

CHAPTER 61B-50 THE RULES OF PROCEDURE GOVERNING RECALL ARBITRATION

61B-50.101	Scope, Organization, Procedure, and Title.
61B-50.102	Organization and Procedure. (Repealed)
61B-50.103	Recall of One or More Members of a Board of Administration at a Unit Owner Meeting; Procedures. (Repealed)
61B-50.104	Recall of One or More Members of a Board of Administration by Written Agreement of the Voting Interests; Procedures. (Repealed)
61B-50.105	Initiation of Recall Arbitration.
61B-50.106	Computation of Time.
61B-50.107	Parties.
61B-50.108	Who May Appear; Criteria for Other Qualified Representatives.
61B-50.109	Standards of Conduct for Recall Arbitration Proceedings. (Repealed)
61B-50.110	Communication with an Arbitrator.
61B-50.111	Disqualification. (Repealed)
61B-50.112	Withdrawal of Petition.
61B-50.115	Filing; Service of Papers; Signing.
61B-50.116	Amendment of Petitions. (Repealed)
61B-50.117	Motions.
61B-50.118	Summary Disposition by Arbitrator. (Repealed)
61B-50.119	Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.
61B-50.120	Informal Arbitration; Waiver of Formal Hearing. (Repealed)
61B-50.123	Prehearing Conferences; Prehearing Stipulation. (Repealed)
61B-50.124	Discovery.
61B-50.125	Continuances; Effect of Continuances. (Repealed)
61B-50.126	Conduct of Proceeding by Arbitrator.
61B-50.127	Subpoenas and Witness; Fees.
61B-50.128	Witness Fees. (Repealed)
61B-50.129	Witnesses. (Repealed)
61B-50.130	Stenographic Record and Transcript.
61B-50.131	Conduct of Formal Hearing; Evidence.
61B-50.134	Official Recognition of Facts. (Repealed)
61B-50.135	Hearings or Proceedings by Telephone. (Repealed)
61B-50.136	Notice of Final Hearing; Scheduling; Venue; Continuances.
61B-50.137	Misarbitration. (Repealed)
61B-50.138	Post-hearing Memoranda. (Repealed)
61B-50.139	Final Orders.
61B-50.140	Technical Corrections; Rehearing.
61B-50.1405	Motions for Attorney's Fees and Costs.
61B-50.141	Claim for Costs and Attorney's Fees. (Repealed)

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

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

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

Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1030.

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

61B-50.105 Initiation of Recall Arbitration.

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

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

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

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

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

(4) Form of Petition. The term "petition" as used in this rule includes any application or other document that expresses a request for arbitration of a recall of one or more board members. The petition shall comply with the provisions of this rule, and be printed, typewritten or otherwise duplicated in legible form on one side of the paper only with lines double-spaced.

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

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

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

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

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

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

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

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

(h) Each specific basis upon which the board based its determination not to certify the recall, including the unit number and specific defect to which each challenge applies. Any specific reason upon which the board bases its decision not to certify the recall that is stated in the petition for recall arbitration, but absent from the board meeting minutes or attachments thereto, shall be

ineffective and shall not be considered by the arbitrator. A board member may be recalled with or without cause. The fact that a unit owner may have received misinformation is not a valid basis for rejecting a recall agreement and shall not be considered by the arbitrator;

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

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

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

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

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

61B-50.106 Computation of Time.

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

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

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

61B-50.107 Parties.

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

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

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

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

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

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

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

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

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

(4) The arbitrator shall make a determination of the qualifications of the prospective non-attorney representative in light of the nature, scope and extent of the proceedings, the proposed representation, the applicable federal and state laws, rules and regulations, and the factual and legal issues to be presented during the arbitration proceeding. (The prospective non-attorney representative shall not, however, be required to disclose facts and legal theories to the prejudice of his client.) In determining the qualifications of a prospective non-attorney representative, the arbitrator shall consider the following criteria to the extent they are relevant, material, and applicable to the proceeding:

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

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

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

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

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

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

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

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

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

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

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

(8) Standards of Conduct.

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

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

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

(d) A representative shall not:

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

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

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

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

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

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

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

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

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

10. Advise or cause a person to 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's testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony.

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

61B-50.110 Communication with an Arbitrator.

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

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

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

61B-50.112 Withdrawal of Petition.

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

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

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

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

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

(2) Method and Proof of Service.

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

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

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

“I certify that a copy hereof has been furnished

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

Signature

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

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

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

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

(a) The style of the proceeding involved;

(b) The case number, if any;

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

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

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

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

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

61B-50.117 Motions.

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

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

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

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

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

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

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

filed by the parties.

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

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

61B-50.124 Discovery.

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

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

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

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

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History--New 7-1-82, Formerly 7D-50.15, 7D-50.015, Amended 1-17-93, Formerly 7D-50.124, Amended 1-19-97, 6-24-04.

61B-50.126 Conduct of Proceeding by Arbitrator.

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

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

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

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

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

61B-50.127 Subpoenas and Witnesses; Fees.

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

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

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

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

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

61B-50.130 Stenographic Record and Transcript.

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

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

Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History--New 1-17-93, Formerly 7D-50.130, Amended 1-19-97, 6-24-04.

61B-50.131 Conduct of Formal Hearing; Evidence.

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

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

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

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

(5) Evidence.

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

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

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

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

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

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

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

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

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

noticed for the final hearing.

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

61B-50.139 Final Orders.

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

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

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

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

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

61B-50.140 Technical Corrections; Rehearing.

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

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

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

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

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

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

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