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**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES**

**IN RE: PETITION FOR RECALL ARBITRATION**

**MARK STERN,**

Case Number: 2007-06-6957

Petitioner

vs.

**PLAYA DEL MAR ASSOCIATION, INC.**

Respondent.

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**PETITIONER MARK STERN'S RESPONSE TO RESPONDENT'S MOTION TO  
DETERMINE STANDING OF PETITIONER AND TO SEEK RELIEF SOUGHT BY  
PETITION FOR NON-BINDING ARBITRATION**

Petitioner, Mark Stern, by and through the undersigned, and pursuant to the Order Requiring Response dated March 17, 2008, files his Response to Respondent's Motion to Determine Standing of Petitioner and to Seek Relief sought by the Petition for Non-Binding Arbitration and states as follows:

1. In its motion, Respondent alleges that Petitioner is not a unit owner within the Playa del Mar Condominium, and therefore not a member of Playa del Mar. Petitioner is in fact a unit owner and has standing to bring this petition as evidenced by the attached trust and warranty deed.

2. Attached as Exhibit "A" is a Quit Claim Deed dated March 1, 2003 between Beverly Kohn and Mark Stern conveying a one (1%) percent ownership to Unit 1401 at Playa del Mar Condominium. Article IV of The Declaration of Condominium documents provides for fee simple ownership of the Apartment that may be conveyed as the Apartment owner sees fit. The Quit Claim Deed establishes ownership interest by the Petitioner irrespective of the percentage.

Article 1(A) of the Dispositive Provisions of the Residence Trust Agreement entered into between Beverly Kohn and Mark Stern on February 21, 2007 (attached hereto as Exhibit "B") evidences conveyance by the Grantor, Beverly Kohn to Mark Stern of the subject property at Playa del Mar. The original trust clearly states that Beverly Kohn and Mark Stern "shall be entitled to the use and occupancy in the property". Further, the First Amendment to Residence Trust Agreement dated February 21, 2007 (attached hereto as Exhibit "C") reaffirms the original conveyance of the property and provides for homestead exemption to Petitioner.

3. Petitioner is qualified to serve as a Director of Playa del Mar pursuant to Florida Statutes § 617.0802(2) which states:

**"..membership is appurtenant to ownership of a unit....a grantor of a trust beneficiary as defined in s. 737.303(4)(b) [FN1] of a trust which owns a unit, parcel, or mobile home shall be deemed a member of the association and eligible to serve as a director of the condominium association,..."** (Emphasis added).

Moreover, Article VI paragraph (2) of the Playa del Mar Articles of Incorporation establishes membership as "an acquisition of a fee ownership interest therein, whether by conveyance devise or judicial decree..." At the time of election, Petitioner was the beneficiary and grantor of a revocable trust establishing ownership. Petitioner has the same ownership as other board members at the time he ran for election.

4. Petitioner has been a continuing beneficiary of the trust and a legal member of the Association entitled and qualified to sit on the Board of Directors.

5. Paragraph 8 of Respondent's own motion acknowledges that Florida Statutes § 617.0802(2) extends membership to not only unit owners, but to grantors or beneficiaries of a trust which owns a unit within the condominium.

6. Petitioner has established he was in fact a unit owner within the Playa del Mar Condominium and as such, is qualified to bring this petition.

7. Petitioner Mark Stern is requesting his attorneys fees and costs to the undersigned to whom he has agreed to pay reasonable attorneys fee. The condominium documents as well as Florida Law provide for such attorneys fees.

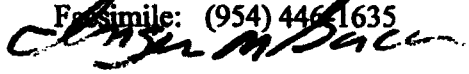
8. Respondent's motion was filed intentionally in bad faith for delay and is absolutely frivolous

9. Petitioner should be awarded attorneys fees immediately for a bad faith motion.

WHEREFORE, Petitioner, MARK STERN respectfully request a determination establishing at he is the proper party for this recall and to awards attorneys fees and costs for the defense of this frivolous motion intended solely to harass and delay as the Association has all the documents outlining ownership for Mr. Stern.

DATED, this 27<sup>th</sup> day of March, 2008.

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Inger Garcia, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy was faxed and mailed to the following this 27<sup>th</sup> day of March, 2008.

Case Number: 2007-06-6957

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