

State of New Jersey

N J L R C

New Jersey Law Revision Commission

FINAL REPORT

Relating to

TITLE RECORDATION

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Introduction

The New Jersey Law Revision Commission approved a project to revise the statutes pertaining to the recording of title documents following the enactment of the federal Electronic Signatures in Global and National Commerce Act (E-sign), 15 U.S.C. §7001 *et seq.*, and New Jersey's enactment of the Uniform Electronic Transactions Act (UETA), L.2001, c.116. This legislation requires the acceptance of electronic alternatives to paper documents. While the use of electronic deeds and mortgages is not expected to occur in the near term, both E-sign and UETA encourage the development of systems that will accept electronic documents without disrupting the ongoing process of title recordation.

The New Jersey statutes related to the recording and indexing of title documents are contained in Title 46, chapters 15 to 26. Most of these statutes date from a period when recording meant the inclusion of documents in large well-bound books of good paper. The statutes initially were amended to allow recording offices to microfilm documents. Later amendments in 1997 permitted the use of any other method of recording that was "in conformance with rules, standards and procedures promulgated by the Division of Archives and Records Management in the Department of State and approved by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the 'Destruction of Public Records Law (1953),' P.L.1953, c.410 (C.47:3-15 *et seq.*)." *N.J.S.* 46:19-1. This system for approving new methods of recording documents has the advantage of not requiring any particular manner of recording so it will not become obsolete with changes of recording technology.

The increased use of new methods of recording that affect the way documents are recorded and processed, however, necessitates an increase in regulatory authority to assure uniformity.

The proposed statutory language contained in this Final Report (the revision) addresses the methods of recording and indexing and reflects the same approach as the existing law. References to separate sets of books or separate databases for different kinds of documents have been deleted, since with modern technology, an index serves the same function. Requirements for marginal notation of documents also have been deleted. Most recording offices do not retain paper documents; redefining marginal notation in that context raises conceptual problems, and computerized indexes serve the same purpose. In addition, the revision attempts to simplify the statutes, combining overlapping provisions and deleting unnecessary ones. The current Chapter 16, for example, begins with a section that characterizes and lists the documents that may be recorded. Other statutory sections that address the recording of particular kinds of documents follow Chapter 16. In the revision, these sections have been combined into one section that lists documents entitled to recording, although in an exercise of caution, the revision retains specifically listed documents that arguably might fall within more general categories.

The general prerequisites for recording found in the current statutes are the result of the Commission's work in 1989. That effort is generally considered to have been successful in simplifying the process of determining whether a document may be recorded. The scope of the Commission's 1989 report, however, was narrow. Exceptions and additions to the recording requirements found in other sections of the statute were left uncompiled. The current revision assembles all of those sections, combining them where appropriate. In addition, while the 1989 report standardized the requirements for the most commonly recorded documents, issues regarding unusual documents were not addressed. For example, the question of how to meet the recording requirements if a document is not a conveyance, and is not prepared by the person who seeks to record it, had not been previously answered by the statute. The practice of requiring an affidavit accompanying such a document is now reflected in the revision.

The revision also includes language allowing format requirements for documents. The current statutes contain some limitations on the size of paper documents and on the quality of paper used. The problem of formatting becomes more acute if electronic equivalents to paper documents are to be accepted. Format requirements must be standardized throughout the State so that recording offices can be ready to accept electronic documents from a variety of sources, and so that persons can know and comply with them regardless of the office in which they are being recorded. It must be acknowledged, however, that conventional paper documents will continue to be recorded for the foreseeable future. This revision is a first step toward balancing the need to use technological advances where appropriate, with the recognition that it is not appropriate to mandate an immediate switch to the latest technological development.

CHAPTER 1 -- RECORDING

1-1. Definitions: document and recorded

For the purpose of this chapter:

a. "Document" includes both:

- (1) Paper documents, and
- (2) Electronic documents, documents created, communicated or stored by electronic means;

b. A document is "recorded" if:

- (1) The document or its image has been placed in the permanent records of the recording office, and
- (2) The document has been indexed as provided by this chapter.

Source: New.

COMMENT

Current statutes do not state directly what is meant by "recording." The concept is most important in regard to the legal effect of a recorded document. Cases are not consistent as to when a document is recorded.

1-2. Documents that may be recorded

Documents affecting real estate entitled to recording are:

- a. Deeds or other conveyances, releases, or declarations of trust of any interest;
- b. Powers of attorney for conveyance or release of any interest;
- c. Leases, or memoranda of leases, for life or a term not less than two years;
- d. Mortgages or other conveyances in the nature of a mortgage;
- e. Liens or encumbrances and releases of liens or encumbrances on any interest;
- f. Assignments, discharges, cancellations or releases;
- g. Options and rights of first refusal;
- h. Certified copies of judgments, decrees and orders of courts of record;
- i. Reports of condemnation commissioners filed with the Superior Court;
- j. Notices of Federal tax liens, liens arising from the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub. L. 96-510 (42 *U.S.C.* § 9601 et seq.), and other federal liens, which any Act of Congress or regulation adopted pursuant to it provides for filing of notice in the recording office designated by a state, and certificates discharging such liens;
- k. Restrictions affecting the real estate or its use;

- l. Notices of settlement as provided by this chapter;
- m. Maps as provided by this chapter;
- n. Condominium master deeds and unit deeds as defined by law;
- o. Cooperative master declarations and proprietary leases as defined by law;
- p. Any other document that affects title to any interest in real estate in any way or contains any agreement in relation to real estate, or grants any right or interest in real estate or grants any lien on real estate; and
- q. Any other document relating to real estate that is directed to be recorded by any statute or court order.

Source: 46:16-1.

COMMENT

This section is derived from the parts of 46:16-1 that relate to real estate. The section makes no substantive change in the kinds of documents that may be recorded. The general rule that any document that affects title to real estate and meets certain requirements may be recorded is stated both in 46:16-1 and 46:16-2. Other provisions in Chapter 16 provide for the recording of particular kinds of documents.

The parts of 46:16-1 that provide for recording of instruments concerning personal property have been deleted as unnecessary. Documents of title to the few kinds of personalty that are recorded are not recorded with the county recording offices. Liens against personalty are governed, in general, by Revised Article 9 of the Uniform Commercial Code. *N.J.S.* 12A:9-101 et seq. Liens against personalty, other than personalty that is or will be fixtures, are recorded by filing a UCC form with the division of Commercial Recording. Liens against fixtures are recorded by filing the required document (usually a fixture filing) with the county recording officer, but that recording is separate from the recording governed by this Chapter. Fixtures are part of the real estate, may be encumbered by mortgages, liens, and the like filed in the real estate records, and may be affected by any kind of encumbrance on the real estate generally. Recording these encumbrances is provided for by subsections (d) and (e).

Subsections (h) and (i) are derived from 46:16-1.1. Subsection (h) also includes the subject matter of 46:16-4.1 and 46:16-4.3, decrees and orders of the United States Bankruptcy Courts. Subsection (l) is based on 46:16A-1. It incorporates the chapter allowing the recording of settlement statements into the general recording provisions. The general provisions, subsections (p) and (q), are derived from 46:16-2.

1-3. Prerequisites for recording

a. A document satisfies the prerequisites for recording if it appears from the document or the image of it delivered to the recording office that:

(1) The document is in English or accompanied by a translation into English;

(2) The document bears a signature;

(3) The document (including a corrected document submitted for re-recording) is acknowledged or proved as provided by this title;

(4) The names are printed beneath all signatures that appear on the document;

(5) If the document is a deed conveying title to real estate, it (a) fulfills the requirements of P.L.1968, c.49, s.2 (C.46:15-6), and (b) includes a reference to the lot

and block number of the real estate conveyed as designated on the tax map of the municipality at the time of the conveyance or the account number of the real estate. If the real estate has been subdivided, the reference shall be preceded by the words "part of." If no lot and block or account number has been assigned to the real estate, the deed shall state that fact, and

(6) if the document is an assignment, release or satisfaction of a mortgage or an agreement respecting a mortgage, it states the book and page number or the document identifying number of the mortgage to which it relates if the mortgage has been given such a number.

b. A document, whether made by an individual, corporation or other entity, is not required to be executed under seal, or to contain words referring to execution under seal.

Source: 46:15-1.1; 46:18-1.

COMMENT

This section is substantially similar to 46:15-1.1, which was based on the Commission's 1989 report. The opening language has been changed to reflect the section's new context. That language establishes that the original document need not be submitted to the recording office. The recording office even now retains only an image of the document; under this provision; the recording office may never see the original. That rule is necessary to facilitate the electronic filing of documents. Subsection (a)(4) of the source has been reworded to allow for electronic documents. In the source, the subsection required that the names of signatories "appear typed, printed or stamped beneath the signatures" suggesting a requirement of a paper document. The new phrase, "printed beneath the signatures" is intended to indicate only that the name of the signatory appear in readable form. The provision of the source, requiring the payment of fees, has been deleted here because it appears elsewhere.

The section makes two small substantive changes in the prerequisites for recording. First, the requirement that the name of the preparer of the document appear on the first page has been deleted. The name of the preparer was included to provide a person for the recording officer to call if questions arose about the document. In practice, the burden of the requirement exceeded its usefulness. The person who presents the document for recording provides a sufficient source for answers concerning it. Second, the section modifies the requirement as to a book and page reference on assignments, releases and satisfactions of mortgages. Often, a mortgage is assigned before it is given a book and page reference. In that case, the reference is not required under this section.

This section applies only to documents that are recorded with the county recording officer. Other documents, such as fixture filings under the Uniform Commercial Code, that are filed rather than recorded are governed by separate statutes with different requirements,

1-4. Exceptions to prerequisites to recording

Notwithstanding the prerequisites to recording in section 1-3, the following may be recorded:

a. Documents that establish or evidence a trust under which a fiduciary has acquired real estate if accompanied by an affidavit of the fiduciary that the document is an original trust document;

b. Ancient documents that cannot be acknowledged or proved because of the death or other disability of the grantors and subscribing witnesses, accompanied by an affidavit made by a person claiming to derive title from the document stating that the affiant truly believes that quiet, continuous, adverse and undisturbed possession of the

real estate has been enjoyed by virtue of the document for the period applicable for adverse possession;

c. Documents other than those listed in section 1-2 that by their nature cannot be acknowledged or proved, accompanied by an affidavit made by a person claiming to derive title to the real estate stating that the document is genuine and how the document relates to title to the real estate;

d. Notices of Federal tax liens, liens arising from the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 *U.S.C.* § 9601 et seq.), and other federal liens, which any Act of Congress or regulation adopted pursuant to it provides for filing of notice in the recording office designated by a state, and certificates discharging such liens;

e. Maps as provided by this act;

f. Notices of settlement executed by an attorney at law or authorized representative of a party in accordance with this act;

g. Certified copies of:

(1) Judgments, decrees, or orders of any court of record and petitions filed in a United States Bankruptcy Court;

(2) Government issued documents affecting title to real estate;

(3) Documents recorded or filed in any public recording office in the United States; and

h. Any other document that is permitted by another statute to be recorded or filed without acknowledgement.

Source: 46:16-1.1; 46:16-4.1; 46:16-4.2; 46:16-4.3; 46:16-5.1; 46:16-7; 46:16-9; 46:16-9; 46:16-13; 46:16-14; 46:16-15; 46:16-17.

COMMENT

This section assembles the exceptions to the ordinary prerequisites for recording and does not make any substantive change in those exceptions. Subsection (g) provides for the kinds of public documents that may not comply with every requirement. This subsection continues the substance of 46:16-1.1, 46:16-4.1, 46:16-4.2, 46:16-4.3, and 46:16-14. Although current law does not provide for recording of public documents, subsection (g)(2) reflects current practice. Subsection (g)(3) is a generalization of 46:16-9 and 46:16-10. Subsection (a) contains the substance of 46:16-5.1. Subsection (b) contains the substance of 46:16-7. Subsection (c) has no direct source but enacts current practice. Subsection (d) contains the substance of 46:16-13, 46:16-15 and 46:16-17. Subsection (f) is identical in substance to 46:16A-2.

1-5. Form of documents and maps; cover sheet or electronic synopsis

a. To be accepted for recording, a document or its image shall be either:

(1) Legibly printed on paper no larger than 8½ inches by 14 inches; or

(2) In compliance with regulations on the form of documents promulgated by the Division of Archives and Records Management in the Department of State.

b. A document or its image accepted for recording may be accompanied by a cover sheet or an electronic synopsis separate from the document or integrated with the document. The Division of Archives and Records Management in the Department of State shall establish forms for cover sheets and formats for electronic synopses. The form for a separate cover sheet shall be available at every recording office and on a web site maintained by the Division of Archives and Records Management. The cover sheet or electronic synopsis shall include:

- (1) The nature of the document;
- (2) The date of the document;
- (3) The names of the parties to the document and any other names by which the document is to be indexed;
- (4) If the document is a deed conveying title to real estate:
 - (A) the lot and block number or other real property tax designation of the real estate conveyed or a statement that the information is not available; and
 - (B) the consideration for the conveyance; and
- (5) If the document is an assignment, release or satisfaction of a mortgage or an agreement respecting a mortgage, it states the book and page number or the document identifying number of the mortgage to which it relates if the mortgage has been given such a number.

c. If the person submitting the document for recording does not include a cover sheet or electronic synopsis, the recording office shall charge an additional fee of ten dollars for the additional cost of indexing.

d. To be accepted for recording, a map shall be clearly and legibly drawn in black ink on translucent tracing cloth, translucent mylars at least 4 mils thick or its equivalent, of good quality, with signatures in ink, or as an equivalent reproduction on photographic fixed line mylar 4 mils thick with signatures in black ink or its equivalent and accompanied by a cloth print or photographic fixed line mylar 4 mils thick duplicate; and one of six standard sizes: 8 1/2" x 13", 30" x 42", 24" x 36", 11" x 17", 18" x 24" or 15" x 21" as measured from cutting edges. If one sheet is not of sufficient size to contain the entire territory, the map may be divided into sections to be shown on separate sheets of equal sizes, with references on each sheet to the adjoining sheets.

e. The regulations of the Division of Archives and Records Management specifying the form of documents shall comply with rules, standards and procedures authorized by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the "Destruction of Public Records Law (1953)," P.L.1953, c.410 (C.47:3-15 et seq.).

Source: New.

COMMENT

Currently, the only form restriction in the statutes is 46:19-4. It requires: "where photographic methods are used, all instruments presented for recording shall be typed, written or printed on paper not to exceed 8 1/2" x 14" of sufficient quality to avoid bleed-through, and shall be legible and clear to produce a good, clear, legible photo recording." However, as a practical matter, that form restriction is generally

applicable, since every recording office uses some kind of photographic method. Of course, even before recording offices used photographic methods, there were restrictions that did not need to be stated: that every document must be in writing, on paper and of a size that allowed its binding into the record books. The current form restriction is continued as a "safe harbor" provision in subsection (a)(1).

While the section preserves unchanged the ability to file a document on paper, it allows for acceptance of electronic documents. If recording offices are to accept documents in electronic form, other restrictions will be necessary. To avoid confusion that would result from 21 separate sets of requirements for electronic recording, authority is given to the Division of Archives and Records Management to establish statewide form requirements. Despite any new systems of electronic recording that are allowed, the section provides that documents still may be recorded on paper.

The section has been expanded to include the form requirements for maps. Currently, these form restrictions are in 46:23-9.11 along with content requirements. The current form restrictions are continued unchanged as a "safe harbor" provision in subsection (d).

1-6. Duty to record; recording officer's books, methods

a. The county recording officer shall record any document or map affecting the title to real estate located in the county, delivered for recording, provided the document:

(1) Is in the form required by this act,

(2) Appears to comply with requirements for recording specified in this act, and

(3) Is accompanied by payment of any required fee and any state tax.

b. Every document or map shall be recorded and indexed not later than two days after its receipt.

c. A document or map that is rejected shall be returned to the person who delivered it for recording with a statement of all grounds for its rejection within two days after its receipt.

d. When a document is recorded, a book and page number or other permanent, unique document identifying number shall be assigned to it.

e. Recording shall be done by a method that:

(1) Produces a clear, accurate and permanent image of a document,

(2) Allows the document to be found by use of the indexes maintained, and

(3) Is authorized by R.S.47:1-5 and is in conformance with rules, standards and procedures promulgated by the Division of Archives and Records Management in the Department of State and approved by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the "Destruction of Public Records Law (1953)," P.L.1953, c.410 (C.47:3-15 et seq.).

f. For documents recorded before the effective date of this act, the recording office shall:

(1) retain the documents or clear, accurate and permanent images of the documents, and

(2) maintain indexes that allow the documents to be found.

g. The Division of Archives and Records Management and the State Records Committee shall consult with the Office of Telecommunications and Information Systems in the Department of the Treasury in the development of technical standards for record keeping. Despite this section, the State Records Committee may adopt rules and regulations to authorize pilot programs for various individual counties in order to evaluate alternative technologies for the preservation of records.

Source: 46:19-1; 46:19-3; 46:8B-1, et seq.; 46:8D-4.

COMMENT

This section contains the portions of 46:19-1 that relate to methods of recording generally. The parts of the source section that refer specifically to “well-bound books” and to the systems of books of documents have been deleted as unnecessary. Subsection (b) reflects the settlement of litigation between the county recording officers and the New Jersey Land Title Association. Current statutes assume that every document will be recorded and indexed on the day received. All parties to the litigation agreed that that time requirement was impractical. Subsection (e) is derived from 46:19-3, but has been generalized to allow any kind of recording method that allows the search and use of the documents. As such, it provides for an identifying number rather than a book and page, and sets out general requirements for recording standards.

The section allows for new methods of recording but preserves the practical effect of the present system: every document is required to be recorded and indexed so that the whole text of the document and appended notations may be found by the use of standard indexes.

The section adds time limits for recording or rejection of a document. A time limit for recording is now in effect by court orders against recording officers. A time limit for rejection is fairly implied by those court orders.

To the extent that the Cooperative Recording Act, the Condominium Act or other statutes require the county recording officer to maintain separate books and indexes, this act supersedes them and allows a single set of books and indexes for newly-recorded documents. Of course, old, separate indexes will need to be maintained for previously-recorded documents unless those indexes are replaced or combined.

1-7. Receipts for documents presented for record

Upon request, the county recording officer shall:

- a. Furnish a receipt for the document and fees paid; and
- b. Return a copy of the document with the date and time it was received for recording, the fee paid, and the book and page number or other permanent, unique document identifying number assigned to the document. If the copy returned is a paper document, the information shall be endorsed on the document.

Source: 46:19-5.

COMMENT

This section replaces sections 46:19-4 and 46:19-5, which provide that the recording officer give receipts for documents lodged for record and, on request, return a copy of the document with recording information endorsed on it. The reference to a receipt for the fee is new but reflects current practice.

The section allows an identifying number other than the traditional book and page to be used.

1-8. Indexes; entries

a. The county recording officer shall maintain one index of all recorded documents and may make other separate, classified, analytical or combination indexes.

b. A deed or other conveyance shall be indexed by the names of its grantors and grantees, and also shall be indexed by the name of:

(1) The testator or intestate if a deed or other conveyance is made by executors or administrators;

(2) The person granting the power of attorney if a deed is made under power of attorney;

(3) The defendants in the execution for which the sale was made if a deed is made by a sheriff; and

(4) The person whose property has been conveyed if a deed is made by a person appointed to convey property by a court.

c. A mortgage shall be indexed by the names of the mortgagors and mortgagees.

d. An assignment, extension, postponement, modification or discharge of a mortgage shall be indexed by the names of the mortgagors, assignors and assignees.

e. A trust instrument shall be indexed by the names of the parties to the instrument and in the names of beneficiaries if they appear.

f. Any other document shall be indexed by the names of the parties to it.

g. A document shall also be indexed by additional names requested by the person submitting the document for recording.

h. A document shall be indexed from the information supplied on its cover sheet or electronic synopsis if one is submitted. A recording officer shall not be liable for differences between the cover sheet or electronic synopsis and the document.

Source: 46:20-1; 46:20-3; 46:20-5; 46:19-2.

COMMENT

This section, for the most part, simplifies section 46:20-1. Subsection (b) is derived from 46:20-3. The provision in subsection (a) allowing other indexes is derived from 46:20-5. Subsection (f) has been added to provide for indexing of unusual documents in accord with common practice.

1-9. Sequence of recording

The county recording officer shall record and index documents in the order received. If two documents affecting the same property are submitted for recording by the same person and are received at the same time, the county recording officer shall record and index the documents in the order requested by the person who submitted them.

Source: 46:20-2.

COMMENT

This section is new in allowing a person who submits a group of documents to determine the order in which they are recorded. Otherwise, though simplified, it is similar to 46:20-2 which provides for the sequence of index entries and to the second paragraph of 46:19-3 which provides for the sequence of recording.

1-10. Documents filed as provided by other statutes

When a statute outside of this chapter provides that a document relating to real estate be filed rather than recorded:

- a. Requirements for the form and content of the document shall be those established by the statute outside of this chapter;
- b. The document shall be recorded with all other documents affecting real estate using the method established by section 1-6(e) of this chapter; and
- c. The document shall be indexed with all other documents affecting real estate as provided by section 1-8 of this chapter.

COMMENT

This section is new. Under current law when a document is filed rather than recorded, the original rather than an image of the document is retained in the recording officer's records and separate files and indexes are made for each kind of document. The distinction between filing and recording serves no modern purpose. This section provides that documents that are now filed be recorded and indexed with recorded documents using the same methods. This change will not only simplify the recording office processes, it will allow a single search to disclose all county-filed or county-recorded documents that affect real estate.

1-11. Notices of settlement

a. A party to a settlement which will convey an interest in real estate, a mortgage on real estate, or both, or the authorized representative of a party or a licensed title insurance producer, may execute a document titled "notice of settlement" and record it in the county recording office of the county in which the real estate is located. The county recording officer may charge a fee not to exceed the fee charged for the recording of notices of Federal tax liens.

b. The notice of settlement shall be signed by a party to the settlement or a party's authorized representative and shall state the names of the parties to the settlement and a description of the real estate. If the notice is executed by anyone other than an attorney at law of this State, the execution shall be acknowledged or proved in the manner of acknowledgement or proof of deeds.

c. A notice of settlement shall be in substantially the following form:

Name

Address

(Seller or Mortgagor)

NOTICE OF SETTLEMENT

Name

Address

(Purchaser or Mortgagee)

NOTICE is hereby given of a(contract, agreement or mortgage commitment) between the parties.

THE lands to be affected are described as follows:

Premises in the of, (municipality) County of and State of New Jersey, commonly known as (street address) and more particularly described as follows:

(legal description)

Name of party or authorized representative

Address

(acknowledgement)

d. A notice of settlement shall be effective for 60 days from the date of recording, unless it is terminated by the recording of a “discharge of notice of settlement.” The effective period of a notice of settlement may be extended for one period of 60 days by recording an additional notice of settlement before the expiration or discharge of the notice of settlement.

e. A discharge of notice of settlement shall be substantially in the form prescribed for a notice of settlement and shall be recorded by the party or authorized representative who recorded the notice of settlement. The recording officer shall record and index each discharge in the same fashion as a notice of settlement.

f. Any person who claims an interest in or lien on the real estate described in the notice of settlement arising during the time that a notice of settlement is effective shall be deemed to have acquired the interest or lien with knowledge of the anticipated settlement and shall be subject to the estate or interest created by the deed or mortgage described in the notice of settlement provided the deed or mortgage is recorded within the time that the notice is effective.

Source: 46:16A-1through 46:16A-5.

COMMENT

This section is substantially similar to 46:16A-1 through -5. Subsection (a) has been reworded and clarified to indicate that a single notice of settlement can be recorded for both a conveyance and mortgage. Most sales of real property involve both. The form in subsection (c) has been simplified slightly. Subsection (d) clarifies the method for extending a notice of settlement and limits the total time that the notice and extension may be effective to 120 days. The section has been reworded to reflect its intended effect more accurately.

1-12. Effect of recording

a. Any recorded document affecting the title to real estate is, from the time of recording, notice to all subsequent purchasers, mortgagees and judgment creditors of the execution of the document recorded and its contents.

b. A claim under a recorded document affecting the title to real estate shall not be subject to the effect of a document that was later recorded or was not recorded unless the claimant was on notice of the later recorded or unrecorded document.

c. A deed or other conveyance of an interest in real estate shall be of no effect against subsequent judgment creditors without notice, and against subsequent bona fide purchasers and mortgagees for valuable consideration without notice and whose conveyance or mortgage is recorded, unless that conveyance is evidenced by a document that is first recorded.

Source: 46:21-1; 46:22-1.

COMMENT

Subsection (a) is closely based on its 46:21-1, but one important substantive change has been made. While the source section gives notice effect to any document “lodged for record with the county recording officer,” subsection (a) limits that effect to documents that are actually recorded. As provided by section 1-2, a document is not recorded unless it has been indexed. It is assumed that a person will protect the position between the time a document is executed and the time it is recorded with an earlier recording of a notice of settlement.

There is one other difference between subsection (a) and its source. The source section does not give the effects of recording to documents that have not been acknowledged or proved. Another section, 46:21-2, limits those effects to any document that has been on record for six years despite defects in acknowledgment. This distinction serves no modern purpose. If a document has been actually recorded, a prospective purchaser should have notice of it.

Subsection (b) contains the rule that is implied by subsection (a) and its source, 46:21-1. The first recorded document takes precedence over later recorded documents unless the claimant under the first recorded document has notice of the documents that are recorded later at the time that he gave value and acquired his interest. *See e.g., Lieberman v. Arzee Mid-State Supply*, 306 N.J. Super. 335, 341 (App. Div. 1997). To the extent that this rule is stated explicitly in the statutes, it is part of 46:22-1. It has been separated from subsection (c), the provision directly derived from 46:22-1, for clarity. Otherwise, Subsection (c) is closely based on 46:22-1. The only substantive changes are those noted in the comment to the previous section.

Subsection (c) is based on 46:22-1. It embodies one of the basic principles underlying the recording statutes, that an unrecorded document is ineffective against later claimants who have no notice of it. *See, e.g. Cox v. RKA Corp.*, 164 N.J. 487, 496 (2000). However, case law is not consistent on this point. One reported case, *Michalski v. U.S.*, 49 N.J. Super. 104 (Ch. Div. 1958), held that a conveyance, which was unwritten and so could not be recorded, is effective against a creditor without notice. *See also, In re L.D. Patella Construction Co.*, 114 B.R. 53, 58-59 (Bankr. D.N.J. 1990). Subsection (c) reverses that rule. If a party makes a conveyance in a form that does not permit it to be recorded, then a subsequent bona fide purchaser, mortgagee or creditor who could not learn of the conveyance from the land records is not bound by the conveyance absent notice of it at the time he acquired the interest for value or docketed the judgment. This principle is in accord with the statute of frauds, 25:1-11, which makes unwritten conveyances enforceable as conveyances only in some cases where possession is transferred. Transfer of possession frequently is notice to prospective purchasers or mortgagees.

CHAPTER 2 -- FEES

2-1. Realty transfer fees

In addition to the recording fees imposed by section 2 of P.L.1965, c.123 (C.22A:4-4.1), a fee is imposed upon grantors, at the rate of \$3.50 for each \$1000 of consideration or fractional part thereof recited in the deed; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), the fee imposed shall be \$1.00 for each \$1000 of consideration or fractional part thereof recited in the deed, which fee shall be collected by the county recording officer at the time the deed is offered for recording. For each \$1000 of consideration or fractional part thereof recited in the deed in excess of \$150,000 an additional fee is imposed of \$1.50; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), no such fee shall be imposed.

Every deed subject to the additional fee required by this act, which is in fact recorded, shall be conclusively deemed to have been entitled to recording, notwithstanding that the amount of the consideration shall have been incorrectly stated, or that the correct amount of such additional fee, if any, shall not have been paid, and no such defect shall in any way affect or impair the validity of the title conveyed or render the same unmarketable; but the person or persons required to pay the additional fee at the time of recording shall be and remain liable to the county recording officer for the payment of the proper amount thereof.

Source: 46:15-7.

COMMENT

This section is identical to its source except that the fees have been expressed per \$1000 of value.

2-2. County, State sharing of fee proceeds

The proceeds of the fees collected by the county recording officer, as authorized by this act, shall be accounted for and remitted to the county treasurer. An amount equal to 28.6% of the proceeds from the first \$3.50 for each \$1000 of consideration or fractional part thereof recited in the deed so collected shall be retained by the county treasurer for the use of the county and the balance shall be paid to the State Treasurer for the use of the State; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), 100% of the proceeds from the first \$1.00 for each \$1000 of consideration or fractional part thereof recited in the deed so collected shall be retained by the county treasurer for the use of the county and no amount shall be paid to the State Treasurer for the use of the State. Payments shall be made to the State Treasurer on the tenth day of each month following the month of collection. Amounts, not in excess of \$25,000,000, paid during the State fiscal year to the State Treasurer from the payment of fees collected by the county recording officer other than the additional fee of \$1.50 for each \$1000 of

consideration or fractional part thereof recited in the deed in excess of \$150,000 shall be credited to the "Shore Protection Fund" created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), in the manner established under that section. All amounts paid to the State Treasurer in payment of the additional fee of \$1.50 for each \$1000 of consideration or fractional part thereof recited in the deed in excess of \$150,000 shall be credited to the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in the manner established under section 20 thereof (C.52:27D-320).

Source: 46:15-8.

COMMENT

This section is identical to its source except that the fees have been expressed per \$1000 of value.

2-3. Falsifying consideration; penalty

Any person who knowingly falsifies the consideration recited in a deed or in the proof or acknowledgment of the execution of a deed or in an affidavit annexed to a deed declaring the consideration therefor or a declaration in an affidavit that a transfer is exempt from recording fee is guilty of a crime of the fourth degree.

Source: 46:15-9.

COMMENT

This section is identical to its source.

2-4. Exemptions from realty transfer fee

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

- a. For a consideration of less than \$100;
- b. By or to the United States of America, this State, or any instrumentality, agency, or subdivision thereof;
- c. Solely in order to provide or release security for a debt or obligation;
- d. Which confirms the estate or interest previously acquired by the grantee by operation of law or which corrects a deed previously recorded;
- e. On a sale for delinquent taxes or assessments;
- f. On partition;
- g. By a receiver, trustee in bankruptcy or liquidation, or assignee for the benefit of creditors;
- h. Eligible to be recorded as an "ancient deed" pursuant to R.S.46:16-7;
- i. Acknowledged or proved on or before July 3, 1968;
- j. Between husband and wife, or parent and child;
- k. Conveying a cemetery lot or plot;
- l. In specific performance of a final judgment;

m. Releasing a right of reversion;

n. Previously recorded in another county and full realty transfer fee paid or accounted for, as evidenced by written instrument, attested by the grantee and acknowledged by the county recording officer of the county of such prior recording, specifying the county, book, page, date of prior recording, and amount of realty transfer fee previously paid;

o. By an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State;

p. Recorded within 90 days following the entry of a divorce decree which dissolves the marriage between the grantor and grantee; and

q. Issued by a cooperative corporation, as part of a conversion of all of the assets of the cooperative corporation into a condominium, to a shareholder upon the surrender by the shareholder of all of the shareholder's stock in the cooperative corporation and the proprietary lease entitling the shareholder to exclusive occupancy of a portion of the property owned by the corporation.

Source: 46:15-10.

COMMENT

This section is identical to its source except for a clarification in subsection (d) which clarifies current practice. NJAC 18:16-5.11.

2-5. Partial fee exemptions; allocation of proceeds

a. The following transfers of title to real property shall be exempt from payment of \$2.50 per \$1000 of consideration or fractional part thereof of the fee imposed upon grantors by this act:

(1) The sale of any one- or two-family residential premises which are owned and occupied by a senior citizen, blind person, or disabled person who is the seller in such transaction; provided, however, that except in the instance of a husband and wife no exemption shall be allowed if the property being sold is jointly owned and one or more of the owners is not a senior citizen, blind person, or disabled person.

(2) The sale of low and moderate income housing.

b. Transfers of title to real property upon which there is new construction shall be exempt from payment of \$2.00 for each \$1000 or fractional part thereof not in excess of \$150,000.

c. The director shall promulgate rules, regulations and forms of certification necessary to carry out the provisions of this section. No transfer shall be eligible for more than one exemption under this section. All fees collected on transfers subject to exemption under subsection a. of this section shall be remitted to the county treasurer for the use of the county. An amount equal to 66 2/3% of the proceeds from the fee imposed upon the consideration not in excess of \$150,000 for transfers of real property upon which there is new construction, and an amount equal to 20% of the proceeds of the \$5.00 fee imposed upon each \$1000 of consideration or fractional part thereof in excess

of \$150,000 for transfers of real property upon which there is new construction, shall be remitted to the county treasurer for the use of the county.

d. The balance of the fees collected on transfers subject to exemption under subsection b. of this section shall be remitted to the State Treasurer and shall be credited to the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), to be spent in the manner established under section 20 thereof (C.52:27D-320).

e. Subsections a. through d. of this section shall be without effect on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2).

Source: 46:15-10.1.

COMMENT

This section is identical to its source except that the fees have been expressed per \$1000 of value.

2-6. Required provisions of annual appropriations act; funding duty of county

a. The annual appropriations act for each State fiscal year shall, without other conditions, limitations or restrictions on the following:

(1) Credit amounts paid to the State Treasurer, if any, in payment of fees collected pursuant to section 3 of P.L.1968, c.49 (C.46:15-7), to the "Shore Protection Fund" created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), and the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), pursuant to the requirements of section 4 of P.L.1968, c.49 (C.46:15-8);

(2) Appropriate the balance of the "Shore Protection Fund" created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), for the purposes of that fund; and

(3) Appropriate the balance of the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), for the purposes of that fund.

b. If the requirements of subsection a. of this section are not met on the effective date of an annual appropriations act for the State fiscal year, or if an amendment or supplement to an annual appropriations act for the State fiscal year should violate any of the requirements of subsection a. of this section, the Director of the Division of Budget and Accounting in the Department of the Treasury shall, not later than five days after the enactment of the annual appropriations act, or an amendment or supplement thereto, that violates any of the requirements of subsection a. of this section, certify to the Director of the Division of Taxation that the requirements of subsection a. of this section have not been met.

c. The county government shall provide sufficient funds to the office of the County Clerk or Register of Deeds to allow that office to record and index documents within the time limits provided by law. If the county does not provide sufficient funds to

allow the County Clerk or Register of Deeds to comply with this chapter, the County Clerk or Register of Deeds may make application to the Assignment Judge of the Superior Court in the county for an order directing the appropriation of additional funds.

Source: 46:15-10.2.

COMMENT

With the exception of the last sentence of subsection (c), this section is identical to its source. The new sentence in subsection (c) is designed to assure that recording officers are allocated sufficient funds to allow them to comply with the time limit for recording documents. The remedy chosen is analogous to that used by prosecutors' offices to secure sufficient funding.

2-7. Rules and regulations

a. The Director of the Division of Taxation of the Department of the Treasury may prescribe such rules and regulations as the director may deem necessary to carry out the purposes of this act.

b. Any person aggrieved by any action of the Director of the Division of Taxation or county recording officer under P.L.1968, c.49 (C.46:15-5 et seq.), may appeal therefrom to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

c. The Director of the Division of Taxation shall, no later than five days after certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), that the requirements of subsection a. of section 2 of P.L.1992, c.148 (C.46:15-10.2), have not been met or have been violated by an amendment or supplement to the annual appropriations act, notify the county recording officers and county treasurers of the several counties of such certification.

Source: 46:15-11.

COMMENT

This section is identical to its source.

2-8. Payment of recording fees

a. A recording office shall accept payment for recording fees in any form approved by the Department of the Treasury.

b. If a document is submitted for recording with payment of an amount exceeding the recording fee, the recording officer shall record the document and refund the surplus amount after the payment is collected.

c. A recording office may allow a person to establish an account with the office to be used for recording fees. When a person submits a document for recording, the recording officer shall deduct the amount of fees due from the account and notify the person of the amount deducted and the amount remaining in the account. If a person who has established an account for recording fees submits a document for recording with an incorrect fee, the recording office may record the document and credit any overpayment to the account or take any underpayment from the account.

Source: New.

COMMENT

Subsection (a) allows the Department of the Treasury to regulate the forms of payment. Its purpose is to allow the use of credit cards if certain technical problems can be solved. Subsection (b) is intended to prevent the return of documents when the person who submits the document includes an incorrect payment that exceeds the recording fees. To avoid having the Clerk's office required to cash checks that might not be honored the subsection provides that a refund is not made until a payment is collected. Subsection (c) allows persons who record documents frequently to establish an account to cover fees rather than to pay each fee separately. Both provisions are intended to prevent the return of documents for mistakes as to the amount of fee due. The complications of the current fee structure result in documents being submitted with incorrect fees. In such a case, recording is delayed and the recording office must notify the recorder of the correct fee. This provision would prevent this problem for frequent recorders by allowing them to establish accounts with the recording office.

CHAPTER 3 -- MAPS

3-1. Definitions

As used in this act:

a. "Condominium plan" means a survey of the condominium property in sufficient detail to identify the location and dimensions of units and common elements, which shall be filed in accordance with the requirements of section 3 of P.L.1960, c.141 (C.46:23-9.11). A condominium plan shall bear a certification by a land surveyor, professional engineer or architect authorized to practice in this State that the plan is a correct representation of the improvements described.

b. "Entire tract" means all of the property that is being subdivided including lands remaining after subdivision.

c. "General property parcel map" means a right of way parcel map showing a group of parcel and easement acquisitions for part of a highway or street project.

d. "Land Surveyor" means a person who is legally authorized to practice land surveying in this State as provided by P.L.1938, c.342 (C.45:8-27 et seq.).

e. "Map" includes a map, plat, condominium plan, right of way parcel maps of the State, county or municipality, chart, or survey of lands presented for approval to a proper authority or presented for filing as provided by this act, but does not include a map, plat or sketch required to be filed or recorded under the provisions of P.L.1957, c.130 (C.48:3-17.2) or a subdivision plat for a subdivision that was granted final approval by a municipal approving authority on or prior to July 1, 1999.

f. "Municipal Engineer" means the official licensed professional engineer appointed by the proper authority of the municipality in which the territory shown on a map is located.

g. "Professional Engineer" means a person who is legally authorized to practice professional engineering in this State as provided by P.L.1938, c.342 (C.45:8-27 et seq.).

h. "Proper authority" means the chief legislative body of a municipality or other agencies to which the authority for approval of maps has been designated by ordinance.

i. "Right of way parcel map" means any general property parcel map which shows highways or street acquisitions and any associated easements for highway or street rights of way.

Source: 46:23-9.10.

COMMENT

All of the definitions in 46:23-9.10 have been retained. Language has been simplified slightly and the definitions have been put into alphabetical order. The first exclusion in the definition of maps, subsection (e), has been retained even though it is unnecessary in that it duplicates a provision in 48:3-17.3(d). The second exclusion in the definition of map continues the substance of 46:23-9.18.

3-2. Requirements for approval or filing of a map

a. A map shall not be approved by a proper authority unless it meets the requirements of this section specified for the kind of map involved. The following kinds of maps shall meet the following requirements:

(1) Major subdivision plats shall meet all of the requirements of this section.

(2) Right of way parcel maps shall meet the requirements of subsections (b) (1), (2), (4), (5), (6), (7), (11) of this section.

(3) Minor subdivision maps shall meet all of the requirements of this section except for the outside tract line monuments requirement of subsection (b)(8).

(4) Condominium plans shall meet the requirements of subsections (b)(1), (4), (5), (6), (7) and (11).

b. No map requiring approval by law or that is to be approved for filing with a county, shall be approved by the proper authority unless it conforms to the following requirements:

(1) A map shall show the scale, which shall be inches to feet and be large enough to contain legibly written data on the dimensions, bearings and all other details of the boundaries, and it shall also show the graphic scale.

(2) A map shall show the dimensions, square footage of each lot to the nearest square foot or nearest one hundredth of an acre. Bearings and curve data shall include the radius, delta angle, length of arc, chord distance and chord bearing sufficient to enable the definite location of all lines and boundaries shown, including public easements and areas dedicated for public use. Non-tangent curves and non-radial lines shall be labeled. Right of way parcel maps shall show bearings, distances and curve data for the right of way or the center line or base line and ties to right of way lines if from a base line.

(3) Where lots are shown thereon, those in each block shall be numbered consecutively. Block and lot designations shall conform with the municipal tax map if municipal regulations so require. In counties which adopt the local or block system of indices pursuant to sections 46:24-1 to 46:24-22 of the Statutes, the map shall show the

block boundaries and designations established by the board of commissioners of land records for the territory shown on the map.

(4) The reference meridian used for bearings on the map shall be shown graphically. The coordinate base, either assumed or based on the New Jersey Plane Coordinate System, shall be shown on the plat.

(5) All municipal boundary lines crossing or adjacent to the territory shall be shown and designated.

(6) All natural and artificial watercourses, streams, shorelines and water boundaries and encroachment lines shall be shown. On right of way parcel maps all easements that affect the right of way, including slope easements and drainage, shall be shown and dimensioned.

(7) All permanent easements, including sight right easements and utility easements, shall be shown and dimensioned.

(8) The map shall clearly show all monumentation required by this chapter, including monuments found, monuments set, and monuments to be set. An indication shall be made where monumentation found has been reset. For purposes of this subsection "found corners" shall be considered monuments. A minimum of three corners distributed around the tract shall indicate the coordinate values. The outbound corner markers shall be set pursuant to regulations promulgated by the State Board of Professional Engineers and Land Surveyors.

(9) The map shall show as a chart on the plat any other technical design controls required by local ordinances, including minimum street widths, minimum lot areas and minimum yard dimensions.

(10) The map shall show the name of the subdivision, the name of the last property owners, the municipality and county.

(11) The map shall show the date of the survey and shall be in accordance with the minimum survey detail requirements of the State Board of Professional Engineers and Land Surveyors.

(12) A certificate of a land surveyor or surveyors, shall be endorsed on the map as follows:

(A) I certify that to the best of my knowledge and belief this map and land survey dated meet the minimum survey detail requirements of the State Board of Professional Engineers and Land Surveyors and the map has been made under my supervision, and complies with the "map filing law" and that the outbound corner markers as shown have been found, or set.

(Include the following, if applicable)

I further certify that the monuments as designated and shown have been set.

.....

Licensed Professional Land Surveyor and No.

(Affix Seal)

(13) If the land surveyor who prepares the map is different from the land surveyor who prepared the outbound survey, the following two certificates shall be added in lieu of the certificate above.

(A) I certify to the best of my knowledge information and belief that this land survey dated _____ has been made under my supervision and meets the minimum survey detail requirements of the State Board of Professional Engineers and Land Surveyors and that the outbound corner markers as shown have been found, or set

.....
Licensed Professional Land Surveyor and No.

(Affix seal)

(B) I certify that this map has been made under my supervision and complies with the "map filing law."

(Including the following if applicable)

I further certify that the monuments as designated and shown have been set.

.....
Licensed Professional Land Surveyor and No.

(Affix seal)

(C) If monuments are to be set at a later date, the following requirements and endorsement shall be shown on the map.

The monuments shown on this map shall be set within the time limit provided in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or local ordinance.

I certify that a bond has been given to the municipality, guaranteeing the future setting of the monuments as designated and shown on this map.

.....
Municipal Clerk

(D) If the map is a right of way parcel map the project surveyor need only to certify that the monuments have been set or will be set.

(14) A certificate of the municipal engineer shall be endorsed on the map as follows:

I have carefully examined this map and to the best of my knowledge and belief find it conforms with the provisions of "the map filing law," resolution of approval and applicable municipal ordinances and requirements.

.....
Municipal Engineer (Affix Seal)

(15) An affidavit setting forth the names and addresses of all the record title owners of the lands subdivided by the map and written consent to the approval of the map of all those owners shall be submitted to the proper authority with the map.

(16) If the map shows highways, streets, lanes or alleys, a certificate shall be endorsed on it by the municipal clerk that the municipal body has approved the highways, streets, lanes or alleys, except where such map is prepared and presented for filing by the State of New Jersey or any of its agencies. The map shall show all of the street names as approved by the municipality.

Source: 46:23-9.11.

COMMENT

The substance of 46:23-9.11 has not been changed; language has been simplified slightly. Subsection (r) of 46:23-9.11 has been separated as a new section on monumentation.

Format requirements, limitations on the size of maps and the materials from which they may be made, from 46:23-9.11 (a) and (b), have been moved to a separate section.

3-3. Monumentation

a. A map shall not be approved by a proper authority unless it meets the monumentation requirements of this section specified for the kind of map involved. The following kinds of maps shall meet the following requirements:

(1) Subdivision plats shall meet all of the requirements of this section.

(2) Right of way parcel maps shall meet the requirements of subsection (b) (9).

b. Monuments are required on one side of the right of way only and shall be of metal detectable durable material at least 30 inches long. The top and bottom shall be a minimum of 4 inches square; if concrete, however, it may be made of other durable metal detectable material specifically designed to be permanent, as approved by the State Board of Professional Engineers and Land Surveyors. All monuments shall include the identification of the professional land surveyor or firm. They shall be firmly set in the ground so as to be visible at the following control points; provided that in lieu of installation of the monuments, the municipality may accept bond with sufficient surety in form and amount to be determined by the governing body, conditioned upon the proper installation of the monuments on the completion of the grading of the streets and roads shown on the map.

(1) At each intersection of the outside boundary of the whole tract, with the right-of-way line of any side of an existing street.

(2) At the intersection of the outside boundary of the whole tract with the right-of-way line on one side of a street being established by the map under consideration.

(3) At one corner formed by the intersection of the right-of-way lines of any two streets at a T-type intersection.

(4) At any two corners formed by the right-of-way lines of any two streets in an "X" or "Y" type intersection.

(5) If the right-of-way lines of two streets are connected by a curve at an intersection, monuments shall be as stipulated in (3) and (4) of this subsection at one of the following control points:

(A) The point of intersection of the prolongation of said lines,

(B) The point of curvature of the connecting curve,

(C) The point of tangency of the connecting curve,

(D) At the beginning and ending of all tangents on one side of any street, or

(E) At the point of compound curvature or point of reversed curvature where either curve has a radius equal to or greater than 100 feet. Complete curve data as indicated in subsection d. of this section shall be shown on the map, or

(F) At intermediate points in the sidelines of a street between two adjacent street intersections in cases where the street deflects from a straight line or the line of sight between the adjacent intersections is obscured by a summit or other obstructions which are impractical to remove. This requirement may necessitate the setting of additional monuments at points not mentioned above. Bearings and distances between the monuments or coordinate values shall be indicated.

(6) In cases where it is impossible to set a monument at any of the above designated points, a nearby reference monument shall be set and its relation to the designated point shall be clearly designated on the map; or the plate on the reference monument shall be stamped with the word "offset" and its relation to the monument shown on the filed map.

(7) In areas where permanency of monuments may be better insured by off-setting the monuments from the property line, the municipal engineer may authorize such procedure; provided, that proper instrument sights may be obtained and complete off-set data is recorded on the map.

(8) By the filing of a map in accordance with the provisions of "the map filing law," reasonable survey access to the monuments is granted, which shall not restrict in any way the use of the property by the landowner.

(9) On right of way parcel maps, the monuments shall be set at the points of curvature, points of tangency, points of reverse curvature and points of compound curvature or the control base line or center line, if used, and be intervisible with a second monument.

(10) On minor subdivisions a monument shall be set at each intersection of an outside boundary of the newly created lot(s) with the right of way line of any side of an existing street.

Source: 46:23-9.11(r).

COMMENT

The substance of 46:23-9.11 has not been changed; language has been simplified slightly. Subsection (r) of 46:23-9.11 has been separated as a new section on monumentation.

3-4. Approval of maps

a. The proper authority shall approve or disapprove a map within 45 days from its receipt.

b. The approval of a map under this law by the proper authority shall not be construed as acceptance of any street or highway indicated on the map; nor shall approval obligate the State of New Jersey or any county or municipality, to maintain or exercise jurisdiction over those streets or highways.

Source: 46:23-9.12; 46:23-9.13.

COMMENT

Subsection (a) continues the substance of 46:23-9.12 unchanged. Subsection (b) continues the substance of 46:23-9.13 unchanged. Language has been simplified slightly.

3-5. Additional prerequisites to filing

The county recording officer shall not accept for filing any map unless it has endorsed on it a certificate by the municipal clerk or secretary of the planning board stating:

a. That the proper authority has approved the map or stating its exemption from approval;

b. That the map complies with the provisions of this law; and

c. The date by which the map is required to be filed by the applicable law.

Source: 46:23-9.14.

COMMENT

This section continues the substance of 46:23-9.14 unchanged. The final sentence of the source has been deleted as unnecessary; section TR-5 makes reference to all of the requirements for recording.

3-6. Filing and indexing of maps, fee

a. The county recording officer shall file a map if an original and a copy of the map are presented for filing, the map complies with all the requirements for filing and is accompanied with the fees for filing and indexing that are provided by law. No fee shall be charged when the map is presented by the State of New Jersey, or any of its agencies.

b. The original map and a duplicate shall be endorsed by the recording office with a receipt indicating the date of filing.

c. The original map shall be retained by the recording office in an appropriate manner for preservation and use for reproduction purposes.

d. Copies of filed maps shall be made available to the public at a reasonable cost.

Source: 46:23-9.15.

COMMENT

This section continues the substance of 46:23-9.15 with little change. References to the way that a map should be stored and the format of a map and its copies have been deleted to allow any technological method that serves the purposes of map filing: preservation and use. The section has also been rearranged and substantially reworded.

3-7. Duplicates of maps in cities having atlases or block maps

Whenever a map is filed in the office of the county recording officer of land in a municipality that has an atlas, or block map, on which is plotted the lots or subdivision of lots of lands, the person filing the map shall file a duplicate of the map, and the recording officer shall indorse on the duplicate the time of recording and filing of the original and deliver the duplicate to the officer of the city having charge of the atlas or block map.

This section shall have no application to maps filed by commissioners appointed to assess benefits derived from the construction of sewers, drains or other municipal improvements.

Source: 46:23-10.

COMMENT

This section continues the substance of 46:23-10 with no change. The section has been reworded slightly.

3-8. Approval and filing of duplicates of filed maps

Whenever a map has been filed in the office of the county recording officer, and copies of it have been made that differ from the original only in title or style, and there have been made conveyances or liens, under which the lands intended to be conveyed or liened have been described by reference to the unfiled copy, the governing body of the municipality in which the land is located, by resolution, may approve the copy for filing in the manner prescribed by law. This approval and filing shall not constitute a dedication of the streets or lot locations as therein delineated and shall be merely for the identification of the lands conveyed or liened.

Source: 46:23-11.

COMMENT

This section continues the substance of 46:23-11 with no change. The section has been condensed and clarified.

CHAPTER 4 -- GENERAL AND TRANSITIONAL

4-1. Regulations

a. The Division of Archives and Records Management in the Department of State in consultation with the County Clerks and Registers of Deeds shall adopt regulations to establish format and technical requirements for recorded documents to foster state-wide uniformity in title recordation and otherwise to implement this Act.

b. Regulations shall be adopted within 12 months after the effective date of this Act.

4-2. UETA superseded

To the extent that this Act conflicts with Sections 17 and 18 of the Uniform Electronic Transactions Act (NJS 12A:12-17 and 18) this Act supersedes UETA.

This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

22A:4-4.1. Fees for services of county clerks and registers.

County clerks and registers of deeds and mortgages, in counties having such offices, shall charge for the services herein enumerated the following fees:

Fee

For recording veteran's discharge papers No fee

~~For recording any instrument: First page — \$30.00~~

~~Each additional page or part thereof — 10.00~~

~~Each rider, insertion, addition, or any Any map, plat or sketch filed or recorded pursuant to subsection (c) of section 2 of P.L.1957, c.130 (C.48:3-17.3) \$10.00~~

~~For entering the marginal notation of an order judgment, statement or warrant discharging, annulling a notice of lis pendens and for filing such order, judgment or statement — \$10.00~~

~~For filing a lis pendens foreclosure — \$30.00~~

~~Notation — \$10.00~~

~~For preparing and transmitting to the assessor, collector, or other custodian of the assessment map of any taxing district, the abstract of an instrument evidencing title to realty — \$10.00~~

~~For entering the marginal notation of a discharge or release of a New Jersey building and loan or savings and loan mortgage and forwarding abstract — \$10.00~~

~~For entering the marginal notation of a discharge, assignment, postponement or release of a mortgage, other than building and loan and savings and loan mortgages \$10.00~~

~~For the cancellation of any mortgage \$20.00~~

~~For a marginal notation of the discharge of a mortgage in counties where mortgages are indexed under a system requiring a duplication of indices and description~~
~~\$10.00~~

For filing and recording notice of federal tax lien or other federal lien or certificate discharging such lien \$25.00

For filing a notice of settlement \$20.00

For filing each map, plat, plan or chart (except when presented by the State or its agencies or filed pursuant to subsection (c) of section 2 of P.L.1957, c.130 (C.48:3-17.3))
\$55.00

For recording tax sale certificate, except by municipalities, or a redemption or assignment of tax sale certificate, ~~first page \$30.00~~ \$35.00

~~Each additional page or part thereof \$10.00~~

Certified copy of veteran's discharge \$6.00

For indexing any recorded instrument in excess of 5 parties, per each name in excess of 5 \$6.00

For recording tax sale certificate, lien, deed, or related instrument by a municipality \$8.00

For recording vacations or dedications of roads, ~~first page \$70.00~~ \$30.00

~~Each additional page or part thereof. \$10.00~~

For disclaimers \$15.00

For reimbursement agreements No fee

For recording a deed other than a condominium

or cooperative master deed \$70

For recording a condominium or cooperative master deed \$1000

For recording a mortgage \$130

For recording an assignment of a mortgage \$50

For recording a discharge of a mortgage \$45

For recording a notice of lis pendens \$40

For recording a lease or memorandum of a lease \$70

For recording a document of a kind not listed in this section \$50

COMMENT

The Commission recommends abandoning the current system of calculating filing fees based on the number of pages and adopting a system of flat fees based on the kind of document. The fees in this amendment for documents now priced per page are based on the average fees now charged for these documents. The Commission intends that the amounts in this section will not or increase or decrease the amount of fees now received by any governmental entity to any significant extent. Any change in amounts received will be an insubstantial increase due to rounding of the average fee now received.

