nonetheless requiring owners to fill out association form identifying family members staying in unit, records are related to operation of the association and are therefore official records. Exemption from disclosure provided in statute for information obtained by association in connection with the approval of a lease or other transfer only applies where association is required to approve or disapprove the transfer. This does not occur where an owner permits a family member to occupy unit, and the exemption finds no application, even assuming that the legislature intended to protect this type of information.
- Where bylaw amendment provided for \$50 transfer fee for renters, not applicable to nonresident family members staying in the unit, requirement that owner claiming family member exemption from \$50 transfer fee fill out form identifying family member and stating the city and street address of the family members was held to be reasonable. Association's desire to enforce its rules, collect its fees, and keep assessments low constitute legitimate goals. Privacy interest in this information does not outweigh the legislative pronouncement that information of this kind is included among the official records.

Garden Isles Apts. #1, Inc. v. Paduda,

Case No. 99-1932 (Pine / Final Order Dismissing Petition for Arbitration / September 27, 1999)

- Petition dismissed for lack of jurisdiction where petitioner asserted that owners' "boarders" or guests or tenants violated documents and where petitioner requested

eviction of everyone and a return of unit to the cooperative. In cases filed after Oct 1, 1998, division declines jurisdiction over any tenant eviction.

Greenway Village South Assn., No. 3, Inc. v. Blair,

Case No. 99-1531 (Powell / Final Order Dismissing Petition for Arbitration / July 30, 1999)

- Petition alleged that tenant was parking a pickup truck on condominium property in violation of the condominium documents. Due to Ruffin v. Kingswood E. Condo. Assoc., Inc., 719 So.2d 951 (Fla. 4th DCA 1998), in which the court appeared to hold that the arbitrator lacked statutory power to enter an order directly addressed to a third party (not an association or unit owner), petition was dismissed for lack of jurisdiction because the condominium was within the geographic confines of the 4th DCA.

Indian Pines Village Condo. Assn., Inc. v. Innocent,

Case No. 98-3485 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / May 1, 1998)

- Petition alleged that unit owners have exceeded the maximum occupancy allowed by the declaration. The unit owners have five persons residing in the unit--at least one of whom is the unit owners' child. Section 718.1255(1), F.S. (as amended effective 10/1/97), does not give the division jurisdiction over cases which primarily involve the eviction or other removal of a tenant from a unit. The term "tenant" is defined broadly enough to encompass unapproved non-owner occupants whose presence violates the association's restrictions as to occupancy of the unit--even where it is not alleged that a formal lease agreement exists or that consideration is being paid for the use of the unit. Therefore the petition is dismissed for lack of jurisdiction.

Jupiter Lakes Townhomes Condo. Assn., Inc. v. Bello

Case No. 99-2280 (Powell / Final Order Dismissing Petition for Arbitration / December 10, 1999)

- Petition alleged that tenant was keeping an oversized dog in unit in violation of the declaration. Due to Ruffin v. Kingswood E. Condo. Assoc. Inc., 719 So.2d 951 (Fla. 4th DCA 1998), in which the court appeared to hold that the arbitrator lacked statutory power to enter an order directly addressed to a third party (not an association or unit owner), petition was dismissed for lack of jurisdiction because the condominium was within the geographic confines of the 4th DCA.

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

Case No. 97-2560 (Anderson-Adams / Final Order Dismissing Petition / April 27, 1998)

- Petition dismissed for lack of jurisdiction where petition alleged that owner was permitting unapproved non-family members/tenants to occupy unit in violation of the declaration. Effective on October 1, 1998, Division lacks jurisdiction over **tenant**

**eviction** disputes where association seeks eviction. Association authorized to file tenant eviction action in court in its own name.

Oriole Gardens Condo. Two Assn., Inc. v. Gelman,

Case No. 97-2111 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / March 2, 1998)

- Petition dismissed for lack of jurisdiction where association sought to enforce bylaw prohibiting occupancy by anyone under 55 years old against the son of an owner and his female companion. Effective on October 1, 1997, Division lacks jurisdiction of tenant disputes where association seeks eviction.

Rolland v. Coral Sun Townhomes Condo., Assn., Inc.,

Case No. 97-0003 (Scheuerman / Final Order on Default / January 21, 1999)

- Where declaration provided for transfer fee of \$50.00, but where neither declaration nor bylaws authorized association to charge a security deposit, association violated Section 718.112(2)(i), F.S., by charging security deposit of \$1,000.00.
- Policy of board which required an owner to submit a tenant application 30 days in advance of the intended occupancy was inconsistent with declaration provision which requires board to accept or reject tenant application within 15 days of receipt. Policy amounted to illicit amendment to declaration.

Sabal Chase Condo. Assn., Inc. v. Zuckerman,

Case No. 98-4007 (Powell / Order / July 14, 1999)

- Although Section 718.1255, F.S., as amended effective October 1, 1997, removed from the jurisdiction of the arbitrator those cases seeking eviction of tenants, the division continues to handle tenant cases not involving eviction, as this was the intent of the legislature. An exception is made for cases arising in the 4th District, where all tenant cases must be filed in court, regardless of the relief requested.

South Paula Point Condo. Assn., Inc. v. Schnepf,

Case No. 00-2043 (Pasley / Final Order of Dismissal / January 22, 2001)

- Since the association sought removal of a tenant's dog, the tenant was an indispensable party. The petition was dismissed because the association failed to name the tenant as a party and failed to provide proof that it had given the tenant advance written notice of the dispute, as is required by Section 718.1255(4)(b), F.S.

The Towers of Quayside No. 4 Condo. Assn., Inc. v. Garami,

Case No. 00-1097 (Powell / Summary Final Order / March 9, 2001)

- Occupant of unit claimed that his father was a part owner of the unit, and therefore the son was a family member and not a tenant. Son was deemed a tenant and not a

family member for purposes of declaration prohibiting tenant from keeping pets since son occupied the unit on his own and not as part of father's household.

***Nuisance (See also Nuisance)***

Arbours of the Palm Beaches Assn., Inc. v. Clarke,

Case No. 98-4766 (Draper / Final Order of Dismissal / September 4, 1998)

- Arbitrator did not have jurisdiction over claim against unit owner alleging that tenants had not been approved, that tenants were under age 55, and that tenants were creating a nuisance. The association sought an order prohibiting the unit owner from renewing the lease, and the eviction of the two unapproved tenants. While petition, filed after October 1, 1997, ostensibly sought an order primarily to require the unit owner to control her tenants' nuisance behavior, and to limit the age of unit occupants in the future, the disagreement primarily involves the "eviction or other removal of a tenant from a unit."

Oakland Shores Condo. #1, Inc. v. Bediant,

Case No. 98-3643 (Scheuerman / Order Granting Motion for Temporary Injunction / April 29, 1998)

- Temporary injunction entered where evidence showed that owner stored trash and excess clutter within unit, creating a fire hazard and breeding ground for plague of insects and vermin. Owner required to hire cleaning service and extermination service, to immediately discard all trash, and to refrain from storing clutter during the pendency of the case.

Oakland Shores Condo. #1, Inc. v. Bediant,

Case No. 98-3643 (Scheuerman / Final Order / May 4, 1998)

- Permanent injunction entered requiring owner, for a period of two years, to hire cleaning service and exterminator where unit used for storage of garbage and excess clutter, creating a nuisance, a fire hazard, and a breeding ground for plagues of insects and vermin.

Sarasota Village Gardens Condo. Assn., Inc. v. Guastavino,

Case No. 97-1869 (Draper / Final Order / May 8, 1998)

- Behavior of occupants of unit who argued loudly, engaged in fist fights and crashed private party at clubhouse determined to be a nuisance. Their actions resulted in owner of adjoining unit losing his seasonal tenants, party being interrupted and other owners' nighttime peace being broken by arguing and domestic battery, all of which are appreciable, tangible injuries to their property rights.

***Rental restriction/rental programs***

Arredondo v. Solimar of Key Biscayne Condo. Assn., Inc.,

Case No. 97-0134 (Scheuerman / Partial Summary Final Order / December 3, 1997)

- Where declaration contained no substantive limitations on an owner's ability to lease his unit, but permitted leasing and gave owners and the association a right of first refusal, association rule, which provided minimum rental period of one year, was inconsistent with rights afforded under the declaration and was therefore invalid.

Bay Shore Cooperative, Inc. v. Procacci,

Case No. 97-0275 (Anderson/Adams / Final Order / July 7, 1999)

- A rule prohibiting subleasing is reasonable and does not conflict with governing documents where certificate of incorporation (articles of incorporation) and occupancy agreement (master lease) prohibit subleasing without permission of the Federal Housing Administration (which provided the mortgage to establish the cooperative), and the Federal Housing Administration has periodically reaffirmed its policy prohibiting subleasing in response to the board's inquiries.

Caristi v. Gleneagles I Condo. Assn., Inc.,

Case No. 96-0168 (Draper / Summary Final Order / June 18, 1997)

- Amendment to declaration prohibiting unit owner from renting more than twice to the same individual upheld; right to lease unit not absolute.

Hillcrest East No. 27, Inc. v. Rodriguez,

Case No. 98-3384 (Draper / Final Order Dismissing Amended Petition for Arbitration / May 27, 1998)

- Arbitrator did not have jurisdiction over claims alleging that unit occupancy limit was exceeded and that minor children were living in the unit with owner and roommate in violation of prohibition against permanent occupancy of unit by children. Petition was filed after the effective date of the 1997 amendment to Ch. 718, F.S., excluding from the definition of "dispute" claims primarily involving eviction or other removal of a tenant. Also included in petition was a claim that the occupants were a nuisance, a claim over which the arbitrator did have jurisdiction; however, since it was impractical to sever this claim from the other claim, the entire petition was dismissed.

Luce v. Tiara East Condo., Inc.,

Case No. 98-4861 (Draper / Partial Summary Final Order / February 19, 1999)

- Declaration provided that prior to leasing or selling a unit, the owner was required to give notice and proof of a bona fide lease or sale offer, at which point association could exercise its right of first refusal to lease or purchase the unit. Association argued that it could block lease without having to provide a substitute tenant where unit owner's tenant was unqualified. Arbitrator rejected the argument, noting that under the declaration the owner had the right to lease the unit 14 days after giving the required notice unless the association exercised its right of first refusal. The right to be free from any other constraints on leasing, such as board prior approval requirement, was inferable from the declaration.

Rolland v. Coral Sun Townhomes Condo., Assn., Inc.,  
Case No. 97-0003 (Scheuerman / Final Order on Default / January 21, 1999)

- Policy of board which required an owner to submit a tenant application 30 days in advance of the intended occupancy was inconsistent with declaration provision which requires board to accept or reject tenant application within 15 days of receipt. Policy amounted to illicit amendment to declaration.

Villa Dilancia Condo. Assn., Inc. v. Hydro Agri North America, Inc., (currently on appeal)  
Case No. 98-3731 (Draper / Summary Final Order / July 6, 1998)

- Arbitrator upheld as equitable restriction contained in declaration which required that a corporately-owned unit could be occupied only by an individual/family designated by the corporation (which designation could not be changed more than twice per calendar year) or that the unit be occupied pursuant to a lease complying with the limitations on rentals contained in the documents, that is, a term of not more than 60 days and permitting only two rentals per calendar year. Intended use of the unit by the corporation, as accommodation for visiting clients of the corporation and its president, would not be permitted.

- “Guests” of designated occupant of corporately-owned unit, who occupied unit in the absence of the designated occupant, would be treated as tenants, subject to leasing restrictions in the documents. Fact that declaration did not prohibit a unit owner from having a guest in his unit in his absence did not invalidate provision of the declaration dealing with corporately-owned units which provided that use of the unit by others than the designated occupant would be subject to the leasing provisions of the declaration. Guests of a residential owner are not the same as guests of a corporate owner. They are generally less frequently present, less varied and fewer in number so as not to contribute to the transient or hotel nature, as would the corporate guest. Therefore, it is reasonable for such occupancies to be treated differently.

West Winds Estates Condo. Assn., Inc. v. Miller,  
Case No. 97-1872 (La Plante / Summary Final Order / January 14, 1998)

- Under declaration, where owner has the right to set the terms and conditions of the lease, rule which seeks to create additional substantive restrictions on the right to rent by requiring leases of at least 90 days but not more than 180 days contravenes the right of the owner to set these variables, and rule is thus invalid as it is in direct conflict with the declaration.

***Unauthorized tenant/association approval***

Applegreen Condo. Apts. I Assn., Inc. v. Moorhead,  
Case No. 96-0282 (Goin / Summary Final Order / June 10, 1997)

- Where declaration stated that rental restrictions did not apply to “immediate family (viz: parents, spouses or children)” arbitrator determined that the declaration was ambiguous as to whether the term “viz” was used to show examples of the types of relatives that could be considered “immediate family” or whether the term was used to describe the only relatives that could be considered “immediate family,” to the exclusion of other relatives. Therefore, the definition of “immediate family” given by the board in its rules and regulations could be considered. As the rules and regulations defined “immediate family” as parents, children, grandchildren or siblings, the arbitrator determined that unit owner did not have to obtain the approval of the association before letting her brother occupy the unit while she was in Germany.

Bayview Condo. Assn., Inc. v. Helmstetter,  
Case No. 97-0281 (Oglo / Final Order / May 20, 1998)

- Association found to have unreasonably disapproved unit owner’s application for tenancy where association deemed the application incomplete, but failed to notify the unit owner, and where the association had a pattern of disapproving tenants as a general proposition.

Colonnades Condo. Assn. No. 1, Inc. v. Murphy, (currently on appeal)  
Case No. 97-0108 (La Plante / Summary Final Order / March 3, 1998)

- Despite fact that one-year lease expired, lessee continued to lease unit from owner on month-to-month basis, in contravention of declaration that leases must be for more than three months. Lessee and his cat ordered to vacate unit.

Green Lakes Condo. Assn., Inc. v. Nozetz,  
Case No. 97-0006 (Draper / Summary Final Order / June 10, 1997)

- Where association approved lease beginning “January 1, 1997 (approx.)” and tenants moved in December 16, 1996, association not estopped from acting against unit owners for unapproved occupancy. Documents permitted only two rentals per year and the unit owners had already rented their unit twice. It was unreasonable for unit owners to assume that December 16 was “approximately” January 1.
- Unit owner’s father’s brother’s son was not member of immediate family, exempt from rental limitations, where rules defined immediate family as “spouses, parents, children, sisters, brothers and associated in-laws (parents, children, sisters, brothers).”
- Despite tenants moving from unit, case not moot where unit owners had repeatedly violated rental restrictions. Probable future violations warranted injunctive-type relief.

Indian Pines Village Condo. Assn., Inc. v. Innocent,  
Case No. 98-3485 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / April 17, 1998)

- No jurisdiction over petition alleging that unit owner has allowed the number of persons occupying their unit to exceed the maximum occupancy allowed by the declaration of condominium by permitting five persons to reside in the unit--at least one of whom is the unit owners' child. SECTION 718.1255(1), F.S. (as amended effective 10/1/97), does not give the division jurisdiction over cases which primarily involve the eviction or other removal of a tenant from a unit. The term "tenant" is defined broadly enough to encompass unapproved non-owner occupants whose presence violates the association's restrictions as to occupancy of the unit--even where it is not alleged that a formal lease agreement exist or that consideration is being paid for the use of the unit. Petition dismissed for lack of jurisdiction.

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

Case No. 97-2560 (Anderson-Adams / Final Order Dismissing Petition / April 27, 1998)

- Petition dismissed for lack of jurisdiction where petition alleged that owner was permitting unapproved non-family members/tenants to occupy unit in violation of the declaration. Effective on October 1, 1998, Division lacks jurisdiction over tenant eviction dispute where association seeks eviction. Association authorized to file tenant eviction action in court in its own name.

Oriole Gardens Condo. Two Assn., Inc. v. Gelman,

Case No. 97-2111 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / March 2, 1998)

- Petition dismissed for lack of jurisdiction where association sought to enforce bylaw prohibiting occupancy by anyone under 55 years old against the son of an owner and his female companion. Effective October 1, 1997, Division lacks jurisdiction over tenant disputes where association seeks eviction.

Pine Ridge at Palm Harbor Condo. Assn., Inc. v. Alexopoulos,

Case No. 97-2277 (Anderson-Adams / Final Order Dismissing Petition for Arbitration / April 27, 1998)

- No jurisdiction over petition alleging that unit owner has leased the unit without approval of the board of directors of the association, and in violation restriction prohibiting occupancy of a unit by any person under the age of 25. Section 718.1255(1), F.S. (as amended effective 10/1/97), does not give the division jurisdiction over cases which primarily involve the eviction or other removal of a tenant from a unit.

***Violation of documents***

**Transfer Fees**

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

**Unit**



***Access to unit***

The Beaches of Longboat Key - South Owners' Assn., Inc. v. Goldreyer,  
Case No. 96-0158 (Oglo / Order on Motion for Rehearing / June 11, 1997)

- Unit owners were ordered to provide the association access to their unit for the provision of pest control services. In their motion for rehearing, the unit owners stated that the association's right of access is limited to expenses necessary for maintaining the common elements. The owners argued that since the association had no authority to impose assessments for pest control services, their action was *ultra vires* and the association cannot seek access to a unit for an action upon which it has no lawful authority to take. The owners' argument was rejected, as pest control service was found to constitute authorized maintenance.

Braemer Isle Condo. Assn., Inc. v. Propis,  
Case No. 98-4424 (Draper / Order Granting Emergency Relief / March 25, 1999)

- Association was empowered to use the unit owners' balcony to accomplish repairs to remainder of building even though balcony area constituted a part of the unit. Section 718.111(5), F.S. provides that association has the right of access to a unit as necessary for maintenance of the common elements.
- Access to unit is not limited to emergency repairs. Declaration and Section 718.111(5), F.S. clearly permit access to the unit during reasonable hours.

Cypress Isle at the Polo Club Condo. Assn., Inc. v. Shelton,  
Case No. 98-4090 (Scheuerman / Order Requiring Status Report / July 22, 1998)

- An association's right of access to the unit is broad and is not restricted to instances in which an emergency is presented, but comes into play whenever the association's related functions of maintenance, repair, or replacement of the property are implicated.

4000 Island Blvd. Condo. Assn., Inc. v. DeBeer,  
Case No. 99-1038 (Powell / Final Order After Default / March 31, 2000)

- Unit owners ordered to provide key to unit in accordance with condominium documents providing for association access and further requiring that unit owner shall provide a key if the locks are changed.

Halifax Shores Homeowners Assn., Inc. v. Varano,  
Case No. 00-1553 (Scheuerman / Order Denying Motion for Rehearing / January 5, 2001)

- Even where neither statute nor documents expressly required that owner supply key to the unit to the association, board policy of requiring key was upheld where policy was shown consistent with statutory right of access to the units. Owner's offer to provide

cellular telephone number to association in lieu of supplying a key does not ensure access, and does not offer immediate emergency access as called for in the by-laws.

Helen Mar Condo. Assn., Inc. v. Marshall,

Case No. 98-4465 (Draper / Summary Final Order / September 22, 1998)

- Unit owner was ordered to provide unit key to association to facilitate association's right of access pursuant to Section 718.111(5), F.S. Unit owner's defense to action, that he did not trust association president with a key to his unit, and proposing instead to permit association to break door down or hire locksmith if access was needed, at unit owner's expense, rejected.

Higdon v. Seaspray Condo. Assn., Inc.,

Case No. 96-0430 (Scheuerman / Summary Final Order / March 24, 1998)

- Where association, through its contractor and manager, entered unit for purpose of removing items damaged by hurricane, association's entry into the unit was lawful and authorized. Cleanup of damage caused by a hurricane would in the usual case implicate the association's maintenance, repair, or replacement responsibilities under sSection 718.113 and 718.115, F.S. Even if the association was not responsible for repairing or replacing specific items within a unit, removal of damaged items furthered the association's function of preventing additional damage to the common elements. The statutory right of access provided for by Section 718.111(5), F.S., is not restricted to emergencies but includes all necessary maintenance. The issues of timing of the entry and notification to the owner are a function of good business judgment, prudence, and civility, which are concepts resisting further enunciation and definition in the Florida Statutes.

Luber v. Ocean Club Townhomes Condo. Assn., Inc.,

Case No. 94-0334 (Scheuerman / Final Order / December 19, 1997)

- Evidence did not support a finding that the association required emergency access to unit to examine leaks from window where it had been some time since the leaking had occurred, owner had provided access for the same unrepaired window on three prior occasions, and where board member with whom owner had antagonistic relationship insisted on accessing the unit personally.

Mueller v. La Renaissance Condo. Assn., Inc.,

Case No. 96-0193 (Oglo / Final Order / February 23, 1998)

- The unit owner claimed that during his absence, the association entered his unit without cause and without providing him with advance notice. As it was necessary for the association to enter the owner's unit to check up on the progress of the condominium's balcony restoration process, and as neither the declaration nor the statute required the association to provide the owner with advance notice, the claim was dismissed.

Sunset House North Apartments of Marco Island v. Brownsen,  
Case No. 01-3381 (Scheuerman / Summary Final Order / August 27, 2001)

- Defense that association is not prudently managing the keys collected from the owners does not lead to the conclusion that the association may not enforce its rule requiring owners to surrender a key to ensure access to the units. This defense, if successful, would in similar circumstances prevent the association from ever enforcing its documents and would supplant the discretion and judgment of the board for that of the arbitrator or judge.

Swisher v. Building Three of Country Club Apartments at Bonaventure 32 Condo. Assn., Inc.,  
Case No. 99-1466 (Anderson-Adams / Summary Final Order / August 31, 1999)

- Unit owner may not condition provision of a key to her unit to the association on the requirement that the president of the association not have access to the key or the unit.

Terra Mar West Condo. Assn., Inc. v. Leavell,  
Case No. 00-0878 (Powell / Summary Final Order / June 30, 2000)

- Unit owner's defense, that he advised the condominium manager that he would make available a key by appointment and that the manager agreed, was stricken. The manager did not have the authority to waive the association's right under Section 718.111(5), F.S., and the condominium documents to permanently keep a key to gain access to the unit as necessary. Also, the unit owner was on notice of the statute and was on notice of the condominium documents by reason of their recordation in the public records. Therefore, reliance upon any statement by the manager was not reasonable. Unit owner was ordered to provide a key to the unit for the association to keep.

Valencia Condo. Residences Assn., Inc. v. Banoub,  
Case No. 99-2302 (Pine / Summary Final Order / April 17, 2000)

- Even where the respondents assert that the association has engaged in a pattern of activity in which its agents have neither properly limited the use of unit keys nor properly supervised those to whom the association granted access to units via the keys, unit owner cannot withhold a key as a self-help measure to safeguard his personal property. The effect of withholding the key is or can be to prevent board-authorized workers from entering the unit for the purposes permitted by the statute. See Section 718.111, F.S., and Section 718.113, F.S.
- The association is required to follow its own policies for maintaining custody and control of keys to units, and is required to take due care to prevent damage to and theft of unit owners' property by use of those keys. The association is answerable in damages for negligence and is financially responsible for the destruction or

disappearance of the unit owners' personal property at the hands of workers hired by the association and let into the units by the association.

***Alteration to unit (See also Fair Housing Act)***

Colonial Club Condo. Assn., Section I, Inc. v. Grunberg,  
Case No. 99-0147 (Powell / Final Order / April 6, 2000)

- Installation of washer and dryer without approval did not violate provision in declaration requiring prior consent for structural addition or alteration to unit. Small opening in drywall to make connections was not shown to be a structural alteration. Nothing prohibits board from passing rule prohibiting washers and dryers in the units, and this approach is preferable to attempting to stretch existing declaration to fit situation.

Lake Emerald Owners' Assn., Inc. v. Fitzgerald,  
Case No. 00-1104 (Draper / Final Order / January 22, 2001)

- French doors installed by owners in place of sliding glass doors do not constitute a change to the appearance of an entry door to the unit, where the doors are located on the inside of a screened porch and, pursuant to the documents, are within the boundaries of the unit. The phrase "entry door" does not include interior doors.

Leisure Living Estates Condo. Assn., Inc. v. Grieve,  
Case Nos. 97-0277 and 98-3285 (consolidated) (Oglo / Final Order / May 14, 1998)

- Unit owners' request to add a Florida room to their mobile home unit was disapproved as it violated set-back requirements. Unit owners' argument that the disapproval was unreasonable because other unit owners who had similar rooms were grandfathered pursuant to the declaration failed as the declaration grandfathering provision did not have to be reasonable.

Mariners Pass Homeowners' Assn., Inc. v. Marzocca,  
Case No. 97-0215 (Cowan / Final Order / July 29, 1998)

- Unit owner who installed wood framing and 71 inches-wide door, removed part of concrete wall, moved air conditioning unit, and failed to provide 18 inches setbacks when building patio enclosure, violated declaration prohibition against alterations without board approval as well as association's guidelines for patio enclosures.

New Hampton at Century Village Condo. III Assn., Inc. v. Brocato,  
Case No. 98-3187 (Draper / Final Order on Default / May 27, 1998)

- Where declaration prohibited any alteration to the unit without association approval and any modification or installation of electric wiring or any material puncture or break in the boundaries of the unit, installation of a central air conditioning system without board

approval, which involved a cut through the fire safety wall in the unit's ceiling, violated the provision.

Papillon v. Ro-Mont Gardens Andover Condo. "C", Inc.,  
Case No. 00-1995 (Powell / Final Order / April 20, 2001)

- Where the declaration prohibited structural modifications in water, gas electrical, plumbing or utilities in unit without association's consent, alterations to water, sewerage, and electrical systems in units were alterations to the structure within meaning of the declaration. Water, drainage and electrical service were added where none existed before for installation of washers and dryers.

Steamboat Bend East Condo. Assn. v. Sky,  
Case No. 00-0057 (Powell / Final Order / November 29, 2000)

- Addition of spa to lanai in unit without association approval violated condominium rules, which required approval where the alteration was visible from the exterior of the building.

***Appurtenances; changes to the appurtenances; section 718.110(4)***

Berger v. Island's End Condo. Assn., Inc.,  
Case No. 96-0341 (Scheuerman / Summary Final Order / December 18, 1997)

- A mere change from a dock to a fishing pier would normally constitute a material alteration to the common elements and would not disturb the appurtenances to the units; no dock space had been assigned to any owner as a limited common element. The appurtenances to the units were not disturbed within the meaning of Section 718.110(4), F.S. The change doubtless altered the function, use, and appearance of the structure within the meaning of Section 718.113(2), F.S., unless it could be shown that such action was required by the Department of Environmental Protection or if natural action of the tide had altered the facility, making it useless as a boating pier and there was no corresponding duty of the association to dredge the area.
- Amendment to declaration adding provision governing material changes to the common elements as provided for by Section 718.113(2), F.S., does not conflict with portion of pre-existing declaration providing procedure for changing the appurtenances to the units as described by Section 718.110(4), F.S. Amendment did not intrude into areas governed by Section 718.110(4), F.S., and a vote of 100% of the members was not required for the passage of the amendment.

Bogikes v. Windmill Village by the Sea Condo. No. 1 Assn., Inc., (currently on appeal)  
Case No. 97-0159 (Scheuerman / Final Order / June 12, 1998)

- Rule permitting board to approve applications to construct docks on common elements adjoining canal violated both Section 718.113(2), F.S., and Section 718.110(4), F.S. The docks changed the appearance and function of the common

elements, and simultaneously changed the right to use the common elements appurtenant to all units by permitting certain owners to in effect colonize portions of the common elements for their exclusive use.

Cascades of Falling Waters, Inc. v. Rafuse,

Case No. 00-1625 (Scheuerman / Summary Final Order / May 4, 2001)

- Where the owner installed concrete pavers forming a patio 10' by 14' formed by paver stones on the common elements outside the glass sliding door of the unit, the owner violated both Section 718.113(2) and 718.110(4), F.S. Even if other owners did not generally use the area occupied by the patio, the respondent owner by his actions has asserted permanent dominion and control over the area. The placement of the stones along with items of personal property has made it less likely that the use rights granted to other owners to pass through or in close proximity to the area will be exercised.
- In determining whether a change to the appurtenances is a *material* change demanding compliance with Section 718.110(4), F.S., materiality will depend on the factors involved in each situation including the intended use of the property, the relative size and significance of the parcel involved, whether the intended or actual use will change significantly and permanently, whether the owners have a legitimate basis for expecting that the current use of the property will remain unchanged, whether the property at issue constitutes limited common elements or other circumstances exist such that the other owners should have no expectation of use rights in the property, and whether overall, the beneficial use of the property will change.

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 Section 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.

Nassif v. Continental Towers, Inc., (currently on appeal)

Case No. 96-0403 (Draper / Partial Summary Order / January 14, 1998)

- Association's discontinuance of on-site office with paid staffer does not constitute material alteration of the common elements. Change to services, as contrasted to physical structure, does not implicate Section 718.113(2), F.S., nor does it result in material alteration to appurtenances, as the space is still available for the use intended under the declaration.

The Privateer South Condo. Assn., Inc. v. Schiff,  
Case No. 00-0618 (Pine / Final Order / April 17, 2001)

- Where the unit owners granted permission in most general terms possible to "tile the balconies" and where association had reason to know that another unit shown to unit owner by association had balcony tile that was not restricted to floor placement, unit owners not required to remove wall tile from balconies.

Stegeman v. Harbor Towers Owners Assn., Inc.,  
Case No. 99-1036 (Draper / Summary Final Order / August 24, 1999)

- Lease by association of common element parking spaces, upon which carports were to be built by lessee/unit owner for exclusive use of lessee/unit owner and for a term of years, did not require 100% unit owner approval per Section 718.110(4), F.S., as a material alteration of the unit's appurtenances. Area upon which carports were to be built was already used for parking, and action of board did not convert area into limited common element. Construction of carports would result in material alteration to the common elements requiring compliance with Section 718.113(2), F.S., and the declaration.

Tradewinds East Condo. Assn., Inc. v. Thibeau,  
Case No. 97-0009 (Scheuerman / Final Order / June 13, 1997)

- Addition of glass enclosure to limited common element patio constituted material alteration to common elements requiring compliance with Section 718.113(2), F.S., and documents; however, there was no change to appurtenances to unit and therefore Section 718.110(4), F.S., was not violated.
- Where general amendment to declaration required affirmative vote of 66-2/3% of owners present at a meeting, and where declaration required the approval of 75% vote of all owners to approve changes to the common elements, amendment to material alteration provision required only 66-2/3% approval.

### ***Floor coverings***

Lakeshore 11 Condo. Assn., Inc. v. Thurman,  
Case No. 98-5264 (Cowal / Summary Final Order / August 19, 1999)

- Where declaration required all units to maintain "fully carpeted floors" (except in kitchens and bathrooms) and where unit owner utilized area rugs that left substantial areas of tile flooring exposed, unit owner was in violation of condominium documents. Provision in declaration was construed not to require wall-to-wall carpeting (although this would suffice), and since declaration did not address the type of carpeting required, area rugs could have been used so long as complete coverage was achieved and so long as quiet was maintained.

Molokai Villas Condo. Assn., Inc. v. Symes,  
Case No. 00-1320 (Pine / Summary Final Order / December 13, 2000)

- When the documents reflect that the balcony is part of the unit, and that the unit owner is responsible for the flooring above the slab of the unit, then the unit owner is responsible for the cost of repair of the balcony flooring. The unit owner is not responsible for repair to any part of the balcony that is a support structure, however, and the unit owner cannot rebuild the support structure to his own design. The responsibility for repairing support structures is on the association rather than on the unit owner.

Spanish Trace Condo. Assn., Inc. v. Buttari,  
Case No. 97-0213 (La Plante / Summary Final Order / February 20, 1998)

- Unit owner installed tile throughout second floor unit, despite restriction in declaration that tile was only authorized in the bathroom, foyer, and kitchen. Unit owner's reliance on board members' statement that she could tile her unit was not reasonable when unit owner was on constructive notice of the prohibition but had never read the declaration. Moreover, the two board members' statements that she could tile her unit did not bind the association or constitute a regulation by the board permitting tiling of units.

Spanish Trace Condo. Assn., Inc. v. Figueras,  
Case No. 97-0212 (La Plante / Order Striking Affirmative Defense and Summary Final Order / January 8, 1998)

- Restriction in declaration prohibiting tiling of second floor units found to be rationally related to the purpose of reducing noise emanating from one unit to the unit below.

***Generally; definition***

Continental Towers, Inc. v. Nassif,  
Case No. 99-0866 (Draper / Summary Final Order / November 24, 1999)

- Balcony held to constitute common element, rather than a part of the unit. Declaration was silent as to whether the boundaries of the unit included the balcony; however, declaration placed responsibility for maintenance of common elements on association except for periodic sweeping and cleaning of balcony, which unit owner was made responsible for. Therefore, balcony held to constitute common element.
- Unit owners were responsible for removing and replacing tile on their common element balcony in order to permit association to effect needed repairs where the tile was not part of the original construction.

Smokehouse Harbor Condo. Assn., Inc. v. Linsenmeyer,  
Case No. 98-4244 (Cawal / Partial Summary Final Order / June 2, 1999)



- Screened porch abutting unit held to constitute part of the unit rather than limited common element. Declaration states that a unit shall include a screened porch and each screened porch is part of the unit which it abuts.

***Rental (See also Tenants)***

***Repair***

Brickell Townhouse Assn., Inc. v. Bagdan,

Case No. 00-1683 (Scheuerman / Summary Final Order / November 21, 2000)

- Board decision to replace and not merely repair windows damaged by hurricane upheld. Old damaged windows were not airtight, resulting in accumulation of mildew in the units, and there was no assurance that windows would provide protection in the event of another storm. The decision of the board, upheld by the arbitrator, would ensure structural safety and soundness.
- Irrespective of considerations of structural integrity and safety, proposal by board to replace damaged windows for aesthetic reasons found support in the documents, which emphasized the need for uniformity of structure and design within the condominium. New windows would conform to the specifications of windows previously replaced by the association after storm damage, such that all windows in the condominium would now share the same appearance and structure.

Habitat II Condo. Assn., Inc. v. Smith,

Case No. 00-0535 (Draper / Summary Final Order / August 25, 2000)

- Association claimed that unit owner was responsible for repairing floor joist of balcony, because it was a part of the unit. Relief was denied because the balcony was determined to be a limited common element and, therefore, the association's maintenance responsibility. Additionally, unit owner's maintenance responsibility extends only to the surface of the floor; joist was located below the surface of the floor.

Molokai Villas Condo. Assn., Inc. v. Symes,

Case No. 00-1320 (Pine / Summary Final Order / December 13, 2000)

- When the documents reflect that the balcony is part of the unit, and that the unit owner is responsible for the flooring above the slab of the unit, then the unit owner is responsible for the cost of repair of the balcony flooring. The unit owner is not responsible for repair to any part of the balcony that is a support structure, however, and the unit owner cannot rebuild the support structure to his own design. The responsibility for repairing support structures is on the association rather than on the unit owner.

Mueller v. La Renaissance Condo. Assn., Inc.,

Case No. 96-0193 (Oglo / Final Order / February 23, 1998) (Oglo / order on Respondent's Motion for Rehearing / March 31, 1998) and (Oglo / Order on Respondent's Motion for Additional Extension of Time/ April 17, 1998)

- Where the association damaged the unit owner's sliding glass doors and removed, but failed to replace, the owner's hardware for its storm shutters during a balcony restoration project, and where the declaration provided that all incidental damage caused to an apartment by the association's work shall be repaired promptly by the association, the association was ordered to replace the sliding glass doors and to reinstall the hardware for the storm shutters.

Philbin v. Shore Manor Building of Town Apts. South, No. 102, Inc.,  
Case No. 97-1875 (Powell / Summary Final Order / April 1, 1998)

- Where the parties stipulated that an exterior door to a Florida room was part of the unit and not part of the common elements, under the documents, the association was responsible for replacing the door and repairing the frame. The association did not dispute that it budgeted for replacement of at least some unit doors and did not cite authority for a distinction between front doors and rear Florida room doors.

Portside Villas Owners Assn. v. Kutina,  
Case No. 97-0019 (Oglo / Final Order / April 8, 1998)

- Association filed petition to require a unit owner, who enlarged her garage during repairs after a hurricane, to restore her garage to its original length. Based upon the declaration provisions that required repairs after casualty damage to be substantially in accordance with the original improvements and that required board approval for changes to the exterior of the building, owner was ordered to restore her garage to its original length.

Rock v. Point East Three Condo. Corp., Inc.,  
Case No. 99-0220 (Powell / Final Order / September 29, 2000)

- Where the declaration provided that the association was responsible for plumbing maintenance and for incidental damage from such work, but the association was not responsible for plumbing fixtures and connections, the association was held responsible for replacing the shelf removed to replace hot water piping in the unit. The association was not responsible, however, for repairing the wall tile the association removed for other plumbing work, where it was not shown that the association was responsible for that particular plumbing repair under the declaration, and no other theory of recovery for this damage was presented.
- Where it was not shown that the floor tile popped up due to the association's negligence in failing to repair a leak, no basis was established making the association responsible for repair of the floor tile.

Williams v. Place One Condo. Assn., Inc.,  
Case No. 97-0405 (Cowal / Summary Final Order / May 22, 1998)

- Where declaration provided that unit owner was responsible for maintaining outside electric meter serving only his unit, unit owner must pay for repair of electrical breaker serving only his unit.

***Restraints on alienation***

Ravosa v. Sea Mesa, Inc.,  
Case No. 99-1630 (Pasley / Final Order / March 2, 2001)

- Where an association is empowered to reject any proposed transferee without being required by the documents to either purchase the unit at fair market value or provide an alternate purchaser, the association may not unreasonably withhold its consent to the transfer of the unit.

***Sale***

Luce v. Tiara East Condo., Inc.,  
Case No. 98-4861 (Draper / Partial Summary Final Order / February 19, 1999)

- Declaration provided that prior to leasing or selling a unit, the owner was required to give notice and proof of a bona fide lease or sale offer, at which point association could exercise its right of first refusal to lease or purchase the unit. Association argued that its right of first refusal did not mature into an option where the tenant offered by the unit owner was unqualified to occupy the unit. Arbitrator rejected the argument, noting that under the declaration the owner had the right to lease the unit 14 days after giving the required notice, where the association did not exercise its right of first refusal, and the right to be free from other constraints, such as board prior approval requirement, was inferable from the declaration.

Mueller v. La Renaissance Condo. Assn., Inc.,  
Case No. 96-0193 (Oglo / Final Order / February 23, 1998)

- The association's practice of requiring a personal interview of corporate officers of a corporate purchaser was reasonable, despite being a financial hardship on the corporate officers who resided in Europe, since the association's stated objective was to promote a community of congenial residents.

Ravosa v. Sea Mesa, Inc.,  
Case No. 99-1630 (Pasley / Final Order / March 2, 2001)

- Where an association is empowered to reject any proposed transferee without being required by the documents to either purchase the unit at fair market value or provide an alternate purchaser, the association may not unreasonably withhold its consent to the transfer of the unit.

- The association is not required to consider a request for approval to transfer ownership of a unit where the application for approval is made on a form other than the association's designated application form; however, the refusal may not be based on the use of the wrong form unless the association notifies the unit owner that the refusal is based on the use of the wrong form.
- The board's disapproval of the unit owners' request to transfer unit to their son (proposed transferee) who already owned another unit within the cooperative, was found to be reasonable where the board proved that on the date of the request for transfer the proposed transferee's account was not current and that the proposed transferee had been habitually delinquent in paying monies owed to the cooperative. It was reasonable for the board to infer that the additional duty of paying assessments for a second unit would result in future delinquencies, thereby increasing the other unit owners' burden of maintaining the cooperative's financial stability.
- Testimony regarding the proposed transferee's present financial status could not be considered by the arbitrator when reviewing the reasonableness of the decision made by the association in rejecting a proposed purchaser. The arbitrator is required to look at the circumstances as they existed at the time that the board made its decision.

Sandpiper Condo. Assn., Inc. v. Parsons,

Case No. 00-2147 (Powell / Summary Final Order / March 16, 2001)

- Where the association sought to enforce provision of the declaration requiring unit owner to apply for association approval of sale of unit and to pay a \$100 fee, defense that association failed to show irreparable harm was insufficient to bar enforcement. Provisions of a declaration are analogous to covenants running with the land, and an injunction is a proper remedy for violation of a restrictive covenant. For such enforcement, violation of the declaration was tantamount to irreparable harm.

***Use/restrictions on use (See also Nuisance; Fair Housing Act)***

Biscayne Lake Gardens Building "B", Inc. v. Azran,

Case No.97-0252 (Draper / Final Order / February 9, 1998)

- Where unit owners were specifically apprised during screening meeting of restriction on guest occupancy, they would not be permitted to argue that they never received a copy of the cooperative documents containing the restriction.
- Where requirement of association approval of occupant specifically exempted "immediate family members such as a member's children, grandchildren, parents, grandparents, siblings and spouses," occupancy by cousin required board approval.

Caristi v. Gleneagles I Condo. Assn., Inc.,

Case No. 96-0168 (Draper / Summary Final Order / June 18, 1997)

- Amendment to declaration prohibiting unit owner from renting more than twice to the same individual upheld; right to lease unit not absolute.

The Carriage House Condo. Assn., Inc. v. Solomon, (currently on appeal)  
Case No. 99-2396 (Scheuerman / Summary Final Order / September 1, 2000)

- Rule which restricted the number of party guests to 40 persons per unit sought to promote the health and welfare of the residents. More guests translates into increased noise and nuisance potential, more pedestrian and vehicular traffic, and greater use of the common elements. Objective of association to address these concerns was legitimate.
- Rule which restricted the number of party guests to 40 persons per unit regardless of unit size was reasonable and not arbitrary or capricious. While the association could have specified a guest occupancy level that changed with unit size, rule addressed existing problem of noise nuisance in large penthouse units and was not shown to be arbitrary. In addition, considered from the standpoint of wear and tear on the common elements and the additional strain on association resources and employees, the burden imposed by 40 guests is the same regardless of the size of the unit.

DBAC, Inc. v. Dangard,  
Case No. 98-4607 (Draper / Final Order / August 30, 1999)

- Sounds of domestic altercation, including breaking of window glass, constitute a violation of declaration restriction prohibiting unit owners from making noises that may tend to disturb others.

Feit v. Cloister Beach Towers Assn., Inc.,  
Case No. 97-0234 (Oglo / Final Order / April 24, 1998)

- Association policy of prohibiting ex-employees terminated for negative reasons from entering condominium found to be reasonable; ex-manager was, therefore, appropriately barred from house-sitting for a unit owner. Policy was not required to be adopted as a rule.

Loveland Courtyards Condo. Assn., Inc. v. Mulvey,  
Case No. 00-1396 (Draper / Summary Final Order / December 8, 2000)

- The unit owner who placed a sign with the name of his security company on the common elements outside his unit violated a rule prohibiting posting of signs on the common elements. In addition, by placing satellite dish on common elements, the owner violated rule prohibiting erection of "antennas or other equipment or structures" on the common elements unless approved by the board. A satellite dish is a type of antenna; also, it constitutes "equipment" or "other structure" under the rule. Owner ordered to remove sign and satellite dish.

Lyme Bay Colony Condo. Assn., Inc. v. Forget,  
Case No. 97-1884 (La Plante / Order Striking Affirmative Defenses and Requiring Supplemental Information / August 10, 1998)

- Rule against “unsightly use” of a balcony not shown to be ambiguous where declaration specifically prohibited hanging plants, and rule prohibited shades and indoor furniture. Thus respondent/unit owner was clearly on notice that these items were prohibited.
- Association’s action of grandfathering-in balcony sheds because they were approved by the developer-controlled board, and because others have existed for more than five, and as long as ten years, does not constitute an amendment to the declaration.

Mueller v. La Renaissance Condo. Assn., Inc.,  
Case No. 96-0193 (Oglo / Final Order / February 23, 1998)

- Unit owner required to remove unapproved patio railing cover where original owner had used the cover for 15 years and cover had subsequently worn out. Current owner not entitled to replace original illegal cover and estoppel did not apply.

Seaside Resort, Inc. v. Clapp, (currently on appeal)  
Case No. 97-0136 (La Plante / Summary Final Order / March 9, 1998)

- In case where no more than two persons were allowed to occupy unit in travel trailer community, unit owners failed to qualify for a hardship exception to allow their infant daughter to be the third person in the unit. Unit owner’s request that his infant daughter reside with him in his unit each year for a few months until she reached school age found not to constitute a hardship.

The Van Lee Management Corp., Inc. v. Sanders, (currently on appeal)  
Case No. 00-0359 (Draper / Summary Final Order / September 6, 2000)

- Association’s claim, that screen door installed by unit owners constituted a safety hazard because it opened outward and blocked the corridor of the building, was rejected. Double doors on the unit’s laundry room, situated across the hall from the unit’s front door, also open outward into the same corridor. In addition, the screen door is open only momentarily; the association did not allege that the respondents leave the door open for long periods.

Villa Dilancia Condo. Assn., Inc. v. Hydro Agri North America, Inc., (currently on appeal)  
Case No. 98-3731 (Draper / Summary Final Order / July 6, 1998)

- Arbitrator upheld as equitable restriction contained in declaration which required that a corporately-owned unit could be occupied only by an individual/family designated by the corporation (which designation could not be changed more than twice per calendar

year) or that the unit be occupied pursuant to a lease complying with the limitations on rentals contained in the documents, that is, a term of not more than 60 days and permitting only two rentals per calendar year. Intended use of the unit by the corporation, as accommodation for visiting clients of the corporation and its president, would not be permitted.

- “Guests” of designated occupant of corporately-owned unit, who occupied unit in the absence of the designated occupant, would be treated as tenants, subject to leasing restrictions in the documents. Fact that declaration did not prohibit a unit owner from having a guest in his unit in his absence did not invalidate provision of the declaration dealing with corporately-owned units which provided that use of the unit by others than designated occupant would be subject to the leasing provisions of the declaration. Guests of a residential owner are not the same as guests of a corporate owner. They are generally less frequently present, less varied and fewer in number so as not to contribute to the transient or hotel nature, as would the corporate guest. Therefore, it is reasonable for such occupancies to be treated differently.

#### **Unit Owner Meetings (See Meetings)**

Katchen v. Braemar Isle Condo. Assn., Inc.,  
Case No. 00-1350 (Powell / Final Order of Dismissal / January 30, 2001)

- Unit owner meeting at which less than two-thirds approval was achieved was properly adjourned to another date, at which time additional votes were cast sufficient to approve the special assessment. A merely procedural violation of Robert’s Rules of Order at the first meeting, in announcing the result of the vote prior to a motion to adjourn, would not render void the action taken by the association.

Unit Owners Voting for Recall v. Sunrise Towne Preferred Condo. Assn., Inc.,  
Case No. 01-2864 (Draper / Summary Final Order / May 15, 2001)

- Where the board of association failed to hold meeting on whether to certify written agreement for recall served on it, and recall agreement was facially valid, association violated Section 718.112(2)(j), F.S. Recall was certified and directors ordered to turn over records of association to remaining board members.

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

#### **Waiver (See also Estoppel; Selective Enforcement)**

Abraham v. Sara-Sea Owners Assn., Inc.,  
Case No. 98-3683 (Powell / Final Order Dismissing Amended Petition / September 14, 1998)

- By participating in the meeting, unit owner waived notice and objection to the manner in which the meeting was convened.

Ancient Oaks R.V. Resort Condo. Assn., Inc.,

Case No. 97-0083 (Draper / Summary Final Order / October 8, 1997)

- Unit owner could not assert affirmative defenses of estoppel and waiver in action against association for enforcing requirement of board approval for additions to R.V. These defenses are to be used as shields not swords.
- Even if estoppel defense were permitted, fact that contractor was permitted on condominium property and that addition to R.V. was undertaken in the open and not blocked, did not constitute representation by board that awning addition was acceptable.

Balmoral Condo. Assn., Inc. v. Goldstein,

Case No. 97-0153 (Anderson-Adams / Summary Final Order / September 2, 1998)

- Unit owners not exempt from declaration's pet restrictions where they had obtained written approval from the developer to keep pets in the unit while they were *leasing* the unit prior to purchase, but no permission to keep pets was obtained from the developer when they actually *purchased* the unit.

Bogikes v. Windmill Village by the Sea Condo. No. 1 Assn., Inc., (currently on appeal)

Case No. 97-0159 (Scheuerman / Amended Order Following Conference Call / May 20, 1998)

- Owners who lived in RV park for five years in violation of declaration prohibiting mobile homes could not challenge the validity of a board rule that, in contravention of declaration, permitted mobile homes and detached single family residences. Owners waived and were estopped to challenge the rule when they resided in a structure violating the declaration, when they continued to reside in prohibited structure after rules were amended to legitimize their living arrangement, and when they waited so long to challenge the rule.

Carriage House Condo. Assn., Inc. v. Bacon,

Case No. 95-0475 and 95-0477 (consolidated) (Scheuerman / Amended Final Order / January 13, 1998)

- Where association had waited over five years to contest the owner's authority to have improvements installed on the limited common element terrace by the developer, association has waived any defect in procedure by waiting that long.

Country Manors Assn., Inc. v. Pira,

Case No. 97-2389 (Anderson-Adams / Summary Final Order / April 9, 1998)

- Owners' argument stricken that association impliedly consented to owners' not-yet conceived children living in the unit when they approved owners for occupancy in 1994, knowing that they were recently married, owners argued board knew or should have known that owners might have children. Condominium documents including age



restrictions were recorded as public record and board was not alleged to have made representations to respondents that children were allowed in contravention of the published restrictions.

Four Sea Suns Condo. Assn., Inc. v. Pariseau,

Case No. 00-0559 (Scheuerman / Order Following Status Conference / June 8, 2000)

- Where association for a period of years had assumed maintenance responsibility for awnings installed by the original owners, association did not waive its ability to re-examine documents or re-determine maintenance responsibility for the awnings at a later date.

Garden Isles Apts. No. 2, Inc. v. Ferrara,

Case No. 99-0679 (Pine / Final Order / December 1, 1999) (currently on appeal)

- Where unit owner did not testify regarding a long-continued, persistent, obvious, or widespread acquiescence to violations of the pet rule, or otherwise establish that the board intended to relinquish its rights to prohibit pets, affirmative defense of waiver rejected.

Ironwood First Condo. Assn., Inc. v. Sorvick,

Case No. 97-1882 (Anderson-Adams / Summary Final Order / May 21, 1999)

- Fact that association took no action to remove unit owner's previous dog, which lived in the unit from 1972 to 1976, and again from 1987 until its death in 1988 is not sufficient to establish either estoppel or waiver, where association seeks to remove unit owner's new dog which was obtained nine years later in 1997.

Kreitman v. The Decoplage Condo. Assn., Inc., (appeal filed October 1998)

Case No. 98-3332 (Draper / Summary Final Order / July 30, 1998)

- Where board meeting notice listed as an agenda item "enforcement of condo documents regarding rentals," adequate notice was provided of the board's adoption of a resolution suspending questionable provision regarding unit rentals and reinstating unit rental provisions contained in the original declaration. The questionable provision had been adopted as an amendment to the declaration, using a procedure that was invalidated in another arbitration proceeding. Therefore, association decided not to enforce the provision and to fall back on the rental provision in effect prior to the amendment. In addition, the petitioning unit owner waived any objections regarding notice by attending and participating in the meeting.

Nassif v. Continental Towers Condo. Assn., Inc.,

Case No. 99-1789 (Pine / Summary Final Order / December 16, 1999)

- Petitioner, who called for a point of order regarding impropriety in election proceedings but was overruled, did not waive her objection by participating in the

remainder of the proceedings. Petitioner's attempt to salvage her position in the face of the board's actions does not constitute condonation of the board's action.

Reuther v. 400 Beach Road Condo. Assn., Inc.,

Case No. 98-4959 (Draper / Final Order / January 29, 1999)

- Where only facts supporting waiver of association's right to maintain foyer area are that the association failed to complain or to prosecute previous owners who used the area as if it was a limited common element reserved for their exclusive use, waiver not shown. It is doubtful whether an association may waive the rights of other owners to complain about another owner's commandeering of a common element area.

Sanders v. Ancient Oaks R.V. Resort Condo. Assn., Inc.,

Case No. 97-0083 (Draper / Summary Final Order / October 8, 1997)

- Unit owner could not assert affirmative defenses of estoppel and waiver in action against association for enforcing requirement of board approval for additions to R.V. These defenses are to be used as shields not swords.
- Even if estoppel defense were permitted, fact that contractor was permitted on condominium property and that addition to R.V. was undertaken in the open and not blocked, did not constitute representation by board that awning addition was acceptable.

Scalese v. The Wittington Condo. Apts., Inc.,

Case No. 99-0939 (Powell / Order Dismissing Claim and Striking Defenses / January 21, 2000)

- Sixteen months was insufficient to establish that waiver has occurred, particularly where the unit owner attempted to resolve the dispute by writing letters prior to filing the petition for arbitration.

Sea Horse Park Homeowners Assn., Inc. v. Brucker,

Case No. 00-2185 (Pine / Final Order / March 21, 2001)

- Any reliance on a single board member's advice that a motor home could be parked on the premises would not be reasonable where unit owners knew that the vehicle was a motor home and that the rules explicitly prohibited parking motor home on premises for more than 72 hours on two occasions per year.

Seaside Villas Condo. Assn., Inc. v. Gerson,

Case No. 00-0324 (Pine / Final Order / February 23, 2001)

- Statements of intent to relinquish association's right to enforce condominium documents, as verbally expressed by individual board members or board officers

outside of meetings, cannot be imputed to the board as a whole and therefore does not establish the defense of waiver.

- By ignoring one example of multiple pets, which existed very briefly before compliance brought about by death of one of the pets, the association did not forever waive its rights to enforce prohibition on multiple pets.

Shore Colony Condo. Assn., Inc. v. Greife, (currently on appeal)  
Case No. 97-2341 (Scheuerman / Final Order / February 19, 1999)

- Where association approval of project involving removal of interior load bearing wall within a unit was conditioned upon licensed contractor performing work, association not estopped from requiring restoration of the wall where owner acted as her own contractor instead of hiring a licensed contractor.
- Where declaration interpreted as prohibiting removal of load-bearing wall by an owner regardless of board approval, board was powerless to approve project, and any approval expressed was contrary to documents and of no effect.

Sunrise Lakes Condo. Assn., Phase I, Inc. v. O'Connor, (currently on appeal)  
Case No. 98-3662 (Powell / Final Order / September 28, 1999)

- Where unit owner had dog when moving into unit in 1982, dog died in January 1995, and a new dog was acquired in February 1995, the defense of waiver failed as to the second dog where the association instituted action to enforce its documents against the second dog soon after learning of its existence, and such enforcement was commenced 17 months after second dog was acquired.

Wild Oak Bay Vista V Owners Assn., Inc. v. Mintz,  
Case No. 97-0110 (Powell / Order Striking Certain Defenses and Requiring Supplemental Information / March 18, 1998)

- Estoppel and waiver held not to apply where the unit owners have not shown that the association approved the installation of the tile. Also, since association previously attempted to encourage unit owners to correct the problem of noise caused by bare tile floors, it did not relinquish its right to enforce the declaration provision barring nuisances.