

CHAPTER 66

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

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

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

C.46:15-5 Definitions.

1. As used in this act:

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

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

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

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

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

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

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

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

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

(h) "Low and moderate income housing" means any residential premises, or part thereof, affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross income equal to 80% or less of the median gross

household income for households of the same size within the housing region in which the housing is located, but shall include only those residential premises subject to resale controls pursuant to contractual guarantees.

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

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

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

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

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

C.46:15-6 Requirements for recording of deed evidencing transfer of title.

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

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

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

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

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

C.46:15-7 Realty transfer fees.

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

(1) A basic fee, which basic fee shall consist of (a) a State portion at the rate of \$1.25 for each \$500.00 of consideration or fractional part thereof recited in the deed, and (b) a county portion at the rate of \$0.50 for each \$500.00 of consideration or fractional part thereof so recited; 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 State portion of the basic fee shall not be imposed;

(2) An additional fee at the rate of \$0.75 for each \$500.00 of consideration or fractional part thereof recited in the deed in excess of \$150,000.00; 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 additional fee shall not be imposed; and

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

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

(b) \$1.40 for each \$500.00 of consideration or fractional part thereof in excess of

\$550,000.00 but not in excess of \$850,000.00 recited in the deed;

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

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

b. A deed subject to any of the fees established by this section, which is in fact recorded, shall be 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 fee shall not have been paid. 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 said 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.

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

C.46:15-8 County, State sharing of fee proceeds.

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

b. (1) The county portion of the basic fee collected pursuant to paragraph (1) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7) shall be retained by the county treasurer for the use of the county.

(2) The State portion of the basic fee, the additional fee, and the general purpose fee 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.

c. (1) Amounts, not in excess of \$25,000,000, paid during the State fiscal year to the State Treasurer from the payment of the State portion of the basic fee 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.

(2) All amounts paid to the State Treasurer from the payment of the additional fee 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).

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

C.46:15-9 Falsifying consideration, failure to disclose new construction on deed and affidavits; penalty.

5. a. 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.

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

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

C.46:15-10.1 Partial fee exemptions.

4. a. The following transfers of title to real property shall be exempt from payment of the State portion of the basic fee:

(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, with respect to all consideration therefor up to \$150,000.00, of 80% of the State portion of the basic fee.

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

(2) No transfer shall be eligible for more than one exemption under this section.

d. The balance of the State portion of the basic fee and the additional fee 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).

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

C.46:15-10.2 Required provisions of annual appropriations act.

2. 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 paragraph (1) or paragraph (2) of subsection a. of 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.46:15-7.2 Additional fee on certain transfers over \$1,000,000.

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

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

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Approved June 30, 2004.