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Regular Condominium Arbitration Order Index (September 2010)



*** Note that this arbitration order index summarizes significant final and certain nonfinal orders entered by the Division pursuant to s. 718.1255, F.S., during the period January 1, 2009 to August 31, 2010. This index does not include recall orders or attorney's fee final orders or orders involving homeowners associations regulated by Ch. 720, F.S. The index does not include all orders entered by the Division during the indicated time period as some effort was made to report only decisions of practical significance that were not redundant of other reported decisions. This index is not intended to offer legal advice and the reader should consult the actual text of the orders summarized and make his or her own conclusions about the holding of cases.**

ARBITRATION ORDER INDEX (SEPT. 2010)

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Condominium Arbitration Subject Matter Index

Age-Restrictions (See Fair Housing Act)

Alienation (See Unit-Restraints on alienation)

Annual Meeting (See Meetings-Unit owner meetings)

Arbitration

Affirmative defenses

Bay Palms Condo Association v. McKenna, Arb. Case No. 2009-05-6396 (Chavis/ Order/ January 26, 2010)

-Where owner claimed that the filing of the petition for arbitration was an act of retaliation, such claim was struck. Retaliation is not a recognized defense in condominium arbitration.

Biscayne Lake Gardens v. Enituxia Group, Arb. Case No. 2010-02-8314 (Lang/ Final Order of Dismissal/ July 1, 2010)

-Where pre-arbitration demand letter in case where a tenant kept a prohibited dog provided that the failure to correct the problem would result in eviction along with all legal fees, or other legal action, since eviction is not available in arbitration, the letter failed to advise that arbitration would be pursued and the notice was inadequate under the statute. It was unclear in the letter whether the tenant or the dog would be evicted. Case dismissed.

Bixler v. Gardens of Sabel Palm Condo, Arb. Case No. 2010-03-1915 (Chavis/ Order to Amend Petition/ July 1, 2010)

-It is improper and contrary to the statute for the pre-arbitration demand notice to incorporate a demand for the payment of attorney's fees.

Boca View Condo Association v. Kowaleski, Arb. Case No. 2010-02-2907 (Chavis/ Order to Show Cause/ May 7, 2010)

-Where documents prohibited any dogs, pre-arbitration demand letter which offered to permit the owner to keep one illegal dog while removing dog claimed to be a service animal and requiring a payment of \$9,812 in attorney's fees to the association does not provide the unit owner with a reasonable opportunity to comply with the documents and was not a valid pre-arbitration demand letter.

Capistrano Condominium Association v. Breiner, Arb. Case No. 2009-05-1633 (Whitsitt/ Final Order of Dismissal/ October 8, 2009)

-Where association, seeking to remove overweight dog belonging to the tenant, failed to provide tenant with pre-arbitration notice required by statute, petition dismissed for failure to comply with condition precedent.

-Where pre-arbitration notice provided by the association to the unit owner whose tenant possessed an overweight dog acknowledged error of association in approving the tenant's application, such notice was insufficient under the statute as it

acknowledges the board's responsibility in creating the problem which the owner must correct.

-Pre-arbitration notice that requires the unit owner to pay to the association the \$88.00 legal fees generated in writing the pre-arbitration notice was invalid. Such a requirement defeats the intended purpose of pre-arbitration notice. Additionally, such a requirement creates tension with the prevailing party provision contained in s. 718.1255, F.S. The association has taken the liberty of bypassing this part of the law and has determined that the association has prevailed, entitling it to an award of fees.

Clipper Cove Village Master Condo Association v. Greco, Arb. Case No. 2009-03-6538 (Chavis/ Final Order/ July 23, 2010)

-Where association waited six years, one month and 5 days after completion of the unauthorized lanai enclosure before filing a petition for arbitration, association guilty of laches and such action was barred by the statute of limitations.

Cypress Chase Condo Association v. Mann, Arb. Case No. 2009-04-2862 (Earl/ Final Order of Dismissal/ December 23, 2009)

-Pre-arbitration demand notice that also demanded that the unit owner reimburse the association for its attorney's fees expended per date was invalid per se, and petition for arbitration dismissed with prejudice.

Dania Chateau De Ville Condo Association v. Zalcborg, Arb. Case No. 2009-04-0877 (Whitsitt/ Final Order of Dismissal/ August 17, 2009)

-Pre-arbitration demand notice which demanded attorney's fees to write the demand letter was ineffective under statute. There is no requirement that an attorney prepare the letter and the statute does not authorize its inclusion into the demand letter.

Decoplage Condo Association v. Abraham, Arb. Case No. 2009-04-1016 (Lang/ Order to Show Cause/ January 8, 2010)

-Where pre-arbitration demand to remove dog was sent by mail but to an incorrect unit number, and where the process server who posted the notice on the correct unit did not make it plain on the return of service where on the property the notice was posted, the association was ordered to show cause why the petition should not be dismissed for inadequate pre-arbitration notice. Posting a demand notice by attaching a copy of it to an unspecified place on the condominium property will not be considered adequate delivery of the notice. [Editor's note--At the time that this order to show cause was issued, there is no indication that the respondent owner had yet been served with the petition and order requiring answer; thus it is likely that the arbitrator raised this matter *sue sponte*.]

El Conquistador Section 1, Village 1 Condo Association v. Stepton, Arb. Case No. 2010-03-7340 (Chavis/ Order to Show Cause and Order Denying Petitioner's Motion to Stay/ August 3, 2010)

-Where association filed petition for arbitration and motion to stay the proceeding to allow the association to seek emergency relief in the courts alleging that the unit owner had intentionally flooded his unit, but failed to demonstrate that a adequate pre-

arbitration demand had been served on the owner, arbitrator lacked jurisdiction over the motion to stay which motion was denied.

El Rancho Village v. Brunton, Arb. Case No. 2009-03-6532 (Earl/ Final Order of Dismissal/ August 19, 2009)

-Petition filed by association in a mobile home cooperative seeking to terminate the tenancy and membership of a coop member for planting bushes on his unit without having obtained the permission of the board dismissed for lack of jurisdiction. The arbitrator lacks the authority to award relief removing the respondent from the community.

Fairview Vista Condo Association v. Muto, Arb. Case No. 2010-03-9759 (Jones/ Order to Show Cause/ August 13, 2010)

-Where petition failed to name tenant who maintained oversized truck at issue and failed to provide copy of pre-arbitration demand notice to the tenant, association ordered to show cause why its petition should not be dismissed.

Fiore at the Gardens Condo Association v. Anderson, Arb. Case No. 2010-00-6650 (Slaton/ Order to Show Cause/ February 16, 2010)

-Where association did not name a co-owner of the unit as a respondent and did not evidently serve pre-arbitration notice on the co-owner, association ordered to show cause why the petition should not be dismissed (Editor's note: Apparently the arbitrator conducted an on-line search of the public records sua sponte to determine ownership of the unit without first issuing an order requiring answer.)

related case

(Slaton/ Final Order Dismissing Petition/ March 5, 2010)

-Petition dismissed for failure to join co-owner notwithstanding argument that the co-owner had failed to notify the association upon his acquisition of an interest in the unit in violation of the documents.

Four Seasons Estates Resident Owned Community v. Ferguson, Arb. Case No. 2010-00-7030 (Campbell/ Order Striking Service Animal Dispute/ April 9, 2010)

-Where the respondent owner claimed the right to keep her cats due to medical conditions, it is not appropriate for the Division to adjudicate fair housing questions for which other agencies have expertise. The arbitrator recedes from the other arbitration cases holding that the Division may properly adjudicate such claims. The respondent may file a complaint with the housing authority.

Hillcrest Country Club No. 2 v. Konya, Arb. Case No. 2009-01-9031 (Whitsitt/ Final Order of Dismissal/ June 2, 2009)

-Pre-arbitration notice requirement contained in s. 718.1255, F.S., was not satisfied where the association posted the demand letter. Posting is a form of constructive service to be used when personal service upon an individual cannot be obtained, and is used for "in rem" proceedings. The instant arbitration proceeding is an "in personam" proceeding.

Horizons at Stonebridge Place Condo Association v. Marin, Arb. Case No. 2009-04-6532 (Whitsitt/ First Amended Order on Case Management Conference/ January 13, 2010)

-Where the dog at issue was owned by the mother of one of the respondent owners who was not joined in the proceeding, since the mother was a necessary and indispensable party, she must be joined. If she agrees to waive her right to pre-arbitration notice, the case would be referred to mediation. If she does not so agree, the case would be dismissed.

Howard v. Coco Wood Condo Association, Arb. Case No. 2009-02-4248 (Slaton/ Final Order Dismissing Petition/ June 10, 2009)

-Where ousted board member sought to challenge his dismissal from board but had not provided pre-arbitration notice to the board, petition dismissed. Although pre-arbitration demand notice is not required for recalls, this was not a recall case.

Jade Residences at Brickell Bay Condo Association v. Jade 3911, Inc., Arb. Case No. 2010-03-7369 (Lang/ Order Requiring Amended Petition/ August 6, 2010)

-Where pre-arbitration demand notice was addressed to "Jade 3911, Inc., Att: Guillermo Gomez" but the security reports name Roberto Araujo as the person answering the door (and presumably creating loud noises), association must show that pre-arbitration notice has been provided to Roberto Auarjo and he must be named as an additional party respondent.

King David of Sunny Isles v. Morinsky, Arb. Case No. 2009-05-3026 (Lang/ Final Order of Dismissal/ December 11, 2009)

-Where pre-arbitration demand letter was sent after only a single instance of yelling at board members, letter did not give the owner an adequate opportunity to provide the relief requested, and letter did not constitute adequate pre-arbitration notice.

Les Chateaux Condominium Apartments v. Dodu, Arb. Case No. 2009-02-0590 (Chavis/ Final Order Dismissing Petition/ July 8, 2009)

-Pre-arbitration notice that incorporated a demand for the payment of attorney's fees as an element of compliance was defective and the petition was dismissed.

Luckhardt v. Shore Condominium, Arb. Case No. 2010-00-5216 (Campbell/ Summary Final Order/ April 9, 2010)

-Unit owner argument that association failed to properly pass a 2003 amendment to the declaration restricting leasing was rejected. It is too late now for an owner to challenge the amendment which is subject to a 5 year statute of limitations.

RELATED CASE Luckhardt v. The Shore Condominium, Inc., Arb. Case No. 2010-00-5216 (Campbell/ Order Setting Aside Summary Final Order/ May 7, 2010)

-Final order invaliding amendment to declaration restricting leases set aside. Association had failed to raise the statute of limitations defense.

Palm Garden of South Beach Condo Association v. Fontaine, Arb . Case No. 2010-00-8903 (Whitsitt/ Amended Order Requiring Additional Documentation/ March 10, 2010)

-Pre-arbitration notice required by statute would be satisfied upon proof that a related circuit court litigation had been served on the respondent owner.

Pell Manor II Condo Association v. Argy, Arb. Case No. 2010-03-1052 (Chavis/ Final Order of Dismissal/ June 23, 2010)

-Where pre-arbitration demand notice demanded removal of unapproved tenants but petition for arbitration merely requested that the arbitrator find that the owners had violated the documents and require the owners to provide the association with tenant information, pre-arbitration demand notice was defective. Petition dismissed.

St. Tropez Condo I Association v. Asher, Arb, Case No. 2009-05-9633 (Campbell/ Final Order/ March 26, 2010)

-Where unit owner had resided in one condominium in a community that did not enforce its restriction against pets and moved to adjacent separate condominium with her illegal pet, current condominium association was not permitted to enforce its pet restriction where the petition incorrectly identified the unit number in the new condominium and where the pre-arbitration demand letters were addressed to her at her prior unit despite the fact that she received these notices.

Tamarac Gardens Condo #6 Association v. Torre, Arb. Case No. 2010-00-8907 (Chavis/ Order/ April 6, 2010)

-The responsibility for deciding fair housing claims, as where a pet owner asserts a disability and requests a reasonable accommodation, does not lie in arbitration. Respondents were ordered to file proof that they filed a fair housing complaint with the appropriate agency, at which time the arbitration petition would be administratively closed.

Thomas v. Caribe, Inc. of Broward County, Arb. Case No. 2010-04-0875 (Lang/ Final Order of Dismissal/ August 31, 2010)

-Where petitioner Jeffery Thomas alleged that the association unlawfully denied the application for membership and transfer of ownership from petitioner to his brother Jeb, the pre-arbitration notice was deficient because it was given by Jeb instead of petitioner. In addition, notice was stale because it was given 8 months before filing petition for arbitration.

Vistas at Stonebridge Place Condo Association v. Rejon, Arb. Case No. 2009-04-3033 (Campbell/ Final Order of Dismissal/ August 19, 2009)

-Where pre-arbitration demand letter was directed to the unit owner more than a year prior to the filing of the petition for arbitration, the letter cannot satisfy the requirements of the statute insofar as the owner would be justified by the intervening inactivity of the board that the dispute had been resolved or that compliance was no longer required by the current board.

Evidence

Silver Thatch Atlantic Plaza Condo Association v. Brown, Arb. Case No. 2009-02-6970 (Whitsitt/ Order Denying Motion to Strike/ February 3, 2020)

-Where association sought to strike the expert affidavit of the unit owners to the effect that the installed tiles will void the concrete warranty on the ground that only the association's expert may so opine, the motion to strike was denied.

Generally

Anchor Condo Association v. Ault, Arb. Case No. 2010-04-1595 (Slaton/ Order Requiring Amended Petition/ August 23, 2010)

-Petition alleging that unit owner had failed to maintain, repair, and replace components within her unit including its carpeting, ceiling in the living room, vanity and plumbing and water heater, and that the unit had fallen into a state of disrepair and creating a problem with insects and mold does not allege sufficient facts to allow for relief. Petition must detail the problems, for example, the hot water heater is leaking, and must request specific relief such as requiring repairs to the hot water heater.

High Point of Ft. Pierce Condo Section III Association v. Lamantia, Arb. Case No. 2010-00-6662 (Whitsitt/ Order Denying Motion for Continuance/ May 11, 2010)

-Where association filed motion to continue final hearing on May 6, 2010, for final hearing scheduled for May 20, 2010, and stated that a witness would be in Argentina at the time of the final hearing, attaching a travel itinerary, motion was denied. The association had not conferred with opposing counsel, had not proposed alternative hearing dates, and the itinerary showed that the trip was not a sudden emergency but had been planned long in advance. Witness was permitted to testify by telephone from Argentina.

Jurisdiction (See Dispute)

Misarbitration

Silver Sands Beach and Racquet Club Condo Association v. Bouldin, Arb. Case No. 2009-04-3155 (Whitsitt/ Order Denying Motion to Disqualify Arbitrator/ January 25, 2010)

-Motion to disqualify arbitrator denied.

Wheatley v. Regency Towers Condo Association, Arb. Case No. 2009-05-8411 (Whitsitt/ Final Order/ March 1, 2010) (currently on appeal)

-Motion to disqualify arbitrator for allegedly becoming an advocate on behalf of pro se unit owner denied.

Parties (See also Dispute-Standing)

4000 Island Boulevard Condo Association v. La Salle Bank National Association, Arb. Case No. 2010-01-6209 (Chavis/ Final Order of Dismissal/ May 25, 2010)

-Where in the course of the arbitration proceeding, the named bank transferred title to a new purchaser/transferee, the petition must be dismissed for lack of jurisdiction.

Atlantic Cloisters Association v. Berliner, Arb. Case No. 2010-00-1277 (Slaton/ Final Order of Dismissal/ February 18, 2010)

-Where association named 12 different unit owners as respondents who had failed to allow the association access to the units for purposes of installing a fire alarm system, petition dismissed. Association must commence 12 actions against the owners.

Bluffs Condo Association v. Hill, Arb. Case No. 2009-00-0197 (Lang/ Order Requiring Amended Petition/ January 19, 2010)

-Petition filed by association against a single owner of multiple units stating disputes against different tenants residing in the units dismissed as separate petitions must be filed involving each separate tenant.

Boca Lakes Condo Association v. O'Connor, Arb. Case No. 2010-01-3113 (Whitsitt/ Order Requiring Amended Petition/ March 19, 2010)

-Where association filed petition seeking removal of adult daughter of unit owner but did not name the daughter as a party, petition dismissed without prejudice to name the daughter and provide evidence that pre-arbitration demand notice had been served on her.

Capistrano Condominium Association v. Breiner, Arb. Case No. 2009-05-1633 (Whitsitt/ Final Order of Dismissal/ October 8, 2009)

-Where association failed to name the tenant who owned the overweight dog, petition dismissed for failure to join the tenant.

Class of Unit Owners v. Stratford Arms Condo Association, Arb. Case No. 2010-03-1865 (Slaton/ Order Requiring Amended Petition/ July 1, 2010)

-Neither the statutes nor the rules allow the arbitrator to certify class action status, and each unit owner is required to file a separate petition in order to contest the decision to require impact glass even if hurricane shutters exist.

Kuhlke v. Lange; Cypress Palms Resort, Arb. Case No. 2008-05-6985 (Chavis/ Final Order of Dismissal/ January 12, 2009).

-In timeshare condominium, petition that sought to challenge an election was dismissed where petition named manager and vice president of Wyndham Vacation Resorts as parties.

Hoover v. Cold Condo Association, Arb. Case No. 2009-00-3637 (Lang/ Final Order Dismissing Petition/ February 4, 2009)

-Arbitrator lacked authority to certify a class action in arbitration.

Horizons at Stonebridge Place Condo Association v. Marin, Arb. Case No. 2009-04-6532 (Whitsitt/ Final Order of Dismissal/ February 1, 2010)

-Where arbitrator had ordered in the course of a case management conference that the association join non-owner family members who resided in unit and owned illegal dog, and where the association refused to join these persons as parties, petition dismissed because the arbitrator could not enter an order granting affirmative relief in the absence of all necessary parties.

Loveall v. Towers Grande Condo Association, Arb. Case No. 2009-06-3774 (Chavis/ Order Requiring Amended Petition/ January 5, 2010)

-Petitioner ordered to amend petition to delete board members individually as parties where petitioner sought damages for interference with a contractual relationship with his tenants. Board members are not proper parties in these proceedings.

Maitland House Management v. Pecado Properties, Arb. Case No. 2010-00-9006 (Slaton/ Final Order of Dismissal/ March 24, 2010)

-Where association filed petition seeking to prevent cat from ranging on the common elements and to remove pet doors installed in unit, but failed to name the cat-owning tenants or provide pre-arbitration notice to them, petition dismissed.

Stern v. Playa Del Mar Association, Arb. Case No. 2009-01-2865 (Campbell/ Final Order of Dismissal/ June 1, 2009)

-Unit owner who was not a candidate for an election and who has not alleged he was prevented from becoming a candidate lacked standing to challenge election. Petitioner has not alleged that he has a distinctive personal involvement in the election and lacks standing.

Summer Cove Condo Association v. Singh and Jagdeosingh, Arb. Case No. 2010-00-3633 (Lang/ Final Order of Dismissal/ February 12, 2010)

-Where pre-arbitration notice was directed to a non-owner who was supposedly married to the actual owner of the unit, petition dismissed as there was no evidence that the owner had been served.

Zoumas v. Brazillian Court Condo Association, Arb Case No. 2009-01-9040 (Earl/ Final Order of Dismissal/ December 18, 2009)

-Unit owner sought access to rental records and other non-rental records. Where condominium contained residential units as well as two commercial units and a hotel unit which maintained a rental program to which the residential owners may submit their units, claim by residential owner that the association had failed to produce rental records stated valid claim only if the association was acting as rental agent which association denied. Regardless, dispute involved the owner of the hotel unit which was an indispensable party and which would render the dispute a unit owner v. unit owner dispute over which the arbitrator lacks jurisdiction. Also, claim that the association had failed to produce non-rental records would not be appropriately severed from the rental records dispute, and the entire petition was dismissed.

**Prevailing party (see separate index on attorney's fees cases)
Sanctions**

Garrett's Run Condo Association v. Rondinone, Arb. Case No. 2009-00-1128 (Earl/ Summary Final Order/ January 19, 2010)

-Where parties had been referred to mediation, and where upon their return to arbitration, the unit owners filed a series of motions discussing settlement negotiations that occurred at mediation, unit owners violated the confidentiality of the mediation

proceeding, warranting the imposition of sanctions. While the arbitrator could have struck all their pleadings and filed judgment against them, in this case the arbitrator merely struck the improper pleadings.

St. George Condo Association v. Malinowski, Arb. Case No. 2008-02-5988 (Lang/ Final Order on Default/ March 23, 2009)

-Where unit owner failed to appear at a duly scheduled mediation conference, the arbitrator may impose sanctions, including entry of a default. Accordingly, a default was entered awarding the association the relief sought.

Woods at Boca Del Mar Condo Association v. Jones, Arb. Case No. 2010-00-8888 (Slaton/ Order Imposing Sanctions for Failure to Attend Mediation/ July 6, 2010)

-Although arbitrator concluded that the association's failure to appear at duly scheduled mediation was not willful, sanctions nonetheless imposed and the association was required to pay the respondent owner the sum of \$350 in attorney's fees incurred in the failed mediation.

Assessments for Common Expenses (See Common Expenses)

Associations, Generally (For association records, See Official Records)

Attorney-Client Privilege

Blass v. Illini Association, Arb. Case No. 2009-04-3047 (Chavis/ Order Denying Motion to Dismiss etc./ June 15, 2010)

-Where board in response to unit owner inquiry in the course of an open board meeting directed the association's attorney to prepare a letter concerning the legality of a budget increase, subsequent written opinion of counsel was not intended to be confidential and was thus not protected by the attorney-client privilege. Clearly there was no presumption that the opinion of the attorney would not be disclosed to the membership. However, since the failure to allow access to the legal opinion was based on legal advice, the denial of access to official records was not willful and would not support a statutory fine.

Board of Administration

Business judgment rule

Feldman v. Harbor Village Community Association, Arb. Case No. 2008-05-2765 (Slaton/ Final Order/ April 29, 2010)

-Business judgment rule did not authorize board to avoid board meetings by passing a resolution authorizing the president to conduct the affairs of the association by presidential fiat.

-Business judgment rule does not apply to unilateral actions of the president but applies to properly conducted actions by the board. Rule did not authorize the actions of the president of the master association in removing a board member from a subassociation.

Lovejoy v. Lands End Condominium Association, Arb. Case No. 2010-02-8726 (Campbell/ Final Order of Dismissal/ June 14, 2010)

-Petition filed by unit owner asking for order directing the board to litigate building code issues with North Palm Beach Village dismissed. It was alleged that the Village in advance of the association repaving its parking lot had increased the required size of parking spaces, resulting in a reduction of available parking spaces. The petition does not show how petitioner will be directly affected, and in any event normal maintenance and repair may properly change the common elements and is entitled to the business judgment rule and deference. Moreover, the decision of the board not to litigate is subject to the business judgment defense. This is particularly true when evaluation of the reasonableness of the action would require construction of an ordinance of a non-party governmental entity.

Nine Island Avenue Condo Association v. Siegel, Arb. Case No. 2008-00-7065 (Chavis/ Summary Final Order/ November 3, 2009)

-Where association was undertaking concrete restoration project of limited common element balconies, the issues of the timing of the entry into the units and notification given to the unit owners are a function of good business judgment, prudence, and civility.

Wheatley v. Regency Towers Condo Association, Arb. Case No. 2009-05-8411 (Whitsitt/ Final Order/ March 1, 2010) (currently on appeal)

-Where plans for reconstruction of destroyed clubhouse featured larger area, would accommodate a larger number of residents, included a larger meeting room and an exercise room and where the roof would change from a flat asphalt roof to a pitched room with gables, new clubhouse would constitute a material alteration to the common elements requiring the approval of at least 75% of the owners. The changes proposed by the board are not limited to those changes necessary to meet current building code requirements. Moreover, the business judgment rule will not insulate the board in its adoption of the new design.

Ratification (See Meetings-Board meetings-Ratification)

Resignation

Term limitations (See Elections/Vacancies-Term limitations)

Vacancies (See Elections/Vacancies)

Board Meetings (See Meetings-Board meetings)

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Common Elements/Common Areas

Generally

Hurricane shutters (See Hurricane Shutters)

Limited common elements

Davis v. Island Place at Bay Harbor Condo Association, Arb. Case No. 2009-04-3054 (Chavis/ Summary Final Order/ February 23,2010)

-Amendment to declaration that shifted the expense of maintaining a limited common element pool to the penthouse owners entitled to exclusive possession of the pool violated section 718.110(4), Florida Statutes. (Editor's Note: It is unclear from the final order whether the arbitrator was requiring a 100% vote or whether the vote was invalid for including 6 proxy votes).

Maintenance and protection

Clooney v. Turkey Creek Villas Condo Association, Arb. Case No. 2009-06-5210 (Whitsitt/ Summary Final Order/ February 5, 2010)

-Arbitrator found that the copper piping leading to the unit owner's air conditioner was a common element and therefore within the maintenance responsibility of the association, and ordered the association to repair the piping and to reimburse the unit owners \$700 in repair bills.

Colavito v. Riverton Manor Condo Association, Arb. Case No. 2008-03-2920 (Campbell/ Final Order/ March 23, 2009).

-Association ordered to effectuate repairs to deteriorated electrical conduit embedded within the concrete of a limited common element balcony where it was not shown that the unit owner had negligently maintained the Chattahoochee surface of balcony slab.

Humphrey v. Carriage Park Condo Association, Arb. Case No. 2008-04-0230 (Campbell/ Final Order/ March 30, 2009)

-Where photographs showed that changes to the common elements undertaken by association did not interfere with the function of the common elements but instead complemented the landscape maintenance and road functions, they were not material alterations that required membership approval. These changes included the placement of coquina boulders along the entry road to the condominium and the installation of hose racks on the buildings.

O'Rhode v. Yachtsman Cover Condo Association, Arb. Case No. 2009-00-3607 (Chavis/ Summary Final Order/ May 19, 2009)

-Petition of unit owner claiming that the association had materially altered the common elements without a vote of the owners failed to state a valid claim where the association demonstrated that the project involved needed maintenance under the Tiffany Plaza line of cases. Specifically, the board had covered carport and pool pavilion ceilings with a vinyl material to protect the interior grade drywall that was showing mold, sagging wood supports, chipping, and damage.

Silver Thatch Atlantic Plaza Condo Association v. Brown, Arb. Case No. 2009-02-6970 (Whitsitt/ Order Granting Motion for Rehearing and Voiding Rule/ April 30, 2010)

-Where upon completion of balcony restoration plaza, board enacted rule prohibiting floor coverings on limited common element balconies, the board pursuant to authority in the declaration had the authority to adopt rules. However, there was no evidence in the record that the board adopted the rule for reasons related to the health, happiness and peace of mind of the unit owners and was not the product of reasoned decision making. The claim that the tiling of balconies would void the warranty on the concrete was unfounded.

-Where, in response to association claim that replacement of tile on limited common element balcony after balcony restoration project voided new concrete warranty, arbitrator demanded a copy of the contract which was provided after 4 demands, arbitrator concluded that the warranty, because it excludes damage caused by normal wear and tear, has little or no value. Arbitrator further concluded that retiling would not void the warranty, but in accordance with expert testimony of an engineer, would protect the balcony. Accordingly, the arbitrator denied the association's request for damages for allegedly voiding the balcony warranty.

Material alteration or addition (See also Fair Housing Act)

Boca Bayou Condo Association v. Carr, Arb. Case No. 2009-00-3711 (Earl/ Final Order/ March 2, 2010)

-Where unit owner built deck almost 5 years prior to the filing of the petition for arbitration seeking its removal, and where he had submitted plans for the deck to the property manager and office personnel, and where the association maintenance man build the deck, there was no evidence that the board approved the deck, and thus any reliance on the supposed approval by office personnel or the manager was unreasonable, and estoppel would not lie. Deck must be removed.

Flagler's Landing Condominium Association v. Ferris, Arb. Case No. 2007-06-7721, (Earl/ Final Order/ July 7, 2009)

-Where unit owner violated the declaration by constructing a balcony project without having obtained the written consent of the board, but where it undisputed that the board at the time of the project conducted business informally and where decisions were made outside of board meetings that were later written into the minutes of the meetings of the board, the association was estopped from requiring removal of the improvement where board members had informally approved project outside of a meeting. Reliance on the board's approval was reasonable given the number of other improvements made without approval in writing by the board.

Garrett's Run Condo Association v. Rondinone, Arb. Case No. 2009-00-1128 (Earl/ Summary Final Order/ January 19, 2010)

-Where unit owners had removed a common element wall situated within their unit, the removal of the wall constituted a material alteration to the common elements, citing Sterling Village. Unit owners ordered to restore the unit to its prior condition.

Humphrey v. Carriage Park Condo Association, Arb. Case No. 2008-04-0230 (Campbell/ Final Order/ March 30, 2009)

-Where photographs showed that changes to the common elements undertaken by association did not interfere with the function of the common elements but instead complemented the landscape maintenance and road functions, they were not material alterations that required membership approval. These changes included the placement of coquina boulders along the entry road to the condominium and the installation of hose racks on the buildings.

Killeen v. S.B. Club Condo Association, Arb. Case No. 2008-06-4403 (Campbell/ Summary Final Order/ March 15, 2009)

-Where at the time petitioner purchased the unit, 66 percent of the unit owners had glass or screen enclosures on their balconies which were limited common elements, and where after petitioner request his balconies, the association directed a letter to all owners announcing that the association would no longer allow future screen enclosures but would grandfather-in existing enclosures, the Association properly refused to permit the request to add the enclosure, citing Chattel Shipping v. Brickell Place, 481 So. 2d 29. (Note, it is unclear in the final order whether the association's rejection of the request occurred before or after the association issued its letter to the residents.)

Lake Howell Arms Condo Association v. Beasley, Arb. Case No. 2008-00-4440 (Earl/ Final Order/ May 11, 2010)

-Where unit owner enclosed their carport which is situated next to an association's carport which had been similarly enclosed, unit owner ordered to remove enclosure. The association has determined not to permit any owners to enclose their carports, and thus there is no disparate treatment among unit owners. Association had also enclosed 4 other carports that it owned and used for storage.

Mutiny on the Bay Condo Association v. Flores, Arb. Case No. 2008-05-9231 (Campbell/ Final Order/ April 16, 2009)

-Unit owner who placed tape and epoxy over metal exterior common element door adjacent to unit to dampen the noise of the door mechanism made an addition or alteration to the common elements without the approval of the board, in violation of the declaration.

O'Rhode v. Yachtsman Cover Condo Association, Arb. Case No. 2009-00-3607 (Chavis/ Summary Final Order/ May 18, 2009)

-Petition of unit owner claiming that the association had materially altered the common elements without a vote of the owners failed to state a valid claim where the association demonstrated that the project involved needed maintenance under the Tiffany Plaza line of cases. Specifically, the board had covered carport and pool pavilion ceilings with a vinyl material to protect the interior grade drywall that was showing mold, sagging wood supports, chipping, and damage.

Quail Run of Sunrise Unit Three Condo Association v. Castellanos, Arb. Case No. 2009-04-6480 (Campbell/ Summary Final Order/ March 23, 2009)

-Where respondent unit owner had altered the rear of their patio by installing a concrete block wall along the outside edge of the patio with rows of windows above the wall extending to the ceiling of the patio without board approval, and where the design was markedly different than other illegal patio enclosures installed by the owners of similarly situated units, enclosure was ordered removed.

-Assuming that the respondent unit owner had installed enclosure on patio in response to drainage problem that the association had refused to address, the unit owner was not entitled to engage in self-help remedy by installing patio enclosure.

San Marino Bay Condo Association v. Hill, Arb. Case No. 2008-04-3673 (Slaton/ Final Order/ February 5, 2010)

-Unit owner violated the declaration by placing wall hangings on the exterior of the building, by removing and replacing the handrails on his balcony, and by installing a solid roof on the pergola outside his unit. Unit owner failed to prove his defenses of estoppel and selective enforcement.

Stanton v. Twin Towers Homeowners Association, Arb. Case No. 2008-06-9417 (Lang/ Final Order of Dismissal/ February 4, 2009)

-Where declaration stated that the board had the right to make such alterations or improvements to the common property which do not prejudice the rights of the owner of any private dwelling unit, the term "alterations" include both material and non-material alterations, and the board was authorized to alter the limited common element or concrete parking structures by replacing them with aluminum structures without a vote of the owners despite that the fact that elsewhere, the declaration prohibited material alterations to the appurtenances to the units.

-Where declaration prohibited changes to the common elements that prejudiced the rights of owners, fact that the garage area was temporarily shut down when the project was being undertaken does not equate with prejudice.

Terry v. Intracoastal Point Condo Association, Arb. Case No. 2008-06-3347 (Campbell/ Final Order on Default/ January 12, 2009)

-By installing multiple security cameras around the exterior of the condominium building, the association altered and improved the common elements without obtaining a 75% vote of the owners as required by the declaration. Association ordered to orchestrate a vote of the unit owners to accept or reject the security system.

Thivierge v. Les Pelicans Condominium Association of Dade County, Arb. Case No. 2009-03-6509 (Lang/ Summary Final Order/ November 24, 2009)

-Amendment to the declaration creating five new limited common element finger boat docks and slips on land owned by the State of Florida and leased to the association was invalid as it was not passed by 100% of the membership. The amendment infringed on the right appurtenant to the units to enjoy riparian rights in the waters over the submerged lands in violation of section 718.110(4), F.S. These rights include ingress, egress, boating, bathing and fishing. Section 718.111(7), F.S., permitting the association to acquire property, does not exempt the association from section 718.110(4), F.S. where the acquisition materially alters the appurtenances to the units.

Three Seasons Association No. 2 v. Bank of New York, Arb. Case No. 2009-03-4825 (Whitsitt/ Summary Final Order/ February 25, 2010)

-Bank after foreclosure was not responsible for curing illegal unapproved changes made by the prior owner such as converting a one/half bathroom into a full bath, converting a kitchen into a bedroom, expanding the kitchen by taking part of the living room, and making a space for a washer and dryer. There had been no showing that such alterations were structural in nature as prohibited by the declaration. Additionally, it is likely that any violations are insulated from prosecution by the statute of limitations. (Editor's note: There is no indication that a final hearing was held in this matter to allow the presentment of expert witness testimony.)

Wheatley v. Regency Towers Condo Association, Arb. Case No. 2009-05-8411 (Whitsitt/ Final Order/ March 1, 2010) (currently on appeal)

-Where declaration permitted the board to reconstruct non-dwelling unit common elements substantially damaged by Hurricane Ivan without a vote of the unit owners in accordance with specifications approved only by the board, association's motions for summary judgment denied.

-Where Santa Rosa Island Authority determined that clubhouse was substantially destroyed, the decision of the board that the clubhouse must be relocated above the flood plain was upheld.

-Where plans for reconstruction of destroyed clubhouse featured larger area, would accommodate a larger number of residents, included a larger meeting room and an exercise room and where the roof would change from a flat asphalt roof to a pitched room with gables, new clubhouse would constitute a material alteration to the common elements requiring the approval of at least 75% of the owners. The changes proposed by the board are not limited to those changes necessary to meet current building code requirements. Moreover, the business judgment rule will not insulate the board in its adoption of the new design.

Right to use

Bennett v. Aquarius Condo Association, Arb. Case No. 2009-05-2306 (Chavis/ Final Order/ July 9, 2010)

-Unit owner who was a CPA did not have the right under the statute or the documents to make frequent use of common element conference room for business purpose to meet with clients, despite fact that another unit owner taught Yoga classes in the conference room for \$40 per class and despite fact that owners at times sold their household goods and antiques in the conference room.

Common Expenses

Constitution

Corporation

Equal protection

Free speech

Generally

State action

Covenants (See Declaration-Covenants/restrictions)

Declaration

Alteration to appurtenances to unit (See Unit-Appurtenances)

Amendments

Davis v. Island Place at Bay Harbor Condo Association, Arb. Case No. 2009-04-3054 (Chavis/ Summary Final Order/ February 23, 2010)

-Amendment to declaration that shifted the expense of maintaining a limited common element pool to the penthouse owners entitled to exclusive possession of the pool violated section 718.110(4), Florida Statutes. (Editor's Note: It is unclear from the final order whether the arbitrator was requiring a 100% vote or whether the vote was invalid for including 6 proxy votes).

Luckhardt v. Shore Condominium, Arb. Case No. 2010-00-5216 (Campbell/ Summary Final Order/ April 9, 2010)

-Unit owner argument that association failed to properly pass a 2003 amendment to the declaration restricting leasing was rejected. It is too late now for an owner to challenge the amendment which is subject to a 5 year statute of limitations.

Smith v. Sandpebble Beach Club Condo Association, Arb. Case No. 2009-01-4206 (Lang/ Summary Final Order/ April 26, 2009)

-Amendatory provision of declaration that required "the affirmative vote of voting members casting not less than two-thirds of the total votes of the members of the Association" required the affirmative vote of not than 2/3 of the total voting interests to pass an amendment to the declaration. Amendment passed with fewer votes was invalid. Association ordered to conduct another vote on the intended amendment.

Thivierge v. Les Pelicans Condominium Association of Dade County, Arb. Case No. 2009-03-6509 (Lang/ Summary Final Order/ November 24, 2009)

-Amendment to the declaration creating five new limited common element finger boat docks and slips on land owned by the State of Florida and leased to the association was invalid as it was not passed by 100% of the membership. The amendment infringed on the right appurtenant to the units to enjoy riparian rights in the waters over the submerged lands in violation of section 718.110(4), F.S. These rights include ingress, egress, boating, bathing and fishing. Section 718.111(7), F.S., permitting the association to acquire property, does not exempt the association from section 718.110(4), F.S. where the acquisition materially alters the appurtenances to the units.

Covenants/restrictions

Greentree Villas Condo Association v. Bauman, Arb. Case No. 2007-06-2772 (Chavis/ Final Order/ March 4, 2009)

-Where association proved that no one 55 years or older was staying in the unit which was not vacant, association was entitled to enforce its 55 and over age restriction. Unit

owner ordered to comply with the age restriction within 60 days of the final order, but arbitrator did not order the removal of the under-aged occupant for lack of jurisdiction.

Lake Clarke Gardens Condominium v. Arencibia, Arb. Case No. 2009-03-8944 (Earl/ Final Order on Default/ October 5, 2009)

-Where the declaration prohibited occupants convicted of a felony after January 1, 1985, from living in the condominium, one of three co-owners was ordered to vacate the condominium property due to his 2002 conviction for the sale of cocaine. The remaining owners were ordered to comply with the documents and to not permit the third owner to occupy the unit.

Exemptions
Generally
Interpretation
Validity

Default

Generally

Smith v. Waterbridge 2 Association, Arb. Case No. 2009-03-4877 (Slaton/ Final Order on Default/ April 27, 2010)

-Where board member sought to challenge decision by his fellow board members to certify his recall in a reverse recall proceeding, and where association failed to respond to the order requiring answer served by the arbitrator such that a default was entered, excusable neglect for purposes of setting aside the default was not shown where the vice president and registered agent was observed by the process server and various other witnesses flinging the served envelope off his third story balcony. Board member was awarded his seat by the arbitrator.

Sanctions (See Arbitration-Sanctions)

Developer

Disclosure

Exemptions (See also Declaration-Exemptions)

Filing

Generally

Transfer of control (See also Elections/Vacancies)

Allen v. Harbourtowne at Country Woods Condo Association, Arb. Case No. 2008-02-8189 (Grubbs/ Summary Final Order/ February 23, 2009)

-Subsequent developer who did not conduct a bona fide sales program was not entitled to vote for a majority of the board. The only evidence of sales program was a letter from the Division accepting his disclosure documents as a filing developer and a listing agreement for a single unit. The developer had not sold any units and did not have any contracts pending. There was also some indication that the offering prices of the units was inflated and was not market price.

Lewis v. The Grande Bellagio at Baywatch Condo Association, Arb. Case No. 2008-00-9637 (Grubbs/ Summary Final Order/ February 9, 2009)

-Where the developer was entitled to elect or appoint one member out of a three member board, the Association correctly excluded an individual from running for the board as a unit owner representative where that individual at the time he declared his notice of intent to run was the designated developer representative on the board, even if he was not a family member, relative, or shareholder or officer or employee in the developer corporation. Allowing him to run for a unit owner position may allow the developer to regain control of the association contrary to the statute.

Disability, Person with (See Fair Housing Act)

Discovery

Attorney-client privilege (See Attorney-Client Privilege)

Generally

High Point of Ft. Pierce Condo Association v. Lamantia, Arb. Case No. 2010-6662 (Whitsitt/ Order on Motion for Discovery/ April 22, 2010)

-In case where association alleged that the respondents were conducting a nursing business out of their unit, arbitrator permitted the association to serve a request for production on the respondents showing bank deposits during a stated time interval.

June Beach Condo Association v. Abood, Arb. Case No. 2007-02-9469 (Lang/ Order on Request for Discovery/ January 5, 2010)

-Arbitrator permitted association to conduct additional discovery by propounding one interrogatory and an accompanying request for production.

Lake Howell Arms Condo Association v. Beasley, Arb. Case No. 2008-00-4440 (Earl/ Order Granting Joint Motion to Conduct Discovery/ February 1, 2010)

-Parties upon joint motion permitted to take depositions.

One Miami West Condo Association v. Wilkerson, Arb. Case No. 2010-01-6187 (Campbell/ Order Denying Motion to Conduct Discovery/ July 15, 2010)

-Request for discovery from respondent unit owner denied where the case had been referred to mediation and where the unit owner had a broad right of access to the official records outside the context of arbitration that he could take advantage of.

Tolbert Bayside Development Company v. Heron at Destin West Beach and Resort Condo Association, Arb Case No. 2009-05-6484 (Campbell/ Order on Motion to Allow Discovery/ February 18, 2010)

-Where association sought to take discovery to determine whether the petitioner developer has a number of units for sale in the ordinary course of business entitling petitioner to appoint a member of the board, association was permitted to propound 20 interrogatories to the petitioner.

Dispute

Considered dispute

Bluffs Condo Association v. Hill, Arb. Case No. 2009-00-0197 (Lang/ Order Requiring Amended Petition/ January 19, 2010)

-Petitioner alleging that the owner had failed to maintain the sliding glass door in his unit was subject to Division arbitration.

Class of Unit Owners v. Stratford Arms Condo Association, Arb. Case No. 2010-03-1865 (Slaton/ Order Requiring Amended Petition/ July 1, 2010)

-Dispute regarding the authority of the association to require the unit owners to install high impact glass and the vote needed for such action is within the jurisdiction of the arbitrator but any budgetary dispute related thereto is not within the jurisdiction of the arbitrator.

Clooney v. Turkey Creek Villas Condo Association, Arb. Case No. 2009-06-5210 (Whitsitt/ Summary Final Order/ February 5, 2010)

-Arbitrator had jurisdiction over dispute brought by unit owner alleging that the association had failed to maintain or replace the copper piping carrying Freon to his air conditioner. Disputes involving the failure of an association to maintain the common elements fall within the jurisdiction of the Division where the owner can demonstrate that such failure has caused a disparate impact on the petitioner's unit.

-Arbitrator had jurisdiction over dispute brought by unit owner alleging that the failure of the association to properly maintain the copper piping carrying Freon to their air conditioner where the unit owner sought to recover \$700 in damages incurred where unit owner was forced to repair the copper piping. The claim for damages is not the primary claim of the petitioners and the primary and secondary claims were so interwoven so as to compel that the arbitrator adjudicate both claims.

Domaine Delray Condo Association v. Koylan, Arb. Case No. 2009-05-4433 (Anderson/ Final Order on Default/ January 12, 2010)

-Arbitrator had authority to enter final order requiring that unit owner and unit owner's child comply with documents and the respondents were ordered to stop littering on the common elements, screaming in the unit, yelling at board members, allowing transients to stay in the unit, appearing nude in the common elements, digging up sod on the common elements, using the pool to wash pots and pans, leaving the association water on, maintaining unsanitary conditions in the unit, covering the windows with prohibited materials, and creating disturbances that required the police and fire department to enter the condominium.

Generally

Claridge Condo Association v. Donelan, Arb. Case No. 2004-02-6247 (Slaton/ Order Denying Relief from Judgment/ January 15, 2010)

-Where a final order was entered requiring removal of illegal dogs was entered in 2005, motion for relief from judgment filed on January 15, 2010, based on newly discovered evidence, was denied as filed beyond the time permitted for rehearing.

Jurisdiction

Moot

Amberwood Lake Condo Association v. White, Arb. Case No. 2009-02-4254 (Whitsitt/ Final Order of Dismissal/ June 24, 2009)

-Where amended petition only alleged two nuisance incidents, there was no showing of an ongoing dispute and the petition was dismissed.

Horizons at Stonebridge Place Condo Association v. Tortorica, Arb. Case No. 2010-00-3387 (Whitsitt/ Final Order of Dismissal/ March 26, 2010)

-Where owners filed answer stating that the dog sought to be removed by the association had been gone for 6 years except for occasional visits, which were not found to be a violation of the documents, case dismissed for mootness.

Schutt v. Carlton Dunes Condominium Association, Arb. Case No. 2009-05-4456 (Slaton/ Final Order of Dismissal/ October 23, 2009)

-Where owner alleged a dispute with the association regarding whether doors and windows were the maintenance responsibility of the association and alleged that the association intended to enter into a contract for replacement of the windows and doors, as there was no allegation that the association had entered into a contract for such installation, the described dispute was a hypothetical question not ripe for adjudication. Additionally, since the petitioner alleged generally that entering into a contract would subject the owner to unnecessary assessments, the gravamen of the dispute concerned assessments over which the arbitrator lacked jurisdiction.

Not considered dispute

Anderson v. Lake in the Wood Condo Association, Arb. Case No. 2009-06-2690 (Chavis/ Final Order Dismissing Petition/ December 10, 2009)

-Petition of unit owner seeking damages and alleging that the association, in order to repair the building, had removed her roll-up hurricane shutters and destroyed them, was dismissed for lack of jurisdiction. Additionally, request for reimbursement of hot water heater purchased by unit owner dismissed where owner alleged that the association had reimbursed other owners for their water heaters after hurricane damage.

Arvelo v. Treasure Island Cove Condo Association, Arb. Case No. 2009-04-2872 (Whitsitt/ Final Order of Dismissal/ August 25, 2009)

-Petition filed by unit owner was dismissed where the owner requested an order requiring the association to remove a flower pot from the common elements, clean up bird droppings from the common elements, cut a hedge around the swimming pool, removed oversized dogs living with owners, and requiring proof of insurance from the owners. Maintenance of the common elements, unaccompanied by allegations of how the petitioner was particularly affected, is not a proper subject for arbitration. Likewise, the failure to enforce the documents is not a proper occasion for arbitration.

Bahia Vista Club v Morlock, Arb. Case No. 2009-05-2415 (Lang/ Final Order of Dismissal/ October 9, 2009)

-Where petition filed by association alleged that respondent was permitting her father to occupy the coop parcel in violation of the cooperative documents, and where association requested an order removing the father, petition dismissed for lack of

jurisdiction. Arbitration statute provides that disputes regarding the removal of a tenant are not eligible for arbitration, and tenant includes friends, family members and other occupants.

Banning v. Belmont Townhouse Condo Association, Arb. Case No. 2010-02-2239 (Slaton/ Final Order of Dismissal/ May 11, 2010)

-Dispute filed by unit owner alleging that association had permitted another unit owner to effect a wooden fence on top of his patio wall did not present a dispute within the jurisdiction of the arbitrator but instead constituted a dispute between owners.

Belago v. Legends Golf and Country Club Master Association, Arb. Case No. 2010-00-2612 (Whitsitt/ Final Order of Dismissal/ January 27, 2010)

-Ch. 718 requires that each condo association be registered with the Division and since this master association is not so registered, and since the association is not a condominium, there is no jurisdiction over the dispute.

Bisch v. Oceania II Condo Association, Arb. Case No. 2008-05-2717 (Lang/ Final Order of Dismissal/ May 29, 2009)

-Petition of unit owner presented title dispute and was accordingly dismissed for lack of jurisdiction where owner alleged that the association had refused to allow petitioner use of a parking space identified by petitioner as an appurtenance to his unit, citing Florida Tower Condo v. Mindes, 770 So. 2d 210 (Fla. 3rd DCA 2000).

Bluffs Condo Association v. Hill, Arb. Case No. 2009-00-0197 (Lang/ Order Requiring Amended Petition/ January 19, 2010)

-Allegation of petition that tenant was selling illegal drugs out of the unit is a criminal matter and not within the jurisdiction of the arbitrator. An amended petition may be filed alleging a nuisance so long as specific dates of the nuisance activities are included.

-Petition alleging that the number of tenants exceeds the limits provided by the documents and asking removal of the excess tenant not within the jurisdiction of the arbitrator.

Brett v. The Hollows of Deer Creek, Arb. Case No. 2009-02-9797 (Campbell/ Final Order of Dismissal/ June 8, 2009)

-Petition filed by unit owner seeking an order requiring the association to terminate work on a contract to resurface the common element driveways and roadways was dismissed for lack of jurisdiction. Allegations of complaint do not fall within the concept of material alteration to the common elements but are limited to a challenge to the due diligence and judgment of the board in undertaking ordinary maintenance.

Brickell Key One Condo Association v. Mavic Corporation, Arb. Case No. 2010-04-1646 (Whitsitt/ Order of Dismissal for Lack of Jurisdiction/ August 26, 2010)

-Although Division has jurisdiction to determine recalls in a mixed use condominium, arbitrator lacked jurisdiction to arbitrate dispute in a mixed use condominium pursuant to s.718.1255, F.S. where association sought order requiring respondent to install tile on its balcony.

Cypress Chase Condo Association v. Mann, Arb. Case No. 2009-04-2862 (Earl/ Final Order of Dismissal/ December 23, 2009)

-Where association sought to recover repair costs to the common elements necessitated by electrical fire caused by respondent's tenant, issue was not eligible for arbitration.

Davila v. Latin Quarter Residential Condo Association, Arb. Case No. 2010-01-0195 (Lang/ Final Order Dismissing Petition/ March 17, 2010)

-Where unit owner filed petition alleging that the association is allowing excess noise to emanate from the unit above petitioner's unit, the petition was dismissed as conflicts between unit owners are not eligible for arbitration.

Deflipps v. Burroughs and Sandlewood Condo Association, Arb. Case No. 2010-02-5116 (Campbell/ Order of Dismissal for Lack of Jurisdiction/ May 21, 2010)

-Petition filed by group of pro se unit owners alleging that president was ineligible to serve on the board because he was not a unit owner, that the association modified the common elements, that the association failed to provide access to official records, had failed to respond to inquiries, had restricted access to the common elements by locking the community center and tennis courts, and that the association improperly fined and assessed members was dismissed for lack of jurisdiction even though most of these issues came within the express jurisdiction of the Division. The Division can only hear an election dispute if the petition for arbitration alleges that curing a particular violation would allow a specified person to come onto the board; here the name of a failed candidate was not stated. Moreover, the arbitrator cannot hear a dispute between a unit owner and an individual member of the board and cannot require the named Mr. Burroughs to do anything. Also, there was considerable doubt whether the pre-arbitration notice had been actually delivered. Petition dismissed for lack of jurisdiction "without prejudice to petitioning for arbitration as to eligible issues if properly presented at a later time."

Domaine Delray Condo Association v. Koylan, Arb. Case No. 2009-05-4433 (Anderson/ Final Order on Default/ January 12, 2010)

-Arbitrator lacked authority to remove adult child of unit owner.

Esch v. Wing South, Inc., Arb. Case No. 2009-05-6400 (Lang/ Final Order of Dismissal/ May 7, 2010)

-Where petitioner unit owner alleged that the association had failed to notice board meetings, had failed to designate a location for posting notices, had failed to allow inspection of official records, had not obtained competitive bids for work on the common element runway, had approved work on the runway not in compliance with FAA standards, arbitrator dismissed action as issues within the Division's jurisdiction were intertwined with the non-jurisdictional issues.

Esplanade Club v. Bensmiller, Arb. Case No. 2010-02-5089 (Slaton/ Final Order of Dismissal/ May 28, 2010)

-Issues of whether the association had the authority to replace existing unit windows with hurricane windows and to charge the cost as a common expense, and whether those owners that had already installed impact glass are entitled to a credit against the assessment, involved assessments and are therefore excluded from jurisdiction. The Division may properly hear disputes involving the authority of the board to alter the common elements, but here the non-jurisdictional issues are entwined with the jurisdictional issues and the case must be dismissed.

Fountains of Jacaranda Condo Association v. Foley, Arb. Case No. 2009-00-5468 (Slaton/ Final Order Dismissing Petition/ February 10, 2009)

-Petition of association that alleged that an owner had acquired more than one unit in the condominium in violation of the declaration clearly implicated title issues beyond the authority of the arbitrator.

Francesca's LLC v. Ocean Reef Marina Condo Association and Ronald Joseph, Arb. Case No. 2009-04-1196 (Chavis/ Final Order Dismissing Petition/ August 17, 2009)

-Petition seeking an order requiring an adjacent dock owner to remove pilings installed within petitioner's dock area was rejected as involving a unit owner v. unit owner dispute or the failure of the association to enforce the condominium documents.

Gamsey v. President Condominium Association, Arb. Case No. 2009-05-6418 (Slaton/ Final Order of Dismissal/ December 8, 2009)

-Petition dismissed as involving title dispute where unit owner alleged that condominium developer had granted him the right to use a particular parking space, and where the association after turnover had subsequently refused to recognize his right to use the space. The arbitrator lacks jurisdiction to award use of the space as it involved either a title dispute or an easement dispute.

Grande v. Carriage Homes at Dunwood Commons, Arb. Case No. 2009-00-3610 (Chavis/ Final Order Dismissing Petition/ February 4, 2009).

-Petition brought by unit owner complaining that unit owner above installed tile flooring without sound proofing was rejected because the dispute was between two unit owners.

Harbor Place Vistas Condo Association v. Harbor Place at Peppertree Condo Association, Arb. Case No. 2009-04-2893 (Campbell/ Final Order of Dismissal/ August 20, 2009)

-Where contractual agreement between two condo associations required Vistas association to pay certain of the operating expenses of a recreational area owned and operated by the Peppertree association, and where Vistas requested access to the financial records of Peppertree regarding the operation of the recreation area, petition dismissed for lack of jurisdiction as Vistas was not a unit owner or member of the Peppertree association, and the dispute between the parties was in the nature of a contractual dispute not covered by s. 718.1255, F.S.

Harbour House Condo v. Cummings, Arb. Case No. 2009-02-2083 (Lang/ Final Order of Dismissal/ May 20, 2009)

-Where petition alleged that unit owner had built a boat lift on the finger of the association's boat dock without association approval, but where it was not clear that the boat slips were located on the common elements of the condominium, a title dispute existed and the petition was dismissed. The fact that the City of Marathon had previously issue a code violation for the area and described it as association property is not dispositive of the status of the property.

High Point of Ft. Pierce Condo Association v. Wighard, Arb. Case No. 2010-04-2500 (Slaton/ Final Order of Dismissal/ August 27, 2010)

-Where son of deceased unit owner took up residence upon the death of his parent, petition seeking an order requiring the son to complete new resident information form and to provide proof of record ownership dismissed for lack of jurisdiction, as it necessarily requires the arbitrator to determine issue of title.

Holbrook v. Hillsboro Island House Condo Association, Arb. Case No. 2009-05-7427 (Campbell/ Final Order of Dismissal/ November 10, 2009)

-Arbitrator lacked jurisdiction to hear the dispute filed by the unit owner alleging that the association had wrongfully failed to pay an outstanding invoice for electrical services needed to make electrical service available to the unit owner's yacht moored at a common element dock pursuant to a lease entered into between the parties. Whether the dispute is viewed as arising from the terms of a lease or from the levy of an assessment, the matter is not subject to Division arbitration.

Hoover v. Cold Condo Association, Arb. Case No. 2009-00-3637 (Lang/ Final Order Dismissing Petition/ February 4, 2009)

-Arbitrator lacked authority to redistribute or re-allocate special assessments on an equitable basis. Arbitrator also lacked authority to certify a class action in arbitration.

King David of Sunny Isles v. Morinsky, Arb. Case No. 2009-05-3026 (Lang/ Final Order of Dismissal/ December 11, 2009)

-The association's claim for \$2000 in damages where the association hired security for 4 promised move-out dates of the owners at which they failed to move out, dismissed for lack of jurisdiction. Similarly, the association's claim for cleanup costs to the common elements necessitated by the owner's former tenants dismissed for lack of jurisdiction.

Kline v. Bayshore Towers of Ft. Lauderdale, Arb. Case No. 2009-05-9848 (Slaton/ Final Order of Dismissal/ November 24, 2009)

-Petition of unit owner dismissed for lack of jurisdiction where owner sought damages based on the association negligently failing to turn off water faucet in petitioner's unit, causing flooding and damages.

Kludo v. Whitehall Condo Association, Arb. Case No. 2009-05-6400 (Lang/ Final Order of Dismissal/ November 3, 2009)

-Where petition for arbitration alleged that the association had improperly taken owner vote to require the installation of hurricane glass, alleged that the association was using

unlicensed contractor and had improperly assessing for the installation, and had rejected petitioners' request to install their own hurricane protection, petition dismissed where petitioners had simultaneously filed an emergency motion for injunction in court. While some of the issues fell within the jurisdiction of the arbitrator, those issues were so intertwined with non-jurisdictional issues that the petition was dismissed.

Lago Del Rey North Condo Association v. Gotta, Arb. Case No. 2009-02-3016 (Slayton/ Final Order Dismissing Petition/ May 1, 2009)

-Where association filed for arbitration alleging that the respondent unit owners had made threats of physical violence and sexual assault, purposefully damaged the common elements, committed theft and damage to personal property and disobeyed association rules and regulations designed for the protection of the residents, petition dismissed for lack of authority to provide effective relief to the association.

Lake Virginia Condo Association v. Profaca, Arb. Case No. 2010-01-3577 (Campbell/ Final Order Determining Jurisdiction, Arb. Case No. 2010-01-3577)

-Petition filed by association seeking to recover damages caused to units below respondent unit owner whose refrigerator leaked causing damage dismissed for lack of jurisdiction. The arbitrator can only award damages in a case where jurisdiction exists. The association's right to require payment from a unit owner does not arise from its authority to require an owner to take action regarding his unit. Authority previously exercised through action is not a basis for jurisdiction over the subsequent claim for damages.

Lauderdale Oaks Condominium I v. Ulett, Arb. Case No. 2010-02-6165 (Chavis/Order on Request for Expedited Determination of Jurisdiction/ May 27, 2010)

-Petition filed by association against former board member claiming that he breached his fiduciary duty by not returning association keys dismissed for lack of jurisdiction.

Leloudis v. Cypress Creek Village Unit II, Arb Case No. 2009-05-9626 (Anderson/ Final Order of Dismissal/ January 15, 2010)

-Where unit owner sued association claiming that the association had permitted mold to grow in his unit and had failed to repair the building, and requested damages plus an order requiring the association to repair the building, the arbitrator found that the primary relief sought was an award of damages and that the two requests for relief were inextricably intertwined and could not be severed. Petition dismissed for lack of jurisdiction.

Levine v. Brazillian Court Condo Association, Arb. Case No. 2009-00-1101 (Earl/ Summary Final Order/ August 20, 2009)

-Where residential owners in a hotel condominium requested the arbitrator to declare that certain shared facilities not made common elements of the condominium but required to maintained in large part by the residential owners were common elements of the condominium, arbitrator declined to assert authority over the dispute. As the shared components were not made common elements, records regarding the maintenance of such facilities were not official records open to the unit owners.

Levisan Holding, Inc. v. Stratford Arms Condo Association, Arb. Case No. 2010-6828 (Lang/ Final Order of Dismissal for Lack of Jurisdiction/ June 16, 2010)

-Where the arbitrator had jurisdiction over whether the association could require unit owners to have high impact resistant windows where the owners already had hurricane shutters and vote needed for such action, but lacked jurisdiction over other issue involving whether the budget provided for adequate reserves, the issues are fatally intertwined and the petition must be dismissed.

Love v. Waterfront Condo Association, Arb. Case No. 2010-01-0533 (Chavis/ Final Order Dismissing Petition/ March 12, 2010)

-Where association in 1992 provided a certificate to the petitioner owners allowing them exclusive use of a limited common element parking space, and where the association rescinded its earlier certificate in 2009, petition dismissed for lack of jurisdiction. Parking disputes are related to title and do not fall within jurisdiction of the Division.

Loveall v. Towers Grande Condo Association, Arb. Case No. 2009-06-3774 (Chavis/ Order Requiring Amended Petition/ January 5, 2010)

-Petition seeking money damages against the board and the association for interfering with unit owner's contractual relationship with his tenants by violating the documents governing tenants, by violating the rules of civil procedure and the constitution does not state a dispute subject to the jurisdiction of the arbitrator. Additionally, where petition alleged that the association improperly considered an amendment to the declaration regarding tenants was mailed to the unit owners 6 minutes short of the required 48 hours notice, such issue was moot because the amendment was not passed. Petitioner allowed to amend his petition.

Lovejoy v. Lands End Condominium Association, Arb. Case No. 2010-02-8726 (Campbell/ Final Order of Dismissal/ June 14, 2010)

-Petition filed by unit owner asking for order directing the board to litigate building code issues with North Palm Beach Village dismissed. It was alleged that the Village in advance of the association repaving its parking lot had increased the required size of parking spaces, resulting in a reduction of available parking spaces. The petition does not show how petitioner will be directly affected, and in any event normal maintenance and repair may properly change the common elements and is entitled to the business judgment rule and deference. Moreover, the decision of the board not to litigate is subject to the business judgment defense. This is particularly true when evaluation of the reasonableness of the action would require construction of an ordinance of a non-party governmental entity.

Majestic View Condo Association v. Fata, Arb. Case No. 2009-00-9872 (Lang/ Final Order of Dismissal/ March 16, 2009)

-Petition filed by association dismissed for lack of jurisdiction where the association alleged that unauthorized tenants were occupying unit and were creating a nuisance, where the association requested removal of the unauthorized tenants and cessation of nuisance activities.

McFarlane v. Majorca Isles III Condo Association, Arb. Case No. 2010-03-7380 (Jones/ Order Requiring Amended Petition/ August 4, 2010)

-Arbitrator lacked jurisdiction over request that the association immediately cease and cancel use of the debit/credit and transactions linked to the association's bank accounts.

Miner v. Westwood Homeowners Association, Arb. Case No. 2009-05-1564 (Campbell/ Final Order of Dismissal/ October 5, 2009)

-Dispute filed by coop unit owner regarding the dimensions and property lines of his parcel constituted a title dispute not subject to arbitration.

Mongelli v. Ragoonan; Jasmine Lakes I Condo Association, Arb. Case No. 2009-02-2778 (Earl/ Final Order of Dismissal/ May 29, 2009)

-Petition filed by downstairs unit owners against upstairs owner and association alleging that the respondent owners had failed to maintain their AC unit resulting in water damage to the petitioner's unit dismissed for lack of jurisdiction. Dispute was a dispute between owner and involved the failure of the association to enforce the documents.

Morris v. Ocean Towers of Vero Beach, Arb. Case No. 2010-03-1907 (Earl/ Order on Request for Expedited Determination of Jurisdiction/ July 13, 2010)

-Petition which named as respondent the board of directors instead of the association does not provide a dispute within the jurisdiction of the arbitrator. In addition, where unit owner sought to challenge the association's action in permitting a unit owner to extend his patio, such dispute was a dispute between owners and was not subject to the Division's jurisdiction.

Nine Island Avenue Condo Association v. Siegel, Arb. Case No. 2008-00-7065 (Chavis/ Summary Final Order/ November 3, 2009)

-Unit owner could not deny the association access to balcony for purposes of concrete restoration on the basis that such operation would damage the tile installed on the balcony by the unit owner. Arbitrator lacked the authority to determine or award incidental damages to the tile.

Noeth v. The Lands of the President Condominium Association, Arb. Case No. 2010-02-6719 (Lang/ Final Order of Dismissal for Lack of Jurisdiction/ June 7, 2010)

- Where case was dismissed by judge and transferred to arbitration, arbitrator dismissed the case for lack of jurisdiction. Complaint alleged that the association mis-spent insurance proceeds and did not repair petitioners' windows and that the association had failed to rebuild and repair the common elements after a hurricane, in violation of the board's fiduciary duty. While the failure of the board to rebuild the common elements may be within the jurisdiction of the arbitrator, petitioners have not described how their use of the common elements is affected by the failure. Such failure requires dismissal. In any event, any jurisdictional issues are fatally intertwined with non-jurisdictional issues so that judicial economy requires a dismissal.

Palm-Aire at Coral Key Apartments Condominium v. Jallie Realty Company, Arb. Case No. 2008-05-9724 (Grubbs/ Summary Final Order of Dismissal for Lack of Jurisdiction/ January 21, 2009)

-Petition dismissed as involving a title dispute where it was alleged that respondent owners had sold their unit to a realty company in violation of the declaration. Association had requested that the former owners provide evidence to the association that title to the unit had been transferred back to the original owners or some other natural person. (Note: Evidently the declaration prohibited ownership of a unit by other than a natural person.)

Royale Green Condo Association v. Barbosa, Arb. Case No. 2010-02-8248 (Jones/ Order of Dismissal/ June 16, 2010)

-Petition seeking removal of tenants in excess of residency restrictions not within jurisdiction of arbitrator. Other count involving belligerent behavior of one of two named owners must be made the subject of an amended petition. Moreover, it was not clear that the owner was given adequate notice in the pre-arbitration demand letter.

Runway Bay Condo Association v. Armstrong, Arb. Case No. 2009-06-1383 (Whitsitt/ Final Order of Dismissal/ December 7, 2009)

-Where association filed petition for arbitration seeking damages for a repair to the plumbing inside respondent's unit, the dispute was dismissed for lack of jurisdiction.

Schutt v. Carlton Dunes Condominium Association, Arb. Case No. 2009-05-4456 (Slaton/ Final Order of Dismissal/ October 23, 2009)

-Where owner alleged a dispute with the association regarding whether doors and windows were the maintenance responsibility of the association and alleged that the association intended to enter into a contract for replacement of the windows and doors, as there was no allegation that the association had entered into a contract for such installation, the described dispute was a hypothetical question not ripe for adjudication. Additionally, since the petitioner alleged generally that entering into a contract would subject the owner to unnecessary assessments, the gravamen of the dispute concerned assessments over which the arbitrator lacked jurisdiction. In either event, whether there was a contract or not, the arbitrator lacked jurisdiction over the dispute.

Sterling v. Atlantis Sherbrooke Villas Condo Association, Arb. Case No. 2010-5056 (Slaton/ Final Order of Dismissal/ May 26, 2010)

-Plea by unit owners that assessment for window replacement be invalidated was rejected for lack of jurisdiction. Division would usually seize jurisdiction over petition alleging that adequate notice was not given of the special assessment and that the meeting at which the assessment was passed was improperly conducted, but since these issues are "inexplicably intertwined" with the non-jurisdictional issue, the Division must resist the urge to take jurisdiction over the dispute.

VLD 1 Trust v. Regatta Beach Club Condominium Association, Arb. Case No. 2010-02-8300 (Campbell/ Order of Dismissal for Lack of Jurisdiction/ June 15, 2010)

-Where unit owners alleged that they were denied participation in board meetings, that the owners who were engaging in short term rentals were being discriminated against, that they were subject to insulting remarks by the board, and that the swimming pool was not in compliance with applicable health codes, jurisdiction is narrowly defined by the statute and rules and the failure to maintain the common elements is not subject to arbitration. Also, "there are apparently pending claims in administrative agencies as to some of the same issues." Also, it is not clear that the pre-arbitration demand notice was adequate. Petition dismissed.

Weinfeld v. Esplanade Club, Arb. Case No. 2010-02-2919 (Whitsitt/ Final Order of Dismissal/ May 25, 2010)

-Dispute seeking to set aside an assessment for the installation of hurricane glass even as to owners who had previously installed shutters was dismissed for lack of jurisdiction.

Whisperwood Residents Association v. Patterson and Whisperwood Residents Association, Arb. Case No. 2009-02-5017 (Earl/ Final Order of Dismissal/ May 27, 2009)

-Petition for recall arbitration filed by a homeowners association formed pursuant to s. 723.075, F.S. did not fall within the jurisdiction of the arbitrator.

Young v. Bonita Beach Club Association, Arb. Case No. 2010-04-0339 (Jones/ Final Order Dismissing Petition/ August 17, 2010)

-Petition alleging that the association had confiscated Petitioner's uncovered parking space and storage locker dismissed based on Florida Tower Condo 770 So. 2d 210.

Zoumas v. Brazillian Court Condo Association, Arb Case No. 2009-01-9040 (Earl/ Final Order of Dismissal/ December 18, 2009)

-Unit owner sought access to rental records and other non-rental records. Where condominium contained residential units as well as two commercial units and a hotel unit which maintained a rental program to which the residential owners may submit their units, claim by residential owner that the association had failed to produce rental records only stated valid claim if the association was acting as rental agent which association denied. Regardless, dispute involved the owner of the hotel unit which was an indispensable party and which would render the dispute a unit owner v. unit owner dispute over which the arbitrator lacks jurisdiction. Also, claim that the association had failed to produce non-rental records would not be appropriately severed from the rental records dispute, and the entire petition dismissed.

Not ripe/bona fide dispute / live controversy

Fratus v. Riverside Club, Inc., Arb. Case No. 2010-00-8969 (Chavis/ Final Order of Dismissal/ March 2, 2010)

-Petition alleging that association was wrongfully planning to amend the declaration to allow for the renting of units was dismissed. Petitioner alleged that the association might do something wrong in the future, not that it actually done anything wrong. Arbitrator cannot issue an advisory opinion.

Neil et al. v. Regench Heights Coop., Arb Case No. 2009-01-1937 (Slaton/ Final Order Dismissing Petition/ March 17,2009).

-Petition filed by unit owners alleging that the association had improperly refused to permit petitioners to be listed as candidates on the ballot for upcoming election and seeking to cancel the election was dismissed because the election had not yet occurred, and whether the election would occur without petitioners names on the ballot was a hypothetical question not ripe for adjudication.

Pending court or administrative action / abatement / stay

Fifth Third Bank v. C.H. Beach Resort Condominium Association, Arb. Case No. 2010-01-6358 (Campbell/ Summary Final Order/ May 26 ,2010)

-The petition filed by the bank alleging that it held nearly half the unit week interests of this timeshare condominium and requesting to review official records and an order requiring a new election dismissed. As the association disputed the number of unit weeks held by the bank, the election dispute that ensues would represent a title dispute. Where a petition involves matters both eligible and ineligible for arbitration, matters of convenience and economy mandate that the arbitrator dismiss the case and urge the court to accept jurisdiction over the dispute.

Testa v. Palm Court Yacht Club Owners Association, Arb. Case No. 2010-00-7695 (Slaton/ Final Order of Dismissal/ March 29, 2010)

-Where pending circuit court action between the parties raised the same type of claims as the arbitration petition, the arbitration was dismissed.

Relief granted or requested

Bayshore on the Boulevard Condo Association v. Sigler, Arb. Case No. 2010-04-2484 (Chavis/ Order Denying Petitioner's Emergency Motion/ August 31, 2010)

-Where association filed a motion to temporary injunction along with its petition for arbitration alleging that the respondent owner who had complained of leaking roof and who was denying the association access to the unit so that the association could not determine if the association's efforts to repair common element roof over Respondent's unit were successful and preventing the respondent from hiring his own contractor to effectuate repairs as the unit owner has done in the past fails to state irreparable harm and motion denied. (Editor's note: It does not appear that the respondent was served or appeared in opposition to the motion for temporary injunction.)

Cypress Chase Condo Association v. Mann, Arb. Case No. 2009-04-2862 (Earl/ Final Order of Dismissal/ December 23, 2009)

-Where association sought to recover repair costs to the common elements necessitated by electrical fire caused by respondent's tenant, issue was not eligible for arbitration.

Greentree Villas Condo Association v. Bauman, Arb. Case No. 2007-06-2772 (Chavis/ Final Order/ March 4, 2009)

-Where association proved that no one 55 years or older was staying in the unit which was not vacant, association was entitled to enforce its 55 and over age restrictions.

Unit owner ordered to comply with the age restriction within 60 days of the final order, but arbitrator did not order the removal of the under-aged occupant for lack of jurisdiction.

Lakewood at Palm Beach Condo Association v. Lingeman, Arb. Case No. 2010-00-8019 (Slaton/ Order Denying Motion to Re-open Case/ June 3, 2010)

-Where petitioner filed a dismissal on April 2, 2010 and the final order of dismissal entered on April 6, 2010, did not state that the dismissal was with prejudice, joint motion filed on May 27, 2010, to re-open the case and dismiss the case with prejudice was denied. The arbitrator does not have the authority to modify a final order except with a timely motion for rehearing.

Lovejoy v. Lands End Condominium Association, Arb. Case No. 2010-02-8726 (Campbell/ Final Order of Dismissal/ June 14, 2010)

-Petition filed by unit owner asking for order directing the board to litigate building code issues with North Palm Beach Village dismissed. It was alleged that the Village in advance of the association repaving its parking lot had increased the required size of parking spaces, resulting in a reduction of available parking spaces. The petition does not show how petitioner will be directly affected, and in any event normal maintenance and repair may properly change the common elements and is entitled to the business judgment rule and deference. Moreover, the decision of the board not to litigate is subject to the business judgment defense. This is particularly true when evaluation of the reasonableness of the action would require construction of an ordinance of a non-party governmental entity.

Oak Shadows Condo. Association v. Daceus, Arb. Case No. 2009-05-3078 (Anderson/Final Order on Default/ December 21, 2009)

-Arbitrator ordered unit owners to reimburse association in the amount of \$1,325.00 for replacing the water heaters in the unit that had rusted and caused damage.

Silver Thatch Atlantic Plaza Condo Association v. Brown, Arb. Case No. 2009-02-6970 (Whitsitt/ Summary Final Order/ April 6, 2010)

-Where, in response to association claim that replacement of tile on limited common element balcony after balcony restoration project voided new concrete warranty, arbitrator demanded a copy of the contract which was provided after 4 demands, arbitrator concluded that the warranty, because it excludes damage caused by normal wear and tear, has little or no value. Arbitrator further concluded that retiling would not void the warranty, but in accordance with expert testimony of an engineer, would protect the balcony. Accordingly, the arbitrator denied the association's request for damages for allegedly voiding the balcony warranty.

Smith v. Waterbridge 2 Association, Arb. Case No. 2009-03-4877 (Slaton/ Order Denying Motion to Compel/ June 1, 2010)

-Where final order placed petitioner on board which was ignored by the association, motion to compel compliance with final order must be filed in court rather than with the arbitrator.

Woods at Boca Del Mar Condo Association, Arb. Case No. 2010-00-8888 (Slaton/ Order to Show Cause/ June 10, 2010)

-Where association reportedly failed to produce a representative at a duly scheduled mediation with authority to settle the case, arbitrator required association to show good cause why the case should not be dismissed.

Standing

Eller v. Laurel Meadows Property Owners Association, Arb. Case No. 2010-00-9473 (Chavis/ Order Denying Motion for Reconsideration/ July 7, 2010)

-Unit owner who was not a disappointed candidate in an election did not have standing to file a petition for arbitration requesting that a new board be seated despite argument that his right to vote had been impaired.

Easements

Elections/Vacancies

Candidate information sheet

Generally

Eller v. Laurel Meadows Property Owners Association, Arb. Case No. 2010-00-9473 (Chavis/ Order Denying Motion for Reconsideration/ July 7, 2010)

-Unit owner who was not a disappointed candidate in an election did not have standing to file a petition for arbitration requesting that a new board be seated despite argument that his right to vote had been impaired.

Lewis v. The Grande Bellagio at Baywatch Condo Association, Arb. Case No. 2008-00-9637 (Grubbs/ Summary Final Order/ February 9, 2009)

-Where the developer was entitled to elect or appoint one member out of a three member board, the Association correctly excluded an individual from running for the board as a unit owner representative where that individual at the time he declared his notice of intent to run was the designated developer representative on the board, even if he was not a family member, relative, or shareholder or officer or employee in the developer corporation. Allowing him to run for a unit owner position may allow the developer to regain control of the association contrary to the statute.

Maignan v. Star Lakes Association, Arb. Case No. 2009-02-5151 (Lang/ Summary Final Order/ September 9, 2009)

-Where the articles and bylaws of this mature association provided that the number of directors shall be between 3 and 9, with the number determined by the members at an annual meeting, such provision could not be interpreted to allow an owner vote for the number of seats on the day of the election. The association is required to amend its bylaws to establish a set number of seats, and if the bylaws are not amended, the default number of 5 directors, as provided by s. 718.112(2)(a)1., F.S., shall govern.

-Where association conducted its election for 9 seats but the documents provided for the number of seats to be between 3 and 9 as determined by a vote of the membership,

and where it was not shown that a vote was taken to fix the number at 9 seats, whether a new election would be required would depend on whether substantial compliance with the election procedures was achieved and whether the will of the majority is reflected. Given that the vote spread between the 5th place candidate and the candidates at the 6th and 7th position was narrow, the outcome of the election may have been different if only 5 candidates were elected, and thus a new election was ordered.

Miller v. Harbor Isles Condo Association, Arb. Case No. 2010-02-5044 (Lang/ Summary Final Order/ June 28, 2010)

-Where association in disputed election conducted a number of recounts, since neither the statute nor the documents allow recounts, such recounts were unauthorized and the arbitrator ordered a runoff election. (Editor's note: It is not known whether the documents in this case authorized a runoff election).

Neil et al. v. Regench Heights Coop., Arb Case No. 2009-01-1937 (Slaton/ Final Order Dismissing Petition/ March 17, 2009).

-Petition filed by unit owners alleging that the association had improperly refused to permit petitioners to be listed as candidates on the ballot for upcoming election and seeking to cancel the election was dismissed because the election had not yet occurred, and whether the election would occur without petitioners names on the ballot was a hypothetical question not ripe for adjudication.

Potts v. Shell Island Beach Club Association, Arb. Case No. 2009-02-0900 (Earl/ Summary Final Order/ September 2, 2009)

-Where bylaws provided for directors to serve 2 year staggered terms, and the articles of incorporation provided for one year director terms, the documents conflicted with each other, and the articles of incorporation control the election conducted on December 5, 2008. The association was ordered to conduct its next election in accordance with the terms provided in the articles of incorporation.

-Where the bylaws provided for 2 year staggered terms but conflicted with the articles providing for one year terms, the statutory amendment to s. 718.112(2)(d), F.S., allowing 2 year terms if provided in the bylaws, effective on October 1, 2008, could not save the election conducted on December 5, 2008, despite the argument that the association obtained a unit owner vote to ratify the two year bylaw provision on December 2, 2008. The arbitrator found that it was not reasonable to interpret the statutory amendment as ratifying a bylaw that conflicts with the articles of incorporation.

Rehbaum v. Royal Arms Condo Association, Arb. Case No. 2009-03-8901 (Lang/ Summary Final Order/ October 7, 2009)

-Where a new election was ordered based on multiple election violations, issue became whether the new election should begin with the first or second notices of election. Where association failed to include with the first notice of election the certification forms of candidates, but where the forms were obtained from the candidates, association was not ordered to begin the election process with the first notice of election.

-Where none of the unit owners challenging the election on the ground that 33 unit owners were not sent ballots were among the 33 alleged to not have received their

ballots, the unit owners lacked standing to bring this challenge. Moreover, an association is not required to personally investigate the validity of the addresses given by the owners; it is the owners who are required to provide updated addresses to the association.

Romano v. Emerald Preserve-Sumerlin homeowners Association, Arb. Case No. 2010-02-2497 (Jones/ Order Denying Petitioners' Motion to Enforce Summary Final Order/ July 23, 2010)

-Where arbitrator in prior final order had ordered the association to conduct a new election, complaints regarding the conduct of the ordered election could not be heard under the original case but must be the subject of a new petition for arbitration.

Smith v. Sandpebble Beach Club Condo Association, Arb. Case No. 2010-01-0555 (Lang/ Summary Final Order/ May 5, 2010)

-Notice of intent to run for the board sent to board via email with a PDF attachment was valid service of the notice of intent to run and the candidate should not have been rejected by the board. Division rule 61B-23.0021 allows delivery via mail, fax or other method of delivery.

-Association policy of requiring a candidate to submit a notice of desire to run for the board in addition to a notice of intent to run was not sanctioned by the statute and was invalid.

-Board is not permitted to include a limited proxy with the election ballot package indicating that the recipient should sign the limited proxy to permit the Secretary to cast his secret ballot for the election. Proxies may also not be used to establish a quorum for the election.

Stern v. Playa Del Mar Association, Arb. Case No. 2009-01-2865 (Campbell/ Final Order of Dismissal/ June 1, 2009)

-Unit owner who was not a candidate for an election and who has not alleged he was prevented from becoming a candidate lacked standing to challenge election. Petitioner has not alleged that he has a distinctive personal involvement in the election and lacks standing.

Master association

Notice of election

Whilden v. Parkway Grove Condominium Association, Arb. Case No. 2009-03-8821 (Chavis/ Summary Final Order/ November 13, 2009)

-Where rogue manager not acting under the authority of the board sent out notices of election even after the manager had been fired, the resulting election was set aside for the failure to comply with the declaration which authorized the board to set the time and date of the election. Certain owners had filed for arbitration to require the board to relinquish control of the board to the newly "elected" board members.

Term limitations

Veros v. Lake House South Association, Arb. Case No. 2009-00-3706 (Lang/ Summary Final Order/ March 11, 2009)

-Where the bylaws were changed in 1980 to provide that no director may serve more than two consecutive terms, and where subsequent amendments to the declaration failed to comply with the requirements of s. 718.110(1)(b), F.S., any such defect not material. Moreover, the attack on the bylaws amendments was not made within the applicable 5 year statute of limitations, and the current board members were allowed continue to occupy the board.

Voting certificates

Hanna v. Hallmark of Hollywood Condo Association, Arb. Case No. 2009-02-0757 (Whitsitt/ Summary Final Order/ September 17, 2009)

-Where the bylaws required the use of a voting certificate if the unit was owned by more than one person or by a corporation, and where the association accepted 37 votes in an election without having supporting voting certificates on file, the association's failure to comply with its bylaws in the current election was inexcusable, regardless of whether the association had enforced its voting certificate requirement in the past, despite the association's argument that a number of voters would be disenfranchised by the sudden and unannounced enforcement of the requirement. The association was ordered to conduct a new election starting with the second notice of election, with a special notification from the arbitrator required to included with the second notice of election.

-Administrative rule 61B-23.0021, providing that the failure to enforce a voting certificate requirement in past elections prevents the association from rejecting a recall ballot for lack of a voting certificate, relates to recalls which are different than elections, and the rule does not apply to elections.

Estoppel (See also Selective Enforcement; Waiver)

Boca Bayou Condo Association v. Carr, Arb. Case No. 2009-00-3711 (Earl/ Final Order/ March 2, 2010)

-Where unit owner built deck almost 5 years prior to the filing of the petition for arbitration seeking its removal, and where he had submitted plans for the deck to the property manager and office personnel, and where the association maintenance man build the deck, there was no evidence that the board approved the deck, and thus any reliance on the supposed approval by office personnel or the manager was unreasonable, and estoppel would not lie. Deck must be removed.

East Lake Woodlands Cypress Estates v. Smith-Gillespie, Arb. Case No. 2009-03-8842 (Whitsitt/ Final Order/ December 9, 2009)

-Where association gave its approval to the unit owner to remove carpeting and install a tile floor with sound insulation in accordance with specifications required by the association's rules, association was estopped to seek removal of the tile where a tenant complained of loud noises emanating from the unit.

Flagler's Landing Condominium Association v. Ferris, Arb. Case No. 2007-06-7721 (Earl/ Final Order/ July 7, 2009).

-Where unit owner violated the declaration by constructing a balcony project without having obtained the written consent of the board, but where it undisputed that the board at the time of the project conducted business informally and where decisions were

made outside of board meetings that were later written into the minutes of the meetings of the board, the association was estopped from requiring removal of the improvement where board members had informally approved project outside of a meeting. Reliance on the board's approval was reasonable given the number of other improvements made without approval in writing by the board.

San Marino Bay Condo Association v. Hill, Arb. Case No. 2008-04-3673 (Slaton/ Final Order/ February 5, 2010)

-Where former manager and unit owner testified that the manager had obtained written approval from the president allowing the unit owner to place wall hangings on the exterior of the building and to replace his balcony handrails, unit owner failed to maintain his burden of proving estoppel where there was conflicting testimony and where copies of the written approvals were not produced.

Slade Condo Association v. Gunning, Arb. Case No. 2008-03-9963 (Earl/ Final Order/ January 8, 2010)

-Where unit owners obtained approval to install hard floor covering from the manager prior to turnover, and where the declaration prohibited such floor coverings, estoppel not applied where the unit owners failed to show that the manager was authorized by the board to approve such coverings.

Evidence (See Arbitration-Evidence)

Fair Housing Act

Condominium Association of Parker Plaza Estates v. Rosa, Arb. Case No. 2010-00-7915 (Campbell/ Summary Final Order/ April 26, 2010)

-Where Broward County Civil Rights Division had already determined that the respondent owner was not substantially limited in one or more life activities, and where that determination was not appealed, unit owner could not, consistent with res judicata, claim in the instant proceeding brought by association to remove dog, that the unit owner was entitled to keep the dog under fair housing laws.

Copomar Condo Association v. Van Der Ven, Arb. Case No. 2010-03-4006 (Jones/ Order Denying Motion to Dismiss/ August 17, 2010)

-Defense raised in dog removal case that the respondent had a medical need for the dog is a counterclaim and is not a defense to the petition for arbitration.

-Because the precursor to 718.1255 became law in 1982 before the 42 USC s. 360 became law in 1988, the Florida Legislature could not have intended that fair housing complaints were subject to arbitration. (Editor's note: There was no precursor to s. 718.1255, F.S., which became effective 1991-2).

Four Seasons Estates Resident Owned Community v. Ferguson, Arb. Case No. 2010-00-7030 (Campbell/ Order Striking Service Animal Dispute/ April 9, 2010)

-Where the respondent owner claimed the right to keep her cats due to medical conditions, it is not appropriate for this Division to adjudicate fair housing questions for which other agencies have expertise. The arbitrator recedes from the other arbitration

cases holding that the Division may properly adjudicate such claims. The respondent may file a complaint with the housing authority.

Greentree Villas Condo Association v. Bauman, Arb. Case No. 2007-06-2772 (Chavis/ Final Order/ March 4, 2009)

-Where declaration required that at least one person who is 55 years or older occupy the unit, and where evidence showed that only the 31 year old daughter of the owner lived in the unit, the arbitrator ordered that the unit owner comply with the age restriction within 60 days of entry of the final order. Arbitrator did not order removal of the under-age daughter, as such would have been beyond the jurisdiction of the arbitrator.

Laguna Landing Owners Association v. Dalton, Arb. Case No. 2010-01-6111 (Slaton/ Order/April 29, 2010)

-Where unit owner raised fair housing defense in response to action by association to remove dog, such defense was stricken as the Division does not have the responsibility for deciding such issues. Unit owner was allowed to file a fair housing complaint with a responsible agency.

Mayfair House Association v. Fontanive, Arb. Case No. 2008-06-7282 (Lang/ Summary Final Order/ October 23, 2009)

-Where owner alleged that he required animal as an accommodation under the fair housing laws, but where the Palm Beach County Office of Equal Opportunity made a finding of no reasonable grounds that the association had violated the fair housing laws, arbitrator ordered removal of dog.

Scottsdale Cluster Condominium III Association v. Hanna, Arb. Case No. 2009-01-9044 (Whitsitt/ Final Order/ September 22, 2009)

-Where unit owner asserted in dog removal case that the dog was a service animal and was required as an accommodation to the owner's disability, where a note from Dr. Lara stated that the dog does provide a significant amount of comfort for the paraplegic, Dr. Lara was not shown to be a psychologist or a psychiatrist but was a general family practitioner, and his statement about the necessity for the dog to provide comfort ventures into an area outside his expertise "and renders that portion of his opinion without authority and invalid."

-Where unit owner did not request an accommodation for his paraplegia under the state or federal fair housing laws, the association could not have discriminated against him by refusing to make an accommodation.

-There was no need shown for a service animal where the unit owner presented no evidence that a dog bark was needed to alert the owner that someone was at the door. No medical records were offered to show that the owner could not hear a knock on the door.

-Even if the dog was shown to be a required accommodation, the accommodation is not reasonable given that the dog lunges at passers-by.

St. Tropez Condo I Association v. Asher, Arb, Case No. 2009-05-9633 (Campbell/ Final Order/ March 26, 2010)

-Where unit owner asserted she was legally blind and was entitled to her cat as a reasonable accommodation, the defense was struck and the owner was directed to file proof of filing a complaint with a fair housing authority, failing which the case would be resumed by the arbitrator with the remaining issues determined.

Tamarac Gardens Condo #6 Association v. Torre, Arb. Case No. 2010-00-8907 (Chavis/ Order/ April 6, 2010)

-The responsibility for deciding fair housing claims, as where a pet owner asserts a disability and requests a reasonable accommodation, does not lie in arbitration. Respondents were ordered to file proof that they filed a fair housing complaint with the appropriate agency, at which time the arbitration petition would be administratively closed.

Windsong at Boca Del Mar Condo Association v. Schonning, Arb. Case No. 2010-00-8925 (Whitsitt/ Order Striking Affirmative Defenses/ March 26, 2010)

-Unit owner defense of fair housing struck and owner required to file proof of filing claim of discrimination with fair housing authority, failing which the case would resume on the merits less the fair housing defense.

Family (See also Fair Housing Act; Guest; Tenants)

Financial Reports/Financial Statements

Fines

Guest (See also Fair Housing Act; Family; Tenants)

Hurricane Shutters

Oceania II Condo Association v. Hirschenson, Arb. Case No. 2009-01-6030 (Whitsitt/ Final Order on Default/ May 29, 2009)

-Where association amended its rules to require all owners to install hurricane shutters at their own expense in accordance with specifications adopted by the board, not later than June 1, 2007, and where the association rule was valid because it was approved by a majority of the unit owners, respondent unit owners required to install such shutters within 30 days of the final order.

Injunctive Type Relief (See Dispute-Relief granted)

Insurance

Sunrise Towers Condo Association v. Helbig, Arb. Case No. 2010-02-2479 (Earl/ Final Order on Default/ August 19, 2010)

-Where petition of association alleged that unit owner had failed to provide evidence of a unit insurance policy, the unit owner was ordered to provide proof of such coverage in accordance with s. 718.111(11)(g). (Editor's note: It appears that this requirement of the statute was changed by Ch. 2010-174, Laws of Florida, effective July 1, 2010.)

Jurisdiction (See Dispute)

Laches (See also Estoppel; Waiver)

Clipper Cove Village Master Condo Association v. Greco, Arb. Case No. 2009-03-6538 (Chavis/ Final Order/ July 23, 2010)

-Where association waited six years, one month and 5 days after completion of the unauthorized lanai enclosure before filing a petition for arbitration, association guilty of laches and such action was barred by the statute of limitations.

Humphrey v. Carriage Park Condo Association, Arb. Case No. 2008-04-0230 (Campbell/ Final Order/ March 30, 2009)

-Where the petitioner is the unit owner who installed patio stones without the required vote of the members, petitioner cannot raise laches as a defense. Moreover, the fact that the association waited a number of years before it began enforcement proceedings against the unit owner did not apply where petitioner knew that the documents required a vote of the membership for such changes.

Lien

Marina

Meetings

Board meetings

Feldman v. Harbor Village Community Association, Arb. Case No. 2008-05-2765 (Slaton/ Final Order/ April 29, 2010)

-Master association composed of representatives of various sub-associations was not authorized to pass resolution allowing president to act unilaterally on behalf of the board in order to avoid petitioners' obstreperous behavior at meetings of the board.

-Business judgment rule did not authorize board to avoid board meetings by passing a resolution authorizing the president to conduct the affairs of the association by presidential fiat.

Committee meetings

Emergency

Generally

Notice/agenda

Quorum

Ratification

Recall (See separate index on recall arbitration)

Unit owner meetings

Terry v. Intracoastal Point Condo Association, Arb. Case No. 2008-06-3347 (Campbell/ Final Order on Default/ January 12, 2009)

-Arbitrator could not order board to call a unit owner meeting for recall. Unit owners were free to call and hold their own recall meeting as provided by the statute and administrative rules.

**Generally
Notice
Quorum
Recall (See separate index on recall arbitration)**

Moot

Mortgagee

Nuisance

Amberwood Lake Condo Association v. White, Arb. Case No. 2009-02-4254 (Whitsitt/ Final Order of Dismissal/ June 24, 2009)

-Amended petition was deficient in that it failed to list in numbered paragraphs specific instances of nuisance behavior.

-Where amended petition only alleged two nuisance incidents, there was no showing of an ongoing dispute and the petition was dismissed.

Amelia Lakes Condominium Association v. Johnson, Arb. Case No. 2009-02-4263 (Lang/ Final Order of Dismissal/ August 5, 2009)

-Where petition for arbitration only alleged a single instance of yelling and drunkenness, and whether the petition failed to recite the date of such activities, petition was deficient and was dismissed.

Belleair Palms Terrace Association v. Smalenberger, Arb. Case No. 2009-02-0885 (Lang/ Final Order on Default/ September 15, 2009)

-Where the unit owner was alleged to have removed extensive portions of the common element drywall in his unit, facilitating the passage of cigarette smoke into adjoining units, the unit owner was ordered to restore all drywall in his unit and to cease smoking in the unit during the required installation of the drywall.

Cypress Park Garden Homes I Condo Association v. Hill, Arb. Case No. 2008-05-2795 (Grubbs/ Summary Final Order After Default/ January 6, 2009)

-Where the declaration permitted pets weighing less than 20 pounds and prohibited nuisances or uses or practices that were a source of annoyance to the residents, or which interfered with the owners' peaceful possession of the residents, unit owner was ordered to remove pet bulls exceeding 20 pounds from her unit where one dog had bitten a resident. Removal was ordered as the owner had demonstrated that she would continue to flout the requirements of the declaration in the absence of an order requiring compliance.

Elan at Calusa Condo II Association v. Simmons, Arb. Case No. 2008-01-0458 (Lang/ Final Order on Default/ February 11, 2010)

-Where amended petition alleged that the respondent owner allowed the occupants of the unit to party loudly, play music late at night, and drink in the hallway, but did not indicate the dates of these infractions, final order entered requiring respondent to permanently cease from interfering with the rights of the other owner.

Jade Residences at Brickell Bay Condo Association v. ACK Investment Group, Arb. Case No. 2008-05-8970 (Lang/ Final Order of Dismissal/ January 12, 2009)

-Where petition filed by association alleged a single instance of a drunken brawl in the association Jacuzzi involving tenants of the respondent unit owner, petition dismissed, as a single instance of misconduct does not create an ongoing nuisance.

Stratford Towers v. Allegro, Arb. Case No. 2010-03-6818 (Lang/ Order Requiring Amended Petition/ August 4, 2010)

-Where petition alleged that the respondent owner had a habit of allowing strangers and vagrants to stay as his guests resulting in the intervention of law enforcement, alleged that guests of respondent broke a security door on June 12 to gain entrance to the condominium building, and further alleged that on the same date, two guests were swimming in the pool naked and engaging in inappropriate sexual conduct, arbitrator required amended petition which must include the dates, times and nature of each incident resulting in law enforcement intervention as well as proof that pre-arbitration notice was given to the respondent "about each incident specified." Additionally, as the petition with reference to the pool incident did not allege that any similar incident occurred after pre-arbitration demand notice was given as to this issue, the amended petition must not include this issue unless additional incidents occurred. Additionally, the pool incident does not allege facts that would qualify as a nuisance (activity that disturbs one in the free use, possession and enjoyment of the property.) A nuisance requires a statement of more facts than an allegation concerning a single incident.

King David of Sunny Isles v. Morinsky, Arb. Case No. 2009-05-3026 (Lang/ Final Order of Dismissal/ December 11, 2009)

-A single incident of yelling at board members does not, as a matter of law, constitute a nuisance.

Official Records

Adelson v. Third Gulfstream Garden Apartments Condo., Arb. Case No. 2008-05-2810 (Campbell/ Summary Final Order/ May 18, 2009)

-As the official records statute contains a monetary penalty, it must be strictly construed.
-The official records statute and its penalty only apply to a willful failure by the association to make available official records described in s. 718.111(12), F.S. It does not apply to records that have not been created, or documents that the association might obtain but would not normally receive, such as copies of negotiated checks.

-In this case, as the association offered dates for inspection of the records within 10 days after receipt of the request for inspection, the evidence failed to establish that the association willfully denied access where the unit owner chose to reschedule the inspection. The penalty provision should not apply if the owner chooses not to attend, or cannot attend at a reasonable time and place set by the association within the narrow period set by statute for inspection.

-There is no willful violation shown where the unit owner serves the association with multiple requests to see the same records and where the owner repeatedly fails to attend scheduled inspection meetings.

-Requests for access to the official records should be plain, direct and simple, if they are to serve as a basis for damages. Confusion often arises whether the request for access to records is mixed with official inquiries directed to the association.

-No willful violations were shown where the request to inspect was mixed with a request for access to other records not shown to be official records.

Blass v. Illini Association, Arb. Case No. 2009-04-3047 (Chavis/ Order Denying Motion to Dismiss etc./ June 15, 2010)

-Where board in response to unit owner inquiry directed the association's attorney to prepare a letter concerning the legality of a budget increase in the course of an open board meeting, subsequent written opinion of counsel was not intended to be confidential and was thus not protected by the attorney-client privilege. Clearly there was no presumption that the opinion of the attorney would not be disclosed to the membership. However, since the failure to allow access to the legal opinion was based on legal advice, the denial of access to official records was not willful and would not support a statutory fine.

Humphrey v. Carriage Park Condo Association, Arb. Case No. 2008-04-0230 (Campbell/ Final Order/ March 30, 2009)

-An email addressed to an individual director on his personal computer, or addressed to the entire board, is not a written communication to the association.

Irizarry v. Laguna Pointe Condo Association, Arb. Case No. 2008-05-2791 (Campbell/ Final Order/ April 10, 2009)

-Since the official records statute provides for a monetary penalty, it must be strictly construed.

-Records request buried as two sentence in a 4 page letter was confusing and formed a valid defense to a charge of willful failure to provide access to the records.

-Loan offer from a bank to an individual who was not on the board was not an official record where it was never received by the association or considered at a board meeting.

-An email directed to the personal computers of the board members and asking for access to the official records is not an official request to the association as a director is under no obligation to turn on his personal computer with any regularity, or to open and read or delete emails. An email directed to a board members is not a written request for access to the records.

-Where association rule only required the association to respond to one request for access per month, evidence showed that the association improperly calculated the one month period, and hence would be charged with a willful violation of the statute.

Levine v. Brazillian Court Condo Association, Arb. Case No. 2009-00-1101 (Earl/ Summary Final Order/ August 20, 2009)

-Where residential owners in a hotel condominium requested the arbitrator to declare that certain shared facilities not made common elements of the condominium but required to be maintained in large part by the residential owners were common elements of the condominium, arbitrator declined to assert authority over the dispute.

As the shared components were not made common elements, records regarding the maintenance of such facilities were not official records open to the unit owners.

-Where association was not acting as rental agent for the rental program in the condominium which was instead operated by the developer as owner of the hotel unit, the residential owners were not entitled to access to the rental records as they were not official records of the association.

Maldonado v. MNTY Condo Association, Arb. Case No. 2009-05-1376 (Earl/ Final Order on Default/ February 5, 2010)

-Where association on default failed to state any meritorious defenses, arbitrator concluded that the charge of 50 cents per page to copy official records upon inspection request was not a reasonable charge under s. 718.111(12), F.S. Unless the association can demonstrate that payment of a market rate to a vendor such as a copy service or an accounting tied to the costs of its copies, the association can only charge a reasonable fee of 15 cents for a single side copy or 20 cents for each double-side copy.

Porter v. Embassy Condo Association, Arb. Case No. 2008-05-0443 (Earl/ Summary Final Order/ September 28, 2009)

-Where unit owner served association's registered agent with a request to review official records, service on the registered agent was sufficient service on the association.

-Argument that the association relied on the advice of its attorney in concluding that it was not required to respond to a request to review official records served on its registered agent was rejected as the association's duty to provide access is neither confusing nor ambiguous. Association ordered to pay \$500 penalty.

Werdene v. Joe Ron North Condo Association, Arb. Case No. 2009-03-3314 (Campbell/ Summary Final Order/ August 14, 2009)

-Where manager was served with a request for access to the official records, but did not inform the association of such request, the association was nonetheless responsible for the acts of its agents including the manager.

-Where petitioners are owners of residential units in a condominium containing 79 residential units, two commercial units and one hotel unit owned by the developer that acts as rental agent for rentals in the condominium, request of residential owners to view the rental operation records denied where the association was not acting as rental agent.

Zoumas v. Brazillian Court Condo Association, Arb Case No. 2009-01-9040 (Earl/ Final Order of Dismissal/ December 18, 2009)

-Unit owner sought access to rental records and other non-rental records. Where condominium contained residential units as well as two commercial units and a hotel unit which maintained a rental program to which the residential owners may submit their units, claim by residential owner that the association had failed to produce rental records stated valid claim if the association was acting as rental agent which association denied. Regardless, dispute involved the owner of the hotel unit which was an indispensable party and which would render the dispute a unit owner v. unit owner dispute over which the arbitrator lacks jurisdiction. Also, claim that the association had

failed to produce non-rental records would not be appropriately severed from the rental records dispute, and the entire petition dismissed.

Parking/Parking Restrictions

Bisch v. Oceania II Condo Association, Arb. Case No. 2008-05-2717 (Lang/ Final Order of Dismissal/ May 29, 2009)

-Petition of unit owner presented title dispute and was accordingly dismissed for lack of jurisdiction where owner alleged that the association had refused to allow petitioner use of a parking space identified by petitioner as an appurtenance to his unit, citing Florida Tower Condo v. Mindes, 770 So. 2d 210 (Fla. 3rd DCA 2000).

Gamsey v. President Condominium Association, Arb. Case No. 2009-05-6418 (Slaton/ Final order of Dismissal/ December 8, 2009)

-Petition dismissed as involving title dispute where unit owner alleged that condominium developer had granted him the right to use a particular parking space, and where the association after turnover had subsequently refused to recognize his right to use the space. The arbitrator lacks jurisdiction to award use of the space as it involved either a title dispute or an easement dispute.

Selmore v. 5600 Condominium Association and Morales, Arb. Case No. 2009-04-0786 (Chavis/ Final Order of Dismissal/ August 13, 2009)

-Where petition filed by unit owner alleged that the association had improperly granted to owner Morales the exclusive right to use the parking space previously occupied by the petitioner, petitioner was seeking to enforce the documents against another unit owner, thereby divesting the arbitrator of jurisdiction. In addition, the dispute involved title which is also excluded from the arbitrator's jurisdiction.

Wakefield v. Porta Bella Yacht and Tennis Club, Arb. Case No. 2009-05-3026 (Campbell/ Summary Final Order/ December 4, 2009)

-Where the declaration prohibited the parking of trucks on the condominium property and where a board rule defined a passenger vehicle as one surrounded by windows and having permanent seats, the association could properly determine that a Chevy Avalanche, which looks like a pickup truck and allows a mid-gate to drop down into the passenger area to form a long flat bed, should be prohibited.

Parties (See Arbitration-Parties)

Pets

Capistrano Condominium Association v. Breiner, Arb. Case No. 2009-05-1633 (Whitsitt/ Final Order of Dismissal/ October 8, 2009)

-Where association failed to name the tenant who owned the overweight dog, petition dismissed for failure to join the tenant.

Condominium Association of Parker Plaza Estates v. Rosa, Arb. Case No. 2010-00-7915 (Campbell/ Summary Final Order/ April 26, 2010)

-Where Broward County Civil Rights Division had already determined that the respondent owner was not substantially limited in one or more life activities, and where that determination was not appealed, unit owner could not, consistent with res judicata, claim in instant proceeding brought by association to remove dog, that the unit owner was entitled to keep the dog under fair housing laws.

-Evidence of dog urinating on the common elements in 2002 was not sufficient to show selective enforcement in case brought by association seeking removal of overweight dog. The examples of selective enforcement must be comparable in nature to the enforcement sought by the association.

-No waiver or estoppel shown where association failed to respond to letter from unit owner requesting an accommodation under the fair housing laws, given that the Broward County Civil Rights Division had already rejected the claim. There was no allegation that the owner ever relied on the inaction of the association, and waiver will not be found in a failure to respond to requests or demands.

Cypress Park Garden Homes I Condo Association v. Hill, Arb. Case No. 2008-05-2795 (Grubbs/ Summary Final Order After Default/ January 6, 2009)

-Where the declaration permitted pets weighing less than 20 pounds and prohibited nuisances or uses or practices that was a source of annoyance to the residents, or which interfered with the owners' peaceful possession of the residents, unit owner was ordered to remove pit bulls exceeding 20 pounds from her unit where one dog had bitten a resident. Removal was ordered as the owner had demonstrated that she would continue to flout the requirements of the declaration in the absence of an order requiring compliance.

Foxcroft Condo Apartments v. Bennett, Arb, Case No. 2007-00-8977 (Chavis/ Final Order/ September 22, 2009)

-Where the board sought removal of a dog in excess of the maximum 15 pound weight allowed by the rules of the association, and where it was shown that the board was aware of other offenders with overweight dogs and had not enforced the rule in those instances, selective enforcement shown and the dog was not removed.

Hillcrest No 7 Condo Association v. Doniz, Arb. Case No. 2007-02-6327 (Chavis/ Summary Final Order/ April 3, 2009)

-Where the agency authorized to make determinations of probable cause in state and federal fair housing cases finds no probable cause to believe a violation has occurred, collateral estoppel prevents the pet owner from re-arguing her case of discrimination with the arbitrator.

Horizons at Stonebridge Place Condo Association v. Tortorica, Arb. Case No. 2010-00-3387 (Whitsitt/ Final Order of Dismissal/ March 26, 2010)

-Where owners filed answer stating that the dog sought to be removed by the association had been gone for 6 years except for occasional visits, which were not found to be a violation of the documents, case dismissed for mootness.

Imperial Point Gardens Condo Association v. Sabell-Schanzle, Arb. Case No. 2010-01-3583 (Whitsitt/ Order to Show Cause/ March 23, 2010)

-Where petition for arbitration sought removal of dog under board rule, but where declaration permitted dogs with certain weight restrictions, rule declared invalid and the pre-arbitration demand letter failed in their purpose, rendering the petition without valid pre-arbitration notice (Editor's note: it may be that the pre-arbitration notice simply demanded removal of the pet without specifying that the animal existed in excess of the declaration's weight restriction.)

Mayfair House Association v. Fontanive, Arb. Case No. 2008-06-7282 (Lang/ Summary Final Order/ October 23, 2009)

-Where owner alleged that he required animal as an accommodation under the fair housing laws, but where the Palm Beach County Office of Equal Opportunity made a finding of no reasonable grounds that the association had violated the fair housing laws, arbitrator ordered removal of dog.

Point East Three Condominium Corp v. Breziner, Arb. Case No. 2008-00-4477 (Earl/ Summary Final Order/ November 13, 2009)

-Where the association sought an order requiring the removal of a dog kept in a unit in violation of the declaration, and where the case was abated to permit the filing of a housing discrimination complaint, where the FCHR ultimately entered a final order denying relief, the arbitrator ordered the dog removed.

Scottsdale Cluster Condominium III Association v. Hanna, Arb. Case No. 2009-01-9044 (Whitsitt/ Final Order/ September 22, 2009)

-Where unit owner asserted in dog removal case that the dog was a service animal and was required as an accommodation to the owner's disability, where a note from Dr. Lara stated that the dog does provide a significant amount of comfort for the paraplegic, Dr. Lara was not shown to be a psychologist or a psychiatrist but was a general family practitioner, and his statement about the necessity for the dog to provide comfort ventures into an area outside his expertise "and renders that portion of his opinion without authority and invalid."

-Where unit owner did not request an accommodation for his paraplegia under the state or federal fair housing laws, the association could not have discriminated against him by refusing to make an accommodation.

-There was no need shown for a service animal where the unit owner presented no evidence that a dog bark was needed to alert the owner that someone was at the door. No medical records were offered to show that the owner could not hear a knock on the door.

-Even if the dog was shown to be a required accommodation, the accommodation is not reasonable given that the dog lunges at passers-by.

St. Tropez Condo I Association v. Asher, Arb, Case No. 2009-05-9633 (Campbell/ Final Order/ March 26, 2010)

-Where unit owner had resided in one condominium in a community that did not enforce its restriction against pets and moved to adjacent separate condominium with her illegal

pet, current condominium association was not permitted to enforce its pet restriction where the petition incorrectly identified the unit number in the new condominium and where the pre-arbitration demand letters were addressed to her at her prior unit despite the fact that she received these notices.

-No finding of selective enforcement would be made where other examples of pets existed in separate condominium.

-Where unit owner asserted she was legally blind and was entitled to her cat as a reasonable accommodation, the defense was struck and the owner was directed to file proof of filing a complaint with a fair housing authority, failing which the case would be resumed by the arbitrator with the remaining issues determined.

Waverly at Los Olas Condominium Association, Arb. Case No. 2009-01-6370 (Whitsitt/ Final Order/ October 5, 2009)

-Where evidence showed that the owner had permitted the dog to habitually defecate on the common elements without picking up after him, and was allowed to habitually urinate outside the entrance to the building, the dog created a health and safety risk and was a nuisance and was ordered removed.

Pre-Arbitration Notice

Prevailing Party (See separate index on attorney's fees cases)

Purchase Contracts

Quorum (See Meetings)

Ratification (See Meetings-Board meetings-Ratification)

Recall of Board Members (See Meetings-Board meetings-Recall) (See separate index on recall arbitration)

Biltmore Estates HOA v. Homeowners Voting For Recall, Arb. Case No. 2010-00-7503 (Campbell/ Order to Show Cause/ February 22, 2010)

-Where homeowners served on the board a petition to hold a special members signed by one third of the homeowners requesting a special election meeting because the HOA had not successfully held an election for 3 years, but where the letter did not use the word "recall", the document was not a recall petition and the board was not required to file for recall arbitration, although it acted in a prudent manner in doing so.

Recreation Leases

Relief Requested (See Dispute-Relief granted or requested)

Rental Restrictions/Rental Program (See Tenants-Rental Restrictions/Rental Program)

Reservation Agreements

Reserves

Restraints on Alienation (See Unit-Restraints on Alienation)

Sanctions (See Arbitration-Sanctions)

Security Deposits (See Purchase Contracts)

Selective Enforcement (See also Estoppel; Waiver)

Condominium Association of Parker Plaza Estates v. Rosa, Arb. Case No. 2010-00-7915 (Campbell/ Summary Final Order/ April 26, 2010)

-Evidence of dog urinating on the common elements in 2002 was not sufficient to show selective enforcement in case brought by association seeking removal of overweight dog. The examples of selective enforcement must be comparable in nature to the enforcement sought by the association.

Double Eagle Condo Association v. Barkalow, Arb. Case No. 2008-04-3712 (Earl/ Summary Final Order/ March 25, 2009)

-Where respondent unit owner without association approval constructed a paver patio extension beyond the original footprint of her unit and encroached onto the common elements, and where the extension exceeded the specifications adopted by the board as rules governing patio extensions, unit owner ordered to remove the patio extension. Fact that over the years, other owners had been permitted to cover and screen in a small patio area did not present similar violations for purposes of selective enforcement.

Flagler's Landing Condominium Association v. Ferris, Arb. Case No. 2007-06-7721 (Earl/ Final Order/ July 7, 2009).

-Where unit owner violated the declaration by constructing a balcony project without having obtained the written consent of the board in extending outward an exterior wall, but where it was shown that another owner had enclosed part of the limited common elements by constructing a garage closet in the parking area, selective enforcement shown as both examples involve enclosing part of the limited common elements.

Foxcroft Condo Apartments v. Bennett, Arb, Case No. 2007-00-8977 (Chavis/ Final Order/ September 22, 2009)

-Where the board sought removal of a dog in excess of the maximum 15 pound weight allowed by the rules of the association, and where it was shown that the board was aware of other offenders with overweight dogs and had not enforced the rule in those instances, selective enforcement shown and the dog was not removed.

Horizons at Stonebridge Place Condo Association v. Marin, Arb. Case No. 2009-04-6532 (Whitsitt/ First Amended Order on Case Management Conference/ January 13, 2010)

-For purposes of selective enforcement, two independent condominiums with separate associations shall be "considered one entity" and thus evidence of pet violations in the

one shall be considered as selective enforcement in the other, where the two condominiums were next to each other, were developed by the same developer, and where the same law firm represents both associations. Also, "both associations are owned by the Master Condominium Association."

Lake Howell Arms Condo Association v. Beasley, Arb. Case No. 2008-00-4440 (Earl/ Final Order/ May 11, 2010)

-Where unit owner enclosed their carport which is situated next to an association's carport which had been similarly enclosed, unit owner ordered to remove enclosure. The association has determined not to permit any owners to enclose their carports, and thus there is no disparate treatment among unit owners. Association had also enclosed 4 other carports that it owned and used for storage.

St. Tropez Condo I Association v. Asher, Arb, Case No. 2009-05-9633 (Campbell/ Final Order/ March 26, 2010)

-No finding of selective enforcement would be made where other examples of pets existed in separate condominium.

Standing (See Dispute-Standing)

State Action (See also Constitution-State action)

Tenants

Generally

Bluffs Condo Association v. Hill, Arb. Case No. 2009-00-0197 (Lang/ Order Requiring Amended Petition/ January 19, 2010)

-Petition filed by association against a single owner of multiple units stating disputes against different tenants residing in the units dismissed as separate petitions must be filed involving each separate tenant.

-Allegation of petition that tenant was selling illegal drugs out of the unit is a criminal matter and not within the jurisdiction of the arbitrator. An amended petition may be filed alleging a nuisance so long as specific dates of the nuisance activities are included.

-Petition alleging that the number of tenants exceeds the limits provided by the documents and asking removal of the excess tenant not within the jurisdiction of the arbitrator.

Capistrano Condominium Association v. Breiner, Arb. Case No. 2009-05-1633 (Whitsitt/ Final Order of Dismissal/ October 8, 2009)

-Where association failed to name the tenant who owned the overweight dog, petition dismissed for failure to join the tenant. Additionally, petition must be dismissed where the association failed to provide the tenant with pre-arbitration notice required by statute.

King David of Sunny Isles v. Morinsky, Arb. Case No. 2009-05-3026 (Lang/ Final Order of Dismissal/ December 11, 2009)

-The association's claim for cleanup costs to the common elements necessitated by the owner's former tenants dismissed for lack of jurisdiction.

Luckhardt v. Shore Condominium, Arb. Case No. 2010-00-5216 (Campbell/ Summary Final Order/ April 9, 2010)

-A decedent's death is the event that vests an heir's right to property whether it passes by homestead, will or by operation of the law of intestacy. In this case, petitioner's father died on May 24, 2002, and he left a will that devised the unit to his minor daughter and son. At the time of his death, the declaration permitted unrestricted leasing, but the declaration was amended on October 15, 2003, to severely limit leasing. Section 718.110(13), Florida Statutes, was enacted effective October 1, 2004, providing that amendments restricting leasing may only be applied to consenting owners or subsequent purchasers. In this case, by May 25, 2002, petitioner owned a share of all rights and interest that her father had in the unit, over a year before the declaration was amended to restrict leasing, and thus the amendment could not be applied to protect her right to rent. Additionally, there was no intent that the statutory amendment be applied retroactively. Thus the daughter was properly subject to the restricted leasing provisions of the declaration.

Maitland House Management v. Pecado Properties, Arb. Case No. 2010-00-9006 (Slaton/ Final Order of Dismissal/ March 24, 2010)

-Where association filed petition seeking to prevent cat from ranging on the common elements and to remove pet doors installed in unit, but failed to name the cat-owning tenants or provide pre-arbitration notice to them, petition dismissed.

Majestic View Condo Association v. Fata, Arb. Case No. 2009-00-9872 (Lang/ Final Order of Dismissal/ March 16, 2009)

-Petition filed by association dismissed for lack of jurisdiction where the association alleged that unauthorized tenants were occupying unit and were creating a nuisance, where the association requested removal of the unauthorized tenants and a cessation of nuisance activities.

Oak Shadows Condo. Association v. Daceus, Arb. Case No. 2009-05-3078 (Anderson/Final Order on Default/December 21, 2009)

-While arbitrator lacked authority to require removal of tenants, arbitrator was authorized to order unit owners to comply with the governing documents requiring that unit owners receive prior approval of the association before leasing their unit.

Nuisance (See also Nuisance)

Lake Faith Condo Association v. Burnett, Arb. Case No. 2010-01-4241 (Chavis/ Order Requiring Amended Petition/ March 24, 2010)

-Association filed petition alleging owner was a nuisance for screaming profanities and acting in disorderly manner and continues to allow her cats to remain unmonitored

outside her unit. "The petition for arbitration must set forth all facts relevant to the case. The petition form does not instruct the petitioner to include just some of the facts or the ultimate facts. The importance of this requirement cannot be overstated. No facts are stated, much less facts that support the conclusion."...On what dates did Respondent scream profanities and act in a disorderly fashion? What happens when she allows her cats outside and unmonitored that is detrimental to the Association? Additionally, the Association has included a lis pendens. The association's lis pendens is struck."

Rental restriction/rental programs

Niz v. Captiva Lakes Villas Condo Association, Arb. Case No. 2009-06-2010 (Campbell/ Summary Final Order/ February 26, 2010)

-Where declaration permitted the board to require the use of a uniform lease but did not grant the board the authority to approve or disapprove tenants except as to leases for less than a 6 month period, the board did not have the authority to require approval of a tenant with a lease greater than 6 months. If approval of such tenant is not required, there could be no reason to require the tenant to file an application with detailed personal information. Moreover, board cannot require written notice that the tenant plans to use the limited common parking space appurtenant to the unit, but instead the board is required to dispense a parking sticker to the tenant upon request of the owner. Association ordered to cease its efforts to require the current or future tenants to complete application forms or pay leasing fees of \$195.00.

Unauthorized tenant/association approval Violation of documents

Transfer of Control of Association (See Developer; Election/Vacancies)

Transfer Fees

Unit

Access to unit

Eastwind of Satellite Beach Condo Association v. Dixon, Arb. Case No. 2010-01-6134 (Chavis/ Summary Final Order/ July 8, 2010)

-Unit owner could not condition providing key to the association by insisting that the maintenance personnel be subjected to drug testing.

Hallendale Towers East v. Chemides, Arb. Case No. 2009-05-8834 (Lang/ Summary Final Order/ March 3, 2010)

-Where owner in action brought by association seeking a key to the unit for unspecified reasons argued that a key had been given to another owner, such defense rejected and the owner was ordered to provide a key to the unit.

Murfield Village at Grasslands v. Carrier, Arb. Case No. 2010-00-3372 (Campbell/ Summary Final Order/ March 16, 2010)

-Association was entitled to key to unit for purpose of making necessary repairs to the building, and the unit owner was not entitled to insist that contractors gain access directly from the owner.

Silver Sands Beach and Raquet Club Condo Association v. Bouldin, Arb. Case No. 2009-04-3155 (Whitsitt/ Summary Final Order/ March 23, 2010)

-Where association filed petition for arbitration seeking access to unit balcony for purposes of performing repairs on common elements on balcony. The association did not identify the common elements needing repair or the location of the common elements, despite a case management conference and 147 pages of engineering explanation which did not satisfy the arbitrator that the common elements needed maintenance or that it was necessary to gain access to the unit. According to the arbitrator, the association's own expert stated that the damage lies on the outer edge of the balcony which could be repaired from the outside of the building. (Editor's note: The unit in question occupies the 3rd or 4th story of a mid-rise building). Petition for arbitration denied as the association has not proved that access to the unit was necessary for the repairs. (Further note: There is no evidence in the final order that any evidentiary final hearing was conducted for purposes of taking evidence and testimony.)

St. Kitts Condo Association v. Machala, Arb. Case No. 2010-00-8914 (Campbell/ Summary Final Order/ April 19, 2010)

-Association was permitted to obtain a key granting access to the unit despite unit owner's offer to make key available to a neighbor and despite her claim that maintenance staff entered her unit once without warning when she was present in the unit.

Sunrise Towers Condo Association v. Helbig, Arb. Case No. 2010-02-2479 (Earl/ Final Order on Default/ August 19, 2010)

-While association was entitled to entry of a final order requiring the unit owner to provide a key to the association, there was no statutory authority or provision in the documents requiring the unit owner to sign and submit a completed Key Permission Form giving the association permission to hold a key to the unit, and this request for relief denied.

Alteration to unit (See also Fair Housing Act)

Flagler's Landing Condominium Association v. Ferris, Arb. Case No. 2007-06-7721, (Earl/ Final Order/ July 7, 2009)

-Where unit owner violated the declaration by constructing a balcony project without having obtained the written consent of the board, but where it undisputed that the board at the time of the project conducted business informally and where decisions were made outside of board meetings that were later written into the minutes of the meetings of the board, the association was estopped from requiring removal of the improvement where board members had informally approved project outside a meeting. Reliance on the board's approval was reasonable given the number of other improvements made without approval in writing by the board.

Killeen v. S.B. Club Condo Association, Arb. Case No. 2008-06-4403 (Campbell/ Summary Final Order/ March 15, 2009)

-Where at the time petitioner purchased the unit, 66 percent of the unit owners had glass or screen enclosures on their balconies which were limited common elements, and where after petitioner request his balconies, the association directed a letter to all owners announcing that the association would no longer allow future screen enclosures but would grandfather-in existing enclosures, the Association properly refused to permit request to add enclosure, citing Chattel Shhipping v. Brickell Place, 481 So. 2d 29. (Note, it is unclear in the final order whether the association's rejection of the request occurred before or after the association issued its letter to the residents.)

**Appurtenances; changes to the appurtenances; Section 718.110(4)
Floor coverings**

East Lake Woodlands Cypress Estates v. Smith-Gillespie, Arb. Case No. 2009-03-8842 (Whitsitt/ Final Order/ December 9, 2009)

-Where association gave its approval to the unit owner to remove carpeting and install a tile floor with sound insulation in accordance with specifications required by the association's rules, association was estopped from seeking removal of the tile where a tenant complained of loud noises emanating from the unit.

San Rafael Condo Association v. Perlman, Arb. Case No. 2009-06-2687 (Campbell/ Final Order on Default/ March 17, 2010)

-Unit owner found to have violated declaration requiring approval before installation of hard floor covering, and was ordered to provide to the association proof of the minimum sound transmission classification and approval as required by the declaration.

Slade Condo Association v. Gunning, Arb. Case No. 2008-03-9963 (Earl/ Final Order/ January 8, 2010)

-Where declaration prohibited hard surface flooring except in the foyer and bathrooms without approval of the board, unit owners were shown to have violated the declaration.

**Generally; definition
Rental (See also Tenants)
Repair**

Quail Run of Sunrise Unit Three Condo Association v. Castellanos, Arb. Case No. 2009-04-6480 (Campbell/ Summary Final Order/ March 23, 2009)

-Assuming that the respondent unit owner had installed enclosure on patio in response to drainage problem that association had refused to address, unit owners were not entitled to engage in self-help remedy by installing patio enclosure.

**Restraints on alienation
Sale**

Unit Owner Meetings (See Meetings)

Voting Rights (See Developer-Transfer of control; Elections)

Waiver (See also Estoppel; Selective Enforcement)

Condominium Association of Parker Plaza Estates v. Rosa, Arb. Case No. 2010-00-7915 (Campbell/ Summary Final Order/ April 26, 2010)

-No waiver or estoppel shown where association failed to respond to letter from unit owner requesting an accommodation under the fair housing laws, given that the Broward County Civil Rights Division had already rejected the claim. There was no allegation that the owner ever relied on the inaction of the association, and waiver will not be found in a failure to respond to requests or demands.