

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
95th General Assembly  
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As Engrossed: H4/1/25

## A Bill

SENATE BILL 323

By: Senator J. Bryant  
By: Representative McCollum

### For An Act To Be Entitled

AN ACT TO AMEND THE HORIZONTAL PROPERTY ACT; AND FOR  
OTHER PURPOSES.

### Subtitle

TO AMEND THE HORIZONTAL PROPERTY ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 18-13-102(1), concerning the definition of "apartment" under the Horizontal Property Act, is amended to read as follows:

~~(1)(A) "Apartment" means a part of the property intended for residential, commercial, industrial, or any other type of independent use consisting of one (1) or more rooms or spaces occupying all or part of one (1) or more floors in a building or buildings of one (1) or more floors designated as an apartment in the master deed and delineated on the plans provided for in § 18-13-105~~ a physical portion of the property that:

(i) Is subject to a master deed designated for separate ownership or occupancy, the boundaries of which are described by the master deed and delineated on the plans provided for in § 18-13-105; and

(ii) May be further subdivided into additional units or apartments by the establishment of a subordinate master deed.

(B) Except as otherwise provided by the master deed or plans provided for in § 18-13-105:

(i) If walls, floors, or ceilings are designated as boundaries of an apartment or unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces are a part



of the apartment or unit, and all other portions of the walls, floors, or ceilings are a part of the common elements of the apartment or unit;

(ii) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of the apartment or unit, then the portion serving only that apartment or unit is a limited common element allocated solely to that apartment or unit, and the portion serving more than one (1) apartment or unit or the common elements is a part of the general common elements;

(iii) Subject to subdivision (1)(B)(ii) of this section, the spaces, interior partitions, and other fixtures and improvements within the boundaries of an apartment or unit are a part of the apartment or unit; and

(iv) Shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, and exterior windows or other fixtures designed to serve a single apartment or unit, but located outside the apartment or unit's boundaries, are limited common elements allocated exclusively to that apartment or unit.

(C) "Apartment" includes a unit;

SECTION 2. Arkansas Code § 18-13-102(4), concerning the definition of "general common elements" under the Horizontal Property Act, is amended to read as follows:

(4) "General common elements" means the common elements that are not limited common elements+;

~~(A) The land on which the building stands;~~

~~(B) The foundations, main walls, roofs, halls, lobbies, stairways, and entrance and exit or communication ways;~~

~~(C) The basements, flat roofs, yards, and gardens, except as otherwise provided or stipulated;~~

~~(D) The premises for the lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;~~

~~(E) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like;~~

~~(F) The elevators, garbage incinerators, and, in general,~~

~~all devices or installations existing for common use; and~~

~~(C) All other elements of the building rationally of common use or necessary to its existence, upkeep, and safety;~~

SECTION 3. Arkansas Code § 18-13-102(5), concerning the definition of "limited common elements" under the Horizontal Property Act, is amended to read as follows:

(5) "Limited common elements" means those a portion of the common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways, and elevators, sanitary services common to the apartments of a particular floor, and the like allocated by the master deed or by operation of an apartment under § 18-13-102(1) for the exclusive use of one (1) or more owner but less than all of the owners;

SECTION 4. Arkansas Code § 18-13-102, concerning the definitions under the Horizontal Property Act, is amended to add additional subdivisions to read as follows:

(12)(A)(i) "Common elements" means all portions of a condominium other than the apartments or units as stated in the master deed.

(ii) "Common elements" includes both general and limited common elements.

(B) Subject to the master deed, a declarant has an easement through the common elements as may be reasonably necessary for discharging the declarant's obligations or exercising special declarant rights whether or not arising under this chapter or reserved by the master deed;

(13) "Declarant" means a person, group of persons, entity, or group of entities, acting in concert, that:

(A) As part of a common promotional plan, offers to dispose of the person's interest in an apartment or unit not previously disposed of;  
or

(B) Reserves or succeeds to any development right under a master deed; and

(14) "Development rights" means a right or combination of rights reserved by a declarant in the master deed to, without necessity of consent

by any other apartment owner or unit owner, to:

- (A) Add real property to a master deed;
- (B) Create an apartment or unit, common elements, or limited common elements by amendment to a master deed;
- (C) Subdivide an apartment or unit, or convert an apartment or unit into common elements by amendment to a master deed;
- (D) Withdraw real property from a master deed;
- (E) Complete improvements indicated on plans under § 18-13-105;
- (F) Make the horizontal property regime part of another development;
- (G) Maintain sales, management, leasing offices, and signs advertising the horizontal property regime and models;
- (H) Amend a master deed to comply with mortgage underwriting requirements; or
- (I) Use an easement through the common elements for the purpose of making improvements within the horizontal property regime or within real property that may be added to the horizontal property regime.

SECTION 5. Arkansas Code § 18-13-103 is amended to read as follows:

18-13-103. Establishment of horizontal property regimes.

~~(a) Whenever a sole owner or the co-owners of a building already constructed or the owners of property upon which a building is to be constructed expressly declare, through the recordation of a master deed setting forth the particulars enumerated in § 18-13-104, their desire to submit their property to the regime established by this chapter, there shall be established a horizontal property regime~~ A horizontal property regime may be created under this chapter only by recording a master deed executed in the same manner as a deed by all persons who have an interest in the real property that will be conveyed to an owner of an apartment or unit and by every lessor of a lease of an interest in real property that will be subject to the master deed, the expiration or termination of which will terminate the horizontal property regime or reduce the size of a horizontal property regime.

(b) A master deed shall be recorded in each county in which any portion of the real property that is subject to the horizontal property

regime is located stating the particulars enumerated in § 18-13-104, and thereafter shall be established a horizontal property regime.

(c) An apartment or unit in an existing horizontal property regime may be further lawfully subdivided into subordinate subunits by the recordation of one (1) or more additional subordinate master deeds that:

(1) Comply with the requirements of this chapter; and

(2) Is permitted in the master deed or is pursuant to any rights reserved in favor of the declarant under the master deed or this chapter.

(d)(1) If a contract for the sale of a condominium ownership interest contains the legend described in subdivision (d)(3) of this section, a declarant may, according to the contractual provisions, use a deposit or down payment for the acquisition of an apartment or unit upon the commencement of construction of the structure of the condominium property in which the purchaser's apartment or unit will be located and use the deposit or down payment in the actual construction and development of the condominium property.

(2) The declarant shall not use the deposit or down payment described under subdivision (d)(1) of this section for:

(A) Advertising purposes; or

(B) The salary, commission, or expenses of an agent.

(3) A contract that permits withdrawals of a deposit or down payment for the purposes described in subdivision (d)(1) of this section shall include the following legend conspicuously printed or stamped in boldface type, on the first page of the contract and immediately above the signature of the purchaser:

"Purchaser acknowledges that, under this contract, the seller may withdraw and then use for construction and development of the condominium property a deposit or down payment that the purchaser makes before closing."

SECTION 6. Arkansas Code § 18-13-104 is amended to read as follows:  
18-13-104. Master deed.

(a) The master deed creating and establishing the horizontal property regime shall be:

(1) ~~executed~~ Executed by the declarant or owner or owners of the real property making up the horizontal property regime; and

(2) ~~shall be recorded~~ Recorded in the office of the clerk and ex

officio recorder of the county where the real property subject to the horizontal property regime is located.

(b) ~~The~~ A master deed shall express the following particulars:

(1) ~~The description of the land and the building, expressing their respective areas~~ real property subject to the horizontal property regime;

(2) ~~The general description and number of each apartment, expressing its area, location, and any other data necessary for its identification~~ The name of the declarant, if any, reserving the development rights and special declarant rights under this chapter, and a time limit, if applicable, for which each of the development rights or special declarant rights shall be exercised;

(3) The name of the association, if any, or a description of the operations or rights reserved to the council of co-owners, in either case that will:

(A) Enforce the terms and conditions expressed in the master deed; and

(B) Operate and manage the common elements;

(4) A description of the boundaries of each apartment or unit created by the master deed, including without limitation the apartment's or unit's identifying number and any other data necessary for the identification of the apartment or unit;

(5) ~~The description of the general common elements of the building and, in proper cases, of the limited common elements restricted to a given number of apartments or units, expressing which are those apartments or units; and~~

~~(4) The value of the property and of each apartment and, according to these basic values, the percentage appertaining to the co-owners in the expenses of, and rights in, the elements held in common~~

(6) An allocation to each apartment or unit of the apartment's or unit's allocated interests in the common elements and common expenses, which the allocation does not have to be equal to each other such that an allocation of interests in the common elements may differ from the apartment's or the unit's allocation of common expenses;

(7) A statement of the maximum number of apartments or units that may be created within the horizontal property regime but subject to any

development rights under § 18-13-102(14);

(8) The time period in which any development rights that are reserved by a declarant in a master deed may be exercised;

(9) The method of amending a master deed;

(10) The allocation to each apartment or unit a portion of the votes in the association;

(11) The formula used to establish the allocations under subdivision (b)(6) of this section;

(12) If the master deed permits an apartment or unit to be added to or withdrawn from the horizontal property regime, state the formula that shall be used to reallocate the allocated interest among the apartments and units included in the horizontal property regime after the addition or withdrawal of an apartment or unit; and

(13) Any other matters a declarant considers appropriate.

(c) Except as may otherwise be provided in a master deed, an amendment to a master deed requires consent of all apartment owners or unit owners.

SECTION 7. Arkansas Code § 18-13-112 is amended to read as follows:

18-13-112. Ownership and valuation of separate units and common elements.

(a)(1) An apartment owner or unit owner shall have the exclusive ownership of his or her apartment or unit and shall have a common right to a share, with the other co-owners, in the common elements of the property as stated in the master deed.

~~(2)(A) This share is equivalent to the percentage representing the value of the individual apartment with relation to the value of the whole property.~~

~~(B) This percentage shall be computed by taking as a basis the value of the individual apartment in relation to the value of the property as a whole~~ The master deed may provide different allocations of votes that are to be made to the apartments or units on particular matters specified in the master deed.

(b) The percentage shall be expressed at the time the horizontal property regime is constituted, shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments or units of the building except as described under § 18-13-

104(a)(12) due to a declarant's addition or withdrawal of an apartment or unit in the horizontal property regime according to the declarant's development rights.

~~(c) The basic value, which shall be fixed for the sole purpose of this chapter and irrespective of the actual value, shall not prevent each co-owner from fixing a different circumstantial value to his or her apartment in all types of acts and contracts.~~

SECTION 8. Arkansas Code § 18-13-116 is amended to read as follows:

18-13-116. Liability for expenses and assessments.

(a)(1) The co-owners of ~~the apartments~~ an apartment or unit are bound to ~~contribute pro rata, in the percentages computed according to § 18-13-112,~~ pay according to the percentages established by a master deed toward:

~~(A) the~~ The expenses of administration and of maintenance and repair of the general common elements and, ~~in the proper case,~~ of the limited common elements of the building; and

~~(B) toward any~~ Any other expense lawfully agreed upon.

(2)(A) However, the administrator, board of administration, or other form of administration of a horizontal property regime may establish additional assessments to be collected from ~~any~~ a co-owner who makes his or her apartment or unit available for rent or lease either directly or through an agent.

(B) ~~Such~~ The additional assessments shall not exceed the amount reasonably calculated to cover expenses for additional security, wear and tear on buildings, additional trash pickup, and other additional costs occasioned by ~~such units~~ the apartment or unit being available for rent or lease.

~~(b)(1) No~~ A co-owner ~~may~~ shall not exempt himself or herself from contributing toward ~~such~~ the expenses under subdivision (a)(2)(A) of this section by waiver of the use or enjoyment of the common elements or by abandonment of the apartment or unit belonging to him or her.

(2) Notwithstanding subdivision (b)(1) of this section, the declarant, from the date of the initial assessment until declarant control of the association terminates, or five (5) years from a declarant's first conveyance of a unit or apartment, whichever is earlier, shall periodically pay to the association:

(A) An amount equal to all operational expenses of the association, less the operational expense portion of the assessments paid by an owner of an apartment or an owner of a unit other than the declarant; or

(B) The common expenses allocated to each apartment or unit owned by the declarant.

(3) Common expenses shall be assessed against all apartments and units conveyed, rented, or used as models or offices by the declarant, and all apartments or units owned by a declarant after termination of a declarant's control of the association or five (5) years from a declarant's first conveyance of an apartment or unit, whichever is earlier, according to the common expenses allocated to each apartment or unit.

(4) A past due assessment or installment of an assessment may bear interest at a lawful rate established by the association.

(c) Upon the sale or conveyance of an apartment or unit, all unpaid assessments against a co-owner for his or her pro rata share in the expenses to which subsection (a) of this section refers shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

(1) Assessments, liens, and charges for taxes past due and unpaid on the apartment or unit; and

(2) Payments due under mortgage instruments of encumbrance ~~due~~ recorded.

(d) The purchaser of an apartment or unit shall be jointly and severally liable with the seller for the amounts owing by the ~~latter~~ seller under subsection (a) of this section up to the time of the conveyance, without prejudice to the purchaser's right to recover from the other party the amounts paid by him or her as the joint debtor.

SECTION 9. DO NOT CODIFY. Applicability.

(a) This act is applicable to a horizontal property regime organized on and after September 1, 2025.

(b) A horizontal property regime organized before September 1, 2025, may elect to be subject to the provisions of this act by amending the master deed and filing the appropriate reorganization documents on and after September 1, 2025.

*/s/J. Bryant*