61B-80 The Arbitration Rules of Procedure Governing Recall and Election Disputes in Homeowners' Associations

61B-80.101 Scope, Organization, Procedure, Forms, and Title.

(1) This chapter shall be entitled "The Arbitration Rules of Procedure Governing Recall and Election Disputes in Homeowners' Associations" and shall govern the arbitration of election disputes and recall disputes arising in a homeowners' associations governed by Chapter 720, F.S. For purposes of these rules "homeowners" means "members" and "parcel owners" who are voting members of the association as those terms are defined by Section 720.301, F.S. This chapter applies to all recall and election arbitration proceedings held pursuant to Section 720.303, 720.306, or 720.311, F.S.; these provisions shall only apply to election and recall disputes that exist on or after October 1, 2004. The provisions of Chapter 61B-45 and Chapter 61B-50, F.A.C., are incorporated herein by reference to the extent those chapters are consistent with these rules. These rules also apply to all arbitration proceedings referred to the division and conducted after mediation pursuant to subsection 720.311(2)(b), F.S.

(2) All petitions and other papers filed with the division for election or recall arbitration pursuant to Section 720.303, 720.306, or 720.311, F.S., and these rules, shall be filed at the official headquarters of the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, Director's Office, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1030, except that a petition or other pleading may be filed with the division via telefax at (850) 921-5446. All forms referenced in these rules may be obtained online at: http://www.myflorida.com/dbpr/.

(3) In order to file a petition for recall arbitration, a petitioner must use DBPR FORM HOA 6000-4, MANDATORY BINDING ARBITRATION FORM PETITION–RECALL DISPUTE, incorporated herein by reference and effective 2-3-05. In order to file a petition for election arbitration, a petitioner must use DBPR FORM HOA 6000-3, MANDATORY BINDING ARBITRATION FORM PETITION–ELECTION DISPUTE, incorporated by reference and effective 2-3-05. 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 HOA 6000-6, HOA QUALIFIED REPRESENTATIVE APPLICATION, incorporated herein by reference and effective 2-3-05. An answer to a petition for arbitration for recall or election dispute arbitration must be filed using DBPR FORM HOA 6000-9, HOA ANSWER TO PETITION, incorporated herein by reference and effective 2-3-05. A request for an expedited determination of whether jurisdiction exists to hear a particular dispute shall be filed on DBPR FORM HOA 6000-7, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated herein by reference and effective 2-3-05.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.102 Filing for Recall Dispute Arbitration.

(1) Where the homeowners attempt to recall one or more directors of a board of a homeowners' association by written agreement, ballot, or vote taken at a meeting, the board of directors shall initiate a recall arbitration by filing a petition for recall arbitration with the division as provided by this rule. Where the homeowners attempt to recall one or more directors of a board at a homeowners meeting or by an agreement in writing or written ballot, 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. Where the board fails to file a petition for recall arbitration as required by these rules and Chapter 720, F.S., the homeowners seeking to challenge the board's decision not to certify the recall, or not to file for recall arbitration, may file a petition for arbitration pursuant to these rules.

(2) 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 directors. 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. A party filing a petition for recall arbitration shall utilize DBPR FORM HOA 6000-4, MANDATORY BINDING ARBITRATION FORM PETITION–RECALL DISPUTE and shall submit the $200 filing fee with the petition.

(3) All petitions for arbitration of a recall filed by an association or by the homeowners who voted in favor of recall shall be signed by either a member of the Florida Bar, or by a qualified representative who has submitted an application to appear pursuant to Rule 61B-80.101, F.A.C. Each petition shall contain:

(a) The name and address of the association, the number of total voting interests in the association, the number of voting interests voting for recall of each board member sought to be recalled, the number of recall votes rejected by the board as to each candidate subject to the recall, and the total number of seats on the board at the time that the recall is served on the board;

(b) The name or names of the board director or directors who were recalled;

(c) The name and address of the homeowner representative selected, pursuant to subparagraph 61B-81.002(2)(b)3. or paragraph 61B-81.003(1)(f), F.A.C., to receive pleadings, notices, or other papers on behalf of the recalling homeowners;

(d) A statement of whether the recall was by vote at a meeting of the homeowners 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 homeowners 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 parcel 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 director may be recalled with or without cause. The fact that a homeowner 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 covenants, and rules, including all amendments thereto, as well as any or other documents that are pertinent to the

petition; and

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

(4) If, during the pendency of a recall arbitration, the homeowners attempt another recall effort and the board files another petition for arbitration, the newly filed petition shall be consolidated with the pending case.

(5) Upon receipt and review of a petition for arbitration of a recall of one or more board directors, the division shall review the petition to verify that it contains all required information and that the petition states a valid claim for relief. If the petition is accepted, within 10 days of the filing of the petition, the arbitrator shall serve the respondent homeowners or other named respondents by mailing a copy of the petition and an order allowing answer by United States certified mail to the representative of the recalling homeowners identified in the petition or other named respondent.

(6) As provided by subsection 720.303(10), F.S., the board of directors must hold a board meeting within 5 full business days after its receipt of a recall agreement in writing or the written recall ballots, and further, the board must within 5 full business days of the board meeting, file a petition for recall arbitration if the board determines not to accept the recall of one or more board directors. The time periods contained in subsection 720.303(10), F.S., operate 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 calling and holding of a meeting on whether to certify a recall, or fails to comply with these rules relating to the filing of a petition for recall arbitration, the board must provide 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 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 Chapter 720, F.S., will result in the certification of the recall and the immediate removal of the board directors subject to recall; however, the failure of the association to timely call or hold a board meeting or to 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 these rules.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.311(1) FS. Law Implemented 720.303(10), 720.311(1) FS. History–New 2-3-05.

61B-80.103 Filing for Election Dispute Arbitration.

(1) An election arbitration is commenced upon the filing of a petition for mandatory binding arbitration pursuant to Sections 720.306 and 720.311, F.S., and conforming to the requirements of this rule. The term "petition" as used in this rule includes any application or other document that expresses a request for arbitration of an election dispute. 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. A party filing a petition for election arbitration shall utilize DBPR FORM HOA 6000-3, MANDATORY BINDING ARBITRATION FORM PETITION–ELECTION DISPUTE and shall include a $200 filing fee, incorporated in subsection 61B-80.101(3), F.A.C.

(2) Election disputes include a controversy relating to the conduct of a regular, special, or runoff election; the qualification of candidates for the board; the filling of a vacancy caused by any reason other than the recall of one or more directors of the board; and other disputes regarding an association election.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.105 Computation of Time.

(1) Recall Time Calculation. In computing the five full business days prescribed by subsections

720.303(10)(b)2., 720.303(10)(c)2., and 720.303(10)(d), F.S., and these rules, in which the board is required to duly notice and hold a board meeting and file for recall arbitration with the division, the day that the board is served with notice of the recall and the day of the board meeting 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. For example, if a recall petition is served on the board on June 1, 2004, a Tuesday, the board must duly notice and hold a board meeting to determine whether to contest the recall not later than Monday, June 7, 2004. Likewise, if the board meeting on whether to certify the recall is held on Monday, June 7, 2004, the board shall file its petition for recall arbitration not later than the close of business on Monday, June 14, 2004.

(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 an order or pleading upon that party, and the order or pleading is served by regular United States 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. This provision does not apply to the filing of the petition for recall arbitration which must be filed by the board within 5 business days of the board meeting on whether to certify the recall. In addition, no additional time is added by operation of this rule for a motion for rehearing that must be filed (e.g., received) by the division within 15 days of entry of a final order. No additional time is added by operation of this rule for the filing of a motion for costs and attorney's fees that must be filed (e.g., received) by the division within 30 days of entry of a final order or final order on motion for rehearing.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.106 Parties; Appearances; Substitution and Withdrawal of Counsel.

(1) Parties in any proceeding conducted in accordance with Section 720.303, 720.306, or 720.311, F.S., are petitioners or respondents.

(2) The petitioner in a recall arbitration proceeding may be the association, where the board seeks to challenge a recall effort of the homeowners, or may be the homeowners voting in favor of recall where the association fails to timely file a petition for recall arbitration. Where the association through the board timely files for recall arbitration, the respondents shall be the group of homeowners who voted at a meeting, or who executed a written agreement, to recall one or more directors of the board. Every homeowner who voted in favor of recall and who did not revoke his or her vote prior to service on the board of the recall agreements shall be deemed to be a party in the recall arbitration proceeding. Where the homeowners voting in favor of recall file the petition for recall arbitration, the respondent shall be the association.

(3) Parties in an election dispute shall be involved homeowners and the association.

(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-80.108, F.A.C.

(5) An attorney or qualified representative who has filed a petition or has otherwise become the attorney or representative of record for a party to a proceeding shall be permitted to withdraw from representation only upon the filing of a suitable motion with the arbitrator, which motion shall provide a correct mailing address for the client. Only attorneys licensed to practice law in Florida shall be permitted to appear as counsel of record, except that an attorney licensed out of state may apply to the arbitrator for permission to appear in an individual proceeding.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.107 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 these rules of procedure, and with any relevant portions of Chapter 720, F.S., and the rules promulgated by the division.

(2) If a person wishes to be represented by a qualified 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 homeowner'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) 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.

(5) 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.

(6) 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 herself 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 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.108 Communication with an 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 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. No party or other interested person shall attempt to telephone or otherwise contact the arbitrator unless all parties are joined in the telephone call or otherwise included in the communication.

(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(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.109 Withdrawal or Dismissal of Petition; Settlement.

(1) A petitioner may withdraw or dismiss the petition in writing at any time prior to the entry of a final order. Such withdrawal or dismissal shall be without prejudice to re-filing the petition at a later date. Upon the filing of a dismissal or withdrawal, the arbitrator shall enter an order closing the case file. The filing of a dismissal or withdrawal shall not preclude an award of prevailing party costs and attorney's fees. Where a petitioner voluntarily dismisses the petition, such dismissal shall not relieve the petitioner of the requirement of mandatory binding arbitration for resolution of the dispute; the dispute shall not be filed in the courts but may be re-filed for binding arbitration at a later date.

(2) The petitioner or the parties may request dismissal of the case based on settlement of the dispute. The settlement of a dispute shall not preclude a later award of prevailing party costs and attorney's fees.

(3) Withdrawal of a petition for arbitration of a recall shall be with prejudice; that is, the recall petition can never be re-filed with reference to that recall effort. If the board withdraws the petition, unless otherwise provided in the final order, 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).

(4) Where a respondent undertakes corrective action that ends the dispute between the parties, the respondent shall immediately so notify the arbitrator.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.110 Filing; Service of Papers; Signing.

(1) Filing. Unless specifically ordered by the arbitrator or provided for by these rules, every

pleading or other paper filed in the proceedings, except an initial petition for arbitration, shall also be served on each party.

(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) In a recall arbitration proceeding, when the homeowners have not designated a homeowner representative to represent their interests or when the homeowner representative cannot be ascertained, the arbitrator shall require that the association post a copy of the petition for recall arbitration, the order allowing answer, or other pleading or order on the association property in the same location as it posts notices of meetings in accordance with subparagraph 720.303(2)(c)1., F.S.

(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 United States (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 or election arbitration shall be accompanied by one (1) copy for the respondents.

(4) "Filing" shall mean actual 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 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 paragraph (2)(c) of this rule.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.111 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 in an election dispute shall file the answer with the arbitrator, and shall mail a copy to the petitioner, within 20 days after receipt of the petition. In a recall dispute, the respondent shall have 10 days in which to file an answer. The answer shall include all defenses and objections, and shall be filed on DBPR FORM HOA 6000-9, ANSWER TO PETITION, incorporated in Rule 61B-80.101, 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 subsection 61B-80.101(3), 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 in an election dispute 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.

In the case of election arbitration proceedings, 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. In a recall proceeding, these enumerated defenses shall not be raised by motion but shall be included in the answer.

(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.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.112 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 orders on default may be entered at any time after the entry of a default. The arbitrator shall require affidavits as necessary to determine damages. The arbitrator may, within a reasonable time following entry of the final order on default, not to exceed one year, set aside a final order on default for reasons of excusable neglect, mistake, surprise, or inadvertence.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.113 Motions; Motions for Temporary Injunctive Relief.

(1) During the course of a pending arbitration proceeding, a request to the arbitrator for an order granting some relief or request 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 days of service of a written motion or other time as provided by the arbitrator, 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(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.114 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.

(1) Any dispute that does not involve a disputed issue of material fact shall be arbitrated as provided in this rule. Where there are no disputed issues of material fact, no formal evidentiary hearing shall be conducted. The arbitrator shall decide the dispute based solely upon the pleadings and evidence filed by the parties.

(2) At any time after the filing of the petition, if the parties do not dispute the important facts in a case, the arbitrator shall summarily enter a final order denying relief requested in 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 petition, if the parties do not dispute the important facts, 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) 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 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.115 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) Where discovery is permitted by order of the arbitrator, the 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 homeowner 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 720.303, 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.

(4) At any time after the filing of the petition for arbitration, the arbitrator may enter an order requiring the parties or either party to submit supplemental information, evidence or affidavits in support of, supplementing, explaining, or refuting any legal or factual assertion contained in a petition, answer, affirmative defense, or motion or other pleading.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.116 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 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 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 conference.

(4) At any time after a petition for arbitration has been filed with the division, 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(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.117 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, F.S., 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 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.118 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 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.119 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 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.120 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 duly scheduled hearing may be delayed or continued for good cause shown. Requests for a 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(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.121 Final Orders and Appeals.

(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 that 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 or nonfinal order is effective upon its issuance and mailing unless otherwise provided in the order or unless a stay of the order has been applied for and granted by the arbitrator. 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.

(5) The final order of the arbitrator is binding on the parties and may not be appealed. The final order of the arbitrator does not constitute final agency action and is not appealable to the district courts of appeal in the manner provided by Section 120.68, F.S. In any subsequent judicial proceeding, for example, where a party sues in court to enforce the final order, the department, the division, and the arbitrator are not necessary or proper parties and shall not be named as parties.

(6) The arbitrator in the final order may grant mandatory or prohibitory relief, declaratory relief, or any other remedy or relief that is just and equitable. No final order shall include a civil penalty assessed against a party. Relief may include certification of an election or recall, decertification of an election or recall, a requirement that a new election be held, certification of a candidate for election, decertification of a candidate, requiring a board to fill a vacancy or hold an election to fill a vacancy, requiring a director to return association records to the board, and cease acting as a board member, or other relief as may be appropriate in a given case.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.122 Technical Corrections; Rehearing.

(1) Any party may file a motion for rehearing or a motion to correct any clerical mistake or error arising from oversight or omission in any final order entered by an arbitrator within 15 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. A motion for rehearing shall state with particularity the points of law or fact that the arbitrator has overlooked or misapprehended but shall not re-argue the merits of the final order. Any response shall be filed within 10 days of service of the

motion.

(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. A timely filed motion for rehearing tolls the time in which a party must file to recover its costs and attorney's fees, until after disposition of the motion for rehearing or reconsideration.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.123 Motions for Attorney's Fees and Costs.

(1) The prevailing party in a proceeding brought pursuant to Section 720.311, 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.

(2) 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, failing which no motion for costs and attorney's fees will be granted.

(3) A party prevailing in an arbitration proceeding must file a motion requesting an award of costs and attorney's fees within 30 days following entry of a final order, or final order on rehearing entered in response to a timely filed motion for rehearing. The motion is considered filed when it is actually received by the division.

(4) The motion must specify the hourly rate claimed and must include an affidavit of the attorney who performed the work that states the number of years the attorney has practiced law, must indicate each activity for which compensation is sought, and must state the time spent on each activity. In a case involving multiple issues or counts, the affidavit shall present time activity broken down by issue or count.

(5) If an award of costs is sought, the party seeking recovery of costs shall attach receipts or other documentation to provide evidence of the costs incurred. Costs will be awarded consistent with Florida case law and the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. 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.

Specific Authority 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. Law Implemented 720.303(10), 720.306(9), 720.311(1) FS. History–New 2-3-05.

61B-80.124 Department Fee.

(1) The department fee will be an amount adequate to cover all costs and expenses incurred by the department in conducting an arbitration proceeding pursuant to Section 720.311, F.S.

(2) The fee shall be the sum of the following costs:

(a) The sum of the "Labor Cost" for all employees who perform work on the case. The "Labor Cost" for an employee shall be calculated as follows: [(P x 1.35)/W] x H. Where P = the biweekly pay of the lowest pay grade for the employee's position title; 1.35 is a multiplier that takes into account the cost of pay and benefits for an employee; W = the biweekly contract hours for the employee; and H = hours directly related to the arbitration proceeding worked by the employee.

(b) The cost a contractor charges the department for any work directly related to the arbitration proceeding.

(c) Other proceeding costs directly related to the proceeding. For example direct costs include, but are not limited to, travel, long distance charges and photocopy expenses.

(3) If the arbitration proceeding involves an election dispute, petitioner and respondent shall be charged an equal share of the department's fee. Where the arbitration dispute involves a recall dispute, only the association shall be charged the department's fee.

(4) The department will send the party or parties an invoice for the department's fee. The petitioner and respondent shall pay the fee within thirty days of the date of the invoice. The department's acceptance of less than full payment by a party shall not be considered a waiver of its right to the full amount of the fee. The department's acceptance of the payment by one party does not relieve the other party or parties from payment of their share of the fee.

(5) The department shall have the right to collect any unpaid fee to the fullest extent permitted by the laws of this state.

Rulemaking Authority 720.311(1) FS. Law Implemented 720.311(1) FS. History–New 12-10-09.

61B-81 Substantive Rules for Recalls in Homeowners' Associations

61B-81.001 Right to Recall and Replace a Board Director; Developers; Other Members; Class Voting.

(1) For purposes of these rules, "homeowner" is the "member" or "parcel owner" who has the "voting interest" as those terms are defined by Section 720.301, F.S.

(2) Developer Representatives. When both a developer and other homeowners are entitled to representation on a board of directors pursuant to Section 720.307, F.S., the following provisions apply to recall and replacement of directors elected or appointed by a developer:

(a) Only parcels owned by the developer shall be counted to establish a quorum for a meeting to recall and replace a director who was elected or appointed by that developer.

(b) The percentage of voting interests required to recall a director who was elected or appointed by a developer is a majority of the total parcels owned by that developer.

(c) A director who is elected or appointed by a developer may be recalled only by that developer.

(d) Only the developer may vote to fill a vacancy on the board previously occupied by a director elected or appointed by that developer.

(3) Homeowner Representatives. When both a developer and other homeowners are entitled to representation on a board of administration pursuant to Section 720.307, F.S., the following provisions apply to recall and replacement of directors elected or appointed by homeowners other than a developer:

(a) Only parcels owned by homeowners other than a developer shall be counted to establish a quorum at a meeting to recall and replace a director elected by homeowners other than a developer.

(b) The percentage of voting interests required to recall a director elected by homeowners other than a developer is a majority of the total parcels owned by homeowners other than a developer.

(c) A director who is elected by homeowners other than a developer may be recalled only by homeowners other than a developer.

(d) Only homeowners other than a developer may vote to fill a vacancy on the board previously occupied by a director elected by homeowners other than a developer.

(4) Class Voting. When the governing documents provide that a specific class of homeowners is entitled to elect a director or directors to the board, the class of homeowners electing such director or directors to the board shall constitute all the voting interests that may recall or remove such director or directors.

Specific Authority 718.112(2)(j)5., 720.303(10)(d), 720.311(1) FS. Law Implemented 720.301, 720.303(10), 720.307, 720.3075(1) FS. History– New 2-3-05.

61B-81.002 Recall of One or More Directors of a Board at a Homeowner Meeting; Board Certification; Filling Vacancies.

(1) Calling a Recall Meeting. If the governing documents specifically allow recall at a homeowners' meeting, 10 percent of the voting interests may call a meeting of the homeowners to recall one or more directors of the board by the voting interests giving the notice specified in paragraphs (2)(a) and (b) below.

(2) Noticing a Recall Meeting.

(a) Signature List. Prior to noticing a homeowners' meeting to recall one or more directors of the board, a list shall be circulated for the purpose of obtaining signatures of not less than 10 percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a meeting of the homeowners to recall one or more directors of the board;

2. State that replacement directors shall be elected at the meeting if a majority or more of the existing directors are successfully recalled at the meeting; and

3. Contain lines for the voting interest to fill in his or her parcel number, signature and date of signature.

(b) Recall Meeting Notice. The recall meeting notice shall:

1. State that the purpose of the members' meeting is to recall one or more directors of the board and, if a majority or more of the board is subject to recall, the notice shall also state that an election to replace recalled directors will be conducted at the meeting;

2. List by name each director sought to be recalled at the meeting, even if all directors are sought to be recalled;

3. Specify a person, other than a director subject to recall at the meeting, who shall determine whether a quorum is present, call the meeting to order, preside, and proceed as provided in paragraph (3)(b) of this rule;

4. List at least as many eligible persons who are willing to be candidates for replacement directors as there are directors sought to be recalled, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement directors shall not be listed when a minority of the board is sought to be recalled, as the remaining directors may appoint replacements. In addition, the notice must state that nominations for replacement directors may be taken from the floor at the meeting;

5. Have attached to it a copy of the signature list referred to in paragraph (2)(a) above;

6. Be mailed or delivered to all homeowners as required in the governing documents for a meeting of the homeowners; and

7. Be delivered to the board at least 10 days prior to the recall meeting. The notice shall become an official record of the association upon actual receipt by the board.

(3) Recall Meeting; Electing Replacements.

(a) Date for Recall Meeting. A recall meeting shall be held not less than 10 days nor more than 20 days from the date when the notice of the recall meeting is mailed or delivered.

(b) Conducting the Recall Meeting. After determining that a quorum exists (proxies may be used to establish a quorum) and the meeting is called to order, the voting interests shall proceed, as follows:

1. A representative to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling homeowners in the event the board disputes the recall, shall be elected or designated by the presiding officer.

2. A person to record the minutes of the recall meeting, who shall not be a board director subject to recall at that meeting, shall be elected or designated by the presiding officer.

3. The requirements of this subsection do not prohibit the voting interests from electing one person to perform one or more of these functions.

(c) Recall Meeting Minutes. The minutes of the recall meeting shall:

1. Record the date and time the recall meeting was called to order and adjourned;

2. Record the name or names of the person or persons chosen as the presiding officer, the recorder of the official minutes and the unit owner representative's name and address;

3. Record the vote count taken on each director of the board sought to be recalled;

4. State whether the recall was effective as to each director sought to be recalled;

5. Record the vote count taken on each candidate to replace the board directors subject to recall and, if applicable, the specific seat each replacement board director was elected to, in those cases where a majority or more of the existing board was subject to recall; and

6. Be delivered to the board and, upon such delivery to the board, become an official record of the association.

(d) Separate Recall Vote. The voting interests shall vote to recall each board director separately.

(e) Filling Vacancies. When the voting interests have recalled one or more board directors at a homeowners' meeting, the following provisions apply regarding the filling of vacancies on the board:

1. If less than a majority of the existing board is recalled at the meeting, no election of replacement board directors shall be conducted at the homeowners' meeting as the existing board may, in its discretion, fill these vacancies, subject to the provisions of Section 720.307, F.S., by the affirmative vote of the remaining board directors. In the alternative, if less than a majority of the existing board is recalled at the homeowners meeting, the board may call and conduct an election to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote to elect replacement board directors in an amount equal to the number of recalled directors.

(f) Taking Office. When a majority or more of the board is recalled at a homeowners' meeting, replacement directors shall take office:

1. Upon the expiration of five full business days after adjournment of the homeowners' recall meeting, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days of the adjournment of the homeowners' recall meeting; or

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or

3. Upon certification of the recall by the board; or

4. Upon certification of the recall by the arbitrator, in accordance with subparagraph (5)(b)4. of this rule, if the board files a petition for recall arbitration.

(g) After adjournment of the meeting to recall one or more members of the board of administration:

1. Any rescission of an individual homeowner's vote or any additional homeowners' votes received in regard to the recall shall be ineffective.

2. Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(4) Substantial compliance with the provisions of subsections (1), (2) and (3) of this rule shall be required for the effective recall of one or more directors of the board.

(5) Board Meeting Concerning a Recall at a Meeting of the Homeowners; Filling Vacancies. The board shall properly notice the board meeting at which it will determine whether to certify the recall of one or more directors at a homeowners' meeting. It shall be presumed that recall of one or more directors at a homeowners' meeting shall not, in and of itself, constitute grounds for an emergency meeting of the board if the board has been provided notice of the recall meeting as provided in subparagraph (2)(b)7. of this rule.

(a) Certified Recall. If the recall of one or more directors by vote at a homeowners' meeting is

certified by the board, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled director shall return to the board all association records in his or her possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 720.307, F.S., regardless of whether the authority to fill vacancies in this manner is provided in the governing documents. No recalled director shall be appointed by the board to fill any vacancy on the board. A director appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining directors or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement director; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by Section 720.306(9), F.S., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement directors elected at the recall meeting shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A director who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes for any reason not to certify the recall of one or more directors at a meeting of the homeowners, the following provisions apply:

1. The board shall, subject to the provisions of these rules file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the recall of one or more directors.

2. Any director sought to be recalled shall, unless he or she resigns, continues to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining directors may fill the vacancy or vacancies as provided in subparagraph (5)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement directors elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of replacement directors elected at the recall meeting shall expire in accordance with the provisions of subparagraph (5)(a)3. of this rule.

(6) Failure to Duly Notice and Hold the Board Meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of the adjournment of the homeowners' recall meeting, the following shall apply:

(a) The recall under these circumstances shall be deemed effective immediately upon expiration of the last day of five full business days after adjournment of the homeowners' recall meeting.

(b) If a majority of the board is recalled, replacement directors elected at the homeowners' meeting shall take office immediately upon expiration of the last day of five full business days after adjournment of the homeowners' recall meeting, in the manner specified in this rule.

Specific Authority 718.112(2)(j)5., 720.303(10)(d)-(e), 720.311(1) FS. Law Implemented 720.303(10), 720.307, 720.3075(1) FS. History–New 2-3-05.

61B-81.003 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more directors shall:

(a) List by name each director sought to be recalled;

(b) Provide spaces by the name of each director sought to be recalled so that the person executing the agreement may indicate whether that individual director should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement directors as there are directors subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement directors shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are directors sought to be recalled. A space shall be provided and designated for write-in votes. The failure to comply with the requirements of this subsection shall not effect the validity of the recall of a director or directors;

(d) Provide a space for the person signing the written agreement to state his or her name, identify his parcel by number or street address and indicate the date the written agreement is signed;

(e) Provide a signature line for the person executing the written agreement to affirm that he or she is authorized in the manner required by the governing documents to cast the vote for that parcel;

(f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the persons executing the written agreement;

(g) The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday, as prescribed by Section 110.117, F.S., shall be deemed effective as of the next business day that is not a Saturday, Sunday, or legal holiday. Service of the written agreement on an officer, association manager, board director or the association's registered agent will be deemed effective service on the association. Service upon an attorney who has represented the association in other legal matters will not be effective on the association unless that attorney is a director, the association's registered agent, or has otherwise been retained by the association to represent it in the recall proceeding. Personal service shall be effected in accordance with the procedures set out in Chapter 48, F.S., and the procedures for service of subpoenas as set out in rule 1.410(c), Florida Rules of Civil Procedure, effective 2-3-05; and

(h) Become an official record of the association upon service upon the board.

(i) Written recall ballots in a recall by written agreement may be reused in one subsequent recall effort. A written recall ballot expires 120 days after it is signed by a homeowner. Written recall ballots become void with respect to the director sought to be recalled where that director is elected during a regularly scheduled election.

(j) Written recall ballots may be executed by an individual holding a power of attorney or limited or general proxy given by the homeowner(s) of record.

(k) Any rescission or revocation of a homeowner's written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served the written recall agreements.

(2) Substantial compliance with the provisions of subsection (1) of this rule shall be required for an effective recall of a director or directors.

(3) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more directors shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled director shall return to the board all association records in his or her possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining directors, subject to the provisions of Section 720.307, F.S., relating to developer control of the association and regardless of whether the authority to fill vacancies in this manner is provided in the governing documents. No recalled director shall be appointed by the board to fill any vacancy on the board. A director appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining directors or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement director; if a quorum is not obtained, or otherwise) the board may, in its discretion, call and hold an election in the manner provided by Section 720.306(9), F.S., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement directors elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A director who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, consistent with the provisions of Chapter 61B-80, F.A.C., file a petition for arbitration with the division (i.e., be received by 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. Any director sought to be recalled shall, unless he or she resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining directors may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected by written agreement of the voting interests shall become effective upon mailing of the final order of arbitration. The term of office of those replacement directors elected by written agreement of the voting interests shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a director, regardless of any provision to the contrary in the governing documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and homeowner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement.

(4) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record the following information:

(a) A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a director, regardless of any provision to the contrary in the governing documents;

(b) The failure of the association to enforce a voting certificate requirement in past association elections and homeowner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement;

(c) The date and time the board meeting is called to order and adjourned;

(d) Whether the recall is certified by the board;

(e) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and

(f) If the recall was not certified, the specific reasons it was not certified.

(5) After service of a written agreement on the board:

(a) Any written rescission of an individual homeowner vote or any additional homeowner votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(6) Taking Office. When a majority or more of the board is recalled by written agreement, replacement directors shall take office:

(a) Upon the expiration of five full business days after service of the written agreement on the board, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days after service of the written agreement;

(b) Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration;

(c) Upon certification of the recall by the board; or

(d) Upon certification of the recall by the arbitrator, in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(7) Failure to Duly Notice and Hold a Board Meeting. If the board fails to duly notice and hold the board meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:

(a) The recall shall be deemed under these circumstances effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

(b) If a majority of the board is recalled, replacement directors elected by the written agreement shall take office upon expiration of five full business days after service of the written agreement on the board in the manner specified in this rule.

(c) If the entire board is recalled, each recalled director shall immediately return to the replacement board all association records in his or her possession. If less than the entire board is recalled, each recalled director shall immediately return to the board all association records in his or her possession.

Specific Authority 718.112(2)(j)5., 720.303(10)(d), 720.311(1) FS. Law Implemented 720.303(10), 720.307, 720.3075(1) FS. History–New 2-3-05.