

KENTUCKY

Horizontal Property Law

381.805 Short title.

KRS 381.805 to 381.910 shall be known as the Horizontal Property Law.

381.810 Definitions for KRS 381.805 to 381.910.

As used in KRS 381.805 to 381.910, unless the context otherwise requires:

- (1) "Unit" means an enclosed space as measured from interior unfinished surfaces consisting of one or more rooms occupying all or part of a floor in a building of one or more floors or stories regardless of whether it be designed for residence, for office, for the operation of any industry or business, for any other type of independent use or any combination of the above uses, provided it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare;
- (2) "Condominium" means the ownership of single units in a single unit or a multiple unit structure or structures with common elements;
- (3) "Condominium project" means a real estate condominium project; a plan or project whereby two (2) or more apartments, townhouses, rooms, office spaces, or other units in existing or proposed buildings or structures are offered or proposed to be offered for sale;
- (4) "Co-owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof who owns a unit within the building;
- (5) "Council of co-owners" means all the co-owners as defined in subsection (4) of this section;
- (6) "Developer" means a person who undertakes to develop a real estate condominium project;
- (7) "General common elements" means and includes:
 - (a) The land whether leased or in fee simple, on which the building or buildings stand;
 - (b) The foundations, main walls, roof, halls, lobbies, stairways, and entrances and exits 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(s), 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;
 - (g) Recreational facilities, easements and other facilities outside the building(s), including facilities off-site, available for the common use, in part or in whole, of the regime; and
 - (h) All other elements of the property rationally of common use or necessary to its existence, upkeep and safety;
- (8) "Limited common elements" means and includes those common elements which are agreed upon by all of the co-owners to be reserved for the use of a particular unit or
- (9) "Majority of co-owners" means owners of fifty-one percent (51%) of the floor area of units comprising the regime;
- (10) "Master deed" or "master lease" means the deed or lease declaring the property to be a horizontal property regime;
- (11) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof;
- (12) "Property" means and includes the land whether leasehold or in fee simple and all improvements and structures thereon and all easements, rights and appurtenances belonging thereto;
- (13) "To record" means to record in accordance with KRS Chapter 382, or other recording statutes;
- (14) All pronouns used in KRS 381.805 to 381.910 include the male, female and neuter genders and include the singular or plural numbers, as the case may be.

History: Amended 1974 Ky. Acts ch. 35 sec. 1; and ch. 381, sec. 1. -- Created 1962 Ky. Acts ch. 205, sec. 2. Legislative Research Commission Note. This section was amended by two 1974 acts which do not appear to be in conflict and have been compiled together.

381.815 Establishment of a condominium property regime.

Whenever a developer, the sole owner, or the co-owners of a building or buildings, constructed or to be constructed, expressly declare, through the recordation of a master deed or lease, which shall set forth the particulars enumerated by KRS 381.835, their desire to submit their property to the regime established by KRS 381.805 to 381.910, there shall be thereby established a condominium property regime.

History: Amended 1974 Ky. Acts ch. 381, sec. 2. -- Created 1962 Ky. Acts ch. 205, sec. 3.

381.820 Conveyance of units -- Recordation.

Once the property is submitted to the condominium property regime, a unit in the building(s) may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other units in the building(s) of which they form a part, and the corresponding individual titles and interest shall be recordable.

History: Amended 1974 Ky. Acts ch. 381, sec. 3. -- Created 1962 Ky. Acts ch. 205, sec. 4.

381.825 Joint or common ownership.

Any unit may be jointly or commonly owned by more than one (1) person.

History: Amended 1974 Ky. Acts ch. 381, sec. 4. -- Created 1962 Ky. Acts ch. 205, sec. 5.

381.827 Requirements for subdividing units.

(1) The owner of a unit designed for office, industrial or business use may divide his unit into two (2) or more smaller units. No interest in the unit shall be conveyed until the master deed and floor plans have been modified as provided in this section.

(2) Prior to subdividing his unit, the owner shall prepare a set of floor plans which shall show the changes being made in the unit involved. The plans shall bear the verified statement of a registered architect or professional engineer that they accurately portray the unit involved and the changes being made, and the unit owner shall attach to the plans a verified statement which shall contain:

(a) The name by which the property is known;

(b) A reference to the book and page of the recorded master deed and floor plans of the property and any amendments thereto in the office of the county clerk of the county in which the land described in the master deed is situated;

(c) The original unit number of each unit involved in the division, a description or designation of the building in which the unit is located, and the new unit number of each unit being formed;

(d) A statement of the location, approximate area, number of rooms and the structural changes in the perimeter and interior walls, floors, ceilings, windows and doors of the unit being formed and the immediate common element or limited common element to which the unit has access, and any other data necessary for the proper identification of the units being formed by changes to the original unit;

(e) A description of the percentage of interest of the original unit in the common elements, and a description of the new percentage or percentages of interest in the common elements of the units being formed. The percentage of interest in the common elements of the units being formed shall be in proportion to the floor area of the original unit and shall, when taken cumulatively, total the same percentage of interest in the common elements as that of the original unit;

(f) Any further provisions that would serve to clarify the changes being made.

(3) The floor plans and verified statement shall be approved in writing by a majority, unless otherwise provided by the master deed, of the council of co-owners, and by any person holding a lien on such units, and shall be filed for record with the county clerk in the county in which the land described in the master deed is situated as provided in KRS 381.835. The floor plans and verified statement shall be considered as an amendment to the original master deed and floor plans for the sole purpose of dividing a unit and the corresponding percentage of interest in the common elements.

History: Created 1974 Ky. Acts ch. 381, sec. 16.

381.830 Ownership of unit -- Use of general common elements.

(1) (a) A unit owner shall have the exclusive ownership to his unit and shall have a common right to a share, with other co-owners, in the common elements of the property, equivalent to the percentage representing the floor area of the individual unit, with relation to the floor area of the whole property. This percentage shall be computed by taking as a basis the floor area of the individual unit in relation to the floor area of the property as a whole.

(b) Such percentage of common interest shall be expressed at the time the condominium property regime is constituted, shall have a permanent character, and, except as may be otherwise provided in KRS 381.810 to 381.910, shall not be altered without the acquiescence of the co-owners representing all the units of the building(s). The master deed may, however, contain provisions relating to the appropriation, taking or condemnation by eminent domain by the federal, state or local government, or an instrumentality thereof, including, but not limited to, reapportionment or other change of the common interest appurtenant to each unit, or part thereof remaining after a partial appropriation, taking or condemnation. The master deed of a regime under construction may further provide that by later amendment thereto and upon completion of all units, percentage of common interest shall be redistributed on an as-built basis; provided, however, that the number of units originally constituted in the regime may not be increased during construction.

(2) Each co-owner may use the general common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners.

History: Amended 1974 Ky. Acts ch. 381, sec. 5. -- Amended 1966 Ky. Acts ch. 245, sec. 1. -- Created 1962 Ky. Acts ch. 205, sec. 6.

381.835 Recording -- Requirements of master deed or lease -- Record of floor plans.

(1) The county clerk shall immediately set up the mechanics and methods by which recordation of a master deed or lease and of the individual units may be made. Provisions shall be made for the recordation of the individual units on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordation. The master deed or lease to which KRS 381.815 refers shall express the following particulars:

(a) The description of the land, whether leased or in fee simple, and the building, expressing their respective areas;

(b) The general description and the number of each unit, expressing its area, location, and any other data necessary for its identification;

(c) The description of the general common elements of the building; and

(d) 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.

(2) Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans of the building or buildings, showing the layout, location, unit numbers, and dimensions of the units, stating the name of the property or that it has no name, and bearing the verified certification by a licensed architect or professional engineer that it is an accurate copy of portions of the plans of the building or buildings as filed with and approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings, or, in the alternative, certifying that the plans fully and accurately depict the layout, location, unit numbers, and dimensions of the units as built. If the plans do not include a verified statement of a licensed architect or professional engineer that the plans fully and accurately depict the layout, location, unit numbers, and dimensions of the units as built, there shall be recorded prior to the first conveyance of any unit an amendment to the declaration to which shall be attached a verified statement of a professional land surveyor certifying that the plans filed, or being filed simultaneously with the amendment, fully and accurately depict the layout, location, unit numbers, and dimensions of the units as built. The plans shall be kept by the recording officer in a separate file for each property, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "condominium ownership," with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. The record of the declaration shall also contain a reference to the file number of the floor plans of the building or buildings on the property affected.

Effective: January 1, 1999

History: Amended 1998 Ky. Acts ch. 214, sec. 41, effective January 1, 1999. -- Amended 1974 Ky. Acts ch. 381, sec. 6. -- Amended 1966 Ky. Acts ch. 245, sec. 2. -- Created 1962 Ky. Acts ch. 205, sec. 7.

381.837 Master deed exceptions.

If a condominium does not contain any unit which is designed for occupancy by only one family or household, or if the floor area of all those units which are designed for occupancy by only one (1) family or household does not in the aggregate exceed ten percent (10%) of the floor area of all units in the condominium, then the following provisions shall be applicable, notwithstanding any other provisions of this chapter:

The master deed may provide:

(1) That to any extent specified in the master deed the common profits shall be distributed among, and the common expenses shall be charged to, the unit owners in proportions other than according to their respective percentages of the undivided interest in the common areas and facilities;

(2) That to any extent specified in the master deed the unit owners shall not be personally liable for sums assessed for their share of common expenses, but such provisions shall not adversely affect any lien for said share;

(3) That the priority provided in KRS 381.883 shall not prohibit subordination of a mortgage lien to the lien for common expenses;

(4) A procedure for submitting the disputes arising from the administration of the condominium to arbitration or other impartial determination; and

(5) Terms and conditions differing from those set forth in KRS 381.830 or 381.890 regarding rebuilding made necessary by fire or other casualty loss, the making of improvements and allocation of the costs of such rebuilding or improvements, and the removal of the condominium or portion thereof from the provisions of this chapter; and in such case, the terms and conditions of the master deed shall take precedence over the provisions of KRS 381.830 or 381.890 to the extent they are inconsistent.

Effective: July 15, 1988

History: Amended 1988 Ky. Acts ch. 115, sec. 1, effective July 15, 1988. -- Created 1974 Ky. Acts ch. 381, sec. 18.

381.840 Individual deeds -- Contents.

The deed of each individual unit shall describe such unit by making reference to the applicable master deed and floor plans required under KRS 381.835, designating the letter or number or other appropriate designation of the unit, followed by the words "a condominium unit". Any conveyance of an individual unit shall be deemed to also convey the undivided interest of the owner in the common elements, both general and limited, appertaining to said unit without specifically or particularly referring to same.

History: Amended 1974 Ky. Acts ch. 381, sec. 7. -- Created 1962 Ky. Acts ch. 205, sec. 8.

381.845 Repealed, 1974.

Catchline at repeal: Designation of apartments -- Effect of conveyance.

History: Repealed 1974 Ky. Acts ch. 381, sec. 19. -- Created 1962 Ky. Acts ch. 205, sec. 9.

381.850 Waiver of regime -- Effect of encumbrances.

All of the co-owners or the sole owner of a building constituted into a horizontal property regime may waive this regime and request the county clerk to regroup or merge the records of the filial estates with the principal property, provided, that the filial estates are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

History: Created 1962 Ky. Acts ch. 205, sec. 10.

381.855 Subsequent reestablishment of regime.

The merger provided for in KRS 381.850 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 KRS 381.805 to 381.910.

History: Created 1962 Ky. Acts ch. 205, sec. 11.

381.860 Administration of building.

The administration of the building or buildings constituted into a condominium property regime shall be governed by bylaws approved and adopted by the council of co-owners. The bylaws may be amended from time to time by vote of a majority of the council.

History: Amended 1974 Ky. Acts ch. 381, sec. 8. -- Created 1962 Ky. Acts ch. 205, sec. 12.

381.865 Books of account -- Inspection -- Audit.

The administrator, or board of administration, or the person appointed pursuant to the bylaws of the regime, shall keep a book with a detailed account of the receipts and expenditures affecting the project and its administration and specifying the maintenance and repair expenses of the common elements and any other common expenses incurred by or in behalf of the regime. Both the book and vouchers accrediting the entries made thereon 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. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization.

History: Amended 1974 Ky. Acts ch. 381, sec. 9. -- Created 1962 Ky. Acts ch. 205, sec. 13.

381.870 Maintenance -- Pro rata contribution -- Adjustments.

All co-owners are bound to contribute in accordance with their percentage of common interest toward the expenses of administration and of maintenance, repairs and replacement reserves of the general common elements, and, in the proper case, of the limited common elements of the regime, and toward any other expenses lawfully assessed under the master deed and/or by the council of co-owners. Provided, however, that the master deed may provide for adjustments by the council of co-owners for contributions proportioned upon a consideration of a combination of floor area, the number of occupants, demand on public utilities and accessibility to limited common elements. No owner shall be exempt from contributing toward such expenses by waiver of the use or enjoyment of the common elements, both general and limited, or by abandonment of the unit belonging to him; provided, abatement or reduction in an owner's contribution may be granted by the council of co-owners for a reasonable period of time, during which a unit is uninhabitable as the result of damage or destruction.

History: Amended 1974 Ky. Acts ch. 381, sec. 10. -- Created 1962 Ky. Acts ch. 205, sec. 14.

381.875 Exemptions.

The laws relating to exemptions as set out in KRS Chapter 427 are applicable to the individual units which shall have the benefit of said exemption in those cases the same as in ownership of any other property.

History: Amended 1974 Ky. Acts ch. 381, sec. 11. -- Amended 1968 Ky. Acts ch. 152, sec. 156. -- Created 1962 Ky. Acts ch. 205, sec. 15.

381.880 Repealed, 1966.

Catchline at repeal: Assessments; priority; exceptions.

History: Repealed 1966 Ky. Acts ch. 245, sec. 4. -- Created 1962 Ky. Acts ch. 205, sec. 16.

381.883 Lien for unpaid assessments -- Foreclosure -- Suit.

All sums assessed by the council of co-owners but unpaid for the unit's share of the common expenses constitute a lien on such unit prior to all other liens, except only (1) liens for taxes and assessments lawfully imposed by governmental authority against such unit, and (2) all sums unpaid on first mortgages of record. Such lien may be enforced by suit by the administrator or board of administration, acting on behalf of the unit owners, in like manner as a mortgage of real property. In any such enforcement action the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws, and the plaintiff in such enforcement action shall be entitled to the appointment of a receiver to collect the same. The administrator or board of administration, acting on behalf of the unit owners, shall have power, unless prohibited by the declaration, to bid in the unit at court sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses of an owner shall be maintainable without lien enforcement or waiving the lien securing the same.

History: Amended 1974 Ky. Acts ch. 381, sec. 12. -- Created 1966 Ky. Acts ch. 245, sec. 3.

381.885 Insurance.

The council of co-owners may acquire insurance protection for the regime, including, but not exclusively, casualty, liability and employee workers' compensation insurance, without prejudice to the right of each co-owner to insure his own unit on his own account and for his own benefit. The premiums on such insurance shall be considered common expenses, enforceable under lien rights, provided, should the amount of any insurance premium be affected by a particular use of a unit or units, the owners of such units shall be required to pay any increase in premium resulting from such use.

History: Amended 1974 Ky. Acts ch. 381, sec. 13. -- Created 1962 Ky. Acts ch. 205, sec. 17.

381.890 Destruction -- Reconstruction.

(1) In case of fire or other destruction or damage the regime's insurance indemnity, except as provided in subsection (3) of this section, shall be applied to reconstruct and repair the common elements affected.

(2) Where the destruction and damage is not insured or where the insurance indemnity is not sufficient to cover the cost of reconstruction or repair, the cost (or added cost) shall be paid by the co-owners as a common expense, the council by a majority vote being authorized to borrow funds therefor and to amortize the repayment of same over a period of time, not exceeding the reasonable life of the reconstruction or repairs.

(3) Reconstruction shall not be compulsory where two-thirds (2/3) or more of a building is destroyed provided there are provisions in the master deed or bylaws of the regime making adequate provision for reasonable compensation to those co-owners who are deprived of their interest as the result of the failure to reconstruct and further providing for the recalculation and redistribution of the percentage of common interest.

History: Amended 1974 Ky. Acts ch. 381, sec. 14. -- Created 1962 Ky. Acts ch. 205, sec. 18.

381.895 Repealed, 1974

Catchline at repeal: Reconstruction -- Insufficient indemnity -- Contribution.

History: Repealed 1974 Ky. Acts ch. 381, sec. 19. -- Created 1962 Ky. Acts ch. 205, sec. 19.

381.897 Individual and common liabilities for injuries or damages.

(1) Where a judgment arising from a risk common to all of the co-owners is in excess of the liability insurance in force, the liability of any co-owner shall not exceed his pro rata share as determined by the percentage the value of his individual unit bears to the value of the property as a whole. An uncollected share of a judgment shall not be reassessed among the other co-owners.

(2) Any unit owner shall be individually liable for injuries or damages which result from his own negligence or willful misconduct or which occur within his individual unit to the same extent and degree as the individual owner of any other residential, office, industrial or business property.

History: Created 1974 Ky. Acts ch. 381, sec. 17.

381.900 Tax assessments -- Individual liability -- Forfeiture or sale.

Taxes, assessments and other charges of this state, or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority shall be assessed against and collected on each individual unit, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the property as a whole. The valuation of the general and limited common elements shall be assessed proportionately among the co-owners thereof. No forfeiture or sale of the improvements or property as

a whole for delinquent taxes, assessments or charges shall ever divest or in anywise affect the title to an individual unit so long as taxes, assessments and charges to said individual unit are currently paid.

History: Amended 1974 Ky. Acts ch. 381, sec. 15. -- Created 1962 Ky. Acts ch. 205, sec. 20.

381.905 Interpretation of KRS 381.805 to 381.910.

The provisions of KRS 381.805 to 381.910 shall be in addition to and supplemental to all other provisions of the Kentucky Revised Statutes, provided that wherever the application of the provisions of KRS 381.805 to 381.910 conflict with the application of such other provisions, KRS 381.805 to 381.910 shall prevail.

History: Created 1962 Ky. Acts ch. 205, sec. 21.

381.910 Planning and zoning.

Whenever they deem it proper, the planning and zoning commission of any county or municipality may adopt supplemental rules and regulations governing a horizontal property regime established under KRS 381.805 to 381.910 in order to implement this program.

History: Created 1962 Ky. Acts ch. 205, sec. 22.