

**New Jersey  
N2K Hour:**

**Recording  
Requirements  
& Common  
Mistakes Found  
in Recordings**

Webex Presentation,  
April 9, 2019

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## Recording vs. filing

- Recording and filing are often times used interchangeably, but there is a difference between the two.
- Recording is the act of copying an instrument to be recorded into the public records in a book or computer system kept for that purpose by the county clerk or register.
- Filing is the act of depositing an original document as part of the documents kept in the clerk's or register's office.
- Deeds and Mortgages are recorded, UCC-1 financing statements are filed.

## **N.J.S.A. 46:26A-12. Effect of recording.**

- a) Any recorded document affecting the title to real property 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 property 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.

## **N.J.S.A. 46:26A-12. Effect of recording.**

- c) A deed or other conveyance of an interest in real property 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.

# Cover Sheets for Recording Documents

- Cover sheets are mandated by N.J.S.A. 46:26A-5 and required for all paper documents to be recorded.
- Counts as an extra page for recording (\$10.00)
- If recording a deed, cover sheet must include the Lot and Block information, consideration, and mailing address of the Grantee.
- For all documents related to a mortgage, the Book and Page or Document Identifying Number of the mortgage must be included.
- Each County has its Cover Sheet on its webpage. All of them can be found in our [Bulletin](#) as well.

## **N.J.S.A. 46:26A-3. Prerequisites for recording.**

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 Title 46 of the Revised Statutes;
- (4) the names are printed beneath all signatures that appear on the document;

## N.J.S.A. 46:26A-3. Prerequisites for recording.

(5) if the document is a deed conveying title to real property, it

(a) fulfills the requirements of section 2 of P.L.1968, c.49 (C.46:15-6), (Transfer Fees)

(b) includes a reference to the lot and block number of the real property conveyed as designated on the tax map of the municipality at the time of the conveyance or the account number of the real property,

(c) includes the name of the person who prepared the deed, and

(d) includes the mailing address of the grantee. If the real property 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 property, the deed shall state that fact...

# Recording Deeds

- A Deed can be prepared by the grantor, but NJ requires that a licensed attorney in this state can prepare a Deed on someone's behalf.
- Effective date of transfer must be printed on first page of Deed (transfer date would be the closing date of the conveyance).
- A Deed must contain a legal description either in the body of the Deed or as a separate exhibit.
  - This is in addition to the Lot and Block reference.
  - Use either a metes and bounds description or reference to a Filed Map.

## Other Recording Requirements for Deeds.

- Pursuant to N.J.S.A. 46:15-6:
  - Amount of consideration must be included in the body of the Deed, the acknowledgement, or Affidavit of Consideration.
    - Common practice is to include the consideration on the first page in the body of the deed.
  - If the property is new construction, the words "NEW CONSTRUCTION" in all caps 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.

## Other Requirements for Recording Deeds

- The Affidavit of Consideration (RTF-1) must be completed and attached to the deed before recording.
- The Seller's Residency Certificate/Exemption (GIT/REP-3) must be completed as well.
- If seller is as non-resident, the Nonresident Seller Tax Declaration (GIT/REP-1) needs to be completed.
- Detailed instructions for completion of all of these documents are included on Page 2 of the document.
- In addition to these forms, Realty Transfer Tax, Mansion Tax, Nonresident Income Tax, and Bulk Sale must be addressed.

# Transfer Taxes in New Jersey

- Realty Transfer Tax/Fee (RTF) is imposed on deeds, leases for 99 years or more, and co-op transfers.
  - There are a number of exemptions to RTF. Please see Page 2 of the Affidavit of Consideration.
- If property is classified as Class 2 (Residential), Class 3A (Farm Property – Regular), or Class 4A (Commercial) and is being sold for over \$1 million – Mansion Tax applies and the RTF-1EE form must be completed.
  - Class 3A property is only subject to Mansion Tax if there is a building suited for residential use on the property.

# Transfer Taxes in New Jersey

- Nonresident Income Tax: If seller is a nonresident individual, estate, or trust and selling NJ property, they are subject to tax. (multiple exemptions for this – see Page 2 of GIT/REP-3 form)
- Bulk Sale applies when either a part or the whole of a business is sold or transferred (outside the normal course of business).
  - Not technically a title issue – lien goes on the sale proceeds.
  - Seller must notify the State at least 10 days before closing date to receive an estimated tax amount.

## Recording Other Documents

- Mortgages must include the names of the mortgagor and mortgagee, the date of the mortgage, “record and return” information, legal description and all appropriate signatures from the parties, and be properly acknowledged.
- Pursuant to N.J.S.A. 46:26A-3, as assignment, release, or satisfaction of a mortgage, it must state the book and page number OR the document identifying number of the mortgage it relates to.
  - These documents should also include references to the names of the parties, date of recording, and legal description if appropriate.

## Standard ETA for Recording in NJ

- The estimated time for a document to be recorded varies with each county.
- You can e-record in almost every county in NJ EXCEPT Salem County, which still requires hand delivery of documents for recording.
- Some counties may take 2-5 business days to have documents recorded, whereas some counties can take up to 10-15 business days to record documents.
- Hudson, Essex and Camden County are very notorious for slow recording times.

## N.J.S.A. 46:26A-11 Notice of Settlement

- A Notice of Settlement (NOS) is a statutory creation that provides protection for BFPs and Mortgagees from adverse interests recorded in between the last record search and the date of recording.
- A NOS is good for 60 days and one more (2 total) may be filed before the expiration of the first.
- A NOS must include the names of the parties, the legal description of the property, all appropriate signatures, and be properly acknowledged.
- If you see a recently recorded NOS, make sure the transaction was canceled!

## Recording Fees

- Varies by County.
  - Fee schedules are listed on the County Recorder's websites.
- Deeds are usually charged with the highest rate (e.g. \$40 for first page, \$10 for each additional page).
- Mortgages, Assignments, Discharges, easement agreements, power of attorney are typically charged less than Deeds (e.g. \$30 for the first page, and \$10 for each additional page).
- Please consult your underwriter or the County Recorder for recording fees on any specific document.

## Rejected Documents – What do you do?

- Most counties include a cover sheet explaining why a document was rejected. If that sheet is not included or its unclear why the document was rejected, call the Clerk ASAP.
  - Examples include: Incorrect recording or transfer fees, illegible copies, improper form, wrong county, not acknowledged, etc.
- Once the issue has been determined, resolve it and resend the document immediately – DO NOT let documents sit!
- If document cannot be recorded, contact your Underwriter.

# Common Mistakes and Defects with Recordings

- Documents incorrectly list the entity name of the grantor or grantee, or have a scrivener's error in a legal description, or even fail to include a legal description.
  - These errors are not necessarily fatal, and most title insurance companies will likely issue an indemnity for such an error, if they insured the original transaction.
  - Title companies may rely on an Inter-Underwriter Indemnity Agreement (Treaty) to resolve title defects involving a scrivener's error or irregularity in the legal description.
- If you notice an error in a document, consult your Underwriter BEFORE recording a corrective document.

## Covered Risks in the Title Policy

- Under paragraph 2(a) of the Covered Risks in the ALTA 2006 policy jacket, the insured is protected for any defects in title resulting from documents being falsified or not properly executed, witnessed, sealed, acknowledged, notarized or delivered.
  - Failure of all interested parties to sign a document is one of the most common title claims.
- If there is a defect in title caused by any of the aforementioned issues, the Insured can file a claim under the policy.

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### Keyword Search

Example : Absentee

Find it

- All of these words
- This exact phrase
- Any of these words

### Select a Location

Select a state

# Virtual Underwriter

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# THANK YOU FOR JOINING US

Please mark your calendars for our:

## May N2K HOUR

Tuesday

May 14, 2019

11:00AM

Understanding the Title Commitment

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