Arkansas

Title 18 Property

Chapter 13
Horizontal Property Act

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18-13-101. Title.
This chapter shall be known as the Horizontal Property Act.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 1; A.S.A. 1947, § 50-1001.

18-13-102. Definitions.
As used in this chapter:
(1) “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;
(2) “Co-owner” means a person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, who owns an apartment within the building;
(3) **(A)** “Council of co-owners” means all the co-owners as defined in subdivision (2) of this section.
(B) However, except as otherwise provided in this chapter, a majority of co-owners, as defined in subdivision (6) of this section, shall constitute a quorum for the adoption of decisions;
(4) “General common elements” means:
(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
(G) All other elements of the building rationally of common use or necessary to its existence, upkeep, and safety;
(5) “Limited common elements” means those 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;

(6) “Majority of co-owners” means fifty-one percent (51%) or more of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of § 18-13-112;
(7) “Master deed” means the deed establishing the horizontal property regime;
(8) “Person” means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
(9) “Property” means the land, the building, all improvements and structures thereon, and all easements, rights, and appurtenances belonging thereto;
(10) “To record” means to record in accordance with the provisions of §§ 14-15-402, 14-15-404, 14-15-407 — 14-15-417, and 16-46-101 or other applicable recording statutes; and
(11) All pronouns include the male, female, and neuter genders and include the singular or plural numbers, as the case may be.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 2; 1969, No. 216, § 1; A.S.A. 1947, § 50-1002.

18-13-103. Establishment of horizontal property regimes.
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.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 3; 1975, No. 731, § 1; A.S.A. 1947, § 50-1003.

18-13-104. Master deed.
(a) The master deed creating and establishing the horizontal property regime shall be executed by the owner or owners of the real property making up the regime and shall be recorded in the office of the clerk and ex officio recorder of the county where the property is located.
(b) The master deed shall express the following particulars:
(1) The description of the land and the building, expressing their respective areas;
(2) The general description and number of each apartment, expressing its area, location, and any other data necessary for its identification;
(3) 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, expressing which are those apartments; 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.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 9; A.S.A. 1947, § 50-1009.

18-13-105. Plans to be attached to master deed.
(a) (1) There shall be attached to the master deed, at the time it is filed for record, a full and exact copy of the plans of any existing building on the property or the plans for the building or buildings to be constructed thereon. The copy of the plans shall be entered of record along with the master deed.
(2) The plans shall show graphically all particulars of the building constructed or to be constructed, including, but not limited to, the dimensions, area, and location of each apartment therein and the dimensions, area, and location of common elements affording access to each apartment. Other common elements, both limited and general, shall be shown graphically, insofar as possible, and shall be described in detail in words and figures.
(3) The plan shall be certified by an engineer or architect authorized and licensed to practice his or her profession in this state.
(b) Each apartment in a building shall be designated, on the plans referred to in subsection (a) of this section, by letter or number or other appropriate designation.
History. Acts 1961 (1st Ex. Sess.), No. 60, §§ 10, 11; 1975, No. 731, § 2; A.S.A. 1947, §§ 50-1010, 50-1011.

18-13-106. Additional units in excess of those described in master deed.
(a) The sole owner or co-owners of property constituted and established under this chapter as a horizontal property regime may, by description of their intentions in the master deed provided for in § 18-13-104, provide for the addition of apartments or units in the horizontal property regime in excess of those for which specific plans are initially recorded with the master deed.
(b) With reference to any such additional buildings, the plans recorded with the master deed shall reflect:
(1) The area of the property within which the additional apartments or units will be constructed;
(2) The maximum and minimum number of square feet and the maximum and minimum number of additional apartments or units to be constructed;
(3) A general description of any rights in the common elements to be enjoyed by the owners of any additional units or apartments;

(4) The date prior to which final detailed plans for the additional units or apartments will be recorded, with the amendment to the master deed reflecting the revised information to be included in the master deed pursuant to § 18-13-104; and
(5) A covenant and warranty extending to each and all of the owners of individual units or apartments in the regime that any such construction would be of similar quality, in a workmanlike manner, and in the same architectural style as the original buildings in the regime and that the construction will conform, generally, with the specifications set forth in the master deed as required in § 18-13-104.
(c) (1) Any property purportedly established as a horizontal property regime pursuant to this chapter and otherwise complying with it, but which at the time of the recording of the master deed called for in § 18-13-104 did not have one (1) or more completed buildings thereon or which provided for additional or future construction of one (1) or more buildings in addition to those for which plans were initially recorded with the master deed, shall for all purposes be considered and treated as a horizontal property regime in accordance with this chapter.
(2) All mortgages thereof or conveyances thereof as such heretofore occurring shall, likewise, for all purposes be deemed as effective mortgages and conveyances of the same as against any claim that the regime was improperly established at the time thereof.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 24; 1975, No. 731, §§ 4, 5; A.S.A. 1947, §§ 50-1024, 50-1025.

18-13-107. Waiver and reestablishment of regimes.
(a) All of the co-owners or the sole owner of a building or property constituted into a horizontal property regime may waive this regime and regroup or merge the records of the individual apartments, or anticipated apartments, with the principal property if the individual apartments are unencumbered or, if encumbered, if the creditors in whose behalf the encumbrances are recorded agree to accept as such security the undivided portions of the property owned by the debtors.
(b) The merger provided for in subsection (a) of this section shall in no way bar the subsequent constitution of the property into another horizontal property regime whenever so desired and upon observance of the provisions of this chapter.
History. Acts 1961 (1st Ex. Sess.), No. 60, §§ 12, 13; 1975, No. 731, § 3; A.S.A. 1947, §§ 50-1012, 50-1013.

18-13-108. Bylaws.
(a) The administration of every building constituted into horizontal property shall be governed by bylaws which shall be inserted in, or appended to, and recorded with the master deed.
(b) The bylaws must necessarily provide for at least the following:
(1) Form of administration, indicating whether this shall be in charge of an administrator or of a board of administration, or otherwise, and specifying the powers, manner of removal, and, where proper, the compensation thereof;
(2) Method of calling or summoning the co-owners to assemble, that a majority of at least fifty-one percent (51%) is required to adopt decisions, who is to preside over the meeting, and who will keep the minute book wherein the resolutions shall be recorded;
(3) Care, upkeep, and surveillance of the building and its general or limited common elements and services;
(4) Manner of collecting from the co-owners for the payment of the common expenses; and
(5) Designation and dismissal of the personnel necessary for the works and the general or limited common services of the building.
History. Acts 1961 (1st Ex. Sess.), No. 60, §§ 14, 15; A.S.A. 1947, §§ 50-1014, 50-1015.

18-13-109. Modification of administration.
(a) The sole owner of the building or, if there is more than one (1), the co-owners representing two-thirds (2/3) of the total value of the building may, at any time, modify the system of administration, but each one of the particulars set forth in § 18-13-108 shall always be embodied in the bylaws.
(b) No such modification may be operative until it is embodied in a recorded instrument, which shall be recorded in the same office and in the same manner as was the master deed and original bylaws of the horizontal property regime involved.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 15; A.S.A. 1947, § 50-1015.

18-13-110. Book of receipts and expenditures — Examination.
(a) The administrator, the board of administration, or other form of administration specified in the bylaws shall keep a book with a detailed account, in chronological order, of the receipts and expenditures affecting the building and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred.

(b) Both the book and the vouchers accrediting the entries made thereupon shall be available for examination by all the co-owners at convenient hours on working days that shall be set and announced for general knowledge.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 16; A.S.A. 1947, § 50-1016.

18-13-111. Status of individual units.
Once the property is submitted to the horizontal property regime, an apartment in the building may be individually conveyed and encumbered and may be the subject of ownership, possession, or sale and of all types of juridic acts intervivos or causa mortis as if it were sole and entirely independent of the other apartments in the building of which it forms a part, and the corresponding individual titles and interests shall be recordable.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 4; A.S.A. 1947, § 50-1004.

18-13-112. Ownership and valuation of separate units and common elements.
(a) (1) An apartment owner shall have the exclusive ownership of his or her apartment and shall have a common right to a share, with the other co-owners, in the common elements of the property.
(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.
(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 of the building.
(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.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 6; A.S.A. 1947, § 50-1006.

18-13-113. Types of joint ownership.
Any apartment may be held and owned by more than one (1) person as joint tenants, as tenants in common, as tenants by the entirety, or in any other real estate tenancy relationship recognized under the laws of this state.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 5; A.S.A. 1947, § 50-1005.

18-13-114. Common elements.
(a) The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.
(b) Each co-owner may use the elements held in common in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners.
History. Acts 1961 (1st Ex. Sess.), No. 60, §§ 7, 8; A.S.A. 1947, §§ 50-1007, 50-1008.

18-13-115. Conveyances.
(a) Any conveyance or other instrument affecting title to an apartment which describes the apartment by using the plan letter or number followed by the words "in . . . . . Horizontal
Property Regime" shall be deemed to contain a good and sufficient description for all purposes.
(b) Any conveyance of an individual apartment shall be deemed to also convey the undivided interest of the owner in the common elements, both general and limited, appertaining to the apartment without specifically or particularly referring to it.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 11; A.S.A. 1947, § 50-1011.

18-13-116. Liability for expenses and assessments.
(a) (1) The co-owners of the apartments are bound to contribute pro rata, in the percentages computed according to § 18-13-112, toward 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 toward 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 co-owner who makes his or her apartment available for rent or lease either directly or through an agent.
(B) Such 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 being available for rent or lease.
(b) No co-owner may exempt himself or herself from contributing toward such expenses by waiver of the use or enjoyment of the common elements or by abandonment of the apartment belonging to him or her.

(c) Upon the sale or conveyance of an apartment, 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; and
(2) Payments due under mortgage instruments of encumbrance duly recorded.
(d) The purchaser of an apartment shall be jointly and severally liable with the seller for the amounts owing by the latter 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.
History. Acts 1961 (1st Ex. Sess.), No. 60, §§ 17-19; A.S.A. 1947, §§ 50-1017 — 50-1019; Acts 1993, No. 434, § 1.

18-13-117. Insurance generally.
The co-owners may, upon resolution of a majority, insure the building against risk, without prejudice to the right of each co-owner to insure his or her apartment on his or her own account and for his or her own benefit.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 20; A.S.A. 1947, § 50-1020.

18-13-118. Application of insurance proceeds to reconstruction.
(a) In case of fire or any other disaster, the insurance indemnity shall, except as provided in subsection (b) of this section, be applied to reconstruct the building.
(b) Reconstruction shall not be compulsory when it comprises the whole or more than two-thirds (2/3) of the building. In such case, and unless otherwise unanimously agreed upon by the co-owners, the indemnity shall be delivered pro rata to the co-owners entitled to it in accordance with provision made in the bylaws or in accordance with a decision of three-fourths
(¾) of the co-owners if there is no bylaw provision.
(c) Should it be proper to proceed with the reconstruction, the provisions for such eventuality made in the bylaws shall be observed, or in lieu thereof the decision of the council of co-owners shall prevail.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 21; A.S.A. 1947, § 50-1021.

18-13-119. Sharing of reconstruction costs when building not insured or indemnity insufficient.
(a) When the building is not insured or when the insurance indemnity is insufficient to cover the cost of reconstruction, the new building costs shall be paid by all the co-owners directly affected by the damage in proportion to the value of their respective apartments, or as may be provided by the bylaws.
(b) If any one (1) or more of those composing the minority shall refuse to make such payment, the majority may proceed with the reconstruction at the expense of all the co-owners benefited thereby, upon proper resolution setting forth the circumstances of the case and the cost of the works, with the intervention of the council of co-owners.
(c) The provisions of this section may be changed by unanimous resolution of the parties concerned adopted subsequent to the date on which the fire or other disaster occurred.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 22; A.S.A. 1947, § 50-1022.

18-13-120. Taxation.
(a) (1) Taxes, assessments, and other charges of this state, of any political subdivision, of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual apartment.
(2) Each tax, assessment, or other charge on the apartment shall be carried on the tax books as a separate and distinct entity for that purpose and not on the building or property as a whole.
(b) No forfeiture or sale of the building or property as a whole for delinquent taxes, assessments, or charges shall ever divest or in any way affect the title to an individual apartment so long as taxes, assessments, and charges on the individual apartment are currently paid.
History. Acts 1961 (1st Ex. Sess.), No. 60, § 23; A.S.A. 1947, § 50-1023.