

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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

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Tallahassee, Florida 32399-1029

RECALL ARBITRATION SUBJECT MATTER INDEX

June 2005

Note: This supplement contains summaries of arbitration recall final orders entered by division arbitrators in the arbitrator program described by Sections 718.112(2)(j), and 718.1255, Florida Statutes, during the period January 1, 2003, through June 30, 2005. The final order summaries are organized by subject matter. Final orders entered on or after July 1, 2005 will be reported in a subsequent publication. Volume One and Volume Two of the Recall Arbitration Subject Matter Index (available separately) summarize final orders entered from May 1, 1992, through May 31, 1997, and from June 1, 1997, through December 31, 2002. Final orders pertaining to regular (non-recall) condominium arbitration cases are listed in separate indexes.

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Arbitration Procedure

Authority to file petition

[Atlantic View Beach Club Condo. Assn., Inc. v. Owners Seeking Recall of Directors,](#)
Case No. 2003-07-7858 (Mnookin / Summary Final Order / November 24, 2003)

- Where the owners had filed their recall dispute in court prior to the association filing with the Division for recall arbitration, and where the court was actively supervising both the first and the second recall efforts, the Division would decline to exercise jurisdiction over the dispute until the court dismissed or abated the action.

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

Generally

[Berkeley Manor, a Condo., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-01-9164 (Grubbs / Summary Final Order on Petition for Recall Arbitration / April 27, 2005)

- When the unit owner representative failed to file an answer to the petition, the final order was based on the facts alleged in the petition and the information in the exhibits to the petition.

[Ocean Point Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-00-3907 (Scheuerman / Report of Special Master / February 17, 2004)

- Where the unit owners claimed that 130 recall ballots were served on the board and the association argued that only 129 ballots were served, the Special Master appointed to preside over the proceeding concluded, due to numerous errors committed by the unit owners and the resulting diminished degree of care exercised by the owners, that only 129 recall ballots were served on the board.

[The Pavillion Condo. Assn. of Miami Beach, Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-02-5786 (Earl / Summary Final Order / June 30, 2005)

- Where the association and unit owner representative agree a sufficient number of ballots are invalid to support the association's decision not to certify the recall, the arbitrator may summarily affirm the association's decision and it is not necessary to address the other reasons asserted by the association for not certifying the recall.

[Villages of Ascot Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-06-4736 (Coln / Final Order of Dismissal / June 30, 2003)

- Where the unit owners abandoned the recall effort at the recall meeting, and where the ballots were not opened, and where no recall agreements were ever served on the

board, there was never a recall for the board to consider, and thus the board's petition was dismissed.

Withdrawal of petition / Withdrawal of written agreement

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

Case No. 2003-09-6601 (Mnookin / Final Order of Dismissal / March 1, 2004)

- Where the unit owners voting in favor of recall voluntarily rescinded their recall effort, the recall arbitration proceeding is properly dismissed.

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

Case No. 2004-01-7222 (Bembry / Notice of Communication and Final Order of Dismissal / April 29, 2004)

- Recall petition filed by the association was dismissed where the unit owners named as the respondent admitted that recall ballots had not been served on the board, and that no recall of the board members was intended.

[Terra Siesta Co-op, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-01-7040 (Earl / Final Order Certifying Recall / May 6, 2005)

- Where the association withdrew its petition for recall arbitration and indicated it no longer objected to certification of the recall, the recall was certified.

Attorney's Fees / Costs)

Board's Failure to Certify Recall

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

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

Case No. 2004-02-6220 (Mnookin / Summary Final Order / June 11, 2004)

- The failure to include a date on a written recall ballot is merely a minor procedural inconsistency and does not prevent the ballot from substantially complying with the provisions contained in Rule 61B-23.0028, F.A.C.

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

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

Case No. 2005-00-1179 (Bembry / Summary Final Order / March 2, 2005)

- Unit owners seeking the recall of the association's board obtained only 132 votes in which was an insufficient number of votes to recall the named board members of an association that consisted of 269 voting interests. Therefore, the association's determination not to certify the written recall effort was deemed proper and affirmed.

[Pier Point South Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-04-7161 (Coln / Summary Final Order / May 15, 2003)

- The association's argument that the by-laws, which require 2/3 of the unit owners to approve the recall of a member at a budget meeting, control over Section 718.112(2)(j), F.S., (2002), was rejected. First, the provisions contained in the by-laws apply specifically to the budget and refer to recall at a meeting called to address the budget. Since the unit owners sought recall of the board by written agreement, not by unit owner budget meeting, this section of the by-laws does apply. Furthermore, even if this provision was relevant, the 2/3-majority requirement contained in Section VII, paragraph C, of the by-laws is unenforceable as it conflicts with the simple majority provision of Section 718.112(2)(j), F.S.

[San Marco Villas Condo Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-00-5755 (Bembry /Summary Final Order / March 11, 2005)

- Written recall agreement consisting of 117 ballots did not contain a sufficient number of votes to recall the board members subject to the recall effort where one ballot was duplicated, 11 ballots were not signed by unit owner or any other person having authorization to do so, and 12 ballots were rescinded prior to service of the recall. The association's determination not to certify the recall was affirmed as the association consisted of 198 voting interest and 23 of 117 ballots were properly rejected as invalid.

[Spanish Main Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-06-3718 (Coln / Summary Final Order / June 17, 2003)

- The association asserted that the recall effort should not be certified because the association's bylaws require that not less than 80% of the unit owners must vote to recall a board member. The 80% majority requirement contained in the by-laws is unenforceable as it conflicts with the simple majority provision of Section 718.112(2)(j), F.S., (2002).

[Villa 56 Condo., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-01-8297 (Bembry / Summary Final Order / June 20, 2005)

- Where written recall agreement did not consist of a sufficient number of votes to recall the listed board members, the association's determination not to certify recall was upheld.
- Where respondent did not contest the board's determination that several written recall ballots were not signed by the authorized unit owners, board's decision to reject the ballots would be deemed proper.

Failure to properly serve written agreements on the board

[Bay Tree Patio Homes Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-04-6650 (Mnookin / Summary Final Order / January 13, 2005)

- Hand-delivery of recall ballots on the board of directors complies with Rule 61B-23.0028, F.A.C., and is not a valid reason to reject a recall effort.

[Berkeley Manor, a Condo., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-01-9164 (Grubbs / Summary Final Order on Petition for Recall Arbitration / April 27, 2005)

- The board improperly found that service on the board was inadequate when the recall agreement was served on the association's property manager. Rule 61B-23.0028(1)(g), F.A.C.

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

Case No. 2004-02-2093 (Mnookin / Summary Final Order / May 25, 2004)

- The rules governing recall procedures do not require service of the written recall agreements on the board president or the association's registered agent. Service is proper where two board members are served with the recall ballots.

[Greye v. Alpine Woods Assn., Inc.,](#)

Case No. 2004-02-6686 (Mnookin / Summary Final Order / January 7, 2005)

- Where the unit owners initiating a recall effort only served the written recall agreements on one board member, such service complies with Rule 61B-23.0028, F.A.C., even if the board member served is in favor of the recall and notwithstanding allegations that the board member failed to disclose the recall attempt to the other board members. The rules governing recall proceedings do not require all board members to be served with the recall agreements.

[Lakeview Townhomes at the California Club Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-02-3362 (Bembry / Final Order / September 30, 2004)

- Service of written recall agreement on the board president in the course of a board meeting was found to be sufficient notice and service of recall and the board was required to meet as to certification of the recall within the time mandated by Section 718.112(2)(j), F.S.
- Rescissions served after hand-delivery of the written recall agreements on the board but before an attempt to perfect service by a process server were deemed invalid, as hand-delivery of the written recall agreements on the board was deemed sufficient service.
- Where association's board was served with written recall agreements once by hand-delivery and again by process server a day later, the date by which the board must

conduct its recall meeting is calculated based on the date of hand-delivery of the written recall agreement since service by hand delivery was effective.

[Paradise Lakes RV Park Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2003-05-8528 (Coln / Final Order of Dismissal / May 27, 2003)

- Where the owners voting for recall merely served notice of the recall on the board and did not provide either copies or the original recall ballots to the board, the recall has not yet occurred and the board is not required to notice and hold a meeting on whether to certify the recall. Recall occurs when the board is served with the original or copies of the recall ballots. The recall petition was dismissed.

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

Case No. 2004-02-4696 (Earl / Summary Final Order / July 6, 2004)

- In a matter of first impression, the arbitrator found that service of the written recall agreement by first class mail is adequate service where the association and unit owners do not dispute the date on which it was received by the association.

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

Case No. 2003-06-8297 (Mnookin / Summary Final Order / July 31, 2003)

- When serving written recall agreements on the board of directors, unit owners are cautioned to adhere to statutory guidelines to ensure proper service. Service on the association's attorney where there is no evidence that the attorney is representing the association in the recall matter and who is not the registered agent for the association is not effective.

[Unit Owners Voting for Recall v. New World Condo. Apts. III Condo. Assn., Inc.](#)

Case No. 2004-00-8532 (Earl / Summary Final Order / April 7, 2004)

- Where the written recall agreement was delivered to the association's management company, and it was apparent the association was placed on notice of the attempted recall, the board improperly rejected the recall effort on the basis of improper service.

Generally

[Atlantic View Beach Club Condo. Assn., Inc. v. Owners Seeking Recall of Directors,](#)

Case No. 2003-07-7858 (Mnookin / Summary Final Order / November 24, 2003)

- There is no requirement that recall ballots must be sent to every unit owner.

[Berkeley Manor, a Condo., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-01-9164 (Grubbs / Summary Final Order on Petition for Recall Arbitration / April 27, 2005)

- The recall agreement, consisting of one sheet of paper, with signatures of unit owners beneath a statement that read: "We the undersigned, wish to recall the present Board of Directors of Berkeley Manor. A special meeting will be held to elect a new board. It is extremely important that you attend this meeting as financial matters will also be discussed", complied with none of the requirements of Rule 61B-23.0028(1), F.A.C., except appropriate service, and looked like it might have been meant as a signature list for the purpose of calling a unit owners' meeting. However, the board wisely chose to consider the document as an attempted recall by written agreement.

[Bonne Vie Management Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-05-4865 (Mnookin / Summary Final Order / December 23, 2004)

- Neither the Florida Statutes nor the rules governing recall proceedings prohibit the use of faxed recall ballots; thus, a completed recall ballot which is faxed by the owner to the unit owner representative is not facially invalid.
- Despite an association's by-laws which provide that directors may only be removed for cause by a vote of the majority of the association membership, pursuant to Section 718.112(2)(j), F.S., a board member may be removed with or without cause. As the Florida Statutes supersede the association's by-laws, it is not necessary to establish any type of cause or justification for recalling a board member.

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

Case No. 2003-07-9946 (Coln / Summary Final Order / January 28, 2004)

- While an association's unit owner roster is often incorrect, an association is cautioned against using county property appraiser's records to verify unit ownership. Many, if not most, county property appraiser's records are updated only once per year, thus rendering them inherently unreliable in determining the owner of a piece of property at any particular point in time. The simple truth is that neither of these resources occupies the apex position in the hierarchy of reliable title documents. The recorded deeds in the official county records offer the best available method of determining the owner(s) of a condominium unit for purposes of a recall.

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

Case No. 2003-07-7713 (Coln / Final Order of Dismissal / October 2, 2003)

- Where no unit owner vote to recall was ever taken at a unit owner meeting and no ballots were ever served on the board, no recall has occurred.

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

Case No. 2005-00-6513 (Mnookin / Summary Final Order / March 30, 2005)

- Where a unit owner writes a comment on the recall ballot which the association claims questions the voting intent of the owner, the ballot is deemed valid as the recall agreement clearly provided the owner with the option of recalling or retaining each

board member listed on the ballot and the comment did not distract from the unambiguous votes to recall each board member named on the ballot.

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

Case No. 2004-01-1958 (Earl / Summary Final Order / March 26, 2004)

- In response to the petition, the respondent attempted to offer additional recall agreements. However, such agreements submitted subsequent to the service of initial recall agreements on the board will not cure any deficiencies in the respondent's recall effort, as they cannot be accepted as part of this recall effort.

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

Case No. 03-6024 (Coln / Summary Final Order / March 17, 2003)

- The fact that the owners served copies of the recall agreements on the board instead of the originals did not constitute a valid objection to the recall effort.

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

Case No. 2004-02-2093 (Mnookin / Summary Final Order / May 25, 2004)

- Validly executed recall agreements are permitted to be re-used in a subsequent recall attempt.

[Ocean Harbor Assn., Inc. v. Unit Owners Voting For Recall,](#)

Case No. 02-5530 (Coln / Summary Final Order / January 3, 2003)

- Where the association could not demonstrate that a unit owner, who had cast a ballot voting for recall, had previously been found to be incompetent by a court of law, the association was not permitted to challenge her vote based upon her present mental state.

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

Case No. 2004-00-3907 (Mnookin / Summary Final Order / February 17, 2004)

- Where the unit owners voting in favor of recall failed to file an answer in a previous recall effort, the board argued that invalid ballots used in the first recall effort cannot be corrected and re-submitted in a subsequent recall attempt. It is clear that valid recall ballots may be re-used in subsequent recall efforts, but the unit owners' failure to file an answer in a previous recall attempt does not preclude originally invalid recall ballots from being corrected and re-submitted in a second recall effort. Each recall petition is a separate proceeding in and of itself and ballots are evaluated and ruled upon based on information presented in the instant proceeding and not on previous recall proceedings.

[Palm Greens at Villa Del Ray Recreation Assn., Inc. v. Barbara Schlossberg, No. 1 Condo. Assn.-Palm Greens at Villa Del Ray, Inc., and Unit Owners Voting for Recall](#)

and [Palm Greens at Villa Del Ray Recreation Assn., Inc. v. Angela Keller, No. 2 Condo. Assn., Inc. and Unit Owners Voting for Recall,](#)

Case No. 2003-07-3298 and 2003-07-4043 (Scheuerman / Summary Final Order / August 13, 2003 and Amended Summary Final Order / August 15, 2003)

- Where the bylaws of the condominium association only enumerated recall by vote taken at a meeting while the condominium statute permits recall by agreement in writing or by vote at a meeting, the statute prevailed and the owners were free to recall the board by written agreement.
- Pursuant to s. 718.112(2)(j), F.S., only "members" in the association are entitled to recall the board. Where in a master association, the unit owners who are members in their respective condominium associations, directly elected representative board members to the master association, the owners were allowed to recall their representatives pursuant to s. 718.112(2)(j), F.S. The condominium association documents provided for recall by the owners. Although the owners were not made direct members in the master association, by giving the owners the right to first vote in and then recall their representatives, the unit owners were made de facto limited voting members in the master, and the statute permitted the owners to recall the representatives.

[Paradise Lakes RV Park Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2003-05-8528 (Coln / Final Order of Dismissal / May 27, 2003)

- Where the owners voting for recall merely served notice of the recall on the board and did not provide either copies or the original recall ballots to the board, the recall has not yet occurred and the board is not required to notice and hold a meeting on whether to certify the recall. Recall occurs when the board is served with the original or copies of the recall ballots. The recall petition was dismissed.

[The Pavillion Condo. Assn. of Miami Beach, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-02-5786 (Earl / Summary Final Order / June 30, 2005)

- Pursuant to Rule 61B-23.0028(1)(i), F.A.C., recall ballots become void with respect to the board member sought to be recalled where that board member is elected during a regularly scheduled election. In order for a ballot to be deemed void in such a manner, it need not have been served on the board prior to the election as the rule is based upon the concept that the election is the last manifestation of the association's intent. Furthermore, once a ballot becomes void, it cannot be revived. To permit so would render Rule 61B-23.0028(1)(i), F.A.C., useless.

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

Case No. 2004-01-1153 (Earl / Summary Final Order / April 8, 2004)

- If the recall effort is considered a recall by written agreement, it fails to list by name each board member sought to be recalled; to provide spaces by the name of each

board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained; to list at least as many replacement candidates as members subject to recall while providing a space for write-in votes; and to provide for the unit owner's signature to affirm the authority to vote along with space to indicate the date it was signed. Therefore, the effort fails to substantially comply with Rule 61B-23.0028(1), F.A.C., and it fails as a recall by written agreement.

- If the recall effort is considered a recall by vote at a meeting, the effort fails because it is incomplete, as the petition does not indicate that a recall meeting, pursuant to Rule 61B-23.0027, F.A.C., at which a recall vote was taken, has occurred. As a recall meeting and vote regarding the recall has not occurred in the instant case, there is no recall by unit owner meeting to be considered since no recall has occurred.

[Three Lakes Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-01-1930 (Mnookin / Summary Final Order / April 7, 2004)

- Where an association's governing documents were recorded prior to the enactment of provisions of Florida Statute and Florida Administrative Code relating to recalls, an association cannot argue that the statutes and rules are inapplicable as they are substantive rather than procedural and thus do not require a pre-existing association to comply with such provisions. The statutory requirements for recalling board members are procedural in nature and may be properly applied to existing condominiums. Furthermore, section 718.102, F.S., provides that every condominium created and existing in this state shall be subject to the provisions of this chapter. An association cannot argue that it is exempt from compliance simply because its condominium documents were recorded before the statute or rules became effective.

[Villages of Ascot Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-06-4736 (Coln / Final Order of Dismissal / June 30, 2003)

- Where the unit owners abandoned the recall effort at the recall meeting, where the ballots were not opened, and where no recall agreements were ever served on the board, there was never a recall for the board to consider, thus the board's petition was dismissed.

[Westland South Condo., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-01-3358 (Bembry / Summary Final Order / May 27, 2005)

- Reasons contained in the association's petition for not certifying the unit owners' recall that were not included in the board's meeting minutes will not be considered by the arbitrator when reviewing the association's determination of non-certification.
- Where the board's meeting minutes fail to include specific reasons for rejecting ballots, the minutes fail to comply with Rule 61B-23.0028(4)(d), F.A.C., and the rejection of the recall ballots by the board will not be upheld.

- The association's board may not justify non-certification of unit owner recall by submitting an amended set of meeting minutes containing reasons that vary from the original meeting minutes that were submitted by the board when filing its petition for recall arbitration.

Illegible or incorrect signatures / Failure to print name

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

Case No. 2003-08-0616 (Mnookin / Summary Final Order / November 5, 2003)

- Where the association rejected a recall ballot based on information that the signature on the ballot was forged, but failed to submit any reliable documentation corroborating this forgery, the ballot was improperly rejected.

[The Decoplage Condo. Assn., Inc. v. Unit Owners Voting For Recall,](#)

Case No. 02-5830 (Coln / Amended Summary Final Order / January 16, 2003)

- The association asserted that the signatures on five recall ballots did not match the signature for the unit owner on file with the association. The unit owners provided notarized affidavits from these unit owners affirming that they did in fact sign the recall ballot for their unit. Accordingly, these ballots are valid and should not be excluded.

Misleading information given to voters / Fraud

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

Case No. 2004-03-7151 (Bembry / Summary Final Order / September 14, 2004)

- The association improperly rejected the ballots that were rescinded after service of the written recall agreement on the board by unit owners who believed they cast their votes for recall based on misleading information. Once ballots have been served on the board, the unit owners may not rescind their vote, despite contention that they were misled as to the purpose of the recall.

[Carriage Homes at Terramar Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 03-6131 (Mnookin / Summary Final Order / March 12, 2003)

- Where the board argued that the unit owners were swayed or unduly influenced in the recall effort, but failed to provide the type or manner of the alleged undue influence in the board meeting minutes, it was found that the board member's allegations were not sufficient to support the non-certification of the recall effort.

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

Case No. 2003-06-9954 (Mnookin / Summary Final Order / August 15, 2003)

- The board improperly rejected recall votes based on unit owners' complaints that they did not have knowledge of what they signed. Unit owners are presumed to be aware of the contents of the documents they sign, are expected to ask questions when

in doubt, and ultimately refrain from signing a particular document if they are unsure of its contents or ramifications.

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

Case No. 2005-00-9561 (Earl / Summary Final Order / March 31, 2005)

- Association's allegation that unit owners were told that the purpose of the written recall agreement was to investigate the recent election is not proper reason for rejecting the recall as Rule 61B-50.105(5)(h), F.A.C., provides that the fact a unit owner may have received misinformation is not valid basis for rejecting a recall agreement and shall not be considered by the arbitrator. Furthermore, if the unit owners were told information contrary to what is clearly indicated on the face of the written recall agreement, it is not unreasonable to expect them to ask questions if they doubts before signing the document.

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

Case No. 03-6023 (Coln / Summary Final Order / January 17, 2003)

- The association's argument that the unit owners were deceived as to the purpose of their recall votes, in that they were told that they should vote for recall if they disagree with the assessment, was invalid. Unit owners are presumed to be capable of making their own decisions in the face of misinformation or ambiguous information. Any unit owner who was not sure as to what she was voting for could have either asked for clarification or withheld her vote.

[Park South Two, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-02-6526 (Bembry / Final Order Certifying Recall / September 30, 2004)

- The association improperly rejected the recall ballots of unit owners who, subsequent to service of the written recall agreement, claimed to be without knowledge as to the purpose of the ballot.

Proxy

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

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

Case No. 2004-02-2093 (Mnookin / Summary Final Order / May 25, 2004)

- Replacement board candidates listed on a recall ballot are not disqualified from holding office because they are delinquent in paying assessments.

[Royal Palms Condo. Assn., Inc. of Hialeah v. Unit Owners Voting for Recall,](#)

Case No. 2003-05-8757 (Coln / Summary Final Order / June 11, 2003)

- The association argued that the recall should not be certified because 96 of the 108 written recall agreements contained votes for more replacement directors than the total number of directors subject to the recall. The recall of directors and the election of replacements for recalled directors are two separate questions. The fact that some of the owners voted for more replacement directors than they voted to recall, or that they voted for more replacement directors than directors sought to be recalled in the recall effort, does not affect the validity of their recall votes.

[Three Lakes Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-01-1930 (Mnookin / Summary Final Order / April 7, 2004)

- Where the association rejected recall ballots based on the failure of the ballots to list the proper number of replacement candidates and because one of the replacement candidates was not eligible to be a board member, these reasons for failing to certify a recall are rejected. The recall of board members and the election of replacements for recalled directors are generally two separate questions; thus, an association cannot reject recall ballots based on replacement candidate issues.

Representative

Unit owner delinquent in assessment

[Doral Grand Condo. Assn., Inc. v. Unit Owners Voting For Recall,](#)
Case No. 2003-06-6354 (Mnookin / Summary Final Order / August 11, 2003)

- The association rejected recall votes submitted by unit owners who were delinquent in the payment of maintenance fees. However, recall votes will not be invalidated on the basis that unit owners are delinquent in assessments, even where the declaration provides for such.

[Greentree Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-02-2093 (Mnookin / Summary Final Order / May 25, 2004)

- Recall ballots cannot be rejected due to the unit owner being delinquent in paying his or her assessments.

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

[Berkeley Manor, a Condo., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-01-9164 (Grubbs / Summary Final Order on Petition for Recall Arbitration / April 27, 2005)

- Although unit owners may have intended for written recall agreement to be a signature list, and expected the board to notice and conduct a unit owners' meeting, it is the unit owners seeking the recall who have the responsibility to notice and conduct a unit owners' meeting in accordance with Rule 61B-23.0027, F.A.C.

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

Case No. 2005-01-7019 (Grubbs / Summary Final Order / April 19, 2005)

- Although the unit owners seeking to recall a board member or members are responsible for properly noticing and conducting the recall meeting where the recall occurs at a meeting, there is nothing that prohibits the board of directors, if requested, from providing the notice of the meeting as required by Rule 61B-23.0027(2), F.A.C., or designating a board member as the presiding officer.

Generally

[Carriage Homes at Terramar Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 03-6131 (Mnookin / Summary Final Order / March 12, 2003)

- The notice of recall meeting failed to have the signature lists attached as required under Rule 61B-23.0027, F.A.C. Instead, the signature lists were hand-delivered to the president of the association. But for this deviation, the notice of recall meeting was otherwise found to be in substantial compliance with Rule 61B-23.0027, F.A.C. As a result, the arbitrator found that hand-delivery of the signature lists did not operate to compromise the substantial compliance of the notice for recall meeting.

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

Case No. 2004-03-1708 (Earl / Summary Final Order / July 9, 2004)

- The recall fails as a recall at unit owner's meeting. The respondent indicates that a meeting attended by unit owners, was just a "get-together discussion session" at which no election was held and no "real business" was handled. In the present case, the unit owners have not held a meeting to recall the board members. As there has been no recall vote, there has been no recall by a unit owner's meeting.

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

Case No. 2004-01-1140 (Earl / Summary Final Order / April 28, 2004)

- Where the unit owners attempted to continue the association's annual meeting after the departure of the board of directors, at which time they conducted a recall by vote of unit owners present, and where there is no indication that the unit owners complied with the prerequisite notice and signature list requirements of Rules 61B-23.0027(2)(a) and (b), F.A.C., the board's decision not to certify the recall was upheld.

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

Case No. 2004-01-4011 (Earl / Summary Final Order / April 19, 2004)

- Once the unit owners have obtained the signature list required by Rule 61B-23.0027(2)(a), F.A.C., the association is not required to call a meeting, rather it is the unit owners' responsibility to call and conduct the meeting. If the recall effort is considered a recall by unit owners' meeting, it fails because it has not been alleged that the unit owners have held a meeting to recall board members. As there has been no recall vote, there has been no recall at a meeting.

Presiding officer**Quorum****[Carriage Homes at Terramar Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)**

Case No. 03-6131 (Mnookin / Summary Final Order / March 12, 2003)

- If a properly noticed unit owner recall meeting fails to establish a quorum and is adjourned to a later date, in accordance with condominium documents, so that quorum may be established, the adjournment of the first meeting does not act to invalidate the second meeting. If signature lists and other recall documents prepared for the first meeting are found to substantially comply with Rule 61B-23.0027, F.A.C., it is not fatal that the documents were not formally re-submitted for the adjourned meeting.

Vote cast by unauthorized person**[Arlington Park Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)**

Case No. 2003-05-4942 (Mnookin / Summary Final Order / June 5, 2003)

- When an individual who casts votes in a recall effort is not found to be the unit owner of record and lacks a properly executed power of attorney agreement to permit him to cast those votes, the votes cast by this individual are rejected.

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

Case No. 2004-04-6644 (Grubbs / Summary Final Order / October 29, 2004)

- Where the unit was not owned by the person who signed the ballot at the time the recall agreement was submitted to the board, the ballot is invalid.

[Atlantic View Beach Club Condo. Assn., Inc. v. Owners Seeking Recall of Directors,](#)

Case No. 2003-07-7858 (Mnookin / Summary Final Order / November 24, 2003)

- Where a recall ballot is signed by an individual who has an equitable interest in the condominium property, based on the individual's contract to purchase the unit in question, but to whom legal title has not been transferred, that individual is not the record title-holder and does not have the authority to sign a recall ballot on behalf of that unit; thus, such a ballot is properly rejected.

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

Case No. 2004-02-6220 (Mnookin / Summary Final Order / June 11, 2004)

- Where a property deed reflects that a condominium is titled to a life estate holder and a remainderman, the life estate holder, who is entitled to the right of possession of the unit, is the individual legally permitted to vote on behalf of the unit. Therefore, the remainderman, who is not entitled to a right of possession until the estate is terminated, is not permitted to vote on behalf of the unit.

- Where a unit owners sells his condominium unit before the board is served with written recall agreements, a recall ballot signed by the previous owner is not valid and should be rejected.

[Bay Tree Patio Homes Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-04-6650 (Mnookin / Summary Final Order / January 13, 2005)

- Where a unit owner representative submits mortgage documentation as proof of an individual's condominium ownership and his or her authority to execute a recall ballot, such documentation is rejected as ownership is evidenced by a properly recorded property deed. The ballot signed by the individual named on the mortgage documentation but not on the property deed is appropriately rejected.

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

Case No. 2003-09-2299 (Coln / Summary Final Order / January 23, 2004)

- Where the association challenged a recall ballot as not being signed by the unit owner, and where the deed recorded in the public records reflects that someone other than the individual who signed the ballot owned the unit , the association properly rejected the recall ballot. Notwithstanding the fact that the individual who signed the ballot is alleged to be a co-owner of the unit at the present time, the evidence of this ownership, a copy of a letter, dated after service of the recall petition on the board, written to the association informing it that signer of the recall ballot was a co-owner, is insufficient to establish ownership of the unit.

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

Case No. 2004-03-1757 (Mnookin / Summary Final Order / July 22, 2004)

- Where a unit is titled to a life estate holder and a remainderman, the life estate holder, who is entitled to the right of possession of the unit in question, is individually permitted to vote on behalf of the unit, not the remainderman.

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

Case No. 2003-07-9946 (Coln / Summary Final Order / January 28, 2004)

- The fact that the association has allowed a non-unit owner to vote on behalf of a unit in the past does not prohibit the association from following the rules and disqualifying the vote. The individual who signed the ballot was not and never had been a unit owner. The argument that he should be permitted to cast an invalid ballot on the basis that he has been allowed to cast invalid ballots in the past is without merit.

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

Case No. 2003-06-9241 (Mnookin / Summary Final Order / August 25, 2003)

- When determining whether to certify a recall effort, where the board has not timely conducted a meeting to decide whether to certify the recall or timely filed for recall

arbitration, the arbitrator must look to the validity of the ballots submitted and determine if the ballots are void ab initio, regardless of the association's failure to comply with statutory guidelines in the recall procedure. Recall ballots that are not signed by unit owners are void ab initio and are properly rejected by the board.

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

Case No. 2004-01-1958 (Earl / Summary Final Order / March 26, 2004)

- Board's decision not to certify recall was affirmed where property records indicated that the board properly rejected fourteen recall agreements because they were not signed by the unit owners, and therefore, the recall effort lacked a sufficient number of valid agreements.

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

Case No. 2003-06-3371 (Coln / Summary Final Order / July 23, 2003)

- The association alleged that eleven ballots had been signed by non-unit owners. The unit owners were requested to produce signature affidavits demonstrating that the eleven unit owners had signed the recall ballots for their units. Where the unit owners failed to provide these affidavits, the allegations regarding these ballots in the petition are accepted as true and the ballots are rejected.

[Greye v. Alpine Woods Assn., Inc.,](#)

Case No. 2004-02-6686 (Mnookin / Summary Final Order / January 7, 2005)

- Where title to a unit shows a unit owner's maiden name and the owner signs a recall ballot using her married name, the recall ballot was accepted.

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

Case No. 2004-03-9021 (Earl / Summary Final Order / July 28, 2004)

- The association properly rejected recall agreement signed by only the non-owner spouse of the record owner of the unit. The fact that the association had permitted this individual to vote in the past does not foreclose the association from disallowing the recall ballot. While prior cases have prohibited associations from enforcing voting certificates for the first time in response to a recall attempt, in those cases the person signing on behalf of the unit had a record ownership interest in the unit, whereas here, the non-owner has no colorable authority to act on behalf of the owner. There is no marital interest recognized under these circumstances in Florida law.

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

Case No. 2003-09-6598 (Mnookin / Summary Final Order / February 5, 2004)

- The arbitrator ruled that the association properly rejected recall ballots that were signed by non-unit owners where property deeds clearly indicated that a non-unit owner had signed the recall ballot in question.

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

Case No. 2004-00-3907 (Mnookin / Summary Final Order / February 17, 2004)

- Where the association rejected recall ballots based on the ballots being executed by someone other than the owner or because the ballots contained a fraudulent signature and no defense was presented by the unit owners, those ballots are properly rejected.

[Royal Palms Condo. Assn., Inc. of Hialeah v. Unit Owners Voting for Recall,](#)

Case No. 2003-05-8757 (Coln / Summary Final Order / June 11, 2003)

- The association contended that the signatures on nineteen recall agreements were not signed by the unit owners. Pursuant to the order requiring supplemental information, the parties submitted copies of the deeds for these units recorded in the official records of Dade County. The deeds submitted demonstrated that the individuals who signed for thirteen units were in fact the recorded owners of the units for which they cast a ballot. Accordingly, these thirteen ballots are valid and should not have been excluded.

[Sandal Cove Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-02-7629 (Bembry / Summary Final Order / August 30, 2004)

- Board's decision not to certify recall was affirmed where there was insufficient documentation submitted by the respondent to permit arbitrator to determine whether single disputed ballot was valid. The disputed ballot, which had been signed by deceased unit owner's daughter, was not shown to be valid simply by the submission of a copy of the deceased unit owner's will, as a will is ineffective to prove title to testator's property until admitted to probate.

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

Case No. 2004-03-7658 (Earl / Summary Final Order / October 7, 2004)

- The association properly rejected written recall agreements signed by persons other than the unit owner where each document authorizing the person to vote on behalf of the unit owner was dated subsequent to the date the recall agreements were served on the board, and respondent failed to provide proof that the association had knowledge of the authorizations at the time it considered the recall effort.

[Villa 56 Condo., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-01-8297 (Bembry / Summary Final Order / June 20, 2005)

- Where written recall agreement did not consist of a sufficient number of votes to recall the listed board members, the association's determination not to certify recall was upheld.

- Where respondent did not contest the board's determination that several written recall ballots were not signed by the authorized unit owners, board's decision to reject the ballots would be deemed proper.

Power of attorney

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

Case No. 2003-05-4942 (Mnookin / Summary Final Order / June 5, 2003)

- Where a unit owner executes a power of attorney agreement with his mother and his mother then executes a second power of attorney agreement with another son, the second power of attorney agreement will not permit that individual to cast recall votes on behalf of the unit owner because the powers included in the first agreement are not specifically transferable to another individual. As a result, the only individual permitted to cast recall votes on behalf of the unit owner is the individual named in the first power of attorney agreement.

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

Case No. 2003-07-6045 (Bembry / Summary Final Order and Order on Motions to Strike / October 22, 2003)

- Absent a showing that a power of attorney authorizing a person to vote on behalf of the unit owner has been revoked, written recall ballots signed by the person so authorized will be considered valid.

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

Case No. 2005-01-8294 (Mnookin / Summary Final Order / June 9, 2005)

- Where a unit owner's handwritten power of attorney agreement purportedly giving another individual the authority to vote on behalf of the unit is dated after the date on which the board was served with the recall agreements, the agreement, even if valid, cannot be used in this recall effort.

Proxy

Trusts / Trustee

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

Case No. 2005-00-6513 (Mnookin / Summary Final Order / March 30, 2005)

- Where a condominium unit is owned by a trust and the trustee fails to sign the unit's voting certificate as "trustee", the ballot will not be rejected based on this technical error. Documentation provided with the ballot clearly identified the individual as the trustee and failure to use the trustee title on the voting certificate will not invalidate an otherwise valid ballot.

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

Case No. 2005-01-5139 (Grubbs / Summary Final Order on Petition for Recall Arbitration / April 8, 2005)

- When a unit was owned by a person as the trustee for that same person's revocable trust, the association's decision to reject the ballot signed by that person, because it did not have the word "trustee" written after the name, was erroneous and unjustified. Since the person signing the ballot owns the unit in his or her capacity as the trustee of the trust, obviously, that is the capacity in which he or she is signing the ballot.

Voting certificate

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

Case No. 2004-02-3962 (Coln / Summary Final Order / June 18, 2004)

- Acceptable evidence that the association has actively enforced a voting certificate requirement includes official voting records that demonstrates that specific votes were rejected on this basis, including minutes of the election meeting, tally sheets, or discarded ballots indicating the reason for their rejection.

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

Case No. 2003-08-0616 (Mnookin / Summary Final Order / November 5, 2003)

- Where the association rejected recall ballots for failure to comply with voting certificate requirements, the board must demonstrate that voting certificate requirements have been enforced in previous voting instances. The association submitted copies of several voting certificates on file and notices sent to unit owners informing them of the necessity to execute a voting certificate for elections. However, the documentation fails to establish that the association has actively enforced voting certificate requirements in the past. Acceptable documentation to support the enforcement of voting certificate requirements includes official voting records which demonstrate that specific votes were rejected on this basis, including minutes, tally sheets or discarded ballots indicating the reasons for their rejection.

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

Case No. 2005-00-6513 (Mnookin / Summary Final Order / March 30, 2005)

- Where a unit owner transfers ownership of the condominium unit to an LLC and signs the unit's voting certificate without identifying himself as a manager of the LLC, the ballot will not be rejected based on this technical flaw. The association had knowledge that the individual who signed the voting certificate and recall ballot was a manager and registered agent for the LLC. Simply failing to sign the voting certificate as "manager of the LLC" will not render the ballot invalid.

[The Decoplage Condo. Assn., Inc. v. Unit Owners Voting For Recall,](#)

Case No. 02-5830 (Coln / Amended Summary Final Order / January 16, 2003)

- The association challenged several votes because the unit owners did not have valid voting certificates on file with the association. The association, however, in a companion proceeding, had been found to have arbitrarily applied the voting certificate requirement during its previous election for the board of directors. Where an association has failed to enforce a voting certificate requirement in prior elections, the requirement will not be enforced in a recall arbitration to disenfranchise voters.

[Flamingo Courts Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-00-6989 (Coln / Summary Final Order / February 24, 2004)

- The association was required to prove that the association had required voting certificates in elections during the past two years. The association provided an affidavit from the condominium manager that indicated that the association has not enforced the voting certificate requirement in the past two years, as it has been unnecessary. The affidavit further stated that during the annual election two years ago, it was unnecessary to enforce the voting certificate requirement as the elected board members won by an overwhelming majority. However, this hardly demonstrates that the association has historically, and not selectively, enforced the voting certificate requirement. As the association has not actively enforced the voting certificate requirement in past elections, the association is precluded from rejecting recall ballots on this basis.

[Florida Ocean Club Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 03-6024 (Coln / Summary Final Order / March 17, 2003)

- Where the association cannot demonstrate that it had enforced the voting certificate requirement in the past, the failure to have a valid voting certificate on file with the association was not a valid basis for the board not to certify the recall.

[Galt Ocean Manor Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-08-4326 (Coln / Summary Final Order / March 17, 2004)

- In order for an association to enforce a voting certificate requirement during a recall, the association must have enforced the voting certificate requirement in the past. The association provided as evidence, minutes and the ballot check-in sheet for the April 2003 election and the ballot check-in sheet and three rejected ballots for the April 2002 election. No vote was conducted for the April 2003, election as the number of individuals running for board position was less than or equal to the number of available vacancies on the board. The ballots rejected at the April 2002 election indicate that they were rejected because the units for which they were cast did not have valid voting certificates on file. This evidence is sufficient to demonstrate that the association has enforced the voting certificate requirement in the past.

[The Gatsby Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-03-4272 (Mnookin / Summary Final Order / August 19, 2004)

- Where an association rejects recall ballots for failing to comply with voting certificate requirements but is unable to demonstrate that it has enforced voting certificate requirements in the past, the recall votes are deemed valid as an association is not permitted to reject recall ballots for failing to comply with voting certificate requirements when it has not been shown that the requirements have been enforced in the past. Here, the board attempted to show enforcement by stating that the association does not have any records reflecting rejection of votes for failure to comply with voting certificate requirements, that the association's voting procedure over the past six years has been very informal and never contentious in nature and that no votes have ever been challenged. This information fails to establish that the association has actively enforced the voting certificate requirement in the past.

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

Case No. 2005-01-8294 (Mnookin / Summary Final Order / June 9, 2005)

- An association that has repeatedly failed to enforce a provision of its documents cannot begin enforcement and disenfranchise owners without first adequately informing its membership of the intended enforcement action. Even though the association's recent election materials sent to the owners contained language regarding voting certificates, the language is general in nature and deemed insufficient to put the unit owners on notice of the requirement to complete voting certificates. Because voting certificates were not consistently enforced in the past and unit owners were not adequately informed of the association's intent to enforce the voting certificate requirements, failure to comply with voting certificate requirements cannot be used to reject recall votes in this recall effort.

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

Case No. 2004-02-2093 (Mnookin / Summary Final Order / May 25, 2004)

- There is no requirement that voting certificates must be filed with the association prior to the date on which the association is served with the written recall agreements. Voting certificates may be filed simultaneously with service of the written recall agreements.

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

Case No. 2003-08-9272 (Mnookin / Summary Final Order / December 10, 2003)

- Where an association rejects recall ballots based on a unit owner's failure to comply with voting certificate requirements, the association bears the burden of demonstrating that the condominium documents require voting certificates and that such requirements have been consistently enforced in the past.

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

Case No. 2004-04-3472 (Mnookin / Summary Final Order / October 6, 2004)

- The association rejected recall ballots based on the owners' failure to comply with voting certificate requirements and submitted documentation to show that it has consistently enforced voting certificate requirements in the past which consisted of a letter sent for a prior election informing owners that because a properly executed voting certificate was not on file with the association, the ballot submitted for an annual election would not be counted unless a voting certificate was completed. Where the unit owner representative failed to appear in the recall proceeding, the arbitrator held that the association had consistently enforced voting certificate requirements and the ballots rejected on this basis were properly rejected.

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

Case No. 2003-09-6598 (Mnookin / Summary Final Order / February 5, 2004)

- Where the association rejected certain recall ballots based on the failure to comply with voting certificate requirements and supplied documentation that the voting certificate requirement had been consistently enforced in past elections, those ballots are deemed properly rejected.

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

Case No. 2004-00-3907 (Scheuerman / Report of Special Master / February 17, 2004)

- Where the association rejected certain recall ballots alleging that the required voting certificate was not attached to the ballot, and the unit owners claimed that voting certificates had in fact been served with the recall ballots, the Special Master found sufficient evidence to conclude that the voting certificates had been served on the board. Accordingly, those ballots were improperly rejected.

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

Case No. 2003-06-8297 (Mnookin / Summary Final Order / July 31, 2003)

- A board may not enforce voting certificate requirements for the first time to thwart a recall effort, where the board has steadfastly ignored this requirement in past elections and other voting events. If an association wishes to pursue enforcement of voting certificate requirements in future elections or reject future recall votes because of non-compliance with the requirements, common notions of fairness, equity and due process obligate the association to notify the association membership in advance and, thereafter, seek its consistent enforcement.

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

Case No. 2003-07-8497 (Coln / Summary Final Order / November 4, 2003)

- Where the association rejected a number of recall ballots because no voting certificates were on file with the association, and where the association was required by the arbitrator to demonstrate that voting certificates were in common use prior to the recall, evidence submitted by the association, including prior notices sent to the membership notifying them of the requirement of a voting certificate, does not rise to the

level of evidence required. Acceptable documentation includes the minutes of election meetings, tally sheets or ballots discarded for failure of the owner to file a voting certificate.

[Sky Lake Gardens Condo. No. 4, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2003-04-8569 (Mnookin / Summary Final Order / August 1, 2003)

- In order for an association to properly reject recall votes based on non-conformity with voting certificate requirements, the association must demonstrate that this requirement has been enforced in previous voting circumstances. However, simply submitting copies of voting certificates on file with the association fails to demonstrate that the voting certificate requirement has been actively enforced in the past.

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

Case No. 2004-05-1256 (Bembry / Summary Final Order / December 23, 2004)

- Association's decision not to certify recall of subject board members was upheld where the disputed ballot was not signed by the designated voting member for a unit with multiple owners on the date the recall agreement was served on the board. Although the designated voting member for a unit with multiple owners may be changed, the change must be noted on the voting certificate and filed with the association in accordance with the requirements of the governing documents prior to the newly designated voting member's ballot being served on the board.

[Vista Del Lago I Condo., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-04-6608 (Earl / Summary Final Order / October 28, 2004)

- The association properly rejected recall agreements for units with multiple unit owners where only one unit owner signed the ballot and the units did not have a voting certificate on file with the association as required by the association's by-laws. As the respondent failed to appear or present argument and evidence to the contrary, the arbitrator accepted the affidavit of the president and manager on this issue along with copies of notices of past annual elections.

Vote cast improperly

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

Case No. 2004-04-6644 (Grubbs / Summary Final Order / October 29, 2004)

- Although a unit owner cannot withdraw or revoke his ballot after service of the recall agreement on the board, the board may consider and act on allegations regarding the validity of the ballot after the recall agreement has been served.
- Where it is undisputed that the unit owner did not check the boxes on the ballot he signed and submitted and that someone else subsequently checked the recall spaces, the ballot is invalid.

- Any addition to a ballot, made by someone other than the person who voted, that changes the voting intent of the voter who signed the ballot, invalidates the ballot.
- Adding check marks in the recall spaces on a signed blank ballot, when not authorized by the voter, constitutes vote tampering.

[Bay Tree Patio Homes Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-04-6650 (Mnookin / Summary Final Order / January 13, 2005)

- Where the association rejects a recall ballot based on the owner indicating that someone else filled out his ballot improperly, the ballot is found to be valid when the marks on the recall ballot are not shown to be inconsistent with the owner's marks, and fraudulent activity is not established.

[Greye v. Alpine Woods Assn., Inc.,](#)
Case No. 2004-02-6686 (Mnookin / Summary Final Order / January 7, 2005)

- Where a unit owner accidentally marked the recall box next to a blank line rather than the recall box next to the board member's name, the vote was accepted because the ballot clearly showed two recall boxes marked and only two board members were named on the ballot. The unit owner's intent to recall both board members is clear in that two recall boxes are marked and simple misalignment where the owner's intent is unambiguous will not invalidate an otherwise valid recall vote.

[Lakes of Woodhaven Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-01-5139 (Grubbs / Summary Final Order on Petition for Recall Arbitration / April 8, 2005)

- Where condominium documents did not require the signatures of all the owners of a unit for a valid vote, but instead authorized either the husband or wife of married unit owners to vote for the unit, and allowed other jointly held units to file a voting certificated designating a voting member for the unit, the rejection of any ballots of jointly held units because all of the unit owners had not signed the ballot was unwarranted, regardless of the association's "policy."
- Even if an association requires and enforces voting certificates, when all of the owners of a unit sign a recall ballot, the ballot is valid regardless of the voting certificate requirement. However, it does not follow that just because the association has never enforced its voting certificate requirements, it can reject a ballot for the failure to include the signatures of all the unit owners. When the unit owners have complied with the declaration and bylaws by designating a voting representative, the representative can vote for the unit.

[Paradise Lakes RV Park Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-06-7664 (Mnookin / Summary Final Order / September 8, 2003)

- Where the written recall ballot consists of three pages and the third page attached to two of the ballots contains incorrect voter signatures, the ballots should not have been rejected. The mistake was merely inadvertent and the second page of the ballots clearly identifies all pertinent information: the unit owner's name, his unit number, the board members that he wishes to recall, and the individuals selected as replacement candidates.

Vote withdrawn / Rescission / Added after service of petition

[12590 Coronado Towers, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-01-3731 (Grubbs / Summary Final Order on Petition for Recall Arbitration / April 6, 1004)

- When six unit owners rescinded their recall votes on the day before the recall agreement was served on the board, the rescissions were valid. The subsequent effort to revoke the rescissions, and thus re-activate the vote for recall, were not effective because they were received by the board after the board was served with the recall agreement. The fact that the unit owners were told untruths to convince them to sign the original rescissions was not relevant.

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

Case No. 2003-05-4942 (Mnookin / Summary Final Order / June 5, 2003)

- Recall ballots cannot be added or withdrawn after the recall agreements have been served upon the board of directors. However, where a recall effort is not certified, unit owners are permitted to re-use validly executed recall votes from the first recall attempt in a subsequent recall effort.

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

Case No. 2004-04-6644 (Grubbs / Summary Final Order / October 29, 2004)

- Although a unit owner cannot withdraw or revoke his ballot after service of the recall agreement on the board, the board may consider and act on allegations regarding the validity of the ballot after the recall agreement has been served.

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

Case No. 2004-02-6220 (Mnookin / Summary Final Order / June 11, 2004)

- In order for a recall ballot to be properly rescinded, a unit owner must submit a written rescission to the board prior to the date on which the board is served with the recall agreements.

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

Case No. 2003-06-9954 (Mnookin / Summary Final Order / August 15, 2003)

- The board improperly rejected recall votes which were rescinded after the recall agreements were served on the board. According to controlling case law, unit owners

are only permitted to rescind recall votes prior to the date of service of the written recall agreements on the board.

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

Case No. 2003-08-0616 (Mnookin / Summary Final Order / November 5, 2003)

- Where a unit owner rescinds her recall vote prior to the date on which the board is served with the written recall agreements, the vote is properly rejected.

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

Case No. 2005-01-9941 (Grubbs / Summary Final Order on Petition for Recall Arbitration / June 14, 2005)

- Because the 24 revocations used as a basis to reject the recall agreement were all executed and served after the recall agreement had been served on the board, none of the rescissions are valid.

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

Case No. 2004-02-2093 (Mnookin / Summary Final Order / May 25, 2004)

- Controlling case law only permits unit owners to rescind recall votes prior to the date on which the board is served with the written recall agreements.

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

Case No. 2004-02-4696 (Earl / Summary Final Order / July 6, 2004)

- Pursuant to Rule 61B-23.0028(5)(a), F.A.C., any rescission of a unit owner vote received after service of the written recall agreement on the board is ineffective.

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

Case No. 2005-02-8510 (Grubbs / Summary Final Order / June 16, 2005)

- When a single ballot was served on the board after a written recall agreement had not been certified by the board and the petition for arbitration was pending, the board treated the one ballot as a separate written recall and properly rejected it. The single ballot could not be treated as an addition to the written recall agreement that had previously been served on the board and was currently pending before the arbitrator. No ballots can be added to (or subtracted from) a written recall agreement after it has been served on the board.

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

Case No. 2004-03-7658 (Earl / Summary Final Order / October 7, 2004)

- Recall ballots submitted subsequent to the service of the initial recall agreements on the board in an attempt to correct errors in the recall effort will not cure any deficiencies

in the respondent's recall effort, as ballots submitted subsequent to service of the initial recall agreement cannot be accepted.

[Westgate at Pelican Bay Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-02-8345 (Mnookin / Summary Final Order / June 30, 2004)

- Where certain unit owners submitted written rescissions for their recall votes to the board after the board has been served with the recall agreements, these rescissions are invalid because recall votes cannot be added or withdrawn after the board has been served with the recall documents.

[Winter Haven Harbour Apartments, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-04-6311 (Earl / Summary Final Order / November 3, 2004)

- Pursuant to Rule 61B-23.0028(5)(a), F.A.C., a rescission of a unit owner vote must be received before service of the written recall agreement on the association in order to be effective. As the association attached to its petition written revocations, each of which was dated prior to the time the board was served with the recall, and as the respondent failed to assert that they were received after service of the petition, it was presumed that the revocations were timely received.

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

[Atlantic View Beach Club Condo. Assn., Inc. v. Owners Seeking Recall of Directors,](#)

Case No. 2003-07-7858 (Mnookin / Summary Final Order / November 24, 2003)

- There is no requirement that the board of directors must be in agreement with the form of the recall ballot even where the court, which subsequently relinquished jurisdiction over the dispute, has adopted and required use of a particular form. Pursuant to Rule 61B-23.0028, F.A.C., a recall ballot is valid as long as it substantially complies with the requirements therein.

[Bay Tree Patio Homes Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-04-6650 (Mnookin / Summary Final Order / January 13, 2005)

- Technical flaws on a recall ballot, such as the failure to provide "write-in" blanks, dates and designation of authority to execute do not render the ballot fatally flawed.

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

Case No. 2004-04-5700 (Grubbs / Summary Final Order on Petition for Recall Arbitration / October 12, 2004)

- Rule 61B-23.0028(1)(b), F.A.C., requires that a recall ballot have spaces by the name of each board member sought to be recalled so that the unit owner can vote to recall or retain each board member individually. Recall agreement ballots that fail to provide recall and retain lines for each board member are invalid.

[Cortez Villas Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-03-1708 (Earl / Summary Final Order / July 9, 2004)

- The recall fails as a recall by written agreement. The agreement failed to provide spaces by the name of each board member sought to be recalled to indicate whether that person should be recalled or retained, failed to list replacement candidates, and failed to provide a signature line for the owners' signature, in violation of Rule 61B-23.0028, F.A.C.

[Grege v. Alpine Woods Assn., Inc.,](#)
Case No. 2004-02-6686 (Mnookin / Summary Final Order / January 7, 2005)

- The failure of a recall ballot to include the date it was signed will not invalidate the ballot.

Recall / Retain lines

[Admiral's Port Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-03-7160 (Mnookin / Summary Final Order / August 13, 2004)

- Where a recall ballot fails to include separate recall/retain lines for each board member subject to recall, the ballot does not substantially comply with Rule 61B-23.0028(1)(b), F.A.C., and the recall will not be certified.

[Bay Colony Villas Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-06-5647 (Mnookin / Summary Final Order / July 1, 2003)

- A written recall agreement seeking to recall two board members listed the names of the board members at the top of the page, but failed to include separate recall/retain lines next to each name. The unit owners claimed that individuals could strike through one of the names listed if they did not want to recall that member or refuse to execute the agreement, however, these instructions were not included on the agreement. As such, unit owners were not given the opportunity to recall one board member while retaining the other. Accordingly, the board of directors properly rejected the recall effort based on the written agreement failing to comply with Rule 61B-23.0028(1)(b), F.A.C.

[Bay Tree Patio Homes Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-04-6650 (Mnookin / Summary Final Order / January 13, 2005)

- Where a recall ballot uses "yes" and "no" columns instead of recall/retain lines and the instructions on the ballot clearly indicate that circling "yes" operates to recall a board member and circling "no" retains that board member, the ballot substantially complies with Rule 61B-23.0028, F.A.C.

[Byron Gardens Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-03-1757 (Mnookin / Summary Final Order / July 22, 2004)

- Where only one board member is subject to the recall effort, the omission of recall/retain lines on the recall ballot is not fatal and does not invalidate the recall vote.

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

Case No. 03-6031 (Mnookin / Final Order Affirming Decision Not to Certify Recall / March 20, 2003)

- The written agreement used to recall three board members failed to include separate recall/retain lines for each board member. Since voters were not given the opportunity to recall some board members while retaining others, the written form failed to comply with Rule 61B-23.0028 (1)(b), F.A.C. As a result, the recall was not certified by the arbitrator.

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

Case No. 2003-07-2813 (Coln / Summary Final Order / July 24, 2003)

- The association's sole basis for rejecting the recall was that the ballots were fatally flawed because of the absence of separate lines on which the voter could indicate a desire to recall or retain each board member subject to the recall effort. The omission of recall and retain lines, however, is insufficient in and of itself to invalidate an otherwise valid recall, where only a single board member is sought to be recalled. Any unit owner who did not wish to recall that board member could simply have refused to sign the agreement.

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

Case No. 2004-04-5700 (Grubbs / Summary Final Order on Petition for Recall Arbitration / October 12, 2004)

- Recall agreements that inextricably linked two board members sought to be recalled, with no way to vote to retain one and recall one, were in violation of Rule 61B-23.0028(1)(b), F.A.C.

[Delray Oaks Condo. Assn., No. 2, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2003-07-3482 (Bembry / Summary Final Order / August 15, 2003)

- The arbitrator affirmed the board's decision not to certify the recall because the ballots used by unit owners voting for recall did not contain recall and retention lines, and therefore failed to comply with Rule 61B-23.0028(1)(b), F.A.C., which requires recall and retention lines to be placed by each board member's name.
- Corrected ballots that provided recall/retain lines after the names of the board members subject to the recall would not be considered by the arbitrator where the corrected ballots were submitted after the board had been served with the written recall agreements.

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

Case No. 2003-07-2488 (Coln / Summary Final Order / September 5, 2003)

- According to the petition, the form of the recall ballots did not allow for a separate vote for each individual sought to be recalled. Rather, the voter was forced or constrained to vote for or against the entire slate of board members sought to be recalled. Arbitration precedent is clear, holding that in the interests of fair play, each board member sought to be recalled must be given separate consideration and accommodation in the ballot form utilized. Where the recall agreement failed to list separate retain/recall lines for each board member sought to be recalled, the fate of one director is effectively linked to the fate of the remaining directors and does not apprise unit owners of their choice to recall only one or both of the board members listed; the written recall agreement is rejected.

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

Case No. 03-6024 (Coln / Summary Final Order / March 17, 2003)

- Where the recall ballot form used was pre-checked in the column calling for recall of the specified board members prior to being given to the owners for their signature, the act of pre-checking did not render the ballots invalid. But see [Maya Marca v. Unit Owners Voting for Recall](#), Arb. Case No. 2004-05-5661, Summary Final Order (January 7, 2005)

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

Case No. 2004-06-0269 (Earl / Summary Final Order on Petition for Recall Arbitration / February 10, 2005)

- Where a written recall agreement sought the recall of more than one board member, the agreement failed to substantially comply with Rule 61B-23.0028(1)(b), F.A.C., in that the recall/retain spaces were pre-marked. By pre-marking the recall/recall lines, the ballot effectively no longer has recall/retain lines. As such, the agreement impermissibly links the fate of the directors. The fact that unmarked ballots were available to the unit owners would not be sufficient to correct the deficiency in pre-marked ballots submitted to the board.

[Lakeview Townhomes at the California Club Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-02-3362 (Bembry / Final Order / September 30, 2004)

- Recall ballot containing owner's signature but no marks in the recall or recall spaces cannot be considered to be an effective agreement for recall.

[Maya Marca Condo. Apartments, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-05-8005 (Grubbs / Summary Final Order on Petition for Recall Arbitration / February 9, 2005)

- Because the recall line next to each board member listed was pre-checked before the unit owner was given the ballot, the unit owner executing the agreement could not indicate whether the individual board member should be recalled or retained, and thus the written recall agreement did not substantially comply with Rule 61B-23.0028(1), F.A.C.

[Paradise Lakes RV Park Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-06-7664 (Mnookin / Summary Final Order / September 8, 2003)

- Where a recall ballot does not list separate recall/retain lines for each board member subject to recall, but contains instructions that specifically state that the absence of a unit owner's initials by the name of a board member indicates the desire of the unit owner to retain that individual as a board member, the voter is provided an opportunity to recall one board member while retaining another. Accordingly, the recall ballot substantially complies with Rule 61B-23.0028, F.A.C.

[Rolling Hills Golf and Tennis Club Condo. IX Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-02-7283 (Earl / Summary Final Order / June 7, 2005)

- Written recall agreement was fatally flawed where the recall ballots listed the board members subject to recall in a paragraph indicating the intent to recall both of them followed by spaces for the date signed, unit number and signature of the unit owner. The ballots failed to provide separate recall/retain lines inextricably linking the board members subject to recall.

[Sequoia Gardens Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-03-7658 (Earl / Summary Final Order / October 7, 2004)

- The association properly rejected the written agreement signed by multiple unit owners, as it appeared that the unit owners who placed their signatures in the bottom margin of the agreement were not given the option to vote to recall or retain individual board members, impermissibly linking the board members. Accordingly, the votes for the unit owners who placed their signatures in the bottom margin were deemed invalid.

[Sheffield Woods at Wellington Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-02-5416 (Mnookin / Summary Final Order / May 25, 2005)

- Where a recall ballot fails to contain recall and retain lines for the recall of three members of the board of directors, the ballot fails to comply substantially with Rule 61B-23.0028(1)(b), F.A.C., and the ballot is fatally flawed and the recall cannot be certified.

[Snapper Village Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-04-6630 (Mnookin / Summary Final Order / October 22, 2004)

- Where a written recall agreement fails to contain separate recall and retain lines when more than one board member is subject to a recall effort, the ballot does not substantially comply with Rule 61B-23.0028(1)(b), F.A.C., and the recall cannot be certified.

[Star Lakes Assn. Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-00-0524 (Earl / Summary Final Order / January 28, 2004)

- Where the documents comprising the written recall agreement failed to list by name each board member sought to be recalled and to provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained; failed to list as many replacement candidates as members subject to recall; and did not provide space for write-in votes, the unit owner's signature to affirm the authority to vote and to indicate the date signed, the recall agreement did not substantially comply with Rule 61B-23.0028(1), F.A.C. Some of the recall agreement's deficiencies standing alone would not render it defective; however, the recall agreement failed to comply with numerous requirements of Rule 61B-23.0028(1), F.A.C., and is a sloppy, poorly organized, heterogeneous grouping of documents, some claiming to be recall by written agreement and others indicating that they are a recall by unit owner's vote while others are apparently a petition to remove the management company. The recall agreement is found to be extremely confusing and misleading, especially considering that a recall by written agreement and recall by unit owner's meeting are fundamentally different procedures. These factors alone provide sufficient reason to find the recall agreement defective.

[Vantage View, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-02-4854 (Grubbs / Summary Final Order on Petition for Recall Arbitration / June 2, 2005)

- Although the petition for arbitration provided specific reasons for declaring 27 votes invalid and identifies each invalid vote by unit number, the minutes of the board meeting did not identify the specific votes that were rejected or the specific reasons for the rejection of each vote. Therefore, the allegation contained in the petition related to those 27 votes cannot support the board's refusal to certify the recall. Nevertheless, the recall cannot be certified because the written recall agreement is itself fatally flawed due to its failure to comply with Rule 61B-23.0028(1)(b), F.A.C. The unit owners must be given the option to recall or retain each board member individually.

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

Case No. 2005-02-1379 (Grubbs / Summary Final Order on Petition for Recall Arbitration / June 16, 2005)

- Where 56 out of the 107 ballots submitted as a written recall agreement were computer generated and contained an "x" in the "recall" space next to each name, the recall agreement could not be certified. The ballots containing the pre-marked recall

boxes were invalid. When a ballot is pre-marked, it no longer provides the spaces next to each board member's name where the unit owner may designate whether he wishes to recall or retain that board member. Thus, a pre-marked ballot will not satisfy the requirements of Rule 61B-23.0028(1)(b), F.A.C.

Written agreement held to be defective

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

Case No. 2004-03-4272 (Mnookin / Summary Final Order / August 19, 2004)

- Where a recall ballot is submitted in the form of a letter sent via e-mail and fails to contain any type of signature verification, the ballot is not valid. A recall ballot must contain a signature pursuant to Rule 61B-23.0028, F.A.C. Alternatively, if an association's governing documents allow for recall ballots to be submitted via e-mail, an otherwise valid ballot could be accepted if submitted in accordance with the documents. However, if an association has accepted recall ballots submitted via e-mail in the past, the association would presumably be precluded from asserting this defense during a recall effort unless the association membership had been informed that e-mail recall ballots would no longer be accepted.

[La Playa De Varadero, III Motel Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-06-0214 (Grubbs / Summary Final Order on Petition for Recall Arbitration / February 11, 2005)

- The written recall agreement did not comply with Rule 61B-23.0028(1), F.A.C., in three ways: (1) it failed to provide recall/retain spaces by each board member's name so that the unit owner could vote on each board member individually; (2) it failed to have the person who voted affirm that he was authorized to cast the vote for the unit; (3) it failed to include the name of the unit owner's designated representative they could be voted. Thus, the agreement was found to be fatally flawed.

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

Case No. 2004-01-4011 (Earl / Summary Final Order / April 19, 2004)

- Written recall agreement was *void ab initio* where it failed to comply with numerous requirements of Rule 61B-23.0028, in that it failed to provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained; failed to list at least as many as replacement candidates as members subject to recall while providing a space for write-in votes; and failed to provide signature line for the unit owner's signature to affirm the authority to vote along with space to indicate the date it was signed.

[Star Lakes Assn. Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-00-0524 (Earl / Summary Final Order / January 28, 2004)

- Where the documents comprising the written recall agreement failed to list by name each board member sought to be recalled and to provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained; failed to list as many replacement candidates as members subject to recall; and did not provide space for write-in votes, the unit owner's signature to affirm the authority to vote and to indicate the date signed, the recall agreement did not substantially comply with Rule 61B-23.0028(1), F.A.C.
- Some of the recall agreement's deficiencies standing alone would not render it defective; however, the recall agreement failed to comply with numerous requirements of Rule 61B-23.0028(1), F.A.C., and is a sloppy, poorly organized, heterogeneous grouping of documents, some claiming to be recall by written agreement and others indicating that they are a recall by unit owner's vote while others are apparently a petition to remove the management company. The recall agreement is found to be extremely confusing and misleading, especially considering that a recall by written agreement and recall by unit owner's meeting are fundamentally different procedures. These factors alone provide sufficient reason to find the recall agreement defective.
- A written recall agreement was found to sufficiently designate a unit owner representative where parts of the recall agreement indicated that if there are questions a certain unit owner should be consulted.

Written agreement held to substantially comply

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

Case No. 2004-03-1757 (Mnookin / Summary Final Order / July 22, 2004)

- Where a recall ballot is submitted in the form of a letter and not on the recall ballot form used for the other recall votes, the ballot is deemed valid where it indicates the unit for which the ballot is submitted, is signed by the unit owner, and clearly indicates the unit owner's intent to recall the board member subject to the recall effort; thus, the ballot substantially complies with Rule 61B-23.0028, F.A.C., and must be accepted.

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

Case No. 2005-00-9561 (Earl / Summary Final Order / March 31, 2005)

- The arbitrator may review a written recall agreement to determine if on its face it complies with all the requirements of Rule 61N-23.0028, F.A.C., that might have an effect on the validity of the recall and to determine if there are a sufficient number of agreements in favor of recall. However, the arbitrator may not delve beyond the four corners of the recall agreement to determine why certain agreements that appear valid on their face are in fact invalid for reasons not addressed by minutes of board meeting at which the board failed to certify the recall.

[Paradise Lakes RV Park Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2003-06-7664 (Mnookin / Summary Final Order / September 8, 2003)

- Where an association rejected recall ballots and voter certificates which listed incorrect or incomplete dates, the arbitrator found that the date inaccuracies did not prevent the ballots or voter certificates from substantially complying with Rule 61B-23.0028, F.A.C.

Class Voting

Conflict of Interest

Corporations / Chapter 617, Florida Statutes

Developer

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

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

Case No. 2005-02-2116 (Earl / Final Order of Dismissal / June 7, 2005)

- Where a second recall of the board members is certified while the first recall arbitration is pending, the second petition for arbitration is moot and the case will be dismissed.

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

Case No. 2005-01-9078 (Mnookin / Summary Final Order / May 5, 2005)

- Where the board members subject to a recall effort submitted written resignations before the board was served with the recall agreements, the recall effort is not certified as the board members named on the recall ballots were no longer members of the board of directors.

[Coral Bay Club Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-02-9279 (Grubbs / Final Order Dismissing Petition as Moot / June 30, 2005)

- Where a second recall of the board members is certified while the first recall arbitration is pending, the second petition for arbitration is moot and the case will be dismissed.

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

Case No. 2003-09-6601 (Mnookin / Final Order of Dismissal / March 1, 2004)

- When an annual election occurs during the pendency of a recall dispute, the election renders the recall effort moot and the proceeding is properly dismissed.

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

Case No. 2004-01-3860 (Earl / Final Order of Dismissal / May 26, 2004)

- Where all the board members subject to the recall resigned, the recall petition was dismissed as moot.

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

Case No. 2003-04-5722 (Mnookin / Final Order Dismissing Petition for Recall Arbitration / April 22, 2003)

- Where a regular election is held during the pendency of a recall arbitration proceeding, the recall is rendered moot. This is the case even if the unit owners contend that irregularities in the election procedure should keep the recall from being moot. In such a case, the unit owners who wish to contest the validity of an election may file a petition for arbitration pursuant to Section 718.1255(1)(b)1, F.S.

Effect of Recall

Jurisdiction

[Atlantic View Beach Club Condo. Assn., Inc. v. Owners Seeking Recall of Directors,](#)

Case No. 2003-07-7858 (Mnookin / Summary Final Order / November 24, 2003)

- Where the owners had filed their recall dispute in court prior to the association filing with the Division for recall arbitration, and where the court was actively supervising both the first and the second recall efforts, the Division would decline to exercise jurisdiction over the dispute until the court dismissed or abated the action.

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

Case No. 2003-07-7713 (Coln / Final Order of Dismissal / October 2, 2003)

- Where no unit owner vote to recall was ever taken at a unit owner meeting and no ballots were ever served on the board, no recall has occurred.

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

Case No. 2003-04-8454 (Coln / Summary Final Order / September 18, 2003)

- The association filed a petition for arbitration, naming all of the unit owners in the association and alleging that two unit owners were improperly representing themselves as members of the board. The petition sought as relief an order enjoining the respondents from holding themselves out as board members. From the petition and its attachments, it was difficult to ascertain whether the petition for arbitration concerned a recall or election issue. In subsequent pleadings, it became evident that a recall did in fact occur and was the subject of the arbitration petition. Accordingly, the petition for arbitration was treated as a petition for recall arbitration pursuant to Rule 61B-23.0028, F.A.C.

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

Case No. 2003-06-4736 (Coln / Final Order of Dismissal / June 30, 2003)

- Where the unit owners abandoned the recall effort at the recall meeting, where the ballots were not opened, and where no recall agreements were ever served on the board, there was never a recall for the board to consider, and thus the board's petition was dismissed.

Power of Attorney

Proxy

Reconsideration / Rehearing

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

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

Case No. 2004-02-2093 (Mnookin / Summary Final Order / May 25, 2004)

- A recall ballot cannot be rejected solely for failing to list replacement candidates where a majority of the board is being recalled.

[Sky Lake Gardens Condo. No. 4, Inc. v. Unit Owners Voting for Recall.](#)

Case No. 2003-04-8569 (Mnookin / Amended Summary Final Order / August 8, 2003)

- A summary final order was entered certifying a recall effort which also ordered an election to appoint replacement board members because the recall ballot failed to provide replacement candidates. Upon further consideration for an appropriate remedy, the arbitrator entered an amended summary final order ruling that replacement board members should be determined in conformity with Rule 61B-23.0028, F.A.C. The order authorized the unit owner representative to compose a ballot of at least three, but not more than five candidates to replace the recalled board members and ordered the ballots to be mailed to those unit owners who participated in the recall effort, with the three individuals who received the most votes to replace the recalled board members.

[Unit Owners Voting for Recall v. New World Condo. Apts. III Condo. Assn., Inc.](#)

Case No. 2004-00-8532 (Earl / Order on Emergency Motion and Appeal for Reconsideration of Arbitrator's Order on Emergency Motion and Amending Summary Final Order / June 3, 2004)

- Section 718.112(j)(5), F.S., and Rule 61B-23.0028(3)(a), F.A.C., provide that where less than a majority of the board is recalled, the vacancies may be filled by the remaining board members. In the instant case, the petitioner sought the recall of three of six board members. Simple mathematics establishes that a majority of six board members is any number of board members greater than three and less than or equal to six ($3 < \text{majority} \leq 6$). As board members only come in whole numbers, a majority of six board members would be at least four board members. Therefore, the petitioner sought the recall of less than a majority of the board, and accordingly, the remaining board members not subject to the recall are entitled to appoint replacement members.

Standing

[Pellan v. Ancient Oaks RV Resort Condo. Assn., Inc.](#),

Case No. 2003-05-4356 (Coln / Final Order of Dismissal / April 15, 2003)

- Former board members filed a petition for arbitration challenging the board's decision to certify their recall from the board. Only the board, on behalf of the association, is empowered under Section 718.112(2)(j), F.S., to seek to challenge a recall. If the board determines not to challenge a recall, or if a board does not file a petition for arbitration within the time required for the filing of a petition, the recall is deemed certified. A former board member does not have standing under Section 718.112(2)(j), F.S., to challenge the decision of the board in this regard, but may petition for arbitration under Section 718.1255, F.S.

Time Limits / Legitimate Justification (see also, Unit Owners Defenses – Failure to timely file petition)**Unit Owner Defenses to Petition for Arbitration*****Division advice******Failure of association to previously enforce voting certificate requirement***

[The Decoplage Condo. Assn., Inc. v. Unit Owners Voting For Recall](#),

Case No. 02-5830 (Coln / Amended Summary Final Order / January 16, 2003)

- The association challenged several votes because the unit owners did not have a valid voting certificate on file with the association. The association, however, in a companion proceeding, had been found to have arbitrarily applied the voting certificate requirement during its previous election for the board of directors. Where an association has failed to enforce a voting certificate requirement in prior elections, the requirement will not be enforced in a recall arbitration to disenfranchise voters.

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

Case No. 2004-00-6989 (Coln / Summary Final Order / February 24, 2004)

- The association was required to prove that the association had required voting certificates in elections during the past two years. The association provided an affidavit from the condominium manager that indicated that the association has not enforced the voting certificate requirement in the past two years, as it has been unnecessary. The affidavit further stated that during the annual election two years ago, it was unnecessary to enforce the voting certificate requirement as the elected board members won by an overwhelming majority. However, this hardly demonstrates that the association has historically, and not selectively, enforced the voting certificate requirement. As the association has not actively enforced the voting certificate requirement in past elections, the association is precluded from rejecting recall ballots on this basis.

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

Case No. 03-6024 (Coln / Summary Final Order / March 17, 2003)

- Where the association cannot demonstrate that it had enforced the voting certificate requirement in the past, the failure to have a valid voting certificate on file with the association was not a valid basis for the board not to certify the recall.

[Les Chateaux at International Gardens Condo. Assn., v. Unit Owners Voting for Recall,](#)
Case No. 2003-07-2231 (Coln / Final Order / February 6, 2004)

- Where the unit owners asserted that the association has not enforced the voting certificate requirement in past elections, minutes of the prior annual elections for the board of directors that indicate that ballots were rejected because the units for which they were cast did not have valid voting certificates on file is sufficient to establish that the association has actively enforced the voting certificate requirement in past elections.

[Oakwood Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-01-7211 (Coln / Summary Final Order / April 29, 2004)

- Where the association rejected several recall ballots for failing to have valid voting certificates on file with the association, and the association's governing documents do not require voting certificates, the association should not have rejected the recall ballots and disenfranchised voters for failing to comply with a nonexistent rule.

[Second Horizons Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-07-8497 (Coln / Summary Final Order / November 4, 2003)

- Where the association rejected a number of recall ballots because no voting certificates were on file with the association, and where the association was required by the arbitrator to demonstrate that voting certificates were in common use prior to the recall, evidence submitted by the association, including prior notices sent to the membership notifying them of the requirement of a voting certificate, does not rise to the level of evidence required. Acceptable documentation includes the minutes of election meetings, tally sheets or ballots discarded for failure of the owner to file a voting certificate.

[Vista Del Lago I Condo., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-04-6608 (Earl / Summary Final Order / October 28, 2004)

- The association properly rejected recall agreements for units with multiple unit owners where only one unit owner signed the ballot and the units did not have a voting certificate on file with the association as required by the association's by-laws. As the respondent failed to appear or present argument and evidence to the contrary, the arbitrator accepted the affidavit of the president and manager on this issue along with copies of notices of past annual elections.

Failure of minutes to include specific reasons for not certifying

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

Case No. 2003-07-6045 (Bembry / Summary Final Order and Order on Motions to Strike / October 22, 2003)

- Where revocation of certain recall ballots was not included in the board's recall meeting minutes as a reason for not certifying the recall, the association would not be permitted to assert the revocation of ballots as reason for not certifying the recall in its petition for recall arbitration. The minutes of the board's recall meeting must specify the reasons why the recall effort was not certified by the board, pursuant to Rule 61B-23.0028(4)(d), F.A.C.

[Bonne Vie Management Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-05-4865 (Mnookin / Summary Final Order / December 23, 2004)

- Where an association's petition cites reasons in its petition for arbitration for not certifying a recall that are not included in the meeting minutes at which the recall was discussed, the additional reasons cannot be addressed.
- Where the minutes for a board meeting wherein a recall is discussed contain general and vague allegations for rejecting the recall, for example, some signatures might have been obtained by distorting the truth and recalls must be conducted correctly and honestly, and where the minutes fail to identify specific ballots that were rejected, the minutes fail to comply with Rule 61B-23.0028(4)(d), F.A.C., and recall ballots cannot be rejected based on the non-specific allegations.

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

Case No. 2003-07-9946 (Coln / Summary Final Order / January 28, 2004)

- The association sought to challenge several additional recall ballots, for reasons not stated in the minutes of the board meeting, after the petition for arbitration had been filed. It is unreasonable to allow the association to raise new grounds for not certifying the recall where the grounds were not raised in the minutes or in the petition for arbitration. At some point, regardless of the nature of the grounds for rejecting the recall, the issues must be defined and ruled upon. To allow the association to supplement its basis for rejecting the recall after the filing of the petition would result in unnecessary delay and call into question whether any ruling upon a recall was ever truly final.

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

Case No. 2003-06-9241 (Mnookin / Summary Final Order / August 25, 2003)

- When the minutes from a board meeting wherein the board decided to reject a recall effort merely point to general, conclusory statements as the basis for not certifying the recall, rather than citing specific reasons, the minutes fail to comply with Rule 61B-23.0028(4)(d), F.A.C.

[Colonial Gardens Apartments, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2003-04-7986 (Coln / Final Order Dismissing Petition for Recall Arbitration / March 25, 2003)

- The petition for recall arbitration failed to comply with Rule 61B-23.0027(6)(d) and Rule 61B-23.0028(4)(d), F.A.C., in that the minutes did not specify any reason for the non-certification of the recall effort, yet the petition specified two reasons. Since the minutes failed to include those reasons, these grounds could not be asserted for the first time in the petition for recall arbitration.

[Conquistador Villas Condo. Assn., Inc. v. Unit Owners Voting For Recall,](#)

Case No. 2003-05-6597 (Gioia / Recall Arbitration Summary Final Order / May 2, 2003)

- Where the board's minutes failed to list specific reasons why the board rejected specific recall ballots in support of the board's failure to certify the recall, the affidavit of the secretary created after the recall arbitration proceeding was initiated, seeking to supplement the minutes to add additional reasons for the board's decision not to certify the recall, was rejected.

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

Case No. 2005-01-9941 (Grubbs / Summary Final Order on Petition for Recall Arbitration / June 14, 2005)

- The statement that “several of the signatures do not match signatures of the record owners” was not a sufficient reason not to certify the recall when none of the ballots containing signatures the “did not match” were identified by unit number or in any other way by the board. The minutes of the board meeting must be specific. Unless the board has indicated the specific ballot rejected, or cited a reason for rejection that is clear from the face of the individual ballots, the rejection of a ballot is invalid.
- Because the minutes of the board meeting were not specific as to the reason for rejection for any individual ballot, the rejection of the ballots of the 25 unit owners listed in the petition could not be sustained unless the petitioner could establish that the individual ballots were identified at the board meeting, but the specific units were simply omitted by the secretary in the minutes. Petitioner was permitted to submit video or audio tapes of the meeting to support the petitioner’s allegation that the questioned ballots were identified and separated at the meeting. However, the only tape submitted, a video tape submitted by the unit owners, did not support the petitioner’s allegations.
- Where the minutes do not support the reasons stated for rejection, but the respondent in its answer basically confesses error as to certain ballots, leaving the recall agreement with less than a majority of votes, the recall cannot be certified; however, where the ballots are facially valid, the board at its meeting provides insufficient grounds for not certifying the recall, and the respondent does not confess error or provide evidence establishing the invalidity of any ballots, the recall will be certified.

[The Decoplage Condo. Assn., Inc. v. Unit Owners Voting For Recall,](#)

Case No. 02-5830 (Coln / Amended Summary Final Order / January 16, 2003)

- The association sought to amend the petition for recall arbitration by adding several new grounds for rejecting the recall that were not recorded in the minutes of the board meeting. Pursuant to Rule 61B-23.0028(4), F.A.C., the board meeting minutes shall record the specific reasons the recall was not certified. Only the grounds set forth in the minutes of the board meeting as the basis for the board's decision not to certify the recall can be considered by the arbitrator in reviewing the board's decision not to certify a recall.

[Doral Grand Condo. Assn., Inc. v. Unit Owners Voting For Recall,](#)

Case No. 2003-06-6354 (Mnookin / Summary Final Order / August 11, 2003)

- The minutes from the board meeting, wherein the board determined to reject the recall effort merely pointed to a few conclusory statements as the basis for not certifying the recall. As the minutes fail to identify the specific ballots that were rejected and the reason for the rejection, the minutes fail to comply with Rule 61B-23.0028(4)(d), F.A.C.

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

Case No. 2004-02-2093 (Mnookin / Summary Final Order / May 25, 2004)

- The minutes of the board meeting wherein the board determined to reject a recall effort must cite the specific reasons for not certifying the recall pursuant to Rule 61B-23.0028(4)(d), F.A.C. General, conclusory statements are not sufficient.
- Where a petition for recall arbitration included specific reasons for the board's rejection of the recall effort that were not included in the minutes of the board meeting wherein the board determined to reject the recall, the reasons cited in the petition cannot be considered by the arbitrator because they were not included in the meeting minutes as required by Rule 61B-23.0028(4)(d), F.A.C.

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

Case No. 2005-00-9561 (Earl / Summary Final Order / March 31, 2005)

- Reasons for not certifying the recall such as improper service of the agreements on the board, rescission of agreements and improper signatures, alleged in the petition, but not address by the minutes for the board meeting at which it decided not to certify the recall, may not be considered by the arbitrator.
- Where the minutes of the board meeting at which the board determined not to certify the recall agreement indicated that unit owners were coerced into voting in favor of the recall, but did not specify the unit owners who felt intimidated and the nature of the intimidation, the minutes lacked sufficient specificity and failed to comply with Rules 61b-23.0028(4)(d) and 61B-50.105(5)(h), F.A.C.

- The arbitrator may review a written recall agreement to determine if on its face it complies with all the requirements of Rule 61N-23.0028, F.A.C., that might have an effect on the validity of the recall and to determine if there are a sufficient number of agreements in favor of recall. However, the arbitrator may not delve beyond the four corners of the recall agreement to determine why certain agreements that appear valid on their face are in fact invalid for reasons not addressed by minutes of board meeting at which the board failed to certify the recall.

[James Place Condo., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2003-05-4048 and 2003-05-4324 (Mnookin / Final Order Dismissing Petition for Recall Arbitration and Order of Consolidation / April 21, 2003)

- The board incorrectly refused to certify the recall because the owners did not provide a reason for recalling the board. The owners are not required to explain why recall was sought. Recall was certified.
- Where a board at its recall meeting fails to advance reasons for its decision to reject the recall, reasons cannot later be asserted as justification for the board's refusal to certify the recall. As a result, none of the reasons stated in the petition can be considered because they are not cited in the minutes.

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

Case No. 2005-01-5139 (Grubbs / Summary Final Order on Petition for Recall Arbitration / April 8, 2005)

- It is not sufficient for the minutes to simply list all of the rejected ballots by unit number and state that they have been rejected "due to the lack of proper signature." That is too broad a statement. The board must state the specific reason for each rejection, and those specific reasons should be recorded in the minutes. Otherwise, the rejection of the ballot will not be upheld, unless the ballot is facially invalid.

[La Playa De Varadero, III Motel Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2004-06-0214 (Grubbs / Summary Final Order on Petition for Recall Arbitration / February 11, 2005)

- The minutes identified the ways in which the written agreement failed to comply with the recall rules. The fact that the minutes cited the wrong rule numbers for the defects listed was immaterial.

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

Case No. 2003-06-5615 (Coln / Summary Final Order / June 30, 2003)

- According to the petition, the recall was not certified because there are "some questionable signatures." It is unclear what exactly this refers to as no ballots, names, or unit numbers are listed in the petition or the minutes of the meeting. Rule 61B-

23.0028(4)(d), F.A.C., provides that the minutes of the board meeting at which the board determined not to certify the recall shall include the specific reasons it was not certified. Accordingly, this claim is rejected.

[Sky Lake Gardens Condo. No. 4, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2003-04-8569 (Mnookin / Summary Final Order / August 1, 2003)

- The minutes from the board meeting, wherein the board decides to reject a recall effort must contain specific reasons for rejecting it. Minutes that merely point to a few conclusory statements as the basis for rejecting a recall effort do not satisfy this requirement.

[Vantage View, Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-02-4854 (Grubbs / Summary Final Order on Petition for Recall Arbitration / June 2, 2005)

- Although the petition for arbitration provided specific reasons for declaring 27 votes invalid and identifies each invalid vote by unit number, the minutes of the board meeting did not identify the specific votes that were rejected or the specific reasons for the rejection of each vote. Therefore, the allegation contained in the petition related to those 27 votes cannot support the board's refusal to certify the recall. Nevertheless, the recall cannot be certified because the written recall agreements is itself fatally flawed due to its failure to comply with Rule 61B-23.0028(1)(b), F.A.C. The unit owners must be given the option to recall or retain each board member individually.

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

Case No. 2005-02-1379 (Grubbs / Summary Final Order on Petition for Recall Arbitration / June 16, 2005)

- Although the minutes did not identify each of the 56 pre-marked ballots by unit number, which would normally result in the arbitrator refusing to consider the rejection of those ballots, in this case, the rejected ballots were readily identifiable on their face due to the pre-marking, and the association's determination not to certify the recall was affirmed.

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

Case No. 2005-01-3358 (Bembry / Summary Final Order / May 27, 2005)

- Reasons contained in the association's petition for not certifying the unit owners' recall that were not included in the board's meeting minutes will not be considered by the arbitrator when reviewing the association's determination of non-certification.
- Where the board's meeting minutes fail to include specific reasons for rejecting ballots, the minutes fail to comply with Rule 61B-23.0028(4)(d), F.A.C., and the rejection of the recall ballots by the board will not be upheld.

- The association's board may not justify non-certification of unit owner recall by submitting an amended set of meeting minutes containing reasons that vary from the original meeting minutes that were submitted by the board when filing its petition for recall arbitration.

Failure to give proper notice of board meeting

[Les Chateaux at International Gardens Condo. Assn., v. Unit Owners Voting for Recall,](#)
Case No. 2003-07-2231 (Coln / Final Order / February 6, 2004)

- Where the unit owners alleged that the association had failed to properly post notice of the board meeting at which the recall was discussed at least 48 hours prior to the meeting, testimony that the association's property manager prepared and posted notice of the board meeting 48 hours in advance of the meeting is sufficient to prove that the association gave adequate notice of the board meeting at which the recall was considered and discussed. The fact that some unit owners either did not see the notice or were otherwise unaware of the meeting, does not establish that notice of the meeting was not given.

[The Sails Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-01-4011 (Earl / Summary Final Order / April 19, 2004)

- Where, as in the instant case, the recall agreement is *void ab initio*, the failure of the board to properly notice or conduct its meeting or to file a recall arbitration petition will not rehabilitate an otherwise invalid recall agreement.

Failure to have a quorum at board meeting

[Bonne Vie Management Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-05-4865 (Mnookin / Summary Final Order / December 23, 2004)

- Where the board members attempted to conduct a meeting to discuss a recall effort but failed to establish a quorum, no meeting or board action could occur and no vote on the recall could take place, thus, the recall should be certified as the board failed to comply with Section 718.112(2)(j)4, F.S., by holding a meeting at which quorum existed.

Failure to hold or timely hold board meeting

[Crestview Towers Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2005-01-9941 (Grubbs / Summary Final Order on Petition for Recall Arbitration / June 14, 2005)

- Although the unit owners had a return receipt signed by the receptionist showing service on "Tripp Scott Attorneys" on March 18, 2005, the association could not be considered served until Monday, March 21, 2005, when the attorney who was the registered agent of the association actually received the package because the package containing the written recall agreement was not addressed to the registered agent individually and there were more than 30 attorneys in the firm.

[Gateway by the Bay Condo. Assn. Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-08-5834 (Bembry / Summary Final Order / January 16, 2004)

- Board deemed to have received written recall agreements on date certified mail package containing written recall ballots was delivered to board secretary's mailbox, where postal service had provided prior notices of certified mail package to board secretary who delayed retrieval of the certified mail. The date by which board must hold a board meeting runs from the date board is deemed to be in receipt of recall package, not from the date a board officer actually retrieved the recall package.

[Madden v. Windmill Village by the Sea Condo. No. 1 Assn., Inc.,](#)
Case No. 2004-03-1746 (Grubbs / Summary Final Order / February 16, 2005)

- When a quorum was not present for the board meeting noticed to determine whether to certify a written recall agreement, in accordance with Rule 61B-23.001(a), F.A.C., a meeting could not be held. Because no meeting was held within five days of service of the agreement, the recall was deemed effective by operation of Section 718.112(2)(j)(4), F.S., and Rule 61B-23.0028(7), F.A.C. A unit owner filed a petition asserting that the automatic recall of the board members should be "rescinded." However, after two amended petitions, the petitioner had still not alleged any appropriate basis for overriding the statutory mandate, i.e., that the recall agreement was void *ab initio* or that less than a majority of the unit owners had voted for the recall. Therefore, the petition seeking to "rescind" the recall was dismissed with prejudice.

[Rolling Hills Golf and Tennis Club Condo. IX Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 2005-02-7283 (Earl / Summary Final Order / June 7, 2005)

- Where a recall agreement is void *ab initio*, the failure of the board to properly notice or conduct its meeting or to file recall arbitration petition will not rehabilitate an otherwise invalid recall agreement.

[The Sails Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2004-01-4011 (Earl / Summary Final Order / April 19, 2004)

- Where, as in the instant case, the recall agreement is *void ab initio*, the failure of the board to properly notice or conduct its meeting or to file a recall arbitration petition will not rehabilitate an otherwise invalid recall agreement.

[The Senate Condo. Assn., Inc. v. Unit Owners Voting for Recall,](#)
Case No. 2003-04-8454 (Coln / Summary Final Order / September 18, 2003)

- Where the unit owner served the board with a recall petition and the association never held a meeting to determine whether or not to certify the recall, did not file petition for recall and failed to provide a sufficient explanation as to why neither action was taken, the recall of the board was certified.

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

Case No. 2003-08-2948 (Coln / Summary Final Order / October 22, 2003)

- Where the unit owner served the board with a recall petition and the association never held a meeting to determine whether or not to certify the recall, did not file petition for recall and failed to provide a sufficient explanation as why neither action was taken, the recall of the board was certified.

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

[DuQuette v. Sandlake Courtyards Condo. Assn., Inc.,](#)

Case No. 2004-01-7108 (Mnookin / Summary Final Order / April 5, 2004)

- The petition filed by the unit owners' representative alleged that the association rejected the unit owners' recall effort but failed to file a petition for recall arbitration. While this type of dispute is within the jurisdiction of the Division, the recall effort contained a fatal flaw in that the recall ballots failed to provide separate recall/retain lines for each board member subject to the recall. Notwithstanding the association's failure to properly file a petition for recall arbitration when it rejected the unit owners' recall effort, the omission of separate recall/retain lines from a recall ballot is fatal and precludes the certification of the recall attempt.

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

Case No. 2004-02-6331 (Mnookin / Summary Final Order / June 21, 2004)

- The association was served with written recall agreements on March 23, 2004, and determined to reject the recall effort at a meeting held on March 25, 2005. However, the board did not file a petition for recall arbitration until May 5, 2004, and failed to offer any explanation for the delay in filing the petition. As Rule 61B-23.0028(3)(b), F.A.C., requires that a petition for recall arbitration must be filed within five business days of the meeting at which the board determines not to certify the recall, the recall is effective under Section 718.112(2)(j)(4), F.S.

[Sands Point Homeowners Assn., Inc. v. Unit Owners Voting for Recall,](#)

Case No. 03-6036 (Mnookin / Final Order Dismissing Petition for Recall Arbitration / March 18, 2003)

- Where the former board failed to file a challenge in arbitration to the recall effort of the owners and four months passed during which the new board exercised the authority of the association and operated the condominium, the former board waived the right to challenge the recall in the absence of any controlling equitable considerations to the contrary.

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

Case No. 2003-04-8454 (Coln / Summary Final Order / September 18, 2003)

- Where the unit owner served the board with a recall petition and the association never held a meeting to determine whether or not to certify the recall, did not file petition for recall and failed to provide a sufficient explanation as to why neither action was taken, the recall of the board was certified.

[Unit Owners Voting for Recall v. New World Condo. Apts. III Condo. Assn., Inc.](#)

Case No. 2004-00-8532 (Earl / Summary Final Order / April 7, 2004)

- Where the board held a meeting within five business days of service of the recall agreement at which the recall agreement was discussed, the association's position that the meeting was not a meeting to consider certification of the recall was unpersuasive.
- Section 718.112(2)(j)(2), F.S., requires a board to either certify the agreement for recall or file a petition for recall arbitration. As the board did not certify the recall at its meeting, it should have filed a petition for recall arbitration within five business days after the meeting.
- Where the association failed to timely hold a meeting to consider the recall effort or failed to timely file a petition for recall arbitration upon refusal to certify the recall agreement, the recall will be certified unless the association shows good cause for the delay, and where the recall effort substantially complied with the statutory requirements.

Generally

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

Case No. 2003-07-9946 (Coln / Summary Final Order / January 28, 2004)

- The association sought to challenge several additional recall ballots, for reasons not stated in the minutes of the board meeting, after the petition for arbitration had been filed. It is unreasonable to allow the association to raise new grounds for not certifying the recall where the grounds were not raised in the minutes or in the petition for arbitration. At some point, regardless of the nature of the grounds for rejecting the recall, the issues must be defined and ruled upon. To allow the association to supplement its basis for rejecting the recall after the filing of the petition would result in unnecessary delay and call into question whether any ruling upon a recall was ever truly final.

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

Case No. 2003-09-5979 (Mnookin / Final Order Dismissing Petition for Recall Arbitration / February 24, 2004)

- Where an annual election renders a recall proceeding moot, but the procedure by which the board members were elected is contested, a separate petition must be filed pursuant to s. 718.1255, F.S. A recall proceeding is not the proper forum to raise election disputes.

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

Case No. 2004-01-4011 (Earl / Summary Final Order / April 19, 2004)

- The affirmative defenses of failure to state a cause of action, estoppel, laches, unclean hands, failure to mitigate damages, and failure to perform conditions precedent, raised by the unit owners, if proven do not justify the unit owners' failure to comply with the statutes and regulations governing recalls, as the arbitrator cannot certify a recall effort that does not substantially comply with the recall rules.

No Legitimate Reasons for Failing to Certify

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

Case No. 2004-02-6331 (Mnookin / Summary Final Order / June 21, 2004)

- Where none of the reasons stated in the minutes of the meeting in which the board determined to reject the recall effort are sufficient grounds for rejecting the recall, and there is no evidence that the recall agreements fail to substantially comply with Rule 61B-23.0028, F.A.C., the recall is certified.

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

Case No. 2005-00-9561 (Earl / Summary Final Order / March 31, 2005)

- The motivation for recalling the board of directors is irrelevant and not a proper basis for rejecting a written recall agreement, as Section 781.112(2)(j), F.S., provides that any member of the board may be recalled with or without cause.

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

Case No. 2003-06-5615 (Coln / Summary Final Order / June 30, 2003)

- The association claimed that the board member whose recall was sought by the unit owners was doing a good job and fulfilling his duties as treasurer. This basis for not certifying the recall is without merit. A majority of unit owners may recall and remove any member of the board "with or without cause." Therefore, the fact that the member was doing a good job or performing his duties as required is irrelevant and this basis for rejecting the recall is rejected.

Ratification

Vacancies