



# **New Jersey N2K Hour: Conveyances: Recording Requirements & Common Mistakes Found in Recordings**

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Presented By: Susan Bavaro  
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# Statutory Requirements

## 1991 and 2012 Revision to Recording Act:

Revisions to Title 46 were done to modernize our recording practices to eliminate overlapping and inconsistent sections, and to incorporate modern day uses, most importantly being the use of computerized recording systems and recording fully electronic documents.

### Definitions:

“Document” now includes both paper and electronic documents

“Recorded” a document is “recorded” if “(1) the document or its image has been placed in the of the recording office, and (2) the document has been indexed.”

# Statutory Requirements:

Broken down into 3 major categories:

- 1) Prerequisites to recording;
- 2) Acknowledgements and proofs; and
- 3) Requirements related to the realty transfer fee [RTF];

# Prerequisites to Recording:

## Requirements common to all documents:

- (a) the document is in English or is accompanied by an English translation;
- (b) the document bears a signature;
- (c) the document is acknowledged or proved;
- (d) the names of the signatories and of the officer taking the acknowledgment are printed underneath; and
- (e) the recording fee is paid
- (f) Cover sheet

# Statutory Requirements:

## Acknowledgments:

STATE OF **NEW JERSEY**,

COUNTY OF **ESSEX**,           SS:

I CERTIFY that on **June 28, 2020, John Smith and Mary Smith personally came before me** and acknowledged under oath, **to my satisfaction**, that this person (or if more than one, each person):

- (a) is named in and personally signed the attached document; and
- (b) signed [, sealed] and delivered this document as his or her act and deed.

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**Robert Roe,**  
**Attorney-at-Law of New Jersey**

# Statutory Requirements:

STATE OF **NEW JERSEY**,

COUNTY OF **ESSEX**,           SS:

I CERTIFY that on **June 28, 2020, John Smith, Individually and as Executor of the Estate of Mary Smith, personally came before me** and acknowledged under oath, **to my satisfaction**, that this person (or if more than one, each person):

- (a) is named in and personally signed the attached document; and
- (b) signed [, sealed] and delivered this document as his or her act and deed.
- (c) made this Deed for \$\_\_\_\_\_ as the full and actual consideration paid or to be paid for the transfer of title.

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**Robert Roe,  
Notary**

# Duties of Notarial Officers

## Regulations

Regulated by the New Jersey Treasury Department under the authority of the Notaries Public Act.

Other officers who can take an acknowledgment include County Clerks and Deputy County Clerks, Registers and Deputy Registers of Deeds, Surrogates and Deputy Surrogates, New Jersey attorneys, and out of state notaries. These are parties are not regulated by the Notaries Public Act.

## “Personally appeared”

It is very important that Notarial officers verify the identities of the parties who appear before them. “Appear before them” is literal. A notary may not (for example) take an acknowledgment over the telephone, or use communication technology to acknowledge the signature of a party who signs a document in a remote location. (aside from RON)

# Acknowledgements:

## Acknowledgment vs jurat:

An acknowledgment must be distinguished from a jurat, which usually takes the following form:

Signed and sworn before me this \_\_\_ day of \_\_\_, 20\_\_\_

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Notary Public

If an instrument is to be recorded, a jurat is not an acceptable substitute for an acknowledgment, because it lacks all of the information which an acknowledgment must contain.



# Prerequisites to Recording:

## Cover Sheet:

All documents submitted to the county clerk or register for recording must also be accompanied by a cover sheet. Each county has created its own version of the cover sheet, and the forms are available on each county's website.

The cover sheet (or electronic synopsis) must include:

- (1) the nature of the document;
- (2) the date of the document; and
- (3) the names of the parties to the document and any other names by which the document is to be indexed

# Statutory Requirements – Names, Signatures, Seals

## Names:

Names of persons executing, witnessing or acknowledging documents must be printed beneath each signature.

## Signatures:

Signatures means any mark made on a document by a person who intended to give legal effect to the document. A signature may include any mark made on a document on behalf of a person, with that person's authority and to effectuate that person's intent even in the absence of a recorded power of attorney, for example, where a person is physically disabled (but not mentally disabled) such a person could presumably direct another person to make a mark on behalf of the signatory.

**Seals:** No longer required.

# Other Recording Documents:

## Mortgages:

Mortgage must include the names of the mortgagor and mortgagee, the date of the mortgage, record and return to information, amount of mortgage, all appropriate signatures from the parties, and be properly notarized.

Watch for non-titled spouses who must sign on the mortgage, also in front of a notary!

Watch for missing riders such as condominium riders – be sure they're included when it goes out for recording.

And of course, attach the legal description!

# Other Recording Documents:

## Discharges of Mortgages:

Discharges of mortgages must always reference the recorded mortgage – AND re-recorded mortgage if applicable, or an assignment of rents and leases!

# Prerequisites to Recording:

## Additional requirements for deeds conveying title to realty:

- (a) information as to consideration for realty transfer fee [RTF] and this must appear on the first page even if consideration is nominal;
- (b) the name of the preparer;
- (c) the tax block and lot designation; and
- (d) the mailing address of the grantee for “Record & Return To”

# Realty Transfer Fee

## Fee Schedule

The fee schedule can be found at the following link:

<https://www.nj.gov/treasury/taxation/pdf/lpt/feeschedover350.pdf>

## Details:

- 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.
- Applicable to deeds conveying fee estate and leases for 99 years or more.
- Exemptions and partial exemptions may apply

# Realty Transfer Tax

## Consideration:

Defined as: the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title.

When calculating the transfer tax, include anything of value given for the property, like assumption of the remaining balance on a mortgage.

If there is other value aside from the stated purchase price, then an affidavit of consideration will probably be required.

# Affidavit of Consideration

**Required when deed does not recite the full consideration.**

If consideration is listed as “\$1.00 and other good and valuable consideration”, an AOC will be required. Better to just list the consideration as \$1.00 or “less than \$100.00”.

**Also required where a complete or partial exemption of RTF is claimed.**



STATE OF NEW JERSEY  
**AFFIDAVIT OF CONSIDERATION**  
 (STATEMENT OF PRIOR MORTGAGE, LIENS OR ENCUMBRANCES)  
 FOR  
**SHERIFF'S DEEDS**  
 (c. 225, P.L. 1979)  
 To Be Recorded With Deed Pursuant to c. 49 P.L. 1968, as amended, and c. 225, P.L. 1979

STATE OF NEW JERSEY }  
 COUNTY OF \_\_\_\_\_ } ss.

FOR RECORDER'S USE ONLY	
Consideration \$ _____	
Realty Transfer Fee \$ _____	
Date _____	By _____

**IMPORTANT NOTES:**

This form is to be attached to all Sheriff's Deed not otherwise exempt pursuant to N.J.S.A. 46:15-10, when presented to the County Clerk or Register of Deeds' for recording. One of the following blocks **MUST** be checked:

- NO PRIOR MORTGAGES OR LIENS ARE OUTSTANDING.
- PRIOR MORTGAGE OR LIENS OUTSTANDING AND **NOT** EXTINGUISHING BY THE SALE ARE AS LISTED IN SECTION 2 BELOW.

(1) PARTY OR LEGAL REPRESENTATIVE

\_\_\_\_\_  
*(Plaintiff)*

\_\_\_\_\_  
*(Legal Representative of Plaintiff)*

(Legal representative is to interpreted broadly to include any person actively and responsibly participating in the transaction, such as but not limited to: an attorney representing one of the parties; a closing officer of a title company of lending institution participating in transaction; a holder of power of attorney from plaintiff)

(2) CONSIDERATION

Deponent states that, with respect to deed hereto annexed, there follows the name or names of all mortgagees and other holders of encumbrances constituting "consideration" as defined in the act to which this act is a supplement (C. 46:15-5(c)), to which such sale shall be subject. Such prior mortgages, liens and encumbrances are as follows:

NAME OF SECURED PARTY	CURRENT AMOUNT DUE
_____	\$ _____
_____	_____
_____	_____
_____	_____
TOTAL	\$ _____

**NOTE:** The amount of consideration on which the Realty Transfer Fee shall be calculated shall include both the total listed above and the amount bid at the sale as set forth in the Sheriff's Deed.

Deponent makes affidavit to induce the County Clerk or Register of Deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of c. 49, P.L. 1968, as amended, and c. 225, P.L. 1979.

Subscribed and Sworn to before me \_\_\_\_\_  
 this \_\_\_\_\_ Name of Deponent  
 Day of \_\_\_\_\_, 19 \_\_\_\_\_  
 Address of Deponent

AMOUNT BID AT SHERIFF SALE \$ _____
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FOR OFFICIAL USE ONLY	
This space for use of County Clerk or Register of Deeds	
Instrument Number _____	County _____
Deed Number _____	Block _____ Page _____
Deed Dated _____	Date Recorded _____

**IMPORTANT - BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE FOLLOWING PAGE.**

This form is prescribed by the Director, Division of Taxation in the Department of the Treasury, as required by law, and may not be altered or amended without the approval of the Director.

ORIGINAL to be attached to Sheriff's Deed.  
 COPY to be retained by Sheriff's Deed.

# Mansion Tax

A 1% tax imposed on the grantee on the transfer of real property in excess of \$1,000,000.00, for property classified by tax assessor as Class 2 “residential”, Class 3A “farm property (regular)”, 4A and 4C.

## Exemptions:

Not imposed on vacant lands, industrial sites or multi-family apartment buildings.

Any transfers exempt from payment of the RTF will be exempt from payment of the mansion tax.

Nonprofit corporations are exempt from payment of mansion tax.

# Underwriting Requirements

# Underwriting Requirements

## Legal Description!

A Deed must contain a legal description either in the body of the Deed or as a separate exhibit.

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.

# Underwriting Requirements

## Deed Recitals!

Prior deed information:

Being and intending to be the same land and premises as was conveyed to grantor herein by deed of Harry Harmless, by deed dated 1/1/11 and recorded 2/2/22 in Book 1234 at page 0987.

Deed recitals can and should also be used to give context, add estate information, explain a error in a legal description or a misspelling of a parties name. Don't overlook the value of a good deed recital!

# Remote Online Notarization (RON) Remote Ink Notarization (RIN)

Stewart's Virtual Underwriter website links to RON info

General information:

<https://www.virtualunderwriter.com/en/ron.html>

List of Vendors

<https://www.virtualunderwriter.com/en/ron.html#accordion-de58d3626d-item-9d8c48cd07>

# Stewart Approved RON Vendors

Amrock

DocuSign

Qualia

Blend

NotaryCam

Secured Signing

BlueNotary

Pactima

SIGNiX

DocMagic

Pavaso

Simplifile

Docverify

Proof (fka  
Notarize)

Stavvy

# Recording vs. Filing:

## Recording

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. Once a document has been recorded, the original is returned to the party who submitted it

## Filing

Filing is the act of tendering an original document with the county clerk or register who retains the original document as part of the documents kept in the clerk's or register's office.



# Notice of Settlement:

## Purpose:

The Notice of Settlement (NOS) is unique to NJ and is designed to cover the gap period. It acts as an umbrella over the gap period preventing intervening deeds or liens from hitting the record of your property while your transaction is pending.

## Filing

The NOS is filed in the county/register. It is effective for 60 days from date of filing. The NOS should be filed as soon as possible, even if you don't have a closing date yet. You can re-file a second NOS if needed, but that's the limit. NOS must be used for purchase and refinance transactions, residential or commercial.

# Recording Fees:

**Rates Vary By County – Check with the county for specific charges**

## Deeds

Usually charged with the higher rate for the first page and a reduced rate for each page thereafter. When counting pages, be sure to include the pages for legal description, Affidavit of Consideration, Git/rep. An incorrect fee will cause the document to be rejected and returned to your office.

## Mortgages, Assignments, Discharges, Easement Agreements, Etc

Usually charged a lesser rate than deeds. Again, remember the legal description page, any riders required by the lender.

# Standard ETA for Recording in NJ

## There Is No Standard!

Time frames and board dates vary by county, and even by season.

Deeds and mortgages can be e-recorded in all counties.

Remember: What is acceptable in one county may not be acceptable in another county.

Contact the clerk's office directly to review.

# Common Mistakes and Defects

# Defective Acknowledgments

## Missing or blank:

The document will be rejected by the county recording office, thereby creating a delay in the recording.

Be sure that the acknowledgment is completed with date, names of parties, county and state where the ack was taken and the notary's name and signature.

Be sure that the capacity of the person signing is reflected in the acknowledgment.

# Common Mistakes and Defects with Recordings

## Defective Delivery

Delivery requires delivery by grantor and acceptance by grantee.

Presumption of delivery on the on the date of acknowledgment, but this is rebuttable.

Usually accomplished at closing of title when the deed is delivered to the grantee and the grantor receives the purchase price. Once delivered, a deed cannot be altered without consent of grantor.

Sometimes a deed is delivered into escrow to be held pending the closing date. What if the grantor or grantee dies, becomes incompetent, or files bankruptcy prior to delivery out of escrow.

# Common Mistakes and Defects with Recordings

## Incorrectly listed parties

Show grantor's name in the same manner the grantor took title.

Errors in previous deed, or name change due to marriage/divorce/gender change since taking title, both names should be set forth in the "parties" portion of the deed, in order to permit proper indexing. Reference both.

Mary Jones, now known as Michael Jones

-or-

John A. Smythe, incorrectly identified in deed as Jon A. Smith

# Common Mistakes and Defects with Recordings

## Incorrect fee

RTF, GIT/rep

Recording pages. Count those pages! Include the page you need to print out for the legal description! And don't forget the AOC, GIT/rep, mortgage riders, cover pages!

Understand the counties requirements.



# Common Mistakes and Defects with Recordings

## Missing or incorrect legal descriptions

Deeds with no description page attached.

Deeds with an incorrect description – maybe minor typographical errors, maybe from the other closing being done on the same day.

# Covered Risk 2a

Any defect in or lien or encumbrance on the Title. Covered Risk 2 includes, but is not limited to, insurance against loss from:

a. a defect in the Title caused by:

i. **forgery, fraud**, undue influence, duress, incompetency, incapacity, or impersonation;

iii. a document affecting the Title **not properly** authorized, created, executed, **witnessed, sealed, acknowledged, notarized** (including by **remote online notarization**), or **delivered**;

vi. a document not properly filed, **recorded, or indexed** in the Public Records, including the failure to have performed those acts by electronic means authorized by law;

# Wrap Up and Review

## SLOW DOWN!

Check that your NOS is already of record, and if necessary send in a second one to carry you to the board date

Check the spelling of the names on all documents and have your parties check their names

Check that all documents are signed where they are supposed to be signed

Check that the acknowledgment is complete and accurate

Check that you have all of the pages accounted for, that you've printed out and attached the correct legal description, and the correct fee is attached

# THANK YOU FOR JOINING US

Please mark your calendars for our next N2K hour:  
Tuesday, December 10<sup>th</sup> @ 11:00AM  
Transfer Taxes

# www.VUwriter.com

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Virtual Underwriter

Home Forms Bulletins Real Estate Practices Standard Exceptions Underwriting Manual Special Alerts

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### Keyword Search

All of these words  This exact phrase  Any of these words

### Select a Location

# [NJUWing@Stewart.com](mailto:NJUWing@Stewart.com)

