

**Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.**

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001

# A Bill

SENATE BILL 421

4  
5 By: Senator Gullett  
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7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE HORIZONTAL PROPERTY REGIME ACT TO  
10 INCLUDE MOBILE HOMES AND MOBILE HOME PARKS; AND FOR  
11 OTHER PURPOSES.  
12

## Subtitle

13  
14 AN ACT TO AMEND THE HORIZONTAL PROPERTY  
15 REGIME ACT TO INCLUDE MOBILE HOMES AND  
16 MOBILE HOME PARKS.  
17

18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code 18-13-102 is amended to read as follows:  
22 18-13-102. Definitions.

23 As used in this chapter, unless the context otherwise requires:

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

29 (2) "Co-owner" means a person, firm, corporation, partnership,  
30 association, trust, or other legal entity, or any combination thereof, who  
31 owns an apartment within the building;

32 (3) "Council of co-owners" means all the co-owners as defined in  
33 subdivision (2) of this section; but a majority, as defined in subdivision (6)  
34 of this section, shall, except as otherwise provided in this chapter,  
35 constitute a quorum for the adoption of decisions;

36 (4) "General common elements" means and includes:

- 1 (A) The land on which the building stands;
- 2 (B) The foundations, main walls, roofs, halls, lobbies,  
3 stairways, and entrance and exit or communication ways;
- 4 (C) The basements, flat roofs, yards, and gardens, except as  
5 otherwise provided or stipulated;
- 6 (D) The premises for the lodging of janitors or persons in charge  
7 of the building, except as otherwise provided or stipulated;
- 8 (E) The compartments or installations of central services such as  
9 power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks  
10 and pumps, and the like;
- 11 (F) The elevators, garbage incinerators, and, in general, all  
12 devices or installations existing for common use; and
- 13 (G) All other elements of the building rationally of common use  
14 or necessary to its existence, upkeep, and safety;
- 15 (5) "Limited common elements" means and includes those common elements  
16 which are agreed upon by all the co-owners to be reserved for the use of a  
17 certain number of apartments to the exclusion of the other apartments, such as  
18 special corridors, stairways, and elevators, sanitary services common to the  
19 apartments of a particular floor, and the like;
- 20 (6) "Majority of co-owners" means fifty-one percent (51%) or more of  
21 the basic value of the real property as a whole, in accordance with the  
22 percentages computed in accordance with the provisions of § 18-13-112;
- 23 (7) "Master deed" means the deed establishing the horizontal property  
24 regime;
- 25 (8) "Mobile home" means a transportable single-family dwelling unit  
26 suitable for year-round occupancy and containing the same water supply, waste  
27 disposal and electrical conveniences as immobile housing;
- 28 ~~(8)~~(9) "Person" means an individual, firm, corporation, partnership,  
29 association, trust, or other legal entity, or any combination thereof;
- 30 ~~(9)~~(10) "Property" means ~~and includes the land, the building buildings,~~  
31 a mobile home or a mobile home park and all improvements and structures  
32 thereon, and all easements, rights, and appurtenances belonging thereto;
- 33 ~~(10)~~(11) "To record" means to record in accordance with the provisions  
34 of §§ 14-15-402, 14-15-404, 14-15-407 - 14-15-417, and 16-46-101 or other  
35 applicable recording statutes;
- 36 ~~(11)~~(12) All pronouns used in this chapter include the male, female,

1 and neuter genders and include the singular or plural numbers, as the case may  
2 be.

3

4 SECTION 2. Arkansas Code 18-13-103 is amended to read as follows:

5 18-13-103. Establishment of horizontal property regimes.

6 Whenever a sole owner or the co-owners of a building or mobile home park  
7 already constructed or the owners of property upon which a building or mobile  
8 home park is to be constructed expressly declare, through the recordation of a  
9 master deed setting forth the particulars enumerated in § 18-13-104, their  
10 desire to submit their property to the regime established by this chapter,  
11 there shall be established a horizontal property regime.

12

13 SECTION 3. Arkansas Code 18-13-104 is amended to read as follows:

14 18-13-104. Master deed.

15 (a) The master deed creating and establishing the horizontal property  
16 regime shall be executed by the owner or owners of the real property making up  
17 the regime and shall be recorded in the office of the clerk and ex officio  
18 recorder of the county where the property is located.

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

20 (1) The description of the land and the building, or mobile home  
21 park expressing their respective areas;

22 (2) The general description and number of each apartment, or  
23 mobile home, expressing its area, location, and any other data necessary for  
24 its identification; and

25 (3) The description of the general common elements of the  
26 building or mobile home park and, in proper cases, of the limited common  
27 elements restricted to a given number of apartments, or mobile homes  
28 expressing which are those apartments or mobile homes;

29 (4) Value of the property and of each apartment ~~and,~~ or mobile  
30 home, according to these basic values, the percentage appertaining to the co-  
31 owners in the expenses of, and rights in, the elements held in common.

32

33 SECTION 4. Arkansas Code 18-13-105 is amended to read as follows:

34 18-13-105. Plans to be attached to master deed.

35 (a) There shall be attached to the master deed, at the time it is filed  
36 for record, a full and exact copy of the plans of any existing building or

1 mobile home park on the property or the plans for the building ~~or~~ buildings,  
2 or mobile home or mobile homes to be attached or constructed thereon, ~~which~~

3 (1) A copy of the plans shall be entered of record along with the  
4 master deed.

5 (2) The plans shall show graphically all particulars of the  
6 building or mobile home attached or constructed or to be attached or  
7 constructed, including, but not limited to, the dimensions, area, and location  
8 of each apartment or mobile home therein and the dimensions, area, and  
9 location of common elements affording access to each apartment or mobile home.

10 (3) Other common elements, both limited and general, shall be  
11 shown graphically, insofar as possible, and shall be described in detail in  
12 words and figures.

13 (4) The plan shall be certified by an engineer or architect  
14 authorized and licensed to practice his profession in this state.

15 (b) Each apartment in a building or mobile home in a mobile home park  
16 shall be designated, on the plans referred to in subsection (a) of this  
17 section, by letter or number or other appropriate designation.

18  
19 SECTION 5. Arkansas Code 18-13-106 is amended to read as follows:

20 18-13-106. Additional apartments, mobile homes or units in excess of  
21 those described in master deed.

22 (a) The sole owner or co-owners of property constituted and established  
23 under this chapter as a horizontal property regime may, by description of  
24 their intentions in the master deed provided for in § 18-13-104, provide for  
25 the addition of apartments, mobile homes or units in the horizontal property  
26 regime in excess of those for which specific plans are initially recorded with  
27 the master deed.

28 (b) With reference to any such additional buildings or mobile homes,  
29 the plans recorded with the master deed shall reflect:

30 (1) The area of the property within which the additional  
31 apartments, mobile homes or units will be constructed;

32 (2) The maximum and minimum number of square feet and the maximum  
33 and minimum number of additional apartments, mobile homes or units to be  
34 constructed;

35 (3) A general description of any rights in the common elements to  
36 be enjoyed by the owners of any additional ~~units or~~ apartments, mobile homes

1 or units;

2 (4) The date prior to which final detailed plans for the  
3 additional ~~units or~~ apartments, mobile homes or units will be recorded, with  
4 the amendment to the master deed reflecting the revised information to be  
5 included in the master deed pursuant to § 18-13-104; and

6 (5) A covenant and warranty extending to each and all of the  
7 owners of individual ~~units or~~ apartments, mobile homes or units in the regime  
8 that any such construction would be of similar quality, in a workmanlike  
9 manner, and in the same architectural style as the original buildings in the  
10 regime and that the construction will conform, generally, with the  
11 specifications set forth in the master deed as required in § 18-13-104.

12 (c)(1) Any property purportedly established as a horizontal property  
13 regime pursuant to this chapter and otherwise complying with it, but which at  
14 the time of the recording of the master deed called for in § 18-13-104 did not  
15 have one or more completed buildings or mobile homes thereon or which provided  
16 for additional or future construction of one (1) or more buildings or  
17 attachment of mobile homes in addition to those for which plans were initially  
18 recorded with the master deed, shall for all purposes be considered and  
19 treated as a horizontal property regime in accordance with this chapter.

20 (2) All mortgages thereof or conveyances thereof as such  
21 heretofore occurring shall, likewise, for all purposes be deemed as effective  
22 mortgages and conveyances of the same as against any claim that the regime was  
23 improperly established at the time thereof.

24

25 SECTION 6. Arkansas Code 18-13-107 is amended to read as follows:

26 18-13-107. Waiver and reestablishment of regimes.

27 (a) All of the co-owners or the sole owner of a building, mobile home  
28 park or property constituted into a horizontal property regime may waive this  
29 regime and regroup or merge the records of the individual apartments or mobile  
30 homes, or anticipated apartments and mobile homes, with the principal property  
31 if:

32 (1) ~~the~~ The individual apartments or mobile homes are  
33 unencumbered, ~~or~~

34 (2) ~~if~~ If encumbered, ~~if~~ and the creditors in whose behalf the  
35 encumbrances are recorded agree to accept as such security the undivided  
36 portions of the property owned by the debtors.

1 (b) The merger provided for in subsection (a) of this section shall in  
 2 no way bar the subsequent constitution of the property into another horizontal  
 3 property regime whenever so desired and upon observance of the provisions of  
 4 this chapter.

5  
 6 SECTION 7. Arkansas Code 18-13-108 is amended to read as follows:

7 18-13-108. Bylaws.

8 (a) The administration of every building and mobile home park  
 9 constituted into horizontal property shall be governed by bylaws which shall  
 10 be inserted in, or appended to, and recorded with the master deed.

11 (b) The bylaws must necessarily provide for at least the following:

12 (1) Form of administration, indicating whether this shall be in  
 13 charge of an administrator or of a board of administration, or otherwise, and  
 14 specifying the powers, manner of removal, and, where proper, the compensation  
 15 thereof;

16 (2) Method of calling or summoning the co-owners to assemble,  
 17 that a majority of at least fifty-one percent (51%) is required to adopt  
 18 decisions, who is to preside over the meeting, and who will keep the minute  
 19 book wherein the resolutions shall be recorded;

20 (3) Care, upkeep, and surveillance of the building or mobile home  
 21 park and its general or limited common elements and services;

22 (4) Manner of collecting from the co-owners for the payment of  
 23 the common expenses;

24 (5) Designation and dismissal of the personnel necessary for the  
 25 works and the general or limited common services of the building or mobile  
 26 home park.

27  
 28 SECTION 8. Arkansas Code 18-13-109 is amended to read as follows:

29 18-13-109. Modification of administration.

30 (a) The sole owner of the building or mobile home park, or if there is  
 31 more than one, the co-owners representing two-thirds (2/3) of the total value  
 32 of the building or mobile home park may, at any time, modify the system of  
 33 administration, but each one of the particulars set forth in § 18-13-108 shall  
 34 always be embodied in the bylaws.

35 (b) No such modification may be operative until it is embodied in a  
 36 recorded instrument, which shall be recorded in the same office and in the

1 same manner as was the master deed and original bylaws of the horizontal  
2 property regime involved.

3  
4 SECTION 9. Arkansas Code 18-13-110 is amended to read as follows:

5 18-13-110. Book of receipts and expenditures – Examination.

6 The administrator, the board of administration, or other form of  
7 administration specified in the bylaws shall keep a book with a detailed  
8 account, in chronological order, of the receipts and expenditures affecting  
9 the building or trailer park and its administration and specifying the  
10 maintenance and repair expenses of the common elements and any other expenses  
11 incurred. Both the book and the vouchers accrediting the entries made  
12 thereupon shall be available for examination by all the co-owners at  
13 convenient hours on working days that shall be set and announced for general  
14 knowledge.

15  
16 SECTION 10. Arkansas Code 18-13-111 is amended to read as follows:

17 18-13-111. Status of individual units or mobile homes.

18 Once the property is submitted to the horizontal property regime, an  
19 apartment in the building or a mobile home in the mobile home park may be  
20 individually conveyed and encumbered and may be the subject of ownership,  
21 possession, or sale and of all types of juridic acts intervivos or causa  
22 mortis as if it were sole and entirely independent of the other apartments in  
23 the building or other mobile homes in the mobile home park of which it forms a  
24 part, and the corresponding individual titles and interests shall be  
25 recordable.

26  
27 SECTION 11. Arkansas Code 18-13-112 is amended to read as follows:

28 18-13-112. Ownership and valuation of separate units and common  
29 elements.

30 (a) An apartment or mobile home owner shall have the exclusive  
31 ownership of his apartment or mobile home and shall have a common right to a  
32 share, with the other co-owners, in the common elements of the property. This  
33 share is equivalent to the percentage representing the value of the individual  
34 apartment or mobile home with relation to the value of the whole property.  
35 This percentage shall be computed by taking as a basis the value of the  
36 individual apartment or mobile home in relation to the value of the property

1 as a whole.

2 (b) The percentage shall be expressed at the time the horizontal  
3 property regime is constituted, shall have a permanent character, and shall  
4 not be altered without the acquiescence of the co-owners representing all the  
5 apartments of the building or mobile homes in the mobile home park.

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

10

11 SECTION 12. Arkansas Code 18-13-113 is amended to read as follows:

12 18-13-113. Types of joint ownership.

13 Any apartment or mobile home may be held and owned by more than one (1)  
14 person as joint tenants, as tenants in common, as tenants by the entirety, or  
15 in any other real estate tenancy relationship recognized under the laws of  
16 this state.

17

18 SECTION 13. Arkansas Code 18-13-115 is amended to read as follows:

19 18-13-115. Conveyances.

20 (a) Any conveyance or other instrument affecting title to an apartment  
21 or mobile home which describes the apartment or mobile home by using the plan  
22 letter or number followed by the words "in . . . . Horizontal Property  
23 Regime" shall be deemed to contain a good and sufficient description for all  
24 purposes.

25 (b) Any conveyance of an individual apartment or mobile home shall be  
26 deemed to also convey the undivided interest of the owner in the common  
27 elements, both general and limited, appertaining to the apartment or mobile  
28 home without specifically or particularly referring to it.

29

30 SECTION 14. Arkansas Code 18-13-116 is amended to read as follows:

31 18-13-116. Liability for expenses and assessments.

32 (a) The co-owners of the apartments or mobile homes are bound to  
33 contribute pro rata, in the percentages computed according to § 18-13-112,  
34 toward the expenses of administration and of maintenance and repair of the  
35 general common elements and, in the proper case, of the limited common  
36 elements of the building or mobile home park, and toward any other expense



1 lawfully agreed upon. Provided, the administrator, board of administration,  
 2 or other form of administration of a horizontal property regime may establish  
 3 additional assessments to be collected from any co-owner who makes his or her  
 4 apartment or mobile home available for rent or lease either directly or  
 5 through an agent. Such additional assessments shall not exceed the amount  
 6 reasonably calculated to cover expenses for additional security, wear and tear  
 7 on buildings, additional trash pickup, and other additional costs occasioned  
 8 by such units or mobile homes being available for rent or lease.

9 (b) No co-owner may exempt himself from contributing toward such  
 10 expenses by waiver of the use or enjoyment of the common elements or by  
 11 abandonment of the apartment or mobile home belonging to him.

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

17 (1) Assessments, liens, and charges for taxes past due and unpaid  
 18 on the apartment or mobile home; and

19 (2) Payments due under mortgage instruments of encumbrance duly  
 20 recorded.

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

26  
 27 SECTION 15. Arkansas Code 18-13-117 is amended to read as follows:

28 18-13-117. Insurance generally.

29 The co-owners may, upon resolution of a majority, insure the building or  
 30 mobile home park against risk, without prejudice to the right of each co-owner  
 31 to insure his apartment or mobile home on his own account and for his own  
 32 benefit.

33  
 34 SECTION 16. Arkansas Code 18-13-118 is amended to read as follows:

35 18-13-118. Application of insurance proceeds to reconstruction.

36 (a) In case of fire or any other disaster, the insurance indemnity

1 shall, except as provided in subsection (b) of this section, be applied to  
 2 reconstruct the building or mobile home park.

3 (b) Reconstruction shall not be compulsory where it comprises the whole  
 4 or more than two-thirds (2/3) of the building or more than two-thirds (2/3) of  
 5 the mobile home park. In such case, and unless otherwise unanimously agreed  
 6 upon by the co-owners, the indemnity shall be delivered pro rata to the co-  
 7 owners entitled to it in accordance with provision made in the bylaws or in  
 8 accordance with a decision of three-fourths (3/4) of the co-owners if there is  
 9 no bylaw provision.

10 (c) Should it be proper to proceed with the reconstruction, the  
 11 provisions for such eventuality made in the bylaws shall be observed, or in  
 12 lieu thereof the decision of the council of co-owners shall prevail.

13  
 14 SECTION 17. Arkansas Code 18-13-119 is amended to read as follows:

15 18-13-119. Sharing of reconstruction costs where building not insured  
 16 or indemnity insufficient.

17 (a) Where the building or mobile home park is not insured or where the  
 18 insurance indemnity is insufficient to cover the cost of reconstruction, the  
 19 new building or new mobile home park costs shall be paid by all the co-owners  
 20 directly affected by the damage in proportion to the value of their respective  
 21 apartments or mobile homes, or as may be provided by the bylaws.

22 (b) If any one (1) or more of those composing the minority shall refuse  
 23 to make such payment, the majority may proceed with the reconstruction at the  
 24 expense of all the co-owners benefited thereby, upon proper resolution setting  
 25 forth the circumstances of the case and the cost of the works, with the  
 26 intervention of the council of co-owners.

27 (c) The provisions of this section may be changed by unanimous  
 28 resolution of the parties concerned adopted subsequent to the date on which  
 29 the fire or other disaster occurred.

30  
 31 SECTION 18. Arkansas Code 18-13-120 is amended to read as follows:

32 18-13-120. Taxation.

33 (a) Taxes, assessments, and other charges of this state, of any  
 34 political subdivision, of any special improvement district, or of any other  
 35 taxing or assessing authority shall be assessed against and collected on each  
 36 individual apartment or mobile home. Each tax, assessment, or other charge on

1 the apartment or mobile home shall be carried on the tax books as a separate  
2 and distinct entity for that purpose and not on the building, mobile home park  
3 or property as a whole.

4 (b) No forfeiture or sale of the building, mobile home park or property  
5 as a whole for delinquent taxes, assessments, or charges shall ever divest or  
6 in any way affect the title to an individual apartment or mobile home so long  
7 as taxes, assessments, and charges on the individual apartment or mobile home  
8 are currently paid.

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