

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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

Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029
Telephone: (850) 414-6867
Fax: (850) 487-0870

Email:

arbitration.ctmh@myfloridalicense.com

Web Address:

[http://www.myfloridalicense.com/dbpr/lsc/ARB/
LSCMHArbitrationResearch.html](http://www.myfloridalicense.com/dbpr/lsc/ARB/LSCMHArbitrationResearch.html)

RECALL ARBITRATION SUBJECT MATTER INDEX

September 2007

Note: This supplement contains summaries of arbitration recall final orders entered by division arbitrators in the arbitrator program described by Sections 718.112(2)(j), and 718.1255, Florida Statutes, during the period January 1, 2006, through September 5, 2007. The final order summaries are organized by subject matter. Indexes of earlier final order decisions are available separately online at the above web address.

Table of Contents

Arbitration Procedure 3
 Authority to file petition 3
 Failure to comply with 61B-50 / Order of the arbitrator 3
 Generally 3
 Withdrawal of petition / Withdrawal of written agreement 5
 Attorney’s Fees / Costs 5
 Board’s Failure to Certify Recall 5
 Failure to date recall agreements / Failure of agreements to be executed within a
 finite period of time 5
 Failure to obtain a majority of voting interests / Failure to properly calculate a majority
 of voting interests..... 5
 Failure to properly serve written agreements on the board..... 5
 Generally 5
 Illegible or incorrect signatures / Failure to print name 6
 Misleading information given to voters / Fraud 7
 Pre-marked ballots..... 7
 Proxy 7
 Qualifications of replacement candidates / Replacement candidates not properly
 elected (See also, Replacement Candidates)..... 7
 Representative 8
 Unit owner delinquent in assessment 8
 Unit owner meeting to recall failed to comply with 61B-23.0027 8
 Generally..... 8
 Presiding officer 8
 quorum..... 8
 Vote cast by unauthorized person 8
 Power of attorney 9
 Proxy 9
 Trusts / Trustee 9
 Voting certificate..... 9
 Vote cast improperly 9
 Vote withdrawn / Rescission / Added after service of petition..... 10
 Written agreement form did not substantially comply with 61B-23.0028..... 10
 Recall / Retain lines 12
 Written agreement held to be defective..... 12
 Written agreement held to substantially comply 13
 Class Voting 13
 Conflict of Interest 13
 Corporations / Chapter 617, Florida Statutes 13
 Developer 13
 Dispute Moot (For example, election held after recall, recalled director resigns, etc.) .. 13
 Effect of Recall 14
 Jurisdiction 15
 Power of Attorney..... 15

Proxy 15

Reconsideration / Rehearing..... 15

Replacement Candidates (see *also*, Board’s Failure to Certify Recall) 15

Standing 16

Time Limits / Legitimate Justification (see *also*, Unit Owners Defenses – Failure to timely file petition)..... 16

Unit Owner Defenses to Petition for Arbitration 16

 Division advice..... 16

 Failure of association to previously enforce voting certificate requirement 16

 Failure of minutes to include specific reasons for not certifying 16

 Failure to give proper notice of board meeting 18

 Failure to have a quorum at board meeting 18

 Failure to hold or timely hold board meeting..... 18

 Failure to timely file petition (see also, Time Limits / Legitimate Justification) 19

 Generally 19

 No Legitimate Reasons for Failing to Certify 19

 Ratification..... 19

Vacancies..... 20

Arbitration Procedure

Authority to file petition

[Ringler v. Tower Forty One Assn, Inc.,](#)

Case No. 2005-04-1867 (Mnookin / Final Order / December 12, 2005)

- In this type of "reverse recall," the board member whose recall was certified initiates the arbitration proceeding, along with any other unit owners who wish to join in as petitioners, naming the association as the respondent and alleging that the recall was erroneously certified by the board.

[Ringler v. Tower Forty One Assn, Inc.,](#)

Case No. 2005-04-1867 (Grubbs / Order Denying Motion for Rehearing / January 17, 2006)

- To obtain the relief sought in a "reverse recall," i.e, reinstatement to the board, the former board member must allege and prove not only that the association failed to properly hold or conduct the recall board meeting through no fault of his own, but that the recall agreement would not have been certified by the board at the meeting had the meeting been properly held and conducted. In other words, the petitioner must provide the reasons the recall agreement would not have been certified had the association done things properly. When the petitioner failed to provide any grounds for finding the recall agreement to be invalid, the certification of the recall would have to be affirmed regardless of the inappropriate actions or inactions of the association.

Failure to comply with 61B-50 / Order of the arbitrator

[International Studio Apartment Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-00-0846 (Earl / Summary Final Order / March 15, 2006)

- Where the unit owner representative failed to file an answer disputing any of the facts alleged by the association or presenting any defenses, it was presumed that the association's account of the recall effort and attachments to its petition were true and accurate.

Generally

[Brookside Mobile Manor, Inc. v. Members Voting for Recall,](#)

Case No. 2006-02-0053 (Grubbs / Summary Final Order on Petition for Recall Arbitration / May 17, 2006)

- There is no way to have a valid written recall agreement by secret ballot. A written recall agreement can never be considered valid if the ballots do not include the name of the person who executed the ballot. The identity of the person who voted must be revealed.

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

Case No. 2006-00-9580 (Harnden / Summary Final Order / April 4, 2006)

- A summary final order affirming the board's decision not to certify the recall was appropriate where unit owners failed to respond to the first petition, where the recall is facially defective, and a second, corrective petition, is filed while the first recall is pending.

[Harbour Hall Inlet Club II Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-00-0895 (Earl / Summary Final Order / February 7, 2006)

- Where the recall petition and minutes for the board meeting indicate that two ballots were rejected because the signatures were forged and another was rejected as duplicative and the respondent did not file an answer challenging the association's conclusions, the association's basis for rejection was presumed to be valid.

[Ringler v. Tower Forty One Assn, Inc.,](#)

Case No. 2005-04-1867 (Mnookin / Final Order / December 12, 2005)

- In this type of "reverse recall," the board member whose recall was certified initiates the arbitration proceeding, along with any other unit owners who wish to join in as petitioners, naming the association as the respondent and alleging that the recall was erroneously certified by the board.

[Ringler v. Tower Forty One Assn, Inc.,](#)

Case No. 2005-04-1867 (Grubbs / Order Denying Motion for Rehearing / January 17, 2006)

- To obtain the relief sought in a "reverse recall," i.e, reinstatement to the board, the former board member must allege and prove not only that the association failed to properly hold or conduct the recall board meeting through no fault of his own, but that the recall agreement would not have been certified by the board at the meeting had the meeting been properly held and conducted. In other words, the petitioner must provide the reasons the recall agreement would not have been certified had the association done things properly. When the petitioner failed to provide any grounds for finding the recall agreement to be invalid, the certification of the recall would have to be affirmed regardless of the inappropriate actions or inactions of the association.

[Tennis Club II Courts Condo. Assn, Inc. v. Unit Owners Voting For Recall,](#)

Case No. 2005-06-4758 (Harnden / Summary Final Order / April 5, 2006)

- Where multiple board members are included in recall agreement, the board's decision not to certify recall agreement shall be affirmed where agreement fails to afford voter opportunity to cast separate vote to retain or recall each board member. Grouping board members names at top of document and providing only the names or signatures

of voters and their unit information below this list does not afford each voter the right to retain or recall a board member and does not constitute a valid written recall agreement.

Withdrawal of petition / Withdrawal of written agreement

[Keystone Harbor Club Condo. Ass'n, Inc. v. Unit Owners Voting for Recall](#),
Case No. 2006-00-7066 (Earl / Summary Final Order / April 3, 2006)

- Pursuant to rule 61B-50.112, F.A.C., where the association withdraws its petition for recall arbitration, such withdrawal is with prejudice and the recall is deemed certified.

Attorney's Fees / Costs

Board's Failure to Certify Recall

Failure to date recall agreements / Failure of agreements to be executed within a finite period of time

Failure to obtain a majority of voting interests / Failure to properly calculate a majority of voting interests

[The Hemispheres Condo. Assn, Inc. v. Unit Owners Voting for Recall](#),
Case No. 2006-00-2745 (Bembry / Summary Final Order / March 7, 2006)

- Where the board did not receive enough votes for a recall, the decision of the board not to certify the recall was affirmed.

Failure to properly serve written agreements on the board

[Ringler v. Tower Forty One Assn, Inc.](#),
Case No. 2005-04-1867 (Mnookin / Final Order / December 12, 2005)

- Serving all members of the board of directors is not required to effectuate service on the board. Service on the board was satisfied when the recall agreement was served on the property manager.

Generally

[Dieppa v. Lisette Condo. Assn, Inc.](#),
Case No. 2006-01-0911 (Grubbs / Summary Final Order / March 7, 2006)

- The basic requirement for a successful recall is that a majority of the voting interests vote to recall the board member. The purpose of all the other rules and statutory requirements is to safeguard the integrity of the process. In this case, the failure of the association to follow the proper procedures, i.e., hold a meeting within five business days of service of the agreement and file a petition for arbitration after rejecting the recall agreement, cannot result in certification of the recall because it is not clear from the agreement that a majority of the unit owners sought the recall of any board member. A cover letter asking for the resignation of the president to which is attached a signature list with no heading cannot be considered a valid recall agreement. There is no

statement on the signature list indicating its purpose, and even the cover letter merely asks for the president's resignation. Therefore, even though the board of directors in this case failed to comply with the rules and statute, which normally would result in automatic certification of the recall as required by statute, the recall in this case was *void ab initio*, and, therefore, cannot be certified or deemed effective.

[Forest Ridge Village Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-06-0936 (Earl / Summary Final Order / March 22, 2006)

- The condominium consisted of 104 individually owned built units and 24 un-built units owned by the association. At all times prior to the instant recall, the association had based all its unit owner votes, budgets, and financial operations on the presumption that the association consisted of 104 voting/owner interests. Considering the association's historical treatment of the association owned units and that the amendment to the declaration by which the association was authorized to acquire the units was not clear as to the legal status of the units, the association will not be permitted to treat them as voting interests in order to defeat the instant recall.

Illegible or incorrect signatures / Failure to print name

[Brookside Mobile Manor, Inc. v. Members Voting for Recall,](#)

Case No. 2006-02-0053 (Grubbs / Summary Final Order on Petition for Recall Arbitration / May 17, 2006)

Rule 61B-75.008(2), F.A.C., states that "substantial compliance with the provisions of section (1) of this rule shall be required for an effective recall of a board member or members." Where the unit owners seeking recall used the standard form provided by the Division, but used on "Block A" and eliminated blocks B and C from the individual ballots, none of the ballots that were submitted to the board identified the person who voted or his unit number and none contained the voter's signature, among other things. Thus, the recall did not substantially comply with Rule 61B-75.008(1). The recalling unit owners were attempting to have a secret vote by having the ballots returned to the unit owner committee in sealed "inner" and "outer" envelopes, with the "outer" envelope containing all of the identifying information and shareholder's signature. The ballots, however, were not submitted to the board in the sealed envelopes. Submitting the ballots and identifying information separately would not be sufficient because the board would have no way of knowing that the person who signed the envelope actually completed the ballot and could not know which ballot belonged to which envelope, so that the board would not know which ballot was invalid should someone other than a shareholder sign an envelope.

- There is no way to have a valid written recall agreement by secret ballot. A written recall agreement can never be considered valid if the ballots do not include the name of the person who executed the ballot. The identity of the person who voted must be revealed.

[Daytona Beach Club Condo. Ass'n, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-03-0665 (Earl / Summary Final Order / July 17, 2006)

- Recall ballots that lack signatures are fatally flawed and must be rejected. Likewise, unsigned recall ballots submitted via e-mail that are not signed must be rejected because such messages lack the assurances of authenticity of signed ballots since persons familiar with computers can manipulate e-mails in order to send messages that falsely appear to be sent by a particular person.

Misleading information given to voters / Fraud

[Sea Monarch Condominium Association, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2007-03-2662 (Golen / Final Order / September 5, 2007)

- Where at least eight unit owners had their ballots changed without their consent and where unit owner representative's testimony established no reliable chain of custody of the ballots prior to her acceptance of them, and presented no evidence as to preservation of the integrity of all of the ballots collected, moreover, the respondent's admission that the ballots were tampered with coupled with its suggestion that this fact be ignored to allow a finding that the votes cast for a different board member and others be found valid makes it impossible for the arbitrator to do, particularly where the aroma of fraud is so pungent. With such a showing of tampering with ballots it can not be determined if the votes cast for any of the board positions are true and accurate representations of the unit owners. All ballots are considered void.

Pre-marked ballots

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

Case No. 2006-00-0575 (Bembry / Summary Final Order / February 2, 2006)

- Ballots that were pre-marked at the time they were presented for signature by the unit owners voting for recall of listed board members were deemed invalid and the association's determination not to certify written recall agreement was upheld.

Proxy

[Royal Pines Condominium Association, Inc. v. Unit Owners Voting For Recall,](#)

Case No. 2007-04-0558 (Campbell / Summary Final Order / August 8, 2007)

- Attempted recall by meeting, required 29 votes. Respondent presented written list of 23 votes and represented that 7 proxies provided for votes at the meeting. Because section 718.112(2)(d)(3), Florida Statutes, prohibits the use of proxies for elections, proxies cannot be used for recalls. Proxies could be used to establish a quorum for meeting, but vote at the meeting must produce a majority of all voting interests to effect recall.

Qualifications of replacement candidates / Replacement candidates not properly elected (See also, [Replacement Candidates](#))

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

Arb. Case No. 2007-02-8234 (Chavis/Summary Final Order/June 21, 2007)

- The fact that one of the three identified replacement candidates is ineligible to serve on the board is not a sufficient reason to reject the entire recall. The recall of directors and the election of their replacements are two separate questions.

Representative

Unit owner delinquent in assessment

Unit owner meeting to recall failed to comply with 61B-23.0027

Generally

[International Studio Apartment Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-00-0846 (Earl / Summary Final Order / March 15, 2006)

- Board correctly chose not to certify the recall of board members by unit owner meeting as the attempted recall failed to comply with most of the requirements of subsections 61B-23.0027(1), (2), and (3), F.A.C.

[Number 1 Condo. Assn – Village Green, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-01-4096 (Bembry / Summary Final Order / April 28, 2006)

- The association's decision not to certify recall by unit owner meeting was upheld where the board was served with only a signature list purportedly bearing the signatures of unit owners who were seeking to recall the board members listed on the signature sheet. Where compliance with all the requirements of rule 61B-23.0027, F.A.C., was not shown, the recall was properly rejected by the board.

Presiding officer

quorum

Vote cast by unauthorized person

[Harbour Hall Inlet Club II Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-00-0895 (Earl / Summary Final Order / February 7, 2006)

- Where the recall petition and minutes for the board meeting indicate that two ballots were rejected because the signatures were forged, another was rejected as duplicative, and the respondent did not file an answer challenging the association's conclusions, the association's basis for rejection was presumed to be valid.

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

Case No. 2005-06-2869 (Earl / Summary Final Order / January 18, 2006)

- The fact that the association has accepted the signature of person not authorized vote on behalf of the unit in past association votes did not authorize or require the

association to accept these votes in a recall since the association's past treatment could not act to validate an otherwise invalid vote in the current matter.

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

Arb. Case No. 2007-02-8234 (Chavis/Summary Final Order/June 21, 2007)

- Submission of mortgage documentation is insufficient evidence to establish ownership of the unit.

Power of attorney

Proxy

Trusts / Trustee

Voting certificate

Vote cast improperly

[Brookside Mobile Manor, Inc. v. Members Voting for Recall,](#)

Case No. 2006-02-0053 (Grubbs / Summary Final Order on Petition for Recall Arbitration / May 17, 2006)

Rule 61B-75.008(2), F.A.C., states that "substantial compliance with the provisions of section (1) of this rule shall be required for an effective recall of a board member or members." Where the unit owners seeking recall used the standard form provided by the Division, but used on "Block A" and eliminated blocks B and C from the individual ballots, none of the ballots that were submitted to the board identified the person who voted or his unit number and none contained the voter's signature, among other things. Thus, the recall did not substantially comply with Rule 61B-75.008(1). The recalling unit owners were attempting to have a secret vote by having the ballots returned to the unit owner committee in sealed "inner" and "outer" envelopes, with the "outer" envelope containing all of the identifying information and shareholder's signature. The ballots, however, were not submitted to the board in the sealed envelopes. Submitting the ballots and identifying information separately would not be sufficient because the board would have no way of knowing that the person who signed the envelope actually completed the ballot and could not know which ballot belonged to which envelope, so that the board would not know which ballot was invalid should someone other than a shareholder sign an envelope.

- There is no way to have a valid written recall agreement by secret ballot. A written recall agreement can never be considered valid if the ballots do not include the name of the person who executed the ballot. The identity of the person who voted must be revealed.

[Harbour Hall Inlet Club II Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-00-0895 (Earl / Summary Final Order / February 7, 2006)

- Where the recall petition and minutes for the board meeting indicate that two ballots were rejected because the signatures were forged, another was rejected as duplicative, and the respondent did not file an answer challenging the association's conclusions, the association's basis for rejection was presumed to be valid.

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

Arb. Case No. 2007-02-8234 (Chavis/Summary Final Order/June 21, 2007)

- Where there are two ballots cast on behalf of one unit, one by each owner and each ballot has identical votes, the additional ballot is disregarded but does not invalidate the one ballot case for that unit.

Vote withdrawn / Rescission / Added after service of petition

[Crystal Villas Owners Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-01-1931 (Grubbs / Summary Final Order on Petition for Recall Arbitration / April 14, 2006)

- The board refused to certify the recall of two board members based on the "withdrawal" of the recall ballot by a unit owner (also a board member) who had initially voted for the recall. The e-mails to the board members and property manager stating that he rescinded his ballot were sent after the board had been served with the written agreement, so the board relied on an e-mail he sent to the unit owner representative prior to service of the agreement. However, because that e-mail only stated that he was "thinking of withdrawing" his ballot, the ballot could not be considered to be rescinded prior to service on the board. Because the contested ballot was not effectively withdrawn, revoked or rescinded prior to the time the recall agreement is served on the board, the individual ballots become, in effect, fused together as the recall agreement, which cannot be altered by unit owners withdrawing ballots from it or adding ballots to it.

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

Case No. 2006-01-8271 (Bembry / Summary Final Order / May 16, 2006)

- Final order affirming the board's decision not to certify recall was issued where unit owners did not dispute that the single determining ballot was not rescinded by the signing unit owner prior to service of the written recall agreement on the board.

Written agreement form did not substantially comply with 61B-23.0028

[Dieppa v. Lisette Condo. Assn, Inc.,](#)

Case No. 2006-01-0911 (Grubbs / Summary Final Order / March 7, 2006)

- The basic requirement for a successful recall is that a majority of the voting interests vote to recall the board member. The purpose of all the other rules and statutory requirements is to safeguard the integrity of the process. In this case, the failure of the association to follow the proper procedures, i.e., hold a meeting within five business days of service of the agreement and file a petition for arbitration after rejecting the

recall agreement, cannot result in certification of the recall because it is not clear from the agreement that a majority of the unit owners sought the recall of any board member. A cover letter asking for the resignation of the president to which is attached a signature list with no heading cannot be considered a valid recall agreement. There is no statement on the signature list indicating its purpose, and even the cover letter merely asks for the president's resignation. Therefore, even though the board of directors in this case failed to comply with the rules and statute, which normally would result in automatic certification of the recall as required by statute, the recall in this case was *void ab initio*, and, therefore, cannot be certified or deemed effective.

[International Studio Apartment Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-00-0846 (Earl / Summary Final Order / March 15, 2006)

- If the recall effort is intended to be a recall by written agreement, it fails because the form of the written recall ballots were fatally defective, only complying with one of the requirements of rule 61B-23.0028(1), F.A.C.

[Number 1 Condo. Assn – Village Green, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-01-4096 (Bembry / Summary Final Order / April 28, 2006)

- A final order affirming the board's decision not to certify the unit owner recall was issued where the board was served with only a collection of signatures for the recall of the named board members. Recall agreement was *void ab initio*, as the recall signature sheet contained no recall or retains lines for the listed board members, and failed to comply with the requirements of rule 61B-23.0028, F.A.C.

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

Case No. 2006-00-6054 (Harnden / Summary Final Order / March 1, 2006)

- It is proper for the board to reject a written recall agreement that fails to provide a space for the person signing the written agreement to include his name, parcel or unit identification information, and signature, for failure to comply with rule 61B-23.0028(1)(d) and (3), F.A.C.

[Town & Country Condominium Association of Lauderdale Lakes, Inc. v. Unit Owners Voting for Recall,](#)

Arb. Case No. 2007-00-1728, (Earl / Summary Final Order / February 16, 2007)

- A recall agreement is fatally flawed where the ballots fail to provide separate recall/retain lines for each board member, as required by rule 61B-23.0028(1)(b), Fla. Admin. Code. The person executing the agreement must be able to indicate whether each of the listed board members should be recalled or retained.

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

Case No. 2006-00-2456 (Harnden / Summary Final Order / March 1, 2006)

- Where the recall agreement fails to provide separate recall and retain lines next to each board member sought to be recalled is fatally flawed and thus fails.

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

Case No. 2005-06-5905 (Bembry / Summary Final Order / January 19, 2006)

- All recall ballots submitted by the unit owners voting for recall were deemed invalid as each of the ballots had been pre-marked prior to the voting unit owners executing the agreement. Pre-marked ballots impermissibly link the fate of one board member to any other board member subject to the recall and effectively preclude a unit owner from indicating which members should be retained and recalled from the board.

Recall / Retain lines

[The Fountains Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-06-3667 (Earl / Summary Final Order / January 18, 2006)

- Respondent argued that twelve proxies attached to the written recall, each signed by the unit owner and of identical form permitting the unit owner only to elect to remove all the current board members except Doris Wilson should have been treated as recall ballots; but they are fatally flawed in that they inextricably link the board members subject to recall by not permitting person executing the ballot to indicate whether an individual board member should be recalled or retained.

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

Case No. 2006-00-6064 (Harnden / Summary Final Order / March 1, 2006)

- A recall by written agreement fails to comply with rule 61B-23.0028, F.A.C., if it does not contain separate recall and retain lines next to each board member sought to be recalled. A recall effort must adhere to the administrative rules adopted by the Division; therefore, good faith and diligence on the part of the unit owners bears no weight.

Written agreement held to be defective

[Brookside Mobile Manor, Inc. v. Members Voting for Recall,](#)

Case No. 2006-02-0053 (Grubbs / Summary Final Order on Petition for Recall Arbitration / May 17, 2006)

Rule 61B-75.008(2), F.A.C., states that “substantial compliance with the provisions of section (1) of this rule shall be required for an effective recall of a board member or members.” Where the unit owners seeking recall used the standard form provided by the Division, but used on “Block A” and eliminated blocks B and C from the individual ballots, none of the ballots that were submitted to the board identified the person who voted or his unit number and none contained the voter’s signature, among other things. Thus, the recall did not substantially comply with Rule 61B-75.008(1). The recalling unit owners were attempting to have a secret vote by having the ballots returned to the unit owner committee in sealed “inner” and “outer” envelopes, with the “outer” envelope containing all of the identifying information and shareholder’s signature. The ballots,

however, were not submitted to the board in the sealed envelopes. Submitting the ballots and identifying information separately would not be sufficient because the board would have no way of knowing that the person who signed the envelope actually completed the ballot and could not know which ballot belonged to which envelope, so that the board would not know which ballot was invalid should someone other than a shareholder sign an envelope.

- There is no way to have a valid written recall agreement by secret ballot. A written recall agreement can never be considered valid if the ballots do not include the name of the person who executed the ballot. The identity of the person who voted must be revealed.

Written agreement held to substantially comply

Class Voting

Conflict of Interest

Corporations / Chapter 617, Florida Statutes

Developer

Dispute Moot (For example, election held after recall, recalled director resigns, etc.)

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

Case No. 2005-06-4719 (Earl / Final Order of Dismissal / January 20, 2006)

- Where the association subsequent to filing the petition in the instant matter received another group of recall agreements which it deemed to be proper and effective, and as a result, the board members subject to the recall in the present matter stepped down and replacement board members took their place, the case was dismissed as moot.

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

Case No. 2006-01-8239 (Harnden / Final Order of Dismissal / May 10, 2006)

- Where a second recall is served on the board while the recall arbitration proceeding is pending for the recall of the same board members and the “second” recall is certified, the first recall petition is dismissed as moot.

[Cape Winds Condo. Assn. v. Unit Owners Voting for Recall,](#)

Case No. 2006-00-9585 (Grubbs / Final Order Dismissing Petition as Moot / March 16, 2006)

- Where the annual election was held while the recall petition for arbitration was pending, the question of the validity of the recall agreement served on the board prior to the annual election was moot, even though the same board members were re-elected to the board of directors.

[Carmel Townhomes Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2006-01-8684 (Earl / Final Order of Dismissal / May 30, 2006)

- An intervening election for the seats subject to the recall during the pendency of the recall arbitration renders the recall arbitration case moot.

[Chateau Le Mer Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2006-00-8508 (Chavis / Summary Final Order / March 29, 2006)

- Where there is less than a majority of voting interest votes in favor of the recall of the named board members, the recall does not substantially comply with section 718.112(2)(j), Florida Statutes.

[Harbour Hall Inlet Club II Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2006-00-0895 (Earl / Summary Final Order / February 7, 2006)

- Where a board member resigned during the pendency of the recall dispute, any attempt to recall that board member is moot and since a majority of the board members remained on the board, the remaining board members were permitted to appoint a person to fill the vacancy with anyone other than the board member who resigned.

[Twin Towers Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-05-3274 (Grubbs / Final Order of Dismissal / January 17, 2006)

- Where the respondent's answer was not filed until November 28, 2005, and the annual election was scheduled for December 19, 2005, the parties were in agreement that the case should be held in abeyance pending the annual election and dismissed as moot after the annual election was actually held.

Effect of Recall

[Aronson v. Lakeview Condo. Assn, Inc.,](#)
Case No. 2006-01-2188 (Grubbs / Final Order Dismissing Petition / March 16, 2006)

- From the notice filed in the earlier recall case filed by the association and the final order of the arbitrator in that case dismissing the prior case as moot, it was clear that the previous board, which at the time consisted of two board members, either certified the subsequent recall or recognized that the subsequent recall was effective by operation of statute due to the failure of the board to timely hold a meeting. Although it would have been preferable for that board to notice and hold a board meeting to officially certify the subsequent recall, thus providing for a smooth transition to the new board, the board's failure to call and hold such a meeting does not prevent the new board, consisting of the replacement board members elected in the recall agreement from rightfully assuming the seats vacated by the former board. Therefore, the petitioner's contention that there was no board of directors left to run the association

after the former two board members stepped aside is not correct. The replacement candidates are the new board.

[Crestview Towers Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-05-9559 (Grubbs / Summary Final Order / January 4, 2006)

- The board's concern that certification of the recall would affect the annual election, as well as being inconsequential, is unfounded. When a majority of a board is recalled, the persons listed as replacement board members take the place of the board members recalled and stay in office only as long as the recalled board member would have stayed in office. If an election is scheduled to be held three weeks after a recall is certified, and all board seats are up for election, then the replacement board members would only be in office for three weeks, but they would be responsible for ensuring that the election is held as scheduled, assuming the election has been properly noticed and scheduled. Thus, an upcoming election should have no effect on a board's decision concerning certification of a recall agreement.

Jurisdiction

[The Hamilton and the St. George Office Condominium Association, Inc. v. Unit Owners Voting For Recall,](#)

Arb. Case No. 2007-01-4548 (Earl/Final Order of Dismissal/April 12, 2007)

- Recall disputes involving non-residential condominium units are not within the arbitrator's jurisdiction.

Power of Attorney

Proxy

Reconsideration / Rehearing

Replacement Candidates (see also, [Board's Failure to Certify Recall](#))

[Aronson v. Lakeview Condo. Assn, Inc.,](#)

Case No. 2006-01-2188 (Grubbs / Final Order Dismissing Petition / March 16, 2006)

- From the notice filed in the earlier recall case filed by the association and the final order of the arbitrator in that case dismissing the prior case as moot, it was clear that the previous board, which at the time consisted of two board members, either certified the subsequent recall or recognized that the subsequent recall was effective by operation of statute due to the failure of the board to timely hold a meeting. Although it would have been preferable for that board to notice and hold a board meeting to officially certify the subsequent recall, thus providing for a smooth transition to the new board, the board's failure to call and hold such a meeting does not prevent the new board, consisting of the replacement board members elected in the recall agreement from rightfully assuming the seats vacated by the former board. Therefore, the petitioner's contention that there was no board of directors left to run the association

after the former two board members stepped aside is not correct. The replacement candidates are the new board.

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

Arb. Case No. 2007-02-8234 (Chavis/Summary Final Order/June 21, 2007)

- The fact that one of the three identified replacement candidates is ineligible to serve on the board is not a sufficient reason to reject the entire recall. The recall of directors and the election of their replacements are two separate questions.
- The failure of the written recall agreements to identify sufficient eligible replacement members does not affect the validity of the recall if the written recall agreements otherwise substantially comply with the requirements of Rule 61B-23.0028.

Standing

Time Limits / Legitimate Justification (see also, Unit Owners Defenses – [Failure to timely file petition](#))

Unit Owner Defenses to Petition for Arbitration

Division advice

Failure of association to previously enforce voting certificate requirement

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

Case No. 2006-02-2054 (Bembry / Amended Final Order / June 30, 2006)

- Ballots that were rejected for lack of unit owners voting certificate were deemed valid where the association failed to establish that it had previously enforced its voting certificate requirement.

Failure of minutes to include specific reasons for not certifying

[Brookside Mobile Manor, Inc. v. Members Voting for Recall,](#)

Case No. 2006-02-0053 (Grubbs / Summary Final Order on Petition for Recall Arbitration / May 17, 2006)

- Where board's minutes merely stated that recall agreement was rejected because "the recall was not handled properly" and that "the ballots were not properly prepared, nor properly handled when counted, nor properly delivered to the board for their inspection," the minutes were not sufficient to support the rejection of the recall on any specific grounds; however, where the ballots are fatally flawed, as in this case where the ballots had "Block A" of the standard ballot form but not blocks B and C, so that none of the ballots contained the name or signature of the person purportedly voting, the recall cannot be certified regardless of the failure of the minutes to articulate the specific reasons for rejecting the agreement.

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

Case No. 2005-05-9559 (Grubbs / Summary Final Order / January 4, 2006)

- The minutes of the board meeting to address the recall stated in their entirety as follows: "A quorum of the Board of Directors held today a meeting at 10 A.M. to inform all unit owners about our decision to not certify the Recall and file for Arbitration." However, the petition for arbitration alleged that a number of individual ballots were rejected. When petitioner asserted that minutes were incomplete, the petitioner was given an opportunity to file video or audio tape of board meeting to support allegations in petitions regarding invalid ballots. Petitioner was advised that in the absence of proof that the board rejected the individual ballots for the reasons stated in the petition, the recall would be certified. A tape was not filed by the time deadline, the motion for extension of time was denied, and the recall was certified.
- The minutes of the recall board meeting must be specific. Because the minutes of the board meeting did not establish that the board gave any reasons for the refusal to certify the recall, the board's action in rejecting the recall could not be sustained unless the petitioner could establish that the specific reasons for rejecting the identifiable ballots specified in the amended petition were articulated at the board meeting, but were simply omitted by the secretary of the association in the minutes.

[The Fountains Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-06-3667 (Earl / Summary Final Order / January 18, 2006)

- The arbitrator found that the minutes from the board meeting to consider the recall fail to comply with the requirements of rules 61B-23.0028(4)(d) and 61B-50.105(5)(h), F.A.C. The arbitrator further noted that none of the reasons stated in the minutes justify rejection of the recall. However, the arbitrator may review the written recall agreement to determine if it is facially valid and whether there are a sufficient number of votes in favor of recall. In the instant matter, the disputed proxies/ballots are facially flawed for failing to provide recall/retain lines.

[Harbour Hall Inlet Club II Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-00-0895 (Earl / Summary Final Order / February 7, 2006)

- Based upon the petition, it appeared that the board meeting to consider the recall effort did not address one of the three board members whose recall was sought because the written recall agreement did not contain a sufficient number of votes to recall the board member even if all the ballots were presumed to be valid. The better practice would have been to specifically state in the minutes the reasons for not certifying the recall as to that board member since rule 61B-50.105(5)(h), F.A.C., provides that any specific reason upon which the board bases its decision not to certify the recall that is stated in the petition, but absent from the board meeting minutes or attachments thereto, shall be ineffective and shall not be considered by the arbitrator. Moreover, where the minutes are silent as to the board's decision regarding the status of a director, it will be presumed that the board failed to timely address the recall of that director and the arbitrator may deem the recall is certified in accordance with Section

718.112(2)(j), Florida Statutes. However, where the recall effort is void *ab initio* because it is clear it has not been approved by the majority of the voting interests, the recall agreement will not be certified.

[Town & Country Estates Condominium Apartments Association, Inc. v. Unit Owners Voting For Recall,](#)

Arb. Case No. 2007-01-8897 (Campbell/Notice of Communication and Order Denying Rehearing/April 11, 2007)

- Failure to have complete and accurate set of minutes from the Association's recall meeting to support the recall arbitration petition was found to be a fatal defect and the recall was certified.

[Villas of West Miami Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-00-8498 (Harnden / Summary Final Order / March 17, 2006)

- Where the board fails to give reasons for rejecting the recall agreement at the board meeting, the arbitrator may only look to the facial validity of the recall agreement in deciding whether or not to certify the recall.

Failure to give proper notice of board meeting

[Town & Country Estates Condo. Apartments Ass'n v. Unit Owners Voting for Recall,](#)

Case No. 2007-01-8897 (Campbell / Summary Final Order / April 4, 2007)

- Where the Association's board held the meeting to consider the written agreement on the same day it was received, the meeting was found to be improperly noticed and the recall was therefore certified. Notice of the board meeting to consider a written recall agreement must be provided in accordance with section 718.112(2)(c), Florida Statutes, which requires that the notice be posted conspicuously on the condominium property at least 48 continuous hours before the meeting, except in an emergency. A board meeting to consider a written recall agreement is not an emergency meeting.

Failure to have a quorum at board meeting

Failure to hold or timely hold board meeting

[Dieppa v. Lisette Condo. Assn, Inc.,](#)

Case No. 2006-01-0911 (Grubbs / Summary Final Order / March 7, 2006)

- The basic requirement for a successful recall is that a majority of the voting interests vote to recall the board member. The purpose of all the other rules and statutory requirements is to safeguard the integrity of the process. In this case, the failure of the association to follow the proper procedures, i.e., hold a meeting within five business days of service of the agreement and file a petition for arbitration after rejecting the recall agreement, cannot result in certification of the recall because it is not clear from the agreement that a majority of the unit owners sought the recall of any board member. A cover letter asking for the resignation of the president to which is attached a signature

list with no heading cannot be considered a valid recall agreement. There is no statement on the signature list indicating its purpose, and even the cover letter merely asks for the president's resignation. Therefore, even though the board of directors in this case failed to comply with the rules and statute, which normally would result in automatic certification of the recall as required by statute, the recall in this case was *void ab initio*, and, therefore, cannot be certified or deemed effective.

[The River Club Townhouses Condo. Assn, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2006-01-5806 (Grubbs / Summary Final Order on Petition for Recall Arbitration / May 2, 2006)

- Recall agreement not in substantial compliance with rule 61B-23.0028, F.A.C. was *void ab initio*, therefore, even if board's meeting to consider was not timely pursuant to section 718.112(2)(1)2, Florida Statutes, the recall could not be "deemed" certified as provided by section 718.112(2)(1)4, Florida Statutes.

Failure to timely file petition (see also, [Time Limits / Legitimate Justification](#))

[Dieppa v. Lisette Condo. Assn, Inc.,](#)

Case No. 2006-01-0911 (Grubbs / Summary Final Order / March 7, 2006)

- The basic requirement for a successful recall is that a majority of the voting interests vote to recall the board member. The purpose of all the other rules and statutory requirements is to safeguard the integrity of the process. In this case, the failure of the association to follow the proper procedures, i.e., hold a meeting within five business days of service of the agreement and file a petition for arbitration after rejecting the recall agreement, cannot result in certification of the recall because it is not clear from the agreement that a majority of the unit owners sought the recall of any board member. A cover letter asking for the resignation of the president to which is attached a signature list with no heading cannot be considered a valid recall agreement. There is no statement on the signature list indicating its purpose, and even the cover letter merely asks for the president's resignation. Therefore, even though the board of directors in this case failed to comply with the rules and statute, which normally would result in automatic certification of the recall as required by statute, the recall in this case was *void ab initio*, and, therefore, cannot be certified or deemed effective.

Generally

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

Case No. 2006-02-2054 (Bembry / Amended Final Order / June 30, 2006)

- The association improperly rejected two ballots where it was shown by competent substantial evidence that the unit owners signed the recall ballots.

No Legitimate Reasons for Failing to Certify

Ratification

Vacancies

[Aronson v. Lakeview Condo. Assn, Inc.](#)

Case No. 2006-01-2188 (Grubbs / Final Order Dismissing Petition / March 16, 2006)

- A board has authority to certify the recall of the two remaining board members when the board has failed to appoint a replacement board member for the third board seat. Obviously, it better serves the community to have a full board. When a seat is vacant, the remaining members should act with due diligence to appoint a replacement or hold an election to fill the vacancy in accordance with Section 718.112(2)(d)8, Florida Statutes; however, the fact that a board seat is vacant does not mean that the board has no authority to take action on a recall agreement or conduct any other association business.