

ASSEMBLY, No. 117

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS

Eliminates supplemental realty transfer fee and one percent fee on transfers of certain commercial real estate and tax on sale of controlling interests in certain commercial real property.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 4/8/2016)

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1 AN ACT eliminating the supplemental realty transfer fee, the one
2 percent fee on the sale of certain commercial real property, and
3 the tax on the sale of controlling interests in certain commercial
4 real property, amending P.L.1968, c.49 and P.L.2004, c.66 and
5 repealing various sections of statutory law.

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. Section 1 of P.L.1968, c.49 (C.46:15-5) is amended to read
11 as follows:

12 1. As used in this act:

13 (a) "Deed" means a written instrument entitled to be recorded in
14 the office of a county recording officer which purports to convey or
15 transfer title to a freehold interest in any lands, tenements or other
16 realty in this State by way of grant or bargain and sale thereof from
17 the named grantor to the named grantee. A leasehold interest for 99
18 years or more or a proprietary lease of a cooperative unit and any
19 assignment of a proprietary lease of a cooperative unit, shall be
20 treated as a "freehold" for the purpose of this act. Instruments
21 providing for common driveways, for exchanges of easements or
22 rights-of-way, for revocable licenses to use, to adjust or to clear
23 defects of or clouds on title, to provide for utility service lines such
24 as drainage, sewerage, water, electric, telephone or other such
25 service lines, or to quitclaim possible outstanding interests, shall
26 not be "deeds" for the purposes of this act.

27 (b) The terms "county recording officer" and "office of the
28 county recording officer" mean the register of deeds and mortgages
29 in counties having such an officer and office, and the county clerk
30 and his office in the other counties.

31 (c) "Consideration" means in the case of any deed, the actual
32 amount of money and the monetary value of any other thing of
33 value constituting the entire compensation paid or to be paid for the
34 transfer of title to the lands, tenements or other realty, including the
35 remaining amount of any prior mortgage to which the transfer is
36 subject or which is to be assumed and agreed to be paid by the
37 grantee and any other lien or encumbrance thereon not paid,
38 satisfied or removed in connection with the transfer of title. The
39 amount of liens for real property taxes, water or sewerage charges
40 for the current or any subsequent year, or by way of added
41 assessment or other adjustment, as well as of other like liens or
42 encumbrances of a current and continuing nature ordinarily adjusted
43 between the parties according to the period of ownership shall be
44 excluded as an element in determining the consideration,
45 notwithstanding that such amount is to be paid by the grantee.

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

Matter underlined thus is new matter.

1 In the case of a leasehold interest for 99 years or more as defined
2 in subsection (a) of this section, the consideration shall be in the
3 amount of the assessed value of the property at the date of the
4 transaction for the purpose of levying local real property taxes
5 adjusted to reflect the true value in accordance with the county
6 percentage level established for the current year.

7 In the case of a proprietary lease of a cooperative unit or
8 assignment thereof as defined in subsection (a) of this section, the
9 consideration is the total price paid for the ownership interest held
10 in conjunction with a cooperative unit, including the pro rata
11 amount of any underlying mortgage or other obligation of the
12 cooperative.

13 (d) "Blind person" means a person whose vision in his better eye
14 with proper correction does not exceed 20/200 as measured by the
15 Snellen chart or a person who has a field defect in his better eye
16 with proper correction in which the peripheral field has contracted
17 to such an extent that the widest diameter of visual field subtends an
18 angular distance no greater than 20°.

19 (e) "Disabled person" means any resident of this State who is
20 permanently and totally disabled, unable to engage in gainful
21 employment, and receiving disability benefits or any other
22 compensation under any federal or State law.

23 (f) "Senior citizen" means any resident of this State of the age
24 of 62 years or over.

25 (g) "New construction" means any conveyance or transfer of
26 property upon which there is an entirely new improvement not
27 previously occupied or used for any purpose.

28 (h) "Low and moderate income housing" means any residential
29 premises, or part thereof, affordable according to federal
30 Department of Housing and Urban Development or other
31 recognized standards for home ownership and rental costs and
32 occupied or reserved for occupancy by households with a gross
33 income equal to 80% or less of the median gross household income
34 for households of the same size within the housing region in which
35 the housing is located, but shall include only those residential
36 premises subject to resale controls pursuant to contractual
37 guarantees.

38 (i) "Basic fee" means the fee established by paragraph (1) of
39 subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), which fee
40 shall consist of a State portion and a county portion as prescribed
41 under that paragraph.

42 (j) "Additional fee" means the fee established by paragraph (2)
43 of subsection a. of section 3 of P.L.1968, c.49.

44 (k) "General purpose fee" means the fee established by
45 paragraph (3) of subsection a. of section 3 of P.L.1968, c.49.

46 【(l) "Supplemental fee" means the fee established by subsection
47 a. of section 2 of P.L.2003, c.113 (C.46:15-7.1).】

48 (cf: P.L.2004, c.66, s.1)

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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
4 evidencing transfer of title to real property shall be recorded in the
5 office of any county recording officer unless it satisfies the
6 following requirements:

7 a. If the transfer is subject to any fee established under section
8 3 of P.L.1968, c.49 (C.46:15-7) **【**or section 2 of P.L.2003, c.113
9 (C.46:15-7.1)**】**, a statement of the true consideration for the transfer
10 shall be contained in the deed, the acknowledgment, the proof of the
11 execution, or an appended affidavit by one of the parties to the deed
12 or that party's legal representative.

13 b. If the transfer is exempt from any fee established under
14 section 3 of P.L.1968, c.49 (C.46:15-7) **【**or section 2 of P.L.2003,
15 c.113 (C.46:15-7.1)**】**, an affidavit stating the basis for the
16 exemption shall be appended to the deed.

17 c. If the transfer is of real property upon which there is new
18 construction, the words "NEW CONSTRUCTION" in upper case
19 lettering shall be printed clearly at the top of the first page of the
20 deed, and an affidavit by the grantor stating that the transfer is of
21 property upon which there is new construction shall be appended to
22 the deed.

23 (cf: P.L.2004, c.66, s.2)

24

25 3. Section 8 of P.L.2004, c.66 (C.46:15-7.2) is amended to read
26 as follows:

27 8. a. In addition to all other fees imposed under P.L.1968, c.49
28 (C.46:15-5 et seq.), there is imposed a fee upon the grantee of a
29 deed for the transfer of real property:

30 (1) that is classified pursuant to the requirements of
31 N.J.A.C.18:12-2.2 as Class 2 "residential";

32 (2) (a) that includes property classified pursuant to the
33 requirements of N.J.A.C.18:12-2.2 as Class 3A: "farm property
34 (regular)" but only if the property includes a building or structure
35 intended or suited for residential use, and

36 (b) any other real property, regardless of class, that is effectively
37 transferred to the same grantee in conjunction with the property
38 described in subparagraph (a) of this paragraph; or

39 (3) that is a cooperative unit as defined in section 3 of P.L.1987,
40 c.381 (C.46:8D-3)**【**; or

41 (4) that is classified pursuant to the requirements of
42 N.J.A.C.18:12-2.2 as Class 4A "commercial properties"**】**

43 that is transferred for consideration in excess of \$1,000,000 recited
44 in the deed, which fee shall be an amount equal to 1 percent of the
45 entire amount of such consideration, which fee shall be collected by
46 the county recording officer at the time the deed is offered for
47 recording and remitted to the State Treasurer not later than the 10th

1 day of the month following the month of collection for deposit into
2 the General Fund.

3 b. (1) The fee imposed by subsection a. of this section shall not
4 apply to a deed if the grantee of the deed for the transfer of real
5 property is an organization determined by the federal Internal
6 Revenue Service to be exempt from federal income taxation
7 pursuant to paragraph (3) of subsection (c) of section 501 of the
8 federal Internal Revenue Code of 1986, 26 U.S.C. s.501.

9 (2) **【**The fee imposed by subsection a. of this section shall not
10 apply to a deed if the transfer of real property is incidental to a
11 corporate merger or acquisition and the equalized assessed value of
12 the real property transferred is less than 20% of the total value of all
13 assets exchanged in the merger or acquisition. A grantee shall
14 claim this exemption from imposition of the fee at the time the deed
15 is offered for recording by filing with the county recording officer
16 such information, in addition to the affidavit of consideration filed
17 by one or more of the grantee parties named in the deed or by the
18 grantee's legal representative pursuant to subsection d. of this
19 section, as the Director of the Division of Taxation in the
20 Department of the Treasury may prescribe as to constitute a filing
21 of a protest of the assessment of the fee and by paying any other
22 recording fees not exempted pursuant to this paragraph. This
23 additional information shall be forwarded by the county recording
24 officer to the director along with the grantee's affidavit of
25 consideration, and shall be deemed to be and have the effect of a
26 protest of a finding by the director of a deficiency of payment of the
27 fee filed on the date on which the deed is recorded.**】** (Deleted by
28 amendment, P.L. , c.) (pending before the Legislature as this
29 bill)

30 c. The fee imposed by subsection a. of this section shall be
31 subject to the provisions of the State Uniform Tax Procedure Law,
32 R.S.54:48-1 et seq.; provided however, that notwithstanding the
33 provisions of subsection a. of R.S.54:49-14, a taxpayer may file a
34 claim under oath for refund at any time within 90 days after the
35 payment of any original fee and that subsection b. of R.S.54:49-14
36 shall not apply to any additional fee assessed.

37 d. (1) **【**If a transfer includes property classified pursuant to the
38 requirements of N.J.A.C.18:12-2.2 as Class 4 property of any type,
39 an affidavit of consideration shall be filed by one or more of the
40 grantor parties named in the deed or by the grantor's legal
41 representative declaring the consideration and shall be annexed to
42 and recorded with the deed as a prerequisite for the recording of the
43 deed. The filing of an affidavit of consideration pursuant to this
44 paragraph shall be in addition to the filing, if any, pursuant to
45 paragraph (2) of this subsection.**】** (Deleted by amendment, P.L. ,
46 c.) (pending before the Legislature as this bill)

47 (2) Whether or not the transfer is exempt, pursuant to subsection
48 b. of this section or any other provision of law, from payment of the

1 fee pursuant to subsection a. of this section, if a transfer includes
2 property otherwise subject to subsection a. of this section, then an
3 affidavit of consideration shall be filed by one or more of the
4 grantee parties named in the deed or by the grantee's legal
5 representative declaring the consideration and shall be annexed to
6 and recorded with the deed as a prerequisite for the recording of the
7 deed. **【The filing of an affidavit of consideration pursuant to this**
8 **paragraph shall be in addition to the filing, if any, pursuant to**
9 **paragraph (1) of this subsection.】**

10 (3) An affidavit of consideration filed pursuant to paragraph
11 **【(1) or paragraph】** (2) of this subsection shall clearly and entirely
12 state the consideration, the county and municipality in which the
13 property is situate, and the block and lot description of the real
14 property conveyed.

15 (4) One copy of each affidavit of consideration filed and
16 recorded with deeds pursuant to this subsection shall be forwarded
17 by the county recording officer to the Director of the Division of
18 Taxation in the Department of the Treasury on the tenth day of the
19 month following the month of the filing of the deed.

20 (cf: P.L.2006, c.33, s.1)

21

22 4. The following sections are repealed:
23 Section 2 of P.L.2003, c.113 (C.46:15-7.1);
24 Section 2 of P.L.2005, c.19 (C.46:15-7.3);
25 Section 2 of P.L.2006, c.33 (C.46:15-7.4); and
26 Section 3 of P.L.2006, c.33 (C.54:15C-1).

27

28 5. This act shall take effect immediately.

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30

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STATEMENT

32

33 This bill eliminates one of the four realty transfer fees, the
34 supplemental fee. In addition, it repeals the one percent assessment
35 on the selling price of commercial property transacted for more than
36 \$1 million, and the parallel tax on the sale of controlling interests in
37 certain commercial real property. In so doing, the bill lowers the
38 cost of property transactions and supports the real estate market.

39 The State capitalized on the recent real estate boom by creating
40 two new realty transfer fee layers in 2003 and 2004 and by
41 instituting a one percent assessment on residential properties selling
42 for more than \$1 million in 2004 and on commercial properties
43 selling for more than \$1 million in 2006. Now that the real estate
44 market finds itself in a downward spiral, these actions drag down
45 the market and dissuade property transactions.

46 The bill repeals the supplemental fee, which saves a seller of an
47 existing \$250,000 property \$300, the seller of a new \$250,000
48 property \$600, and a seller of an existing \$350,000 property \$580.

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1 The supplemental fee, created in 2003, applies to the seller of non-
2 exempt real property, provided that the seller is neither a senior citizen
3 nor blind or disabled. The supplemental fee is a graduated fee that
4 pertains to the full amount of the property transaction and has the
5 following structure: \$0.25 on each \$500 of consideration on the first
6 \$150,000 of the value recited in the deed of transfer; \$0.85 on each
7 \$500 of consideration between \$150,000 and \$200,000; and \$1.40 on
8 each \$500 of consideration over \$200,000. Of the revenue generated,
9 counties retain \$0.25 on every \$500 of consideration, of which a
10 portion shall be utilized under certain circumstances to finance public
11 health services under the Public Health Priority Funding Act. The
12 remaining revenue accrues to the State Extraordinary Aid Account to
13 fund property tax relief. In addition, the supplemental fee effectively
14 voided a partial exemption of \$1.00 per \$500 of consideration for the
15 first \$150,000 of the transaction price of property upon which there is
16 new construction.

17 The bill also repeals the “one percent fee” that buyers of Class
18 4A “commercial properties” transacted for more than \$1 million
19 pay and the parallel tax on the purchaser in a non-deed transfer of a
20 controlling interest in an entity that owns Class 4A “commercial
21 properties”. The buyer of a \$2 million commercial property thus
22 saves \$20,000. Class 4A “commercial properties” are any kind of
23 income-producing real property other than property classified as
24 vacant land, residential property, farm property, industrial
25 properties, and apartments.