

CHAPTER 61B-45 THE MANDATORY NON-BINDING ARBITRATION RULES OF PROCEDURE

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61B-45.001 Scope, Organization, Forms, Purpose, and Title.

(1) This chapter shall be entitled "The Mandatory Non-Binding Arbitration Rules of Procedure" and shall be construed to secure the just, speedy and inexpensive determination of every proceeding. Specifically, this chapter applies to all proceedings for mandatory non-binding arbitration held pursuant to Section 718.1255, F.S. (1991) and Section 719.1255, F.S. (1992 Supp.). This chapter does not apply to recall arbitrations commenced pursuant to Section 718.112(2)(k) or 719.106(1)(f), F.S. (1992 Supp.); recall arbitrations shall be governed by Chapter 61B-50, F.A.C.

(2) All petitions and other papers filed with the division shall be filed at the official headquarters of the Division of Florida Land Sales, Condominiums and Mobile Homes, Attention: Arbitration Program, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1030. A subject-matter index of arbitration orders may be requested by writing to the Arbitration Clerk at this address.

(3) In order to file a petition for arbitration, a petitioner must use DBPR form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated herein by reference and effective 7-4-04. In order for someone who is not a member of the Florida Bar to represent a party in a proceeding, the person must file a completed DBPR form ARB 6000-002, QUALIFIED REPRESENTATIVE APPLICATION, incorporated herein by reference and effective 7-4-04. An answer to a petition for arbitration must be filed using DBPR form ARB 6000-003, ANSWER TO PETITION, incorporated herein by reference and effective 2-17-98, and revised April 30, 1998. A request for an expedited determination of whether jurisdiction exists to hear a particular dispute shall be filed on DBPR form ARB 6000-004, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated herein by reference and effective 7-4-04. Copies of the forms referenced in these rules may be obtained by writing: 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 32399-1030. All forms may be obtained online at <http://www.state.fl.us/dbpr/lsc/arbitration/index.shtml>.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.001, Amended 6-19-96, 12-10-96, 2-17-98, 7-4-04.

61B-45.004 Who May Appear; Criteria for Other Qualified Representatives; Standards of Conduct.

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

(2) If a person wishes to be represented by a qualified non-attorney representative, he or she shall file with the arbitrator a completed DBPR form ARB96-002, QUALIFIED REPRESENTATIVE APPLICATION, incorporated in subsection 61B-45.001(3), Florida Administration Code. Based on the information provided on the completed form, and based on the responses to any inquiries made by the arbitrator concerning the applicant's familiarity and understanding of the statute and rules applicable to the proceeding, the arbitrator shall determine whether the prospective representative is authorized and qualified to appear in the arbitration proceedings and capable of representing the rights and interests of the person.

(3) Members of The Florida Bar and certified law students are bound by a broad code of ethics. For other qualified representatives, the following standards have been written. These standards of conduct are adopted as a mandatory guide for all representatives appearing in any arbitration proceeding, except counsel subject to the disciplinary procedures of The Florida Bar.

(4) Standards of Conduct.

(a) A representative shall exercise due diligence in the filing and argument of any motion or pleading to ensure that the motion or pleading is filed and argued in good faith.

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

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

(d) A representative shall not:

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

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

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

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

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

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

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

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

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

10. Advise or cause a person to secrete himself or leave the jurisdiction of any agency for the purpose of making the person unavailable as a witness therein; pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony. *Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.004, Amended 6-19-96.*

61B-45.007 Communication with Arbitrator.

(1) While a case is pending and within 15 days of entry of a final order, no party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation relative to the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward.

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

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.007, Amended 6-19-96, 7-4-04.

61B-45.009 Computation of Time; Service by Mail.

(1) In computing any period of time prescribed or allowed for the filing or service (i.e., mailing) of any document, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, F.S., in which event the period shall run until the end of the next business day. When the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) Additional Time After Service By Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of a document and that document is served by regular U.S. mail, five days shall be added to the prescribed period. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission. No additional time is added for filing a motion for rehearing that must be filed (e.g., received by the agency) within 15 days of entry of a final order, or a motion for costs and attorney's fees that must be filed within 45 days of entry of the final order as required by Rule 61B-45.048, F.A.C., unless an appeal for trial de novo has been timely filed in the courts. Also, no additional time is added by operation of this rule for the filing of a complaint for trial de novo which must be filed in the courts within 30 days of the date of rendition of a final arbitration order as required by Section 718.1255(4)(k), F.S.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.009, Amended 6-19-96, 7-4-04.

61B-45.010 Filing; Service of Papers; Signing.

(1) Filing. Unless specifically ordered, every pleading or other paper filed in the proceedings, except the initial petition, shall also be served on each party. A pleading or other paper is considered "filed" when it is received by the division.

(2) Method and Proof of Service.

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

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

"I certify that a copy hereof has been furnished to (here insert name or names and address or addresses) by U.S. mail this day of _____, 19 ____."

Signature

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

(4) "Filing" shall mean receipt by the Division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the

arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the Division received the document. A facsimile copy is filed within the meaning of this rule when the facsimile copy of the document is received by the Division. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

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

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

(a) The style of the proceeding involved;

(b) The docket number, if any;

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

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

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

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

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.010, Amended 9-21-94, 12-20-95, 6-19-96, 7-4-04.

61B-45.011 Motions; Temporary or Interim Injunctive or Emergency Relief.

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

(2) A party may, either with the original petition for arbitration, or any time before entry of a final order, file a motion for emergency relief or temporary injunction, which motion or accompanying argument shall demonstrate a clear legal right to the relief requested, that irreparable harm or injury exists or will result, that no adequate remedy at law exists, and that the relief or injunction would not be adverse to the public interest. An evidentiary hearing on a motion for emergency relief shall be scheduled and held as soon as possible after the filing of the motion and supporting petition for arbitration. The hearing will be held upon due notice after the petition for arbitration and motion are served on the opposing party and may be held prior to the filing of the answer.

(3) No temporary injunction shall be entered unless a bond is given by the movant in an amount the arbitrator upon testimony taken deems sufficient, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Formerly 7D-45.011, Amended 6-19-96, 12-10-96, 7-4-04.

61B-45.013 Matters Eligible or Ineligible for Arbitration.

(1) A "dispute" under Section 718.1255, F.S., includes a disagreement that involves use of a unit or the appurtenances thereto, including use of the common elements.

(2) No controversy shall be accepted for arbitration under these rules where the controversy is between or among unit owners, or between or among a unit owner or unit owners and tenants, except where the association is a party and the dispute is otherwise eligible for arbitration. The only disputes eligible for arbitration are those existing between a unit owner or owners and the association or its board of administration; however, pursuant to Rule 61B-45.015, F.A.C., a tenant shall be named as a party respondent where the subject matter of the dispute concerns a tenant. In addition, other unit owners having a particular interest in the proceeding shall be named as parties.

(3) Except as otherwise provided by Rule 61B-45.035, F.A.C., any party who has participated as a party in a prior arbitration, administrative or court hearing shall not be allowed, consistent with the principles of res judicata and collateral estoppel, to raise identical issues in a subsequent arbitration hearing.

(4) Where a controversy involves both matters eligible and ineligible for arbitration, the arbitrator shall determine by order whether the ineligible matters may properly be severed from the controversy so that the remaining eligible issues may be arbitrated.

(5) No petition shall be accepted for arbitration under these rules which involves issues which are moot, abstract, hypothetical, or otherwise lacking the requirements of a case or controversy; no dispute which is not a bona fide, actual and present dispute shall be accepted for arbitration.

(6) No petition shall be accepted for arbitration under these rules which alleges the failure by the association to enforce, or properly enforce, the condominium documents, unless the controversy otherwise constitutes a dispute as defined by Section 718.1255, F.S., and these rules.

(7) No petition shall be accepted for arbitration under these rules which alleges the failure of the association to properly repair, replace, or maintain the common elements, common areas, association property, or cooperative property unless the petition also alleges how the petitioner's use of the common elements, common areas, association property, or cooperative property has been directly affected as a result of the alleged failure.

(8) No petition shall be accepted for arbitration under these rules unless it arises in a residential cooperative or condominium, and involves a residential unit or units; however a petition will be accepted which arises in a nonresidential condominium, is the declaration provides for arbitration pursuant to Section 718.1255, F.S.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.013, Amended 9-21-94, 6-19-96, 2-22-15.

61B-45.015 Parties; Appearances; Substitution and Withdrawal of Counsel.

(1) Parties in proceedings before the arbitrator are unit owners, associations, and tenants to the extent provided in subsection 61B-45.013(5), F.A.C. If the dispute involves a tenant, the tenant and the unit owner shall be named as party respondents. If the petition may directly affect the particular interests of a non-party unit owner, the unit owner shall be made a party to the proceeding. Parties shall be entitled to receive copies of all pleadings, motions, notices, orders and other matters filed in a proceeding. The party who files a petition shall be designated as the petitioner. The party who files an answer shall be designated as the respondent.

(2) Withdrawal of Counsel or Representative. An attorney or qualified representative who has filed a petition or has otherwise become an attorney or representative of record for any party to a proceeding under these rules shall remain attorney or representative of record in said cause and shall be permitted to withdraw from the cause only upon filing a notice with the arbitrator, which notice shall provide a correct mailing address for the client.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.015, Amended 9-21-94, 6-19-96.

61B-45.016 Expedited Procedure for Determination of Jurisdiction.

(1) Any party who is in doubt as to whether a controversy falls within the jurisdiction of the division may file with the division a request for expedited determination of jurisdiction by filing a completed DBPR form ARB 6000-004, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated in subsection 61B-45.001(3), F.A.C. A request for expedited determination of jurisdiction shall be accompanied by a completed DBPR form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated in subsection 61B-45.002(3), F.A.C., which shall include the \$50 filing fee provided by Section 718.1255, F.S.

(2) If the determination of jurisdiction is subject to reasonable dispute, within 10 days of the assignment of a request for relief pursuant to this rule, the arbitrator shall deliver by U.S. mail to all other persons involved with the dispute, a copy of the request for relief, and shall provide such persons an opportunity to serve a response on the issue of whether the dispute falls within the jurisdiction of the division.

(3) The arbitrator, within 20 days of receipt of the responses permitted by subsection (2) above, shall make a determination of whether the controversy falls within the jurisdiction of the division, and shall enter an appropriate order.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.016, Amended 9-21-94, 6-19-96, 7-4-04.

61B-45.017 Initiation of Arbitration Proceedings; Content of Petition.

(1) Initiation of arbitration proceedings shall be made by a unit owner or association filing the original petition for arbitration and one copy for each named respondent with the Division of Florida Land Sales, Condominiums and Mobile Homes. All petitions shall be submitted on a completed DBPR Form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated in subsection 61B-45.001(3), F.A.C. A fee of \$50.00 shall be included with each petition for arbitration. A petition which is not accompanied by this fee shall not be processed. Once a petition, including the filing fee, is received by the division for filing, the fee cannot be refunded.

(2) If a person other than an attorney files a petition or other pleading as a representative of a party, that person shall simultaneously file a completed DBPR Form ARB96-002, QUALIFIED REPRESENTATIVE APPLICATION, incorporated in subsection 61B-45.001(3), F.A.C.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.017, Amended 9-21-94, 12-20-95, 6-19-96, 2-17-98.

61B-45.018 Processing of Arbitration Petitions; Notification to Parties.

(1) If, upon receipt of a petition for arbitration, the filing fee required by Section 718.1255, F.S., is not included, the division shall return the petition to the sender with an explanation for its return.

(2) After assignment of a petition for arbitration, the arbitrator shall make a preliminary determination on whether the controversy described in the petition falls within the jurisdiction of the division and whether the petition complies with Rule 61B-45.017, F.A.C.

(3) If the controversy falls within the jurisdiction of the division, and complies with Rule 61B-45.017, F.A.C., the arbitrator shall so notify the petitioner and shall proceed as set forth in subsection (4) below. The arbitrator shall reject a petition if it is determined to be outside the jurisdiction of the division.

(4) If the petition fails to comply with Rule 61B-45.017, F.A.C., the arbitrator shall enter an order requiring petitioner to amend the petition to comply with Rule 61B-45.017, F.A.C. The arbitrator shall reject a petition for noncompliance with Rule 61B-45.017, F.A.C.

(5) If the arbitrator preliminarily determines the dispute to fall within the jurisdiction of the division and determines that the petition complies with Rule 61B-45.017, F.A.C., the arbitrator shall by United States certified mail or personal service, provide the respondent with a copy of the petition and an order requiring respondent to file an answer.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.018, Amended 9-21-94, 6-19-96, 2-17-98.

61B-45.019 Answer and Defenses.

(1) After a petition for arbitration is filed and assigned to an arbitrator, the respondent will be mailed a copy of the petition by the arbitrator, and will be given an opportunity to answer the petition. Unless a shorter time is ordered by the arbitrator in cases where the health, safety, or welfare of the resident(s) of a community is alleged to be endangered, a respondent shall file the answer with the arbitrator, and shall mail a copy to the petitioner, within 20 days after receipt of the petition. The answer shall include all defenses and objections, and shall be filed on DBPR form ARB96-003, ANSWER TO PETITION, incorporated in subsection 61B-45.001(3), F.A.C. The answer shall not include a request for relief (counterclaim) against the petitioner. Any claim or request for relief must be filed as a new petition following the procedure provided in Rule 61B-45.017, F.A.C.

(2) The service of any motion under these rules does not alter the period of time in which to file an answer, except that service of a motion in opposition to the petition postpones the time for filing of the answer until 20 days after the arbitrator's ruling on the motion. The following defenses shall be made by motion in opposition to the petition:

- (a) Lack of jurisdiction over the subject matter,
- (b) Lack of jurisdiction over the person,
- (c) Insufficiency of process,
- (d) Insufficiency of service of process,
- (e) Failure to state a cause of action, and
- (f) Failure to join indispensable parties.

A motion making any of these defenses shall be made before the filing of the answer. The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion. Any ground not stated in the motion shall be deemed to be waived except any ground showing that the division lacks jurisdiction of the subject matter may be made at any time.

(3) Every defense in law or fact to a claim for relief in a petition shall be asserted in the answer. Unless otherwise determined by the arbitrator, any ground or defense not stated in the answer shall be deemed to be waived except any ground showing that the arbitrator lacks jurisdiction of the subject matter. Each defense shall be separately stated and shall include an identification of all facts upon which the defense is based. The defense of selective enforcement shall contain all examples of selective enforcement upon which the respondent depends, shall indicate the unit(s) to which each example pertains, shall identify the unit owner(s), how long the violation has existed, and shall indicate whether the board knew of the existence of the violation(s). The defense that the petitioner has failed to provide the pre-arbitration notice required by Section 718.1255, F.S., is deemed waived if not asserted by motion to dismiss set forth in subsection (2) above or in the answer.

(4) An answer shall separately identify all facts contained in the petition which the respondent disputes, or shall in the alternative state that no disputed facts exist. All facts not specifically denied shall be deemed admitted. A general denial does not satisfy the requirements of this paragraph. Any answer which fails to comply with this requirement shall be stricken.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.019, Amended 9-21-94, 6-19-96, 7-4-04.

61B-45.020 Defaults and Final Orders on Default.

(1) When a party fails to file or serve any responsive document in the action or has failed to follow these rules or a lawful order of the arbitrator, the arbitrator shall enter a default against the party where the failure is deemed willful, intentional, or a result of neglect. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them shall be served in the manner provided for service of the original petition for arbitration.

(2) Final Order. Final orders after default may be entered by the arbitrator at any time. The arbitrator shall receive affidavits as necessary to determine damages.

(3) Setting Aside Default. If a final order after default has been entered, the arbitrator may set it aside for reasons of excusable neglect, mistake, surprise, or inadvertence. A motion setting aside the final order after default must be made within a reasonable time not to exceed 1 year after the final order was entered.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.020, Amended 6-19-96, 12-10-96, 7-4-04.

61B-45.024 Discovery.

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

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

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

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.024, Amended 9-21-94, 6-19-96, 7-4-04.

61B-45.025 Subpoenas and Witnesses; Fees.

(1) A subpoena requiring the attendance of witnesses or the production of documents, whether for purposes of discovery or for purposes of a final hearing, may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age, as provided in Rule 1.410., Florida Rules of Civil Procedure, (1996), or as that rule may subsequently be renumbered. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(2) All witnesses, other than public employees subpoenaed to appear in their official capacity, appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as set forth in Section 92.142, F.S., (1996), or as that statute may subsequently be renumbered. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.025, Amended 6-19-96.

61B-45.030 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.

(1) Any dispute which does not involve a disputed issue of material fact as shown by the answer, prehearing stipulation, or otherwise, shall be arbitrated as provided in this rule.

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

(3) At any time after the filing of the answer, and if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief if the arbitrator finds that no meritorious defense exists, and that the petition is otherwise appropriate for relief.

(4) No formal evidentiary hearing as described by Rule 61B-45.039, F.A.C., shall be conducted for arbitrations determined pursuant to this rule. The arbitrator shall decide the dispute solely upon the pleadings and evidence filed by the parties.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.030, Amended 6-19-96.

61B-45.033 Notice of Final Hearing; Scheduling; Venue; Continuances.

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

(2) Whenever possible, hearings shall be held by telephone conference call or at the place most convenient to all parties and witnesses as determined by the arbitrator.

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

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.033, Amended 6-19-96, 7-4-04.

61B-45.035 Withdrawal or Voluntary Dismissal of Petition; Settlement.

(1) A petitioner may withdraw or voluntarily dismiss the petition for arbitration at any time. Such withdrawal or dismissal shall be in writing directed to the arbitrator and shall be without prejudice to refile. No withdrawal or voluntary dismissal of a petition shall operate as an automatic withdrawal or dismissal of any other claim or petition pending in that case.

(2) Withdrawal or voluntary dismissal of the petition for arbitration shall not constitute exhaustion of administrative remedies or otherwise relieve the petitioner of the requirement of arbitration prior to resort to the courts as provided by Section 718.1255(4)(a) or 719.1255, F.S.

(3) The petitioner may request that the arbitration be dismissed based on a settlement of the dispute. Except as otherwise provided by subsection 61B-45.048(8), F.A.C., or by the terms of a settlement agreement, the settlement of a dispute shall not preclude the filing of a petition for costs and attorney's fees pursuant to Rule 61B-45.048, F.A.C.

(4) Where a party undertakes corrective action in the case which ends the dispute between the parties, such as removing an unapproved pet or tenant, that party shall immediately notify the arbitrator of the action taken.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.035, Amended 9-21-94, 6-19-96, 7-4-04.

61B-45.036 Conduct of Proceedings by Arbitrator.

(1) The failure or refusal of a petitioner to comply with any lawful order of the arbitrator or with a provision of these rules shall result in a dismissal of the petition or individual claims or imposition of costs and attorney's fees, or both, as appropriate, where such failure is deemed willful, intentional, or a result of neglect. The dismissal of any petition pursuant to this rule shall not be considered a decision on the merits of the petition.

(2) The failure or refusal of a respondent to comply with any lawful order of the arbitrator or with a provision of these rules shall result in the striking of the answer or individual defenses or imposition of costs and attorney's fees, or both, as appropriate.

(3) The arbitrator may without the agreement of the parties, conduct any proceeding permitted under these rules, including a motion hearing, by telephone conference.

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

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Formerly 7D-45.036, Amended 6-19-96, 2-17-98.

61B-45.037 Stenographic Record and Transcript.

(1) Any party wishing a stenographic record shall make such arrangements directly with the court reporter and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record.

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

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.037.

61B-45.039 Conduct of Formal Hearing; Evidence.

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

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

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

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

(5) Evidence.

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

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

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

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

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.039, Amended 9-21-94, 6-19-96.

61B-45.043 Final Orders; Appeals; Stays.

(1) Unless waived, a final order shall be entered within 45 days after the hearing, receipt by the arbitrator of the hearing transcript if one is timely filed, or receipt of any post-hearing memoranda, whichever is applicable. The final order shall be in writing and shall include a statement of any award or remedy. Failure to render a decision within such time period shall not invalidate the decision.

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

(3) The final order shall include notice of the right to initiate judicial proceedings under Section 718.1255 or 719.1255, F.S.

(4) The decision shall be final and binding upon the parties, unless judicial proceedings are initiated pursuant to Section 718.1255 or 719.1255, F.S.

(5) The arbitrator in the final order may grant mandatory or prohibitory relief, monetary damages, declaratory relief, or any other remedy or relief which is deemed just and equitable. However, no final order may include the imposition of a civil penalty pursuant to Section 718.501 or 719.501, F.S.

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

(7) A final order of the arbitrator does not constitute final agency action and therefore is not appealable to the district courts of appeal as otherwise provided by Section 120.68, F.S., and Rule 9.110, Florida Rules of Appellate Procedure. Appeals, if taken, shall be by trial de novo as described in subsection (4) above.

(8) The arbitrator, the division, and the Department of Business and Professional Regulation are not necessary parties in judicial proceedings relating to the arbitration, including appeals by trial de novo and actions seeking enforcement of final orders.

(9) A final or nonfinal order is effective upon its issuance unless a stay has been issued. A party who appeals from an order seeking to stay a final or nonfinal order may, within 30 days of issuance of a final or nonfinal order from which an appeal is sought, file a motion to stay with the arbitrator who shall have continuing jurisdiction to grant, modify, or deny such request for relief.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.043, Amended 9-21-94, 12-20-95, 6-19-96, 12-10-96, 7-4-04.

61B-45.044 Motions for Rehearing.

(1) A motion for rehearing may be filed within 15 days after the date of entry of the final order. The motion shall state with particularity the points of law or fact that the arbitrator has overlooked or misapprehended and shall not reargue the merits of the final order. Any response to the motion must be filed within 10 days of service of the motion.

(2) The arbitrator shall not modify the substance of the final order except upon a showing that the decision is based on a clear error of law or fact. A motion that is timely filed pursuant to this rule shall suspend the operation of the final order, and the time for filing a complaint for trial de novo, a motion seeking to recover prevailing party costs and attorney's fees, or a petition for enforcement under Sections 718.1255 and 719.1255, F.S., shall not commence until the arbitrator either denies the motion or

enters an amended final order. An untimely filed motion for rehearing does not toll or otherwise stop the time provided for the filing of a motion for prevailing party costs and attorney's fees or the time provided for the filing of a petition for trial de novo in the courts.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.044, Amended 9-21-94, 6-19-96, 7-4-04.

61B-45.048 Claim for Costs and Attorney's Fees.

(1) Any party seeking an award of costs and attorney's fees must request the award in writing prior to the rendition of the final order.

(2) A prevailing party seeking an award of costs and attorney's fees shall file a motion seeking the award not later than 45 days after rendition of the final order, except that if an appeal by trial de novo has been timely filed in the courts, a motion seeking prevailing party costs and attorney's fees must be filed within 45 days following the conclusion of that appeal and any subsequent appeal. The motion is considered "filed" when it is received by the division. The motion shall:

- (a) State the basis for the petition and the total attorney's fees and costs that are claimed;
- (b) Specify the hourly rate claimed;
- (c) Include an affidavit by the attorney who performed the work that:

- 1. States the number of years in which the attorney has been practicing law,
- 2. Indicates each activity for which compensation is sought, and
- 3. States the time spent on each activity. In a case involving multiple issues which are separate and distinct from each other, the affidavit shall identify the specific issue for which each activity was performed.

(d) If an award of costs is sought, attach receipts or other documents that provide evidence of the costs claimed. The arbitrators shall follow Florida case law and the Statewide Uniform Guidelines For Taxation Of Costs In Civil Actions in awarding costs. The cost of personal service by an authorized process server is only a recoverable cost if such personal service is either authorized or required by the arbitrator. The cost of attending a hearing by a court reporter is a recoverable cost; the cost of preparing a transcript of the hearing is only a recoverable cost if the transcript, or a portion thereof, is filed with the arbitrator prior to rendition of the final order.

(3) The failure of a party to timely file a motion complying with this rule or to timely plead for or request attorney's fees shall preclude the party from recovering its costs and attorney's fees incurred in the arbitration.

(4) The parties on whom a motion for costs and attorney's fees is served shall have 20 days from receipt of the motion in which to file a response to the motion with the arbitrator.

(5) A final order on the motion for attorney's fees or costs shall be entered in the manner and within the time prescribed by Rule 61B-45.043, F.A.C. In determining a reasonable hourly fee and a reasonable total award of costs and attorney's fees, the arbitrator is not required to conduct any hearing or proceedings or to seek or consider expert advice or testimony.

(6) Any proceeding seeking costs and attorney's fees shall be stayed if a party to that proceeding has timely filed a complaint for trial de novo. The party filing the complaint for trial de novo shall notify the arbitrator that such complaint has been filed. The stay shall be in force and effect until the conclusion of that litigation and any subsequent appeal.

(7) The prevailing party in a proceeding brought pursuant to Section 718.1255, F.S., is entitled to an award of reasonable costs and attorney's fees. A prevailing party is a party that obtained a benefit from the proceeding and includes a party where the opposing party has voluntarily provided the relief requested in the petition, in which case it is deemed that the relief was provided in response to the filing of the petition. Where a respondent has provided the relief sought by the petitioner prior to the filing of the petition and service on the respondent of the order requiring answer and copy of the petition, the petitioner under these circumstances is not deemed to be a prevailing party and is not entitled to an award of reasonable costs and attorney's fees. The factors to be considered by the arbitrator in determining a reasonable attorney's fees include the following:

- (a) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;
- (b) The likelihood that the acceptance of the particular employment will preclude other employment by the attorney;
- (c) The fee customarily charged in the locality for similar legal services;
- (d) The amount involved and the results obtained;
- (e) The time limitations imposed by the client or by the circumstances;
- (f) The nature and length of the professional relationship with the client; and
- (g) The experience, reputation, and ability of the attorney or attorneys performing the services.

Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History-New 4-1-92, Amended 2-2-93, Formerly 7D-45.048, Amended 9-21-94, 6-19-96, 2-17-98, 7-4-04.