

**Case Notes**

Statute exempting portion of realty transfer fee for sale of property on which there was new construction applicable only to "entirely new" construction; taxpayer not entitled to exemption for construction work built upon remains of former apartment building gutted by fire. Grand Chester Associates v. Taxation Div. Director, 6 N.J.Tax 336 (Tax Ct.1984).

**SUBCHAPTER 2. PREREQUISITES FOR RECORDING**

**18:16-2.1 Conditions for recording of deed**

(a) No county recording officer shall record any deed evidencing transfer of title to real property unless:

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1. The consideration paid or to be paid therefor is recited therein and in the acknowledgement or proof of the execution; or

2. An affidavit by one or more of the parties named therein or by a legal representative declaring the consideration paid or to be paid therefor is annexed thereto for recording with the deed; and

3. A fee at the rate of \$1.75 for each \$500.00 of consideration or fractional part thereof (which shall be in addition to the recording imposed by P.L. 1965, Chapter 123, Section 2 (R.S. 22A:4-4.1)) shall be paid to the county recording officer at the time the deed is offered for recording. An additional fee at the rate of \$.75 for each \$500.00 of consideration or fractional part thereof in excess of \$150.00 of consideration shall be paid to the county recording officer. 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 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. A completed form RTF-1, (Rev. 9/1/75) Affidavit of Consideration or Exemption or Partial Exemption, is attached to such deeds with respect to which exemption or partial exemption is claimed, pursuant to N.J.A.C. 18:16-5.1(a) or 5.2.

Amended by R.1975 d.84, effective March 31, 1975.

See: 7 N.J.R. 119(a), 7 N.J.R. 240(b).

Amended by emergency adoption R.1975 d.242, effective September 1, 1975.

See: 7 N.J.R. 443(a).

Amended by R.1993 d.481, effective October 4, 1993.

See: 25 N.J.R. 2653(a), 25 N.J.R. 4604(b).

#### Cross References

As to definition of "consideration", see N.J.A.C. 18:16-1.1.

As to recording deed exempt from fee, see N.J.A.C. 18:16-8.3.

#### Statutory References

As to requirement of recital of consideration, see N.J.S.A. 46:15-6.

As to affidavit of consideration or exemption or partial exemption, for consideration or exemption, see P.L. 1968, c.49, N.J.S.A. 46:15-10; for partial exemption, see P.L. 1975, c.176, N.J.S.A. 46:15-10.1.

#### 18:16-2.2 Consideration recited in deed

(a) Every deed shall recite the dollar amount, comprising 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 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 represented by the deed.

(b) The dollar amount may be written out or in figures or a combination of the two.

1. Example (1): Where the consideration paid or to be paid is \$10,000.00, the recital in the deed may read:

i. "In consideration of the sum of TEN THOUSAND DOLLARS"; or

ii. "In consideration of the sum of \$10,000"; or

iii. "In consideration of the sum of TEN THOUSAND DOLLARS (\$10,000.00)".

2. Example (2): A deed which states "one dollar and other good and valuable consideration" may not be recorded unless there is annexed thereto an affidavit of consideration or exemption or partial exemption setting forth the actual and full consideration paid or to be paid for the transfer.

3. Example (3): A deed which states "one dollar and love and affection" may not be recorded unless there is annexed thereto an affidavit of consideration or exemption or partial exemption setting forth the actual and full consideration paid or to be paid for the transfer.

Amended by emergency adoption R.1975 d.242, effective September 1, 1975.

See: 7 N.J.R. 443(a).

Amended by emergency adoption R.1975 d.286, effective September 25, 1975.

See: 7 N.J.R. 490(c).

#### Statutory References

As to the requirement of recitation of consideration, see N.J.S.A. 46:15-6.

#### 18:16-2.3 Consideration recited in acknowledgement

Every acknowledgement or proof of execution of the deed shall contain, in addition to the usual language of acknowledgement, a statement in the following language:

"the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within deed, as such consideration is defined in P.L. 1968, c.49, Section 1(c), is \$ . . . ."

Amended by emergency adoption R.1975 d.242, effective September 1, 1975.

See: 7 N.J.R. 443(a).

#### Cross References

As to when an alternative affidavit of consideration or exemption or partial exemption is required, see N.J.A.C. 18:16-2.5.

**Statutory References**

As to the requirement of recitation of consideration, see N.J.S.A. 46:15-6.

**18:16-2.4 Deeds with more than one acknowledgment**

Where a deed involving several parties contains several acknowledgments, some of which properly recite the consideration paid or to be paid for the transfer while others do not, the deed may be recorded upon the payment of a realty transfer fee computed in accordance with the properly recited consideration.

**Statutory References**

As to the power of the Director of Taxation to promulgate rules and regulations, see N.J.S.A. 46:15-11.

**18:16-2.5 Affidavit of consideration or exemption or partial exemption; when required**

(a) If the consideration is not stated in the deed and in the acknowledgment of proof of execution thereof in the manner set forth in sections 2 and 3 of this subchapter, there must be annexed to the deed, for recording therewith an affidavit (Form RTF-1) by one or more of the parties named in the deed or by a legal representative, declaring the actual and full consideration for the deed.

(b) The execution of the affidavit shall constitute an affirmation of the truth of the facts stated and shall be passed on personal knowledge of the affiant and not on hearsay.

**Cross References**

As to the definition of "consideration", see N.J.A.C. 18:16-1.1.

**Statutory References**

As to the use of an affidavit of consideration or exemption or partial exemption, see N.J.S.A. 46:15-6.

**18:16-2.6 Claiming exemption**

(a) If exemption from the fee is claimed pursuant to N.J.S.A. 46:15-10(b) to (n), inclusive, a clear statement of the basis for such exemption must be recited in the deed or in any accompanying affidavit, either in form RTF-1, or in any other form of affidavit which clearly sets forth the basis for the exemption, which affidavit shall be recorded with the deed.

(b) No affidavit is necessary where it clearly appears in the deed that the deed was given for one of the following reasons:

1. By or to the United States of America, the State of New Jersey or any instrumentality, agency or subdivision;
2. Solely in order to provide or release security for a debt or obligation;
3. To confirm or correct a deed previously recorded;

4. On a sale for delinquent taxes or assessments;
5. On partition;
6. By a receiver trustee in bankruptcy or liquidation, or assignee for the benefit of creditors;
7. Eligible to be recorded as an "ancient deed" pursuant to N.J.S.A. 46:16-7;
8. Acknowledged or proved on or before July 3, 1968;
9. Between husband and wife, or parent and child;
10. Conveying a cemetery lot or plot;
11. In specific performance of a final judgment;
12. Releasing a right of reversion;
13. 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.

(c) An affidavit of consideration or exemption is required to be attached to any deed with respect to which claim is made for exemption from payment of the \$1.25 portion of the \$1.75 fee where such claim is made for any one of the following reasons:

1. Conveyance of a one or two-family residence owned and occupied by a "senior citizen", "blind person" or "disabled person";
2. Sale of property upon which there is "new construction".

Amended by R.1975 d.84, effective March 31, 1975.

See: 7 N.J.R. 119(a), 7 N.J.R. 240(b).

Amended by emergency adoption R.1975 d.242, effective September 1, 1975.

See: 7 N.J.R. 443(a).

Amended by R.1979 d.93, effective March 8, 1979.

See: 11 N.J.R. 101(a), 11 N.J.R. 211(c).

**Cross References**

As to the procedure for claiming an exemption for consideration that is under \$100.00, see N.J.A.C. 18:16-2.8.

As to definition of "senior citizen", "blind person", "disabled person" and "new construction", see N.J.A.C. 18:16-1.1.

**Statutory References**

As to which deeds are exempt from the realty transfer fee, see N.J.S.A. 46:15-10 as amended.