

1 Lisa Marx
2 13610 N. 111th Ave.
3 Sun City, AZ 85351
4 602-748-7781
5 aimtodogood@gmail.com
6 Representing self

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9
10 Lisa Marx
11 Plaintiff,

Case No. CV 2025-012980

12 vs.

13 Tara Condominiums Association, Inc.,

14 **PLAINTIFF'S MOTION FOR**
15 **PARTIAL**
16 **SUMMARY JUDGMENT ON**
17 **COUNT VII**
18 **(CLAIMS 120 AND 121 – A.R.S.**
19 **§ 10-11601, CORPORATE**
20 **RECORDS)**
21 **AND MEMORANDUM OF POINTS**
22 **AND AUTHORITIES**

23 Honorable Adele Ponce

24 Pursuant to Ariz. R. Civ. P. 56(a), Plaintiff Lisa Marx moves for partial summary judgment on two of the claims asserted in Count VII of the Second Amended Complaint – Claim 120 and Claim 121 (Violation of A.R.S. § 10-11601). This Motion is supported by Plaintiff's Separate Statement of Facts ("SOF"), the following Memorandum, the Declaration of Lisa Marx, and the entire record.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Count VII of the Second Amended Complaint pleads violations of A.R.S. § 10-11601, the corporate-records statute, at ¶¶ 118-125. By this Motion Plaintiff seeks partial summary judgment on two of those claims only – Claim 120 and Claim 121 – and does not seek judgment on the remaining claims in Count VII, which she reserves. Claim 120 alleges that on June 15, 2024 the Association “refused corrections to minutes to correctly record the actual meeting minutes despite member protests.” Claim 121 alleges that in 2024 and 2025 the Association “conducted association business without any written record of it in meeting minutes, including but not limited to appointment of board members, hiring of vendors, reorganization of committees, expenses, transferring of funds.” Section 10-11601 requires the Association both to keep accurate minutes of its meetings and to keep a record of its actions; Claim 120 proves the first failure and Claim 121 the second, each on the Association's own documents. Because Count VII is a declaratory-judgment claim under A.R.S. §§ 12-1831 and 12-1832, Plaintiff is entitled to the requested declarations regardless of whether § 10-11601 creates a private right of action. This Court has already ruled that Plaintiff's claims “are not derivative” and that injunctive relief to compel the Association to follow “the CC&R's or other law ... is not a derivative claim.” (Minute Entry, filed June 26, 2025.)

II. STATEMENT OF FACTS

Plaintiff incorporates her Separate Statement of Facts, ¶¶ 1-36. The Association is an Arizona nonprofit corporation. (SOF ¶ 2.) Section 9.E of its Declaration states that “[a] majority vote of the Managers shall entitle said Board to carry out action on behalf of the owners,” and § 12.B commits the expenditure of assessments to the Board. (SOF ¶¶

1 8-9.) Part A (§§ 1-7) establishes the June 15, 2024 minutes-correction refusal; Part B (§§
2 8-36) establishes the unrecorded acts.

3 III. LEGAL STANDARD

4 Summary judgment is proper where there is no genuine dispute of material fact and
5 the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a); Orme
6 School v. Reeves, 166 Ariz. 301, 309, 802 P.2d 1000 (1990). The construction of A.R.S. §
7 10-11601 and of the Association's governing documents presents questions of law.

8 IV. ARGUMENT

9 A. The Declaratory Judgment Act entitles Plaintiff to the requested declarations.

10 Under A.R.S. § 12-1832, “any person ... whose rights, status or other legal relations are
11 affected by a statute” may obtain a declaration of rights. Count VII invokes that Act.
12 Whether § 10-11601 independently creates a private cause of action is therefore beside
13 the point: the Act supplies the vehicle, and Plaintiff, whose statutory records rights are
14 affected, is entitled to a declaration whether the Association complied with § 10-11601.

15 B. Claim 120: the Association failed to keep accurate minutes.

16 Section 10-11601(A) requires the Association to keep “minutes of all meetings” of its
17 board. Minutes of a meeting are a record of the proceedings; a record that omits part of
18 what occurred is not complete or accurate minutes of that meeting. The June 15, 2024
19 meeting was noticed to approve the March 16, 2024 minutes “as written and dispersed”
20 (SOF ¶ 3). Plaintiff requested to offer corrections to those minutes, and Chairperson
21 Gottmann refused, on the record (SOF ¶ 4); other members objected (SOF ¶ 5); and the
22 Board then voted 4-0 to approve the minutes as written (SOF ¶ 6). The Association's
23 official minutes record only the motion and the 4-0 vote carrying it, and omit Plaintiff's
24 request to offer corrections and Gottmann's refusal (SOF ¶ 7). The minutes therefore

1 present the approval as unopposed when it was not, and do not, in the words of Claim
2 120, “correctly record the actual meeting minutes.” They are inaccurate and incomplete
3 in violation of § 10-11601. That recordkeeping duty is one the Association owes its
4 members directly: Arizona has adopted Restatement (Third) of Property: Servitudes §
5 6.13, under which an association must treat its members fairly and act reasonably in the
6 exercise of its discretionary powers, and comment a provides that those duties are
7 owed to individual members and their breach gives rise to a cause of action against the
8 association. *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, ¶ 25, 165
9 P.3d 173 (App. 2007). Plaintiff does not contend the Association was required to adopt
10 her proposed corrections; she contends only that its minutes must accurately record
11 that the approval was taken over her on-record request and the Chairperson's refusal.

12 **C. Claim 121: the Association kept no unredacted record of its board actions.**
13 Section 10-11601(A) requires the Association to keep permanent minutes of all board
14 meetings and “a record of all actions taken ... without a meeting.” The expenditures at
15 issue are expenditures of Association assessments, which § 12.B of the Declaration
16 commits to the Board (SOF ¶ 9); each was therefore a board action for which § 10-11601
17 required a record. The undisputed facts establish the breach across every category ¶
18 121 names: a closed board meeting and the legal fees billed for it, with no minutes (SOF
19 ¶¶ 10–13); materials, maintenance, and HUD expenditures with no unredacted board-
20 action record (SOF ¶¶ 14–26); a fee waiver for a director (SOF ¶¶ 27–29); a fund
21 transfer and a reserve draw, each with no unredacted record (SOF ¶¶ 30–33); and the
22 Board's determination — which the Association admits — that no meeting or action
23 was required on Plaintiff's November 3, 2024 letter regarding the return of the 2025
24 budget ballots, for which no record was produced (SOF ¶¶ 34–35). A ledger entry

1 recording a transaction is not a record of the board action authorizing it, which § 10-
2 11601 separately requires; and the Association's discovery production contains no
3 minutes or record of any of these board actions (SOF ¶ 36). As with Claim 120, the duty
4 to keep these records is one the Association owes its members directly under
5 Restatement (Third) of Property: Servitudes § 6.13. *Tierra Ranchos*, 216 Ariz. at ¶ 25.

6 **D. The forgiven \$35 fee illustrates the violation.**

7 The \$35.00 the Association forgave was a returned-payment fee charged to the
8 individual account of a director, Stephanie Buschart — a charge imposed by the
9 Association's bank or its accountant, Colby Management, on the account holder
10 responsible for the returned payment, not an Association expense. Forgiving that
11 charge relieved a director of a debt she personally owed. That was a substantive Board
12 decision, not a ministerial act; under Declaration § 9.E it required a majority vote of the
13 Board, and under § 10-11601 a record of that action. The Association produced neither.
14 (SOF ¶¶ 27-29.)

15 **E. The Association's use of an accountant does not excuse the missing records.**

16 The Association cannot avoid the recordkeeping duty by pointing to its accountant.
17 The Association is self-managed and retains Colby Management to keep its books; it
18 employs no professional community manager, and the governing authority remains
19 with the Board. Under Declaration § 9.E, only “a majority vote of the Managers ...
20 entitle[s] [the] Board to carry out action on behalf of the owners.” (SOF ¶ 8.) An
21 accountant who records the Association's transactions does not exercise that governing
22 authority; the substantive decisions underlying the expenditures, the director fee
23 waiver, the fund transfer, and the reserve draw were the Board's to make. Section 10-
24 11601 required a record of the board action authorizing each, and the Association

1 produced none. That the Association's books reflect the transactions does not supply
2 the missing record of the decision to make them.

3 **F. The claims are direct, not derivative.**

4 This Court has already held Plaintiff's claims “are not derivative.” (Minute Entry, June
5 26, 2025.) Plaintiff is an owner of a unit in, and a member of, the Association (SOF ¶ 1).
6 A claim is direct where the duty ran to the plaintiff and the injury and recovery are
7 hers. *Albers v. Edelson Tech. Partners L.P.*, 201 Ariz. 47, ¶¶ 17–18, 31 P.3d 821 (App.
8 2001). The § 10-11601 duty to keep accurate and complete records runs to Plaintiff as a
9 member, and her injury is the denial of her own statutory right to those records — a
10 right the statute confers on each member. *Iqtunheimr, LLC v. Val Vista Lakes Cmty.*
11 *Ass'n*, 586 P.3d 1081 (Ariz. Ct. App. 2026), held only that general common-area-
12 maintenance claims are derivative; it preserved individualized claims, and Plaintiff
13 asserts an owner-specific records right. *Albers*, ¶ 18.

14 **G. The anticipated defenses fail.**

15 The recordkeeping duty is mandatory, and keeping a record for some board actions but
16 not others does not satisfy § 10-11601. Arizona does not apply the business-judgment
17 rule to excuse a community association from compliance with its governing
18 obligations. *Tierra Ranchos*, 216 Ariz. at ¶ 25. Because each fact set out above is drawn
19 from the Association's own minutes, financial records, vouchers, and discovery
20 responses, no genuine dispute of material fact remains for trial.

21 **V. A PROSPECTIVE INJUNCTION AND COSTS ARE WARRANTED**

22 The violation is systemic rather than isolated. Across 2024 and 2025 the Association's
23 own records show board action — expenditures, a director fee waiver, a fund transfer,
24 and a reserve draw — taken with no minutes and no unredacted record of the

1 authorizing decision (SOF ¶¶ 10-36). A continuing course of statutory noncompliance
2 of this kind warrants prospective relief requiring the Association to keep and to
3 provide the accurate and complete minutes and records that § 10-11601 mandates. As
4 the successful party, Plaintiff is entitled to her taxable costs under A.R.S. § 12-341.

5 **VI. RELIEF REQUESTED**

6 Plaintiff requests that the Court grant partial summary judgment on Claims 120 and
7 121 and declare that the Association violated A.R.S. § 10-11601 by failing to keep
8 accurate and complete minutes of the June 15, 2024 meeting (Claim 120) and by
9 conducting association business without any record of the board action authorizing it
10 (Claim 121); enter an injunction requiring the Association to keep and provide
11 complete and accurate minutes of its meetings and a record of the actions it takes; and
12 award Plaintiff her taxable costs under A.R.S. § 12-341. Plaintiff does not seek on this
13 Motion a declaration that the underlying acts are void, and reserves that relief.

14 **VII. CONCLUSION**

15 For the foregoing reasons, Plaintiff requests that the Court grant partial summary
16 judgment on Claims 120 and 121.

17
18 RESPECTFULLY SUBMITTED this 10th day of July, 2026.

19 /s/ Lisa Marx

20 Lisa Marx, Plaintiff Pro Se

21 13610 N. 111th Ave.

22 Sun City, AZ 85351

23 602-748-7781

24 aimtodogood@gmail.com

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CERTIFICATE OF SERVICE

I certify that on July 10, 2026, a true copy of the foregoing was served via e-file to the Court and Defendant's Counsel and by email on counsel for Defendant:

Chuck Oldham — Chuck.Oldham@chdblawn.com

Ari Bowhay — Ari.Bowhay@chdblawn.com

/s/ Lisa Marx

Lisa Marx, Plaintiff Pro Se

13610 N. 111th Ave.

Sun City, AZ 85351

602-748-7781

aimtodogood@gmail.com