



State of New Jersey

N J L R C

New Jersey Law Revision Commission

ANNUAL REPORT

2006

Report to the Legislature of the State of New Jersey
as provided by 1:12A-9.

February 2007

TABLE OF CONTENTS

I. MEMBERS AND STAFF	3
II. HISTORY AND PURPOSE.....	4
III. LEGISLATIVE SUMMARY	6
IV. FINAL REPORTS AND RECOMMENDATIONS	
A. Uniform Foreign-Country Money Judgments Recognition Act.....	13
B. Residential Mortgage Satisfaction Act	18
C. Open Public Records Act.....	33
V. TENTATIVE REPORTS	
A. Common Interest Ownership Act	35
VI. WORK IN PROGRESS	
A. Criminal Code Causation	39
B. Title 39 – Motor Vehicles.....	40
C. Title 44 – Poor Law	41
D. Married Women’s Property Act.....	42
VII. FINAL REPORTS PUBLISHED IN 2006	
Uniform Foreign-Country Money Judgments Recognition Act.....	Appendix A
Residential Mortgage Satisfaction Act.....	Appendix B
Open Public Records Act.....	Appendix C
VIII. TENTATIVE REPORTS PUBLISHED IN 2006	
Common Interest Ownership Act.....	Appendix D

I. MEMBERS AND STAFF OF THE COMMISSION IN 2006

The members of the Commission are:

Vito A. Gagliardi, Jr., Chairman, Attorney-at-Law

Andrew O. Bunn, Attorney-at-Law

Albert Burstein, Attorney-at-Law

Hon. Sylvia Pressler, P.J.A.D., Retired

John Adler, Chairman, Senate Judiciary Committee, Ex officio

Linda R. Greenstein, Chairman, Assembly Judiciary Committee, Ex officio

Stuart Deutsch, Dean, Rutgers Law School - Newark, Ex officio
Represented by Associate Dean **Bernard Bell**

Patrick Hobbs, Dean, Seton Hall Law School, Ex officio
Represented by **William Garland**, Professor of Law

Rayman Solomon, Dean, Rutgers Law School - Camden, Ex officio,
Represented by **Grace Bertone**, Attorney-at-Law

The staff of the Commission are:

John M. Cannel, Executive Director

John J. A. Burke, Assistant Executive Director

Laura C. Tharney, Counsel

Judith Ungar, Counsel

II. HISTORY AND PURPOSE OF THE COMMISSION

New Jersey has a tradition of law revision. The first Law Revision Commission was established in 1925 and it produced the Revised Statutes of 1937. The Legislature, however, intended the work of revision and codification to continue after the enactment of the Revised Statutes, so the Law Revision Commission continued in operation. After 1939, its functions passed to a number of successor agencies, most recently the Legislative Counsel.¹

In 1985, the Legislature transferred the functions of statutory revision to the newly created² New Jersey Law Revision Commission,³ which began work in 1987. Since that time, the Commission has filed 71 reports with the Legislature, 33 of which have been enacted into law and several of which are now pending.

The objective of the Commission is to simplify, clarify and modernize New Jersey statutes. In order to do so, the Commission conducts an ongoing

¹ 52:11-61.

² The Law Revision Commission was charged with the duty to:

a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it for the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to

(1) Remedy the defects, (2) Reconcile conflicting provisions found in the law, and (3) Clarify confusing and excise redundant provisions found in the law;

b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;

c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and

d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant to its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

review of the statutes to identify areas that require revision. The scope of the revision performed by the Commission includes the correction of inconsistent, obsolete and redundant statutes, and comprehensive modifications of select areas of the law.

When choosing an area of the law for revision, the Commission considers recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, New Jersey judges, and other learned bodies and public officers. Once a revision project begins, the Commission extensively examines local law and practice, and the laws of other jurisdictions. The Commission also consults with experts in the particular area of the law, and seeks input from individuals and organizations familiar with the practical operation and impact of the existing statutes. The Commission continues its efforts to obtain input from these various sources throughout the drafting process.

When the revision of a particular area of the law is completed, the Commission submits its final report and recommendation to the New Jersey Legislature for consideration.

The Commission's work has resulted in changes to the statutes, been published in law journals, cited by the New Jersey Courts, and has been utilized by law revision commissions in other states and foreign countries.

The meetings of the Commission are open to the public and the Commission actively solicits public comment on its tentative reports, which are widely distributed to interested persons and groups. In 1996, the Commission established a website where its current projects and its reports are available to the public on the Internet at *<http://www.njlrc.org>*.

³ 1:12A-1 et seq.

III. LEGISLATIVE SUMMARY

Since the Commission began work in 1987, the New Jersey Legislature has enacted 36 bills based upon 33 Final Reports and Recommendations of the New Jersey Law Revision Commission:

- Anatomical Gift Act (L. 2001, c.87)
- Cemeteries (L. 2003, c.261)
- Child Custody Jurisdiction and Enforcement Act (L. 2004 c.147)
- Civil Actions - Service of Process (L. 1999, c.319)
- Civil Penalty Enforcement Act (L. 1999, C.274)
- Court Names (L. 1991, c.119)
- Court Organization (L. 1991, c.119)
- Criminal Law, Titles 2A and 24 (L. 1999, c.90)
- Statute of Frauds (L. 1995, c.36)
- Intestate Succession (L. 2001, c.109)
- Evidence (L. 1999 c.319)
- Juries (L. 1995 c.44)
- Lost or Abandoned Property (L. 1999, c.331)
- Material Witness (L. 1994, c.126)
- Municipal Courts (L. 1993, c.293)
- Parentage Act (L. 1991, c.22)
- Recordation of Title Documents (L. 1991, c.308)
- Repealers (L. 1991, c.59, 93, 121, 148)
- Replevin (L. 1995, c.263)
- Service of Process (L.1999 c.319)
- Surrogates (L. 1999, c.70)
- Tax Court (L. 1993, c.403)
- Title 45 -Professions (L. 1999, c.403)
- Uniform Commercial Code 2A -Leases (L. 1994, c.114)
- Uniform Commercial Code 3 - Negotiable Instruments (L. 1995, c.28)
- Uniform Commercial Code 4 - Bank Deposits (L. 1995, c.28)
- Uniform Commercial Code 4A - Funds Transfers (L. 1994, c.114)
- Uniform Commercial Code 5 - Letters of Credit (L. 1997, c.114)
- Uniform Commercial Code 8 - Investment Securities (L. 1997, c.252)
- Uniform Commercial Code 9 - Secured Transactions (L. 2001, c.117)
- Uniform Electronic Transactions Act (L. 2001, c.116)
- Uniform Foreign Money Claims Act (L. 1993, c.317)
- Uniform Mediation Act (L. 2004 c.157)

IV. FINAL REPORTS AND RECOMMENDATIONS

A final report is the decision of the Commission on a particular area of the law. The report contains an analysis of the subject, proposed statutory language and appropriate commentary. A final report is approved and adopted by the Commission after the public has had an opportunity to comment on tentative drafts of the report, and is then filed with the Legislature. After filing, the Commission and its staff work with the Legislature to draft the report in bill form and to facilitate its enactment.

In 2006, the New Jersey Law Revision Commission published three final reports and recommendations to the Legislature.

A. Uniform Foreign-Country Money Judgments Recognition Act

In December 2006, the Commission released a report recommending enactment of the Uniform Foreign-Country Money Judgments Recognition Act. Previously, the National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated proposed legislation entitled the "Uniform Foreign-Country Money Judgments Recognition Act" (the Act). The Act revises the 1962 "Uniform Foreign Money-Judgments Recognition Act". In 1997, New Jersey adopted in 1962 "Foreign Country Money-Judgments Recognition Act". 2A:49A-15 through 24. The Act is not intended to depart from the basic rules or approach of the 1962 Act that have withstood the test of time. Instead, it clarifies a number of sections, allocates burdens of proof and establishes a statute of limitations.

The Act deals only with the question of whether a court of an adopting state should recognize the judgment as one entitled to be enforced in that state. It does not deal with enforcement of the judgment or specific enforcement issues. Also, the Act applies directly and exclusively to money judgments or a judgment denying the recovery of money; it does not address the question of whether foreign country judgments based on other grounds should be enforced, except to note that a court may recognize non-money parts

of the foreign country money judgment under other principles of law such as applicable statutes or comity.

Section 6 of the Act provides for the procedure for securing recognition of a foreign country money judgment. In the Official Text, it is the legislature that specifies the procedure to follow. In New Jersey, as a consequence of the decision in *Winberry v. Salisbury*, 5 N.J. 240 (1950), the New Jersey Supreme Court has authority to make rules governing the administration, practice and procedures of the New Jersey Courts. To address any problem that Section 6 of the Act poses constitutional questions under *Winberry*, the Commission recommends that Section 6 be amended to include a new subsection (c) stating, "Nothing in this Section precludes the New Jersey Supreme Court from promulgating rules to specify procedures for recognition of foreign-country money judgments".

After reviewing the Act, the Commission determined that it does not contain any provisions that would militate against its adoption. It provides a clear and systematic method of seeking recognition of foreign-country money judgments. To the extent it has clarified issues that have been raised in other jurisdictions, the revision improves the 1962 Act.

B. Residential Mortgage Satisfaction Act

In September 2006, the Commission released a report recommending enactment of a new Mortgage Satisfaction Act. The Commission began this project with consideration of the Uniform Residential Mortgage Satisfaction Act, which was promulgated by the National Conference of Commissioners on Uniform State Laws in 2004. That Act requires mortgage holders to provide payoff statements, to file a satisfaction of mortgage when the mortgage is paid, and provides a mechanism to clear title when a mortgage holder fails to file the satisfaction of mortgage. The Commission compared the Uniform Law to current New Jersey statutes and found certain advantages to the Uniform Law. The Commission determined that it would be an improvement to the

current state of the law to adopt the advantageous provisions or concepts as modified to be effective in the State of New Jersey. As a result, the Commission's Mortgage Satisfaction Act is not identical to the Uniform Residential Mortgage Satisfaction Act.

Part of the difference is explained by the fact that while the Commission was working with the Uniform Law; the New Jersey Land Title Association presented an idea for improvement of law based on an approach taken by the states of Minnesota and Illinois. The suggested approach was uniquely well designed for situations where a piece of property is being sold or re-mortgaged and the current mortgage must be satisfied. The landowner requests a payoff statement and complies with its terms. The lawyer or title officer for the landowner then files an affidavit certifying that the mortgage has been paid. This "one touch" system allows a satisfaction agent to file an affidavit of satisfaction when he knows that the mortgage has been satisfied as required by the payoff statement. The agent can pay the mortgage at closing and immediately satisfy it as of record, simplifying and expediting the settling of the matter.

In addition, the Commission made other changes to the Uniform Act. Provisions were added to apply the Act where a mortgage covers more than one parcel of property and partial payment will satisfy the mortgage as to a particular parcel. The Act, as drafted by the Commission, will allow anyone with a mortgage or lien on the property (not just the landowner or his agent) to request a payoff statement, but provides a penalty for instances in which an unauthorized person requests one. The Commission also added a reference to cancellation of a mortgage by endorsement on the original, a simple and convenient method that happens to be unique to New Jersey. Finally, the Commission simplified and clarified provisions of the Uniform Law, resulting in a proposal that is based on the Uniform Residential Mortgage Satisfaction Act, but is significantly different, and improved.

C. Open Public Records Act

In September 2006, the Commission released a report recommending amendments to 47:1A-10. This project was begun in response to a decision of the Superior Court, Appellate Division, in *Paff v. Byrnes* (App. Div. May 25 2006). In that case, the court considered the exceptions to the Open Public Records Act, 47:1A-10, and found that it was unclear whether a personnel record fell within the exceptions even though an ordinance required the disclosure of the record. The statute provides that a record not within the exception must be disclosed if "another law" required its disclosure. The court considered it unclear whether municipal ordinances were encompassed by the phrase, "another law." The court suggested that the statute be clarified and referred the issue for consideration by the Commission.

The Commission determined that if information is required to be disclosed, there is no reason to shield it from disclosure as an exception to the Open Public Records Act. If the information must be made public by other law, that information is no longer confidential and it should not matter what kind of law requires the disclosure. The Commission's report made this recommendation.

V. TENTATIVE REPORTS

A tentative report represents the first settled attempt of the Commission to revise an area of law. It is the product of lengthy deliberations, but it is not final. A tentative report is distributed to the general public for comment. The Commission considers these comments and amends its report.

In 2006, the Commission published one tentative report.

A. Common Interest Ownership Act

In November 2006, the Commission released a tentative report recommending three provisions regulating residential condominiums and cooperatives. Four years earlier, the Law Revision Commission released a report recommending a comprehensive revision of the law relating to

condominiums and cooperatives. The Legislature has considered that report, the Uniform Common Interest Ownership Act (on which the Commission recommendation was based) and other proposals on several occasions during the last few years but none of the comprehensive proposals has been enacted. Revision of the law on common interest ownership communities remains an important priority since a significant percentage of New Jersey residents now live in these communities, and the law regulating them is insufficient to deal with problems that arise.

After considering the issue, the Commission determined that the time was not ripe to begin again writing a comprehensive statute. First, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has just begun a project to rewrite its Uniform Common Interest Ownership Act. The NCCUSL report should be reviewed before New Jersey either enacts the old uniform law or writes its own. In addition, there has been controversy on many aspects of common interest ownership law, especially between representatives of the governing boards of communities and individual unit owners. In the absence of a developed consensus on the substance of the law, the Commission's ability to make a meaningful contribution to this area of the law is limited.

There were, however, a few critical issues requiring legislation that the Commission believed should not wait until a comprehensive law can be enacted. The first is the right to transfer ownership of a unit. Common law has always favored free alienability of real property and disfavored restrictions on transfer. It is important both to unit owners and to the preservation of a free market in units that restrictions be limited to those that are important to the interests of the common interest community.

The second Commission proposal protects the right of a unit owner to live in his unit. New Jersey has taken the lead in protecting tenants from eviction. There is no basis to afford a unit owner less protection. If a landlord should be limited in the bases for eviction of a tenant, a community should be

limited similarly in removing a unit owner. A unit owner has all of the interests of a tenant and an additional one, ownership of the unit.

The Commission also recommends a provision limiting the power of the community to regulate a unit owner's conduct in his own unit. A community has a legitimate interest in controlling behavior that takes place on common property or affects others in the community. However, the community should not be involved in controlling private behavior within a unit. In a sense, a common interest community functions like a new kind of governmental unit. Just as there are limits as to what a municipality may regulate, there must be limits on the power of common interest communities. The limits must be based on a balance between the needs of the community as a whole and the legitimate expectations of unit owners.



State of New Jersey

N J L R C
New Jersey Law Revision Commission

FINALREPORT

Relating to

Uniform Foreign-County Money Judgments Recognition Act

July 2006

John M. Cannel, Esq., Executive Director
New Jersey Law Revision Commission
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlrc@njlrc.net
Website: <http://www.lawrev.state.nj.us>

Introduction

The National Conference of Commissioners on Uniform State Laws (NCCUSL) in July 2005 proposed legislation entitled the “Uniform Foreign-Country Money Judgments Recognition Act”. The Act revises the 1962 “Uniform Foreign Money-Judgments Recognition Act”. Section 1:12A-8(c) of the New Jersey Law Revision Commission enabling statute provides that the Commission is to:

“Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions.”

The examination of the 2005 “Recognition Act” is within the purview of the functions of the Commission in reporting its recommendations to the Legislature. This memorandum is designed to facilitate the Commission’s review of the 2005 NCCUSL proposed legislation.

Executive Summary

The New Jersey Law Revision Commission extensively discussed the Act and found that it improves existing New Jersey law. The Act is concise and clear. Its organization is logical and provides counsel and the judiciary with clear guidelines as to how and when to recognize a foreign judgment. Enactment of the legislation will not result in significant deviation from existing New Jersey law. The Commission recommends that the Legislature adopt the Act with one amendment to Section 6, subsection (b) in deference to the exclusive power of the judicial branch over procedural matters. The Commission expresses one caveat: no State has adopted the Act or introduced it for adoption. Nevertheless, the Commission determined that absolute uniformity is not needed in this area, and that New Jersey should not be deterred from improving its legislation because of sister state inactivity. The Official Text of the Act is attached as an Appendix.

Current New Jersey Law

The State of New Jersey adopted in 1997 the 1962 “Foreign Country Money-Judgments

Recognition Act”. N.J.S.A. 2A:49A-15 through 24.⁴ The Assembly Judiciary Committee inserted minor amendments in language. However, New Jersey adopted the 1962 act containing its primary principles and structure. No case law is reported under this statute. Consequently, if New Jersey were to adopt the 2005 Act, that adoption would not alter any case law. The adoption would change the language of the existing statute, but not to any detriment as explained below, and would change practice in the procedure to obtain recognition of foreign country money judgments.⁵

The 2005 Recognition Act

The first question posed that naturally arises is why NCCUSL revised the earlier Act. The Prefatory Note contained in the Official Text explains that the revision is not intended to “depart from the basic rules or approach of the 1962 Act” that have withstood the test of time. The Prefatory Note provides the following rationale for the revision:

1. “The need to update and clarify the definitions section”
2. “The need to organize and clarify the scope provisions, and to allocate the burden of proof with regard to establishing the application of the Act”
3. “The need to set out the procedure by which recognition of a foreign-country money judgment under the Act must be sought”
4. “The need to clarify, and to a limited extent, expand upon the grounds for denying recognition ...”
5. “The need to expressly allocate the burden of proof with regard to the grounds for denying recognition”
6. “The need to establish a statute of limitations”.

The “Recognition Act” deals only with the question of whether a court of an adopting state should recognize the judgment as one entitled to be enforced in that state. It does not deal with enforcement of the judgment or specific enforcement issues. Recognition and enforcement are two conceptually distinct legal concepts. Second, the “Recognition Act” applies directly and exclusively to money judgments or a judgment denying the recovery of money; it does not address the question of whether foreign country judgments based on other grounds should be enforced, except to note that a court may recognize non-money parts of the foreign country money judgment under other principles of law such as applicable statutes or comity.

A point-by-point discussion of the six issues listed in the Prefatory Note provides a good overview of the “Recognition Act” and how it is designed to work. Take the definitions section contained Section 2. The term “foreign country” is defined unremarkably as a government other than the United States, or a government other than a state, district, commonwealth, territory, or insular possession of the United States. Section 2(1)(A) and

⁴ The 1962 act is adopted by 28 states, the District of Columbia and the territory of the Virgin Islands.

⁵ It is not known how widely attorneys use the 1962 New Jersey Act. The effect on practice could be minimal.

(B). The innovation takes place in Section 2(1)(C). Under that section, a foreign country is any government that has issued a judgment that initially is not subject to the Full Faith and Credit Clause. This innovation is positive in clarifying the applicability of the Act. If the judgment is subject to review under the Full Faith and Credit Clause, then it is not a judgment of a foreign country and the “Recognition Act” does not apply. This modification also coordinates the “Recognition Act” with the Uniform Enforcement of Foreign Judgment Acts that New Jersey has adopted. It also makes clear that sister state judgments do not come within the purview of the Act.

Regarding point Two, the “Recognition Act” applies only to the following judgments that: (1) grant or deny recovery of sums of money and (2) under the law of the foreign country where the judgment was rendered are final, conclusive and enforceable in that foreign country.⁶ The Comment quoted verbatim states: “A judgment is final when it is not subject to additional proceedings in the rendering court other than execution. A judgment is conclusive when it is given effect between the parties as a determination of their legal rights and obligations. A judgment is enforceable when the legal procedures of the state to ensure that the judgment debtor complies with the judgment are available to the judgment creditor to assist in the collection of the judgment.” The nuanced distinction between “finality” and “conclusiveness” is satisfied when the foreign country judgment is final.

Even if the judgment grants or denies the recovery of money, the “Recognition Act” is inapplicable, if the judgment is: (1) for taxes, (2) for fines or penalties, or (3) a judgment of divorce, support or other judgment related to domestic relations. The burden of proof logically rests with the party attempting to seek recognition of the judgment as stated in Section 3(c). An action seeking recognition requires recourse to foreign law experts and evidence to demonstrate to the court that the requirements of the Act are satisfied.

Regarding Points 4 and 5, if the foreign country judgment is within the scope and applicability provisions of the Act, then a court is obliged to recognize that judgment. There are two exceptions: one is mandatory and the other is discretionary. First, a court cannot recognize the judgment if: (1) the judgment was rendered by a tribunal within a judicial system that does not provide impartial tribunals or provide adequate standards of due process, (2) the foreign court lacked personal jurisdiction over the defendant⁷, or (3) the foreign court lacked subject matter jurisdiction. Alternatively, the court has the option not to enforce the judgment for the eight reasons listed in Section 4(c) that individually will not be repeated here. Common threads are that the judgment was: obtained under circumstances unfair to the defendant, offensive to due process or obtained by fraud. The party resisting the recognition of the judgment has the burden of proof to establish a non-recognition ground.

Regarding Point 3, the procedure to obtain recognition of a foreign-country money judgment is straightforward and set forth in Section 6. If the recognition is sought as an original matter, filing an action for recognition brings it. If recognition is sought in a pending action, then the issue is raised by counter-claim, cross-claim or affirmative defense. When the court finds that the

⁶ Section 8 gives the court the authority to stay the proceedings if a party establishes that an appeal has been taken or will be taken. The stay is effective until the appeal is concluded, the time for appeal has expired, or the appeal was not prosecuted.

⁷ Section 5 identifies when the foreign court had jurisdiction over the defendant.

judgment is entitled to recognition, then the effect of that decision is that the judgment is conclusive between the parties to the same extent as would be judgment entitled to Full Faith and Credit. In addition, the judgment is enforceable in the same manner as a judgment rendered in the state.

Regarding Point 6, Section 9 establishes a limitations period as follows, using an earlier in time approach. An action must be commenced within the earlier of these times: the judgment is effective in the foreign country or 15 years from the date the judgment became effective in the foreign country.

New Jersey Amendment

The judicial branch in New Jersey has asserted its exclusive right over the establishment in matters of court procedure. In deference to this authority, the Commission recommends that Section 6 of the Act entitled “Procedure for recognition of Foreign-Country Judgment” be amended as follows:

- (a) If recognition of a foreign-country judgment is sought as an original matter, filing an action seeking recognition of the foreign-country judgment shall raise the issue of recognition.
- (b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense, or as specified by court rule.

Conclusion

The 2005 “Recognition Act” does not contain any provisions that would militate against its adoption. It provides a clear and systematic method of seeking recognition of foreign-country money judgments. To the extent it has clarified issues that have been raised in jurisdictions other than the State of New Jersey, the revision improves the 1962 Act. Therefore, it is recommended that the Legislature adopt the Act as amended in spite of inactivity in sister state legislatures.⁸

⁸ Legislative Fact sheet retrieved 9 July 2006 from http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ufcmjra.asp.



STATE OF NEW JERSEY

NJLRC

New Jersey Law Revision Commission

Final Report

Relating to

RESIDENTIAL MORTGAGE SATISFACTION ACT

December 2006

John M. Cannel, Esq., Executive Director
New Jersey Law Revision Commission
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlrc@njlrc.net
Website: <http://www.lawrev.state.nj.us>

Introduction

The Law Revision Commission began this project with consideration of the Uniform Residential Mortgage Satisfaction Act, which was promulgated by the National Conference of Commissioners on Uniform State Laws in 2004. That Act requires mortgage holders to provide payoff statements, to file a satisfaction of mortgage when the mortgage is paid, and provides a mechanism to clear title when a mortgage holder fails to file the satisfaction of mortgage. The Commission compared the Uniform Law to current New Jersey statutes and found certain advantages to the Uniform Law. While it is not identical to the Uniform Residential Mortgage Satisfaction Act, this report is based on that Act.

While the Commission was working with the Uniform Law, the New Jersey Land Title Association presented an idea for improvement of law based on an approach taken by the states of Minnesota and Illinois. This approach is uniquely well designed for situations where a piece of property is being sold or re-mortgaged and the current mortgage must be satisfied. The landowner requests a payoff statement and complies with its terms. The lawyer or title officer for the landowner then files an affidavit certifying that the mortgage has been paid. This “one touch” system allows a satisfaction agent to file an affidavit of satisfaction when he knows that the mortgage has been satisfied as required by the payoff statement. The agent can pay the mortgage at closing and immediately satisfy it of record, simplifying and expediting the settling of the matter.

The Commission proposal also allows affidavits to be filed as provided in the Uniform Act. Those affidavits may be required where no payoff statement is provided. Such situations include where the mortgage was paid sometime in the past but no record of satisfaction was filed.

The Commission made a number of other changes to the Uniform Act. Provisions were added to apply the act where a mortgage covers more than one parcel of property and partial payment will satisfy the mortgage as to a particular parcel. See Sections 2(11), 12(5) and 15. The act has been changed to allow, in addition to the landowner or his agent, anyone with a mortgage or lien on the property to request a payoff statement, but to provide a penalty where an unauthorized person requests one. See Sections 2(5), 4(a)(1) and 4(k).

The Commission also added a reference in Section 7(b) to cancellation of a mortgage by endorsement on the original. That method is simple and convenient, though unique to New Jersey. The proposal substitutes the more common terms, “mortgage holder” and “mortgage” for the terms “secured creditor” and “security instrument” used in the Uniform Law. The Commission also simplified and clarified provisions of the Uniform Law. While the resulting proposal is based on the Uniform Residential Mortgage Satisfaction Act, it is significantly different, and improved.

SECTION 1. SHORT TITLE.

This act may be cited as the Residential Mortgage Satisfaction Act.

COMMENT

This section is identical to Section 101 of the Uniform Act.

SECTION 2. DEFINITIONS.

In this act:

(1) “Address for giving notice” means the most recent address provided in a document by the intended recipient of notice to the person giving notice, unless the person giving notice knows of a more accurate address, in which case the term means that address.

(2) “Day” means calendar day, except that in computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.

(3) “Document” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) “Entitled person” means a person liable for payment or performance of the obligation secured by the real property described in a mortgage, the landowner, or any person with a recorded interest in the property.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Landowner” means a person that, before foreclosure, has the right of redemption in the real property described in a mortgage. The term does not include a person that holds only a lien on the real property.

(8) “Mortgage holder” means a person that holds or is the beneficiary of a mortgage or that is authorized to receive payments on behalf of a person that holds a mortgage. The term does not include a trustee under a security instrument.

(9) “Mortgage” means an agreement, however denominated, that creates or provides for an interest in residential real property to secure payment or performance of an obligation, whether or not it also creates or provides for a lien on personal property.

(10) “Notice” means a document containing information required under this act and signed by the person required to provide the information.

(11) “Payoff amount” means the sum necessary to satisfy a mortgage, or, if the payoff statement so provides, the amount necessary to release a portion of the property from the mortgage.

(12) “Payoff statement” means a document containing the information specified in Section 4(d).

(13) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(14) “Recording data” means book and page number or other document number that indicates where a document is recorded in the office of the county clerk or register of deeds.

(15) “Residential real property” means real property located in this state that is used primarily for personal, family, or household purposes and is improved by one to four dwelling units.

(16) “Sign” means, with present intent to authenticate or adopt a document:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the document an electronic sound, symbol, or process.

(17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or possession subject to the jurisdiction of the United States.

(18) “Submit for recording” means to deliver, with required fees, a document sufficient to be recorded, to the appropriate county recording office.

COMMENT

Most of this section is substantively identical to Section 102 of the Uniform Act. Definition (17) (“Security interest”) of the Uniform Law has been deleted because all uses of the phrase have been deleted.

Definition (5) has been changed slightly to allow the holder of another mortgage on the property or an interest in it to protect his interests by obtaining a payoff statement. Definition (11) has been expanded to provide for situations where a mortgage is secured by several parcels and payment of a portion of the mortgage releases less than all parcels and allows them to be transferred free of the mortgage.

SECTION 3. NOTICE: MANNER OF GIVING AND EFFECTIVE DATE.

a. A person gives notice by:

(1) depositing it with the United States Postal Service with first-class postage paid or with a commercially reasonable delivery service with cost of delivery provided, properly addressed to the recipient’s address for giving notice;

(2) sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient’s address for giving notice, but only if the recipient agreed to receive notice in that manner; or

(3) causing it to be received at the address for giving notice within the time that it would have been received if given pursuant to paragraph (1).

b. Notice is effective:

(1) the day after it is deposited with a commercially reasonable delivery service for overnight delivery;

(2) three days after it is deposited with the United States Postal Service, first-class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery;

(3) the day after it is given, if given pursuant to subsection (a)(2); or

(4) the day it is received, if given by a method other than as provided in subsection (a)(1) or (2).

c. A person need not use a method of giving notice that provides proof of receipt unless the provision directing giving notice specifically so provides.

COMMENT

Subsection (c) of Section 103 the Uniform Act as been deleted as recommended by the legislative note to the Uniform Act. Subsection (c) as it appears here is new; it is a clarification of the Uniform Act.

SECTION 4. PAYOFF STATEMENT: REQUEST AND CONTENT.

a. An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the mortgage holder notice requesting a payoff statement for a specified payoff date not more than 30 days after the notice is given. The notice must contain:

(1) the entitled person's name, and if the person is not the landowner, the basis of the person's entitlement;

(2) if given by a person other than an entitled person, the name of the person giving notice and a statement that the person is an authorized agent of the entitled person;

(3) a direction whether the statement is to be sent to the entitled person or that person's authorized agent;

(4) the address to which the mortgage holder must send the statement; and

(5) sufficient information to enable the mortgage holder to identify the mortgage and the real property encumbered by it.

b. If notice under subsection (a) directs the mortgage holder to send the payoff statement to a person identified as an authorized agent of the entitled person, the mortgage holder must send the statement to the agent, unless the mortgage holder knows that the entitled person has not authorized the request.

c. (1) Within 10 days after the effective date of notice that complies with subsection (a), the mortgage holder shall issue a payoff statement and send it as directed by Section 3(a)(3) and (a)(4) in the manner prescribed for giving notice. A mortgage holder who sends a payoff statement to the entitled person or the authorized agent may not claim that the notice did not satisfy subsection (a).

(2) If the person to whom the notice is given once held an interest in the mortgage but has since transferred that interest, the person need not send a payoff statement but, within ten days, shall give notice of the transfer to the person to whom the payoff statement otherwise would have been sent, providing the name and address of the transferee.

d. A payoff statement must contain:

(1) the date on which it was prepared and the payoff amount as of that date, including the amount by type of each fee, charge, or other sum included within the payoff amount;

(2) the information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount; and

(3) the payment cutoff time, if any, the address or place where payment must be made, and any limitation as to the authorized method of payment.

e. A payoff statement may contain the amount of any fees authorized under this section not included in the payoff amount.

f. A mortgage holder may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount in writing at no charge and to obtain that updated payoff amount during normal business hours on the payoff date or the immediately preceding business day.

g. A mortgage holder must provide upon request one payoff statement without charge during any six-month period. A mortgage holder may charge a fee of \$25 for each additional payoff statement requested during that six-month period. However, a mortgage holder may not charge a fee for providing an updated payoff amount under subsection (f) or a corrected payoff statement.

h. Unless the mortgage provides otherwise, a mortgage holder is not required to send a payoff statement by means other than first-class mail. If the mortgage holder agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

i. Except as otherwise provided in Section 8, if a mortgage holder to whom notice has been given pursuant to subsection (a) does not send a timely payoff statement that substantially complies with subsection (d) and the entitled person prevails in an action to enforce this act, the mortgage holder is liable to the entitled person for any actual damages caused by the failure ~~plus~~ or a penalty of \$500, ~~whichever is greater~~, but additional punitive damages shall not be allowed.

j. A request for a payoff statement may be combined with a notice of intent to submit for recording an affidavit of satisfaction of a mortgage.

k. If persons who know they are not entitled to request a payoff statement, request one and receive it, they are liable to the landowner for any actual damages caused ~~plus or~~

a penalty of \$500, ~~whichever is greater~~, but additional punitive damages shall not be allowed.

COMMENT

The section is substantially identical to Section 201 of the Uniform Law. The language added in subsection (a)(1) reflects the broadening of the class of those persons entitled to a payoff statement. See the definition of “entitled person.” The addition of the word “additional” in subsection (i) is intended as a clarification. The last sentence of subsection (h) has been deleted as it duplicates the last sentence of subsection (g). New subsection (j) reflects Official Comment 4 to Section 302. New subsection (k) is intended to enforce the restriction on those persons entitled to a payoff statement.

SECTION 5. UNDERSTATED PAYOFF STATEMENT: CORRECTION; EFFECT.

a. If a mortgage holder determines that the payoff amount it provided in a payoff statement was understated, the mortgage holder may send a corrected payoff statement in the same manner as the original payoff statement was sent. If the entitled person or the person’s authorized agent receives and has a reasonable opportunity to act upon a corrected payoff statement before making payment, the corrected statement supersedes an earlier statement.

b. A mortgage holder that sends a payoff statement containing an understated payoff amount may not deny the accuracy of the payoff amount as against any person that reasonably and detrimentally relies upon the understated payoff amount.

c. Except as provided by subsection (b), this act does not:

(1) affect the right of a mortgage holder to recover any sum that it did not include in a payoff amount from any person liable for payment of the mortgage; or

(2) limit any claim or defense under law.

COMMENT

The section is substantially identical to Section 202 of the Uniform Law.

SECTION 6. MORTGAGE HOLDER TO SUBMIT SATISFACTION FOR RECORDING; LIABILITY FOR FAILURE.

a. Except as provided in subsection (b), a mortgage holder shall submit for recording a satisfaction of a mortgage within 30 days after the mortgage holder receives full payment or performance of the mortgage. If a mortgage secures a line of credit or future advances, the mortgage is fully performed only if, in addition to full payment, the landowner has given notice requesting the mortgage holder to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the mortgage.

b. A mortgage holder is not required to submit a satisfaction of a mortgage when the person making payment has given notice as provided by section 4(j) that an affidavit of satisfaction of mortgage will be filed

c. Except as otherwise provided in Section 8, a mortgage holder that is required to submit a satisfaction of a mortgage for recording and does not do so by the end of the period specified in subsection (a) is liable to the landowner for any actual damages caused by the failure, but not punitive damages.

d. Except as otherwise provided in subsection (e) and in Section 8, a mortgage holder that is required to submit a satisfaction of a mortgage for recording and does not do so by the end of the period specified in subsection (a) is also liable to the landowner for any additional court costs and damages incurred or a penalty of \$500, whichever is greater, ~~and any court costs incurred~~ if, after the expiration of the period specified in subsection (a):

(1) the landowner gives the mortgage holder notice, by any method that provides proof of receipt, demanding that the mortgage holder submit a satisfaction for recording; and

(2) the mortgage holder does not submit a satisfaction for recording within 30 days after receipt of the notice.

e. Subsection (d) does not apply if the mortgage holder received full payment or performance of the mortgage before the effective date of this act.

COMMENT

This section is substantively identical to Section 203 of the Uniform Law except for the addition of the final sentence of subsection (a). That additional language is necessary to implement the “one touch” system in which the satisfaction agent files an affidavit of satisfaction after paying the mortgage in compliance with the payoff statement.

SECTION 7. FORM AND EFFECT OF SATISFACTION.

A satisfaction of a mortgage shall be either:

a. a document that:

(1) identifies the parties to the mortgage, the property mortgaged and the recording data for the mortgage;

(2) states that the person signing the satisfaction is the mortgage holder;

(3) contains language terminating the effectiveness of the mortgage; and

(4) is signed and acknowledged by the mortgage holder; or

b. an endorsement:

(1) authorizing cancellation of the mortgage signed by the mortgage holder; and

(2) made on the original mortgage that bears on it the receipt given by the county recording officer at the time it was recorded.

Comment

Subsection (a) is derived from Section 204 of the Uniform Law. Subsection (b) allows the cancellation of mortgages by re-recording the original mortgage with an endorsement authorizing cancellation. That is derived from current statute, 46:18-5.1(a). Subsection (b) of the Uniform Law section required the recording officer to record satisfactions of mortgage. That subject is governed by other law and has been deleted.

SECTION 8. LIMITATION OF MORTGAGE HOLDER'S LIABILITY.

A mortgage holder is not liable under this act if the mortgage holder:

- a. established a reasonable procedure to achieve compliance with its obligations under this act;
- b. complied with that procedure in good faith; and
- c. was unable to comply with its obligations because of circumstances beyond its control.

COMMENT

This section is substantively identical to Section 205 of the Uniform Law.

SATISFACTION BY AFFIDAVIT

SECTION 9. DEFINITION; ELIGIBILITY TO SERVE AS SATISFACTION AGENT; REGULATION OF SATISFACTION AGENTS.

- a. "Title insurance company" means an organization authorized to conduct the business of insuring titles to real property in this state.
- b. The following may serve as a satisfaction agent under this act:
 - (1) a title insurance company, acting directly or through an insurance producer licensed in the line of title insurance authorized to sign and submit for recording an affidavit of satisfaction; or
 - (2) an attorney at law licensed to practice law in this state.

COMMENT

In accordance with the legislative note appended to Section 301 of the Uniform Law, subsection (c) which allowed specification of others who could serve as satisfaction agents has been deleted. As a result, only title insurance agents and lawyers may file affidavits to clear title. That is current law.

SECTION 10. AFFIDAVIT OF SATISFACTION: NOTICE TO MORTGAGE HOLDER.

- a. If a mortgage holder has not submitted for recording a satisfaction of a mortgage a satisfaction agent acting for, and with authority from, the landowner may give the mortgage holder notice that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the mortgage. The notice shall include:

- (1) the identity and mailing address of the satisfaction agent;
 - (2) identification of the mortgage for which a recorded satisfaction is sought, including the names of the original parties to, and the recording data for, the mortgage;
 - (3) a statement that the satisfaction agent has reasonable grounds to believe that:
 - (A) the real property described in the mortgage is residential real property;
 - (B) the person to whom notice is being given is the mortgage holder; and
 - (C) the mortgage holder has received satisfaction of all obligations secured by the mortgage;
 - (4) a statement that the satisfaction agent, acting with the authorization of the owner of the real property described in the mortgage, intends to sign and submit for recording an affidavit of satisfaction of the mortgage unless, within 30 days after the effective date of the notice:
 - (A) the mortgage holder submits a satisfaction of the mortgage for recording;
 - (B) the satisfaction agent receives from the mortgage holder a notice stating that the mortgage remains unsatisfied; or
 - (C) the satisfaction agent receives notice from the mortgage holder stating that the mortgage holder has assigned the mortgage and identifying the name and address of the assignee.
- b. A notice under subsection (a) shall be sent by a method:
- (1) authorized by Section 6, and
 - (2) that provides proof of receipt at the mortgage holder's address as defined in Section 2.
- c. This act does not require a person to agree to serve as a satisfaction agent.

COMMENT

This section is substantively identical to Section 302 the Uniform Law. The change in subsection (a)(3)(C) is merely a clarification. The change in subsection (b)(1) is also a clarification; the definition in Section 2, for most purposes, is the last known address.

SECTION 11. AFFIDAVIT OF SATISFACTION: AUTHORIZATION TO SUBMIT FOR RECORDING.

a. A satisfaction agent may sign and submit for recording an affidavit of satisfaction of a mortgage if:

(1) the agent knows that the mortgage has been paid in compliance with a written payoff statement provided by the mortgage holder;

(2) the mortgage holder has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a mortgage within 30 days after the effective date of a notice; or

(3) the mortgage holder authorizes the satisfaction agent to do so.

(b) A satisfaction agent may not sign and submit for recording an affidavit of satisfaction of a mortgage by authority of subsection (a)(2) if the agent has received notice stating that the mortgage remains unsatisfied.

(c) If a satisfaction agent receives notice that the mortgage has been assigned, the satisfaction agent may not submit for recording an affidavit of satisfaction of the mortgage by authority of subsection (a)(2) without:

(1) Giving a notice of intent to submit for recording an affidavit of satisfaction to the identified assignee at the identified address; and

(2) Complying with Section 10 with respect to the identified assignee.

COMMENT

Except for subsection (a)(1), this section is substantively similar to Section 303 of the Uniform Law. Subsection (a)(1) is new and implements the “one touch” approach. As a result of that addition, the restrictions of subsections (b) and (c) have been limited. They apply only to situations where the satisfaction agent is acting because the mortgage holder had not replied, not where the mortgage holder has provided a payoff statement or given authority for an affidavit of satisfaction.

SECTION 12. AFFIDAVIT OF SATISFACTION: FORM.

An affidavit of satisfaction shall be substantially in the following form:

(Date of Affidavit)

AFFIDAVIT OF SATISFACTION

I state as follows:

1. I am: [check appropriate box]

? an officer or agent of [Name of title insurance company] (the “Company”), which is licensed as an insurance producer licensed in the line of title insurance in this state, and I have been authorized by the Company to sign and submit for recording an affidavit of satisfaction.

? an attorney licensed to practice law in this state.

2. I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property encumbered by the following mortgage (the “mortgage”) currently held by _____ (the “mortgage holder”):

Original parties to mortgage:

County and state of recording:

Recording data for mortgage:

3. I have reasonable grounds to believe that:

a. the mortgage holder has received full payment or performance of the balance of the obligations secured by the mortgage; and

b. the real property described in the mortgage constitutes residential real property.

4. [check appropriate box]

? The mortgage holder has provided a written payoff statement for the mortgage and I know that the mortgage has been paid as specified in the statement; or

? With the authorization of the owner of the real property described in the mortgage, I gave notice to the mortgage holder that I would sign and record an affidavit of satisfaction of the mortgage unless, within 30 days after the effective date of the notice, the mortgage holder gave notice that the mortgage remains unsatisfied. The 30-day period has elapsed, and I have not received notice that the mortgage remains unsatisfied; or

? The mortgage holder authorized me to execute and record this affidavit of satisfaction.

5. [Check box and complete if appropriate] ? this affidavit of satisfaction affects only the following portion of the property mortgaged: (state property description).

(Signature of Satisfaction Agent)

(Notarization)

COMMENT

This section is derived from Section 305 of the Uniform Law. There is no section equivalent to Section 304 of the Uniform Law. In the Uniform Law, Section 304 sets out the requirements for an affidavit of satisfaction and Section 305 establishes a form meeting those requirements. That duplication was obviated by the approach of this section, requiring an affidavit be “substantially in the following form” and providing a form that meets the substantive requirements.

Paragraph (4) of the form differs from that of the Uniform Law as the result of the “one-touch” system. That paragraph now includes three options: an affidavit after making payment in response to a payoff statement, an affidavit when the mortgage holder has been given notice that the mortgage has been paid and does not respond, and an affidavit authorized by the mortgage holder. In the ordinary case of a current mortgage paid as directed in a payoff statement, the first option would be used. When the mortgage was paid sometime in the past but no satisfaction was filed, the second or third option may be appropriate depending on whether the mortgage holder fails to respond or responds authorizing the affidavit.

Paragraph (5) of the form is new. It allows the affidavit of satisfaction procedure to be used where several parcels of property secure the mortgage and the payoff statement allows particular parcels to be released from the mortgage after partial payment.

SECTION 13. AFFIDAVIT OF SATISFACTION: EFFECT.

a. Upon recording, an affidavit ~~substantially complying with the requirements of Section 12~~ constitutes a satisfaction of the mortgage described in the affidavit ~~provided it substantially complies with Section 12.~~

b. The recording of an affidavit of satisfaction of a mortgage does not by itself extinguish any liability of a person for payment or performance of any obligation secured by the mortgage.

COMMENT

Subsections (a) and (b) are substantively identical to Section 306 of the Uniform Law. Subsection (c) of the Uniform Law section required the recording officer to record affidavits. That subject is governed by other law and has been deleted.

SECTION 14. LIABILITY OF SATISFACTION AGENT.

a. Except as otherwise provided in subsection (b), a satisfaction agent who records an affidavit of satisfaction of a mortgage erroneously or with knowledge that the statements contained in the affidavit are false is liable to the mortgage holder for any actual damages caused by the recording and costs.

b. A satisfaction agent who records an affidavit of satisfaction of a mortgage erroneously is not liable if the agent properly complied with this act.

c. If a satisfaction agent records an affidavit of satisfaction of a mortgage with knowledge that the statements contained in the affidavit are false, this section does not preclude:

- (1) A court from awarding punitive damages on account of the conduct;
- (2) The mortgage holder from proceeding against the satisfaction agent under law of this state other than this act; or
- (3) The enforcement of any criminal statute prohibiting the conduct.

COMMENT

This section is substantively identical with Section 307 of the Uniform Law.

SECTION 15. SATISFACTION OF MORTGAGES AFFECTING MORE THAN ONE PARCEL OF PROPERTY.

When a mortgage is secured by more than one parcel of property, and the payoff statement provides that it may be satisfied in respect to particular parcels by making a payment in compliance with the payoff statement satisfying particular conditions, the provisions of this act may be applied to those parcels.

COMMENT

This section is not found the Uniform Law. It applies the act to partial satisfactions

SECTION 16. DOCUMENT OF RESCISSION: EFFECT; LIABILITY FOR WRONGFUL RECORDING.

a. In this section, “document of rescission” means a document stating that an identified satisfaction or affidavit of satisfaction of a mortgage was erroneous, and the mortgage remains unsatisfied, and in force.

b. A person who has recorded a satisfaction or affidavit of satisfaction of a mortgage in error may execute and record a document of rescission. Upon recording, the document rescinds an erroneous satisfaction or affidavit.

c. A recorded document of rescission has no effect on the rights of a person that:

(1) Acquired an interest in the real property described in a mortgage after the recording of the satisfaction or affidavit of satisfaction of the mortgage and before the recording of the document of rescission; and

(2) Would otherwise have priority over or take free of the lien created by the mortgage.

d. A person who erroneously records a document of rescission is liable to any person injured thereby for the actual damages caused by the recording and costs.

COMMENT

This section is substantially identical to Section 104 of the Uniform Act. Subsection (b) has been reworded to remove an ambiguity. The subsection now states what was intended by the Uniform Law: only the person who filed the erroneous document may rescind it.

The deletion in subsection (c)(2) reflects the fact that whether or not an interest has priority over a mortgage is not just a question under the recording statute. Subsections (a) and (b) have been reworded slightly to clarify the fact that it is the prior satisfaction itself that was erroneous, not that there was an error in the way it was recorded.

MISCELLANEOUS PROVISIONS

SECTION 17. AWARD OF ATTORNEYS' FEES

In any action brought under this act, the land owner may be awarded a reasonable attorney's fee as part of the cost, provided however, that no attorney's fee shall be awarded to a defendant unless there is a determination that the ~~complainant action was~~ brought ~~the charge~~ in bad faith.

COMMENT

This section is new. It generalizes sections 104(d), 201(i) and 203(c), all of which provide for award of attorneys' fees. In form, the section is based on a provision of the Law Against Discrimination, 10:5-27.1.

SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

As permitted by the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 *et seq.*), this act modifies, limits, and supersedes that act but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

COMMENT

This section is substantially identical to Section 401 of the Uniform Act



STATE OF NEW JERSEY

N J L R C

New Jersey Law Revision Commission

FINAL REPORT

Relating to

OPEN PUBLIC RECORDS ACT

September 2006

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlrcc@njlrcc.org
Web site: <http://www.njlrcc.org>

Introduction

This project was begun in response to a decision of the Superior Court, Appellate Division in ~~Paff v. Byrnes~~ (App. Div. May 25 2006). The court considered the exceptions to the Open Public Records Act, 47:1A-10, and found that it was unclear whether a personnel record fell within an exception even though an ordinance required the disclosure of the record. The statute provides that a record fell was not within the exception and must be disclosed if "another law" required its disclosure. The court considered it unclear whether municipal ordinances were encompassed by the phrase, "another law." The court suggested that the statute be clarified and referred the issue for consideration by the Commission.

The Commission determined that if information is require to be disclosed, there is no reason to shield it from disclosure as an exception to the open public records act. If the information must be made public by other law, that information is no longer confidential. It should not matter what kind of law requires the disclosure; if disclosure is required, there is no basis for an exception to public access to the information under the open public records act.

The Commission recommends the following amendment to 47:1A-10. Deletions are indicated by strikeouts; additions, by underlining.

47:1A-10 Personnel, pension records not considered public information; exceptions.

Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that:

an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be a government record;

Personnel or pension records of any individual shall be accessible when required to be disclosed by ~~another a statute, ordinance, regulation or other~~ another a statute, ordinance, regulation or other law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

Data contained in information, which discloses conformity with specific experiential, educational, or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information shall be a government record.



STATE OF NEW JERSEY

N J L R C

New Jersey Law Revision Commission

Tentative Report

Relating to

ISSUES CONCERNING COMMON INTEREST OWNERSHIP ACT

September 2006

John M. Cannel, Esq., Executive Director
New Jersey Law Revision Commission
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: njlr@njlr.org
Web site: <http://www.njlr.org>

Introduction

Four years ago, the Law Revision Commission released a report recommending a comprehensive revision of the law relating to condominiums and cooperatives. The Legislature considered that report, the Uniform Common Interest Ownership Act (on which the Commission recommendation was based) and other proposals on several occasions during the last few years. None of the comprehensive proposals has been enacted. Revision of the law on common interest ownership communities remains an important priority; a significant percentage of New Jersey residents now live in these communities, and the law regulating them is insufficient to deal with problems that arise.

However, the Commission has decided that is not the time to begin again on writing a comprehensive statute. First, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has just begun a project to rewrite its Uniform Common Interest Ownership Act. The NCCUSL product should be reviewed before New Jersey either enacts the old uniform law or writes its own act. In addition, there has been controversy on many aspects of common interest ownership law, especially between representatives of the governing boards of communities and individual unit owners. In the absence of a developed consensus on the substance of the law it is harder for the Commission to make a meaningful contribution.

The Commission decided that there were a few critical issues that require legislation that should not wait until a comprehensive law can be enacted. This Report addresses three issues related to common interest ownership communities. The first is the right to transfer ownership of a unit. Common law has always favored free alienability of real property and disfavored restrictions on transfer. It is important both to unit owners and to the preservation of a free market in units that restrictions be limited to those that are important to the interests of the common interest community.

The second Commission proposal protects the right of a unit owner to live in his unit. New Jersey has taken the lead in protecting tenants from eviction. There is no basis to afford a unit owner less protection. If a landlord should be limited in the bases for eviction of a tenant, a community should be limited similarly in removing a unit owner. A unit owner has all of the interests of a tenant and an additional one, ownership of the unit.

The Commission also recommends a provision limiting the power of the community to regulate a unit owner's conduct in his own unit. A community has a legitimate interest in controlling behavior that takes place on common property or affects others in the community. However, the community should not be involved in controlling private behavior within a unit. In a sense, a common interest community functions like a new kind of governmental unit. Just as there are limits as to what a municipality may regulate, there must be limits on the power of common interest communities. The limits must be based on a balance between the needs of the community as a whole and the legitimate expectations of unit owners.

Restrictions on transfers of ownership and use of units

A common interest property may not restrict the transfer of ownership or lease of a unit except that the master deed or bylaws may:

- a. In a cooperative, restrict transfer of ownership of units to satisfy objective, generally applicable criteria to assure that owners are able to meet financial responsibility related to ownership;
- b. Restrict leasing to meet requirements that a certain percentage of units be owner occupied if that is necessary to satisfy the requirements of institutions that regularly lend money secured by first mortgages on units in common interest properties or regularly purchase those mortgages;
- c. Require certification of a handicap to comply with the purposes of a common interest property established by the master deed as primarily for handicapped persons;
- d. Establish a minimum age limit to comply with the purposes of a common interest property established by the master deed as primarily for persons and family members meeting the age requirements of the Federal Fair Housing Act; and
- e. Limit transfers to the extent required by State or Federal law.

COMMENT

This section was part of the Commission's 2001 report. It has exceptions to allow cooperatives ability to enforce financial standards, and meet the requirements of various federal programs.

Removal of a unit owner

a. A unit owner shall not be removed from a unit in a common interest property except by an action brought in the Law Division of Superior Court. The Court shall not order the removal of a unit owner from a unit used for residential purposes in an action brought by the management of a common interest property except upon establishment of one of the following grounds as good cause:

(1) The unit owner has failed to pay maintenance fees and assessments due under the master deed and bylaws of the common interest property.

(2) The unit owner has continued, after written notice to cease, to be so disorderly as to substantially impair the peace and quiet of other occupants of the common interest property.

(3) The unit owner has willfully or by reason of gross negligence caused or allowed destruction or substantial damage or injury to the premises.

(4) The unit owner has continued, after written notice to cease, to substantially violate any of the common interest property's rules and regulations governing the premises, provided the rules and regulations are reasonable and have been accepted in writing by the unit owner or were in effect before the unit owner acquired the unit.

(5) The common interest property is being terminated in accordance with law.

(6) The unit owner has committed a crime of the second degree or higher in the common interest property or has habitually committed crimes of any degree in the common interest property.

b. A court order removing a unit owner:

(1) Shall be entered only when other relief will be inadequate to protect the rights of other unit owners;

(1) Shall provide for protection of the rights of co-owners of the unit from which a unit owner is to be removed, and

(2) Shall allow reasonable methods for the unit owner removed to sell or lease the unit.

COMMENT

Subsection (a) is based on relevant portions of 2A:18-61.1 which governs the eviction of tenants from leased premises. Subsection (b) is new. It is intended to provide extra protections necessary for the ownership rights of the person removed and that person's co-owners.

Regulation of behavior in, or occupancy of, units.

a. The master deed or bylaws of a common interest property may regulate behavior in or occupancy of units which may adversely affect the use and enjoyment of other units or the common elements by other unit owners.

b. A common interest property may not:

(1) Impose any regulation on the use of or behavior in residential units that is more restrictive than a landlord may legally impose on a tenant; or

(2) Impose a regulation by amendment to the master deed; bylaws or rules, without reasonable accommodation for practices and uses by unit owners that were permitted at the time the unit owners acquired their units.

c. Any rule or regulation governing behavior in or occupancy of units shall be included in the master deed or bylaws.

COMMENT

This section was part of the 2001 Commission Report. It allows an association to regulate use and behavior in units but restricts the subject of regulations and requires that new regulations affecting established uses accommodate those uses.

VI. WORK IN PROGRESS

A. Criminal Code Causation

This project was begun in response to a call from a Trial Judge concerning 2C:2-3, which addresses the causal relationship between conduct and result. The Judge's concern was that subsections (c) and (e) uses the phrase, "probable result." When either of these subsections is read to a jury, the jury is apt to conclude that only results that are probable are encompassed by the provision and that any consequence that has a less than 50-50 chance of occurring is not a result for which the defendant can be held responsible.

In fact, the words "probable result" in the statutes do not have that meaning. A probable consequence is not a consequence that is more probable than not; it is one which is not too remote, accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's culpability. Cannel, *Criminal Code Annotated* (Gann Law Books 2006), p 123. Cases are consistent in supporting that interpretation. See e.g. *State v. Martin*, 119 N.J. 2, 33 (1990); *State v. Green*, 318 N.J. Super. 361, 374 (App. Div. 1999) *aff'd o.b.* 163 N.J. 140 (2000). *State v. McClain*, 263 N.J. Super. 488 (App. Div.) *certif. den.* 134 N.J. 477 (1993); *State v. Smith*, 210 N.J. Super. 43 (App. Div.) *certif. den.* 105 N.J. 582 (1986).

The clear judicial interpretation does not obviate the problem. The common definition of "probable" is more limited than the judicial definition. The usual synonym for the word is "likely." *Webster's Third International Dictionary*, Merriam-Webster Inc. 1986. Jury members, when they hear "probable result", may understandably use the usual English language definition of the phrase and, as a result, apply the wrong standard. The problem of misinterpretation can be avoided by using ordinary words in accord with their ordinary meanings whenever possible. The courts have supplied a definition that is in relatively common English: not too remote, accidental in

its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's culpability. *State v. Martin*, 119 N.J. 2, 33 (1990). There is no reason not to use that phrase in place of the ambiguous, "probable result."

B. Title 39 - Motor Vehicles

A substantial project that the Commission has worked on for several years concerns the law pertaining to motor vehicles. After preliminarily reviewing this area of the law, the Commission determined that the three volumes of the statute that comprise Title 39 were appropriate candidates for revision.

The basic statutory provisions concerning motor vehicles were drafted in the 1920s. Periodic modifications and accretions over time have resulted in a collection of layered statutes containing overlapping, contradictory and obsolete provisions.

The scope of Title 39 is very broad. It includes registration and licensing requirements, motor vehicle equipment requirements, and numerous provisions regarding the regulation of traffic, including requirements pertaining to bicycles, roller skates, horses and horse-drawn vehicles, snowmobiles, all terrain vehicles, machinery and equipment of unusual size or weight, pedestrians, the law of the road and right-of-way, traffic signals, accidents and reports, parking, highway and traffic signs, and the powers of municipal, county and state officials. Title 39 also includes provisions regarding automobile insurance, vehicle inspections, the purchase, sale and transfer of vehicles, abandoned and unclaimed vehicles, junk yards, driving schools and auto body repair facilities.

As a result of the scope of Title 39, it has a significant impact on a large number of residents of the State of New Jersey, and on those who drive on the many roadways in this State. The Commission would like to improve the language, the structure and the accessibility of the law pertaining to motor

vehicles so that those who are impacted by various provisions of the law can more readily locate and understand the requirements, responsibilities and restrictions imposed upon them.

The general goal of this revision is not to modify the substance of the law significantly, but to consolidate and, where appropriate, restructure the law so that it is consistent, organized and accessible. There may, however, be sections of the law where substantive revision is appropriate, including outdated and inconsistent penalty provisions. In those cases, the Commission will be responsive to the input from those who work with Title 39, including the Motor Vehicle Commission, municipal court judges, attorneys who regularly practice in municipal court, and police officers and others whose work with Title 39 has afforded them the opportunity to identify the instances in which the current law does not adequately address the problems posed by its day-to-day application.

The Commission made considerable progress on the Title 39 project during 2006, and it is anticipated that the project will be completed and released to the public as a tentative report early in 2007.

C. Title 44 - Poor Law

Two main laws with confusingly similar names govern assistance to the needy in New Jersey.

One, the "Work First New Jersey" Act, 44:10-55 et seq, resulted from the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 42 *U.S.C.*, Section 601, et seq, which established a federal block grant for temporary assistance for needy families and enabled the states to design their own welfare programs. This Act replaced earlier programs including: aid to families with dependent children, general public assistance

(GA), emergency assistance for recipients, and the Family Development Initiative. 44:10-58(b). The two main relief programs established by this act are Temporary Aid for Needy Families (TANF) and General Assistance (GA). TANF is the successor to the federally funded categorical programs; GA is the continuation of municipal general public assistance for those people who do not fit within the categorical programs.

The Work First New Jersey General Public Assistance Act, 44:8-107 et seq, the second main law, replaced the State's General Public Assistance Law of 1947. The existing statutory language obfuscates the relationship between the two "Work First" laws. The Work First New Jersey General Public Assistance Act seems to establish a general assistance program to "needy, single adults and couples without dependent children" 44:8-108. In fact, the Act serves only to provide for municipal governance of the General Assistance program established by the other "Work First" Act. A municipality may choose either to run the program itself or to cede authority to the county. In current practice, administration of the program is equally divided between municipal and county governance. The TANF program is administered by the county.

The Commission is drafting provisions that clearly establish the programs operating in New Jersey, and that remove the ambiguities and anachronisms of the current statutes.

D. Married Women's Property Act

The Married Women's Property Acts comprise the bulk of Chapter 2 of Title 37. The Commission recommends their repeal.

These statutes were enacted between the mid 19th century and the early 20th century to alter the old common law rules that limited a married woman's legal capacity and power to own and control property. When enacted, the Acts served a purpose. Under common law rules in the early 19th century, married women, as opposed to married men and unmarried women, had restricted legal and property rights. The Married Women's Property Acts changed those rules.

At this point in time, however, the Acts no longer serve a current purpose. No one would now suggest that by marrying, a woman loses her rights to own, control and dispose of property and, if the acts are repealed, no court would find that the common law requires the kind of discrimination that was accepted in the 19th century.

Moreover, Article 1, Paragraph 1 of the New Jersey Constitution guarantees all citizens liberty and equal protection. *See e.g., Lewis v. Harris* 188 N.J. 415 (2006). Civil rights statutes reinforce those guarantees. *See e.g.,* 10:1-1, 10:1-2 and 10:5-4. The more recent protections are inconsistent with the legal disabilities that law in the 19th century imposed on married women. Thus, the Constitution would prevent any court from holding that those disabilities were revived by the repeal of the Married Women's Property Acts.

The Commission suggests that the repeal of the Acts will have no substantive effect. The law treating married women as having the same capacity to control property, as others will be unchanged. The repeal will just remove an anachronistic part of the New Jersey Statutes.