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

9
10 Lisa Marx
11 Plaintiff,

12 vs.

13 Tara Condominiums Association, Inc.,
14 Defendant,

Case No. CV 2025-062973

**PLAINTIFF'S MOTION FOR
RECONSIDERATION OF COURT'S
OWN MOTION TO
CONSOLIDATE ACTIONS
(Expedited Consideration Requested
- Master Insurance Policy Already
Terminated on December 1, 2025)**

Honorable Scott Minder

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18 Plaintiff Lisa Marx, pro per, moves this Court pursuant to Ariz. R. Civ. P. 7.1(e) for
19 reconsideration of its own motion (Minute Entry December 3, 2025 but not yet received
20 by Plaintiff and based on email from the court.) to consolidate this new action with CV
21 2025-012980. The Court's sua sponte consolidation order constitutes an interlocutory
22 order subject to reconsideration under the Court's inherent authority to amend such
23 orders prior to final judgment, as recognized in Arizona case law. See, e.g., Demoli v.
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1 Superior Court, 10 Ariz. App. 572, 460 P.2d 984 (1969) (affirming trial court's power to
2 reconsider interlocutory rulings).

3 This Motion is supported by the attached Memorandum of Points and Authorities,
4 Affidavit of Lisa Marx, and the record in both cases.

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6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. FACTUAL BACKGROUND AND URGENCY**

- 8 1. The original case (CV 2025-012980) was filed in April 2025. The operative Second
9 Amended Complaint does not plead the Declaration amendments or insurance-
10 shift claim that is the subject of this new action.
- 11 2. The illegal Declaration amendments were proposed in August 2025 and voted
12 upon in October 2025 – constituting the **second** statutorily defective member
13 vote under this Board. • First: 2024 budget vote (no open meeting, no proper
14 ballots) • Second: October 2025 Declaration/insurance-shift vote (no open
15 meeting, grouped amendments, door-to-door collection) • Third: November
16 2025 budget vote (again refused open meeting and compliant ballots) This
17 escalating pattern of willful statutory noncompliance is new evidence that exists
18 only in this action. This pattern demonstrates a continuing course of conduct that
19 post-dates the original filing and introduces distinct factual issues not present in
20 the prior case.
- 21 3. On December 1, 2025, the Association terminated the master insurance policy
22 that had provided blanket structural coverage on all nine condominium
23 buildings. The property is now completely uninsured for roofs, exterior walls,
24 and common elements.

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4. At the time the original case was filed (April 2025), the Association’s master carrier was American Family. By the time of the illegal October 2025 vote and this new case, the carrier had changed. American Family therefore has no duty to defend or indemnify the Board or provide D&O coverage for claims arising from the new amendments – further distinguishing the two actions.
 5. The Court has never held an evidentiary hearing or reached the merits of the insurance-shift issue. Plaintiff’s repeated attempts to obtain emergency relief – Motion for Expedited Hearing (October 9, 2025), Reply (October 30, 2025), Emergency Motion for Temporary Restraining Order (October 29, 2025, denied November 5, 2025), and Amended Motion to Set Evidentiary Hearing (November 6, 2025) – were all denied without testimony or merits review.
 6. The Arizona Condominium Act **mandates** that the Association “shall maintain ... property insurance on the common elements ... insuring against all risks of direct physical loss commonly insured against” (A.R.S. § 33-1253(A)(1)). “Common elements” are statutorily defined as “all portions of the condominium other than the units” (A.R.S. § 33-1202(9)) – i.e., the roofs, exterior walls, and structural components of all nine buildings. This is a **non-delegable statutory duty**. Failure to maintain such insurance exposes the Association and unit owners to severe liability, as the statute imposes a mandatory obligation that cannot be shifted without unanimous consent or statutory compliance.
 7. The illegal Declaration amendments purport to shift this **mandatory statutory obligation** onto individual unit owners, leaving the structures uninsured by the Association in direct violation of Arizona law. The Association then terminated the master policy on December 1, 2025, making that violation **immediate and**

1 **complete.** Nine condominium buildings – fifty families – now face immediate,
2 catastrophic financial exposure. A single fire, windstorm, or plumbing failure
3 could destroy decades of equity overnight. *Tierra Ranchos Homeowners Ass’n v.*
4 *Kitchukov*, 216 Ariz. 195, 199, 165 P.3d 173, 177 (App. 2007). (holding that
5 enforcement of invalid restrictions causes irreparable harm not compensable by
6 damages, as it undermines property rights and community governance
7 expectations).

8 **II. LEGAL BASIS: ARCP 7.1 ALLOWS RECONSIDERATION FOR GOOD CAUSE**

9 ARCP 7.1(e) allows reconsideration of interlocutory orders for good cause, including
10 manifest error of law or fact, or to prevent injustice. Consolidation here is an
11 interlocutory order. See *Corbin v. Arizona Corp. Comm’n*, 143 Ariz. 219, 693 P.2d 362
12 (App. 1984) (good cause includes new circumstances or prejudice). Imminent harm
13 from the deadline constitutes good cause, as in injunction cases requiring prompt
14 review (ARCP 65(a)). Delay would moot the motion and prejudice the Plaintiff by
15 eliminating the opportunity for a fair and timely hearing on the merits of the
16 consolidation request.

17 The amendments violate explicit statutory mandates: A.R.S. § 33-1227 (requiring 67%
18 vote for non-unanimous amendments; unanimous for boundary/interest changes),
19 A.R.S. § 33-1250(C) (post-declarant control, no proxies; votes must be in
20 person/absentee tied to a meeting, with ballots complying with subsections 1-7,
21 including separate votes for each action, validity for one meeting, and retention for
22 inspection), A.R.S. § 33-1253 (mandatory association insurance for common elements
23 unless unavailable), A.R.S. § 33-1248(A) (open meetings required; fiduciary duties), and
24 are unforeseeable under *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, 506 P.3d

1 18 (2022) (because the original declaration did not provide sufficient notice that such
2 new restrictions could be adopted without unanimous consent) (unforeseeable
3 amendments invalid without unanimous approval, as they lack notice in original
4 declaration). See also *Vales v. Kings Hill Condo. Ass'n*, 207 Ariz. 546, 88 P.3d 591 (App.
5 2004) (The Condominium Act takes precedence over conflicting documents); *Johnson v.*
6 *Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, 73 P.3d 616 (App. 2003) (boards owe duties to
7 individual owners for specific harms); Restatement (Third) of Prop.: Servitudes § 6.13
8 (fiduciary duties in associations); *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216
9 Ariz. 195, 165 P.3d 173 (App. 2007) (Plaintiff will suffer harm that cannot be
10 compensated by monetary damages if the invalid restrictions are enforced) (invalid
11 restrictions cause irreparable harm). Moreover, under ARCP 42(a), consolidation is
12 discretionary and requires common questions of law or fact; here, the new action
13 involves post-filing events and distinct violations, militating against consolidation to
14 avoid prejudice under ARCP 42(b). See *Brumett v. MGA Home Healthcare, L.L.C.*, 240
15 Ariz. 420, 380 P.3d 638 (App. 2016) (courts abuse discretion by consolidating without
16 weighing efficiency against potential prejudice).

17 18 **III. GOOD CAUSE FOR RECONSIDERATION**

- 19 1. **The Insurance-Shift Claim is Not Pled in the Original Case** The Second
20 Amended Complaint in CV 2025-012980 contains no count challenging the
21 October 2025 Declaration amendments. Those amendments are unforeseeable
22 under *Kalway* and violate A.R.S. §§ 33-1227(D), 33-1250(C), and 33-1253. The
23 claim is not part of the old case and cannot be adjudicated there. Consolidating
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1 distinct claims risks confusion of issues and unfair prejudice, contrary to ARCP
2 42(a)'s purpose.

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2. **This is the Board's Third Illegal Vote** The Board has now conducted **three** member votes (2024 budget vote, October 2025 Declaration/insurance-shift vote, and November 2025 budget vote) while deliberately refusing to hold an open meeting or use statutorily compliant ballots. This pattern of willful statutory noncompliance is new evidence that exists only in this action. This constitutes newly discovered evidence warranting reconsideration to prevent manifest injustice.
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3. **A.R.S. § 33-1227(B) Creates a One-Year Statute of Limitations** The one-year period to challenge the validity of the recorded amendments began running only when they were recorded in late October 2025. Consolidating this time-sensitive claim into an eight-month-old case risks expiration of the statutory window.
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4. **Consolidation Will Deprive Plaintiff of a Fresh Review by the Newly Assigned Judge** This new case has been assigned to a new judge, Scott Minder, providing an opportunity for fresh review of the urgent, time-sensitive issues. The prior judge in CV 2025-012980 (Randall H. Warner) has denied every request for an evidentiary hearing and stated Plaintiff is "not entitled to another preliminary injunction hearing every time the Board ... act[s] in a way Plaintiff believes is illegal." Consolidating would risk entangling this new action in the original case's history of denials, guaranteeing further delay. Arizona courts favor independent judicial review for distinct actions to ensure impartiality. See, e.g., *Siler v. Superior Court*, 83 Ariz. 49, 316 P.2d 296 (1957) (discussing discretion in consolidation decisions).

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5. **Defendant’s True Motive is to Bury the Emergency** Defendant’s counsel is attempting to prevent the facts from ever being heard on the merits. Consolidation serves only to run out the clock as the master policy lapses, rendering any future relief meaningless. They are trying to run out the timeclock for reversing the illegal amendment.
 6. **Rule 42(b) Authorizes Separate Trials to Avoid Prejudice** Even if common facts exist, Rule 42(b) expressly allows the Court to order separate trials “to avoid prejudice.” The prejudice here is undeniable: nine condominium buildings are completely uninsured according to the statute by the association according to ARS 33- 1253(A.) (1)(2) starting December 1, 2025. The Court's discretion under Rule 42(b) should be exercised to prioritize avoiding prejudice over mere convenience, especially where irreparable harm is imminent.
 7. **Plaintiff Will Suffer Irreparable Harm Absent Reconsideration** Plaintiff has suffered and will continue to suffer irreparable harm, including title clouds, resale barriers, no building insurance on her unit according to statute, increased costs (e.g., HO-3 premiums, deductibles and maintenance if damage to building occurs), potential uninsurability for lack of coverage, and breach of her warranty deed's expectations. Monetary damages are insufficient, as harms involve property rights and governance violations per se irreparable in HOA contexts. The harm caused by actions inconsistent with the community's established rules and expectations undermines the fundamental nature of the property rights, which Arizona courts recognize as irreparable. See *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, 535, 506 P.3d 18, 21 (2022) (holding that property rights in an HOA context are defined by the original, foreseeable covenants, and

1 amendments must be consistent with the "general plan of development" and
2 reasonable expectations of the homeowners). The balance of equities favors
3 Plaintiff, as preserving the status quo imposes no undue burden on Defendant,
4 who can reattempt compliant amendments. Public interest favors enforcing the
5 Condo Act to protect owners from ultra vires acts. This harm is immediate and
6 ongoing, justifying reconsideration to expedite merits review.

- 7 **8. Plaintiff Refuses to Comply with the Invalid Amendments** Plaintiff refuses to
8 comply with the invalid amendments, risking fines/liens.

9 **IV. CONCLUSION**

10 For these reasons, the Court should reconsider and deny consolidation to prevent
11 manifest injustice. Plaintiff respectfully requests an expedited hearing on this motion
12 given the urgent nature of the uninsured property risk.

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14 DATED: December 3, 2025.

15 Respectfully submitted,

16 /s/ Lisa Marx

17 Lisa Marx, Pro Per
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19 **AFFIDAVIT OF LISA MARX**

20 I, Lisa Marx, swear under penalty of perjury pursuant to A.R.S. § 12-2221 that the
21 following is true and correct based on my personal knowledge:

- 22 1. I am the Plaintiff and owner of Unit 5.
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2. The Board's consents, as detailed in the filed Motion for Preliminary Injunction, violate Arizona laws including A.R.S. §§ 33-1250(C) and 33-1248(A), and the October 15 deadline caused harm including title devaluation and increased costs.
3. Expedited hearing is needed to prevent harm from the already adopted amendments, including enforcement and irreversible implementation of the invalid insurance shift.

I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct. Executed on December 3, 2025 at Sun City, Arizona.

/s/ Lisa Marx

CERTIFICATE OF SERVICE

ORIGINAL of the foregoing e-filed

this 3rd day of December, 2025

Arizona Judicial Branch Statewide eFiling System

I hereby certify that on December 3, 2025, I caused a true and correct copy of the foregoing document to be served via email to:

Charles H. Oldham, Esq

Chuck.Oldham@chdblawn.com

Ari Bowhay

Ari.Bowhay@chdblawn.com

By: /s/ Lisa Marx