

Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

Jill Faucher,
Petitioner,

v.

Redfield Park Unit Owners Association,
Inc.,
Respondent.

No. 26F-H056-REL

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: June 14, 2026, at 1:00 PM.

APPEARANCES: Jill Faucher ("Petitioner") appeared on her own behalf with Christopher Ackerlund as a witness. Ashley Turner, Esq. appeared on behalf of Redfield Park Unit Owners Association ("Respondent" and "Association") with Sandra Palaich and Holly Turner as witnesses. Christa Musgrave observed.

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

EXHIBITS ADMITTED INTO EVIDENCE: The NOTICE OF HEARING, including the referring agency's administrative file, June 05, 2026, HEARING ORDER, Petitioner Exhibits 3.1, 4, 5.1-5.2, 6.10-6.16, 6.18-6.19, 6.21-6.25, and Respondent Exhibits A, C-F, and were admitted into the evidentiary record.

After review of the hearing record in this matter, the undersigned Administrative Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Department is authorized by statute to receive and to decide petitions for hearings from members of condominium associations and from condominium unit owners in Arizona.

2. On or about February 18, 2026, Petitioner filed a single-issue petition with the Department which alleged a violation of Arizona Revised Statute (“ARIZ. REV. STAT.”) §§ 33-1212, 33-1253 and sections 2.2, 7.1, and 7.3 of the Association’s Covenants, Conditions, and Restrictions (“CC&Rs”).¹ Specifically, Petitioner argued that Respondent refused to submit an insurance claim for interior damage to her unit resulting from their failure to maintain and repair a roof drainage pipe, classified as a common element, which leaked water into her unit.² Petitioner requested an order directing Respondent to abide by the aforementioned statutes and governing documents.³ Petitioner did not request the imposition of a civil penalty against Respondent.⁴

a. On March 02, 2026, Petitioner tendered a \$500.00 filing fee to the Department for the petition.⁵

3. On March 05, 2026, the Department issued a HOA NOTICE OF PETITION to Respondent.⁶

4. On an unknown date, Respondent returned its ANSWER to the Department whereby it denied all complaint items in the petition.

5. On May 08, 2026, the Department issued a NOTICE OF HEARING setting the above-captioned matter for hearing before ALJ Sam Fox at the Office of Administrative Hearings (“OAH”), an independent state agency, at 1:00 p.m. on June 12, 2026, to determine whether Respondent violated ARIZ. REV. STAT. §§ 33-1212 and 33-1253 and/or CC&Rs sections 2.2, 7.1, and 7.3.⁷

6. On or about June 06, 2026, the above-captioned matter was reassigned to the undersigned for adjudication.

THE PARTIES AND GOVERNING DOCUMENTS

¹ See Agency File, 26F-H056 Petition Faucher.pdf.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Agency File, Payment Request Received 3-5-26.pdf.

⁶ See Agency File, Notice of Petition – Faucher v Redfield Park.pdf.

⁷ See Agency File, Notice of Hearing.pdf.

1 7. Respondent is a condominium community association whose members
2 own properties in the Redfield Park Condominium residential real estate development
3 located in Scottsdale, Arizona.

4 8. Petitioner is a Redfield Park unit owner and a member of the Association.

5 9. The Association is recognized by the State of Arizona as a domestic
6 nonprofit corporation.⁸

7 10. The Association is governed by its CC&Rs and Bylaws, and overseen by a
8 Board of Directors ("the Board"). The CC&Rs empower the Association to control certain
9 aspects of property use within the condominium development. The Bylaws dictate how
10 the Association operates internally, governing the Board, meetings, and elections. When
11 a party buys a unit in the development, the party receives a copy of the CC&Rs and
12 Bylaws and agrees to be bound by their terms. Thus, the CC&Rs form an enforceable
13 contract between the Association and each unit owner, and the Bylaws outline how the
14 Association is permitted to operate.

15 a. The Association is managed by Associated Asset Management ("AAM"), a
16 professional homeowners association property management company.

17 11. Article II – **Unit Boundaries, Property Rights in Common Elements**,
18 Section 2 **Unit Boundaries** of the CC&Rs⁹ provides the following:

19 (a) The Boundaries of each Unit are as follows:

20 (i) The vertical boundaries of the interior finished but undecorated surfaces
21 of the perimeter of walls of the Unit.

22 (ii) The lower horizontal boundary is the finished but undecorated surface
23 floor of the Unit of the lowest floor.

24 (iii) The upper horizontal boundary is the underside of the finished but
25 undecorated ceiling of the highest floor.

26 (iv) Each Unit shall include any door or window within a perimeter wall of the
27 Unit, the openings and outlets of all utility installations in the Unit and the
28 firebox of any fireplace located in the Unit. All lath, furring, wallboard,

29 ⁸ See Agency File, ACC Record Redfield Park Unit Owners Association, Inc.pdf.

30 ⁹ See Agency File, Petition Supporting Docs – Declaration of CCRs.pdf; see also Respondent Exhibit A.

1 plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring
2 and other materials constituting any part of the finished surfaces of the
3 walls or floor are part of the Unit, and all other portions of the walls, floors
4 and ceilings are part of the Common Elements. All spaces, interior
5 partitions and other fixtures and improvements (including, but not limited
6 to, chutes, flues, wires, conduits, heating and air conditioning units, hot
7 water heaters and gas, cable television, water and electric pipes, lines or
8 meters) within the boundaries of a Unit which serve only the Unit are part
9 of the Unit, and any such fixtures or improvements located within the
10 boundaries of a Unit but which serve more than one Unit are part of the
11 Common Elements.

12 (b) In interpreting the Plat, this Declaration and the Condominium Documents, if
13 the interior finished surfaces of perimeter walls, floors, ceilings, doors and
14 windows of a Unit are not exactly where indicated on the Plat due to settling or
15 minor variances resulting from the construction of the Units, the existing
16 physical interior unfinished surfaces of the perimeter walls, floors, ceilings,
17 doors and windows of the Unit shall be deemed to be its actual boundaries
18 rather than the boundaries as shown on the Plat.

19 (c) In the event of any inconsistency or conflict between the provisions of this
20 Section and the Plat in regard to the description of the boundaries of the Unit,
21 this Section shall control.

22 (d) Declarant reserves the right to relocate the boundaries between Adjoining Units
23 owned by the Declarant and to reallocate each such Unit's Fractional Interest in
24 the Common Elements, votes in the Association and allocation of assessments
25 subject to and in accordance with A.R.S. § 33-1222.

26 12. Article VII – **Common Elements and Unit Maintenance**, Section 1
27 Common **Elements** of the CC&Rs¹⁰ provides the following:

28 Common Elements. Except as provided in Sections 7.2 or 7.3 below, the
29 Association shall be responsible for the maintenance, repair, and replacement of
30 the Common Elements (including the exterior and the structural elements of all
garages, the garage doors, all structural elements of the Building such as walls,
patios, and balconies, and the roof of the Building, but not including yards that are
within the Limited Common Elements for a Unit). Without any approval of the
Owners, the Association may: (i) reconstruct, repair, replace, and refinish any
Common Elements; (ii) maintain, repair, and landscape any shared entry area for
the Condominium (whether established through easement, license, or otherwise);
(iii) cause the annual inspection and preparation of the inspection report as
required by Section 12.7 and (iv) do any other acts deemed necessary to preserve,

¹⁰ *Id.*

1 beautify, and protect the Common Elements in accordance with the general
2 purposes specified in the Condominium Documents. The Board of Directors of the
3 Association shall be the sole and absolute judge as to the appropriate maintenance
4 of the Common Elements. Notwithstanding anything contained in this Section 7.1,
5 the Association will have no obligation to perform any maintenance or repair work
6 that is performed by any municipality or provider utility company responsible for the
7 maintenance of any utilities or improvements located within any Common
8 Elements. No Owner may alter, remove, injure, damage, or interfere in any way
9 with any landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees,
10 and the like, if any, placed on the Common Elements. To the extent reasonably
11 practical, the Association shall provide notice to the owners affected by
12 maintenance, repair and replacement described in this Section 7.1 at least two (2)
13 days prior to the commencement of such work, unless such maintenance, repair
14 and replacement is deemed to be an emergency by the Board of Directors, in which
15 event the Association shall be under no obligation to provide notice to the Owners
16 affected by such work.

17
18 13. Article VII – **Common Elements and Unit Maintenance**, Section 3
19 **Maintenance of Unit** of the CC&Rs¹¹ provides the following:

- 20 (a) All portions of the Owner's Unit;
- 21 (b) The interior portions of the Unit, including, without limitation: (i) service
22 equipment such as a dishwasher, laundry, refrigerator, microwave, oven, and
23 stove. Whether or not these items are built-in fixtures; (ii) interior fixtures such
24 as electrical and plumbing fixtures, tubs, toilets, sinks, floor coverings, and
25 surfaces except the floor slab and subfloor; and (iii) all interior surfaces
26 including but not limited to windows, doors, inside paint, and other inside wall
27 finishes;
- 28 (c) All windows and glass doors (including the cleaning of the interior and exterior
29 of any windows and glass doors);
- 30 (d) The air conditioning unit (including compressors and condensers), heater, and
hot water heater servicing the Unit whether located in the Unit or in the
Common Elements;
- (e) The decorating within the Unit including, without limitation, painting
wallpapering, paneling, floor covering, draperies, window shades, curtains,
lamps, and other furniture and interior decorating. Subject to the provisions of
this Declaration, each Owner shall be entitled to the exclusive use of the interior
surfaces of the perimeter and interior walls, floors, and ceilings within the
Owner's Unit, and each Owner shall maintain these surfaces in good condition

¹¹ *Id.*

1 at the Owner's sole expense. Maintenance by the Owners may be subject to the
2 rules and regulations of the Association as may be necessary for the common
3 good of the Condominium;

4 (f) The interior space of the garage designated for parking by a single Owner;

5 (g) To the extent not included within the categories identified above in this Section
6 7.3, the Limited Common Elements of the type described in subparagraphs (iii),
7 (iv), and (vi) of Section 2.4 of this Declaration;

8 (h) All cosmetic defects or blemishes within the Unit including, without limitation,
9 damage or defect caused by settlement, expansion and/or cracking; and

10 (i) To provide insurance for the Owner's personal property;

11 HEARING EVIDENCE

12 14. Petitioner testified on her own behalf and called Christopher Ackerlund as a
13 witness. Sandra Palaich and Holly Turner testified on behalf of Respondent. The
14 substantive evidence of record is as follows:

15 a. Petitioner owns residential property located at 9551 E. Redfield Rd., Unit
16 1009 Scottsdale, AZ 85260. The unit is approximately 1,280 sq. ft. with two
17 bedrooms and 2.5 bathrooms and shares a roof with the adjoining unit.

18 b. On September 26, 2025, Petitioner's neighborhood experienced a
19 significant late-monsoon storm that resulted in heavy rainfall. During the
20 event Petitioner noticed a leak in her ceiling. That afternoon, Petitioner
21 notified AAM via email about the leak and included several photographs.¹²
22 Petitioner opined that the leak was "expanding by the second" due to the
23 storm and asked AAM to "send someone out to take a look."¹³ An AAM
24 representative responded shortly thereafter that the soonest a roofer could
25 be sent out would be the following day.¹⁴

26
27
28 ¹² See Agency File, Petition Supporting Docs – Roof Leak.pdf; see also Petitioner Exhibits 3.1, 6.10-6.16,
29 and 6-18-6.25.

¹³ *Id.*

¹⁴ *Id.*

- 1 c. Although Petitioner inquired multiple times over the course of several days,
2 including articulation of additional damage due to continued rain and leaks,
3 a roofer was not dispatched to inspect her until October 08, 2025.¹⁵
- 4 d. On October 10, 2025, after receiving additional complaints from Petitioner
5 regarding damage to the interior of her unit, representatives from AAM
6 inspected her unit.¹⁶ A portion of Petitioner's ceiling was observed to be
7 "burst open" and water intrusion was noted in her living room and dining
8 room.¹⁷ Later that afternoon AAM shared with Petitioner that, "The issue is
9 not the roof itself but the drain pipe on the roof."¹⁸ [sic]
- 10 e. On October 11, 2025, 5 Guys Roofing inspected the roof and identified that
11 a plumber was needed to repair the drainage pipe. Afterwards, Petitioner
12 informed AAM that, per the roofer, her insulation was "soaked through" and
13 requested professional inspection of affected areas in her unit prior to
14 remediation.
- 15 i. On October 11, 2025, Omega Star Construction completed repairs to
16 the drainage pipe.¹⁹ Respondent was subsequently invoiced for the
17 work on October 22, 2025.²⁰
- 18 f. On October 21, 2025, AAM informed Petitioner that a decision was pending
19 as the Association was waiting to be advised by counsel as to what steps, if
20 any, the Association would take to repair Petitioner's unit.²¹
- 21 g. On October 22, 2025, Petitioner received mailed correspondence from the
22 Associations counsel, CHDB Law, that advised the following, in pertinent
23 parts:
24 The Board of Directors for the Association asked us to respond to your
25 demands to repair the interior damage to your Unit. For the reasons

26 ¹⁵ *Id.*

27 ¹⁶ *Id.*

28 ¹⁷ *Id.*

29 ¹⁸ *Id.*

30 ¹⁹ See Respondent Exhibit C.

²⁰ *Id.*

²¹ *Id.*

summarized below, the Association declines to make repairs to the interior of your Unit.

Upon learning that the drainage pipe was the source of the leak, the Association hired a plumber for an emergency inspection of the drainage pipe, which occurred on October 11, 2025. Repairs were made that same day to the drainage pipe. The vendor returned onsite to perform additional testing on the drainage pipe to ensure there were no additional leaks, which was performed on October 14, 2025.

Based on the provisions of the CC&Rs, the Association is responsible for repairing the drainage pipe, but you are responsible for the costs the Association incurs to do so. Additionally, the interior of the Unit is your responsibility to maintain and repair. The Association was not negligent in its maintenance of the drainage pipe, and is therefore not responsible for making any repairs to the interior of your Unit.

[I]t is the Association's position that although it is responsible for the repair or replacement of the drainage pipe as a Limited Common Element, because the drainage pipe exclusively serves your Unit, **you are responsible for the cost of such maintenance.** (*Emphasis in original.*)

Therefore, per the CC&Rs and Arizona law, even though the Association performed the repair or replacement work to the drainage pipe at issue, you are responsible for the costs, as the drainage pipe is a Limited Common Element serving your Unit exclusively.

Last, you are responsible for making any necessary repairs to the interior of your Unit, including the ceiling.

[T]here is no evidence to support any negligence on behalf of the Association.

[T]he Association declines to make any repairs to the interior of your Unit. Should you fail to make the necessary repairs within your Unit, the Association reserves the right to enter upon your Unit to make those repairs, and charge the costs to your account, which are secured by a lien upon the Unit, per Section 7.4, CC&Rs.²²

- h. On October 30, 2025, Paradigm Shift Design ("PSD"), an architectural design and general contracting firm hired by Petitioner as a consultant,

²² See Agency File, Petition Supporting Docs – LT Faucher Re Repairs.pdf; see also Petitioner Exhibit 4.

1 issued FORMAL DEMAND FOR CORRECTIVE ACTION to AAM that opined, based
2 on its forensic construction analysis, that because Petitioner's unit was
3 constructed with a single continuous EMC-coated polyurethane foam roof
4 system extended across multiple units without any dividing parapet walls,
5 separation joints, or independent drainage assemblies that functioned as a
6 monolithic structure serving multiple residences as a single drainage
7 system, they is, by definition, a Common Element per Article 2.4(a)(v) of the
8 Association's CC&Rs.²³ Thusly, per ARIZ. REV. STAT. §§ 33-1247 and 33-
9 1253(A)(1), (I), and (J), the Association bore the statutory duty to insure and
10 promptly repair or replace the drainage system at issue.²⁴

- 11 i. On November 07, 2025, AAM advised PSD that Petitioner was required to
12 cover costs associated with repairs to the interior of her unit per Section 7.3
13 of the CC&Rs, including mold remediation.²⁵ AAM declined to submit a claim
14 to repairs to the Association's master insurance.²⁶
- 15 j. On November 10, 2025, PSD issued notice to AAM that it had "completed its
16 review of the roof-drain failure at Unit 1009" and determined that "the failed
17 roof-drain assembly lies above the finished ceiling within the Common
18 Element roof cavity."²⁷ PSD opined that the drain system was part of a
19 "continuous, shared waterproofing assembly serving multiple units and was
20 not an owner-maintained fixture."²⁸ PSD further opined that the Association's
21 denial of Petitioner's remediation request was a violation of Section 8.2(b) of
22 the CC&Rs and A.R.S. §§ 33-1247(A) and 33-1253(A).²⁹
- 23 k. On November 14, 2025, and November 18, 2025, PSD issued follow-up
24 correspondence to AAM on behalf of Petitioner wherein the Board was

25
26 ²³ See Petitioner Exhibit 5.1.

27 ²⁴ *Id.*

28 ²⁵ See Respondent Exhibit D.

29 ²⁶ *Id.*

30 ²⁷ See Agency File, Petition Supporting Docs – Roof Drain Failure.pdf.

²⁸ *Id.*

²⁹ *Id.*

asked to “[a]ctivate the applicable master insurance policy or confirm the intent to do so” but received no reply.³⁰

- l. On November 18, 2025, Petitioner also issued a demand to AAM that they activate the Association’s master insurance policy and file a claim for damage in her unit.³¹ Petitioner also requested a copy of the master insurance policy.³²
- m. On December 01, 2025, Petitioner renewed her prior requests for action and documentation to AAM.³³ Several hours later an AAM representative alerted Petitioner that another representative was responsible for replying to her and had been reminded to do so.³⁴ No further correspondence was received by Petitioner from AAM.

ADDITIONAL EVIDENCE

- n. Redfield Park is comprised of 68 units across 34 buildings.
- o. On March 31, 2025, AAM obtained a CERTIFICATE OF LIABILITY INSURANCE from the Mahagony Group for the Association.³⁵ Unit Owners were advised that they needed to have their own HO-6 condominium insurance for items not covered by the master policy, such as damages falling below the \$10,000.00 deductible for water and \$5,000.00 for all other perils including the entirety of unit interiors (e.g. drywall, insulation, fixtures and ceilings).³⁶
- p. Petitioner testified that although AAM informed her that the damage sustained to her unit in Fall 2025 was not an insurable event, the report she received from PSD October 30, 2025, identified the source of her damage as a Common Element which she opined was covered by the Association’s master insurance policy for repair(s).

³⁰ *Id.*

³¹ See Agency File, Petition Supporting Docs – Water Damage Request.pdf.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See Respondent Exhibit E.

³⁶ *Id.*

1 q. Mr. Ackerlund holds several construction licenses issued by the Arizona
2 Registrar of Contractors, including CR-37 Plumbing and KB-2 Dual
3 Residential and Small Commercial contracting licenses.³⁷ All license are
4 active and in good standing.³⁸ Mr. Ackerlund is also a licensed public
5 insurance adjuster³⁹ and principle of PSD. Mr. Ackerlund testified that
6 Petitioner's unit does not have an individual drainage system on her roof,
7 rather there is a continuous monolithic foam roof that is shared between her
8 unit and the unit adjoining hers. Per Mr. Ackerlund the drainage pipe is a
9 common element. Mr. Ackerlund also opined, based on his firsthand
10 observations, that damage to Petitioner's unit was exacerbated by delayed
11 mitigation by Respondent, and that it was the master insurance policy's
12 obligation to determine coverage and repair(s), if any to Petitioner's unit –
13 not Respondent.

14 **CLOSING ARGUMENTS**

15 15. In closing, Respondent denied violating committing any statutory or
16 community document violations and argued that no liability existed because the drainage
17 pipe at issue was a limited common element and Petitioner's responsibility.

18 16. In closing, Petitioner argued that but for Respondent's failure to properly
19 maintain the drainage pipe, and additional failures to timely address the resulting leak
20 therefrom, that her unit incurred extensive damage that should be covered by the
21 Association's master insurance policy as a common element.

22 **CONCLUSIONS OF LAW**

23 1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV.
24 STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a
25 condominium and/or planned community association. The owner or association may
26 petition the department for a hearing concerning violations of community documents or

27 ³⁷ See <https://azroc.my.site.com/AZRoc/s/contractor-search?licenseId=a0o8y0000004X1OAAU> and
28 <https://azroc.my.site.com/AZRoc/s/contractor-search?licenseId=a0ot0000000NknjAAC>.

29 ³⁸ *Id.*

30 ³⁹ See <https://external-lookup-web.prod.naic.org/lookup/licensee/summary/22166212?jurisdiction=AZ&entityType=IND&licenseType=ADJ>.

violations of the statutes that regulate condominium communities as long as the petitioner has filed a petition with the department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

2. Condominium associations are regulated by ARIZ. REV. STAT. Title 33, Chapter 9, Article 3.

3. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D), 32-2199.02, and 41-1092 et seq., OAH has the authority to hear and decide the contested case at bar. OAH has the authority to interpret the contract between the parties.⁴⁰

4. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated sections 2.2, 7.1, and 7.3 of the CC&Rs and ARIZ. REV. STAT. §§ 33-1212 and 33-1253. Respondent bears the burden of establishing any affirmative defenses by the same evidentiary burden.⁴¹

5. “A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not.”⁴² A preponderance of the evidence is “[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”⁴³

6. When construing statutes, we look first to a statute's language as the best and most reliable index of its meaning. If the statute's language is clear and unambiguous, we give effect to that language and apply it without using other means of statutory construction, unless applying the literal language would lead to an absurd result. Words should be given “their natural, obvious, and ordinary meaning.”⁴⁴ Statutes should be interpreted to provide a fair and sensible result.⁴⁵ Unless defined by the legislature, words

⁴⁰ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

⁴¹ *Id.*

⁴² MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁴³ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

⁴⁴ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

⁴⁵ *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234, 238, 439 P.2d 805, 809 (1968) (“Courts will not place an absurd and unreasonable construction on statutes.”).

1 in statutes are given their ordinary meanings.⁴⁶ Each word, phrase, clause, and sentence
2 of a statute or rule must be given meaning so that no part will be void, inert, redundant, or
3 trivial.⁴⁷

4 7. ARIZ. REV. STAT. § 33-1212(2) provides, except where excluded by the
5 Declaration, that if any chute, flue, duct, wire, conduit, bearing wall, bearing column or
6 other fixture lies partially within and partially outside the designated boundaries of a unit,
7 any portion serving only that unit is a limited common element allocated solely to that unit
8 and **any portion serving more than one unit or any portion of the common elements**
9 **is a part of the common elements.** (*Emphasis added.*)

10 8. ARIZ. REV. STAT. § 33-1253(A)(1) provides, in pertinent part, that
11 commencing not later than the time of the first conveyance of a unit to a person other than
12 a declarant, **the association shall maintain**, to the extent reasonably available,
13 **property insurance on the common elements** and, if required by the condominium
14 documents, the units, insuring against all risks of direct physical loss commonly insured
15 against. (*Emphasis added.*)

16 9. ARIZ. REV. STAT. § 33-1253(D)(1) and (5) provide that insurance policies
17 carried pursuant to ARIZ. REV. STAT. § 33-1253(A) shall include a provision that **each unit**
18 **owner is an insured person under the policy with respect to** liability or **property**
19 **damage arising out of the unit owner's interest in the common elements**, and that as
20 an insured person under the association's policy with respect to the unit owner's interest in
21 the common elements, **each unit owner has the right to report a loss under the**
22 **association's property insurance policy.** (*Emphasis added.*)

23 10. The crux of Petitioner's inquiry is whether the roof drainage pipe is a
24 common element, whether Respondent failed to maintain said drainage pipe, and if so,
25 whether the pipe leak resulting in damage to the interior of her unit triggered a duty by
26 Respondent to submit a claim to its master insurance policy for remediation and repairs.

27 11. Based on review of the credible and relevant evidence of record, the
28 Tribunal is in agreement with Petitioner.

29 ⁴⁶ *Id.*

30 ⁴⁷ See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

12. Here, the record establishes that the Association's Board of Directors is solely responsible for maintenance of common elements, and that all roofs on each of the Association's 34 buildings constitute common elements. It is undisputed that on September 26, 2025, Petitioner reported a leak in her unit which was determined to be a result of a crack in a drainage pipe located on a shared roofing structure, and that the drainage pipe was repaired on October 11, 2025. The record also reflects that through and until December 01, 2025, Petitioner continuously reported the incurrence of additional damage to the interior of her unit as a result of the leak(ed) drainage pipe. It is undisputed that the Association never provided Petitioner with a copy of its master insurance policy or filed a claim for loss with the Mahagony Group per her request.

- a. Notably, nearly all factual discrepancies are resolved in Petitioner's favor as Mr. Ackerlund provided the most credible testimony on all points of contention between the parties.

13. Ultimately, the Tribunal finds that but for the failure of a common element the interior of Petitioner's unit would more likely than not have sustained water and related damage. The Tribunal also finds that, at a minimum, once Respondent was informed of the damage and cause thereof it was required to submit a claim to its master insurer – the only appropriate entity to determine liability, if any, and associated repairs and costs related thereto. Neither finding holds Respondent in violation of ARIZ. REV. STAT. §§ 33-1212 or 33-1253 or sections 2.2 or 7.3 of the CC&Rs, but does find Respondent out of compliance with section 7.1 of the CC&Rs.

14. Therefore, the undersigned Administrative Law Judge concludes that because Petitioner sustained her burden of proof, in part, the underlying petition must be granted.

ORDER

In view of the foregoing,

IT IS ORDERED that Petitioner's petition, including all relief requested, be granted.

IT IS FURTHER ORDERED that Respondent shall reimburse Petitioner's filing fee, totaling \$500.00 (five hundred dollars), as required by ARIZ. REV. STAT. §§ 32-2199.01-02.

IT IS FURTHER ORDERED that Respondent shall henceforth abide by section 7.1 of the CC&Rs; including submitting a claim to the Mahagony Group regarding this matter.

IT IS FURTHER ORDERED that no civil penalties shall be levied against Respondent as a result of these proceedings.

IT IS FURTHER ORDERED that each party bears its own costs related to preparation and litigation of this matter.

NOTICE

Pursuant to ARIZ. REV. STAT. §32-2199.02(B), this FINAL ORDER is binding on the parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. § 32-2199.04. Pursuant to ARIZ. REV. STAT. § 41-1092.09, a request for rehearing in this matter must be filed with the Commissioner of the Arizona Department of Real Estate within thirty (30) days of the service of this FINAL ORDER upon the parties.

Done this day, July 02, 2026.

Office of Administrative Hearings

/s/ Jenna Clark
Administrative Law Judge

Transmitted electronically to:

Susan Nicolson, Commissioner
Arizona Department of Real Estate
100 N. 15th Ave. Ste. 201
Phoenix, AZ 85007
snicolson@azre.gov
mneat@azre.gov
lrecchia@azre.gov
labril@azre.gov
vnunez@azre.gov
gosborn@azre.gov
dmorehouse@azre.gov

Jill Faucher, Petitioner
9551 E. Redfield Rd., Unit 1009
Scottsdale, AZ 85260
jfaucher01@gmail.com

1 Ashley N. Turner, Esq.
2 Mark K. Sahl, Esq.
3 CHDB Law LLP, Counsel for Respondent
4 1400 E. Southern Ave., Ste. 400
5 Tempe, AZ 85282-5691
6 minuteentries@chdblaw.com
ashley.turner@chdblaw.com
mark.sahl@chdblaw.com

7 By: OAH Staff
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30