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 IN SUPPORT (CLAIMS 40 AND 85; 41 AND 86; 51 AND 95; 53 AND 97)** Honorable Adele Ponce

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Lisa Marx moves, under Ariz. R. Civ. P. 56(a), for partial summary judgment on Claims 40 and 85, 41 and 86, 51 and 95, and 53 and 97 of the Second Amended Complaint. Each challenged act was taken by the Board of Management, or by Mark Gottmann acting as its Chairperson, without the majority vote at a properly noticed open meeting that the Declaration and the Arizona Condominium Act require, and each is therefore void.

The material facts are undisputed and are set out in the accompanying Separate Statement of Facts (“SSOF”). This Motion is supported by the following Memorandum, the SSOF, the Declaration of Lisa Marx (“Marx Decl.”), and the exhibits filed herewith. In the alternative, Plaintiff requests an order under Rule 56(g) specifying the material facts established without substantial controversy.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case is about a simple, recurring failure of authority. A condominium board may act on the owners’ behalf only as its governing documents and the Condominium Act permit — by a majority vote of the Board taken at a meeting properly noticed and open to the members. On the four matters presented here, that never happened. The Board developed the 2025 budget in un-noticed work sessions and settled it through off-meeting consensus (Claims 40/85); its Chairperson personally conducted the Budget Committee meetings that its own By-Laws assigned to a separately appointed committee chairperson (Claims 41/86); that Chairperson handpicked the committee’s membership — including himself — with no Board vote and no open process (Claims 51/95); and the Association made and paid for a series of 2025 landscaping and maintenance expenditures with no vote at any open meeting (Claims 53/97). The facts are undisputed and drawn almost entirely from the Association’s own minutes, e-mails, recordings, and vouchers. Because each act was taken without the authority the governing documents require, each is void, and Plaintiff is entitled to judgment as a matter of law.

II. THE UNDISPUTED FACTS

The material facts are set out in the SSOF and are incorporated here by reference. The foundational facts are undisputed: the Association is an Arizona nonprofit corporation (SSOF ¶ 2); it is governed by its Declaration, By-Laws, and Articles of Incorporation (SSOF ¶ 3); Plaintiff owns Unit 5 and is a member subject to those governing documents (SSOF ¶ 1); and Mark Gottmann acted as Chairperson of the Board of Management at all relevant times (SSOF ¶ 5). The claim-specific facts are set out in SSOF ¶¶ 6–45 and cited below.

III. LEGAL STANDARD

Summary judgment is required where there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a); *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). The interpretation of a recorded declaration and of a statute presents questions of law for the Court. *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, ¶ 9, 506 P.3d 18 (2022). The Arizona Condominium Act, A.R.S. § 33-1201 et seq., governs the Association notwithstanding that the community was created in 1970. A.R.S. § 33-1201. The Court may declare the parties' rights under A.R.S. § 12-1831 et seq.

IV. ARGUMENT

A. The Board has no inherent authority; every action on behalf of the owners must clear both the authority gate and the process gate.

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. Every question in this Motion follows from that premise: the Board cannot act unless a governing document or statute empowers it, and then only on the conditions those sources impose.

Those conditions are two gates, and every challenged act must clear both. The authority gate is Declaration § 9.E: only "a majority vote of the Managers shall entitle said Board to carry out action on behalf of the owners of the units" (SSOF ¶ 4). The Condominium Act reinforces the same limit — the Board's powers are "subject to the provisions of the declaration" (A.R.S. § 33-1242(A)) and may be exercised "except as provided in the declaration or the bylaws" (A.R.S. § 33-1243(A)) — and the Nonprofit Corporation Act provides that "all corporate powers shall be exercised by or under the authority of" the board (A.R.S. § 10-3801(B)), so that no single officer may act alone.

The process gate is A.R.S. § 33-1248. Meetings of the Board and its committees must be open to the members; members must be allowed to speak before the Board takes "formal action"; notice and an agenda are required (§ 33-1248(D)); a meeting may be closed only for enumerated purposes and only after the Board identifies the applicable paragraph (§ 33-1248(C)); and "all provisions" are to be "construed in favor of open meetings" (§ 33-1248(F)). All voting and formal action must occur in open session, and the agenda must apprise the members of the business to be transacted. *AZNH Revocable Trust v. Sunland Springs Village Homeowners Ass'n*, No. 1 CA-CV 25-0424 (Ariz. App. Apr. 28, 2026) (construing the materially identical planned-community open-meeting statute, A.R.S. § 33-1804, which applies in pari materia to § 33-1248). Failure at either gate makes the act void.

A single distinction disposes of the Association's anticipated defense that these were "routine" matters. Ministerial execution of an already-authorized decision —

paying an invoice the Board already approved by open vote, or performing work the Board already directed — needs no new vote. But a new discretionary action — spending funds not already approved, engaging or paying a vendor outside an approved contract, staffing and running a committee, or deciding who may perform common-area work — is "action on behalf of the owners" that § 9.E requires be taken by a Board vote at an open meeting. Each act challenged here falls on the new-action side, and the Association's own records show no prior authorization for any of them.

B. Plaintiff's claims are direct, not derivative, and she has standing.

The direct/derivative distinction turns on the nature of the injury and the right vindicated, not on how broadly a remedy might benefit others. Plaintiff pleads direct, individualized harm distinct from that of other members (SAC ¶¶ 2, 18, 20), and this Court has already ruled, in its Minute Entry of June 24, 2025 (e-filed June 26, 2025), that her claims are not derivative — the law of the case. Independently, A.R.S. § 10-3304(B)(2) permits any member to bring a proceeding to enjoin an unauthorized act, with no membership-percentage threshold. Plaintiff owns Unit 5, is subject to the governing documents, and is individually injured by the challenged practice. She has standing to seek the relief requested.

C. Each challenged act was taken without the required vote at an open meeting.

1. Claims 40 and 85 — the 2025 budget was developed off the open record, with no open-meeting vote.

The Board created a Budget Committee to develop the 2025 budget (SSOF ¶¶ 6–7). As late as July 20 and September 21, 2024, the committee admitted on the record that it "had not even started" and that "the budget is not done" (SSOF ¶¶ 11, 13–14). Yet by

October 10, 2024 — with no intervening noticed meeting — two complete draft budgets, including specific line items and reserve reductions, were circulated by e-mail (SSOF ¶¶ 15–19). Gottmann then admitted on October 19 that he had "conversations with board members outside the meeting" and "came to a consensus" to change the recommendation (SSOF ¶ 23). Because a majority of the committee were sitting Board members (SSOF ¶ 10), that off-meeting consensus was Board decision-making conducted outside any noticed open meeting — precisely what § 33-1248 forbids. The Association produced no notice, agenda, minutes, or vote for the development of that budget (SSOF ¶ 25; Marx Decl. ¶ 5). The development of the 2025 budget thus cleared neither gate and is void.

2. Claims 41 and 86 — the Chairperson conducted the committee meetings his By-Laws assigned to a separately appointed committee chairperson.

By-Law § 1.03 fixes the Chairperson's entire role as to committees: he "shall appoint needed committees, the committee chairperson and shall serve as an advisor to such committees" (SSOF ¶ 26). Three things follow, and each is fatal to what occurred. First, the By-Law directs the Chairperson to appoint a committee chairperson — a separate officer whose function is to preside over the committee. That appointment would be meaningless if the Board Chairperson simply presided in the committee chair's place; the By-Law does not create the office of committee chairperson only to let the Board Chairperson displace it. Second, the Chairperson's ongoing role as to committees is fixed by the text: he "shall serve as an advisor." An advisor counsels; he does not preside, direct, or control. Third, the first sentence's authority to "preside at all meetings" is the authority to preside over the bodies the Chairperson heads — the

Board and the members — not license to displace the very committee chairperson the same section directs him to appoint. Any other reading collapses the two offices the By-Law deliberately separates and writes the words “the committee chairperson” and “advisor” out of § 1.03.

Here the Association appointed Stephanie Buschart as chairperson of the Budget Committee (SSOF ¶ 27). Yet the minutes show Gottmann called both the October 12 and the October 19 Budget Committee meetings to order “by Mark Gottmann, Chairperson” (SSOF ¶¶ 28–29), and he conducted each meeting in its entirety — opening it, presenting the budget, directing the proceedings, and adjourning it — while Buschart, the appointed chairperson, presided over neither (SSOF ¶ 30). Gottmann thus did the one thing § 1.03 does not permit: he took over the committee he was entitled only to advise, displacing the chairperson the By-Law required be appointed. That is action without authority (the authority gate), and because § 33-1248 requires the Association’s committee meetings to be conducted in conformity with the governing documents, conducting them through an officer the By-Laws did not authorize to conduct them fails the process gate as well. The acts are void.

3. Claims 51 and 95 — the Chairperson handpicked the committee’s membership, which no governing document empowered him to do.

The June 15, 2024 minutes show that Gottmann, as Chairperson, introduced the Budget Committee and named its members — Gottmann, Rice, Shepherd, Nihei, Kreuter, and Rawlings — with the June 15 notice carrying no agenda item for community volunteer solicitation, no open deliberation on membership, and no Board motion or vote on the formation or the members (SSOF ¶¶ 31–37). By-Law § 1.03 does not authorize that. Parsed precisely, the Chairperson “shall appoint needed committees, the committee chairperson" — the two things he may appoint are the committee and its chairperson. The membership is conspicuously absent. By naming the chairperson as the person he appoints and stopping there, the By-Law excludes the balance of the membership from his appointment power; to read in a power to handpick every member would rewrite the section. Nor may the Chairperson seat himself: as to committees he is confined to "advisor," and an advisor is not a member (SSOF ¶ 37).

Selecting the committee's membership was therefore not the Chairperson's to do — it was the Board's. A.R.S. § 10-3801(B) commits "all corporate powers" to the board, not to any individual officer, and the Association's own By-Law § 1.08 makes it "the duty of the Board of Management" — as a body — "to impartially administer" the Association's affairs; the By-Laws even confirm that appointments are made "by a majority vote" of the Board (By-Law § 1.04). Staffing a committee of the corporation is thus Board action reserved to a § 9.E vote at an open meeting. Gottmann took that action alone, with no vote and no open process. The appointment of the membership cleared neither gate and is void.

4. Claims 53 and 97 — the Association made and paid for 2025 landscaping and maintenance expenditures with no open-meeting vote.

The Association's own Gardener Service Agreement confirms that supply purchases require a Board vote: the Association pays "for general supplies such as grass seed, nursery stock, soil, fertilizer, herbicides, pesticides, gravel, etc., when the purchase has been authorized by the Board of Management" (SSOF ¶ 38). Yet the Association paid Lopez Lawn Service $380.00 for a June 2025 gypsum application (SSOF ¶ 40), and neither the February 22 nor the April 13, 2025 minutes contain any vote authorizing it (SSOF ¶ 39). The same defect runs through the remaining 2025 expenditures and work — the drip-system repairs the Board admitted in writing (SSOF ¶ 41), the sprinkler maintenance (SSOF ¶ 42), the September 2025 porch-light purchase (SSOF ¶ 43), the November 2025 concrete patching (SSOF ¶ 44), and the digging and maintenance work depicted in the photographs (SSOF ¶ 45) — none of which appears in any Board vote or record of authorization (Marx Decl. ¶ 5). Each is "action on behalf of the owners" under Declaration § 9.E, and Declaration § 12.B independently obligates the Board to "use and expend the assessments" to maintain the common elements — a duty of the Board, exercised by vote, not of an individual officer at his discretion. Because none of these expenditures was authorized by a Board vote at an open meeting, each is void.

D. Each act, taken without authority, is void — not voidable.

An act taken with no authority is void, not merely voidable. It is a nullity: it took no legal effect, it needs no unwinding, and it cannot be ratified after the fact. Whether an act is ultra vires so as to render it void is a question of law. *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 113–14 (1966). In the association context, an ineffective vote "did not authorize anything." *Prieve v. Flying Diamond Airpark, LLC*, 252 Ariz. 195, ¶ 6, 500 P.3d 1045 (App. 2021); see *Sycamore Hills Estates HOA v. Zablotny*, 250 Ariz. 479, ¶ 6, 481 P.3d 700 (App. 2021) (recognizing, in a Rule 60(b)(4) posture, that an ultra vires act is void, and citing *Tovrea*). Declaring these acts void is not overbroad relief; it simply recognizes that acts taken without the § 9.E vote never took legal effect.

E. The business-judgment rule does not apply and cannot supply the missing authority.

Arizona does not extend deferential business-judgment deference to homeowners' associations; it applies a reasonableness standard instead. *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 201 ¶ 25, 165 P.3d 173, 179 (App. 2007). The good-faith presumptions for directors and officers in A.R.S. §§ 10-3830(D) and 10-3842(D) do not change the analysis: they are rebuttable only by clear and convincing evidence, and they protect discretionary judgments made within the board's authority. They cannot supply authority the Board never obtained by a § 9.E vote. The question here is not whether the Board exercised judgment well; it is whether it had authority to act at all. It did not.

F. The Restatement's reasonableness standard confirms the result.

The Restatement (Third) of Property: Servitudes § 6.13, which Arizona has adopted, requires the governing board of a common-interest community to exercise its powers reasonably and in the community's interest. *Tierra Ranchos*, 216 Ariz. at 201 ¶ 25. A board that spends the owners' money, staffs and runs a committee, and sets the budget with no vote at any open meeting is not acting reasonably within the framework the servitudes and the Condominium Act establish — it is acting outside that framework altogether. The Restatement standard therefore reinforces, not softens, the conclusion that these unauthorized acts cannot stand.

G. The violations are deliberate and ongoing, and prospective relief is necessary.

The record shows this is not inadvertence but a practice. When a director stated at the February 8, 2026 Board meeting that "anybody that wants to help… are more than welcome to join," the Chairperson overruled him on the record — "No, Mickey, Mickey. No" — and the acting chair agreed (17:17-17:29) **(**EX 18 AUDIO, TRANSCRIPT, AUTHENTICATION**)**. At the June 15, 2024 meeting, when a member asked to be considered for the committee, Gottmann answered "No" and declared the selection "my prerogative… case closed." (4:42- 5:52) (EX 5 AUDIO, TRANSCRIPT, AUTHENTICATION) These are party-opponent admissions (Ariz. R. Evid. 801(d)(2)) that the Board knows the open-participation rule and works around it. The practice has continued past the filing of this suit and into the 2026 budget cycle, which the Board again committed to the owners for ratification without an open, participatory process (TARA003793; TARA003811; TARA003812). A violation that is deliberate and ongoing is the paradigm case for an injunction: absent one, the Association will continue to act on the owners' behalf without the vote and the open meeting the governing documents require. (This conduct is offered as evidence of willfulness and of the need for prospective relief; it is not, and need not be, a basis of liability, which rests on the undisputed absence of a § 9.E vote.)

H. The relief requested is directed to the Board's authority, not to any absent person.

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 vendor, insurer, director, or member who is not a party, and no relief requested here depends on the participation of any such person.

I. RELIEF REQUESTED

Plaintiff respectfully requests that the Court: (1) grant partial summary judgment on Claims 40 and 85, 41 and 86, 51 and 95, and 53 and 97; (2) declare that each challenged action of the Board of Management identified in the SSOF exceeded the Board's authority under Declaration § 9.E and A.R.S. § 33-1248 and is void; (3) declare that, going forward, the Association may take action on behalf of the owners only as the Declaration and the Condominium Act permit; (4) 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 meeting properly noticed and open to the members, at which members are permitted to speak before the Board takes formal action; (5) award Plaintiff her taxable costs under A.R.S. § 12-341; and (6) grant such further relief as is just. Plaintiff's claim for damages under Count I is expressly reserved and is not sought by this Motion. In the alternative, if the Court does not grant full summary judgment, Plaintiff requests an order under Rule 56(g) specifying the material facts — set out in the SSOF — that are established without substantial controversy.

V. CONCLUSION

Each challenged act was taken without the majority vote at a properly noticed open meeting that the Declaration and the Condominium Act require, and each is therefore void. The material facts are undisputed. Plaintiff respectfully requests that the Court grant the Motion.

RESPECTFULLY SUBMITTED this 21st day of July, 2026.

/s/ Lisa Marx

Lisa Marx, Plaintiff Pro Se

CERTIFICATE OF SERVICE

I certify that on July 21, 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 Pro Se