

**ASSEMBLY, No. 127**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman PARKER SPACE**

**District 24 (Morris, Sussex and Warren)**

**Assemblyman JAMEL C. HOLLEY**

**District 20 (Union)**

**Assemblyman HAROLD "HAL" J. WIRTHS**

**District 24 (Morris, Sussex and Warren)**

**SYNOPSIS**

Eliminates supplemental realty transfer fee and one percent fee on transfers of certain commercial real estate and tax on sale of controlling interests in certain commercial real property.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



A127 SPACE, HOLLEY

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1   **AN ACT** eliminating the supplemental realty transfer fee, the one  
2       percent fee on the sale of certain commercial real property, and  
3       the tax on the sale of controlling interests in certain commercial  
4       real property, amending P.L.1968, c.49 and P.L.2004, c.66 and  
5       repealing various sections of statutory law.

6

7       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
8       *of New Jersey:*

9

10      1. Section 1 of P.L.1968, c.49 (C.46:15-5) is amended to read  
11      as follows:

12      1. As used in this act:

13      (a) "Deed" means a written instrument entitled to be recorded in  
14      the office of a county recording officer which purports to convey or  
15      transfer title to a freehold interest in any lands, tenements or other  
16      realty in this State by way of grant or bargain and sale thereof from  
17      the named grantor to the named grantee. A leasehold interest for 99  
18      years or more or a proprietary lease of a cooperative unit and any  
19      assignment of a proprietary lease of a cooperative unit, shall be  
20      treated as a "freehold" for the purpose of this act. Instruments  
21      providing for common driveways, for exchanges of easements or  
22      rights-of-way, for revocable licenses to use, to adjust or to clear  
23      defects of or clouds on title, to provide for utility service lines such  
24      as drainage, sewerage, water, electric, telephone or other such  
25      service lines, or to quitclaim possible outstanding interests, shall  
26      not be "deeds" for the purposes of this act.

27      (b) The terms "county recording officer" and "office of the  
28      county recording officer" mean the register of deeds and mortgages  
29      in counties having such an officer and office, and the county clerk  
30      and his office in the other counties.

31      (c) "Consideration" means in the case of any deed, the actual  
32      amount of money and the monetary value of any other thing of  
33      value constituting the entire compensation paid or to be paid for the  
34      transfer of title to the lands, tenements or other realty, including the  
35      remaining amount of any prior mortgage to which the transfer is  
36      subject or which is to be assumed and agreed to be paid by the  
37      grantee and any other lien or encumbrance thereon not paid,  
38      satisfied or removed in connection with the transfer of title. The  
39      amount of liens for real property taxes, water or sewerage charges  
40      for the current or any subsequent year, or by way of added  
41      assessment or other adjustment, as well as of other like liens or  
42      encumbrances of a current and continuing nature ordinarily adjusted  
43      between the parties according to the period of ownership shall be  
44      excluded as an element in determining the consideration,  
45      notwithstanding that such amount is to be paid by the grantee.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 In the case of a leasehold interest for 99 years or more as defined  
2 in subsection (a) of this section, the consideration shall be in the  
3 amount of the assessed value of the property at the date of the  
4 transaction for the purpose of levying local real property taxes  
5 adjusted to reflect the true value in accordance with the county  
6 percentage level established for the current year.

7 In the case of a proprietary lease of a cooperative unit or  
8 assignment thereof as defined in subsection (a) of this section, the  
9 consideration is the total price paid for the ownership interest held  
10 in conjunction with a cooperative unit, including the pro rata  
11 amount of any underlying mortgage or other obligation of the  
12 cooperative.

13 (d) "Blind person" means a person whose vision in his better eye  
14 with proper correction does not exceed 20/200 as measured by the  
15 Snellen chart or a person who has a field defect in his better eye  
16 with proper correction in which the peripheral field has contracted  
17 to such an extent that the widest diameter of visual field subtends an  
18 angular distance no greater than 20°.

19 (e) "Disabled person" means any resident of this State who is  
20 permanently and totally disabled, unable to engage in gainful  
21 employment, and receiving disability benefits or any other  
22 compensation under any federal or State law.

23 (f) "Senior citizen" means any resident of this State of the age  
24 of 62 years or over.

25 (g) "New construction" means any conveyance or transfer of  
26 property upon which there is an entirely new improvement not  
27 previously occupied or used for any purpose.

28 (h) "Low and moderate income housing" means any residential  
29 premises, or part thereof, affordable according to federal  
30 Department of Housing and Urban Development or other  
31 recognized standards for home ownership and rental costs and  
32 occupied or reserved for occupancy by households with a gross  
33 income equal to 80% or less of the median gross household income  
34 for households of the same size within the housing region in which  
35 the housing is located, but shall include only those residential  
36 premises subject to resale controls pursuant to contractual  
37 guarantees.

38 (i) "Basic fee" means the fee established by paragraph (1) of  
39 subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), which fee  
40 shall consist of a State portion and a county portion as prescribed  
41 under that paragraph.

42 (j) "Additional fee" means the fee established by paragraph (2)  
43 of subsection a. of section 3 of P.L.1968, c.49.

44 (k) "General purpose fee" means the fee established by  
45 paragraph (3) of subsection a. of section 3 of P.L.1968, c.49.

46 **[(l) "Supplemental fee" means the fee established by subsection**  
47 **a. of section 2 of P.L.2003, c.113 (C.46:15-7.1).]**

48 (cf: P.L.2004, c.66, s.1)

1

2       2. Section 2 of P.L.1968, c.49 (C.46:15-6) is amended to read  
3 as follows:

4       2. In addition to other prerequisites for recording, no deed  
5 evidencing transfer of title to real property shall be recorded in the  
6 office of any county recording officer unless it satisfies the  
7 following requirements:

8       a. If the transfer is subject to any fee established under section  
9 3 of P.L.1968, c.49 (C.46:15-7) **【**or section 2 of P.L.2003, c.113  
10 (C.46:15-7.1)**】**, a statement of the true consideration for the transfer  
11 shall be contained in the deed, the acknowledgment, the proof of the  
12 execution, or an appended affidavit by one of the parties to the deed  
13 or that party's legal representative.

14       b. If the transfer is exempt from any fee established under  
15 section 3 of P.L.1968, c.49 (C.46:15-7) **【**or section 2 of P.L.2003,  
16 c.113 (C.46:15-7.1)**】**, an affidavit stating the basis for the  
17 exemption shall be appended to the deed.

18       c. If the transfer is of real property upon which there is new  
19 construction, the words "NEW CONSTRUCTION" in upper case  
20 lettering shall be printed clearly at the top of the first page of the  
21 deed, and an affidavit by the grantor stating that the transfer is of  
22 property upon which there is new construction shall be appended to  
23 the deed.

24 (cf: P.L.2004, c.66, s.2)

25

26       3. Section 8 of P.L.2004, c.66 (C.46:15-7.2) is amended to read  
27 as follows:

28       8. a. In addition to all other fees imposed under P.L.1968, c.49  
29 (C.46:15-5 et seq.), there is imposed a fee upon the grantee of a  
30 deed for the transfer of real property:

31       (1) that is classified pursuant to the requirements of  
32 N.J.A.C.18:12-2.2 as Class 2 "residential";

33       (2) (a) that includes property classified pursuant to the  
34 requirements of N.J.A.C.18:12-2.2 as Class 3A: "farm property  
35 (regular)" but only if the property includes a building or structure  
36 intended or suited for residential use, and

37       (b) any other real property, regardless of class, that is effectively  
38 transferred to the same grantee in conjunction with the property  
39 described in subparagraph (a) of this paragraph; or

40       (3) that is a cooperative unit as defined in section 3 of P.L.1987,  
41 c.381 (C.46:8D-3)**【**; or

42       (4) that is classified pursuant to the requirements of  
43 N.J.A.C.18:12-2.2 as Class 4A "commercial properties"**】**

44 that is transferred for consideration in excess of \$1,000,000 recited  
45 in the deed, which fee shall be an amount equal to 1 percent of the  
46 entire amount of such consideration, which fee shall be collected by  
47 the county recording officer at the time the deed is offered for

1 recording and remitted to the State Treasurer not later than the 10th  
2 day of the month following the month of collection for deposit into  
3 the General Fund.

4 b. (1) The fee imposed by subsection a. of this section shall  
5 not apply to a deed if the grantee of the deed for the transfer of real  
6 property is an organization determined by the federal Internal  
7 Revenue Service to be exempt from federal income taxation  
8 pursuant to paragraph (3) of subsection (c) of section 501 of the  
9 federal Internal Revenue Code of 1986, 26 U.S.C. s.501.

10 (2) **【**The fee imposed by subsection a. of this section shall not  
11 apply to a deed if the transfer of real property is incidental to a  
12 corporate merger or acquisition and the equalized assessed value of  
13 the real property transferred is less than 20% of the total value of all  
14 assets exchanged in the merger or acquisition. A grantee shall  
15 claim this exemption from imposition of the fee at the time the deed  
16 is offered for recording by filing with the county recording officer  
17 such information, in addition to the affidavit of consideration filed  
18 by one or more of the grantee parties named in the deed or by the  
19 grantee's legal representative pursuant to subsection d. of this  
20 section, as the Director of the Division of Taxation in the  
21 Department of the Treasury may prescribe as to constitute a filing  
22 of a protest of the assessment of the fee and by paying any other  
23 recording fees not exempted pursuant to this paragraph. This  
24 additional information shall be forwarded by the county recording  
25 officer to the director along with the grantee's affidavit of  
26 consideration, and shall be deemed to be and have the effect of a  
27 protest of a finding by the director of a deficiency of payment of the  
28 fee filed on the date on which the deed is recorded.**】** (Deleted by  
29 amendment, P.L. , c. ) (pending before the Legislature as this  
30 bill)

31 c. The fee imposed by subsection a. of this section shall be  
32 subject to the provisions of the State Uniform Tax Procedure Law,  
33 R.S.54:48-1 et seq.; provided however, that notwithstanding the  
34 provisions of subsection a. of R.S.54:49-14, a taxpayer may file a  
35 claim under oath for refund at any time within 90 days after the  
36 payment of any original fee and that subsection b. of R.S.54:49-14  
37 shall not apply to any additional fee assessed.

38 d. (1) **【**If a transfer includes property classified pursuant to the  
39 requirements of N.J.A.C.18:12-2.2 as Class 4 property of any type,  
40 an affidavit of consideration shall be filed by one or more of the  
41 grantor parties named in the deed or by the grantor's legal  
42 representative declaring the consideration and shall be annexed to  
43 and recorded with the deed as a prerequisite for the recording of the  
44 deed. The filing of an affidavit of consideration pursuant to this  
45 paragraph shall be in addition to the filing, if any, pursuant to  
46 paragraph (2) of this subsection.**】** (Deleted by amendment, P.L. ,  
47 c. ) (pending before the Legislature as this bill)

1 (2) Whether or not the transfer is exempt, pursuant to subsection  
2 b. of this section or any other provision of law, from payment of the  
3 fee pursuant to subsection a. of this section, if a transfer includes  
4 property otherwise subject to subsection a. of this section, then an  
5 affidavit of consideration shall be filed by one or more of the  
6 grantee parties named in the deed or by the grantee's legal  
7 representative declaring the consideration and shall be annexed to  
8 and recorded with the deed as a prerequisite for the recording of the  
9 deed. **【The filing of an affidavit of consideration pursuant to this**  
10 **paragraph shall be in addition to the filing, if any, pursuant to**  
11 **paragraph (1) of this subsection.】**

12 (3) An affidavit of consideration filed pursuant to paragraph  
13 **【(1) or paragraph】** (2) of this subsection shall clearly and entirely  
14 state the consideration, the county and municipality in which the  
15 property is situate, and the block and lot description of the real  
16 property conveyed.

17 (4) One copy of each affidavit of consideration filed and  
18 recorded with deeds pursuant to this subsection shall be forwarded  
19 by the county recording officer to the Director of the Division of  
20 Taxation in the Department of the Treasury on the tenth day of the  
21 month following the month of the filing of the deed.

22 (cf: P.L.2006, c.33, s.1)

23

24 4. The following sections are repealed:  
25 Section 2 of P.L.2003, c.113 (C.46:15-7.1);  
26 Section 2 of P.L.2005, c.19 (C.46:15-7.3);  
27 Section 2 of P.L.2006, c.33 (C.46:15-7.4); and  
28 Section 3 of P.L.2006, c.33 (C.54:15C-1).

29

30 5. This act shall take effect immediately.

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#### STATEMENT

34

35 This bill eliminates one of the four realty transfer fees, the  
36 supplemental fee. In addition, it repeals the one percent assessment  
37 on the selling price of commercial property transacted for more than  
38 \$1 million, and the parallel tax on the sale of controlling interests in  
39 certain commercial real property. In so doing, the bill lowers the  
40 cost of property transactions and supports the real estate market.

41 The State capitalized on the recent real estate boom by creating  
42 two new realty transfer fee layers in 2003 and 2004 and by  
43 instituting a one percent assessment on residential properties selling  
44 for more than \$1 million in 2004 and on commercial properties  
45 selling for more than \$1 million in 2006. Now that the real estate  
46 market finds itself in a downward spiral, these actions drag down  
47 the market and dissuade property transactions.

1       The bill repeals the supplemental fee, which saves a seller of an  
2       existing \$250,000 property \$300, the seller of a new \$250,000  
3       property \$600, and a seller of an existing \$350,000 property \$580.  
4       The supplemental fee, created in 2003, applies to the seller of non-  
5       exempt real property, provided that the seller is neither a senior citizen  
6       nor blind or disabled. The supplemental fee is a graduated fee that  
7       pertains to the full amount of the property transaction and has the  
8       following structure: \$0.25 on each \$500 of consideration on the first  
9       \$150,000 of the value recited in the deed of transfer; \$0.85 on each  
10      \$500 of consideration between \$150,000 and \$200,000; and \$1.40 on  
11      each \$500 of consideration over \$200,000. Of the revenue generated,  
12      counties retain \$0.25 on every \$500 of consideration, of which a  
13      portion shall be utilized under certain circumstances to finance public  
14      health services under the Public Health Priority Funding Act. The  
15      remaining revenue accrues to the State Extraordinary Aid Account to  
16      fund property tax relief. In addition, the supplemental fee effectively  
17      voided a partial exemption of \$1.00 per \$500 of consideration for the  
18      first \$150,000 of the transaction price of property upon which there is  
19      new construction.

20      The bill also repeals the “one percent fee” that buyers of Class  
21      4A “commercial properties” transacted for more than \$1 million  
22      pay and the parallel tax on the purchaser in a non-deed transfer of a  
23      controlling interest in an entity that owns Class 4A “commercial  
24      properties”. The buyer of a \$2 million commercial property thus  
25      saves \$20,000. Class 4A “commercial properties” are any kind of  
26      income-producing real property other than property classified as  
27      vacant land, residential property, farm property, industrial  
28      properties, and apartments.