

TO: Assessing Officers
Equalization Directors

No. 10 April 9, 1989
Site Condominium Project

FROM: State Tax Commission

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

CONDOMINIUMS: Establishment of site condominium project

MAPS AND PLATS: Regulation of site condominium project

WORDS AND PHRASES: "Site condominium"

A site condominium project consisting of not less than two condominium units and established in conformance with the Condominium Act, MCL 559.101 et seq; MSA 26.50(101) et seq, is not subject to the Subdivision Control Act of 1967, MCL 560.101 et seq; MSA 26.430(101) et seq.

Opinion No. 6577

MAR 13 1989

Honorable John Cherry
State Senator
The Capitol
Lansing, Michigan 48909

You have requested my opinion whether a site condominium is subject to the Subdivision Control Act of 1967, MCL 560.101 et seq; MSA 26.430(101) et seq. The term "site condominium" is not defined in your letter.¹

In Michigan, condominium projects are governed by the Condominium Act, 1978 PA 59, MCL 559.101 et seq; MSA 26.50(101) et seq, and the rules of the Corporation and Securities Bureau, Department of Commerce, adopted pursuant to that act. MCL

¹An extensive discussion, from a Michigan perspective, of various so-called "site condominiums" is found in Wyant and Williams, Site Condos: A Quiet Revolution, Planning & Zoning News, September, 1988, pp 5-13. The term generally refers to

559.242; MSA 26.50(242), 1979 AC and 1985 AACCS, R 559.101 et seq.
Under the Condominium Act, MCL 559.104(1); MSA 26.50(104)(1), a
condominium project is defined as:

"a plan or project consisting of not less than
2 condominium units established in conformance
with this act."

A condominium unit is defined by the Condominium Act,
MCL 559.104(3); MSA 26.50(104)(3), as:

"that portion of the condominium project
designed and intended for separate ownership
and use, as described in the master deed,
regardless of whether it is intended for resi-
dential, office, industrial, business,
recreational, use as a time-share unit, or any
other type of use."

The initial sale of condominium units is subject to the
Condominium Act, MCL 559.121(1); MSA 26.50(121)(1), which pro-
vides, in pertinent part:

single family residential developments which, although physically
resembling traditional subdivisions, utilize the condominium form
of ownership. Detached condominiums may qualify for federal
mortgage insurance programs authorized by 12 USC 1715y(b). See,
also, Schreiber, The Lateral Housing Development: Condominium or
Home Owners Association?, 117 U Pa L Rev 1104 (1969);
Krasnowiecki, Townhouse Condominiums Compared to Conventional
Subdivision with Homes Association, 1 Real Est L J, 323 (1973);
Berger and Rohan, Condominium v Home Owner Association
Arrangements - An Overview, in Symposium on the Law of
Condominiums, 48 St. John's L Rev 736 (1974); Lehmann, Are
Condominium Projects Subject to Local Land Use Codes?, 55 Wis Bar
Bull, p 19 (May, 1982); and Tudzarov, Platting the Condominium:
Is It Required?, 15 Real Est L J 22 (1986).

"A condominium unit located within this state shall not be offered for its initial sale in this state unless the offering is made in accordance with this act or the offering is exempt by rule of the administrator [the Department of Commerce or an authorized designee]."

Pursuant to MCL 559.172; MSA 26.50(172), a condominium project for any property shall be established upon the recording of a master deed that complies with the Act. A master deed is defined by MCL 559.108; MSA 26.50(108), as the condominium document recording the condominium project to which are attached as exhibits the project's bylaws and the project's condominium subdivision plan. According to MCL 559.166(2); MSA 26.50(166)(2), the condominium subdivision plan shall include all of the following:

- "(a) A cover sheet.
- "(b) A survey plan.
- "(c) A floodplain plan, if the condominium lies within or abuts a floodplain area.
- "(d) A site plan.
- "(e) A utility plan.
- "(f) Floor plans.
- "(g) The size, location, area, and horizontal boundaries of each condominium unit.
- "(h) A number assigned to each condominium unit.
- "(i) The vertical boundaries and volume for each unit comprised of enclosed air space.
- "(j) Building sections showing the existing and proposed structures and improvements including their location on the land. Any

proposed structure and improvement shown shall be labeled either 'must be built' or 'need not be built'. To the extent that a developer is contractually obligated to deliver utility conduits, buildings, sidewalks, driveways, landscaping and an access road, the same shall be shown and designated as 'must be built', but the obligation to deliver such items exists whether or not they are so shown and designated.

"(k) The nature, location, and approximate size of the common elements.

"(l) Other items the administrator requires by rule."

Additional requirements for the contents of a condominium subdivision plan are set forth in 1979 AC, R 559.402.

The condominium subdivision plan must be delivered to and retained by the local register of deeds office. MCL 559.174; MSA 26.50(174). In addition, detailed architectural plans and specifications for the condominium project shall be filed with the local unit of government in which the project is located. MCL 559.173(4); MSA 26.50(173)(4). If the condominium project does not have public water and public sewers available to it, approval of the subdivision condominium plan is required by the appropriate public health agency. MCL 559.171a; MSA 26.50(171a).

Under the Subdivision Control Act of 1967, any division of land which results in a subdivision shall be surveyed and a plat thereof submitted, approved and recorded as required by the provisions of the Act. MCL 560.103(1); MSA 26.430(103)(1). For the purposes of the Subdivision Control Act of 1967, the term

"subdivision" is defined by MCL 560.102(d); MSA 26.430(102)(d),
as:

"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."

The Subdivision Control Act of 1967 is silent as to whether the development of a condominium involves a "subdivision" within the meaning of the Act. This question was addressed in Gerber v Town of Clarkstown, 78 Misc 2d 221; 356 NYS2d 926, 927-928 (1974), where the court concluded that a condominium project is not a subdivision of real property:

"The term 'condominium' may be defined generally as a system of separate ownership of individual units in a multi-unit project. (Rohan & Reskin, Condominium Law and Practice, Vol. 1, Sec. 1.01[1]). It is a system of ownership of real property whereby a parcel of real estate and the building or buildings existing thereon are owned by more than one person, each of whom has two separate and distinct real property interests: (1) Fee simple ownership of a unit or apartment; and (2) an undivided interest, together with all of the other unit owners in the project, in the common elements. [Citation omitted.]

". . . .

"[T]he ... conclusion is that a condominium is not a subdivision of real property and hence, Section 239-m of the General Municipal Law (authorizing the County Planning Board to

review certain subdivision plots) and Section 276 of the Town Law (authorizing the Planning Board to approve plots showing lots, blocks, or sites) is inapplicable to the case at bar."

Consistent with the concept that a condominium project (although comprised of condominium units, limited common elements and common elements) is situated on a single parcel of real property, the Condominium Act states that condominium projects are excluded from the requirements of the Subdivision Control Act of 1967:

"[T]he provisions of Act No. 288 of the Public Acts of 1967, as amended, being sections 560.101 to 560.293 of the Michigan Compiled Laws [the Subdivision Control Act of 1967], shall not control divisions made for any condominium project." MCL 559.110(1); MSA 26.50(110)(1).

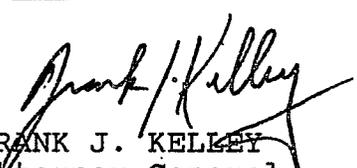
OAG, 1975-1976, No 4933, p 303 (February 17, 1976), concluded that to dedicate a private street in a condominium, the master deed of which has been recorded, to public use, it is necessary to obtain the consent of all co-owners, mortgagees, and other persons interested in the condominium. That opinion recognized that condominiums were excluded from the Subdivision Control Act of 1967, MCL 560.101 et seq; MSA 26.430(101) et seq, by reason of the predecessor to the Condominium Act which also contained exclusionary language similar to that found in the Condominium Act.

In reaching this conclusion, I am mindful of the Illinois decision which concluded that the Illinois Legislature

had not intended to authorize a mobile home park owner to convert a mobile home park to a condominium because such conversion would sidestep the otherwise applicable subdivision review process.

People ex rel County of LaSalle v Grundy County Nat'l Bank, 97 Ill App 3d 101, 103; 422 NE2d 648, 649-650 (1981). However, that case is inapplicable to the Michigan statutes discussed in this opinion which, inter alia, specifically authorize mobile home conversion condominium projects. MCL 559.222a et seq; MSA 26.50(222a) et seq.

It is my opinion, therefore, that a site condominium project consisting of not less than two condominium units and established in conformance with the Condominium Act, MCL 559.101 et seq; MSA 26.50(101) et seq, is not subject to the Subdivision Control Act of 1967, MCL 560.101 et seq; MSA 26.430(101) et seq.


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