

**To: New Jersey Law Revision Commission**  
**From: Susan G. Thatch**  
**Re: Bulk sale tax notification – N.J.S. 54:50-38**  
**Date: February 8, 2016**

## **MEMORANDUM**

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The attached Draft Tentative Report formalizes the narrative and draft statutory language presented to the Commission at the January 21, 2016 meeting.

Please note that Staff has removed the language referencing “other real estate tenancy relationships recognized under the laws of this State.” As discussed at the Commission meeting, this language was derived from NJ’s Horizontal Property Rights act (N.J.S. 46:8A-5) and similar language is found in New Jersey’s Condominium Act (N.J.S.46:8B-5). In each instance, the phrase is contained within the declaration that an apartment or a condo may be owned by one or more person. Research has not uncovered similar language elsewhere in New Jersey statutes or in relevant case law.

As Commissioner Harnett identified, this language was originally proposed to prevent the omission of other unidentified tenancy relationships. However, given the legislature’s strong interest in tax collection and the judicial inclination to narrowly construe exemptions, it is likely advisable to be specific with the exemption and not include a catch-all that could be misinterpreted or exploited.

Additionally, Staff has considered whether exempting co-tenancies could potentially provide a “back-door” exemption for partnerships — in conflict with the express statutory provision stating that partnerships are not exempt. In addition to the legislative intent manifest in the statutory language, New Jersey courts have recognized that “[p]artnership’ describes a kind of legal entity whereas the term ‘tenancy in common’ describes the form of property ownership and the two terms are not interchangeable.”<sup>1</sup> Given the express statutory language of 54:50-38 regarding partnerships and the courts’ clear differentiation of partnerships and co-tenancies, it does not appear that exempting co-tenancies would disrupt the legislature’s determination to subject partnerships to the bulk sale tax notification requirements.

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<sup>1</sup>*Zimmerer v. Clayton*, 7 N.J.Tax 15, 22 (Tax 1984); *see also Ginsberg v. Bistricher*, 2007 WL 987162 \*18 (App. Div. 2007) (reiterating the distinction between partnerships and tenancies in common).