

To: New Jersey Law Revision Commission
From: Susan Thatch
Re: Prerequisites for recording – N.J.S. 46:26A-3
Date: September 6, 2016

MEMORANDUM

A member of the public contacted the Law Revision Commission to propose a project regarding a minor structural change to N.J.S. 46:26A-3, which details the requirements for recording deeds and other instruments. This memorandum provides some background information for the Commission's consideration.

Background

In November 2003, the New Jersey Law Revision Commission released a Final Report which proposed revisions to statutes governing the recording of title documents following the federal enactment of the Electronic Signatures in Global and National Commerce Act¹ and New Jersey's enactment of the Uniform Electronic Transactions Act.² The Final Report sought to (1) address recording and indexing in a manner consistent with existing law, (2) simplify the statutes by combining overlapping sections and deleting extraneous provisions, (3) incorporate provisions reflecting existing practice, and (4) provide uniformity in modern methods of recording.³

In March 2010, the Legislature introduced a bill proposing statutory language substantially similar to the language approved by the NJLRC.⁴ The favorable statement of the Assembly Housing and Local Government Committee referenced the bill's origin as an NJLRC Final Report and restated portions of the Final Report's introductory narrative.⁵ The statement of the Senate Community and Urban Affairs Committee similarly referred to the NJLRC's work in this area.⁶

Analysis

The NJLRC's proposed language for 46:26A-3 read as follows:

¹ 15 U.S.C. § 7001 *et seq.*

² N.J.S. 12A:12-1 *et seq.*

³ N.J. LAW REVISION COMM'N, FINAL REPORT RELATING TO MORTGAGE RECORDING at 2 (November 2003), available at <http://lawrev.state.nj.us/titlerecordation/trFR111303curr020110.pdf>.

⁴ A.B. 2565, 214th Leg. (N.J. 2010).

⁵ STATEMENT OF ASSEMBLY HOUSING AND LOCAL GOVERNMENT COMM. ON ASSEMBLY NO. 2565 (June 13, 2011), available at http://www.njleg.state.nj.us/2010/Bills/A3000/2565_S1.PDF.

⁶ STATEMENT OF SENATE COMMUNITY AND URBAN AFFAIRS COMM. ON SENATE NO. 88 (December 8, 2011), available at http://www.njleg.state.nj.us/2010/Bills/A3000/2565_S2.PDF.

1-3. Prerequisites for recording

a. A document satisfies the prerequisites for recording if it appears from the document or the image of it delivered to the recording office that:

- (1) The document is in English or accompanied by a translation into English;
- (2) The document bears a signature;
- (3) The document (including a corrected document submitted for re-recording) is acknowledged or proved as provided by this title;
- (4) The names are printed beneath all signatures that appear on the document;
- (5) If the document is a deed conveying title to real estate, it
 - (a) fulfills the requirements of P.L.1968, c.49, s.2 (C.46:15-6), and
 - (b) includes a reference to the lot and block number of the real estate conveyed as designated on the tax map of the municipality at the time of the conveyance or the account number of the real estate. If the real estate has been subdivided, the reference shall be preceded by the words "part of." If no lot and block or account number has been assigned to the real estate, the deed shall state that fact, and
- (6) if the document is an assignment, release or satisfaction of a mortgage or an agreement respecting a mortgage, it states the book and page number or the document identifying number of the mortgage to which it relates if the mortgage has been given such a number.

Upon introduction, the following changes were made to the NJLRC's recommended language:

a. A document satisfies the prerequisites for recording if it appears from the document or the image of it delivered to the recording office that:

- (1) the document is in English or accompanied by a translation into English;
- (2) the document bears a signature;
- (3) the document (including a corrected document submitted for re-recording) is acknowledged or proved as provided by ~~this title~~ [Title 46 of the Revised Statutes](#);
- (4) the names are printed beneath all signatures that appear on the document;
- (5) if the document is a deed conveying title to real ~~estate~~ [property](#), it
 - (a) fulfills the requirements of P.L.1968, c.49, ~~s. section 2~~ [31 of](#) (C.46:15-6), ~~and~~
 - (b) includes a reference to the lot and block number of the real ~~estate~~ [property](#) conveyed as designated on the tax map of the municipality at the time of the conveyance or the account number of the real ~~estate~~. ~~If the real estate~~ [property](#),

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

(d) includes the mailing address of the grantee. **If the real property has been subdivided, the reference shall be preceded by the words "part of." If no lot and block or account number has been assigned to the real estate property, the deed shall state that fact,**
and

(6) if the document is an assignment, release or satisfaction of a mortgage or an agreement respecting a mortgage, it states the book and page number or the document identifying number of the mortgage to which it relates if the mortgage has been given such a number.

The individual contacting the Commission attention suggested that the emphasized “subdivision” language contained in subsection (d) of the enacted law was a potential typesetting error. It appears that upon adding the two additional requirements to state the name of the person preparing the deed and the mailing address of the grantee, the subdivision language was separated from where it originally resided in subsection (b) and retained at the end of subsection (d). There does not appear to be any manifest legislative intent for this modification.

Conclusion

Staff has not uncovered any case law that identifies this alleged misplacement as problematic. However, it may be more suitable to have the language moved to subsection (b) so that all procedural requirements relating to lot and block designations are within the same subsection. If the Commission would like to proceed with this project, Staff will contact county offices and legal professionals to determine whether the placement of this language creates confusion or delay.