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Sent: Saturday, September 27, 2025 9:47 PM
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Subject: Re: Proposed Insurance amendments to Tara CC&R's

Follow Up Flag: Follow up
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Tara Condominium Association Board of Management,

I am writing in response to your recent letter to the Tara members, which addresses my concerns about the proposed amendments to the Declaration of Restrictions, Establishment of Board of Management and Lien Rights (the "Declaration"). While I appreciate the Board's acknowledgment of my passion and the role of constructive criticism in community governance, I must express my disappointment in the letter's tone and content, which seems to dismiss legitimate concerns as mere disagreement rather than engaging with them substantively. I believe this process warrants greater transparency and collaboration, and I urge the Board to reconsider the amendments in light of the issues I outline below.

First, regarding the Board's invitation for members to "work with us to find solutions," I must point out that the Association has not fostered an environment conducive to

such collaboration. The Board does not hold sufficient open meetings that allow for the meaningful exchange of ideas and input from owners. In the limited meetings that do occur, the use of timers to restrict owner comments demonstrates a lack of genuine interest in hearing from members. This approach suggests the Board is more focused on advancing its own agenda than on incorporating owner perspectives, which is contrary to the principles of community governance and the requirements of ARS § 33-1248 for open meetings. If the Board is truly open to dialogue, I recommend scheduling additional in-person meetings without time limits on discussions related to these significant changes.

Turning to the proposed amendments themselves, I remain convinced that they are unnecessary, non-compliant with Arizona law, and not in the best interest of the community. The letter to members (dated August 6, 2025) claims the amendments are needed due to unsustainable insurance costs, citing a range of \$86,000 to \$94,000 annually. However, these increases do not justify declaring the insurance "not reasonably available" under ARS § 33-1253(C). This statute requires the Association to maintain property insurance on common elements (and units if required by the Declaration) to the extent reasonably available, with prompt notice to owners if it is not. The lack of evidence (e.g., multiple carrier denials) raises questions about the accuracy of the information provided to owners and whether the Board has fulfilled its fiduciary duty under ARS § 33-1243 to act with due care and transparency.

The amendments seek to redefine key terms in a way that shifts the burden of insuring building structures from the Association to individual owners, requiring us to obtain HO-3 policies for the entire unit, including exteriors.

Specifically:

- **Paragraph 1 Amendment:** Redefining "Residential Unit" as "a structure designated for separate ownership and occupancy" appears intended to subtly eliminate the Association's master property insurance coverage for building structures by reclassifying them as individually owned units. This expands the unit beyond the original interior-focused definition (Paragraph 9 of the 1970 Declaration) to include the full building structure, excluding underlying land, which misaligns with the statutory "Unit" under ARS § 33-1202(24) ("a portion of the condominium designated for separate ownership or occupancy," typically interiors). This redefinition changes unit boundaries, requiring unanimous owner consent under ARS § 33-1227(D), and proceeding with a 67% vote as proposed would render this change invalid.
- **Paragraph 10 Amendments:** Subsection (A) limits "Common Elements" to "all portions of the land which is not the Residential Units," excluding buildings, while subsection (B) introduces "Limited Common Elements" for exclusive use portions. This reclassification misaligns with ARS § 33-1202(8), which defines common elements as all portions other than units, typically including building exteriors. By minimizing common elements to land only, the amendments risk de-classifying the property as a condominium under

ARS § 33-1202(12), which requires undivided common ownership vested in unit owners.

- **Paragraph 12(B) Amendment:** Limiting assessments to "Common Elements, including the improvements other than the Residential Units and Limited Common Elements" excludes building maintenance and insurance, shifting these costs to owners.
- **Paragraph 12(H) Amendment:** Restricting insurance to "Common Elements" at 80% actual cash value eliminates master coverage for buildings, violating ARS § 33-1253(A)(1) unless unavailability is proven. New subsection (ii) allows additional assessments for insurance deficiencies, but this does not address the core non-compliance.
- **Paragraph 12(Q) Amendment:** Requiring 60% owner vote for special assessments on unit damage further alters responsibilities without statutory justification. It would be far better to plan ahead by establishing an annual budget that accounts for maintenance and insurance costs, ensuring financial stability, rather than imposing the uncertainty of special assessments on homeowners with fixed budgets.
- **Paragraph 18(A) Amendment:** The addition of late fees and interest on unpaid assessments, enforceable as liens on "Residential Units," complicates matters by introducing new financial penalties. The original rule, with assessments due on the 1st and considered late after the 15th with a \$25 late fee, provided a reasonable 14-day grace period that balanced enforcement with owner flexibility. This new

amendment disrupts that balance and does not resolve underlying legal issues.

- **New Paragraph 24:** Requiring owners to insure their units and improvements, including the building structures, with proof to the Association imposes new burdens without offsetting benefits and is contrary to ARS § 33-1253(A)(1), which mandates that the Association maintain property insurance on common elements and, if required by the condominium documents, the units, thereby placing the responsibility for insuring building structures on the Association unless deemed not reasonably available under § 33-1253(C).

Additionally, the proposed "Action By Written Consent" process for voting on these amendments does not comply with ARS § 33-1250(C). This statute prohibits proxies after the declarant control period (long ended for Tara) and mandates that votes be cast in person, by absentee ballot, or another form of delivery (e.g., email, fax), with specific requirements: (1) ballots must list each proposed action, (2) provide for/against options, (3) be valid for one election only, (4) specify a delivery deadline at least seven days after distribution, (5) not authorize proxies, (6) include voter identification/signature and (7) retain records for one year. Noncompliance with these provisions renders any actions taken through this process unenforceable, further undermining the amendments' legality.

These changes, taken together, appear designed to circumvent the Association's statutory insurance obligations without sufficient justification. The modest premium range of \$86,000 to \$94,000 (averaging \$1,720–

\$1,880 per unit annually for 50 units) does not meet the "not reasonably available" standard under ARS § 33-1253(C), as no evidence of market refusal has been provided. Moreover, the amendments conflict with the original Declaration's requirement to insure "all buildings and improvements" (Paragraph 12.H) and could expose the Association to legal challenges for fiduciary breach under ARS § 33-1243, including lack of due diligence in exploring alternatives like risk pools or self-insurance.

A far better solution, which protects the integrity of our Association and its financial stability while avoiding the negative aspects of these illegal Declaration changes, is to address the root cause of higher premiums: aluminum wiring. All homeowners can obtain small home equity loans (typically \$5,000–\$10,000 at low interest rates of 6–8% in 2025) to afford pigtail—connecting aluminum wiring to copper using approved methods like COPALUM or AlumiConn connectors. This remediation reduces fire hazards, making the property more insurable and lowering the master policy premium to approximately \$40,000 annually. The savings (from \$94,000 to \$40,000) would pay for the loans in 3–5 years through reduced assessments, benefiting all owners long-term.

This can be accomplished without amending the Declaration, which requires a 100% vote and risks non-compliance. Instead, the Board can send a simple letter of explanation to homeowners encouraging self-compliance, or propose a rule change in our Bylaws (Section 1.09 allows modifications with majority approval). A bylaw rule could mandate pigtail within a reasonable timeframe (e.g., 6 months), enforced through fines or assessments

for non-compliance. This approach complies with ARS § 33-1242 (association powers to adopt rules) and prevents the need for boundary changes or insurance shifts, protecting homeowners from increased personal premiums and responsibilities that were not foreseeable and are challengeable under *Kalway vs. Calabria Ranch* (HO-3 vs. HO-6), potential coverage gaps, title/deed issues, and resale difficulties.

I urge the Board to withdraw the proposed amendments and pursue this alternative, scheduling an open meeting to discuss it without time limits. Let's work together to maintain Tara as a strong, sustainable community without compromising legal standards or owner rights.

Sincerely, Lisa Marx

On Sat, Sep 27, 2025 at 10:56 AM tara-condos <tara.condos.sc@gmail.com> wrote:

To the Tara Members:

As many of you know, the Board has initiated a vote on proposed amendments to the Declaration concerning insurance responsibilities. These changes are being pursued not out of convenience or cost-shifting, but out of necessity—to ensure that your monthly assessment remains affordable and our properties remain insured.

The cost of maintaining the type of master insurance policy the Association has historically carried has become unsustainable. If we were to continue with the current master insurance policy, the insurance premiums would place an overwhelming burden on the Association's finances and, by extension, on each of you as homeowners. The proposed changes are designed to give owners more control over their individual property coverage while protecting the Association's ability to function responsibly and avoid financial crisis.

Importantly, the Board has sought and received legal counsel throughout this process. The procedures being used, including the voting method and content of the proposed amendments, were developed with the assistance of the Association's attorneys to ensure full compliance with Arizona law. While Ms. Marx has raised concerns, we want members to understand that the process being followed was crafted in consultation with legal professionals to help the Association and its members continue to access essential insurance coverage in an era of rapidly rising costs.

The Board wants to be clear; the Association is not walking away from its obligations. We are implementing a plan that allows us all to preserve insurance coverage and financial stability. Without this shift, the viability of homeownership at Tara would be severely compromised.

We appreciate Ms. Marx's passion and the engagement she brings to these issues. Constructive criticism plays an important role in community governance. That said, we hope that members who identify potential pitfalls in the proposed amendments will also work with us to find solutions so that we can improve the language and outcome together, rather than focus solely on disagreement.

Thank you for your continued interest in keeping Tara a strong and sustainable community. If you have questions, ideas, or concerns, we welcome you to reach out directly to the Board.

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Sincerely,
The Tara Condominiums Association Board

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