

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202

September 14, 2001

Opinion No. 01-147

Establishment of Horizontal Property Regime without Regional Planning Commission's Approval

QUESTION

Does the development of property pursuant to the Horizontal Property Act, Tenn. Code Ann. §§ 66-27-101 to -123 (1993), constitute the subdivision of property requiring the approval of the regional planning commission under Tenn. Code Ann. §§ 13-3-401 to -411 (1999)?

OPINION

No, the establishment of a horizontal property regime under the Horizontal Property Act does not constitute a subdivision of property. Accordingly, if a property owner complies with the Act's provisions for establishing a horizontal property regime, the property owner need not seek the regional planning commission's approval under the statutory provisions governing subdivisions.

ANALYSIS

Pursuant to the Horizontal Property Act, the developer or owner of an apartment building may convert the building's apartments into individually-owned units. *See* Tenn. Code Ann. §§ 66-27-103, -104 (1993). In order to establish a horizontal property regime, the developer or owner must comply with the Act's requirements, including the recordation of a master deed, lease, or plat declaring the intent to create such a regime. *See* Tenn. Code Ann. §§ 66-27-103(a), -107 (1993). The master deed, lease, or plat must describe the land and building, each apartment in the building, and the general common elements of the building. *See* Tenn. Code Ann. § 66-27-107(b)(1)—(3) (1993). The master deed, lease, or plat also must set forth bylaws for the administration of the building. *See* Tenn. Code Ann. § 66-27-107(b)(4) (1993).

A developer or owner may establish a horizontal property regime merely by complying with the Act's provisions. The Act provides that, "[w]henever a developer, the sole owner, or the co-owners of a building expressly declare, through the recordation of a master deed or lease, or by plat, which shall set forth the particulars enumerated by § 66-27-107, their desire to submit their property to the regime

established by this chapter, there shall be thereby established a horizontal property regime.” Tenn. Code Ann. § 66-27-103(a) (1993). The Act does not require the developer or owner to seek the approval of the regional planning commission prior to establishing a horizontal property regime.

In the context of the municipal planning statutes set forth in Tenn. Code Ann. §§ 13-4-301 to -309 (1999), this Office has opined that the establishment of a horizontal property regime under the Horizontal Property Act does not constitute a subdivision of property that requires the approval of the municipal planning commission. The municipal planning statutes and the regional planning statutes contain identical definitions of the term “subdivision.” The statutes generally define a “subdivision” as “the division of a tract or parcel of land into two (2) or more lots, sites, or other divisions requiring new street or utility construction, or any division of less than five (5) acres, for the purpose, whether immediate or future, of sale or building development.” Tenn. Code Ann. §§ 13-3-401(4)(B), 13-4-301(4)(B) (1999).

In its prior opinion, issued in 1988, this Office reasoned that

[a] horizontal property regime created pursuant to the Horizontal Property Act involves the conversion of apartments to condominiums. It does not involve a division of land. Thus, there would be no requirement of prior approval by the Municipal Planning Commission.

....

Obviously, [in passing the Horizontal Property Act] the legislature contemplated creating an estate in real property consisting of a separate interest in a residential building on such real property together with an undivided interest-in-common in other portions of the same property. This does not involve a division of the tract of land, and therefore would not constitute a subdivision as defined by T.C.A. § 13-4-301(4)(B). It follows that no prior approval by the municipal planning commission should be required to effectuate recordation and filing. T.C.A. § 13-4-302(a).

Op. Tenn. Att’y Gen. 88-10 (Jan. 11, 1988) (copy attached).

The same rationale applies to the regional planning statutes governing subdivisions. Like a municipal planning commission, a regional planning commission is empowered to “adopt regulations governing the subdivision of land within its jurisdiction.” Tenn. Code Ann. § 13-3-403(a) (1999). Under the statutes, plats of subdivisions of land within the region must be submitted to the regional planning commission for approval before filing or recording. *See* Tenn. Code Ann. § 13-3-402(a) (1999). In accordance with the rationale of our prior opinion, however, the establishment of a horizontal property regime pursuant to the provisions of the Horizontal Property Act does not constitute a subdivision of land.

See Tenn. Code Ann. § 13-3-401(4)(B)(1999). Accordingly, the developer or owner who establishes such a regime need not seek the prior approval of the regional planning commission.¹

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MARY ELLEN KNACK
Assistant Attorney General

Requested by:

The Honorable Richard Montgomery
State Representative, 12th Legislative District
207 War Memorial Building
Nashville, TN 37243-0112

¹In issuing this opinion, this Office does not mean to suggest that a developer need not seek the approval of the appropriate authorities prior to embarking upon the construction of a building that becomes part of a horizontal property regime. A regional planning commission is required to make and adopt a general regional plan that includes, among other things, “a zoning plan for the regulation of the height, area, bulk, location and uses of buildings, the distribution of population, and the uses of land” for various purposes, including “habitation.” Tenn. Code Ann. § 13-3-301(b) (1999). “[N]o building permit shall be issued and no building shall be erected on any lot within the region” unless certain requirements are met. Tenn. Code Ann. § 13-3-411(a) (1999).