year but if only the townhouse is leased, there is no partitioning or dividing of the tract into "parcels"; i.e., separate continuous areas or acreages of land.[3]

Since it is my opinion that bulding townhouses for lease on a single tract of land is not a subdivision of the land within the meaning of the subdivision control act of 1967, it is unnecessary to respond to the remainder of your first situation.

2. It is my opinion that an apartment for lease is not a "parcel" as defined by the subdivision control act of 1967; therefore, situation #2 is not a "subdivision" as defined in that act.

3. This is a large-scale apartment development built on a single tract of land wherein all apartments may be leased for more than one year. This is not a subdivision of land as contemplated by the subdivision control act of 1967 so long as the developer retains ownership of the development or transfers it as a unit or subdivides into less than five parcels of 10 acres or less.

4–5. If this planned unit development referred to in situations 4 and 5 is the result of the partition or division of a single tract or parcel into five or more parcels, each of which is 10 acres or less in area, for purposes of building development, this is a subdivision of land as defined in Section 102(d) of the subdivision control act of 1967. The fact that common space separates the parcels is irrelevant. The fact that the parcels are conveyed separately to a proprietor-owned corporation or to third persons confirms the proprietor's intention to subdivide into separate parcels.

Very truly yours,
FRANK J. KELLEY,
Attorney General.

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RECORDS AND RECORDATION: Land Contracts

Before a land contract may be recorded by a register of deeds, the county treasurer must certify that all taxes due thereon have been paid for the 5 years preceding the date of the instrument except for certain instruments expressly exempt from this requirement by 1893 PA 206, § 135; MCLA 211.135; MSA 7.194.

Opinion No. 4920 January 26, 1976.

Hon. Claude A. Trim
State Representative
Capitol Building
Lansing, Michigan

You have requested my opinion as to whether a land contract must be certified by the County Treasurer pursuant to either 1893 PA 206, § 135; MCLA 211.135; MSA 7.194 or 1933 PA 126, § 5; MCLA 211.305;

[3] Section 102(e), subdivision control act of 1967 [MCLA § 560.102(e); MSA § 26.430(102)(e)].

MSA 7.235, before such land contract may be recorded by the Register of Deeds.

1893 PA 206, § 135, *supra*, provides in part:

> "When any deed, land contract, . . . or any other instrument for the conveyance of title to any real estate, is presented to the register of deeds of any county in this state for record or filing in his office, he shall require from the person presenting the same a certificate from the auditor general,[1] or from the county treasurer of the county whether there are any tax liens or titles held by the state, or by any individual, against such piece or description of land sought to be conveyed by such instrument, and that all taxes due thereon have been paid for the 5 years next preceding the date of such instrument, and a certificate from the city, village or township treasurer, wherein the lands are located, in any city, village or township collecting its own delinquent taxes or special assessments, whether there are any tax titles or certificates of tax sale held by such city, village or township, or by any individual, against such piece or description of land sought to be conveyed by such instrument, and that all tax titles, tax certificates, or special assessments sold thereon to the city, village or township certifying, have been redeemed for the 5 years next preceding the date of such instrument, and in default of the presentation of such certificate or certificates *he shall not record the same until such certificate is secured and presented.* . . . The register of deeds shall note the fact upon said deed that said certificate or certificates have or have not been presented to him when such instrument is presented for record, and in case the person presenting such instrument shall refuse to procure such certificate or certificates, he shall endorse that fact upon said instrument, over his official signature, and shall refuse to receive and record the same: Provided, That the provisions of this section shall not apply to the filing of any town or village plat for the purpose of incorporation, in so far as the land therein embraced is included in a plat already filed in the office of the register of deeds, or in so far as the description of lands therein is not changed by such plat, nor to the filing of any copy of the town, village or city plat in case the original plat filed in the office of such register of deeds has been lost or destroyed, nor to any sheriff's or commissioner's deed executed for the sale of lands under any proceeding in law, or by virtue of any decree of any of the courts of this state, nor to any deed of trust by any assignee, executor or corporation executed pursuant to any law of this state, nor to any quitclaim deed or other conveyance containing no covenants of warranty; nor to any land patent executed by the president of the United States, or the governor of this state, nor to any tax deed made by the auditor general; nor to any deed executed by any railroad company conveying its right of way, provided such deed is accompanied by a certificate of the auditor general showing that all specific taxes due from said railroad company

[1] The auditor general no longer issues such certificates in light of Const 1963, art 4, § 53.

have been paid, to and including the year in which such deed is executed. . . ." [Emphasis added]

1933 PA 126, § 5, *supra,* enacted during the depression years as emergency legislation to protect, preserve and promote home ownership, provides in pertinent part:

". . . No such certificate [required by 1893 PA 206, § 135, supra] . . . shall be required on any conveyance not containing a warranty of title clause. . . ."

However, 1933 PA 126, § 5, *supra,* is inapplicable because it refers only to ad valorem property taxes due and payable prior to 1935. 1933 PA 126, § 10; MCLA 211.310; MSA 7.240.

The general requirements which an instrument must fulfill to entitle it to recordation are set forth in 1937 PA 103, § 1; MCLA 565.201; MSA 26.1221, which provides:

"No instrument by which the title to real estate or any interest therein is conveyed, assigned, encumbered or otherwise disposed of, executed after the effective date of this act shall be received for record by the register of deeds of any county of the state unless the same complies with each of the following requirements:

"(a) The name of each person who executed such instrument shall be legibly printed, typewritten or stamped upon such instrument immediately beneath the signature of such person and the address of each such person shall be printed, typewritten or stamped upon the face of the instrument;

"(b) No discrepancy shall exist between the name of such person as it appears either in the body of such instrument, the acknowledgment or jurat, as printed, typewritten or stamped upon such instrument by the signature, or in the signature of such person;

"(c) The name of each witness to such instrument shall be legibly printed, typewritten or stamped upon such instrument immediately beneath the signature of such witness;

"(d) The name of any notary public whose signature appears upon such instrument shall be legibly printed, typewritten or stamped upon such instrument immediatly beneath the signature of such notary public;

"(e) Wherever in this act it is required that the name of a person shall be 'printed, typewritten or stamped upon such instrument immediately beneath the signature' of such person, it is the intent of the legislature to require that such signature be written upon such instrument directly preceding such name so 'printed, typewritten or stamped.' Such signature shall not, however, be superimposed upon such name so as to render either illegible. Such instrument shall, however, be entitled to be received for record if such name and signature are in the discretion of the register of the register of deeds so placed upon such instrument as to render the connection between the 2 apparent. Any instrument received and recorded by a register of deeds shall be conclusively presumed to comply with the requirements of this act. *The requirements contained in this act shall be cumulative to the*

requirements imposed by any other act relating to the recording of instruments;

"(f) The address of each of the grantees in each deed of conveyance or assignment of real estate, including the street number address if located within territory where such street number addresses are in common use, or, if not, the post office addresses shall be legibly printed, typewritten, or stamped in such instrument;

"(g) Instruments shall not be typewritten or printed in type smaller than 8 point size, and the size of any sheet in such instrument shall not exceed 8½ by 14 inches, and shall be legible and on paper of not less than 13 (17x22-500) pound weight. Nothing in this subdivision shall affect instruments executed outside the state or the filing or recording of plats or other instruments, the size of which are regulated by law." [Emphasis added]

In effect, 1893 PA 206, § 135, *supra,* adds an additional provision to the recording requirements of 1937 PA 103, § 1, *supra.* This is not a novel problem and the Michigan Supreme Court in the case of *Van Husan* v *Heames, Register of Deeds of Wayne County,* 96 Mich 504; 56 NW 222 (1893), in reference to 1893 PA 206, § 135, *supra,* stated:

"The fact that it imposes a condition which must be fulfilled before a deed is entitled to record, thereby changing in this respect the recording act, does not affect its validity . . ."

It is therefore my opinion that a land contract, unless expressly exempt from the provisions of 1893 PA 206, § 135, *supra,* must be certified by the County Treasurer before such land contract may be recorded by the Register of Deeds. As stated in OAG, 1914, p 401 (December 17, 1913):

". . . the acceptance or rejection of the deed by any particular register of deeds depends on whether the certificate shows that the taxes have been paid on the land situated in his county. The deed would not be entitled to record in any county where the certificate shows that the taxes on land situated in that county had not been paid for the five years previous to the date of the deed." [p 402]

FRANK J. KELLEY,
Attorney General.