

ASSEMBLY, No. 3115

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 21, 2004

Sponsored by:

Assemblyman JOSEPH CRYAN

District 20 (Union)

SYNOPSIS

Imposes "general purpose fee" on certain realty transfers and fee on purchase of residential property for over \$1 million; generally clarifies realty transfer fee law.

CURRENT VERSION OF TEXT

As introduced.



A3115 CRYAN

2

1 AN ACT imposing a "general purpose fee" on certain realty transfers
2 and a fee upon grantees under certain deeds conveying residential
3 property and clarifying the law with respect to realty transfer fees
4 generally, amending and supplementing P.L.1968, c.49, and
5 amending P.L.1975, c.176 and P.L.1992, c.148.

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 as
11 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 the
17 named grantor to the named grantee. A leasehold interest for 99 years
18 or more or a proprietary lease of a cooperative unit and any
19 assignment of a proprietary lease of a cooperative unit, shall be treated
20 as a "freehold" for the purpose of this act. Instruments providing for
21 common driveways, for exchanges of easements or rights-of-way, for
22 revocable licenses to use, to adjust or to clear defects of or clouds on
23 title, to provide for utility service lines such as drainage, sewerage,
24 water, electric, telephone or other such service lines, or to quitclaim
25 possible outstanding interests, shall not be "deeds" for the purposes of
26 this act.

27 (b) The terms "county recording officer" and "office of the county
28 recording officer" mean the register of deeds and mortgages in
29 counties having such an officer and office, and the county clerk and his
30 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 value
33 constituting the entire compensation paid or to be paid for the transfer
34 of title to the lands, tenements or other realty, including the remaining
35 amount of any prior mortgage to which the transfer is subject or which
36 is to be assumed and agreed to be paid by the grantee and any other
37 lien or encumbrance thereon not paid, satisfied or removed in
38 connection with the transfer of title. The amount of liens for real
39 property taxes, water or sewerage charges for the current or any
40 subsequent year, or by way of added assessment or other adjustment,
41 as well as of other like liens or encumbrances of a current and
42 continuing nature ordinarily adjusted between the parties according to
43 the period of ownership shall be excluded as an element in determining

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 the consideration, notwithstanding that such amount is to be paid by
2 the grantee.

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

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

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

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

24 (f) "Senior citizen" means any resident of this State of the age of
25 62 years or over.

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

29 (h) "Low and moderate income housing" means any residential
30 premises, or part thereof, affordable according to federal Department
31 of Housing and Urban Development or other recognized standards for
32 home ownership and rental costs and occupied or reserved for
33 occupancy by households with a gross income equal to 80% or less of
34 the median gross household income for households of the same size
35 within the housing region in which the housing is located, but shall
36 include only those residential premises subject to resale controls
37 pursuant to contractual 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) of
43 subsection a. of section 3 of P.L.1968, c.49.

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

46 (l) "Supplemental fee" means the fee established by subsection a.

1 of section 2 of P.L.2003, c.113 (C.46:15-7.1).

2 (cf: P.L.1987, c.381, s.13)

3

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

6 2. In addition to other prerequisites for recording, no deed
7 evidencing transfer of title to real property shall be recorded in the
8 office of any county recording officer unless it satisfies [one of] the
9 following requirements:

10 a. If the transfer is subject to [the additional] any fee [as provided
11 in] established under section 3 of P.L.1968, c.49 (C.46:15-7) or [to
12 the supplemental fee as provided in] section 2 of P.L.2003, c.113
13 (C.46:15-7.1), a statement of the true consideration for the transfer
14 [is] shall be contained in [(1)] the deed, [or (2)] the
15 acknowledgment, [or (3)] the proof of the execution, or [(4)] an
16 appended affidavit by one of the parties to the deed or that party's
17 legal representative.

18 b. If the transfer is exempt from [the additional] any fee [required
19 by] established under section 3 of P.L.1968, c.49 (C.46:15-7)[,] or
20 [from the supplemental fee as provided in] section 2 of P.L.2003,
21 c.113 (C.46:15-7.1), an affidavit stating the basis for the exemption
22 [is] shall be appended to the deed.

23 c. If the transfer is of real property upon which there is new
24 construction, the words "NEW CONSTRUCTION" in upper case
25 lettering shall be printed clearly at the top of the first page of the deed,
26 and an affidavit by the grantor stating that the transfer is of property
27 upon which there is new construction shall be appended to the deed.
28 (cf: P.L.2003, c.113, s.1)

29

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

32 3. a. In addition to the recording fees imposed by section 2 of
33 P.L.1965, c.123 (C.22A:4-4.1), a grantor shall pay to the county
34 recording officer at the time the deed is offered for recording the
35 following fees:

36 (1) A basic fee [is imposed upon grantors], which basic fee shall
37 consist of (a) a State portion at the rate of [\$1.75] \$1.25 for each
38 \$500.00 of consideration or fractional part thereof recited in the deed,
39 and (b) a county portion at the rate of \$0.50 for each \$500.00 of
40 consideration or fractional part thereof so recited; provided however,
41 that on and after the tenth day following a certification by the Director
42 of the Division of Budget and Accounting in the Department of the
43 Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148
44 (C.46:15-10.2), the State portion of the basic fee shall not be imposed
45 [shall be \$0.50 for each \$500.00 of consideration or fractional part

1 thereof recited in the deed, which fee shall be collected by the county
2 recording officer at the time the deed is offered for recording.];

3 [For] (2) An additional fee at the rate of \$0.75 for each \$500.00
4 of consideration or fractional part thereof recited in the deed in excess
5 of \$150,000.00 [an additional fee is imposed of \$0.75]; provided
6 however, that on and after the tenth day following a certification by
7 the Director of the Division of Budget and Accounting in the
8 Department of the Treasury pursuant to subsection b. of section 2 of
9 P.L.1992, c.148 (C.46:15-10.2), [no such] the additional fee shall not
10 be imposed; and

11 (3) A general purpose fee at the rate of:

12 (a) \$0.90 for each \$500.00 of consideration or fractional part
13 thereof recited in the deed that is not in excess of \$550,000.00, except
14 that in the case of a conveyance or transfer of property for which the
15 total consideration recited in the deed does not exceed \$350,000.00,
16 no general purpose fee shall be imposed;

17 (b) \$1.40 for each \$500.00 of consideration or fractional part
18 thereof in excess of \$550,000.00 but not in excess of \$850,000.00
19 recited in the deed;

20 (c) \$1.90 for each \$500.00 of consideration or fractional part
21 thereof in excess of \$850,000.00 but not in excess of \$1,000,000.00
22 recited in the deed; and

23 (d) \$2.15 for each \$500.00 of consideration or fractional part
24 thereof in excess of \$1,000,000.00 recited in the deed;

25 [Every] b. A deed subject to any of the [additional fee required]
26 fees established by this [act] section, which is in fact recorded, shall
27 be [conclusively] deemed to have been entitled to recording,
28 notwithstanding that the amount of the consideration shall have been
29 incorrectly stated[,], or that the correct amount of such [additional]
30 fee [, if any,] shall not have been paid[, and no]. No such defect shall
31 in any way affect or impair the validity of the title conveyed or render
32 the same unmarketable; but the person or persons required to pay said
33 additional fee at the time of recording shall be and remain liable to the
34 county recording officer for the payment of the proper amount thereof.
35 (cf: P.L.1992, c.148, s.3)

36

37 4. Section 4 of P.L.1968, c.49 (C.46:15-8) is amended to read as
38 follows:

39 4. a. The proceeds of the fees collected by the county recording
40 officer, as authorized by P.L.1968, c.49 (C.46:15-5 et seq.), shall be
41 accounted for and remitted to the county treasurer.

42 b. (1) [An amount equal to 28.6% of the proceeds from the first
43 \$1.75 for each \$500.00 of consideration or fractional part thereof
44 recited in the deed] The county portion of the basic fee collected
45 pursuant to paragraph (1) of subsection a. of section 3 of P.L.1968,

1 c.49 (C.46:15-7) shall be retained by the county treasurer for the use
2 of the county [and the balance].

3 (2) The State portion of the basic fee, the additional fee, and the
4 general purpose fee shall be paid to the State Treasurer for the use of
5 the State[]; provided however, that on and after the tenth day
6 following a certification by the Director of the Division of Budget and
7 Accounting in the Department of the Treasury pursuant to subsection
8 b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), 100.0% of the
9 proceeds from the first \$0.50 for each \$500.00 of consideration or
10 fractional part thereof recited in the deed so collected shall be retained
11 by the county treasurer for the use of the county and no amount shall
12 be paid to the State Treasurer for the use of the State]. Payments
13 shall be made to the State Treasurer on the tenth day of each month
14 following the month of collection.

15 c. (1) Amounts, not in excess of \$25,000,000, paid during the
16 State fiscal year to the State Treasurer from the payment of [fees
17 collected by the county recording officer other than the additional fee
18 of \$0.75 for each \$500.00 of consideration or fractional part thereof
19 recited in the deed in excess of \$150,000.00 collected pursuant to
20 section 3 of P.L.1968, c.49 (C.46:15-7)] the State portion of the basic
21 fee shall be credited to the "Shore Protection Fund" created pursuant
22 to section 1 of P.L.1992, c.148 (C.13:19-16.1), in the manner
23 established under that section.

24 (2) All amounts paid to the State Treasurer [in] from the payment
25 of the additional fee [of \$0.75 for each \$500.00 of consideration or
26 fractional part thereof recited in the deed in excess of \$150,000.00
27 collected pursuant to section 3 of P.L.1968, c.49 (C.46:15-7)] shall
28 be credited to the Neighborhood Preservation Nonlapsing Revolving
29 Fund established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.),
30 in the manner established under section 20 thereof (C.52:27D-320).
31 (cf: P.L.2003, c.113, s.3)

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33 5. Section 5 of P.L.1991, c.49 (C.46:15-9) is amended to read as
34 follows:

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

40 b. Any grantor conveying title to real property upon which there
41 is new construction who fails to subscribe and append to the deed an
42 affidavit to that effect in accordance with the provisions of subsection
43 c. of section 2 of P.L.1968, c.49 (C.46:15-6) is guilty of a disorderly
44 persons offense.

45 (cf: P.L.1991, c.308, s.4)

1 6. Section 4 of P.L.1975, c.176 (C.46:15-10.1) is amended to read
2 as follows:

3 4. a. The following transfers of title to real property shall be
4 exempt from payment of [\$1.25 per \$500.00 of consideration or
5 fractional part thereof of] the State portion of the basic fee [imposed
6 upon grantors by section 3 of P.L.1968, c.49 (C.46:15-7)]:

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

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

15 b. Transfers of title to real property upon which there is new
16 construction shall be exempt from payment [of \$1.00 for each \$500.00
17 of], with respect to all consideration [or fractional part thereof not in
18 excess of] therefor up to \$150,000.00, of 80% of the State portion
19 of the basic fee [imposed upon grantors by section 3 of P.L.1968, c.49
20 (C.46:15-7)].

21 c. (1) The director shall promulgate rules, regulations and forms
22 of certification or otherwise necessary to carry out the provisions of
23 this section.

24 (2) No transfer shall be eligible for more than one exemption under
25 this section. [All fees imposed pursuant to section 3 of P.L.1968, c.49
26 (C.46:15-7) collected on transfers subject to exemption under
27 subsection a. of this section shall be retained by the county treasurer
28 for the use of the county. An amount equal to 66 2/3% of the
29 proceeds from the fee imposed pursuant to section 3 of P.L.1968, c.49
30 (C.46:15-7) upon the consideration not in excess of \$150,000.00 for
31 transfers of real property upon which there is new construction, and
32 an amount equal to 20% of the proceeds of the \$2.50 total fees
33 imposed pursuant to section 3 of P.L.1968, c.49 (C.46:15-7) upon
34 each \$500.00 of consideration or fractional part thereof in excess of
35 \$150,000.00 for transfers of real property upon which there is new
36 construction shall be retained by the county treasurer for the use of the
37 county.]

38 d. The balance of the [fees] State portion of the basic fee and the
39 additional fee collected on transfers subject to exemption under
40 subsection b. of this section shall be remitted to the State Treasurer
41 and shall be credited to the Neighborhood Preservation Nonlapsing
42 Revolving Fund established pursuant to P.L.1985, c.222 (C.52:27D-
43 301 et al.), to be spent in the manner established under section 20
44 thereof (C.52:27D-320).

45 e. Subsections a. through d. of this section shall be without effect

1 on and after the tenth day following a certification by the Director of
2 the Division of Budget and Accounting in the Department of the
3 Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148
4 (C.46:15-10.2).

5 (cf: P.L.2003, c.113, s.4)

6

7 7. Section 2 of P.L.1992, c.148 (C.46:15-10.2) is amended to read
8 as follows:

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

11 (1) credit amounts paid to the State Treasurer, if any, in payment
12 of fees collected pursuant to paragraph (1) or paragraph (2) of
13 subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7)[,] to the
14 "Shore Protection Fund" created pursuant to section 1 of P.L.1992,
15 c.148 (C.13:19-16.1), and the Neighborhood Preservation Nonlapsing
16 Revolving Fund established pursuant to section 20 of P.L.1985, c.222
17 (C.52:27D-320), pursuant to the requirements of section 4 of
18 P.L.1968, c.49 (C.46:15-8);

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

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

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

36 (cf: P.L.1992, c.148, s.2)

37

38 8. (New section) In addition to all other fees imposed under
39 P.L.1968, c.49 (C.46:15-5 et seq.), there is imposed upon the grantee
40 of a deed for the transfer of real property zoned for residential use,
41 whether improved or not, for consideration in excess of \$1,000,000
42 recited in the deed a fee in an amount equal to 1 percent of the entire
43 amount of such consideration, which fee shall be collected by the
44 county recording officer at the time the deed is offered for recording
45 and remitted to the State Treasurer not later than the 10th day of the
46 month following the month of collection for deposit into the General

1 Fund.

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3 9. This act shall take effect immediately and apply to transfers of
4 real property occurring on or after August 1, 2004.

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STATEMENT

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9 Current law provides for three realty transfer fees, which this bill
10 identifies as a "basic fee," an "additional fee" and a "supplemental fee."
11 This bill imposes an additional fee, a "general purpose fee," on
12 grantors of property whose value, as recited in the deed of transfer, is
13 more than \$350,000. The "general purpose fee" applies to the full
14 amount of the sale of the property. The revenue generated by the
15 "general purpose fee" will be used for general State purposes.

16 The "general purpose fee" is structured as follows: \$0.90 for each
17 \$500 on the first \$550,000 of the value recited in the deed of transfer;
18 \$1.40 on each \$500 of the value between \$550,000 and \$850,000;
19 \$1.90 on each \$500 of the value between \$850,000 and \$1,000,000;
20 and \$2.15 for each \$500 of the value over \$1,000,000.

21 In addition, the bill imposes upon the grantee (buyer) of real
22 property zoned residential, whether improved or not, for consideration
23 in excess of \$1 million, a separate fee equal to 1 percent of the full
24 amount of the consideration. The revenue generated by this fee will
25 also be used for general State purposes.

26 Finally, the bill makes a number of editorial revisions in the text of
27 the realty transfer fee statute for purposes of clarifying its provisions.