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2 95th General Assembly
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4

As Engrossed: H4/1/25

A Bill

SENATE BILL 323

5 By: Senator J. Bryant
6 By: Representative McCollum
7

For An Act To Be Entitled

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

Subtitle

14 TO AMEND THE HORIZONTAL PROPERTY ACT.

15
16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

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

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

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

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

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

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



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

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

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

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

19 (C) "Apartment" includes a unit;

20
 21 SECTION 2. Arkansas Code § 18-13-102(4), concerning the definition of
 22 "general common elements" under the Horizontal Property Act, is amended to
 23 read as follows:

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

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

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

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

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

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

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

1 ~~all devices or installations existing for common use; and~~
2 ~~(C) All other elements of the building rationally of~~
3 ~~common use or necessary to its existence, upkeep, and safety;~~
4

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

8 (5) "Limited common elements" means those a portion of the
9 common elements which are agreed upon by all the co-owners to be reserved for
10 the use of a certain number of apartments to the exclusion of the other
11 apartments, such as special corridors, stairways, and elevators, sanitary
12 services common to the apartments of a particular floor, and the like
13 allocated by the master deed or by operation of an apartment under § 18-13-
14 102(1) for the exclusive use of one (1) or more owner but less than all of
15 the owners;
16

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

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

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

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

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

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

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

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

1 by any other apartment owner or unit owner, to:

2 (A) Add real property to a master deed;

3 (B) Create an apartment or unit, common elements, or
4 limited common elements by amendment to a master deed;

5 (C) Subdivide an apartment or unit, or convert an
6 apartment or unit into common elements by amendment to a master deed;

7 (D) Withdraw real property from a master deed;

8 (E) Complete improvements indicated on plans under § 18-13-
9 105;

10 (F) Make the horizontal property regime part of another
11 development;

12 (G) Maintain sales, management, leasing offices, and signs
13 advertising the horizontal property regime and models;

14 (H) Amend a master deed to comply with mortgage
15 underwriting requirements; or

16 (I) Use an easement through the common elements for the
17 purpose of making improvements within the horizontal property regime or
18 within real property that may be added to the horizontal property regime.

19
20 SECTION 5. Arkansas Code § 18-13-103 is amended to read as follows:

21 18-13-103. Establishment of horizontal property regimes.

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

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

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

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

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

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

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

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

19 (A) Advertising purposes; or

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

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

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

29
30 SECTION 6. Arkansas Code § 18-13-104 is amended to read as follows:
31 18-13-104. Master deed.

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

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

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

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

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

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

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

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

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

18 (B) Operate and manage the common elements;

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

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

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

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

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

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

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

4 (9) The method of amending a master deed;

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

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

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

14 (13) Any other matters a declarant considers appropriate.

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

17
18 SECTION 7. Arkansas Code § 18-13-112 is amended to read as follows:

19 18-13-112. Ownership and valuation of separate units and common
20 elements.

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

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

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

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

1 104(a)(12) due to a declarant's addition or withdrawal of an apartment or
2 unit in the horizontal property regime according to the declarant's
3 development rights.

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

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

10 18-13-116. Liability for expenses and assessments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28
29 SECTION 9. DO NOT CODIFY. Applicability.

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

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

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/s/J. Bryant