Lisa Marx
13610 N. 111th Ave.
Sun City, AZ 85351
602-748-7781
aimtodogood@gmail.com
Representing self

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Lisa Marx Plaintiff, vs. Tara Condominiums Association, Inc.,	Case No. CV 2025-012980 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM OF POINTS AND AUTHORITIES RE: CLAIMS 30, 47, 74, 103, AND 108; 48 AND 92** Honorable Adele Ponce

Plaintiff Lisa Marx moves under Ariz. R. Civ. P. 56(a) for partial summary judgment on Claims 30, 47, 74, 103, and 108, and on Claims 48 and 92. The motion is supported by the following Memorandum, Plaintiff’s Separate Statement of Facts (“SOF”), the Declaration of Lisa Marx (“Marx Decl.”), and the accompanying exhibits.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Board of Management has no inherent authority. It exists only because the Declaration created it and the Condominium Act recognizes it, and it holds only the powers those instruments give it, on the conditions they impose. Take away the governing documents and the statutes, and the Board has no authority at all.

The Declaration imposes two conditions on every act the Board takes on behalf of the owners. Declaration § 9.E supplies the authority gate: "A majority vote of the Managers shall entitle said Board to carry out action on behalf of the owners of the units." SOF ¶ 3. A.R.S. § 33-1248 supplies the process gate: board meetings are open to the members, who must receive notice, an agenda, and the right to speak before the board takes formal action. An act that fails either gate is beyond the Board's power and is void.

This motion concerns two such acts, four months apart, taken by the same Chairperson using the same device.

In February 2024, the Chairperson personally negotiated a 50/50 split of a common-element roof repair with a homeowner who had caused no damage, obtained her acceptance, and only then convened a two-minute closed meeting to vote on the arrangement he had already made. SOF ¶¶ 10–21. In May 2024, the same Chairperson convened another closed meeting and moved to erase a recorded lien for repair costs — costs the Board itself had incurred, itemized, demanded, and recorded against the owner whose contractor caused the damage. SOF ¶¶ 37–42. Both meetings were closed under the same recital: "Executive Session pursuant to A.R.S. Section 33-1248.2." SOF ¶¶ 14, 37. Neither act ever appeared on an open-meeting agenda, and no open meeting of the Board ever authorized either one. SOF ¶¶ 29, 44.

The facts are drawn almost entirely from the Association's own notices, minutes, ledgers, invoices, and discovery responses. They are not in dispute. Plaintiff asks the Court to declare both acts void, to enjoin the Association from acting except by a majority vote of the Board at a properly noticed open meeting, and to award costs under A.R.S. § 12-341.

II. STATEMENT OF FACTS

Plaintiff owns Unit 5, Tract G, of Tara Condominiums, together with an undivided 1/50th interest in the common area. SOF ¶ 1. The Articles of Incorporation state that the purpose of the corporation is "to uphold and enforce" the Declaration and to perform the duties imposed by the By-Laws. SOF ¶ 2. Declaration § 9.E requires a majority vote of the Managers before the Board may act on behalf of the owners. SOF ¶ 3. Declaration ¶ 12.B places the "common elements, buildings, grounds and improvements (other than interior of the buildings)" in the Board's care, to be maintained with the assessments collected. SOF ¶ 4. Declaration ¶ 13 permits the Board to charge an owner for a common-element repair in one circumstance only — where the damage arises "through the negligent or culpable act of an owner or any guests, agents, or members of his family" — and then requires that owner to "repay the Board of Management in the amount actually expended." SOF ¶ 5. Declaration ¶ 13.A provides that such charges "shall become a lien" and "shall continue to be such lien until fully paid." SOF ¶ 6. By-Law § 1.08 makes it "the duty of the Board of Management to impartially administer the regulations governing the use and occupancy of the units." SOF ¶ 7.

A. The 13609 N. Newcastle roof.

Legacy Repair addressed its $1,150.00 estimate for a shingle roof repair to “Tara Condominiums.” SOF ¶ 8. On February 1, 2024, in a closed session, the Board recorded that the damage was “caused by removal of patio cover by previous owner” and that the question “Who is responsible for repairs? Tara or the homeowner” “remains to be decided.” SOF ¶ 9.

Twelve days later, before the Board had decided anything, the Chairperson and one director went to the homeowner’s home, gave her the contractor’s letter and estimate, told her the Association “was not prepared to pay the total cost,” and proposed that she pay half. SOF ¶¶ 10–12. That evening the Chairperson wrote to her from the Association’s email account, signing “Mark Gottmann, Chairman, Tara Condominiums Association.” SOF ¶ 13.

On February 16 the Chairperson noticed a closed meeting for February 18 “only open to the Board of Directors.” SOF ¶ 14. On February 17 the Board held an open meeting. Its notice contained no roof item. SOF ¶ 15. The homeowner attended. Plaintiff attended. SOF ¶ 16. The roof was never raised, and the minutes record no motion, second, discussion, or vote concerning it. SOF ¶ 17. That same afternoon the homeowner wrote: “we will accept the 50-50 split … Please let me know the Board’s decision.” SOF ¶ 18. The next day the Board convened for two minutes behind a closed door, took up the single question “whether or not to agree to a 50/50 split,” and voted 4 to 0. SOF ¶¶ 19–21.

On February 24 Plaintiff wrote to the Board about the Association’s responsibility for the roof and asked for “a written response to this letter with a full explanation of the actions the board is going to take." SOF ¶ 22. She emailed the Board the same day. SOF ¶ 23. The Board never answered. SOF ¶ 24.

Legacy Repair then billed the homeowner $575.00 — half the estimate — on an invoice bearing the notation "*** 50% INVOICE PER MARK GOTTMANN ***." SOF ¶ 25. She paid it on March 1. SOF ¶ 26. On March 8 the Association paid the other $575.00 and posted it to Account 321 – Reserve-Roofing. SOF ¶ 27.

B. The Watkins and Aldis lien.

In November 2023 the Board sent Watkins and Aldis a violation letter. It states that the asphalt in front of their carport "was newly sealed on October 6, 2023" and was marked with paint "in regards to a project that you did on the building that you live in"; that "[t]his project benefitted you alone and therefore it is your responsibility alone to repair the damages to the asphalt"; and that "[a]ll costs not paid within the 10 days allowed will become a lien as stated." The letter gave the owners twenty-one business days to respond by certified mail and the right to petition the Arizona Department of Real Estate under A.R.S. § 32-2199.01. SOF ¶ 30.

The owners did not comply. The Board hired a vendor, and on December 26, 2023 wrote: "The cost for this repair is $323.63 and is due and payable in the next ten days," failing which "a lien will be placed against your property for the $323.63 plus the costs of the lien and the lien release … as stated in our C,C, and Rs point 13." SOF ¶ 31. The vendor invoice was $300.00; the sealant voucher was $23.63. SOF ¶¶ 32–33. On January 5, 2024 the Association executed a Notice and Claim of Lien for $383.63 — the repair cost plus the recording and release fees — expressly "according to the Tara Declaration points 13 and 13A." It was recorded January 9, 2024. SOF ¶ 34. The owners never responded, never appealed, and never petitioned the Department. SOF ¶ 35. As of April 30, 2024, the Watkins/Aldis account carried a balance of $1,466.59 and an adjustment of $0.00. SOF ¶ 36.

On May 20, 2024 the Chairperson noticed a closed meeting for May 22, again "only open to the Board of Directors," and again reciting "A.R.S. Section 33-1248.2." SOF ¶ 37. The notice stated no agenda items. SOF ¶ 38. Four directors met. SOF ¶ 39. The minutes recite that the lien was "for 383.63 resulting from the covering of the spray painting by utilities on the alleyway," and that "[a]ssociations can only file a lien on a property for failure to pay a monthly assessment or a special assessment, not fines for rule violations." SOF ¶ 40. The Chairperson moved to remove the lien; the motion carried 4 to 0. SOF ¶ 41. He recorded the release on May 28, 2024. SOF ¶ 42. The Association's May ledger shows the $1,466.59 extinguished by an adjustment of ($1,466.59) — not by payment. SOF ¶ 43.

The Association was asked in discovery for every signed board minute, agenda, and attachment from January 1, 2024 through April 30, 2025, and responded that it "has conducted a reasonable search … and has produced all non-privileged responsive documents currently known." SOF ¶ 28. Nothing in that production authorizes the roof repair, the 50/50 split, the removal of the amounts charged to the Watkins and Aldis account, or the release of the lien. SOF ¶¶ 29, 44.

III. LEGAL STANDARD

Summary judgment is proper where there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a). A dispute is genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party; the court should grant the motion "if the facts produced in support of the claim or defense have so little probative value … that reasonable people could not agree with the conclusion advanced by the proponent." Orme Sch. v. Reeves, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). Once the movant makes that showing, the opposing party may not rest on its pleadings; it must set forth specific facts, supported by admissible evidence, showing a genuine issue for trial. Ariz. R. Civ. P. 56(e).

The construction of a declaration, by-laws, and articles of incorporation is a question of law. Where the governing documents and the Condominium Act conflict, the Act controls. Vales v. Kings Hill Condo. Ass'n, 211 Ariz. 561, 125 P.3d 381 (App. 2005).

IV. PLAINTIFF'S CLAIMS ARE DIRECT, NOT DERIVATIVE, AND SHE HAS STANDING

Plaintiff sues in her own right, as a member whose individual rights were denied. Whether a claim is direct or derivative turns on the nature of the injury and the right being vindicated, not on how broadly the remedy may benefit others. Albers v. Edelson Tech. Partners L.P., 201 Ariz. 47, ¶ 18, 31 P.3d 821 (App. 2001).

The rights Plaintiff asserts are hers alone. A.R.S. § 33-1248 gives every member the right to notice of board meetings, to an agenda, to attend, and to speak before the board takes formal action on an item. Declaration § 9.E gives every member the right to have the Board act only by majority vote of the Managers. By-Law § 1.08 gives every member the right to impartial administration of the governing documents. Plaintiff was in the room on February 17, 2024 — the minutes name her — while the Board withheld the roof from its agenda and voted on it in a closed session the next day. SOF ¶¶ 14–21. She wrote to the Board a week later and received no answer. SOF ¶¶ 22–24. Those are injuries to her, not to the corporation.

Standing is also conferred by statute. A.R.S. § 10-3304(B)(2) permits any member of a nonprofit corporation to bring a proceeding to enjoin or set aside an act beyond the corporation's power, without any membership-percentage threshold. Nothing more is required.

This Court has already so held. By Minute Entry dated June 24, 2025, the Court ruled that Plaintiff's claims are not derivative. That ruling is law of the case.

Plaintiff does not seek, and does not claim, the money the Association charged to Cynthia Fullen or forgave to James Watkins and Nancy Aldis. Those sums are evidence of what the Board did. They are not Plaintiff's damages, and no relief requested in this motion turns on them.

V. ARGUMENT

A. The Board's power comes only from the governing documents and the Act.

The Association is a condominium organized under the Condominium Act. A.R.S. §§ 33-1201, 33-1202(6). As a nonprofit corporation, it may act only within the powers conferred on it; an act beyond those powers is ultra vires. A.R.S. § 10-3801(B). The Articles of Incorporation confirm the point rather than expand it: the corporation exists "to uphold and enforce" the Declaration and to perform the duties imposed by the By-Laws. SOF ¶ 2. The Articles do not free the Board from Declaration § 9.E. They bind it to § 9.E.

An act taken beyond the authority conferred by the governing instruments is void, not merely voidable. Tovrea Land & Cattle Co. v. Linsenmeyer, 100 Ariz. 107, 113–14 (1966); Sycamore Hills Ests. Homeowners Ass'n v. Zablotny, 250 Ariz. 479, ¶ 6, 481 P.3d 700 (App. 2021). A vote that was never lawfully taken "did not authorize anything." Prieve v. Flying Diamond Airpark, LLC, 252 Ariz. 195, ¶ 6, 500 P.3d 1045 (App. 2021). A void act is a nullity from the outset; it took no legal effect and cannot be ratified.

B. The roof decision failed both gates and is void. (Claims 30, 74, 47)

The authority gate. Declaration § 9.E entitles the Board to carry out action on behalf of the owners only by "[a] majority vote of the Managers." SOF ¶ 3. No such vote preceded the roof decision. On February 1 the Board itself recorded that responsibility "remains to be decided." SOF ¶ 9. On February 13 the Chairperson decided it — he told the owner the Association would not pay in full and proposed that she pay half. SOF ¶¶ 11–12. He wrote to her that evening as "Chairman." SOF ¶ 13. She accepted on February 17. SOF ¶ 18. Only on February 18 did the Board vote. SOF ¶ 21. The arrangement was made before any vote existed. A chairperson acting alone is not "a majority vote of the Managers," and the later vote could not ratify what was already void.

The process gate. A.R.S. § 33-1248(A) requires that all meetings of the board be open to the members, and that members be permitted to speak before the board takes formal action on an agenda item. Subsection (A) permits a board to close a portion of a meeting for five purposes only. Subsection (C) requires the board to identify, before closing, the paragraph of subsection (A) that authorizes the closure. The February 16 notice identified "A.R.S. Section 33-1248.2" — the exception for pending or contemplated litigation — and declared the meeting "only open to the Board of Directors." SOF ¶ 14. No litigation was pending or contemplated. A cost-sharing arrangement for a roof repair is not litigation, and it is not any of the other four permitted purposes.

The Board had an open meeting available and did not use it. It met in open session on February 17 with a full quorum, with both the affected homeowner and Plaintiff present. SOF ¶ 16. The roof was not on the notice. SOF ¶ 15. It was not raised, discussed, or voted on. SOF ¶ 17. The Board voted the next day in a room the members were barred from, in two minutes. SOF ¶¶ 19–21. No open meeting of the Board has ever authorized the roof repair or the 50/50 split — in a production the Association itself certified as complete. SOF ¶¶ 28–29.

The decision therefore failed the authority gate and the process gate. It is void.

C. The Board had no power to assess the homeowner at all. (Claims 47, 103, 108)

Independent of how the decision was made, the Board had no authority to make it.

A roof is a common element. A.R.S. § 33-1212 defines the boundaries of a unit; everything beyond the finished interior surfaces is a common element. Declaration ¶ 12.B places the "common elements, buildings, grounds and improvements (other than interior of the buildings)" in the Board's charge, to be maintained out of the assessments collected. SOF ¶ 4. And A.R.S. § 33-1247(A) provides that "the association is responsible for maintenance, repair and replacement of the common elements." The Association understood this. Legacy Repair addressed the estimate to "Tara Condominiums." SOF ¶ 8. And the Association paid its share out of Account 321 – Reserve-Roofing — the reserve it funds precisely because roofs are its obligation. SOF ¶ 27.

The governing documents supply exactly one route by which the Board may shift a common-element repair cost onto a single owner. Declaration ¶ 13 reaches the owner whose “negligent or culpable act” — or that of the owner’s guests, agents, or family — caused the damage, and requires that owner to “repay the Board of Management in the amount actually expended for said repairs.” SOF ¶ 5. The provision requires culpability, and it requires repayment in full. It contains no cost-sharing power, no fractional assessment, and no discretion to charge an owner who did nothing.

Cynthia Fullen did nothing. The Board wrote in its own minutes that the damage was “caused by removal of patio cover by previous owner.” SOF ¶ 9. She was nonetheless billed $575.00 “PER MARK GOTTMANN,” and she paid it. SOF ¶¶ 25–26. There is no provision in the Declaration, the By-Laws, or the Condominium Act that permits the Board to charge a non-culpable owner half the cost of a common-element roof. A rule adopted by no one binds no one. Even a properly noticed open meeting and a unanimous vote could not have produced this result, because the power to reach it does not exist. The assessment is void.

D. The Board had no power to release the lien. (Claims 48, 92)

The Watkins and Aldis lien is Declaration ¶ 13 working exactly as written. The Board’s own violation letter says the asphalt was “newly sealed on October 6, 2023” and was damaged by a project the owners undertook on their own unit, which “benefitted you alone,” making repair “your responsibility alone,” with “[a]ll costs” becoming a lien if unpaid. SOF ¶ 30. That is a culpable act by an owner’s agent damaging a common element. The Board repaired it, itemized the cost — $300.00 to the vendor and $23.63 for sealant, totaling the $323.63 it demanded — and, when payment did not come, recorded a lien for $383.63, the repair cost plus the recording and release fees, “according to the Tara Declaration points 13 and 13A.” SOF ¶¶ 31–34.

Declaration ¶ 13.A then removes any discretion. The charge “shall become a lien … and shall continue to be such lien until fully paid.” SOF ¶ 6. Until fully paid. The Declaration gives the Board the power to impose and to collect. It gives the Board no power to forgive. There is no provision under which a ¶ 13 lien may be released for nothing.

It was released for nothing. The Association’s April ledger shows the account at $1,466.59 with an adjustment of $0.00. SOF ¶ 36. Its May ledger shows the same $1,466.59 extinguished by an adjustment of ($1,466.59), with payments of only $260.00 — the ordinary monthly assessment. SOF ¶ 43. The debt was not paid. It was written off.

The reason the Board gave does not reach the instrument it released. The minutes state that “[a]ssociations can only file a lien on a property for failure to pay a monthly assessment or a special assessment, not fines for rule violations.” SOF ¶ 40. But the $383.63 was never a fine. The minutes themselves say it arose “from the covering of the spray painting by utilities on the alleyway” — that is, from a repair. SOF ¶ 40. The Board’s own 2023 letters say the same thing: repair costs, itemized, demanded, and liened under ¶ 13. SOF ¶¶ 30–34. Whatever may be said of fines, the Board’s stated rationale has nothing to do with a ¶ 13 repair lien, and no provision of the governing documents permitted its release without payment. The release is void.

The release also failed the process gate. The May 20 notice recited “A.R.S. Section 33-1248.2” and stated no agenda items at all. SOF ¶¶ 37–38. No litigation was pending or contemplated. Nor was the Board hearing “a unit owner’s appeal of any violation cited or penalty imposed": Watkins and Aldis never responded to the violation letters, never appealed, and never petitioned the Department of Real Estate. SOF ¶ 35. There was no appeal to hear. Section 33-1248(C) required the Board to identify the authorizing paragraph before closing the meeting, and the paragraph it identified does not apply. No open meeting of the Board ever authorized the release or the removal of the amounts charged. SOF ¶¶ 28, 44.

VI. DECLARATORY AND INJUNCTIVE RELIEF; NO DAMAGES REQUIRED

A void act requires no proof of damages to be declared void. Plaintiff's right to relief rests on the fact that the Board acted beyond its power, and A.R.S. § 10-3304(B)(2) authorizes any member of a condominium association to bring a proceeding to enjoin an unauthorized corporate act, without any membership threshold. Plaintiff expressly reserves all claims for compensatory and consequential damages, which are pleaded as breach of the governing documents and are neither presented by this motion nor waived by it. The Declaration, By-Laws, and Articles are an express contract among and between the owners and the Association. Prieve, 252 Ariz. at 200 ¶ 17.

The relief Plaintiff requests is directed to the Board's authority, not to the rights of any absent person. Plaintiff asks the Court to declare what the Board had no power to do and to require that the Board act in the future only as the Declaration and the Condominium Act permit. She does not ask the Court to adjudicate the assessment paid by Cynthia Fullen, to order its refund, to reinstate the lien released against James Watkins and Nancy Aldis, or to fix any obligation of those owners. No relief requested here depends on the participation of any person who is not a party to this action.

Injunctive relief is warranted because the conduct is not isolated. The same Chairperson used the same closed-session device twice in four months, reciting the same inapplicable statutory exception each time. SOF ¶¶ 14, 37. And the two acts point in opposite directions under the same provision of the Declaration. Under ¶ 13, the Board charged an owner who owed nothing and forgave an owner who owed. SOF ¶¶ 25–26, 40–43. By-Law § 1.08 makes impartial administration of the governing documents a duty the Board owes to every member, including Plaintiff. SOF ¶ 7. When Plaintiff put the Board on written notice of the Declaration's requirements and asked for "a written response … with a full explanation of the actions the board is going to take," the Board did not answer. SOF ¶¶ 22–24. Absent an injunction, there is no reason to expect the practice to stop.

The Restatement (Third) of Property: Servitudes § 6.13 supplies the standard of conduct Arizona applies to community associations. Tierra Ranchos Homeowners Ass'n v. Kitchukov, 216 Ariz. 195, 201 ¶ 25, 165 P.3d 173, 179 (App. 2007). Section 6.14 of the Restatement has not been adopted in Arizona, and Plaintiff does not rely on it; the duties invoked here arise from the Declaration, the By-Laws, and the Condominium Act.

VII. THE BUSINESS JUDGMENT RULE PROVIDES NO PROTECTION FOR ACTS THAT EXCEED THE BOARD'S AUTHORITY OR VIOLATE THE GOVERNING DOCUMENTS AND STATUTES

In Tierra Ranchos, the court of appeals expressly declined to apply the business judgment rule to a community association and adopted instead the reasonableness standard of Restatement § 6.13. 216 Ariz. at 201 ¶ 25, 165 P.3d at 179. The rule has no application here in any event. Business judgment presupposes a judgment lawfully made. It does not convert an act the Board had no power to take into an act the Board was entitled to take, and it cannot supply an open-meeting vote that never occurred. Deference is owed to choices within the Board's authority; it is not owed to acts outside it.

The presumptions available to directors and officers under A.R.S. §§ 10-3830(D) and 10-3842(D) are rebuttable, and they do not reach conduct that violates the governing documents or the Condominium Act.

VIII. CONCLUSION AND RELIEF REQUESTED

The material facts are established by the Association's own notices, minutes, ledgers, invoices, and discovery responses. Plaintiff respectfully requests that the Court:

1. Grant partial summary judgment in Plaintiff's favor on Claims 30, 47, 74, 103, and 108, and on Claims 48 and 92;

2. Declare that the action taken by the Board of Management in the closed session of February 18, 2024 concerning the roof repair at 13609 N. Newcastle was beyond the Board's authority under Declaration § 9.E and A.R.S. § 33-1248, and is void;

3. Declare that the action taken by the Board of Management in the closed session of May 22, 2024 concerning the Watkins and Aldis account and the lien recorded January 9, 2024 was beyond the Board's authority under Declaration § 9.E, Declaration ¶ 13.A, and A.R.S. § 33-1248, and is void;

4. Declare that the maintenance and repair of the common elements, including roofs, is the responsibility of the Association under Declaration ¶ 12.B and A.R.S. § 33-1247(A); that the Board has no authority to assess a unit owner for a common-element repair except as Declaration ¶ 13 permits, which requires the negligent or culpable act

of that owner and repayment of the amount actually expended; and that the Board has no authority to release a lien arising under Declaration ¶ 13 except upon payment in full, as Declaration ¶ 13.A requires;

5. Enjoin the Association from carrying out action on behalf of the owners except by a majority vote of the Board of Management taken at a meeting properly noticed and open to the members as required by A.R.S. § 33-1248;

6. Award Plaintiff her taxable costs under A.R.S. § 12-341; and

7. In the alternative, if the Court declines to enter partial summary judgment on any claim, enter an order under Ariz. R. Civ. P. 56(g) specifying the material facts that are not genuinely in dispute and treating those facts as established in this action.

Plaintiff expressly reserves all claims for compensatory and consequential damages.

RESPECTFULLY SUBMITTED this 13th day of July, 2026.

/s/ Lisa Marx
Lisa Marx, Plaintiff Pro Se
13610 N. 111th Ave.
Sun City, AZ 85351
602-748-7781
aimtodogood@gmail.com

CERTIFICATE OF SERVICE

I certify that on July 13, 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@chdblaw.com

Ari Bowhay — Ari.Bowhay@chdblaw.com

/s/ Lisa Marx, Lisa Marx, Plaintiff Pro Se