

According to the petition attached to your letter to this office, the proposed amendment would:

1. Make the mayor a full-time salary position;
2. Make the office of the mayor responsible for the proper administration of the affairs of the city; and
3. Give the mayor the power to appoint the heads of all departments, including the city manager, subject to the confirmation of the city commission, to serve at the will of the mayor except as provided by the Civil Service ordinance.

These changes would necessarily mean wide-ranging modifications of the relationships between the mayor, the city commission, the city manager, and the department heads. Increasing the powers of the mayor to this degree with a consequent diminution of the powers of both the city commission and the city manager would be a fundamental change. It is my opinion that the proposed amendment may be accomplished only through the charter revision process.

FRANK J. KELLEY,
Attorney General.

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MAPS AND PLATS: Construction of apartment buildings, townhouses or duplexes.

MAPS AND PLATS: Leases for more than one year.

WORDS AND PHRASES: "Subdivision"; "partition"; "divide".

Multi-building apartment, townhouse or duplex developments are not "subdivisions" within the meaning of the Subdivision Control Act if the development is owned as a single unit and the residential units are leased.

A "lease of more than one year" within the meaning of the exemption from the Subdivision Control Act does not mean that the developer, to enjoy the exemption, must lease a residential unit for only a single term of less than one year.

Opinion No. 4912

January 26, 1976.

Honorable William L. Jowett
State Representative
The Capitol
Lansing, Michigan 48901

The Michigan Department of Treasury Land Subdivision Information Bulletin No. 11 dated January 1975 contains the following interpretation of § 102(d) of the Subdivision Control Act, 1967 PA 288, MCLA 560.102(d); MSA 26.430(102)(d):

" . . . The construction of each townhouse or apartment building constitutes a parcel of land for the purpose of building development whether the living units are sold or leased." [Emphasis added; p 3]

In light of the above-quoted language from the Bulletin, you have requested my opinion on the following questions:

1. Is Land Subdivision Information Bulletin No. 11, issued by the Treasury Department in 1975, consistent with subsections (d) and (e) of § 102 of the Subdivision Control Act?
2. Is an owner of a single 7-acre tract of land who intends to build 6 duplexes on this property to be rented on a month-to-month basis required to comply with the provisions of the Subdivision Control Act?

1967 PA 288, § 102(d), *supra*, provides:

“‘Subdivide’ or ‘subdivision’ means the partitioning or dividing of a parcel or tract of land by the proprietor thereof or by his heirs, executors, administrators, legal representatives, successors or assigns for the purpose of sale, or lease of more than one year, or of building development, where the act of division creates 5 or more parcels of land each of which is 10 acres or less in area; or 5 or more parcels of land each of which is 10 acres or less in area are created by successive divisions within a period of 10 years.”

In light of the above quotation, it is clear that in order for a subdivision to be created the parcel or tract must be *divided* or *partitioned* into smaller parcels or tracts.

The word “divide” or “partition” implies some present or planned separation or severance of a parcel of land into smaller parcels, *Mailey v Rubin*, 388 Pa 75; 130 A2d 182 (1957); *Collins v Naylor*, 192 SW2d 332 (Tex Civ App, 1946). “Partition” or “divide” further implies that after the land has been cut up into smaller parcels, interest in the smaller parcels will be dispersed among a number of individuals so that an individual with an interest in one of the smaller parcels will have some exclusive rights in that parcel.

For example, in an opinion to Allison Green, State Treasurer, dated October 7, 1971, I held that the Subdivision Control Act applies to a cooperative mobile home development. Under the plans for the mobile home development in question, an individual purchased shares of stock in a cooperative corporation which held title to all real estate. Ownership of a share of stock entitled the individual to a “proprietary lease” of a *specific lot* within the development on which the lessee’s personally-owned mobile home would be situated; the lessee was guaranteed the exclusive use and quiet enjoyment of that specific lot. In light of these facts I stated:

“There is no dispute that more than 5 lots are included in this development and that each of the lots is 10 acres or less in area. *The lands are ‘partitioned or divided’ in that each owner of a share of stock, as lessee under the proprietary lease, acquires the right to use a specific parcel, separate and apart from parcels utilized by other lessees, notwithstanding the fact that title to all lands remains in the cooperative corporation itself.*” [p 2; emphasis added]

In a letter to Representative Roy Smith dated December 19, 1967, I construed § 102(d) of the Subdivision Control Act as follows:

“. . . It is equally obvious, since the definition of subdivide speaks of a partition or division of a tract of land 'for the purpose of sale,' that a subdivision may be effected prior to the actual sale of the parcels. *Such division would normally be accomplished by the surveying and staking out of a tract of land into parcels for the purpose of sale.*

"This understanding of the definition of the word 'subdivide' is consistent with the judicial interpretation of similar definitions in the statutes of other states. For example, in *People v. Embassy Realty Associates*, 73 Cal App 2d 901, 167 P 2d 797, 799 (1946), the court quoted Webster's New International Dictionary, Second Edition, definition of subdivide as "To subdivide a tract of land into lots to sell before developing or improving them." In *County of Yuma v. Leidendeker*, 81 Ariz 208, 303 P 2d 531, 535 (1956), the court quoted the same dictionary's definition of a subdivision as "An unimproved tract of land surveyed and divided into lots for purposes of sale." [p 2; emphasis added]

Finally, in a letter to Representative William V. Weber dated June 25, 1970, a copy of which is attached, I held that the Subdivision Control Act does not apply to a townhouse development so long as the proprietor of the land retains ownership of the development or transfers it as a unit and if the townhouse *only* is leased. I noted that if certain land such as the front and back yard as well as the townhouse is leased, then there has been a subdivision.

Thus, it is my opinion that the mere construction of a townhouse unit or apartment building on a parcel of land does not require compliance with the provisions of the Subdivision Control Act. However, if the land is leased along with the residential unit, or if the buildings are constructed so that it is apparent that each lessee has the exclusive right to utilize some of the land surrounding the leased unit, then a division or partition of the land has occurred.

It further appears that the Department of Treasury in Bulletin No. 11 has construed the phrase "lease of more than one year" found in 1967 PA 288, § 102(d), *supra*, to mean that a building or residential unit may only be leased for a single period of not more than 12 months. That is, the proprietor may only lease the unit or building once. I do not concur in this interpretation of the phrase "lease of more than one year." Even though this phrase may have been placed in the act by its drafters for the sole purpose of allowing certain developers to lease homes within a newly subdivided area for a single 12-month period before the provisions of the Subdivision Control Act have been complied with, such intent is not reflected in the legislation itself. The phrase "lease of more than one year" does not contain sufficient language to support the construction given to it in Bulletin No. 11.

It may also be noted that, in a law review article¹, it is stated:

¹ Cunningham, "Public Control of Land Subdivision in Michigan: Description and Critique", 66 Mich L Rev 1, 55 (1967).

"It should be noted at the outset that this provision still leaves outside the definition of 'subdivision' all large-scale apartment developments where the developer intends to retain ownership of the entire development or transfer it as a single unit, and where all apartments are to be occupied under leases of one year or less. In such cases, there is obviously no actual 'partitioning or dividing' of the land for 'building development,' and there will be no leases 'of more than one year.' Hence the developer will not be subject to the development controls imposed on subdivision by the Subdivision Control Act of 1967."

In summary, the answer to your first question is that multi-building apartment, townhouse or duplex developments are not "subdivisions" within the meaning of the act if only the residential units themselves are leased. If land is leased along with the units, then there has been a "partitioning or dividing" of the land for "building development" or in the appropriate case for "lease of more than one year." Furthermore, if a subdivision for the purpose of lease has occurred, but the proprietor does not lease the units for more than a year at a time, then the provisions of the Subdivision Control Act are not called into play. However, it should be noted that if subdivided *land* is leased, and if the land has been subdivided for the purpose of a building development, then the provisions of the Subdivision Control Act must be complied with even if the lease is for less than one year.

The answer to your second question is that if a developer builds 6 duplexes on a single 7-acre tract of land and rents only the units themselves on a month-to-month basis then this developer need not comply with the provisions of the Subdivision Control Act.

FRANK J. KELLEY,
Attorney General.

June 25, 1970.

The Honorable William V. Weber
State Representative
46th District
House of Representatives
The Capitol
Lansing, Michigan 48903

Dear Representative Weber:

You have requested my opinion regarding the applicability of subsection (d) of Section 102 of the subdivision control act of 1967¹ to the following situations:

1. Townhouses (ground level entrances but with common walls) which will be leased for terms in excess of one year. If so, how would a plat proprietor comply with the Act where townhouses are constructed on a hillside so that a townhouse is constructed with two townhouses occupying the same parcel of land, upper townhouse being at grade level on the downhill side?

¹ Act 288, PA 1967 [MCLA § 560.102(d); MSA § 26.430(102)(d)].