

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

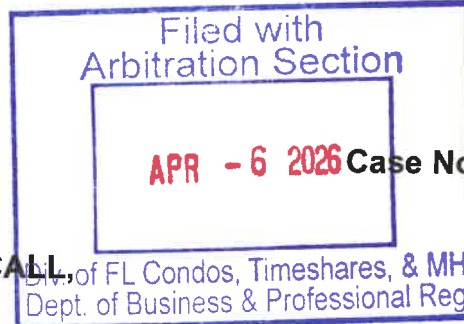
IN RE: PETITION FOR HOMEOWNERS ASSOCIATION – RECALL DISPUTE

**PINELOCH HOMEOWNER'S
ASSOCIATION, INC.,**

Petitioner,
v.

HOMEOWNERS VOTING FOR RECALL,

Respondents.



ORDER OF REASSIGNMENT AND SUMMARY FINAL ORDER

This case has been reassigned to the undersigned arbitrator. Hereafter, all filings shall be addressed to his attention.

Issue

Whether Petitioner's Board of Directors properly determined not to certify the written recall agreement.

Procedural History

On December 1, 2025, Pineloch Homeowner's Association, Inc., (the "Association"), filed a Mandatory Binding Arbitration Form Petition – Recall Dispute, against Respondents, Homeowners Voting for Recall, challenging a recall served on the Association on November 14, 2025. On December 30, 2025, the prior arbitrator entered an order requiring the Association to file certain documents including the notice and minutes for the November 12, 2025, annual meeting and directors meeting and the notice and minutes for the Board meeting on November 20, 2025 – the date of the meeting to consider the recall.

On January 13, 2026, Ryan Morales submitted a Qualified Representative Application for Representation of Respondents, the Homeowners Voting for Recall and filed an Answer to Petition. On January 14, 2026, Petitioner filed what it stated were Notices for and Meeting Minutes related to meetings occurring on November 12 and 20, 2025, and copies of the recall ballots served on the Association. On January 15, 2026, Respondent's Supplemental Response to Petitioner's Exhibits was filed. On February 3, 2025, an Order Setting Hearing for Case Management was issued.

On February 17, 2026, a telephonic Hearing for Case Management was conducted with Counsel for the Association and Respondent's representative participating. The issues were discussed and the parties requested that they be allowed to provide additional evidence in the form of Affidavits and additional ballots. The parties agreed that the case could be decided once this additional evidentiary submittal was complete.

Statement of the Facts

1. The Association is the legal entity responsible for the operation and maintenance of the homeowners community.
2. Respondents are the group of homeowners who delivered the written recall ballots to the Association on November 14, 2025. The same ballots were delivered to the Association a second time on December 1, 2025.
3. The total number of voting interests in the Association is 57. Therefore, a majority of votes needed to recall a director is 29.
4. The number of seats on the Board of Directors at the time of the recall was 3.
5. The three directors targeted for recall were Peter MacCarthy, Ruth Gratt and Eva Leonis. While the petition alleged that 30 recall ballots were delivered to the

Association, the arbitrator counted the ballots filed by the Association and there were 31 ballots filed that voted to recall each director.

6. The Petition alleges that the Board held a meeting to consider the recall on November 20, 2025. It started at 5:02 p.m. and adjourned at 5:22 p.m. according to the minutes.

7. The Association's legal counsel presented his findings to the Board regarding the recall effort. The minutes of the meeting stated that:

Of the 30 ballots submitted, two were deemed invalid: one due to the homeowner name not matching ownership records (11506 Pineloch Loop) and another because multiple ballots were received from one home (11517 Pineloch Loop). In addition, [counsel] advised that the ballots were not valid because the selections were pre-marked and did not provide homeowners with the opportunity to independently cast their vote.

8. The minutes do not reflect that there was any discussion by Board members concerning the recall, or that the Board examined the recall ballots. The Board passed a motion not to certify the recall.

9. The petition alleged that the recall was defective because it was served only two days after the annual election "rendering the timing improper under Fla. Stat. [section] 720.303(10)(a)."¹

10. The Association filed the draft minutes of the Annual Meeting held on November 12, 2025. The minutes stated: (a) "Quorum Not Met – No Meeting; and (2)

¹ This is an incorrect cite; the actual section pertaining to time is section 720.303(l), Florida Statutes (2025).

under paragraph 4. "Determination & Nomination of Candidates: N/A." While the filing stated that a notice of that meeting was attached it was not.

11. The Association filed a letter dated December 4, 2025, from Homeowner Jenifer Meuller to the Board, stating:

I . . . am writing regarding the recall ballot that I previously signed. After further review and clarification, I realize that I did not fully understand the meaning and implications of the document at the time I signed it. I do not wish to remove the existing board members and I support their continuation in their current roles.²

12. The Association filed a letter dated December 4, 2025, from Homeowner Aida Barroso who stated that on November 2, 2025, she "signed a recall ballot in which all selection boxes were already marked. . . . [I] did not mark any of the boxes on this First Ballot." The Association filed her affidavit to the same effect dated February 19, 2026.

13. On December 1, 2025, Respondents delivered the same 31 ballots to the Association; the Board held a meeting on December 8, 2025, to consider this recall; rejected 4 ballots for specified reasons; and voted not to certify the recall because the first recall was now being litigated in this case. Because The Association did not file a petition for mandatory binding arbitration of the second recall as required by section 720.303(10)(d), Florida Statutes, the merits, including notice, of such recall effort are not addressed in this order.

14. Respondents filed their answer denying that the Board Meeting on November 20, 2025, to consider the recall was properly noticed.

15. Respondents filed a letter and affidavit with attachments from their Qualified Representative stating, among other things, that Patrick Seminario was authorized to sign

the recall ballot as the surviving spouse of Denise Gaboy the former owner of the home at 11506 Pineloch Loop, Clermont, FL.

16. While the Petition alleged that 30 ballots were delivered to the Association, the arbitrator counted the ballots filed by the Association and there were 31 such ballots.

17. Respondents Ryan Morales, Carey Bagley and Daniel Montero filed a verified response, signed in the presence of a notary public, to the order to show cause stating among other things, that (a) the November 12, 2025, annual meeting, dating back as 10 years of annual meetings have all lacked quorums; and (b) 31 recall ballots were served on the Association on November 14, 2025; These three homeowners voted for on the 31 recall ballots as replacements for the recalled directors.

18. The Association only filed one purported letter and affidavit attempting to rescind the owner's recall ballot – the one for 11623 Pineloch Loop.

Conclusions of Law

The arbitrator concludes that he has subject matter jurisdiction of this recall dispute and personal jurisdiction of the parties. Because the arbitrator concludes, and the parties agreed at the case management conference, that there are no disputed issues of material fact, summary disposition is appropriate pursuant to Rule 61B-80.114, Florida Statutes.

Relevant Statutory and Governing Documents Provisions

Section 720.303(2)(c)(1), Florida Statutes, provides in part:

The bylaws shall provide the following for giving notice to owners and members of all board meetings and, if they do not, shall be deemed to include the following: (1) Notices of all board meetings must specifically identify agenda items for the meetings and must be posted in a conspicuous place in the community at least 48 hours in advance of the meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency . . .

(Emphasis added).

The Association's ByLaws, at Article VI, Notices, states:

Whenever under the provisions of the statutes or of the Certificate of Incorporation or these Bylaws, notice is required to be given to any director or voting member. [sic] It shall not be construed to mean personal notice; but such notice may be given in writing by mail[.]

Section 720.303(b)2., Florida Statutes, provides in part:

The board shall duly notice and hold a board meeting within 5 full business days after receipt of the agreement in writing or written ballots.

Section 720.303(10)(b)4., Florida Statutes, provides:

Any rescission or revocation of a member's written recall ballot or agreement must be in writing and, in order to be effective, must be delivered to the association before the association is served with the written recall agreements or ballots.

Section 720.303(10)(d), provides in part:

If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board . . . the board shall within 5 full business days after the meeting file . . . with the department a petition for binding arbitration. . . .

Section 720.303(10)(f), Florida Statutes, provides in part:

If the board fails to duly notice and hold a meeting within 5 full business days after service of an agreement in writing, . . the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board all records and property of the association.

(Emphasis added).

Section 720.303(10)(l), Florida Statutes, provides in part:

The division or a court of competent jurisdiction may not accept for filing a recall petition or action, . . . when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

(Emphasis added).

Rule 61B-81.003(3), Florida Administrative Code provides in part:

The board shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing or by written ballot without a membership meeting. . . .

Rule 61B-80.102(3)(h), Florida Administrative Code, provides in part:

Each specific basis upon which the board based its determination not to certify the recall, including the parcel number and specific defect to which each challenge applies. Any specific reason upon which the board based its determination not to certify the recall that is stated in the petition, but absent from the board meeting minutes thereto, shall be ineffective and shall not be considered by the arbitrator. . . .

(Emphasis added).

The ByLaws, at Article V, Section 2, titled Annual Meeting, provides:

B. Regular annual meetings subsequent to the first meeting shall be held on the second Tuesday of _____ each year, if not a legal holiday, or non-business day, and if a legal holiday, or non-business day, then on the next business day following, or as the Board of Directors may determine.

C. At the annual meeting, the membership entitled to vote shall elect a Board of five (5) directors as provided in Article II, Section 1. . . .

Rule 61B-81.003(3), Florida Administrative Code, provides in part:

The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement. . . .

(Emphasis added)(words omitted in the blank in original).

Analysis

The arbitrator concludes that there are a plethora of reasons why the Association's board of directors failed to comply with Florida law and its bylaws by voting not to certify the recall. While the issue of failure of the Association to properly notice the annual meeting and relevant board meetings is sufficient to certify the recall, the arbitrator will

also discuss other issues to determine the number of facially valid recall ballots, and for the benefit of the parties going forward.

Failure To Provide Proper Notice of Board Meeting

At the outset it is important to state the rule that the Association must prove its factual allegations by a preponderance of the evidence. *See, e.g., Hebdon v. Turkey Creek Villas Condominium Association, Inc.*, Arb. Case No. 2020-03-3364, Final Summary Order (January 19, 2021). The prior arbitrator ordered the Association to file notices of the Association's November 12, 2025, Annual Meeting, and notice of the Association's November 20, 2025, board meeting. The Association's filings stated that the notice and minutes for the November 20, 2025 Board Meeting, were filed. However, they were not.

When a Petitioner or its counsel fails to comply with a lawful order of the arbitrator, serious adverse consequences may occur, including one that "shall result in a dismissal of the petition where such failure is deemed willful, intentional, or a result of neglect." *See*, Rule 61B-80.116(2), Florida Administrative Code. The arbitrator concludes that the failure to file the notice was willful, intentional or as a result of neglect, but will not dismiss the petition because the merits need to be addressed and ruled upon. The arbitrator further concludes that the Association failed to establish that the Board properly noticed the meeting to consider the recall in compliance with the statute and its Bylaws rendering the meeting and vote not to certify the recall void.

In *Ortiz v. Long Lake Estate Homeowners Association, Inc.*, Arb. Case No. 2022-01-1149, Summary Final Order (June 1, 2022), a board member who had been recalled filed a petition for binding arbitration challenging the board's certification of his recall. The arbitrator stated that it was clear that the board never duly noticed a meeting to consider the recall and that such failure to notice, together with failure to hold the meeting, was

sufficient to void the recall, citing section 720.303(10)2., Florida Statutes, and Rule 61B-81.003(b)(3), Florida Administrative Code both quoted above. Moreover, the undisputed and un rebutted evidence filed by Respondents demonstrates that no notice was given for the November 20, 2025, board meeting.

The arbitrator concludes that because the Association failed to properly notice the Board Meeting on November 20, 2025, the actions the Board took at such meeting including the vote not to certify the recall were void.

The Timing Issue

The petition alleged that the recall was defective because it was served only two days after the annual election rendering the timing improper. The arbitrator rejects this argument for two reasons. First, that reason was not stated as a basis for voting not to certify the recall in the minutes of the Board meeting. In *Homeowners of Sherwood Forrest, Inc. v. Homeowners Voting for Recall*, Arb. Case No. 09-02-6928, Summary Final Order (August 31, 2009), the arbitrator ruled that only specific reasons stated by the board in the minutes of the meeting held to consider the recall are considered, and other reasons stated in the petition are not considered, citing Rule 61B-80.102(3)(h), quoted above.

Second, the Association relies upon section 303(10)(l), Florida Statutes, quoted above, but it has no application here. There was no election of the board members sought to be recalled because no quorum was obtained at the annual meeting.

The Other Reasons The Board Rejected Ballots

A. Pre-Marking of Recall Ballots and Ineffective Rescission of One Ballot.

As stated in the minutes, the Association's counsel stated at the meeting held to consider the recall that "the ballots were not valid because the selections were pre-marked," but did not identify any specific parcel numbers for ballots that were pre-marked.

When an arbitrator finds and concludes that recall ballots have been pre-marked such ballots are facially invalid because they do not afford an owner the opportunity to independently vote to recall or retain a targeted director. See, *Maya Marca Condominium Apartments, Inc. v. Unit Owners Voting For Recall*, Arb. Case No. 2004-05-5661, Summary Final Order On Petition For Recall Arbitration, n. 6 (January 7, 2005)(arbitrator found that “all of recall ballots had been pre-marked and copied for distribution to the unit owners. . . .”, relying on Rule 61B-23.0028(1), Florida Administrative Code used in condominium cases, and citing many cases stating that pre-marked ballots are facially invalid). See, also Rule 61B-81.003(1)(b), Florida Administrative Code (recall agreement shall “provide spaces by the name of each director sought to be recalled so that the person executing the agreement may indicate whether that individual director should be recalled or retained.”). However, in this case, the minutes did not specify a specific parcel number of a ballot it concluded was pre-marked, thus making this reason invalid. See, Rule 61B-80.102(3)(h), Florida Administrative Code.

The Association filed both a letter, dated December 4, 2025, and an affidavit, dated February 19, 2026, of one homeowner who stated that her ballot had been pre-marked. Because the letter and affidavit are dated after the date the recall ballots were delivered to the Association, it is ineffective as a rescission of that homeowner’s recall ballot. See, Section 720.303(10)(b)4., Florida Statutes and Rule 61B-81.003(5)(a), Florida Administrative Code.

B. The Other Two Ballots Rejected

The minutes of the recall meeting state that two ballots were rejected. One, the ballot for 11506, was rejected because the person who signed the ballot was not the

owner reflected in the Association's ownership records. The other ballot for 11517 was rejected because the minutes stated that multiple ballots were received from that home.

Respondents filed evidence showing that the owner of 11506 was deceased, and that her surviving spouse, who inherited the home, signed the ballot. The arbitrator reviewed the 31 recall ballots filed by the Association and did not find more than one ballot delivered to the Association for the 11517 home.

The arbitrator concludes that 31 facially valid ballots were delivered to the Association and that the Board improperly voted not to certify the recall. It is therefore,

ORDERED AND ADJUDGED that Directors Peter MacCarthy, Ruth Gratt and Eva Leonis are immediately removed from the Association's Board of Directors and they shall return all Association documents and other property to the Association within 5 working days from the date of receipt of this order. It is further,

ORDERED AND ADJUDGED that Replacement Directors Ryan Morales, Carey Bagley and Daniel Montero are immediately members of the Board of Directors. It is further,

ORDERED AND ADJUDGED that since there were only 3 directors at the time of the recall and the Bylaws provide for a five-member board, the new board shall appoint two more homeowners to the Board pursuant to the ByLaws, Article II, Sections 1 and 2. It is further,

ORDERED AND ADJUDGED that within ten (10) days from receipt of this final binding order, the Association shall deliver by U.S. Mail, and/or by email, a copy of this Summary Final Order to each homeowner and post a copy in a place on the community property where notices are routinely posted.

Binding Decision

This decision shall be binding on the parties in accordance with section 720.311(1), Florida Statutes, and Rule 61B-80.121, Florida Administrative Code.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 6th day of April, 2026.



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