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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 (CLAIMS 26 AND 70; 27 AND 71; 28 AND 72; 29 AND 73; 43 AND 88)** Honorable Adele Ponce

Plaintiff Lisa Marx moves under Ariz. R. Civ. P. 56(a) for partial summary judgment on Claims 26 and 70; 27 and 71; 28 and 72; 29 and 73; and 43 and 88. Each rests on documents the Association itself produced and on its own recorded statements. No material fact is in dispute.

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 commits the Association's powers to its Board of Management and permits the Board to exercise them only "[b]y a majority vote of the Managers." (SSOF ¶¶ 3, 28.) The Condominium Act adds that any such action must be noticed, placed on an agenda, and taken at an open meeting at which members may speak before the Board acts. A.R.S. § 33-1248.

Five times the Association acted without any of that. It moved $5,198.69 of Homeowners Equity into a reserve account. It refused to let Plaintiff state her corrections to the minutes before voting to approve them. It bound itself to a Workers Compensation insurance contract that issued two days before the Chairperson announced it. It adopted a Bermuda grass plan and paid $1,125.99 under it. And it reimbursed the Chairperson $49.50 on a voucher two directors signed. For none of it was there a motion, a second, a discussion, or a vote — and the minutes record none, because none occurred.

II. STATEMENT OF FACTS

Plaintiff owns Unit 5, Tract G. (SSOF ¶ 1.) The Declaration was recorded February 19, 1970. (SSOF ¶ 2.) Paragraph 9.E permits the Board to "carry out actions on behalf of the owners of the units" only by "[a] majority vote of the Managers." (SSOF ¶ 3.) The Association is an Arizona nonprofit corporation whose Articles state that its purpose is "to uphold and enforce" that Declaration. (SSOF ¶¶ 4–5.) Paragraph 12 vests the Association's powers in "[t]he Board of Management," including the powers to pay for insurance, to purchase such insurance as "the Board may deem advisable," and to enter into contracts. (SSOF ¶¶ 28–31.)

On February 28, 2024 the Association moved $5,198.69 from Homeowners Equity to a reserve account; its ledger records both halves of the entry. (SSOF ¶¶ 9–11.) No notice, agenda, or minutes of any open meeting reflect a vote approving it — including at the March 16 meeting, the first open meeting after the transfer — and no produced document reflects one. (SSOF ¶¶ 12–15.)

At the March 16, 2024 open meeting, approval of the February 17 minutes was an agenda item. (SSOF ¶ 16.) Plaintiff sought to correct those minutes; a member seconded her. (SSOF ¶¶ 17–18.) The Chairperson answered that "the board makes those motions … and not the homeowners," cut her off with the single word "No," and, when she asked whether she would be allowed "to make a statement about the corrections," answered "No" again. (SSOF ¶¶ 19–22.) He then called the question and the Board voted. (SSOF ¶¶ 23–24.) The minutes record none of it. (SSOF ¶ 25.)

The Workers Compensation policy names the Association as Named Insured and was printed and issued March 14, 2024, effective March 15. (SSOF ¶¶ 36–37.) On March 16 the Chairperson announced that "the board has secured" it, adding that the first year's premium had been "donated … by an anonymous donor." (SSOF ¶¶ 38–39.) No motion, second, discussion, or vote was taken, and the minutes record none. (SSOF ¶¶

40–41.) The notice contained no item for it, and the March 13 Special Insurance Meeting never mentions Workers Compensation. (SSOF ¶¶ 32–34.) The Association's own agent later wrote that the policy "will be a direct bill" and told the Chairperson to "just pay when you get the invoice." (SSOF ¶ 42.)

The March 16 notice announced a "[p]resentation of plan" to plant Bermuda grass seed — not a vote — and no agenda item proposed one. (SSOF ¶¶ 43–45.) No motion, second, or vote was taken. (SSOF ¶ 46.) The Association then paid $1,125.99. (SSOF ¶¶ 47–48.) The June 15 notice and minutes authorize nothing. (SSOF ¶¶ 49–51.)

Finally, the Chairperson bought LED bulbs on his own Amazon account and submitted a $49.50 voucher, which two directors signed; the money left operating funds. (SSOF ¶¶ 52–54. The July 27, September 21, and October 27 minutes contain no agenda item, discussion, motion, or vote on any lighting expenditure. (SSOF ¶¶ 55–57.)

III. LEGAL STANDARD

Summary judgment shall be granted 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). The opposing party may not rest on its pleadings; it must set forth specific admissible facts showing a genuine issue for trial. Ariz. R. Civ. P. 56(e). Summary judgment is proper where the evidence offered against the motion has "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). Whether an association's act exceeded its authority, such as to render the act void, is a question of law. *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 113–14 (1966).

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

This Court has already held that "Plaintiff's claims against the Association are not derivative." Minute Entry (June 24, 2025) (Warner, J.). That holding is law of the case. Plaintiff owns Unit 5 and is a party to the recorded Declaration. (SSOF ¶¶ 1–2.) The duty runs to the member, the injury is the member's, and the remedy runs against the Association. Restatement (Third) of Property: Servitudes § 6.13 cmt. a; *Albers v. Edelson Tech. Partners, L.P.*, 201 Ariz. 47, ¶ 18, 31 P.3d 821 (App. 2001). The Court of Appeals confirmed the point earlier this year on closely analogous facts. In *AZNH Revocable Trust v. Sunland Springs Village Homeowners Ass'n*, No. 1 CA-CV 25-0424 (Ariz. App. Apr. 28, 2026), an individual owner sued *in its own name* to enforce an association's open-meeting obligations. No derivative procedure was required, and the court held that association votes and formal action must occur in open meetings and that agendas must reasonably apprise members of the matters to be decided. *Id.* ¶¶ 10–14, 20–22. *AZNH* construes A.R.S. § 33-1804, the open-meeting provision of the Planned Communities Act, rather than § 33-1248. Plaintiff cites it not as a construction of § 33-1248, but for the point it does decide — that an individual owner enforces an association's open-meeting obligations *directly*, in her own name, and not derivatively. That holding does not turn on which of the two statutes supplies the duty. Plaintiff's injury is the denial of her own contractual and statutory rights — the right to have the Association act only by a majority vote of its Board at a properly noticed open meeting, and the right to be heard before it acts. Any member may sue to enjoin an ultra vires act, without any membership threshold. A.R.S. § 10-3304(B)(2).

V. ARGUMENT

A. The Condominium Act governs this 1970 condominium, and the 2007 Articles did not enlarge the Board's authority — they confirmed its limits.

The Condominium Act governs this condominium. A.R.S. § 33-1201 provides that the chapter "applies to all condominiums created within this state without regard to the date the condominium was created." Tara Condominiums is a condominium created by the recorded Declaration. (SSOF ¶¶ 2, 28.) And the Board of Management is the board of directors the Act regulates: A.R.S. § 33-1202(6) defines "board of directors" as the body, *regardless of its name*, designated in the declaration and given general management powers to act on behalf of the association. The Declaration designates the Board of Management and gives it exactly those powers. (SSOF ¶¶ 3, 28.) The Board of Management *is* the board of directors § 33-1248 governs.

The Articles of Incorporation confirm those limits rather than expand them. The Declaration came first, in 1970, and created both the governance scheme and the management body. The corporation was formed thirty-seven years later, and its own Article 4 states that the character of affairs it intends to conduct is "to uphold and enforce" that recorded Declaration and to exercise such powers "as are imposed or granted to the Corporation by the Bylaws." (SSOF ¶¶ 4–5.) A corporation organized to uphold a contract does not acquire authority the contract withholds. A.R.S. § 10-3801(B) provides that all corporate powers are exercised by or under the authority of the board of directors "subject to any limitation set forth in the articles of incorporation." Article 4 is such a limitation. The Articles do not free the Board from ¶ 9.E. They bind it to ¶ 9.E.

B. Every action challenged here was the Board's to take, and the Board could take it only by a majority vote at an open meeting.

Paragraph 12 of the Declaration vests the Association's powers — including the powers to pay for insurance, to purchase such insurance as "the Board may deem advisable," and to enter into contracts — in "[t]he Board of Management." (SSOF ¶¶ 28–31.) Paragraph 9.E permits the Board to exercise those powers only "[b]y a majority vote of the Managers." (SSOF ¶ 3.) The Condominium Act routes those powers back through the Declaration: the Association holds its powers "[s]ubject to the provisions of the declaration," A.R.S. § 33-1242(A), and the Board's powers are subordinate to the declaration and bylaws, A.R.S. § 33-1243(A). Section 33-1248 supplies the process — meetings open to members, notice and agendas in advance, and the right to speak on an agenda item before the Board takes formal action — all "[n]otwithstanding any provision in the declaration, bylaws or other condominium documents," and construed in favor of open meetings. Where the governing documents conflict with the Act, the Act controls. *Vales v. Kings Hill Condo. Ass'n*, 211 Ariz. 561, 125 P.3d 381 (App. 2005). An act taken without that authority is ultra vires and void — not voidable. *Tovrea*, 100 Ariz. at 113–14; *Sycamore Hills Estates HOA v. Zablotny*, 250 Ariz. 479, ¶ 6, 481 P.3d 700 (App. 2021). Where the vote that would have authorized an act never validly occurred, the ineffective vote "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: it took no legal effect, it needs no unwinding, and it cannot be ratified.

Section 33-1248 does not permit these matters to be decided behind closed doors. Subsection (A) allows a board to close a meeting for five purposes only: legal advice from an attorney; pending or contemplated litigation; personal, health or financial information about an individual member or employee; the job performance or discipline of an individual employee; and a unit owner's appeal of a violation. Moving money between accounts, purchasing insurance, adopting a landscaping plan, and reimbursing an officer are none of these. Subsection (C) requires a board that closes a meeting to identify on the record the paragraph authorizing the closure. Subsection (E)(4) reaches even an informal gathering of a quorum, without regard to whether the board votes or takes any action. And subsection (F) requires the section to be construed in favor of open meetings. Formal action must therefore occur in open session. The Court of Appeals so held in *AZNH*, No. 1 CA-CV 25-0424, ¶¶ 10–14, construing A.R.S. § 33-1804 — the Planned Communities Act's open-meeting provision, whose operative language mirrors § 33-1248. Plaintiff offers that reasoning as persuasive on materially identical text, not as a construction of § 33-1248; the Condominium Act reaches the same result on its own terms. A vote purportedly taken in executive session on any of these subjects would be void for the same reason no vote at all is void.

C. The February 28, 2024 transfer of $5,198.69 is void (Claims 26 and 70).

The Association's ledger records both halves of the entry: Account 301 shows "Transfer to 325 - Reserve-Major Maintenance," a debit of $5,198.69, and a balance reduced to $0.00; Account 325 shows the matching "Transfer from 301 - Homeowners Equity." (SSOF ¶¶ 9–11.) No notice or agenda listed it; no minutes record a motion, second, discussion, or vote; the silence continues through the March 16 meeting, the first open meeting after the transfer; and no produced document reflects any Board action. (SSOF ¶¶ 12–15.) Moving the owners' equity into a reserve account is an action carried out on behalf of the owners. Paragraph 9.E required a majority vote. There was none — not an ineffective vote, but none at all. The transfer never took legal effect and is void.

D. The Board's March 16, 2024 approval of the February 17 minutes is void (Claims 27 and 71).

Approval of the February 17 minutes was a noticed agenda item. (SSOF ¶ 16.) Plaintiff sought to correct those minutes and a member seconded her. (SSOF ¶¶ 17–18.) The Chairperson cut her off with the single word "No," and when she asked directly whether she would be permitted "to make a statement about the corrections that need to be made," he answered "No" again. (SSOF ¶¶ 20–22.) He then called the question and the Board voted without permitting her statement. (SSOF ¶¶ 23–24.) Section 33-1248 guarantees a member the right to speak on an agenda item after the Board discusses it and before the Board takes formal action on it. The Board discussed the item, took formal action on it, and never let Plaintiff speak to it. The right § 33-1248 secures is the right to *speak* to an agenda item before the Board acts on it, and it applies "[n]otwithstanding any provision in the declaration, bylaws or other condominium documents." No rule of order sourced in the condominium documents can qualify it. *Vales*, 211 Ariz. 561. The Board's formal action on that item is void.

The governing documents supply a second and independent ground, and it does not depend on the statute at all. What the Chairperson announced from the chair was a *rule* — that corrections to Board minutes may be proposed only by Board members and "not the homeowners." (SSOF ¶¶ 19, 24.) Rulemaking has its own gate, and the governing documents lock it twice. Declaration ¶ 12.L permits the Board to make reasonable rules, but such rules "shall be binding upon the owners *when the owners of a* *majority of the units have approved them in writing*." (SSOF ¶ 6.) And By-Law § 1.09 provides that a proposed change or addition to the By-Laws and Rules "may be made by the Board of Management, but, such new rules, changes or modifications *must be approved by the simple majority (51%) of voters*" at an annual or special meeting. (SSOF ¶ 7.) Under either provision, a rule comes from the membership — not from the chair.

Neither gate was passed. No Board voted to adopt that rule, and the owners of a majority of the units never approved it in writing. (SSOF ¶¶ 26–27.) One officer announced it and enforced it in the same minute, against one member, to keep her from speaking to a matter the Board was about to vote on. By-Law § 1.08 required the Board to "impartially administer the regulations." (SSOF ¶ 8.) It did not administer this rule. It invented it. A rule adopted by no one binds no one; it is ultra vires and void, and its enforcement against Plaintiff cannot stand.

E. The Workers Compensation policy is void (Claims 28 and 72).

The policy was printed and issued March 14, 2024 and took effect March 15. (SSOF ¶¶ 36–37.) Two days later the Chairperson opened the meeting with "a little bit of an announcement here that the board has secured a workers comp, if any, insurance policy," and told the members that the first year's premium had been "donated … by an anonymous donor." (SSOF ¶¶ 38–39.) It was already done — the policy bound, the financing arranged — before any Board had voted on any of it. No motion, no second, no discussion, no vote; the minutes record none. (SSOF ¶¶ 40–41.)

The Association's own minutes concede the point. Their agenda reads: "Introduction of volunteer 'Workers Comp – If Any' policy for the community. Approval of the February 17, 2024 Tara Board Meeting Minutes, Presentation of the plan for Bermuda grass seeding in April." (SSOF ¶ 35.) The Board knew how to notice a matter for a vote — it wrote "Approval" for the minutes. For the insurance policy it wrote "Introduction." An agenda must contain information reasonably necessary to apprise members of the matters to be acted on. This one apprised them of the opposite. Nothing in the notice, the agenda, or the March 13 Special Insurance Meeting so much as mentions a vote on a Workers Compensation policy. (SSOF ¶¶ 32–34.)

What the Board never voted on was a contract binding the Association. The policy names "TARA CONDO ASSOCIATION" as the Named Insured. (SSOF ¶ 36.) Whatever was said about a donor, the Association's own insurance agent later wrote to the Chairperson that the policy "will be a direct bill in the spring" and that "if you all want to continue with that policy, just pay when you get the invoice." (SSOF ¶ 42.) The Association is the insured and the Association pays. Paying for insurance, purchasing "such other insurance as the Board may deem advisable," and entering into contracts are powers of the Board of Management. (SSOF ¶¶ 28–31.) The Chairperson is not the Board. He announced; he did not move, and the Board did not vote. The procurement is ultra vires and void.

F. The Bermuda grass plan and the $1,125.99 paid under it are void (Claims 29 and 73).

The notice announced exactly what was coming and what was not: a "[p]resentation of plan to spread fertilizer and plant Bermuda grass seed late April." (SSOF ¶ 43.) A presentation — not a vote. No agenda item proposed a vote, a cost, or a contractor, and the Chairperson's own email adding items to that agenda proposed none. (SSOF ¶¶ 44–45.) The Board's own minutes say the same: the agenda listed a "Presentation of the plan for Bermuda grass seeding in April" — while listing "Approval" for the one item the Board did intend to act on. (SSOF ¶ 35.)

At the meeting no motion was made, no second offered, and no vote taken. (SSOF ¶ 46.) The Association then paid $1,125.99. (SSOF ¶¶ 47–48.) The June 15 notice and minutes authorize nothing, before or after, and no minutes of any open meeting reflect any Board action approving the plan or the payments. (SSOF ¶¶ 49–51.) Spending the Association's funds is an action carried out on behalf of the owners, and ¶ 9.E permits it only by a majority vote of the Board. A presentation is not a vote, and an announcement is not authority. The plan and the payments made under it are void.

G. The $49.50 lighting reimbursement is void (Claims 43 and 88).

The Chairperson ordered LED bulbs on his own account and submitted a voucher for $49.50 against operating funds; two directors signed it; the money left the account. (SSOF ¶¶ 52–54. The minutes of every open meeting in the surrounding window — July 27, September 21, and October 27, 2024 — contain no agenda item, no discussion, no motion, and no vote on any lighting expenditure. (SSOF ¶¶ 55–57.) And no document the Association produced in this action reflects any motion, second, discussion, or majority vote of the Board approving the purchase or the reimbursement. (SSOF ¶¶ 58–59) And no document the Association produced reflects any Board action approving the purchase or the reimbursement. (SSOF ¶ 58.) The amount is small; the principle is not. A signature on a reimbursement form is not a vote of the Board, and it is not an open meeting. The expenditure is void.

VI. THE RELIEF SOUGHT IS DECLARATORY AND INJUNCTIVE; NO SHOWING OF MONETARY DAMAGES IS REQUIRED

Plaintiff moves for partial summary judgment on liability only. She seeks two remedies, and neither requires proof of a monetary loss: a declaration that five specific acts were taken without authority and are void, and an injunction requiring the Association to act as its own governing documents and the Condominium Act require. Plaintiff does not waive, and expressly reserves, her claims for compensatory and consequential damages; those claims are not at issue on this Motion and remain for trial.

The Legislature supplied both remedies. Under the Uniform Declaratory Judgments Act, any person whose rights, status, or other legal relations are affected by a statute or by a contract may have determined any question of construction or validity arising under it and obtain a declaration of rights. A.R.S. §§ 12-1831, 12-1832. The Declaration is such a contract, and § 33-1248 is such a statute. And A.R.S. § 10-3304(B)(2) permits a member to sue to enjoin an act beyond the corporation's authority — with no membership threshold and no damages element. The question this Motion presents is whether the Board voted. It did not.

A declaration of voidness is the predicate for any recovery, not a substitute for one. Once the Court declares that the challenged acts were taken without authority, the Association's breach of the Declaration is established as a matter of law, and what remains for trial is the measure of Plaintiff's damages, not whether a breach occurred. Plaintiff also seeks her taxable costs under A.R.S. § 12-341.

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

Arizona measures an association’s conduct against the reasonableness standard of Restatement (Third) of Property: Servitudes § 6.13, which the Court of Appeals adopted for community associations in *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 201 ¶ 25, 165 P.3d 173, 179 (App. 2007). Section 6.13 measures the reasonableness of an association’s exercise of its *discretionary* powers. It presupposes a power the Board held and a decision the Board made. Where the Board took no vote, there is no exercise of discretion to review, and § 6.13 supplies no shelter. It confirms only that the duties breached here were owed to Plaintiff individually, and that their breach gives rise to a cause of action against the Association. Restatement § 6.13 cmt. a. (Section 6.14, pleaded in tandem, has not been adopted in Arizona and is cited as persuasive authority only.)

The statutory presumptions of A.R.S. §§ 10-3830(D) and 10-3842(D) operate the same way. Each presupposes an act of the board, and each is rebuttable by clear and convincing evidence. Where there was no meeting, no motion, and no vote, there is no act of the board to which a presumption could attach.

And no standard of deference reaches a mandatory duty. The open-meeting, notice, and agenda commands of A.R.S. § 33-1248 are not discretionary. A board has no judgment to exercise about whether to obey them.

VIII. CONCLUSION AND RELIEF REQUESTED

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 Association act in the future only as the Declaration and the Condominium Act permit. She does not ask the Court to adjudicate the rights, status, or obligations of any insurer, vendor, director, or member who is not a party, and no relief requested here depends on the participation of any such person.

Each of the five actions challenged here was taken without the majority vote of the Board at a properly noticed open meeting that Declaration ¶ 9.E and A.R.S. § 33-1248 require. Each is therefore ultra vires and null and void ab initio. Plaintiff respectfully requests that the Court grant partial summary judgment; declare each of those actions taken without authority, ultra vires, and null and void ab initio and of no legal effect; permanently enjoin the Association from taking any action on behalf of the owners of the units except by a majority vote of the Board of Management taken at a properly noticed open meeting at which members are permitted to speak on an agenda item before the Board takes formal action on it; award Plaintiff her taxable costs under A.R.S. § 12-341; 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; and grant such further relief as the Court deems just. A proposed form of order is lodged herewith.

RESPECTFULLY SUBMITTED this 16th day of July, 2026.

/s/ Lisa Marx

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CERTIFICATE OF SERVICE

I certify that on July 16, 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:

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