

46:15-5 ET AL.

LEGISLATIVE HISTORY CHECKLIST

NJSA 46:15-5 to 7; 46:15-10

Laws of 1974 Chapter 184

Bill No. A 1024

Sponsor(s) Perskie

Date Introduced January 31

Committee: Assembly Taxation

Senate Revenue, Finance & Appropriations

Amended during passage Yes Amendments during passage denoted by asterisks

Date of passage: Assembly April 16

Senate Sept. 30

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Following statements are attached if available:

Sponsor statement No

Committee Statement: Assembly Yes

Senate Yes

Fiscal Note Yes

Veto message No

Message on signing No

Following were printed:

Reports No

Hearings No

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ASSEMBLY, No. 1024

STATE OF NEW JERSEY

INTRODUCED JANUARY 31, 1974

By Assemblyman PERSKIE

Referred to Committee on Taxation

AN ACT to amend "An act fixing fees to be imposed upon the recording of deeds transferring title to real property and providing penalties for the violations thereof," approved June 3, 1968 (P. L. 1968, c. 49) (C. 46:15-5 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1968, c. 49 (C. 46:15-5) is amended to read
2 as follows:

3 1. As used in this act:

4 (a) "Deed" means **[an instrument or writing by which title to]**
5 *a written instrument entitled to be recorded in the office of a county*
6 *recording officer which purports to convey or transfer title to a*
7 *freehold interest in any lands, tenements or other realty in this*
8 *State by way of grant or bargain and sale thereof from the named*
9 *grantor to the named grantee* **[sold shall be granted, assigned,**
10 **transferred or otherwise conveyed].** *A leasehold interest for 99*
11 *years or more, shall be treated as a "freehold" for the purpose of*
12 *this act. Instruments providing for common driveways, for ex-*
13 *changes of easements or rights-of-way, for revocable licenses to*
14 *use, to adjust or to clear defects of or clouds on title, to provide*
15 *for utility service lines such as drainage, sewerage, water, electric,*
16 *telephone or other such service lines, or to quitclaim possible out-*
17 *standing interests, shall not be "deeds" for the purposes of this act.*

18 (b) The terms "county recording officer" and "office of the
19 county recording officer" mean the register of deeds and mortgages
20 in counties having such an officer and office, and the county clerk
21 and his office in the other counties.

22 (c) "Consideration" means in the case of any deed, the actual
23 amount of money and the monetary value of any other thing of
24 value constituting the entire compensation paid or to be paid for

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

25 the transfer of title to the lands, tenements or other realty, includ-
 26 ing the remaining amount of any prior mortgage to which the
 27 transfer is subject or which is to be assumed and agreed to be paid
 28 by the grantee and any other lien or encumbrance thereon not paid,
 29 satisfied or removed in connection with the transfer of title.
 30 *The amount of liens for real property taxes, water or sewerage*
 31 *charges for the current or any subsequent year, or by way of added*
 32 *assessment or other adjustment, as well as of other like liens or*
 33 *encumbrances of a current and continuing nature ordinarily ad-*
 34 *justed between the parties according to the period of ownership*
 35 *shall be excluded as an element in determining the consideration,*
 36 *notwithstanding that such amount is to be paid by the grantee.*

37 ***[***In any case where there is no specific dollar consideration*
 38 *agreed upon, or where the consideration as agreed upon cannot*
 39 *feasibly be expressed as a single sum at the time of recording, there*
 40 *shall be a prima facie presumption that the consideration is in the]*
 41 **In the case of a leasehold interest as defined in paragraph (a)*
 42 *of this section, the consideration shall be in the** amount of the
 43 *assessed value of the property *at the date of the transaction** for
 44 *the purpose of levying local real property taxes adjusted to reflect*
 45 *the true value in accordance with the county percentage level*
 46 *established for the current year.**

1 2. Section 2 of P. L. 1968, c. 49 (C. 46:15-6) is amended to read
 2 as follows:

3 2. In addition to other prerequisites for recording, no deed evi-
 4 dencing transfer of title to real property shall be recorded in the
 5 office of any county recording officer unless (a) the consideration
 6 therefor is recited therein **[and]** ****[or]**** ****and**** in the
 7 acknowledgment or proof of the execution thereof, or (b) an
 8 affidavit by one or more of the parties named therein or by their
 9 legal representatives declaring the consideration therefor is
 10 annexed thereto for recording with the deed.

1 3. Section 3 of P. L. 1968, c. 49 (C. 46:15-7) is amended to
 2 read as follows:

3 3. In addition to the recording fees imposed by P. L. 1965, c. 123,
 4 s. 2 (C. 22A:4-4.1) a fee is imposed upon grantors, at the rate
 5 of \$0.50 for each \$500.00 of consideration or fractional part
 6 thereof recited in the deed, which fee shall be collected by the
 7 county recording officer at the time the deed is offered for recording.

8 *Every deed subject to the additional fee required by this act,*
 9 *which is in fact recorded, shall be conclusively deemed to have been*
 10 *entitled to recording, notwithstanding that the amount of the con-*

11 *sideration shall have been incorrectly stated, or that the correct*
 12 *amount of such additional fee, if any, shall not have been paid, and*
 13 *no such defect shall in any way affect or impair the validity of the*
 14 *title conveyed or render the same unmarketable; but the person*
 15 *or persons required to pay said additional fee at the time of re-*
 16 *coding shall be and remain liable to the county recording officer*
 17 *for the payment of the proper amount thereof.*

1 4. Section 6 of P. L. 1968, c. 49 (C. 46:15-10) is amended to read
 2 as follows:

3 6. The fee imposed by this act shall not apply to a deed:

4 (a) For a consideration, as defined in section 1 (c), of less than
 5 \$100.00;

6 (b) By or to the United States of America, this State, or any
 7 instrumentality, agency, or subdivision thereof;

8 (c) Solely in order to provide or release security for a debt or
 9 obligation;

10 (d) Which confirms or corrects a deed previously recorded;

11 (e) On a sale for delinquent taxes or assessments;

12 (f) On partition;

13 **[(g)]** Pursuant to mergers of **[corporation]** corporations;

14 (h) **[By]** *Between* a subsidiary corporation **[to]** *and* its parent
 15 corporation for no consideration, nominal consideration, or in sole
 16 consideration of the cancellation or surrender of the subsidiary's
 17 stock;**]****

18 **[(i)]**** *By a* **[sheriff,]**** receiver, trustee in bank-
 19 ruptcy or liquidation, or assignee for the benefit of creditors;

20 **[(j)]**** *Eligible to be recorded as an "ancient deed"*
 21 *pursuant to R. S. 46:16-7;*

22 **[(k)]**** *Acknowledged or proved on or before July 3,*
 23 **[1958]**** *1968**;*

24 **[(l)]**** *Between husband and wife, or parent and child;*

25 **[(m)]**** *Conveying a cemetery lot or plot;*

26 **[(n)]**** *In specific performance of a final judgment;*

27 **[(o)]**** *Releasing a right of reversion.*

28 **[(n)]** *Previously recorded in another county and full realty*
 29 *transfer fee paid or accounted for, as evidenced by written instru-*
 30 *ment, attested by the grantee and acknowledged by the county*
 31 *recording officer of the county of such prior recording, specifying*
 32 *the county, book, page, date of prior recording, and amount of realty*
 33 *transfer fee previously paid.***

1 5. This act shall take effect January 1, 1975.

ASSEMBLY TAXATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1024

STATE OF NEW JERSEY

DATED: MARCH 28, 1974

This bill redefines the term "deed" for purposes of recording same with the county recording officer and includes leaseholds of 99 years or more. In addition, it extends the exemption from the filing fee for certain transactions in keeping with the recommendations made and action taken by the General Assembly in the last legislative session.

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1024

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1974

There is an apparent lack of uniformity in imposing deed recording fees on instruments transferring title to real property. This is due to the interpretation of an ambiguous definition of a deed subject to the recording fees as currently provided in section 1 of P. L. 1968, c. 49 (C. 46:15-5). This ambiguity extends to the definition of the consideration given for the transfer of title (C. 46:15-5). Assembly Bill No. 1024 proposes amendments to the definition of "deed" and "consideration" for purposes of imposing a deed recording fee, specifically identifying those instruments which are and are not "deeds" and those elements which are and are not to be included in determining "consideration."

Section 2 of P. L. 1968, c. 49 (C. 46:15-6) provides that the prerequisites for recording a deed are the consideration therefor is recited therein and the acknowledgment or proof of the execution thereof. Assembly Bill No. 1024 amends this provision, providing that the consideration may be stated in either the deed or the acknowledgment or proof of execution.

There is also a question as to whether a "deed," in fact recorded, was entitled to recording when the consideration shall have been incorrectly stated and/or the correct recording fees shall not have been paid. The amendments proposed in Assembly Bill No. 1024 (amending C. 46:15-7) provide that the recorded deed, in fact recorded, was entitled to recording notwithstanding the incorrect statement of the consideration, or that the correct fee, if any, shall not have been paid. The person or persons required to pay the recording fee at the time of recording shall be liable to the county recording officer for the correct payment, and such liability shall not in any way impair the validity of the title conveyed or render the title unmarketable.

Assembly Bill No. 1024 further provides for amendments to section 6 of P. L. 1968, c. 49 (C. 46:15-10) which addresses itself to exemptions from deed recording fees. Additional exemptions are provided specific kinds of deeds presented for recording.

Assembly Bill No. 1024 would take effect January 1, 1975.

The fiscal impact of Assembly Bill No. 1024 is not immediately discernible. However, it is not expected to have a significant impact on revenue. State revenue would not be affected as recording fees are retained by county government.

In amending the bill the committee took the perspective that Assembly Bill No. 1024 represents a rewrite of chapter 49 of the laws of 1968. It seemed appropriate to consider all the provisions of that chapter, rather than react only to the changes and additions included in the bill.

The amendment in section 2, line 6 as proposed in the bill was found inappropriate. There may be cases where "consideration" expressed in a deed differs from "consideration" expressed in the acknowledgment. It is viewed to be no great hardship to require the consideration to be expressed in both documents. This ensures disclosure of property values and proper recording fee payment.

In deleting lines 13-17 in section 4, the committee finds no substantial justification for special treatment of real estate transactions by corporations.

Amending section 4, line 18, deleting "sheriff" take cognizance of the fact the property bought at sheriffs sales are often subject to a substantial first mortgage and it does not seem a hardship to impose a transfer fee based on that value.

The amendment to section 4, line 26, is a technical amendment. It would seem the date July 3, 1958 was a typographical error and should read July 3, 1968. This is the effective date of the original act and explicitly exempts deeds acknowledged or proved prior to the effective date from the transfer fee imposed by the act.

The new subsection "(n)" added to section 4 of the bill exempts a deed which has been previously recorded in another county and proper transfer fee paid.

FISCAL NOTE TO
ASSEMBLY, No. 1024

STATE OF NEW JERSEY

DATED: SEPTEMBER 27, 1974

Assembly Bill No. 1024 redefines the term "deed" for purposes of recording same with the county recording officer and includes leaseholds of 99 years or more. In addition, it includes exemptions from filing fees for certain transactions.

Enactment of this legislation would involve no loss to the State. The Department of the Treasury points out that under the Realty Transfer Fee Law, all fees obtained pursuant thereto are accounted for and remitted to the county treasurer for the use of the county. Precise information is not available upon which to base a reasonable estimate of the amount of loss which enactment of this legislation would cause to the respective counties. The department does feel, however, that the loss involved would not be substantial.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.