

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 Tatiana Hernandez,

No. 26F-H012-REL

3 Petitioner,

**ADMINISTRATIVE LAW JUDGE  
DECISION**

4 v.

5 Barcelona Manor Association, Inc.,

6 Respondent.

7  
8

---

**HEARING:** April 17, 2026

9  
10 **APPEARANCES:** Petitioner Tatiana Hernandez appeared on her own behalf. Dr. Bryson  
11 Struse appeared on behalf of Respondent Barcelona Manor Association, Inc., with  
12 witness Erik Myers.

13 **ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella

14 **EXHIBITS ADMITTED INTO EVIDENCE:** Administrative Notice taken of Agency  
15 Record; Petitioner Tatiana Hernandez's Exhibit's 1 through 8

16 **FINDINGS OF FACT**

17 1. Barcelona Manor Association, Inc. ("Respondent") is a  
18 condominium association located in Tucson, Arizona.

19 2. On or about January 9, 2026, Tatiana Hernandez ("Petitioner") filed  
20 a petition with the Arizona Department of Real Estate ("Department") alleging that  
21 Respondent had violated A.R.S. § 33-1247 and the CC&Rs, including Sections 9.1(iii),  
22 9.4, and 13.2. Petitioner paid the required \$500.00 filing fee to address the one issue  
23 claimed in the petition.

24 3. The Notice of Hearing in this matter set forth the issue to be  
25 determined as follows:

26 On December 18, 2025, at or about 5:00 pm, the Association violated  
27 A.R.S. § 33-1247 and the Declaration, including Sections 9.1(ii), 9.4, and  
28 13.2, by determining that I am responsible for repair and damage caused  
29 by a plumbing component that services my unit but is not located within  
30 my unit, is fully concealed within the ceiling of another unit, and is  
inaccessible to me, despite Section 9.1(iii) assigning the Association  
responsibility for plumbing located outside unit boundaries and Sections

1 9.4 and 13.2 applying only to damage caused by an owner's act or  
2 neglect, which is not present here.

3 4. Petitioner is the owner of Unit 624. Petitioner testified that a  
4 plumbing component located in the ceiling below her unit, which cannot be accessed or  
5 maintained by her, experienced a leak. The leak was caused by a faulty P-trap that had  
6 been installed by the previous owner of her unit. Petitioner testified that she had no  
7 knowledge of it, and Petitioner asserted that therefore, there was no negligence on her  
8 part. Petitioner testified that her downstairs neighbor informed her that the leak was "a  
9 problem before her" and blamed the previous owners.

10 5. Petitioner testified that Respondent requested that she not use her  
11 shower for six months and she complied with the request, instead showering at her  
12 gym.

13 6. Petitioner acknowledged that the owner of the unit below hers has  
14 not denied access to the area. Petitioner further acknowledged that prior to purchasing  
15 her unit, her realtor recommended a home inspection of the unit be conducted to ensure  
16 that it was free of defects and Petitioner paid for the inspection. Petitioner asserted that  
17 the previous owner did not disclose the issue.

18 7. However, the Residential Seller's Property Disclosure Statement  
19 ("Disclosure") that was provided to Petitioner prior to the purchase of her unit by the  
20 previous owner, indicates on line number 172, that Silverado Rooter & Plumbing ROC  
21 201381, tightened the bathtub drain.<sup>1</sup> The Disclosure also indicates for line number  
22 285, that the seller was "aware of any water damage or water leaks of any kind on the  
23 property" and the attachment to the Disclosure indicates in pertinent part:

24 Line 172. – Minor plumbing repair performed by Silverado Rooter &  
25 Plumbing

26 Line 175. – Plumbing work was tightening a drain nut which is complete

27 Line 285. – . . . Tub had leak from drain nut which was tightened.<sup>2</sup>

28  
29 <sup>1</sup> See Petitioner's Exhibit 8.

30 <sup>2</sup> *Id.*



1 for maintenance, repair and replacement of the common elements and  
2 each unit owner is responsible for maintenance, repair and replacement of  
3 the unit. On reasonable notice, each unit owner shall afford to the  
4 association and the other unit owners, and to their agents or employees,  
5 access through the unit reasonably necessary for those purposes. If  
6 damage is inflicted on the common elements or any unit through which  
7 access is taken, the unit owner responsible for the damage, or the  
8 association if it is responsible, is liable for the prompt repair of the  
9 damage.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
5. CC&R Section 9.1(iii) states:

All conduits, ducts, plumbing wiring and other facilities for the furnishing of utility services which are contained in the portions of a Unit maintained by the Association, and all facilities contained within a Unit which service part or parts of the Condominium Property other than the Unit within which such facilities are contained.

6. CC&R Section 9.4 states in pertinent part:

(i) If, due to the act or neglect of an Owner or a member of his family or household pet or guest or other authorized Occupant, or visitor or invitee of such Owner, damage shall be caused to the Common Elements or to a Unit owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Owner shall pay for such damage and for such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's insurance.

7. CC&R Section 13.2 states:

Amount of Assessment. Each Condominium Unit and the Owner thereof, subject to the terms hereof, shall be assessed an amount of the Common Expense equal to that Condominium Unit's ownership interest in the Common Elements, and in addition thereto, and by means of a special assessment:

A. If a Condominium Unit Owner fails to perform maintenance, repairs, and replacements which are his obligation, then, after written notice from the Board to perform such maintenance, repairs, or replacements within a reasonable time limit as may be set by the Board, the Board may perform such needed

1 maintenance, repairs, and replacements, and shall levy an  
2 assessment against such Condominium Unit Owner thereof  
3 equal to the amount so expended.

4 B. All costs incurred in the enforcement of the provisions of this  
5 Declaration against and Condominium Unit Owner, including but  
6 not limited to attorney's fees and court costs shall be assessed  
7 to the Unit and the Owner against whom enforcement is sought.

8 8. The Administrative Law Judge finds that CC&R Section 13.2 is  
9 inapplicable to the instant matter.

10 9. In this case, Petitioner has alleged that the leak was caused by a faulty  
11 plumbing repair in the common element. However, the area in which the issue has  
12 arisen is in area *only* between her unit and the unit beneath her unit and was not  
13 caused by Respondent nor was Respondent aware of the faulty repair that had been  
14 performed by the previous owner of the unit. Petitioner was on notice that this repair  
15 had been made as disclosed by the previous owner in the Disclosure. Moreover,  
16 Petitioner did not establish that the area containing the P-trap is in an area of a Unit  
17 *maintained by the Association or contained within a Unit which services part or parts of*  
18 *the Condominium Property other than the Unit within which it is located.* The faulty P-  
19 trap, which is the mechanism causing the leak, is specific to Petitioner's unit.

20 10. Therefore, the Administrative Law Judge concludes, based upon the  
21 evidence presented at hearing, that Respondent has not violated the referenced  
22 statutory provision or the referenced CC&Rs.

23 11. Petitioner failed to prove by a preponderance of the evidence that  
24 Respondent violated the cited statute and referenced CC&Rs as alleged in the petition.

25 **ORDER**

26 IT IS ORDERED that Petitioner's petition is dismissed.

27 **NOTICE**

1 Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties  
2 unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.  
3 Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter  
4 must be filed with the Commissioner of the Department of Real Estate  
5 within 30 days of the service of this Order upon the parties.

6 Done this day, April 29, 2026.

7 /s/ Sondra J. Vanella  
8 Administrative Law Judge

9  
10 Transmitted by either mail, e-mail, or facsimile April 29, 2026, to:

11 Susan Nicolson, Commissioner  
12 Arizona Department of Real Estate

13 Barcelona Manor Association, Inc.  
14 dphillips@associatedasset.com

15 Tatiana Hernandez  
16 kitanna895@gmail.com

17  
18  
19 By: OAH Staff  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30