NEW JERSEY PURCHASE AND SALE ISSUES FOR BUYERS

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This article is intended to provide counsel with a review of law and custom, in New Jersey specifically, regarding the negotiation of Purchase and Sale Agreements ("PSA") in real estate.

I. RECITALS

While not legally required, recitals are nearly always utilized to provide information about the background and purpose of the PSA. Recitals are generally considered to be statements of intent and will be utilized to interpret the language of the PSA in the event of ambiguity later. Becker v. Kelsey, 157 A. 177, 188 (N.J. 1931). It is recommended that any material issue be included and referred to in the recitals for the purposes of clarity and intent. For example, common recitals include: (i) the Seller's desire to sell the property and the Buyer's desire to purchase; (ii) the intent to purchase the property free and clear of liens and encumbrances; (iii) that Seller is the owner to anything the Seller intends to sell; and (iv) any additional parties, guarantors, or specific identifying information of the parties.

The scope of the description of the property depends on the nature of the transaction and the type of property being transferred and is a critical component of the PSA. Any other interest, such as personal property, intellectual property, fixtures, etc. which in any way relate to the real property and are meant to be part of the PSA, should be expressly noted.

Buyer and Seller should keep in mind these key issues prior to finalization of the PSA and description of the property:

- Any personal property, inventory, or equipment. In New Jersey, personal property not affixed to the real estate is excluded unless specifically included in the PSA. N.J.S.A. 46:3-12. But, obviously, the PSA should be clear as to what is excluded.
- Any fixtures to be excluded in the PSA should be expressly identified. Fixtures are typically considered to be part of the real estate and therefore title is transferred with real property. Handler v. Horns,

65 A.2d 523, 525-26 (N.J. 1949). Notably, whether an item is a fixture or personal property depends on Seller's intention and if there was an intention by Seller to permanently affix the item to the real property. See Serafin v. Wolff, 69 A.2d 347, 348-49 (N.J. Super. Ct. App. Div. 1949); Hall v. Luby, 556 A.2d 1317, 1322 (N.J. Super. Ct. Law Div. 1989).

- Any leases which will be assigned to Buyer.
- Any service or management agreements that will be assigned to the Buyer or if Seller must terminate existing agreements before the closing.
- Any warranties for equipment or systems that the Seller can assign to the Buyer.
- Any other intangible interests, which can be included in the purchase price.

II. DUE DILIGENCE AND TERMINATION RIGHTS

While optional, New Jersey Sellers will very often provide Buyers with a due diligence review period to investigate any and all matters related to the property such as: (i) physical condition; (ii) the operation of the property including, without limitation, the financials; (iii) zoning and governmental approvals; (iv) tenants; (v) environmental conditions; and (vi) title and survey. If a Buyer is not satisfied with results of an inspection, the Buyer will typically have the right to terminate the PSA prior to the end of the due diligence period.

In New Jersey specifically, important due diligence considerations for Buyers vary based on the type of property to be purchased. As a prime example, in circumstances where a Buyer is assuming tenant leases as part of the transaction, a Buyer must consider:

- Requesting copies of current leases and rent rolls;
- Reviewing terms of existing leases for tenants' rights on transfer or provisions that may negatively impact the Buyer's intentions;
- The effect of rent control ordinances or other state or local laws or regulations, such as the New Jersey Rent Security Act (N.J.S.A. 46:8-19 to 46:8-26), the Anti-Eviction Act (N.J.S.A. 2A:18-61.1 to 2A:18-61.12), or the Condominium Act (N.J.S.A. 46:8B-1 to 46:8B-38).

A. Environmental Due Diligence

Under both the federal Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601, et seq., and the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11, et seq., current property owners are potentially liable, regardless of fault, for any contamination identified at that property. Once a Buyer acquires ownership of property, that Buyer may face liability under *both* CERCLA *and* the Spill Act for pre-existing contamination. A Buyer does not have any defense unless the Buyer conducts "All Appropriate Inquiries" under CERCLA and "Appropriate Inquiry" under New Jersey's Spill Act prior to the time of acquisition.

CERCLA requires a Buyer to investigate the past use of property prior to the time of acquisition by conducting a Phase I Environmental Site Assessment ("Phase I") in accordance with U.S. Environmental Protection Agency ("EPA") regulations, 40 CFR Part 312. A Buyer may follow ASTM E1527-13: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process when conducting "All Appropriate Inquiries." In most states, conducting a Phase I satisfies a Buyer's appropriate inquiry requirement for a limitation of liability under that state's environmental liability law. In New Jersey, however, specific steps must be taken in order to obtain a defense to environmental liability. Under the Spill Act, N.J.S.A. 58:10-23.11g(d):

> To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. For the purposes of this paragraph (2), all appropriate inquiry shall mean the performance of a preliminary assessment, and site investigation, if the preliminary assessment indicates that a site investigation is necessary, as defined in section 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with rules and regulations promulgated by the department defining these terms.

The Preliminary Assessment and, if needed, the Site Investigation must be conducted in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.1, et seq., in order to obtain an "innocent purchaser" defense to Spill Act liability. In New Jersey,

Preliminary Assessments and Site Investigations are performed by environmental consultants. A consultants may or may not be a Licensed Site Remediation Professional ("LSRP"). An LSRP is an experienced, private-sector environmental professional that is licensed by the State of New Jersey to direct and oversee environmental investigations and remedial actions in accordance with applicable rules and regulations. The LSRP can often expedite the remediation process, which typically was not possible prior to the creation of the LSRP Program, when each round of proposed actions was subject to review and comment by the New Jersey Department of Environmental Protection ("NJDEP") prior to approval.

However, a Buyer is not required to hire an LSRP to conduct a Preliminary Assessment and Site Investigation pursuant to N.J.S.A. 58:10B-1.3(a). Indeed, a Seller will often insist that an LSRP not be utilized, or that their use be restricted, as there is a heightened reporting obligation on LSRPs. Under the New Jersey Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., property owners are required to investigate and remediate their property if and when they obtain knowledge of a discharge of hazardous substances on or from their property. In the event that the Buyer's LSRP reports discovery of a discharge of hazardous substances, the property owner would still have this affirmative obligation to investigate and remediate even if the Buyer terminates the PSA. Notably, a Response Action Outcome, which is the final document issued after remediation is complete, is not required for a Preliminary Assessment and Site Investigation conducted for "Appropriate Inquiry" purposes unless those investigations identify contamination at the property that requires remediation.

A New Jersey court has rejected arguments that reliance on an inquiry to local officials and on an EPA Mini Pollution Report satisfied the Spill Act requirement for an "innocent purchaser" defense to liability. New Jersey Dep't of Environmental Protection v. Navillus Group, Docket No. A-4726-13T3 (N.J. App. Div. Jan. 14, 2016). The court stated that the Spill Act defense was unavailable because the Buyer failed to conduct a Preliminary Assessment as defined in the Spill Act.

Moreover, Buyers may need to obtain appropriate environmental land use permits from the NJDEP if the property is being developed and it is located near any body of water, coastal area, or flood zone (including previously filled water areas); the Pinelands Commission if the property is being developed and is located in an area designated as Pinelands Preserve; and/or the Highlands Water Protection and Planning Council if the property is being developed and it is located in an area designated as Highlands Region.

B. The Industrial Site Recovery Act ("ISRA")

ISRA and other environmental law (N.J.S.A. 13:1K and N.J.A.C. 7:26B) require the remediation of certain commercial and industrial sites prior to their sale or transfer or upon its cessation of such business operations on-site. Since 1983, remediation of "industrial establishments" has been required. Compliance with ISRA begins at the time of specified triggering events.

Any person who owns an industrial establishment, owns the real property of the establishment or is the operator of the establishment must comply with ISRA. If a facility is subject to ISRA, then the owner and operator are jointly and severally liable for performing all necessary remediation at the facility. Such process begins with the filing of a General Information Notice ("GIN"). The owner of an industrial establishment must notify the NJDEP within five days of any triggering event by filing the GIN (a triggering event includes a sale of the property). Once this notification is made, the owner or operator must conduct a remediation in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. This remediation must be conducted by an LSRP and includes a Preliminary Assessment to identify areas of concern, and if required thereafter, a Site Investigation.

If there is contamination documented in the Site Investigation Report, the owner must conduct a Remedial Investigation to determine the nature and extent of contamination. The next step is the proposal of a Remedial Action Plan detailing the measures necessary to remediate contaminated property to the applicable remediation standard. The LSRP must also submit a report when there have been no discharges of hazardous substances or waste on the property or at the time any such discharges were cleaned up to the remediation standards in effect at the time.

Notably, closing need not await full ISRA compliance. The execution of a Remediation Certification between the Buyer and Seller whereby one of the parties agrees to be responsible for ISRA compliance will provide the ability to transfer the property. In order to guarantee this obligation, a Remediation Funding Source in the

estimated amount to complete the remediation must be established for the benefit of the NJDEP.

ISRA provides a number of alternate compliance options, exemptions and waivers, including but not limited to a Certificate of Limited Conveyance, a De Minimis Quantity Exemption, a Remediation in Progress Waiver and a Regulated Storage Tank Only Waiver.

III. TITLE INSURANCE AND RELATED ISSUES

A. Regulated Rates

In New Jersey, title insurance companies are subject to the provisions of N.J.S.A. 17:46B-1 et seq. Title insurance premiums and service charges for title insurance policies are regulated through the New Jersey Department of Banking and Insurance. N.J.S.A. 17:46B-1 to 17:46B-5. Therefore, outside of service or potentially some additional fees, there is no particular reason to choose one title insurance company over another. The Buyer is responsible for obtaining and paying for title insurance and such costs are not negotiable, even if payment by Seller can be negotiated (though in practice, is rarely done). By contrast, the cost of a survey, even if ordered through a title company, is negotiable and typically the Buyer pays the cost.

B. Title Commitments/Buyer's Responsibility

Typically a PSA will provide a time frame (usually during the due diligence period) for the Buyer to order a title commitment from a title insurance company. That commitment will contain all pertinent searches pertaining to the property being purchased, such as judgments, taxes, flood area and tidelands status and county land records. The title commitment is an accurate picture of the title as of the date stated in the title commitment. Obtaining such commitment is the responsibility of the Buyer.

At the closing, the title insurance company will "mark up" the commitment so as to indicate those adverse claims that will be eliminated or insured against and those adverse claims that will not be eliminated or insured against. For example, the commitment would list the Seller's outstanding mortgage on the property as an adverse claim (known as an "exception"); but, because the title insurance company will handle payoff of that mortgage as part of the closing, that exception will be marked removed and will be insured against as part of the title insurance policy that will be issued after the closing to the Buyer (and to the mortgage lender, if there is one). Other exceptions, such as utility easements, are not marked removed but rather are marked to remain. They are not insured against by the title insurance policy and will be listed in the policy as "exceptions." Alternatively, a Buyer can request a pro forma of the title insurance policy which will reflect how the final title insurance policy will look once it is issued after closing.

C. Customary Forms of Policy and Endorsements

Since 2006, two American Land Title Association ("ALTA") commitments have been used: ALTA Commitment (NJRB 3-07) and ALTA Plain Language Commitment (NJRB 3-08). However, on May 23, 2017 both of these forms were replaced with a single form: ALTA Commitment for Title Insurance (NJRB 3-09), a New Jersey variation of the form used throughout the country.

In New Jersey, Schedule "B," Section 1 of the title insurance commitment contains a requirement that a Notice of Settlement must be recorded. The language used is similar to the following: "Notice of Settlement as to the above transaction must be filed ten (10) days prior to closing of title." However proof of recording of the Notice of Settlement will support omitting this requirement.

D. Notices of Settlement—Bona Fide Purchasers

The Notice of Settlement notices that there is a pending real estate purchase transaction with or without mortgage financing or a new mortgage by an existing property owner. In a purchase transaction, the Notice of Settlement should be filed at least 10 days prior to closing and recorded in the county clerk's office where the real property is located. N.J.S.A. 46:26A-11.

On May 1, 2012, the statute was revised to extend the life of a Notice of Settlement to 60 days and an additional 60 days if it is refiled. The statute requires that the Notice of Settlement be signed by a party or a party's authorized representative. The forms shall state the names of the parties to the transaction and also contain a property description. Thereafter, the Notice of Settlement must be recorded, and all liens recorded after the recording of the Notice of Settlement will be considered inferior in priority to the impending deed and/or mortgage. However, if the deed/mortgage to be insured is not timely recorded within the effective duration of the recorded Notice of Settlement (and extended period), any liens that are recorded subsequent to the expiration of the Notice of Settlement and prior to the recording of the new deed and/or mortgage will have priority. Therefore, it is critical to ensure that the closing documents are timely recorded.

E. Insuring the Gap Period

The title insurance agency will confirm to the parties to the transaction that a Notice of Settlement or Notices of Settlement was/were filed and in effect at the time of closing and that there is enough time remaining so that the instruments to be insured will maintain their priority through the date of recording of the deed. The information is provided at the time of closing along with any other updated county records, judgments, and liens that affect the real property, the Sellers or the Buyers. The update is referred to as a "rundown of title" in New Jersey. In New Jersey, the title policy issued will insure the "gap" period between closing and recording the deed, so long as the Notice of Settlement has been filed and the rundown has been provided. There is no need for a "gap indemnity" running from Seller to the title company as is sometimes the case in other jurisdictions.

IV. TENANT ISSUES

A. Commercial vs. Residential (Notices and Evictions)

In New Jersey, under the Anti-Eviction Act (N.J.S.A 2A:18-61.1, et seq.), a residential tenant may not be refused the ability to have a lease renewed, or be evicted, absent good cause. A residential tenant in New Jersey may never be evicted unless the tenant violates his or her obligations under the lease, or the landlord is able to invoke one of the specifically enumerated rights under the Act (e.g., the building is to be removed from the rental housing market). Commercial tenants are not afforded such heightened rights.

Specifically with regards to residential property, New Jersey affords significant protection to tenants when a property is sold. As an example of the strong support the law affords tenants in sales transactions, when a property is being converted to or is a condominium or cooperative, the tenancy can only be terminated upon 60 days' prior notice, specifically when a new Buyer seeks to live personally in a purchased condominium or cooperative unit. N.J.S.A 2A:18-61.1(l). Such eviction of the tenant is possible if and only if, at the time of the initial tenancy, the tenant was provided notice pursuant to N.J.S.A. 2A:18-61. Notably, if the landlord fails to complete the sale to a new buyer, the Landlord is liable for treble damages and court costs to the tenant.

B. Security Deposits

The New Jersey security deposit law, the Rent Security Deposit Act, specifies how a residential landlord must collect, maintain, and return a security deposit. N.J.S.A. 46:8-19. The Rent Security Deposit Act requires the landlord to put a security deposit in a separate bank account that pays interest.

The Buyer as the new owner must obtain the tenants' security deposits, plus interest, from the old owner. The law is clear that Buyer is responsible to each tenant for the full amount of the tenant's deposit, plus interest, *whether or not the new owner actually received the deposits from the old owner.* N.J.S.A. 46:8-20 and 21 (emphasis added). Therefore, it is critical that all security deposit information is provided to the Buyer and any and all notice of any movement of the security deposits into new bank accounts be provided to all tenants, with an express description of where the security deposit is being placed. Under New Jersey law, a landlord must return any unused portion of the tenant's security deposit within 30 days after the tenant has surrendered the rental property to the landlord. If a landlord fails to return the security deposit to the tenant as required under the Act, the landlord can be held liable for double damages. N.J.S.A. 46:8-21.1.

C. Certificates of Occupancy

Nearly every municipality in New Jersey requires a landlord to obtain a new Certificate of Occupancy each and every time a new tenant moves in to a residential dwelling. Some towns even require Certificates of Occupancy for commercial rentals. Such certificates should be provided to Buyer, as a dwelling rented without a certificate of occupancy constitutes an illegal contract. For example, in the matter of Khoudary v. Salem Board of Social Services, 260 N.J.S. 79 (App. Div. 1992), the court ruled that a landlord who rents a dwelling without a Certificate of Occupancy does not have the right to file a suit for rents. (This does not bar eviction, a change from former court interpretation, but is still a significant potential detriment. See McQueen v. Brown and Cook, 342 NJS 120 (App. Div. 2001) (The court determined that letting a tenant remain in the illegal rental would be contrary to public policy).

V. CLOSING MATTERS

If possible, both parties should negotiate the forms of each closing document concurrently with the PSA and attach the negotiated forms as exhibits to the PSA. If not, and in order to avoid future disagreements, the Buyer should consider having the PSA require that the parties agree to forms during due diligence with a

provision that if the parties cannot agree to the forms, the parties still have a right to terminate the PSA.

A. Forms of Deed

A deed is an instrument a Seller uses to pass title of real property to a Buyer. A deed must be in writing to transfer title and must have original signatures; copies will not be accepted for recording. N.J.S.A. 25:1-11. In New Jersey, to be accepted, deeds must be recorded (N.J.S.A. 46:26A-12(c)) in the county where the real property is located (N.J.S.A. 46:26A-6) and include the following components:

- Be in English / English translation (N.J.S.A. 46:26A-3(a)(1));
- Identify the grantor / grantee (N.J.S.A. 25:1-11(a)(1));
- Include the mailing address of grantee (N.J.S.A. 46:26A-3(a)(5)(d));
- Include the name of the person that prepared the deed (N.J.S.A. 46:26A-3(a)(5)(c));
- State the consideration for the transfer (N.J.S.A. 46:15-5);
- Contain a legal description of the property being conveyed, i.e. metes and bounds description prepared by a surveyor of the property (N.J.S.A. 46:26A-3(a)(5)(b))[1];
- Include the signature of the grantor (N.J.S.A. 25:1-11(a)(1) and 46:26A-3(a)(2));
- Be acknowledged before a notary (N.J.S.A. 46:26A-3(a)(3)and N.J.S.A. 46:14-2.1);

The parties will have many options as to the type of deed to be delivered, including:

- **Bargain and Sale Deed** (N.J.S.A. 46:4-6): By far the most common type of deed, a bargain and sale deed with covenant against grantor's acts, warrants that the grantor has not performed any act that has encumbered the property. A covenant in the deed that the grantor "will warrant against any acts occurring during his or her time of ownership" is sufficient to provide this covenant.
- **Quit Claim Deed** (N.J.S.A. 46:5-1 to 46:5-9): conveys whatever interest a Seller has in a particular piece of property. It makes no promises about the type of property interest being conveyed. A quitclaim deed is commonly used to transfer property to or from a revocable living trust. Notably the guarantor covenants whatever interest the grantor may have, if any, but makes no covenant that the grantor has any interest at all. N.J.S.A. 46:5-3. Specific language must be included to be valid, pursuant to N.J.S.A. 46:5-1, i.e. "'the grantor releases to the said grantee', or the words 'the grantor does remise, release and forever quitclaim unto the said grantee', or the words 'the grantor does grant and release to the said grantee'", or "the grantor does grant and convey unto the said _____." Such language should be implemented into the recitals.
- **Sheriff's Deed** (N.J.S.A. 2A:50-64(a)(6)): Sale of a foreclosed property in accordance with N.J.S.A. 2A:17-36 procedure.
- **Deed in Lieu of Foreclosure** (N.J.S.A. 2A:50-55): A voluntary, knowing, and uncoerced conveyance by a mortgage debtor to the mortgage lender of all claims, interest and estate in the property subject to the mortgage.
- **Special warranty deeds** (N.J.S.A. 46:4-8) and **General warranty deeds** (N.J.S.A. 46:4-7). Far less common, a general warranty deed warrants title against all claims arising by or through any person (N.J.S.A. 46:4-7) and a special warranty deed warrants title only against claims arising by or through the grantor (N.J.S.A. 46:4-8).
- **Cooperative deeds** (N.J.S.A. 46:8D-11): Co-operative ownership was originally created in New Jersey under common law. However, the Co-Operative Recording Act of New Jersey, N.J.S.A. 46:8D-1 et. seq. provided a legal basis for the creation of co-operatives. Therefore, in such case, a master deed must be created by the board of the common interest real property and be amended as to reallocate interested when required. The master deed must be recorded like any other deed in the county where the common property is located.

New Jersey provides a short form deed (N.J.S.A. 46:4-1). However, a self-drafted deed meeting the minimum statutory requirements is valid and enforceable (N.J.S.A. 46:4-11). Note that deeds are recorded in the clerk's office in each county. However, in Essex County and Hudson County, deeds are recorded in the office of the county register.

B. Seller's Residency Certificate Forms

All Sellers of real property in New Jersey must record either a Seller's Residency Certification (GIT/REP-3) or a Seller's Non-Residency Certification (GIT/REP-2) with the deed.

Non-resident individuals, estates and trusts completing the Non-Residency Certification are required to make an estimated payment of taxes on capital gains earned on the sale of property, but in no case can this amount be less than two percent of the purchase price payable at closing. N.J.S.A. 54A:8-9. Payment is required if none of the Seller's Assurances listed in the GIT/REP-3 Form apply, and is withheld to cover New Jersey's "exit tax."

Resident Sellers, corporations, and limited liability companies do not have to make an estimated payment at closing. The law does not alter the amount of any tax liability. It simply requires that the payment by non-resident Sellers be made at the time of closing. Sellers then will subsequently file their requisite annual tax return with the State to determine the correct amount of the tax, seek any eligible refund for overpayments, or make additional tax payments.

1. Bulk Sales

The Bulk Sales Act is designed to permit the State to collect capital gains tax and *all other outstanding taxes that a Seller may owe the State*, including, without limitation, sales tax, employment taxes, corporate taxes, back taxes, etc., upon the sale of real property while funds to pay such taxes are available (from the sale) and is applicable only to commercial transactions (and certain residential/rental property situations), including the sale of a single parcel of real property. The taxes are payable by the Seller; however, Buyer must comply with the notice requirements of the law or else may be held liable for any state taxes owed by the Seller. See N.J.S.A. 54:50-38. It is not a separate tax (a common misconception).

To comply, Buyers must submit a Notification of Sale, Transfer, or Assignment in Bulk, known as Form C-9600 (C-9600 Notice) to the New Jersey Department of Treasury, State Division of Taxation, Bulk Sales Section (Division), *at least ten 10 business days* prior to closing. Once filed, the Division reviews Seller's State tax liabilities and any amounts that might be owed to the State from the transaction. The Division may issue a letter stating that the State makes no claim against the assets to be transferred (a "clearance letter"), in which case Buyer can close without risk of assuming the Seller's tax liabilities. Alternatively, the Division may require that an escrow account be established from the closing proceeds, sufficient to cover outstanding liabilities of the Seller. The escrow account is typically held by the Buyer's counsel or its title company pursuant to an escrow agreement requiring strict compliance with the Division's instructions.

Sellers can attempt to reduce the amount of the escrow by filing an Asset Transfer Tax Declaration form with the Division prior to closing. This, in turn, may reduce or eliminate the bulk sale escrow requirement altogether.

At or after closing, the Division may issue a demand letter for payment of the Seller's outstanding taxes from the escrowed funds. Once that amount is paid, the Buyer should receive a clearance letter, in which case the remaining funds in escrow can be released to Seller.

If the Buyer fails to file the C-9600 or fails to establish the required escrow, the Buyer will be held liable for any State taxes outstanding against the Seller as of closing. The State has the power to levy a judgment for such taxes, including placing a lien against all properties in New Jersey owned by the Buyer. Liens against property arising in this manner are not insured by title insurance policies.

C. Realty Transfer Fee/Affidavits of Consideration

A Realty Transfer Fee is imposed upon the recording of deeds evidencing transfers of title to real property in the State of New Jersey. Payment is the responsibility of the Seller (although the parties can allocate responsibility in the PSA). The Realty Transfer Fee is calculated on the consideration amount recited in the deed. Exemptions from the Realty Transfer Fee are found in N.J.S.A. 46:15-10. Pursuant to N.J.S.A. 46:15-5 -15-10, the county clerk collects the fee when recording the deed in the county recording office where the real property is located and such fee is dependent on sale price. N.J.S.A. 46:15-6.1; N.J.S.A. 46:15-7(a). In certain transactions, an affidavit of consideration must be attached to and recorded with the deed, for either Seller or Buyer or both. N.J.S.A. 46:15-6(a). For example, if the transaction qualifies for an exemption from the realty transfer fee, involves Class 4 commercial property or involves new construction, an affidavit is required. N.J.S.A. 46:15-6(b); 16-7.2(d)(1) and 15-6(c).

Additionally, in 2004, New Jersey's "Mansion Tax" was enacted creating an additional tax on deed recording. N.J.S.A. 54:15C-1, et seq. The name is something of a misnomer as it originally only applied to high-end residential properties. The tax applies upon the transfer of certain types of real estate where the consideration paid is more than $1 million. The mansion tax is applicable to properties classified as "Class 2" residential, which includes single family homes, and "Class 4A Commercial," which encompasses offices and most commercial establishments (and certain other less common classes of property). The tax is not payable on transfers of vacant land, industrial sites or multifamily apartment buildings. By statute, the fee—which is one percent of the purchase price—is payable to the county clerk by the Buyer 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 both the mansion tax and realty transfer fee.

For Buyers, an affidavit of consideration must be annexed to the deed when the entire consideration is in excess of $1 million or the equalized value of Class 4A property is in excess of $1 million. An affidavit is also required when the Buyer claims an exemption from payment of the fee and when the entire consideration is not recited in the deed or the acknowledgement or proof of the execution. (Buyers of membership or shareholder interests in entities that own Class 4A commercial properties, should also take note of New Jersey's Controlling Interest Transfer Tax (N.J.S.A. 54:15C-1) which imposes a one percent tax (similar to the mansion tax) on Buyers of more than 50 percent interest in such entities if the statutory triggers are met).

D. Apportionments

The Seller is typically responsible for all costs related to the real property until the date immediately preceding the closing date. The Buyer is responsible for all costs from the date of the closing onwards. The apportionments will be included in the closing statement. Specifically, real estate taxes, water and sewer rents, and utilities should be addressed as well as other calculations which may be discovered after closing.

E. Special Tax Assessments

In New Jersey, municipalities may charge for local improvements through a special tax assessment on the lands in the vicinity which benefit from that local improvement. N.J.S.A. 40:56-1. "All assessments levied under this chapter for any local improvements shall in each case be as nearly as may be in proportion to and not in excess of the peculiar benefit, advantage or increase in value which the respective lots and parcels of real estate shall be deemed to receive by reason of such improvement." N.J.S.A. 40:56-27.

Some examples of local improvements are curbing, sidewalks, paving, and decorative lamp posts. The justification for a municipality to levy a special assessment is the benefit or enhancement of value which the improvement confers upon property so assessed. Gabriel v. Paramus, 45 N.J. 381, 384, (1965). Notably, such local assessments differ from general taxes. As stated in In re Public Service Electric & Gas Co., 18 N.J. Super. 357, 363 (App. Div. 1952):

> [Local assessments] are not a tax at all in the constitutional sense or as taxes are generally understood, although it has been said that "assessments for local improvements form an important part of the system of taxation." Assessments as distinguished from other kinds of taxation are those special and local impositions upon the property in the immediate vicinity of the municipal improvements, which are necessary to pay for the improvement, and are laid with reference to the special benefit which the property is supposed to have derived therefrom.

Business Improvement District ("BID"), Pedestrian Mall, Downtown and Main Street areas or commercial mixed use corridors may receive a special assessment for the cost of improvements for property owners who benefit from the improvements. Such districts were authorized by statute in 1984 and are formed by municipal ordinances. Assessment revenues are utilized, for example, for improvement upgrades and maintenance, marketing, and security.

Therefore, Buyers must be aware of such special assessments in a purchase and whether the assessment tax is ongoing or subject to a term and nearing finality. Buyer and Seller may negotiate who is meant to pay these taxes based on a factual inquiry of the tax and its benefits.

F. NJ Rollback Taxes

Farmland in New Jersey is afforded significantly reduced taxes. Therefore, "rollback taxes" are assessed if land historically used for agricultural/horticultural uses changes to a non-farm use. See N.J.S.A. 54:4-23.8.[2] The tax is not applied when ownership of farmland changes, provided the new owner continues to devote the land to agricultural/horticultural uses. Cropland, woodland, or livestock farming having haphazard (i.e., unplanned) activity may lose Farmland Assessment. Loss of Farmland Assessment for inadequate or under devotion during the tax year does not automatically result in roll-back as a change in use. Rollback taxes are applied for the year the change takes place and the two previous tax years, provided the land was farmland assessed during that time. Rollback taxes become a lien on the land from January of the year in which the rollback judgment is rendered by the County Board of Taxation. If a Buyer intends to discontinue agricultural use of the land after closing, the PSA should address responsibility for the payment of the tax.

G. Time of the Essence

Parties to a real estate contract are generally obligated to perform their duties within a reasonable period of time following execution of the contract unless otherwise agreed. In Re Estate of Yates, 368 N.J. Super. 226, 236 (App. Div. 2004). In New Jersey, the date of the closing shall not be considered "of the essence" without an explicit provision providing for such a closing. As stated in Paradiso v. Mazejy, 3 N.J. 110, 114–15, 69 A.2d 15, 17 (1949):

> Where time is not specifically made of the essence, the intention of the parties to make it so must be clearly spelled out either by an examination of all the surrounding circumstances or by supplemental notice from one party to the other. "The law is that a day fixed in a contract for closing title, without more, is merely formal; but if it is stipulated that time is of the essence, or the circumstances are persuasive that that is the case, prompt performance is essential, and it is also the law that, where the time fixed is regarded as a formality only, and the period has gone by, or where time is of the essence, and there is a waiver, that time may nevertheless be made of the essence by formal demand that the title be closed by a given day; but the time given must be reasonable."

Reade v. McKenna, 99 N.J. Eq. 764, 134 A. 371, 372, (Ch. 1926), affirmed 101 N.J. Eq. 304, 137 A. 918 (E. & A. 1927); see also Marioni v. 94 Broadway, Inc., 374 N.J. Super. 588, 603, 866 A.2d 208 (App.Div.); Finn v. Glick, 42 N.J. Super. 514, 518–19, 127 A.2d 204 (App.Div.1956); Orange Soc'y of the New Jerusalem v. Konski, 94 N.J. Eq. 632, 636, 121 A. 448(Ch.), aff'd, 95 N.J. Eq. 254, 122 A. 753 (E. & A.1923)), certif. denied, 183 N.J. 591 (2005); Pimentel v. La Borinquena Bakery, Inc., No. A-4984-06T2, 2008 WL 850267, at *4 (N.J. Super. Ct. App. Div. Apr. 1, 2008).

The real estate contract must clearly establish that the parties understood at the time that a failure to perform on such date, and even a particular hour on such date, would result in the failing party's forfeiture of all rights to enforce its rights under the real estate contract. Marioni v. 94 Broadway, 374 N.J. Super. 588 (App. Div., 2005). In an unreported decision, Steliga v. Ostrum, 2007 WL 1215033 (App. Div. Apr. 26, 2007), the Appellate Division considered, but declined, a trial judge's decision that a time of the essence requirement could be inferred. While the Court chose not to "quarrel with the proposition that the intention of the parties to make time of the essence may be shown by persuasive circumstances" the decision maintains the need for "time is of the essence" clauses to be explicit. If a time is of the essence clause is found to be enforceable, a party's failure to close shall be considered a breach, if the other party is ready, willing, and able to close. Gorrie v. Winters, 518 A.2d 515, 517-18 (N.J. Super. Ct. App. Div. 1986). The parties may always choose to mutually waive the clause. Salvatore v. Trace, 262 A.2d 409, 413 (N.J. Super. Ct. App. Div. 1969).

Notably, if time is not originally made of the essence in a PSA, a party can declare it to be following the date set for closing when a new closing date is demanded, so long as the notice is reasonable in relation to the time already elapsed. The common practice is to set a new closing date not less than 10 days following the demand, but there is no "mathematical calculation" and courts will examine three points in time in determining whether a new closing date is reasonable: (a) the date originally set for closing; (b) the date notice is given; and (c) the new date fixed for closing. Finn v. Glick, 42 N.J. Super. 514, 518-19 (App. Div. 1956). A party, to make time of the essence by demand notice, must ensure that these three dates are reasonable. See Almeida v. Ward, 2006 WL2571227 (App. Div., Sept. 8, 2006) (unreported), (timing is unreasonable where Seller served Buyer a time is of the essence notice setting forth a

new closing date two weeks later, after the Buyer had waited approximately seven months beyond the original closing because of Seller); Paradiso v. Mazejy, 3 N.J. 110 (1949) (two week notice is unreasonable where two months following the original closing date passed).

New Jersey courts have also held that a party can unilaterally declare time to be of the essence before the closing date set forth in the real estate contract passes if the other party has anticipatorily repudiated the real estate contract. In Earlin v. Mors, 1 N.J. 336 (1949), Buyer informed Seller three weeks before the closing date set forth in the contract that the Buyer would be unable to complete the purchase due to finances. In response, Seller delivered a time of the essence notice for the original closing date. The Supreme Court held that this time of the essence notice was valid.

H. Risk of Loss

Historically, when a PSA is silent, the Buyer will assume the risk of loss or destruction, when it is not due to the Seller's neglect or default during the contracting period. Coolidge v. Sickler, 80 A.2d 554, 557 (N.J. 1951). However, PSAs in this state will typically place the risk of loss on the Seller until closing and where a contract specifically allocates the risk of loss between execution and closing loss will not be placed elsewhere. Jock v. Zoning Bd. of Adjustment of Twp. of Wall, 184 N.J. 562, 588, 878 A.2d 785, 800 (2005).

VI. TRANSFER REQUIREMENTS

Depending on the use and location of the real property in New Jersey, additional documents may be required. Such differences are based on each municipality's requirements.

New Jersey requires that before a closing on new construction can occur, the builder/Seller must obtain a Certificate of Occupancy from the municipality wherein the property is located. N.J.S.A. 52:27D-133 et seq. However, for existing buildings to be resold, the State does not mandate that a Seller obtain a Certificate of Occupancy or Certificate of Continuing Occupancy. The requirement for re-sale approval is left to the jurisdiction of the municipality where the property is located. Some municipalities have no requirements (it is often best to contact the building and/or zoning department to confirm). If required, each municipality has different terminology for this approval (e.g., certificate of occupancy, certificate of continued occupancy, zoning certificate, etc.) which is often simply referred to as the "C.O." N.J.S.A. 52:27D-198.1 et seq. The property owner typically must complete an application for an inspection and issuance of the C.O. There is typically a fee for the application. N.J.A.C. 5:23-4.17. Each municipality's approach to enforcement varies. If there are violations, the owner is notified and the violations will typically have to be cured before transfer of property is permitted. A Buyer should attempt to include in the PSA a provision that the Seller obtain the C.O. at Seller's cost. A Seller may balk—fearing the cost to rectify possible violations will dilute profit from the sale. In such a case, a Buyer may be willing to assume the responsibility (and cost) or, alternatively, the parties might agree to a cap on Seller's liability with the Buyer having the option to pay any costs above Seller's cap or the deal terminates.

The State of New Jersey does mandate that the Seller of residential property obtain a certificate of smoke detector, carbon monoxide detector, and fire extinguisher. N.J.S.A. 52:27D-192 et seq. Other requirements may include a well water test certification if a private well provides the potable water to the property N.J.S.A. 58:12A-26.

VII. REPRESENTATIONS AND WARRANTIES

There are several factual representations that can be provided by a Seller in a PSA and which Buyer may further investigate during due diligence. This is a major component of negotiations of a PSA, as Sellers will seek to avoid substantial representations and Buyers will attempt to gain as many as possible. As a practice point, and in addition to the typical authority and non-contravention representations, representations worthy of insistence include any violations of any laws with respect to the property at issue; litigation involving the property; known environmental conditions; and, where applicable, tenant- and lease-related issues.

If possible, Buyer should insist that representations and warranties explicitly survive closing for some period of time in the PSA. Survival periods vary, and are a typical negotiation point in most deals. If such representations do not survive closing, a "merger" clause will merge any and all representations made into the deed. See Andreychak v. Lent, 607 A.2d 1346, 1347 (App. Div. 1992), a benefit to Seller.

PSAs typically include the following representations and warranties: (i) any leases, defaults on lease, and location of security deposits; (ii) any operating agreements; (iii) no representation as to personal property;

(iv) organization and authority of Seller, with the representation Seller has full right to enter into the PSA; (v) resident or non-resident status; (vi) no pending actions on the property; (vii) no condemnation on any interest in the property; (viii) no legal violations; (ix) that the PSA is a binding agreement. As a Buyer, it is in your best interest to begin by requesting significant representations and warranties and negotiating from there, especially items you cannot discover through due diligence.

VIII. "AS IS" PROVISIONS AND DISCLAIMERS

New Jersey generally follows the doctrine of caveat emptor unless a Buyer can show active concealment of a condition by Seller which involves an unreasonable risk to others and the Buyer has no reason to know of the risk. See T & E Indus., Inc. v. Safety Light Corp., 587 A.2d 1249, 1257 (N.J. 1991). Therefore, "as is" language protects the Seller against any condition which would have been discovered with a reasonable level of due diligence by the Buyer. However, significant latent defects which are known to Seller and not disclosed by Seller are still subject to liability. McDonald v. Mianecki, 159 N.J.Super. 1 (App. Div. 1978), aff'd, 79 N.J. 275 (1979); State, Dept. of Envtl. Prot. v. Ventron Corp., 440 A.2d 455, 464 (N.J. Super. Ct. App. Div. 1981); modified 468 A.2d 150, 165-66 (N.J. 1983); See Catena v. Raytheon Co., 145 A.3d 1085, 1093-94 (N.J. Super. Ct. App. Div. 2016) (Sellers face fraud claims by Buyers where Sellers fail to disclose known environmental conditions and remediation activities in "as-is" transactions); Weintraub v. Krobatsch, 64 N.J. 445 (1974) (Seller's failure to disclose a roach infestation which was not observable to Buyers during their inspection); Hackerman v. Larusso & Tozour, LLC, 2015 WL 3476587 (App. Div.) (basement flooding one time prior to sale was not a latent defect, even where Sellers began to experience significant flooding).

IX. IMPLIED COVENANTS OF GOOD FAITH AND BEST EFFORTS

Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement and courts possess a considerable amount of discretion when applying the implied covenant. Wade v. Kessler Institute, 778 A.2d 580 (N.J.Super. A.D. 2001) (ruling that a definition of good faith and fair dealing for all cases has not been developed.) The covenant requires a party in a contract, including a PSA to refrain from conduct that prevents the other party from receiving the fruits of the bargain. Onderdonk v. Presbyterian Homes of New Jersey, 425 A.2d 1057 (N.J. 1981). In Wilson v. Amerada Hess Corp., 773 A.2d 1121, 1131 (N.J. 2001) the court stated a test for determining if the implied covenant has been breached which is: "a party exercising its right to use discretion in setting a term under a contract breaches the duty of good faith and fair dealing if that party exercises its discretionary authority arbitrarily, unreasonably, or capriciously, with the objective of preventing the other party from receiving its reasonably expected fruits under the contract."). Notably, the principles of fair dealing cannot and will not alter the terms of a written agreement, again stressing the importance of a PSA's terms. Rudbart v. N. Jersey Dist. Water Supply Com'n, 605 A.2d 681, 700 (N.J. 1992).

X. DEFAULT AND REMEDIES

A Buyer's default will typically be caused by the failure to deliver the purchase price for the real property and close title whereas the Seller has several obligations to meet under a PSA. A Seller must usually meet certain conditions before being able to close the transaction, including, but not limited to, complying with all of its representations and warranties, as set forth above, and clearing encumbrances affecting title to the real property (if a Buyer has properly objected to them per the terms of the PSA) and convey good title to the real property.

A Buyer shall be entitled to a return of the deposit plus interest if the PSA is voided by a court. Green Springs Estates, Inc. v. Bd. of Educ. of Tp. of Springfield, 558 A.2d 1369, 1370 (N.J. Super. Ct. App. Div. 1989). A Buyer may also recover title search fees and other costs if the Seller fails to perform because of a defect in the title to the property (N.J.S.A. 2A:29-1).

Under New Jersey law, a Buyer may bring a suit for specific performance when a Seller defaults based on the presumption of the uniqueness of land and inadequacy of monetary damages (Friendship Manor, Inc. v. Greiman, 581 A.2d 893, 897-98 (N.J. Super. Ct. App. Div. 1990) ("There is a virtual presumption, because of the uniqueness of land and the consequent inadequacy of monetary damages, that specific performance is the Buyer's remedy for the vendor's breach of the contract to convey.") Generally, to establish a right to the remedy of specific performance in New Jersey, whether or not real estate is involved, a party must demonstrate: (i) that the contract in question is valid and enforceable at law; (ii) that the terms of the contract are "expressed in such fashion that the court can determine, with

reasonable certainty, the duties of each party and the conditions under which performance is due"; and (iii) that an order compelling performance of the contract will not be "harsh or oppressive…" Marioni v. 94 Broadway, Inc., 374 N.J. Super. 588 (App. Div. 2005). An action for financial damages is also available through a claim for breach of contract. The measure of damages is the Buyer's compensatory damages plus incidental damages. The Buyer's loss of the bargain is generally measured by the difference between the market price of the property at the time of the breach and purchase price stipulated in the PSA. Donovan v. Bachstadt, 453 A.2d 160, 164-65 (N.J. 1982). However, in a typical PSA, Sellers nearly always limit Buyer's remedy to specific performance and where financial damages are allowed in the PSA, the damages will often have a basket (minimum damages prior to financial damages being made available) and a cap (maximum liability for financial damages) and will require any financial damages be limited to post closing matters.

A Seller's remedies will primarily be based on the terms of the PSA. Typically, such remedies shall include keeping the Buyer's deposit and interest and potentially legal fees and costs.

In New Jersey, absent a liquidated damages or forfeiture clause in the PSA, a Seller is not entitled to automatically obtain the Buyer's deposit after the Buyer's default. Kutzin v. Pirnie, 591 A.2d 932, 937-38 (N.J. 1991). Where a liquidated damages clause does exist, a party challenging the clause must prove it is unreasonable or has been used as a penalty against the Buyer. MetLife Capital Fin. Corp. v. Washington Ave. Assocs. L.P., 732 A.2d 493, 500 (N.J. 1999); Naporano Assocs., L.P. v. B & P Builders, 706 A.2d 1123, 1128 (N.J. Super. Ct. App. Div. 1998). In certain rare circumstances, specific performance may be available to Seller if the Seller can prove that it is likely to suffer an economic injury for which damages at law are not adequate or some other equitable considerations. Centex Homes Corp. v. Boag, 320 A.2d 194, 198 (N.J. Super. Ct. Ch. Div. 1974).

XI. MISCELLANEOUS

A. Tax Appeals

If a pending tax appeal is ongoing and not yet concluded during PSA negotiations, any and all profits derived from the resolution of the appeal should be considered. Seller, as the entity or person who initially brought the appeal, will typically request such funds be returned to them, for taxes that were forced to be paid in error prior to the appeal. Buyer, as new owner, may want to claim such benefits, especially if real estate taxes after closing continued to be incorrect.

B. Broker's Issues

In New Jersey, "the law is well settled that a real estate broker is in a fiduciary relationship toward the [principal] whom he represents and owes him a duty of 'good faith' and 'absolute fidelity.'" Silverman v. Bresnahan, 35 N.J. Super. 390, 395 (App. Div. 1955). The New Jersey Real Estate License Act, N.J.S.A. 45:15-1, et seq., and the corresponding administrative regulations (N.J.A.C. 11:5-1.1 to 11:5-12.18) provides strict guidance concerning that fiduciary relationship requiring, inter alia, "a written agreement between a brokerage firm and a party describing the terms under which that firm will perform brokerage services as specified in N.J.S.A. 45:15-3." N.J.A.C. 11:5-6.9(a)(1).

The Statute of Frauds similarly requires a broker to obtain a "writing signed by the principal" specifying "the amount or the rate of commission" for a commission agreement to be enforceable. N.J.S.A. 25:1-16(b). Failure to comply with such provisions risks forfeiting an entire commission. See Coldwell Banker Commercial/Feist & Feist Realty Corp. v. Blancke P.W., 368 N.J. Super. 382, 391 (App. Div. 2004). A party may not pursue quasi-contractual or equitable claims. N.J.A.C. 11:5-6.9(a)(1); N.J.S.A. 25:1-16(b); McCann v. Biss, 65 N.J. 301, 310 (1974). New Jersey also prohibits any real estate licensee from acting for more than one party in a real estate transaction without the informed consent of all parties. N.J.S.A. 45:15-17(b); N.J.A.C. 11:5-6.9(h).

A Seller historically becomes liable for a Seller's brokers' commission in the event of a successful sale of the property. "It seems to us that fairness requires that the arrangement between broker and owner be interpreted to mean that the owner hires the broker with the expectation of becoming liable for a commission only in the event a sale of the property is consummated, unless the title does not pass because of the owner's improper or frustrating conduct." Ellsworth Dobbs Inc. v. Johnson, 50 N.J. 528, 548 (1967). Prior to Ellsworth, New Jersey courts interpreted the word "sale" providing for payment of a commission for "perfecting a sale" or "for the sale of the property" to render the owner liable for a commission upon execution by Seller and Buyer of a binding written contract for

sale of the property even though the sale was not consummated and title not closed. Klipper v. Schlossberg, 96 N.J.L. 397, 399-401 (Sup.Ct. 1921). After Ellsworth. even though the sale is not consummated and title is not closed until after expiration of an extension period, the broker will be entitled to commission if a binding written contract is executed by Buyer and Seller prior to expiration of the extension period.

Where no binding executory contract was entered into between the Seller and Buyer registered by the broker prior to the expiration of the extension period, the broker has been denied a commission pursuant to the terms of the brokerage agreement. Therefore, in order to recover a commission under the "efficient producing cause" doctrine, the broker must prove that he or she caused his or her customer to negotiate with the Seller and that the transaction is later consummated through direct negotiations between the Seller and the broker's customer, even though the Seller accepts terms different from those expressed in the listing agreement, providing the customer makes the purchase without a substantial break in the ensuing negotiations. See Loeb v. Peter F. Pasbjerg & Co., 22 N.J. 95, 100 (1956); Fry v. Doyle, 167 N.J. Super. 486, 493-94 (App.Div. 1979); certif. den. 81 N.J. 287, 405 A.2d 831 (1979).

In New Jersey, a broker may not file a lien on a property if commissions are not paid, but courts have held brokers have a right to an equitable lien on real estate to protect a commission. Cohen v. Estate of Sheridan, 528 A.d2 101 (N.J. Super. Ct. Ch. Div. 1987).

C. Integration Clause

Typically the integration clause will state that the contract that it is part of captures the "entire agreement" between the parties which will protect both Buyer and Seller from any previous or later terms, and conversations or agreements which are no longer the intent of the party to the PSA. However, courts may consider extrinsic evidence offered in support of conflicting interpretations. Conway v. 287 Corporate Ctr. Assoc., 187 N.J. 259, 268-69 (2006); Newark Publishers' Ass'n v. Newark Typographical Union, 22 N.J. 419, 427 (1956). "Extrinsic evidence may include the structure of the contract, the bargaining history, and the conduct of the parties that reflects their understanding of the contract's meaning." In re Teamsters Indus. Emp. Welfare Fund, 989 F.2d 132, 135 (3d Cir. 1993). See also Restatement (Second) of Contracts, supra, 214(c) ("[N]egotiations prior to . . . adoption of a writing are admissible in evidence to establish . . . the meaning of the writing, whether or not integrated") (noting jurisdictions that have adopted "the proposition that there need not be a finding of ambiguity before parole evidence is admitted to interpret an integrated agreement").

D. Statute of Frauds

The parties' intent to contract is a key element in meeting the requirements of a valid PSA under New Jersey's statute of frauds. N.J.S.A. 25:1-11(a)(1). Therefore, a written contract is not required for a PSA to be enforced, though having one greatly improves a Buyer's chance at success. New Jersey's Statute of Frauds previously prohibited a contract for the sale of real property without a written contract. However, the revised Statute of Frauds allows an oral contract to be enforced if proven by "clear and convincing evidence." N.J.S.A. 25:1-13. These issues are not intended to be fully addressed herein as a full discussion of New Jersey's Statute of Frauds is beyond the scope of this article.

Notes

1 While a Block and Lot number is acceptable as a legal description of the property, it will not be insurable by the title insurer. Therefore, Buyers should utilize a metes and bounds description of the property prepared by a surveyor during the due diligence period. Preferably, such description should be certified to all parties.

2 Pursuant to N.J.S.A. 54:4-23.8:

In determining the amounts of the roll-back taxes chargeable on land which has undergone a change in use, the assessor shall for each of the roll-back tax years involved, ascertain:

(a)The full and fair value of such land under the valuation standard applicable to other land in the taxing district;

(b)The amount of the land assessment for the particular tax year by multiplying such full and fair value by the county percentage level, as determined by the county board of taxation in accordance with section 3 of P.L.1960, c.51 (C.54:4-2.27);

(c)The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under (b) hereof; and

(d)The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under (c) hereof by the general property tax rate of the taxing district applicable for that tax year.

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