

**New Jersey  
N2K Hour:**

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

Webex Presentation,  
August 10, 2021

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## Recording v. filing

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

## Local customs

- In NJ, deeds, mortgages, and other legal documents which encumber a property are typically recorded by the County Clerk's Office in each particular county.
- County Recorders typically require recording documents to be prepared in black, legible type so it can easily be read and scanned or photocopied.
- County specific cover sheets are required for all recording documents in NJ.

## Deeds

- The face of the Deed should always include “Prepared by” information and the mailing address of the grantee under “Record and Return to” at the top left corner of the Deed.
- A Deed can be prepared by the grantor, but NJ requires that a licensed attorney in this state can only prepare a Deed on someone’s behalf.
- Effective date of transfer must be printed on first page of Deed (transfer date would be the closing date of the conveyance).
- Amount of consideration must be included on first page of Deed, even if for nominal consideration or \$1.00.

## Deeds (cont.)

- A Deed must contain a legal description either in the body of the Deed or as a separate exhibit.
- The legal description may also include a recital which references a prior recorded Deed as to the land that is being conveyed.
- The legal description must contain enough information so the property can be sufficiently identified.
- The best description to use is a metes and bounds description of the property which is usually taken from a survey or a filed map description.

## Deeds (cont.)

- A legal description can simply reference a lot and block number from a recorded plat or tax map, or contain a recital which references a prior recorded Deed for the same property.
- All Deeds must be notarized for recording.
- Grantor(s) must sign the Deed in the presence of a notary.
- Notary section must state the county and State where deed is signed.
- Notary stamp can be used on Deed, but it must state the expiration date for the notary's commission.

## Other Recording Documents

- Mortgages, Discharges, Notice of Settlement
- Mortgage must include the names of the mortgagor and mortgagee, the date of the mortgage, record and return to information, all appropriate signatures from the parties, and be properly notarized.
- Discharges must always reference recorded mortgage or lis pendens filed for encumbered property; include the names of the parties, date of action, and legal description for the property in question.

## Notice of Settlement

- Notice of Settlement (NOS) is filed prior to the Mortgage.
- It is effective for 60 days and sets the priority of the Mortgage over any subsequent lien that is recorded against the property.
- Notice of Settlement must include the names of the parties, the legal description of the property, all appropriate signatures, and be properly notarized.
- Please contact the County Recorder's Office for any specific requirements on other legal documents that need to be recorded for a particular property.



## Recording Notice of Settlement

- A Notice of Settlement must be recorded for your transaction as soon as possible, regardless of whether it is for a purchase or refinance.
- Even if a closing date has not been set by the parties, some counties may take several weeks to have a NOS filed of record, so a NOS must still be filed promptly.
- A new NOS can always be filed for the same transaction if the current NOS is about to expire (maximum of two).
- As long as the NOS is on record and still valid, the gap period will be covered between the closing date of your transaction and the recording date of the Deed or Mortgage.

## Recording Fees

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

## Standard ETA for Recording in NJ

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

## Standard ETA for Recording in NJ (cont.)

- The New Jersey Land Title Association is making a consistent effort to have the recording times expedited in some of these counties.
- Deeds and Mortgages can typically be e-recorded, along with any other documents that are deemed to be in recordable form (e.g. Power of Attorney, Easement Agreements, Memos of Lease).

## Remote Online Notarization (RON)

- On July 22, 2021, Governor Murphy signed NJ Bill A4250/S2508 into law authorizing the use of remote online notarization (RON) in New Jersey.
- The new law will go into effect **within 90 days after enactment.**
- Once the law is in effect, County Clerks must accept documents that have been electronically signed and notarized, as long as the technology used for the notarization process conforms to the standards set forth by the State Treasurer.

## Remote Online Notarization (RON) (cont.)

- The new law also provides that a notarial act performed in another state has the same effect under the law of this State as if performed by a notarial officer of this State, if the act performed in that state is performed by:
  - a notary public of that state; a judge, clerk, or deputy clerk of a court of that state; or any other individual authorized by the law of that state to perform the notarial act.
  - The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

## Remote Online Notarization (RON) (cont.)

- The signature and title of a notarial officer described in this subsection conclusively establish the authority of the officer to perform the notarial act.
- Under the new law, New Jersey issuing offices will be able to now accept and rely upon Remote Online Notarizations performed in compliance with existing statutes in other states.
- If you have any questions regarding RON, please consult your Underwriter for further guidance.

## Realty Transfer Tax

- A realty transfer fee is imposed upon the recording of deeds evidencing transfers of title to real property in the State of New Jersey.
- The NJ Division of Taxation provides a breakdown of the tax and a fee schedule to use for all conveyances.
- The fee schedule can be found at the following link:  
<https://www.state.nj.us/treasury/taxation/pdf/lpt/feeschedover350.pdf>



## Realty Transfer Tax (cont.)

- If the property is classified as Class 4 (commercial, industrial, or apartment properties), NJ requires that an Affidavit of Consideration of Use from both buyer and seller be submitted with every Deed for recording, whether the real property transfer is taxable or exempt from payment of the 1% fee.
- When calculating the transfer tax, please keep in mind that the consideration can include anything of value given for the property, including assumption of the remaining balance on a mortgage.

## Realty Transfer Tax (cont.)

- By statute, the realty transfer fee is payable by the seller at the time of the deed recording; however, parties may agree by contract to shift the burden from sellers to purchasers.
- Certain exemptions may apply:
  - Consideration is less than \$100; a transfer to a governmental entity; and conveyances among commonly owned entities.

## Affidavit of Consideration of Use

- In NJ, a deed will include an Affidavit of Consideration from both the buyer and seller which includes the actual consideration for the property, as well as a computation of the realty transfer tax due to the County.
- There are two Affidavits of Consideration to be completed for every conveyance of a Class 4 property (one from buyer, one from seller).
- Both Affidavits must be consistent with one another as to the actual consideration, and the computation of the realty transfer tax due to the County.
- Each county and municipality has their own code when completing the form.

## Affidavit of Consideration of Use (cont.)

- When computing the transfer tax on the Affidavit, please refer to the Division of Taxation's Table of Equalized Valuations to obtain the Director's Ratio for the computation.
- Each county has their own ratio to calculate the assessed value of the property.
- In NJ, a deed will include an Affidavit of Consideration from both the buyer and seller which includes the actual consideration for the property, as well as a computation of the realty transfer tax due to the County.

## NJ Mansion Tax

- NJ imposes a 1 percent (1%) tax on the transfer of certain types of real estate where the consideration paid is more than \$1 million.
- The mansion tax applies to properties classified as “Class 2” residential, which includes single family homes, and “Class 4A Commercial,” which includes offices and most commercial establishments.
- The tax is not payable on vacant land, industrial sites or multifamily apartment buildings.

## NJ Mansion Tax (cont.)

- By statute, the fee is payable to the county clerk by the purchaser at the time of the recording of the deed, but, as with the realty transfer fee, the contracting parties may agree to shift the responsibility.
- Any transfers exempt from the realty transfer fee will be exempt from payment of the mansion tax.
- Nonprofit corporations are also exempt from payment of the mansion tax.

## Common Mistakes and Defects with Recordings

- Often times, a Deed or Mortgage will incorrectly list the entity name of the grantor or grantee, or have a scrivener's error in a legal description.
- These errors are not necessarily fatal, and most title insurance companies will likely issue an indemnity for such an error, if they insured the original transaction.
- In NJ, title companies rely on an Inter-Underwriter Indemnity Agreement (Treaty) to resolve title defects involving a scrivener's error or irregularity on conveyance documents.

## The Validating Acts

- Inadvertently recorded documents by the County Clerk are often times discovered in title searches by examiners.
- These documents may include a defective or non-existent acknowledgment, or an error with the legal description (incorrect block and lot number).
- In such cases, a party whose search reveals the instrument obtains actual notice thereof.



## The Validating Acts (cont.)

- Under the New Validating Act, any document which has been recorded (and is properly indexed) will impart constructive notice, even if the clerk or register should not have accepted it for recording.
- Under the current statutory scheme, title companies should be less likely to refuse to insure such a document.

## Correction Deed v. Confirmatory Deed

- A Correction Deed or Corrective Deed is typically done to correct an error in an original recorded deed.
- Some of these instances include a mistake in the legal description, or a designation of the parties (grantor and grantee) to the Deed.
- A Correction Deed is used to correct minor mistakes, such as misspelled or incomplete names, omissions of marital status, and missing information.
- A Correction Deed can also be used to amend defects in the execution or acknowledgment of a property deed.

## Correction Deed v. Confirmatory Deed (cont.)

- When recording a Correction Deed, the deed must be executed by the original grantor on the Vesting Deed.
- A Confirmatory Deed is done to confirm that title passed by the prior original deed or by operation of law.
- The Confirmatory Deed can be executed by the current owner of the property.
- A Confirmatory Deed can be executed in the event that the entity in title has dissolved or merged with another entity, or if an individual acquired the real property by a specific devise in the decedent's Will.

## Correction Deed v. Confirmatory Deed (cont.)

- The Confirmatory Deed is used to confirm that the current owner is in title to the real property, so there is no break in the chain of title.
- Both confirmatory and corrective deeds are typically exempt from payment of the Realty Transfer Tax since they both refer back to the date of the original conveyance.
- Please consult your Underwriter if a Correction Deed or Confirmatory Deed is appropriate for a specific transaction.

## Recitals in Deeds

- When a Confirmatory or Correction Deed cannot be executed for any reason, inserting a recital in the new Deed can be a sufficient way to address a break in the chain of title or to correct an ambiguity in one of the previous Deeds on record.
- A recital can address a missing marital interest, or a life estate which was referenced in a prior Deed.
- A recital can also be utilized to correct a minor typo with the legal description on the previous Deed, or a misspelled name with the grantor or grantee.

## Covered Risks in the Title Policy

- Under paragraph 2a of the Covered Risks in the ALTA title policy jacket, the insured is protected for any defects in title resulting from documents being falsified or not properly executed, witnessed, sealed, acknowledged, notarized or delivered.
- If there is a defect in title caused by any of the aforementioned issues, the Insured can file a claim under the policy with our Claims Department.
- Also, please contact your Underwriter for further guidance on any of the covered risks in the policy jacket.

## Wrap-Up and Review

- Recording documents must always be reviewed for proper signatures, notary stamps, and acknowledgments.
- Please check the NJ Division of Taxation website for more information on the Realty Transfer Tax and Mansion Tax.
- Also, please confirm if both are applicable to your transaction.
- Each County Recorder varies in addressing defects with recording documents.
- A slight error on a document can be a cause for rejection or result in a title defect. Please consult your underwriter when these defects occur.

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### Keyword Search

Example : Absentee

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# Virtual Underwriter



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Please mark your calendars for our:

## September N2K HOUR

Tuesday

September 14th

11:00AM