IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 52887

K & L CRYSTAL BEACH, LLC, and ROBERT E. BOHMAN,	)	
Plaintiffs-Appellants,	)	
v.	)	
THE CRYSTAL BEACH CONDOMINIUM ASSOCIATION, INC., an Idaho non-profit corporation; MARVIN ASKEY, ROBERT SCHWENKFELDER, EDWARD BARRETT, CHRISTOPHER BRAZIL, RONALD GROVE, MICHAEL VIRDEN, MARY MARTIN, PATTI ZATICA, TYLER BUTTERFIELD, DARRELL CARNEY, JOHN DOES 1-60 AND JANE DOES 1-60, Encroachers,	)	**Boise, August 2026 Term** **Opinion Filed: October 30, 2026** **Melanie Gagnepain, Clerk**
Defendants-Respondents.	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Valley County. Jason D. Scott, District Judge.

The decision of the district court is affirmed in part, reversed in part, and remanded.

Wright Brothers Law Office, Twin Falls, for Appellants. Brooke B. Redmond argued.

Eberle, Berlin, Kading, Turnbow & McKlveen Chartered, Boise, for Respondents. Evan M. Westerfield argued.

MEYER, Justice.

The Crystal Beach Condominium Association, Inc., ("CBCA") is an Idaho non-profit corporation serving as the owners' association for the Crystal Beach Condominiums in McCall, Idaho. In 2020, CBCA recorded an amended condominium declaration that altered the allocation of owners' common area interests and assessments, along with new rental rules and moorage rules. Two unit owners in the complex, K & L Crystal Beach, LLC, and Robert E. Bohman (collectively, "K&L"), filed suit against CBCA and former members of CBCA's board of directors (collectively

"the Association"). K&L alleged claims for declaratory relief, slander of title, quiet title, encroachment, and breach of contract, which were premised on K&L's contention that the Association unlawfully changed K&L's ownership and rental rights under Idaho law or under the Association's declaration. K&L also filed a claim seeking to compel the Association to remeasure unit square footage and reallocate ownership interests pursuant to Idaho Code section 55-1505(1)(c) of the Condominium Property Act.

The district court granted summary judgment on K&L's claims in favor of the Association, concluding that K&L's first five claims were barred because K&L failed to satisfy the statutory requirements for bringing derivative claims under Idaho's Nonprofit Corporation Act. The court also concluded that K&L failed to establish that the Association acted in bad faith when it reallocated ownership interests in 2020; therefore, K&L was not entitled to specific performance.

On appeal, K&L contends the district court erroneously granted summary judgment on its first five claims because (1) Idaho's Condominium Property Act, not the Nonprofit Corporation Act, governed its claims and expressly grants unit owners "standing and authority" to enforce the declaration and bylaws under Idaho Code section 55-1516; (2) even if the Nonprofit Corporation Act governed, its claims were not derivative because the individualized harm to K&L's property interests were independent of its membership status. K&L also argued that the district court erred in dismissing its claim seeking to remeasure and reallocate ownership interests under section 55-1505(1)(c) because the question of bad faith was a disputed issue of material fact. For the reasons set forth below, we affirm in part, reverse in part, and remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

In October 1971, CBCA was organized as an Idaho non-profit corporation for a waterfront condominium complex located in McCall, Idaho. About a month later, the Association recorded the Condominium Declaration for the Crystal Beach Condominiums (the "Original Declaration"). "A declaration is essentially a master deed which defines the rights and duties of the developer, the owners of the individual condominium units and the management body of the project." *Thompson v. Ebbert*, 144 Idaho 315, 317, 160 P.3d 754, 756 (2007) (citation modified). Pertinent to this appeal, the Original Declaration provides in Article XIV that amendments to the Original Declaration require the consent of owners representing an aggregate ownership interest of 85% and "all holders of any recorded Mortgage covering or affecting any or all of the Condominiums":

> This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the Owners representing an aggregate ownership interest of 85% or more of the Condominiums, as reflected on the real estate records of Valley County, Idaho, and all holders of any recorded Mortgage covering or affecting any or all of the Condominiums, whose interests as Mortgagees appear in such records, consent and agree to such revocation or amendment by instruments duly recorded. Any such revocation or amendment shall be binding upon every Owner and every Condominium whether the burdens thereon are increased or decreased by any such amendment and whether the Owner of each and every Condominium consents thereto.

Article XVI, section 16.1 of the Original Declaration provides "the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner" may maintain "an action to recover sums due and damages or injunctive relief" when an owner fails to comply with the Association's declaration or by-laws:

> Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and the By-Laws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

Lastly, Article X, section 10.1 provides that the units may be leased or rented.

Bohman and K&L Crystal Beach, LLC, each own a unit in the complex. "[C]ondominium ownership is a hybrid form of interest in real property, entitling an owner to (1) fee simple ownership of a unit and (2) an undivided interest in common with the other unit owners in the common areas." *McLaughlin v. Moore*, 176 Idaho 726, ___, 582 P.3d 11, 20 (2025) (citing I.C. §§ 55-1503(a), 55-101B). Under the Original Declaration, each unit carries a 1.595% common-area ownership and voting share, for a combined allocation of 3.19%. Kathleen Glover is the sole member of K&L Crystal Beach. Defendants Marvin Askey, Robert Schwenkfelder, Edward Barrett, Christopher Brazil, Ronald Grove, Michael Virden, Mary Martin, Patti Zattica, Tyler Butterfield, and Darrell Carney are past members of the CBCA's board of directors (the "Board").

In 1993, Marvin Askey purchased a two-bedroom "loft" unit with a balcony area that "had been enclosed by exterior doors" and an attic space that "is only accessible from within" the unit. In 2013, Askey remodeled his unit, with the Board's approval, by adding a vaulted ceiling in one bedroom.

In May 2018, Bohman sent a letter to the Board raising concerns that members had encroached on common or limited common areas while remodeling attic and patio spaces.

Thereafter, the Board held several meetings to discuss the alleged encroachments, and, on August 21, 2018, it approved an audit of three buildings in the complex by architect Cathy Sewell. However, according to Glover's declaration submitted in opposition to summary judgment, Askey voted against the audit, and "[t]he then president of the board Patty Ely, never signed the agreement with Cathy Sewell to allow her to do the work."

In December 2018, the Board received advice of its attorney, Amy Pemberton, regarding the encroachment issue and whether a member's remodeling would require the Board to recalculate the ownership percentages under Idaho Code section 55-1505(1)(c). Pemberton opined that (1) a recalculation would only be required if the unit's useable square footage was expanded beyond its original boundaries, and (2) that any unit that added cubic space beyond the original boundaries during a remodel would constitute an encroachment into the general common area. She further stated that "finishing off a loft to be livable space would increase the square footage of the [u]nit" and advised the Board on the procedure for amending its governing documents to accommodate a reallocation of the owner's interest in the common area. According to Glover, "the board president, now Robert Schwankfelder, did not sign the agreement with Cathy Sewell allowing her to measure the units and resolve the square footage issues." Thereafter, the Board did not move forward with Sewell's audit.

In January 2020, the Board provided its members with six options for amending the provisions of the Original Declaration, which addressed, among other things, a reallocation of owner's interests in common areas and liability for assessments. Pertinent here, "Option #5" allocated ownership interests "according to relative square footage, and voting and assessments as they are today." Owners representing an aggregate ownership interest of 88.33% consented to adopting Option 5. About two weeks later, the Board recorded an Amended and Restated Declaration for the Crystal Beach Condominiums (the "Amended Declaration"). Notably, while the Original Declaration allocated each of K&L's units a 1.595% of undivided interest in the common area, the Amended Declaration allocated each unit a 1.397% "Percentage Ownership [i]n Common Area" and 1.595% "Assessment Allocation Percentage."

After the Amended Declaration was recorded, Craig Marcus, a mortgagee, sent a letter to the Board stating that its recording of the Amended Declaration did not comport with Article XIV of the Original Declaration, which required the consent of all mortgagees. Thereafter, Marcus recorded a "Mortgagee's Notice of Refusal to Consent or Agree to Amendment[.]" In his notice,

Marcus stated that his recorded consent was required to approve amendments to the Original Declaration under Article XIV and that he did not consent.

In February 2020, the Board disseminated rental rules governing owners' rights to rent their units. These rules are not in the record, and their contents are unknown. According to a declaration submitted by Glover in opposition to summary judgment, the Board "threatened fines or evictions if people failed to comply with the rules and regulations." In response, Glover sent a letter to the Board alleging that the proposed rules violated former Idaho Code section 55-115, which prohibited "homeowner's association[s]" from enforcing restrictions that limit "the rental . . . of any property, land or structure thereon within the jurisdiction of the homeowner's association, unless expressly agreed to in writing at the time of such addition or amendment by the owner of the affected property." I.C. § 55-115(3) (2020). Bohman also objected to the rental rules, stating that he would not consent and that they violated section 55-115(3) (2020). The record does not clarify what actions, if any, the Board took on the 2020 rules.

In 2022, the Board again disseminated rental rules along with amendments to its moorage rules. It is unclear whether these rules were the same rules disseminated by the Board in 2020. The rental rules included, among other things, limits on pets and maximum occupancy and that renters' guests could not "utilize the common areas" or "stay in the units overnight." The moorage rules provided in part that vessels must be titled in the name of the unit owner or the owner's children, and that the transfer of a unit's ownership during an estate administration to an adult child would not affect moorage license priority. Thereafter, Glover sent a letter to the Board, again claiming that the rental rules violated Idaho Code section 55-115(3) (2020) (the law was recodified as Idaho Code section 55-3211 as of July 1, 2022). She further stated that she had "not received a ballot for the rental rules or the moorage rules and advised that [she] would be voting" against the proposed rules.

B. Procedural History

In May 2022, K&L filed suit against the Association, asserting claims for declaratory relief, slander of title, quiet title, encroachment, breach of contract, and to compel a remeasurement and reallocation of ownership interests under section 55-1505(1)(c). In its prayer for relief, K&L requested, among other things, that the court "nullify" (1) the Amended Declaration, (2) the new moorage license policy, (3) the new rental rules, and (4) "any rules" that placed restrictions on renting that were not contained in the Association's bylaws at the time K&L purchased their properties. It further requested that the court "find" that the Association was "wrong [in] not

[a]uditing the common area attic and allowing such encroachments to be made and that such wrongful actions were willful and wanton; and a conflict of interest by Board members that had encroached." The Association filed an answer and demand for jury trial.

K&L and the Association filed cross-motions for summary judgment. In relevant part, the Association argued that K&L's claims were derivative because the injuries alleged by K&L equally applied to the Association's members; therefore, it was entitled to judgment as a matter of law on each claim because K&L failed to comply with the pleading requirements for derivative actions. In response, K&L contended that its claims were direct, not derivative, because it sought to enforce individual property rights.

Following a hearing, the district court granted the Association's motion for summary judgment and denied Appellants' motion. First, the district court determined that K&L's claims for declaratory relief, slander of title, quiet title, encroachment, and breach of contract were derivative in nature because each claim challenged the validity of the Amended Declaration and rental and moorage rules on the grounds that the Association lacked the power to act. Therefore, the court determined that K&L was required to pursue its claims in a derivative proceeding pursuant to Idaho Code section 30-30-304(2). However, because K&L lacked five percent of the aggregate voting power in the Association to pursue a derivative claim as required by Idaho Code section 30-30-411(1), the court concluded that K&L's claims were statutorily barred. Next, the district court determined that K&L's statutory claim concerning reallocation of ownership interests was a direct claim. However, the court concluded that the claim failed on the merits because K&L did not establish that the Association acted in bad faith when it reallocated membership interests in 2020. The court also noted that the Association established "the absence of bad faith" through its deliberative reallocation process that ultimately was approved by 88% of the members.

K&L filed a motion to reconsider, arguing that sections 30-30-304(2) and -411(1) of the Idaho Nonprofit Corporation Act did not govern its claims. Instead, K&L contended that its claims were governed by Idaho Code section 55-1516, part of Idaho's Condominium Property Act, and Article 16.1 of the Original Declaration, both of which authorized direct enforcement actions by owners. K&L further argued that there was a genuine issue of fact whether the Board acted in bad faith during the reallocation process in 2020.

The district court denied K&L's motion. First, the district court acknowledged that section 55-1516 granted condominium owners' "standing and authority, unless otherwise provided, to enforce the provisions of the declaration . . . ." (Emphasis omitted.) However, the court ruled that

the Nonprofit Corporation Act "otherwise provided" because it limited the authority of owners to pursue derivative claims on behalf of a condominium association that is organized as a nonprofit corporation. Next, the court declined to reconsider its dismissal of K&L's bad faith claim, again noting that proof of bad faith was lacking.

The district court entered an amended judgment dismissing K&L's claims with prejudice, and K&L appealed.

II. STANDARDS OF REVIEW

"When reviewing a trial court's decision to grant or deny a motion for reconsideration, this Court utilizes the same standard of review used by the lower court in deciding the motion for reconsideration." *Gregory v. Stallings*, 167 Idaho 123, 128, 468 P.3d 253, 258 (2020) (alteration omitted) (quoting *Wickel v. Chamberlain*, 159 Idaho 532, 536, 363 P.3d 854, 858 (2015)). "This Court exercises de novo review of a grant of summary judgment . . . ." S*ummerfield v. St. Luke's McCall, Ltd.*, 169 Idaho 221, 228, 494 P.3d 769, 776 (2021) (quoting *AED, Inc. v. KDC Invs., LLC*, 155 Idaho 159, 163, 307 P.3d 176, 180 (2013)).

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). "[A] mere scintilla of evidence or merely casting a slight doubt of the facts will not defeat summary judgment." *Fragnella v. Petrovich*, 153 Idaho 266, 271, 281 P.3d 103, 108 (2012) (citation omitted). When determining "whether the evidence shows a genuine issue of material fact, the trial court must liberally construe the facts, and draw all reasonable inferences in favor of the nonmoving party." *Id.* (citation omitted). "The interpretation of a statute is a question of law over which this Court exercises free review." *City of Idaho Falls v. H-K Contractors, Inc.*, 163 Idaho 579, 581, 416 P.3d 951, 953 (2018) (alteration omitted) (quoting *Regan v. Owen*, 163 Idaho 359, 362, 413 P.3d 759, 762 (2018)).

III. ANALYSIS

A. We affirm the district court's conclusion that K&L's first five claims were derivative claims for which it did not have standing under the Idaho Nonprofit Corporation Act.

On appeal, K&L argues the district court erred by concluding it lacked standing to pursue its claims for declaratory relief, slander of title, quiet title, encroachment, and breach of contract. "Standing is a threshold determination by this Court before reaching the merits of the case." *Associated Press v. Second Jud. Dist.*, 172 Idaho 113, 118, 529 P.3d 1259, 1264 (2023) (quoting *Reclaim Idaho v. Denney*, 169 Idaho 406, 418, 497 P.3d 160, 172 (2021)). "At its most basic level,

standing is '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.'" *A.C. & C.E. Invs., Inc. v. Eagle Creek Irrigation Co.* ("*Eagle Creek II*"), 173 Idaho 252, 264, 540 P.3d 349, 361 (2023) (alteration in original) (quoting *Standing*, *Black's Law Dictionary* (11th ed. 2019)). "The right to make a claim is often dependent on the type of action being brought." *Id.*

In this case, the district court concluded that the derivative suit and standing requirements of the Idaho Nonprofit Corporation Act ("NCA") supplanted the Condominium Property Act's ("CPA") broad grant of standing to condominium owners to enforce an association's declaration and by-laws. The district court further determined that, under the NCA, K&L's first five claims were derivative claims that K&L lacked standing to assert. On appeal, K&L challenges both conclusions, which we address in turn.

1. The Idaho Nonprofit Corporation Act supplants the Condominium Property Act.

"Statutory interpretation begins 'with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.'" *N. Henry's Lake Homeowners Ass'n, Inc. v. Norton*, 176 Idaho 751, ___, 582 P.3d 36, 40 (2026) (quoting *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011)). "[T]he Court must give effect to all the words and provisions within the statute to ensure that none are void, superfluous, or redundant." *Id.* (quoting *Latah County v. Idaho State Tax Comm'n*, 175 Idaho 841, 846, 571 P.3d 962, 967 (2025)). "Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction." *Eller v. Idaho State Police*, 165 Idaho 147, 154, 443 P.3d 161, 168 (2019) (quoting *Marquez v. Pierce Painting, Inc.*, 164 Idaho 59, 63–64, 423 P.3d 1011, 1015–16 (2018)). "In addition, where two statutes conflict, courts should apply the more recent and more specifically applicable statute." *Id.* (citations omitted).

In this case, two competing acts potentially address K&L's authority to pursue its claims: the Condominium Property Act (CPA) and the Nonprofit Corporations Act (NCA). Therefore, we must determine whether one or both of the two competing acts applies.

The CPA, codified at Idaho Code sections 55-1501 through -1528, was enacted in 1965 to recognize and facilitate condominium ownership as "a lawful estate in property" in Idaho. *See* I.C. § 55-1502; Act of Mar. 26, 1965, ch. 225, 1965 Idaho Sess. Laws 515, 515–31. The operations of a condominium are conducted by a "management body." I.C. § 55-1516; *see also* 15B Am. Jur. 2d Condominiums, Etc. § 21 (2025). Condominium owners are subject to the CPA, the condominium's declaration, and all lawful decisions made by the management body. I.C. § 55-

1516. Pertinent here, section 55-1516 grants each condominium owner "standing and authority" to enforce the provisions of the declaration and by-laws of the project "unless otherwise provided":

> All condominium owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to the provisions of this act shall be subject to this act and to the declaration and by-laws of the project adopted pursuant to the provisions of this act.
>
> All agreements, decisions and determinations lawfully made by the management body shall be deemed to be binding on all condominium owners and shall inure to the benefit of all such owners.
>
> *Each condominium owner and any group of owners shall have standing and authority, unless otherwise provided, to enforce the provisions of the declaration and any recorded by-laws of the project.*

I.C. § 55-1516 (emphasis added).

In 2015, the modern NCA was recodified at Idaho Code sections 30-30-101 to -1204, with the enactment of the Idaho Uniform Business Organizations Code. *See* Act of Apr. 3, 2015, ch. 243, §§ 73–85, 2015 Idaho Sess. Laws 750, 968–1006. The parties do not dispute that the Association is an Idaho nonprofit corporation. The NCA "appl[ies] to any type of lawful nonprofit corporation formed under the provisions of this act or other laws of this state[,]" I.C. § 30-30-101, as well as "all domestic nonprofit corporations in existence on July 1, 2015, that were incorporated under the laws of this state[,]" I.C. § 30-30-1201. The "*ultra vires*" statute contained in the NCA, Idaho Code section 30-30-304, provides in pertinent part that a derivative proceeding is the sole judicial vehicle available to a member of a nonprofit corporation for challenging the validity of corporate action on the ground that the corporation lacked power to act:

> ULTRA VIRES. (1) Except as provided in subsection (2) of this section, the validity of corporate action *may not be challenged on the ground that the corporation lacks or lacked power to act.*
>
> (2) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding *may be brought by* a director, or by *a member or members in a derivative proceeding*.

I.C. § 30-30-304(1)–(2) (emphasis added). "An ultra vires act is an act that is '[u]nauthorized; beyond the scope of power allowed or granted by a corporate charter or by law." *Taylor v. Taylor*, 163 Idaho 910, 918, 422 P.3d 1116, 1124 (2018) (alteration in original) (quoting *Ultra Vires*, *Black's Law Dictionary* (10th ed. 2014)). Section 30-30-411 further provides standing requirements for derivative actions under the NCA:

> (1) A proceeding may be brought in the right of a domestic or foreign nonprofit corporation to procure a judgment in its favor by:
>
> > (a) Any member or members having five percent (5%) or more of the voting power or by fifty (50) members, whichever is less; or
> >
> > (b) Any director.

I.C. § 30-30-411(1)(a)–(b). Section 30-30-411 also contains specific pleading requirements for derivative suits: a plaintiff must, among other things, verify the complaint and allege with particularity the demand made (if any) to obtain action by the directors. I.C. § 30-30-411(3).

Below, the district court concluded that the NCA's *ultra vires* and derivative suit statutes governed K&L's claims. While it acknowledged that section 55-1516 of the CPA broadly granted condominium owners "standing and authority . . . to enforce the provisions of the declaration[,]" the court determined that the qualifying clause "unless otherwise provide[ed]" expressly established that section 55-1516 deferred to other statutory schemes, including the NCA.

On appeal, K&L contends that the district court erred when it determined that the NCA's *ultra vires* and derivative suit provisions governed K&L's claims because the qualifying clause in section 55-1516 refers to limitations on a unit owner's standing as provided in a declaration, not a separate statutory scheme. K&L further contends that the CPA should have had priority over the NCA as the more specific statute, and the court failed to give effect to section 55-1516's language or to harmonize section 55-1516 with the NCA. In response, the Association contends that the district court correctly determined that the legislature intended conflicting statutes to control over section 55-1516 based on the qualifying clause.

For the reasons set forth below, we agree with K&L that the qualifying clause in section 55-1516 refers to limitations on a unit owner's standing as provided in a declaration, not a separate statutory scheme. However, we affirm the district court's conclusion regarding the NCA's application in this case insofar as we reach the same result on separate grounds.

a. <u>The "unless otherwise provided" qualifying clause refers to limitations provided in the declaration, not a separate statutory scheme.</u>

Our analysis begins with determining the intent of section 55-1516's qualifying clause. Initially, we note that the bare phrase "unless otherwise provided," when read in isolation, could sweep broadly enough to encompass limitations created by a declaration *and* separate statutes. However, we do not read provisions of a statute in isolation. *Arreola v. Scentsy, Inc.*, 172 Idaho 251, 257–58, 531 P.3d 1148, 1154–55 (2023) (quoting *Nelson v. Evans*, 166 Idaho 815, 820, 464 P.3d 301, 306 (2020)). Rather, provisions "must be interpreted in the context of the entire

document" and "[t]he statute should be considered as a whole[.]" *Id.* (emphasis omitted) (quoting *Nelson*, 166 Idaho at 820, 464 P.3d at 306).

Here, section 55-1516 has three basic main components: (1) owners, among others, are bound by the CPA, declaration, and bylaws; (2) the management body's lawful decisions bind all owners; and (3) owners retain standing to enforce the declaration and bylaws "unless otherwise provided." I.C. § 55-1516. Thus, section 55-1516's primary purpose was to establish the enforceability and ambit of the declaration and bylaws as governing documents, as well as the management body's authority to bind owners with its decisions. Notably, the second sentence of the statute qualifies that owners are only bound by "lawful" decisions of the management body, while the next sentence grants condominium owners a right to protect their interests by enforcing the declaration. Given section 55-1516's purpose and the lack of reference to any other statutory scheme, K&L's interpretation of this phrase is supported by section 55-1516's context.

Moreover, the phrase "unless otherwise provided" is used as a qualifying clause in three separate statutes of the CPA, and each statute clearly indicates that the clause refers to conflicting provisions set forth in a project's declaration, not a separate statutory scheme. *See State v. Soliz*, 174 Idaho 571, 576, 558 P.3d 716, 721 (2024) ("We can look at other parts of the same statute to understand how a specific word or phrase is used when interpreting a statute." (citing *St. Luke's Magic Valley Reg'l Med. Ctr., Ltd. v. Bd. of Cnty. Comm'rs of Gooding Cnty.*, 149 Idaho 584, 589, 237 P.3d 1210, 1215 (2010))).

First, section 55-1510 provides for the removal of a project from the provisions of the CPA by a two-thirds vote "[u]nless otherwise provided in the declaration . . . ." I.C. § 55-1510. Second, section 55-1520 similarly authorizes the management body to hold personal property "unless otherwise provided for in a declaration recorded pursuant to section 55-1505[.]" I.C. § 55-1520. Third, section 55-1505 permits the declaration to contain "[p]rovisions for assessments to meet authorized expenditures of any management body," providing that each condominium is assessed "in proportion, *unless otherwise provided*, to its owner's fractional interest in the common areas[.]" I.C. § 55-1505(2)(m)(1) (emphasis added). In context, section 55-1505's use of the phrase "unless otherwise provided" plainly refers to what the declaration provides because subsection (2) lists the things "[t]he declaration may but need not also contain[.]" I.C. § 55-1505(2). Thus, the most natural reading of this same phrase in section 55-1516 is that a condominium owner has standing and authority to enforce the declaration and bylaws "unless otherwise provided" in the declaration.

For these reasons, we agree with K&L's interpretation of section 55-1516. Therefore, the district court erred when it concluded that the NCA governed based on its determination that section 55-1516's "unless otherwise provided" phrase referred to conflicting statutes. Even so, the outcome of the case is unaffected by this error because, as set forth below, we reach the same result regarding the NCA's application to this case, albeit for different reasons.

b. The NCA's specific limitations on *ultra vires* challenges and derivative proceedings govern a condominium owner's challenge to the validity of corporate actions on the ground that the corporation lacked power to act.

Next, K&L contends that the district court erred by concluding that the NCA governed its claims because Idaho Code section 55-1505 is the more specific statute. We disagree. "[W]hen two statutes deal with the same subject matter, and the two are irreconcilable, the most recent enactment governs[.]" *Rydalch v. Glauner*, 83 Idaho 108, 113, 357 P.2d 1094, 1097 (1960) (citations omitted); *see also Mickelsen v. City of Rexburg*, 101 Idaho 305, 307, 612 P.2d 542, 544 (1980); *State, Dep't of Health & Welfare v. Wiggins* (*In re Est. of Wiggins*), 155 Idaho 116, 123, 306 P.3d 201, 208 (2013). We have also held that, "where two statutes appear to apply to the same case or subject matter, the specific statute will control over the more general statute." *Eller v. Idaho State Police*, 165 Idaho 147, 154, 443 P.3d 161, 168 (2019) (quoting *State v. Barnes*, 133 Idaho 378, 382, 987 P.2d 290, 294 (1999)); *see also Wiggins*, 155 Idaho at 123, 306 P.3d at 208. Thus, "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976) (quoting *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974)).

The CPA's grant of standing is irreconcilable with the NCA's limitations on *ultra vires* challenges and derivative proceedings. As set forth above, the CPA grants individual condominium owners "standing and authority" to enforce the declaration and bylaws under Idaho Code section 55-1516. Notably, this grant of standing is broad insofar as it does not condition enforcement on whether the owner seeks to pursue a direct action or derivative action. Nor does it limit the type of remedies an owner may seek. In contrast, the NCA provides that a member's challenge to a corporate action as *ultra vires* must be brought through a derivative proceeding, and such remedy is limited "to enjoin[ing] an act where a third party has not acquired rights." I.C. § 30-30-304(2). And, under section 30-30-411, only a member or members having five percent of the voting power (or fifty members) are permitted to initiate such proceedings. I.C. § 30-30-411(1)(a). Thus, where a condominium owner challenges the validity of a nonprofit corporation's

actions as *ultra vires*, the CPA's broad grant of standing is in direct conflict with the NCA's limitations on *ultra vires* challenges and derivative proceedings. Therefore, we must determine the more recent and more specifically applicable statute. *Eller*, 165 Idaho at 154, 443 P.3d at 168.

Sections 30-30-304(2) and -411(1) of the NCA are the more recently enacted statutes. However, while sections 30-30-304(2) and -411(1) are "specific" in the sense that they delineate clear limitations on *ultra vires* challenges and derivative proceedings, they are also generally applicable. As set forth above, the NCA broadly applies "to any type of lawful nonprofit corporation," I.C. § 30-30-101, and, relevant to the CBCA, "all domestic nonprofit corporations in existence on July 1, 2015, that were incorporated under the laws of this state[,]" I.C. § 30-30-1201. In contrast, the CPA only applies to condominium projects and condominium owners, and section 55-1516 squarely addresses an owner's standing to enforce the declaration. Therefore, section 55-1516 is the more specific statute insofar as it applies to condominium entities. Thus, the issue boils down to whether a "clear intention otherwise" can be discovered within the NCA that the limitations and requirements for derivative suits set forth in sections 30-30-304(2) and -411(1) control over conflicting statutes. *See Radzanower*, 426 U.S. at 154.

Here, the NCA, at Idaho Code section 30-30-1204(3), provides guidance on how courts are to resolve conflicts between its provisions and other statutes applicable to nonprofit corporations. It states: "[e]xcept as specifically provided in this chapter, this chapter shall not affect the provisions of other statutes applicable to any form of nonprofit corporation." I.C. § 30-30-1204(3). Here, the NCA specifically provides limitations on *ultra vires* challenges and derivative proceedings in nonprofit corporations. Thus, while section 55-1516 would normally control over a less specific statute, the legislature expressed its intent for these provisions of the NCA to control over the CPA.

Moreover, the legislature expressly provided that the statutes governing canal companies and Carey Act companies under title 42, Idaho Code, would control over conflicting provisions of the NCA. *See* I.C. § 30-30-1203 ("Should any provision of this chapter, as it pertains to canal companies or Carey act companies, conflict with the provisions of title 42, Idaho Code, the provisions of title 42, Idaho Code, shall prevail."). Thus, the legislature knew how to confer the same priority to the CPA over the NCA but elected not to.

For these reasons, we conclude that the NCA's specific limitations on *ultra vires* challenges and derivative proceedings govern a condominium owner's challenge to the validity of corporate actions on the ground that the corporation lacked power to act.

2. The district court correctly concluded that K&L's claims were derivative.

Below, the district court concluded that K&L's claims for declaratory relief, slander of title, quiet title, encroachment, and breach of contract were derivative in nature under section 30-30-304(2) because each challenged the validity of corporate actions on the grounds that the Association lacked power to act. Consequently, the court dismissed K&L's claims on standing grounds because K&L, holding only 3.19% of the voting power, lacked the requisite voting power to pursue its claims through a derivative proceeding under section 30-30-411(1).

On appeal, K&L contends that its claims are direct because none allege corporate-wide harm or seek relief that flows to the CBCA as a whole; rather, it alleged particularized injuries to its property interests that are independent from the CBCA. K&L further argues that, even if its claims are derivative, Article XVI, section 16.1, of the Original Declaration independently granted it standing to pursue its claims. In response, the Association contends that the substance of K&L's claims concerns corporate-wide injuries because any harm caused by the rental rules, moorage rules, or Amended Declaration was suffered by each member of the CBCA. The Association further contends that Article XVI does not permit K&L to bypass Idaho Code section 30-30-411(1)'s standing or pleading requirements. For the reasons set forth below, we agree with the Association.

"[A] derivative action is distinguishable from an individual action." *Eagle Creek II*, 173 Idaho 252, 264, 540 P.3d 349, 361 (2023) (quoting *Kugler v. Nelson*, 160 Idaho 408, 413, 374 P.3d 571, 576 (2016)). "This distinction is necessary due to the unique circumstances presented when a shareholder sues a corporation[.]" *Id*. We have explained that

> [a] stockholder's derivative action is an action brought by one or more stockholders of a corporation to enforce a corporate right or remedy a wrong to the corporation in cases where the corporation, because it is controlled by the wrongdoers or for other reasons fails and refuses to take appropriate action for its own protection.

Id. (quoting *Kugler*, 160 Idaho at 413, 374 P.3d at 576).[1] On the other hand, a member may maintain an individual action

> for an injury directly affecting him, although the corporation also may have a cause of action growing out of the same wrong, where it appears that the injury to the [member] resulted from the violation of some special duty owed to the [member] by the wrongdoer and having its origin in circumstances independent of the plaintiff's status as a [member].

[1] Under the NCA, the term "member" "also mean[s] stockholder or shareholder, wherever and whenever those terms are used in this act . . . ." I.C. § 30-30-103(13).

Kugler, 160 Idaho at 413, 374 P.3d at 576 (emphasis omitted) (quoting *McMann v. McMann* (*McMann II*), 152 Idaho 809, 815, 275 P.3d 824, 830 (2012)).

The determination of whether a claim is derivative or direct carries significant procedural consequences. If a claim is direct, a plaintiff need not satisfy the specific pleading requirements for derivative suits set forth in Idaho Code section 30-30-411 and Rule 78 of the Idaho Rules of Civil Procedure. If a claim is derivative, "[t]he failure of a plaintiff to comply with these pleading requirements is grounds for dismissal." *Eagle Creek II*, 173 Idaho at 260–61, 540 P.3d at 357–58 (citations omitted).

In evaluating whether a plaintiff's claim is direct or derivative, we will look past a claim's label to its substance. *McCann v. McCann* (*McMann I*), 138 Idaho 228, 233–34, 61 P.3d 585, 590–91 (2002). An action will be construed as derivative "if the gravamen of the complaint is the injury to the corporation or to the whole body of its stock or property and not injury to the plaintiff's individual interest as a [member]." *Id.* at 233, 61 P.3d at 590 (quoting 19 Am.Jur.2d *Corporations* § 2250, 151–52 (1986)). Importantly, in *Eagle Creek II*, we concluded that a claim alleging that a corporation improperly amended its articles of incorporation was derivative under section 30-30-304(2) because the claim rested on the *ultra vires* doctrine:

> Throughout both its opening brief and reply brief, AC&CE asserts that the mitigation agreement issue was based on "an *ultra vires* action" by Eagle Creek. While AC&CE does not expressly articulate the issues related to restating the government documents to "eliminate the trust" as an *ultra vires* action, AC&CE argues that "the district court erred in determining that the original articles of incorporation of [Eagle Creek] were properly amended to eliminate trust provisions and increase the number of authorized shares." By asserting that the articles of incorporation were improperly amended, AC&CE is asserting that Eagle Creek acted beyond the scope of power allowed by law. In other words, even though it does not expressly frame its argument as such, AC&CE is asserting that Eagle Creek acted *ultra vires*. Thus, we conclude that AC&CE's remaining claims rest on the *ultra vires* doctrine.

173 Idaho at 265, 540 P.3d at 362 (alterations in original).

Accordingly, we must determine whether K&L's claims rest on the *ultra vires* doctrine and whether the gravamen of each claim concerns an injury to the corporation or the whole body.

a. K&L's declaratory judgment claim is derivative in nature.

In its claim for declaratory judgment, K&L alleged that the Association adopted the rental rules in violation of former Idaho Code section 55-115 (2020) and requested an order "nullify[ing]" the rules. On appeal, K&L contends that its claims are direct because the

Association's adoption of the rental rules impacted K&L Crystal Beach's and Bohman's ability to lease their individual units, which is a particularized harm not suffered by the CBCA as a whole. We disagree. The rental restrictions and moorage rules apply equally to all members of the Assoc CBCA, not just to K&L Crystal Beach and to Bohman. Thus, the gravamen of the claim concerns a purported injury that is corporatewide. Therefore, this claim is derivative. *See Knaack v. Henley Park Homeowners Ass'n, Inc.*, 877 S.E.2d 821, 828 (Ga. Ct. App. 2022) (holding that a claim seeking a declaratory ruling that rental rules were void "is one sustained by the [a]ssociation" because the rules apply equally to all members of the association).

Furthermore, while K&L could have framed its injury on appeal as a particular harm to its right to vote based on the Association's purported disregard of Bohman's and K&L Crystal Beach's vote on these rules, K&L instead challenged the validity of the rental and moorage rules on the grounds that the Association acted unlawfully under former section 55-115 (2020). Thus, K&L is asserting that the Association acted *ultra vires*, which must be asserted in a derivative proceeding under section 30-30-304(2). *See Reifsnyder v. Pittsburgh Outdoor Advert. Co.*, 173 A.2d 319, 322 (Pa. 1961) ("The right to vote is basic and fundamental . . . and is independent of any right that the corporate entity possesses and the shareholder could enforce and protect such rights by bringing a direct action." (footnotes omitted)).

Moreover, K&L has not explained how section 55-115 (2020)—which prohibits *homeowner's associations* from adding rental restrictions without the express written consent of the affected property owner—has any application to rental and moorage rules created by a *condominium association*. *See* I.C. § 55-115 (2020) (now codified in I.C. § 55-3211) ("No homeowner's association may add, amend, or enforce any covenant, condition, or restriction in such a way that limits or prohibits the rental, for any amount of time, of any property, land or structure thereon within the jurisdiction of the homeowner's association, unless expressly agreed to in writing at the time of such addition or amendment by the owner of the affected property."). Thus, K&L has made no cogent argument with citation to authority that section 55-3211 should apply to condominium associations.

b. <u>K&L's slander of title and quiet title claims are derivative in nature.</u>

Next, in its claim for slander of title, K&L alleged that the Amended Declaration is an "improper and void encumbrance" on the title of K&L Crystal Beach's and Bohman's units because the amendment did not receive unanimous consent from the mortgage holders and the unit owners' ballots were not recorded as required by Article XIV. In its quiet title claim, K&L alleges

that: "[w]ithout action of [the district] court removing the wrongfully recorded Declaration . . . , [K&L Crystal Beach's and Bohman's] title[s] to the propert[ies] will be wrongfully encumbered." In its prayer for relief, it requested an order nullifying the Amended Declaration.

On appeal, K&L argues that its claims are direct because the alleged harm, the clouding of Bohman's and K&L Crystal Beach's titles, is unique to the property owner asserting it, and the relief sought would not "benefit the Association or other members but instead protects Appellants' exclusive ownership interests in their individual units." We disagree. While these claims have individualized elements, the gravamen of each claim concerns an injury suffered by every member of the CBCA, and the origin of this injury is based on K&L's status as members of the CBCA. *Kugler*, 160 Idaho at 413–14, 374 P.3d at 576–77. And an order nullifying the Amended Declaration would not just benefit K&L but would extend to every member of the CBCA. Furthermore, K&L's claim challenges the validity of the Amended Declaration on the grounds that the Association acted *ultra vires*. *See Eagle Creek II*, 173 Idaho at 265, 540 P.3d at 362 ("By asserting that the articles of incorporation were improperly amended, AC&CE is asserting that Eagle Creek acted beyond the scope of power allowed by law."). Therefore, these claims are also derivative.

c. K&L's encroachment claim is derivative in nature.

In its encroachment claim, K&L alleged encroachments into the common area and limited common areas, which increased those owners' unit square footage or volume footage without impacting those owners' assessments. K&L sought an order compelling (1) the Board, Association, and individual defendants, "to take any actions necessary to require any encroaching party to vacate any portion of Common Area they have encroached upon and return it to its pre-encroached state" and (2) "Jane and John Does" to vacate the common area.

On appeal, K&L contends that this claim is direct because K&L Crystal Beach and Bohman pay dues based on the common area assessments from 1971. As such, K&L contend that this claim alleges a unique injury to K&L Crystal Beach's and Bohman's individual ownership interests. We disagree because K&L is essentially arguing that the Association failed to control the wrongdoing of the encroachers, and the entire class of non-encroaching owners are harmed equally, not K&L alone. Furthermore, the remedy benefits the entire class of non-encroaching owners; therefore, it is not tailored to K&L Crystal Beach's and Bohman's individual units. Thus, K&L seeks to "remedy a wrong to the corporation . . . because it is controlled by the wrongdoers or for other

reasons fails and refuses to take appropriate action for its own protection." *Kugler*, 160 Idaho at 413, 374 P.3d at 576 (emphasis omitted) (quoting *McMann II*, 152 Idaho at 814, 275 P.3d at 829).

d. K&L's breach of contract claim is derivative in nature.

In its breach of contract claim, K&L asserts that the Associations' adoption of moorage rules breached the Original Declaration and its bylaws by allowing boat slips to be licensed to owners' children. Again, the gravamen of this claim concerns an injury that is corporate-wide and the claim rests on the *ultra vires* doctrine.

e. Section 30-30-304(3) and Article XVI of the Original Declaration do not authorize K&L to pursue derivative claims.

K&L contends that, even if its claims are derivative, Idaho Code section 30-30-304(3) "independently provides a statutory basis for standing" because it "expressly authorizes a corporation's power to act to be challenged 'in a proceeding against an incumbent or former director, officer, employee or agent of the corporation[.]'" Section 30-30-304(3) states:

> A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee or agent of the corporation. The proceeding may be brought by a *director*, *the corporation*, directly, derivatively, or *through a receiver, a trustee or other legal representative*.

I.C. § 30-30-304(3) (emphasis added). This argument is without merit because neither Bohman nor K&L Crystal Beach are directors, receivers, trustees or other legal representatives of the Association.

Next, K&L argues that Article XVI, section 16.1 of the Original Declaration independently granted it standing to pursue its claims. As set forth above, this provisions states:

> Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and the By-Laws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

This argument is strained. First, Article XVI, section 16.1, concerns actions against non-complying owners, not against the Association, and specifies that an action is maintainable by the Association on the owners' behalf, or by an aggrieved owner "in a proper case." K&L is not seeking to enforce an individual owner's compliance with the Declaration, Articles of Incorporation, or the By-Laws of the Association. In short, nothing in this section speaks to or authorizes an action against the Association for failure to comply with the Declaration or corporate documents.

K&L further contends that, by treating these claims as derivative, the district court validated the Amended Declaration, Rental Rules, and amended Moorage License Policy, which "deprived [K&L] of any remedy for encumbrances recorded against their property[,]" and "insulated a defective amendment from judicial review." However, the district court did not validate any of the Association's actions. Instead, it concluded that K&L lacked the requisite voting power to pursue its claims through a derivative proceeding under section 30-30-411(1), as set forth above.

For these reasons, the district court correctly determined that K&L's first five claims were derivative. Consequently, because K&L lacked the requisite voting power to pursue its claims through a derivative proceeding and failed to comply with the specific pleading requirements for derivative suits set forth in Idaho Code section 30-30-411, we affirm the district court's grant of summary judgment on these claims.

B. The district court erred in granting summary judgment on K&L's "specific performance" claim demanding reevaluation and allocation of percentage of ownership interest.

In a claim it labeled as "specific performance," K&L sought an order compelling the Association to "perform a complete remeasurement and redrawing of the condominium units to show where substantial changes in square footage occurred and that would properly support a reallocation for liability and for tax assessment" pursuant to Idaho Code section 55-1505(1)(c). The district court granted summary judgment on this claim, holding that K&L failed to establish that the Board's prior reallocation in 2020 was done in bad faith. The court also noted that the Association established "the absence of bad faith" through its deliberative reallocation process that ultimately was approved by 88% of the members.

On appeal, K&L contends that the district court erred in dismissing its demand for reevaluation and allocation of percentage of ownership because there was "ample evidence of bad faith" by the Association's Board during the reallocation, such as ignoring its attorney's advice regarding procedures for amending its governing documents, disregarding its vote to hire an architect to remeasure the units, and failing to account for decades of known encroachments by owners and two directors. In response, the Association argues that the district court correctly determined that K&L's evidence did not support an inference of bad faith. It emphasizes that "the 2020 reallocation was a deliberate process, guided by [CBCA]'s attorney, where six options were put before the members of [CBCA]" which resulted in the members voting by a "supermajority"

of 88.33% to approve allocating the "assessments and voting the same as they have been allocated since [CBCA] formed in 1971." For the reasons set forth below, we agree with K&L.

Section 55-1505 provides a statutory remedy allowing a unit owner to (1) force a reallocation of the percentage of ownership interest in the common area of a condominium project when a "substantial change is made to the size of at least one (1) unit[,]" or (2) challenge the conclusiveness of a prior fixed percentage allocation based on "clear and convincing proof of bad faith" when the allocation was made. I.C. § 55-1505(1)(c). The statute states:

> (1) The declaration shall contain the following:
>
> . . . .
>
> (c) The percentage of ownership interest in the common area which is to be allocated to each unit for purposes of tax assessment under section 55-1514, Idaho Code, and for purposes of liability as provided by section 55-1515, Idaho Code. Such percentage shall be fixed either by taking as a basis the value of each unit in relation to the value of the property as a whole or by taking as a basis the square footage of the interior floor area of each unit in relation to the square footage of the interior floor area of all the units as a whole. *For said purposes, the percentage so fixed shall be conclusive, subject only to clear and convincing proof of bad faith at the time of and in the making of such allocation or the last prior amendment thereof*. If a substantial change is made to the value or size, depending upon the method used for allocation, of one (1) or more units as compared with other units, upon petition by a unit owner for reevaluation and allocation of percentage of ownership interest, the allocation shall be amended. *Reallocation shall not occur more frequently than every five (5) years and, if square footage is used in determining the percentage of ownership interest, only if a substantial change is made to the size of at least one (1) unit.* If the board of managers fails to act, reallocation may be accomplished by court action. If court action is necessary the prevailing party may be awarded attorney's fees and costs for unreasonable pursuit or refusal.

I.C. § 55-1505(1)(c) (emphasis added).

Here, the Association reallocated the percentages of ownership interest in the common area when it adopted the Amended Declaration in 2020. Because reallocation cannot occur more frequently than every five years, K&L was required to establish that the Association's 2020 reallocation of ownership interest in the common area was made in "bad faith."

> A complete catalogue of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

Bad Faith, *Black's Law Dictionary* (12th ed. 2024) (quoting Restatement (Second) of Contracts § 205 cmt. d (1979)).

In its declarations, K&L submitted evidence that purported to establish that (1) the Board ignored Pemberton's repeated advice that amendments required proper notice and recorded mortgagee consent; (2) the Board voted to hire Sewell to measure the units but never carried out that vote; (3) the architect subsequently hired by the Board to help with the 2020 reallocation failed to measure the units, and did not account for decades of remodels and encroachments that the Board knew had occurred; and (4) two of the directors, Marvin Askey and Christopher Brazil, benefitted from the reallocations by receiving an increased percentage of ownership in common areas while continuing to pay assessments and dues at their prior, lower 1971 percentages.

Viewing this evidence in the light most favorable to K&L as we must, we conclude that a genuine dispute of material fact exists regarding whether the Association acted in bad faith. While the Association's deliberative reallocation process may cut against K&L's claim, the district court's conclusion that this evidence established "the absence of bad faith" suggests that the court weighed the conflicting evidence. However, "[s]ummary judgment should not involve the weighing of evidence and is granted only when there is an absence of a genuine dispute of a material fact." *Kelso v. Applington*, 173 Idaho 738, 749, 548 P.3d 363, 374 (2024) (citation omitted). This traditional summary judgment principle applies "even where there is a heightened evidentiary standard—such as 'clear and convincing evidence' that must be met at trial." *Id.*

Therefore, we reverse the district court's grant of summary judgment on K&L's statutory demand for reevaluation and allocation of percentage of ownership interest and remand the claim for trial.

IV. CONCLUSION

For the reasons set forth above, we affirm the district court's grant of summary judgment on K&L's claims for declaratory relief, slander of title, quiet title, encroachment, and breach of contract; and reverse the district court's grant of summary judgment on K&L's statutory demand for reevaluation and allocation of percentage of ownership interest and remand for trial on that claim. Because all parties prevailed in part, we decline to award costs on appeal pursuant to Idaho Appellate Rule 40.

Chief Justice BRODY, and Justices BEVAN, MOELLER, and ZAHN CONCUR.