

**ANNUAL REPORT OF THE
NEW JERSEY LAW REVISION COMMISSION
1989**

Report to the Legislature of
the State of New Jersey as
provided by C. 1:12A-9.
February 1, 1990

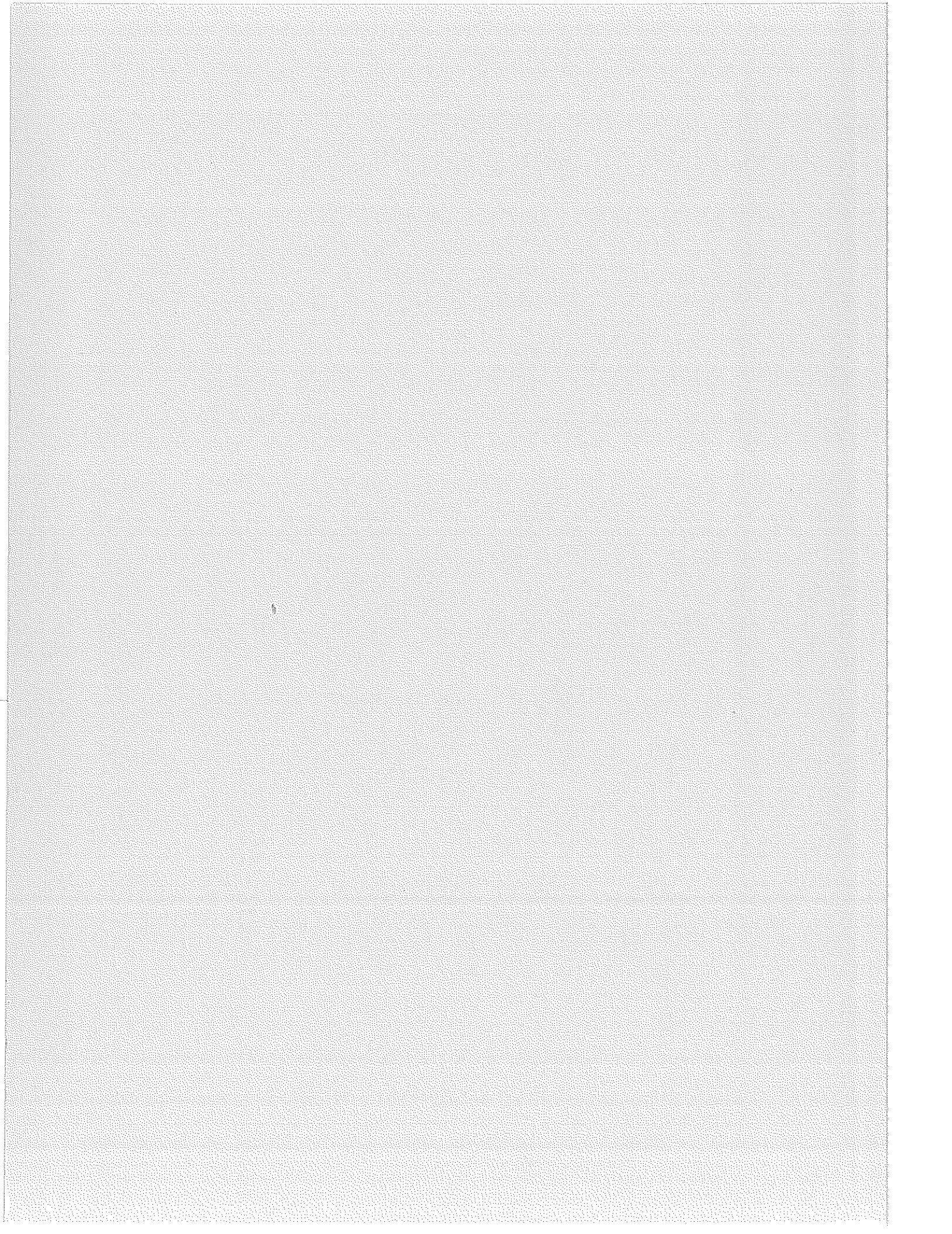


TABLE OF CONTENTS

	<u>Page</u>
I. COMPOSITION OF THE COMMISSION	1
II. HISTORY AND WORK OF THE COMMISSION	2
III. PROJECTS AND RECOMMENDATIONS	
A. Revision of the Laws Relating to the Structure of the Court System	3
B. Revision of the Laws Relating to Recordation of Title Documents	4
C. Article 2A (Leases) of the Uniform Commercial Code	5
D. Administrative Procedure Act	5
E. Notaries' Liability	6
F. Consumer Lessee Protection Act	7
G. Consideration of Uniform Laws promulgated by the National Conference of Commissioners on Uniform State Laws	9
H. Statutes Recommended for Repeal	10
IV. PROJECTS UNDER CONSIDERATION	
A. Statute of Frauds	10
B. Transportation	11
C. Codification	11

V. APPENDICES

A. Report and
Recommendations on Organization of
the Courts

B. Report and
Recommendations on Recordation of
Title Documents

C. Report and
Recommendations on New Article 2A
(Leases); Uniform Commercial Code

D. Report and
Recommendations Concerning the
Administrative Procedure Act

E. Report and
Recommendations on Notaries'
Liability

F. Report and
Recommendations on Consumer
Leases

G. Report and
Recommendations on Statutes to be
Repealed

I. COMPOSITION OF THE COMMISSION

**Albert Burstein, Chairman, Attorney-at-Law,
Appointed 1987**

**Bernard Chazen, Attorney-at-Law,
Appointed 1987**

**Edward O'Connor, Chairman, Senate Committee on
the Judiciary, Ex officio**

**Hugo M. Pfaltz, Jr., Attorney-at-Law,
Appointed 1987**

**Ronald J. Riccio, Dean, Seton Hall Law School
Ex officio**

**Howard T. Rosen, Attorney-at-Law,
Appointed 1987**

**Paul T. Robinson, Dean, Rutgers Law School - Camden,
Ex officio**

**Thomas J. Shusted, Chairman, Assembly Committee on
the Judiciary, Ex officio**

**Peter Simmons, Dean, Rutgers Law School - Newark,
Ex officio**

**John M. Cannel, Executive Director
Maureen E. Garde, Counsel
John J. Burke, Staff Attorney
Judith Ungar, Staff Attorney**

II. HISTORY AND WORK OF THE COMMISSION

The Law Revision Commission was created by L.1985, c. 498, and charged with the duty to:

- a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it for, the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to (1) Remedy the defects, (2) Reconcile conflicting provisions found in the law, and (3) Clarify confusing and excise redundant provisions found in the law;
- b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;
- c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and
- d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant to its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

Although this Commission has operated for only three years, the concept of permanent, institutionalized statutory revision and codification is not new in New Jersey. The first Law Revision Commission was established in 1925. That Commission produced the Revised Statutes of 1937. The Legislature authorized the first Law Revision Commission to operate after the 1937 Revised Statutes were completed. After 1939, the functions of the first Law Revision Commission passed to a number of successor agencies. Most recently, statutory revision and codification were among the duties of

Legislative Counsel (C. 52:11-61). By L.1985, c.498, the Legislature transferred the particular functions of statutory revision and codification to the New Jersey Law Revision Commission.

III. PROJECTS AND RECOMMENDATIONS

A. Revision of the Laws Relating to the Structure of the Court System

In 1989, the Commission completed and filed a two-part report with recommendations for change in the statutes relating to the organization of the court system. As noted in last year's Annual Report, the purpose of this project was to make the statutes reflect the changes in the court system resulting from consolidation of the courts which took place in 1978 and 1983.

There are 34 sections in the Commission's proposal, which would replace 189 sections of current law. The proposed material continues the substantive effect of all replaced sections and reflects current practice in the court system. The fact that the statutes now contain a large number of superseded sections, or sections which relate to subject matters not relevant within a unified court system, explains the difference in length between the proposed material and the current sources.

The second part of the Commission's report identifies sections of the New Jersey statutes specific to courts which have been abolished. The report proposes deletion of these sections. In addition, the second part of the report identifies references to the old courts and proposes corrections of the references.

The first part of the Commission's Report on Organization of the Courts is appended to this Annual Report. Because of the nature and size of the second part of the Report, it is not appended.

B. Revision of the Laws Relating to Recordation of Title Documents

In 1989, the Commission completed and filed a Report and Recommendations Relating to Recordation of Title Documents. The subject was discussed thoroughly in last year's Annual Report.

The Commission recommendation entails the revision of Chapters 12, 13, and 14, and parts of Chapters 15 and 18 of Title 46. In place of the thirty sections in the current law, the Commission proposes only six sections. The first, and most important, section lists all of the prerequisites for recordation of an instrument affecting real estate. These prerequisites are scattered throughout the existing statutes. The first section also reduces the number of requirements for recordation and obliges a recording officer to record any document which appears to meet the requirements. The second section outlines the requirements for cancellation of a mortgage. The current statutory material on this subject is found in seven sections of existing statutes. The third, fourth and fifth sections constitute a clearer statement of the methods for acknowledging or proving a document. At present, there is no such statement; the seven statutes dealing with this subject are neither complete nor consistent with each other. The sixth section defines "signature." The definition of "signature" is available only in case law. The Commission also recommends amendments to two sections of existing law relating to the real estate transfer tax. The amendments simplify the requirements imposed by these sections without impairing their purpose.

The Commission report on recordation of title documents is appended to this Annual Report.

C. Article 2A (Leases) of the Uniform Commercial Code

In 1987, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Commercial Code Article 2A containing rules governing the leasing of personal property. The Uniform Commercial Code applied to lease transactions only if they could be defined as secured transactions governed by Article 9 or sales of goods governed by Article 2.

In 1989, the Commission examined the comprehensive and lengthy provisions of the new Article and proposed a version of the new Article that is similar to versions enacted in California and pending in other states. The appendix to this report contains the explanatory comments prepared for certain provisions of Article 2A proposed for adoption in this State.

D. Administrative Procedure Act

In 1989, the Commission filed a report recommending amendment of the Administrative Procedure Act. This project was suggested by the opinion in DiMaria v. Board of Trustees of the Public Employees' Retirement System, 225 N.J. Super. 341 (App. Div. 1988), which pointed out a gap in the provisions of the Administrative Procedure Act, C. 52:14B-1 to -15. These provisions govern the issuance of decisions in contested cases decided by administrative agencies. The case held that while there is a strict time limit for the agency to act on a case, there is no time limit for the filing of a final decision. Thus, the time limit requirement is ineffective.

After carefully considering a number of possible statutory amendments providing various systems of time limits and consequences for failure to act within them, the Commission concluded that the agency action and final decision setting forth the reasons for the action should be filed concurrently. The Commission rejected any system of time limits which separates the agency action from the filing of a decision stating its legal basis.

Such a bifurcated system encourages agencies to render decisions that are divorced from the detailed factual and legal reasoning that is supposed to underlie their actions.

The final decision which contains findings of fact and conclusions of law fulfills a number of critical roles in the administrative process. The final decision provides a basis for an appellate court to assess whether an agency action is grounded in relevant facts and based upon proper considerations. These purposes can be realized only when the final decision is announced at the same time the agency announces its action. When the findings of fact and conclusions of law are made after the agency action is announced, there is at least a possible perception that the findings are made to justify the action rather than to determine the action. To assure that an agency acts according to the law and facts of each case, and to promote public trust in this system, the statute must require an agency to give the reasons for its action at the time the action is taken.

These considerations led the Commission to recommend an amendment to the Administrative Procedure Act to provide that an agency may adopt, reject or modify the recommendation of an administrative law judge only by filing a final decision. The Commission report that includes this recommendation is appended to this Annual Report.

E. Notaries' Liability

In 1989, the Commission completed and filed a report on Notaries' Liability. The statutes establishing the office of notary are found at C. 52:7-10 to 21. While these sections provide in detail for the appointment of notaries, they specify neither the functions that a notary performs nor the notary's duty in regard to those functions. For a statement of the duty owed by a notary, one must turn to case law. Reported decisions hold that a notary

who takes an oath or acknowledgment must be satisfied as to the identity of the person whose oath of acknowledgment is taken. However, these decisions do not define what constitutes adequate identification.

A notary is often called on to take an oath or acknowledgment for a person whom he has not previously met. If the person is not who he represents himself to be, then despite having exercised due care, the notary may be civilly liable. The cost of subsequent litigation may be high. Some notarial officers, such as attorneys, may have malpractice insurance; for others, insurance is impractical or unavailable. The burden of civil liability must be judged in light of the fees set by statute for notarial acts -- \$.50 for administering an oath or taking an affidavit and \$1.00 for taking an acknowledgment. N.J.S. 22A:4-14.

As a result, the Commission recommended that notaries be immune from civil liability based on negligence in the performance of notarial acts. A copy of this report is appended to this Annual Report.

F. Consumer Lessee Protection Act

In 1989, the Commission filed a report recommending the enactment of a consumer lessee protection act. In its consideration of the proposed Article 2A of the Uniform Commercial Code, the Commission became concerned with the effect of that Article on consumer leases. Article 2A allows the parties to lease contracts the greatest possible latitude in setting the terms of the contract. While this freedom of contract theory is appropriate for commercial leases, it raises some problems for standard lease contracts drawn by lessors and presented to consumers on a "take it or leave it" basis.

Consumer leases have become a popular form of financing the possession and use of personal property. Leasing accounts for a large

percentage of consumer transactions, and provides an attractive alternative to the purchase of consumer goods. While leases serve an important commercial purpose by expanding access to the market, the technical language of the contract often conceals pitfalls for the consumer.

The consumer protection problems in lease transactions are similar to the problems that arose in secured transactions. Court decisions and legislation have gradually eliminated the most egregious abuses in secured transactions. Leases of personal property and secured transactions are very similar from the consumer's point of view, which may lead consumers to assume incorrectly that the protections afforded them in secured transactions apply to leases. Though the business setting may justify some differences in legal treatment between leases and secured transactions, the Commission believes that abuses which are not tolerated in secured transactions should not be allowed in lease contracts.

The Commission has identified a number of specific problems in consumer lease contracts. A primary problem involves the measure of damages upon the lessee's default. In some cases, a lessee is charged the full amount of all future payments due on the lease without recognition of the economic benefit to the lessor of early payment. In cases where the lessee receives some credit, it is substantially less than full reduction to present value. The lessee is also not given credit for the early return of the leased goods. Thus, a lessor receives more profit from a default than from a completed performance of the lease contract. In contrast, damages in a secured transaction are limited by law.

The limitation on damages in secured transactions also applies to early termination of the contract. The buyer in a secured transaction can terminate the contract early by selling the goods and paying the remaining

principal on the debt. Because a lessee does not own the leased property, the lessee cannot freely dispose of it by sale. The only way the lessee can terminate the lease contract early is to default and pay the full amount of damages. This difference in result makes the measure of damages in a lease an important subject for consumer protection legislation.

The issue of insurance further complicates the measure of damages problem. A consumer may believe that insurance provides full coverage against loss or damage to the leased property. However, under most leases, the consumer is liable for damages in excess of the amount paid by insurance when the leased property is damaged or destroyed. For example, in an automobile lease, if the car is damaged and the insurance proceeds are used to repair it, the consumer may still be liable to the lessor at the end of the term for a reduction in the value of the car. If the car is destroyed, the consumer may be liable for damages in addition to the insurance recovery. In both situations, the consumer may not foresee this financial exposure.

The Commission drafted a Consumer Lessee Protection Act to deal with these problems. The Report embodying this recommendation is appended to this Annual Report.

G. Consideration of Uniform Laws promulgated by the National Conference of Commissioners on Uniform State Laws

The Commission's enabling legislation provides that it is the duty of the Commission to receive and consider suggestions and recommendations from the National Conference of Commissioners on Uniform State Laws for the improvement and modification of the laws of New Jersey. During 1989, the Commission reported to the Legislature on the new Article 2A (Leases) of the Uniform Commercial Code.

H. Statutes Recommended for Repeal

The review of the statutes undertaken by the Commission in preparation for its recommendations on codification has produced a list of statutes which the Commission recommends for repeal. Some of these statutes are invalid, having been declared unconstitutional or superseded by later statutes. Others are no longer necessary as part of the codified law in this state. Some of these are very old and have been out of date for many years.

Among the statutes recommended for repeal are a number of 18th-century origin, such as those concerning trespass by swine and regulation of fees charged by millers of grain. Of more recent vintage is a statute concerning promotion of World War II Victory Garden educational programs, still in force over forty years after the end of the war.

The Commission is also recommending the repeal of several statutes declared unconstitutional decades ago, as well as a number of regulatory laws that have been superseded since their enactment.

IV. PROJECTS UNDER CONSIDERATION

A. Statute of Frauds

Few New Jersey statutes are of more ancient derivation than the New Jersey Statute of Frauds, R.S. 25:1-1 to 9. Drawn almost verbatim from the English statute of 1677, the New Jersey statute was enacted in 1794 and was included in Paterson's Laws of 1799.

The New Jersey statute has survived several complete revisions of the New Jersey statutes virtually without change other than minor wording changes in the original five sections and the addition of four new sections. The Statute has been construed in hundreds of reported decisions, many of which apply the statute's provisions in ways that are not consistent with their

literal terms. The archaic terminology of the Statute's sections, coupled with the volume of reported cases, make the Statute difficult to understand and apply in many situations.

The Commission has undertaken the task of examining the Statute with a view to modernizing its language, eliminating unnecessary provisions, and in general, identifying the policy reasons underlying the imposition of a writing requirement in specific situations.

An extensive report on the history and interpretation of the Statute has been prepared, and the Commission currently is considering drafts of new provisions.

B. Transportation

In 1989, in conjunction with the Department of Transportation, the Commission began a project to revise the law of New Jersey relating to Transportation. This project is large, involving consideration of Titles 27 (Highways) and 6 (Aviation), as well as parts of other titles. It is hoped that the project will be completed during 1990.

C. Codification

During the last year, the Commission has continued to examine options related to more general recodification of the New Jersey statutory law. To this end, the Commission completed a systematic examination of the existing statutory law in New Jersey on a title-by-title basis. The study sets forth the history of each chapter of each title of the Revised Statutes in the form of notes on the source of the law, and includes a brief description of the substantive content of each chapter and an evaluation of its technical condition, including problems of organization or numeration resulting from repealed amendments and additions. This study has identified those titles of the statutes that are most in need of complete revision.

Respectfully submitted,

ALBERT BURSTEIN, Chairman
BERNARD CHAZEN
EDWARD T O'CONNOR
HUGO M. PFALTZ, JR.
RONALD J. RICCIO
HOWARD T. ROSEN
PAUL T. ROBINSON
THOMAS P. SHUSTED
PETER SIMMONS

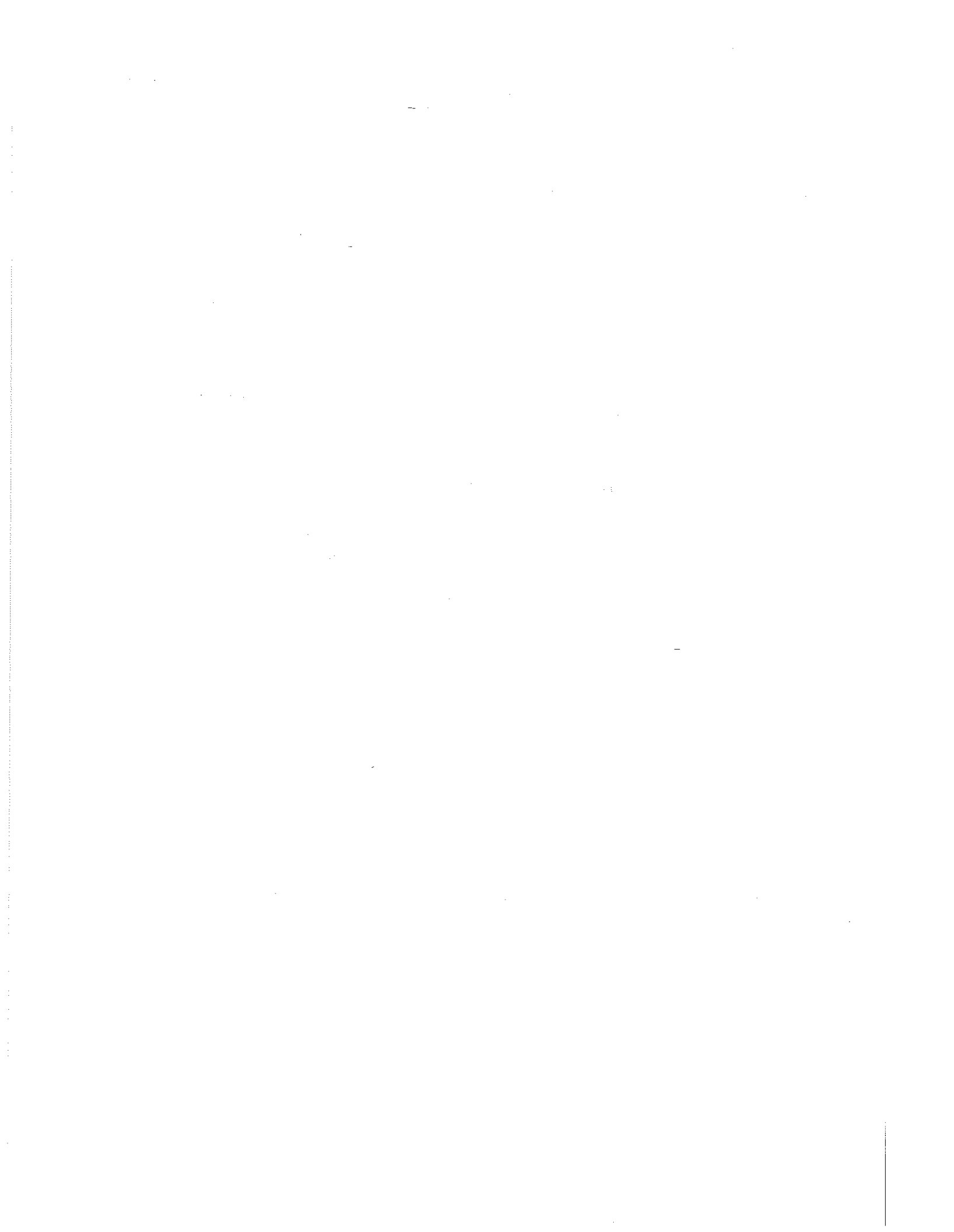
JOHN M. CANNEL,
Executive Director

MAUREEN E. GARDE,
Counsel

APPENDIX A

**REPORT AND RECOMMENDATIONS
ON
ORGANIZATION OF THE COURTS**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575
April, 1989**



INTRODUCTION

The current statutes on the organization of the courts are found in Title 2A, Chapters 1, 1A, 2, 3, 6, 11, and part of Chapter 4. Since the time that material was codified in 1953, the court structure in New Jersey has undergone major change. As a result, many of the statutory sections are obsolete. Some have been superseded but not repealed. E.g. N.J.S. 2A:1-1. Some are specific to courts which no longer exist. E.g. N.J.S. 2A:3-14. Some reflect conditions which no longer exist. E.g. N.J.S. 2A: 11-30. In addition, many of the sections would benefit from clarification and consolidation.

In total, the statutory material on organization of the courts now comprises 189 sections. The Commission's proposal comprises 34 sections. That proposal deals with all the subject matters of the current sections and attempts to do so clearly and comprehensively.

CONTENTS

Chapter 1	General
Chapter 2	Judges
Chapter 3	Clerks
Chapter 4	Other Employees
Chapter 5	Payment of Salaries and Other Costs; Provision of Services
Chapter 6	Equipment and Services Expenses
Chapter 7	Reporting of Court Proceedings
Chapter 8	Interpreters and Translators
Chapter 9	Abolition of Courts and Transfer of Cases

CHAPTER 1 - GENERAL

2B:1-1. Seals

The Supreme Court shall prescribe the form of its seal and the seals of the Superior Court and Tax Court. Each municipal court shall prescribe the form of its seal with the approval of the Supreme Court.

Source: 2A:6-7, 2A:11-1

COMMENT

The section is a simplified version of the source sections, and is revised to reflect changes in the courts in existence.

2B:1-2. Preservation of court records

The Supreme Court may adopt regulations governing the retention, copying and disposal of records and files of any court or court support office.

Source: 2A:6-45, 2A:6-46, 2A:11-48 through 2A:11-53.3

COMMENT

The source provisions specify methods of duplicating court records and time periods during which certain records must be retained. This section abandons those detailed provisions in favor of a more flexible rule-making authority. Pursuant to C.47:3-17 to 20, a rule providing for destruction of records would involve the Bureau of Archives and Records Preservation.

2B:1-3. Criminal history record information

The Supreme Court is authorized to receive criminal history record information from the Federal Bureau of Investigation for use in licensing and disciplining attorneys-at-law of this State.

Source: 2A:1-12

COMMENT

The section is essentially identical to its source, 2A:1-12. As set forth in the Introductory Statement to L.1979, c.370, federal law requires that a state governmental unit have express statutory authority in order to receive this information. See 28 U.S.C. §534(a)(4), and regulations promulgated under the authority of the statute, 28 C.F.R. §20.33 (a)(3).

CHAPTER 2 - JUDGES

2B:2-1. Number of judges - See memo for options

a. The Superior Court shall consist of 359 judges.

b. 1) The Superior Court shall at all times consist of the following number of judges, who at the time of their appointment and reappointment were residents of each county:

Atlantic	10
Bergen	24
Burlington	5
Camden	14
Cape May	4
Cumberland	6
Essex	28
Gloucester	8
Hudson	22
Hunterdon	3
Mercer	8
Middlesex	20
Monmouth	16
Morris	13
Ocean	14
Passaic	14
Salem	2
Somerset	6
Sussex	3
Union	16
Warren	3

2) Additionally, the following number of those judges of the Superior Court satisfying the residency requirements set forth above shall at all times sit in the county in which they reside:

Atlantic	4
Bergen	12
Burlington	4
Camden	8
Cape May	2
Cumberland	4
Essex	14
Gloucester	6
Hudson	6
Hunterdon	2
Mercer	6
Middlesex	8
Monmouth	4
Morris	6
Ocean	8
Passaic	6
Salem	2
Somerset	4
Sussex	2

Union
Warren

6
2

Source: 2A:2-1

COMMENT

The section is essentially identical to its source, 2A:2-1. While its substance is unchanged, the form of subsection b.(2) differs from its source. The source subsection only makes reference to the number of judges of the county court authorized for each county on December 6, 1978. In the interest of clarity, subsection b.(2) of this proposal includes a chart specifying the number of judges on that date.

The requirement of subsection b. is derived from the New Jersey Constitution, Art. 6, §3, ¶3 but is not identical to it. The statute requires that the judges who must sit where they reside be among those satisfying the residency requirement at appointment. That restriction is not found in the Constitution. Subsection b.(1) varies more widely from its cognate Constitutional provision. See N.J. Const. Art. 6, §3, ¶1 which requires only that there be two resident judges in each county. The sensitivity of this issue is such, however, that the Commission felt that it was not its role to vary the requirements of this section.

2B:2-2. Assignment of Superior Court judges

A judge of the Superior Court may be assigned temporarily by the Chief Justice to any court established by statute and exercise all the powers of that court.

Source: 2A:3-7, 2A:6-11, 2A:3A-21, 2A:8-11

COMMENT

This section authorizes the Chief Justice to assign Superior Court judges to courts of limited jurisdiction that may be established from time to time by the Legislature. At present, the only statutory courts are the Tax Court and the municipal courts. There is no provision now which is precisely equivalent to that proposed. 2A:3-7 and 2A:6-11 give Superior Court judges the powers of judges of the former county and county district courts. 2A:8-11 makes county court judges ex officio judges of the municipal court. 2A:3A-21 gives the Chief Justice the power to assign judges of the Superior Court to the Tax Court. It appeared appropriate, in place of all of these provisions, to empower the Chief Justice to assign judges of the Superior Court temporarily to any statutory court.

The authority of the Chief Justice to assign judges to constitutional courts is constitutionally-based and thus no statutory provision is needed concerning such assignments. See N.J. Const. Art. VI, §7, ¶2 and Art. VI, §2, ¶1.

2B:2-3. Judge seeking elective office

A justice or judge of any court of this state, other than a surrogate who is a candidate for reelection, who becomes a candidate for an elective public office, thereby forfeits judicial office.

Source: 2A:11-2

COMMENT

The section is similar to its source, 2A:11-2. The word "justice" has been added to bring the section into harmony with the constitutional provision from which it derives, N.J. Const. Art. VI, §7, ¶7. The section also differs from its source in its treatment of surrogates. The source, 2A:11-2, allows a surrogate to be a candidate for any office; this section would allow a surrogate to be a candidate only for reelection. The added restriction reflects current practice; surrogates are limited in their political activity by Court Rule 1:17-1(g). Moreover, since surrogates are judicial officers, it seems appropriate that their political involvement be minimized. See, Clark v. De Fino, 80 N.J. 539, 546-548 (1979).

2B:2-4. Judicial salaries

Annual salaries of justices and judges shall be:

Chief Justice of the Supreme Court	\$95,000
Associate Justice of the Supreme Court	93,000
Judge of the Superior Court, Appellate Division	90,000
Judge of the Superior Court, Assignment Judge	88,000
Judge of the Superior Court; Judge of the Tax Court	85,000

Source: 2A:1A-6

COMMENT

The section is nearly identical in substance to its source, 2A:1A-6. The only change is the addition of judges of the Tax Court

2B:2-5. Responsibility for judicial salaries

The State shall be responsible for the cost of the salaries of the justices of the Supreme Court, judges of the Superior Court and judges of the Tax Court, except that where the number of Superior Court judges restricted as to residence or assignment by N.J.S. 2B:2-lb. or c. is increased, the county shall be responsible for funding 100% of the cost of the salary of any judge who has been assigned in the first year following the date of increase; 75% in the second year; 50% in the

third year; 25% in the fourth year; and in the fifth year, the State shall be responsible for the entire cost of the salary of any judge so assigned.

Source: 2A:2-1.3b.

COMMENT

The section is a substantial reenactment of its source, subsection b. of 2A:2-1.3.

CHAPTER 3 - CLERKS

2B:3-1. Appointment of court clerks

a. The Supreme Court shall appoint to serve at its pleasure, and shall fix the salary of, the Clerk and a Deputy Clerk of the Supreme Court, neither of whom shall be subject to the provisions of Title 11A, Civil Service, of the New Jersey Statutes.

b. The Supreme Court shall appoint to serve at its pleasure, and shall fix the salaries of, the Clerk and Deputy Clerks of the Superior Court and the Clerk and Deputy Clerks of the Appellate Division of the Superior Court, none of whom shall be subject to the provisions of Title 11A, Civil Service, of the New Jersey Statutes unless the Supreme Court directs otherwise.

c. The clerks of the Supreme Court, the Superior Court, and the Appellate Division of the Superior Court shall select and employ other necessary assistants in accordance with the provisions of Title 11A, Civil Service, of the New Jersey Statutes.

Source: 2A:1-2, 2A:1-6, 2A:2-3, 2A:2-7, 2A:6-23

COMMENT

Subsection a. is a substantial reenactment of the amalgam of 2A:1-2 and 2A:1-6. Subsection b. is derived from 2A:2-3 and 2A:2-7, but flexibility is given in the number of deputy clerks and in the applicability of Civil Service law. Subsection c. is based on 2A:6-23 which related to the clerks of the county district courts. While there is no analogous provision applicable to the Supreme Court or Superior Court, the principle is clearly implied in current law. See, e.g., 2A:1-5, 2A:2-6.

2B:3-2. Clerks, offices and duties

a. The offices of the Clerk of the Supreme Court, the Clerk of the Superior Court, and the Clerk of the Appellate Division of the Superior Court shall be in the City of Trenton. The offices of the Deputy Clerks of the Superior Court shall be in places selected by the Supreme Court as convenient for performance of the deputy clerks' duties except that any office of any deputy clerk subject to Title 11A, Civil Service, shall be in the county in which the deputy clerk previously served unless the deputy clerk consents to transfer.

b. The clerk of each court shall be the custodian of the property, records and seal of that court.

c. Any duties performed by a county clerk for any court shall be in the capacity of Deputy Clerk of the Superior Court as provided by the Constitution.

Source: 2A:1-4, 2A:2-5, 2A:6-20, 2A:11-1

COMMENT

The section pertaining to siting of the clerks' offices is a substantial reenactment of 2A:1-4 and 2A:2-5, except that the reference to the offices of deputy clerks of the Superior Court is new. Subsection b., in its reference to property and records, is a generalization of 2A:6-20. The reference to seals is a substantial reenactment of the provisions of 2A:11-1 on that subject. Subsection c. is new. It reflects the Constitutional duties of county clerks pursuant to N.J. Const. Art. XI, §VI.

2B:3-3. Instruments executed by Clerk of the Superior Court in connection with property held by Superior Court; signatures

All drafts, checks and other instruments executed in connection with any property held by the Superior Court shall be signed by the Clerk of the Superior Court and countersigned by an official designated by the Chief Justice of the Supreme Court by order in writing.

Source: 2A:2-10, 2A:2-11

COMMENT

The section is substantially based on 2A:2-11. Language changes have been made to reinforce the generality of the provision so that it can serve to replace both 2A:2-10 and 2-11. The section has also been changed to reflect the practice of allowing countersigning by an official other than a Superior Court judge.

2B:3-4. Clerk of Superior Court as named party

The Superior Court of New Jersey may be sued by naming the Clerk of the Superior Court as the representative of the court. The Clerk shall not be individually liable for any costs or fees, nor subject to a personal judgment.

Source: 2A:2-9

COMMENT

The section is substantially identical to its source, 2A:2-9.

CHAPTER 4 - OTHER EMPLOYEES

2B:4-1. Special counsel

a. In any action involving the constitutionality or validity of a statute providing for the expenditure of public moneys by the State or any instrumentality thereof, where the legal issues concerning the constitutionality or validity thereof are genuine, and a question arises as to whether the interests of the parties may not be truly adverse, and the issues are of public importance, and an adjudication thereof is in the public interest, the Chief Justice of the Supreme Court, or the Supreme Court *en banc*, may appoint counsel specially to represent any party or interest as may be deemed necessary and appropriate to assure the full presentation of adversary positions and interests with respect to the issues.

b. The Supreme Court, upon petition of special counsel, shall allow such fees and expenses as the Court deems adequate and reasonable. Such allowances shall be paid from any available funds by the chief financial officer of the governmental agency involved in such action. Where more than one governmental body or agency is involved, the Court may direct the allocation of the allowable fees and expenses between such bodies or agencies in such proportionate amounts as it considers appropriate.

Source: 2A:1-10, 2A:1-11

COMMENT

The section is identical to its source sections.

2B:4-2. Appointment of additional employees

The Supreme Court may appoint subordinate officers and employees necessary for the convenient performance of the duties of the Supreme Court and the Superior Courts.

Source: 2A:11-31

COMMENT

The section is a substantial reenactment of 2A:11-31. The appointment power provided is broad enough that sections such as 2A:1-7 (standing masters), which allowed specific appointments, are unnecessary.

2B:4-3. Appointment of staff of justices and judges

A justice of the Supreme Court or a judge of the Superior Court may appoint secretaries, law clerks and other assistants to staff positions approved by

the Supreme Court. These employees shall serve at the pleasure of the appointing justice or judge.

Source: 2A:11-6, 2A:11-7, 2A:11-9

COMMENT

This section deals with secretarial and legal staffs of individual judges and justices. An appointment to these positions is made by the particular justice or judge served; creation of a position requires the approval of the Supreme Court. The section is based on the three source sections, but while those sections created particular positions, this section is more flexible.

CHAPTER 5 - PAYMENT OF SALARIES AND OTHER COSTS; PROVISION OF SERVICES

2B:5-1. Secretarial and legal staff of justices and judges

a. The State shall be responsible for the cost of secretarial and legal staff employees appointed by justices of the Supreme Court, judges of the Appellate Division, and judges of the Chancery Division other than the Family Part.

b. The counties shall be responsible for the cost of secretarial and legal staff employees appointed by judges of the Law Division and of the Family Part of the Chancery Division. For the purpose of determining their compensation, these employees shall be considered to be county employees.

Source: 2A:11-8, 2A:11-10

COMMENT

The section provides for payment of the salaries of secretarial and legal staff of individual justices and judges. This is one of four sections which allocate certain costs of the court system between the State and the counties. See also 2B:2-5, 2B:5-2 and 2B:6-1. The Commission did not deem it appropriate to recommend a change in the allocation of costs and, in these four sections, is attempting to reflect current law and practice. The underlying principle of the proposed sections is that the counties are responsible for the cost of the Law Division and the Family Part of the Chancery Division, while the State is responsible for all other parts of the Superior Court and for the Supreme Court. While some deviations from this principle now occur, it constitutes the overwhelming percentage of current practice.

The legal basis for current practice is less clear. The statutes on costs tend to divide based on divisions of the Superior Court with the Appellate and Chancery Division costs given to the State and the Law Division given to the counties. In addition, the cost of the old Juvenile and Domestic Relations Court was always a county charge. See, e.g., 2A:11-33.

The Juvenile and Domestic Relations Court was replaced by the Family Court by L.1982, c.78. The Family Court was also given matrimonial cases. That change was part of a package: L.1982, c.77 enacted the Juvenile Code; L.1982, c.79 dealt with disclosure of the names of juveniles; L.1982, c.80 dealt with juvenile/family crisis intervention units and L.1982, c.81 dealt with court

intake services. Together, these acts were compiled as Chapter 4A of Title 2A. There was a provision for payment of costs in the Juvenile Code, L.1982, c.77: "All expenses incurred in complying with the provisions of this chapter shall be a county charge." The question is whether that section was intended to place the costs of the whole package on the counties, or just the costs resulting from the adoption of the Juvenile Code. The use of the word "chapter" within the section could refer to the chapter of the session law, but more likely refers to Chapter 4A of Title 2A. The situation is confused by the fact that this section was compiled in Chapter 4 as 2A:4-41, rather than where it appeared in the Act following 2A:4A-59. If 2A:4-41 is intended to provide for all of the Family Court, then the Family Part of the Chancery Division, which is a direct descendant of the Family Court, should be a county charge, as 2A:4-41 was not repealed when the other law relating to the Family Court was repealed.

This discussion not only gives some justification for the current practice in regard to the division of costs, but underlines the need for clarification of the law in this regard. It is the purpose of sections 2B:5-1, 2B:5-2 and 2B:6-1 to provide clear rules on this subject.

2B:5-2. Administrative staff for Superior Court

a. The State shall be responsible for the cost of employees necessary for the operation, management and recordkeeping of the Supreme Court, the Appellate Division, the Chancery Division other than the Family Part, and the Office of the Clerk of the Superior Court.

b. Each county shall provide employees necessary for the operation, management and recordkeeping of the Law Division and Family Part of the Chancery Division of the Superior Court assigned to cases from that county. These employees shall be appointed and shall perform their duties in the manner established by the Chief Justice. For the purpose of determining their compensation, these employees shall be considered to be county employees. Employees performing other than clerical functions shall serve at the pleasure of the appointing authority.

Source: 2A:11-10, 2A:11-31, 2A:4-41

COMMENT

The section embodies the division of the responsibility for costs between the county and the State. On this subject, see comment to section 2B:5-1.

This section deals with the staffs of the courts rather than the staffs of individual judges. Most employees performing these functions in the Law Division and Family Part of the Chancery Division are those who performed those functions for the County, District and Juvenile and Domestic Relations Courts prior to consolidation. See section 2B:9-1. These employees are now under the supervision of the trial court administrator and the assignment judge. See Matter of Judges of Passaic County, 100 N.J. 352, 358-9 and 366 (1985). The reference to the performance of duties "in the manner established by the Chief Justice" is new; the purpose is to make it clear that while the employees are paid by the counties and for that purpose are county employees, they work under the supervision of the judiciary.

The current practice on hiring these employees is not consistent. In some counties, additional employees are provided by the county clerk or other county official. In other counties, they are hired by their supervisor within the constraints of the county judicial budget. As it seems preferable not to divide hiring from supervision, the section chooses the latter practice.

2B:5-3. Compensation of employees administering trust fund

The Clerk of the Superior Court shall pay to the State Treasurer, out of the income of the Superior Court Trust Fund, an amount equal to all payments made from the State Treasury as compensation for salaries, services and supplies furnished for administration of the fund.

Source: 2A:2-8

COMMENT

This section is a substantial reenactment of the source section.

CHAPTER 6 - EQUIPMENT AND SERVICES; EXPENSES

2B:6-1. Courtrooms and equipment; security

a. Suitable courtrooms, chambers, equipment and supplies for the Supreme Court, the Appellate Division of the Superior Court and the Chancery Division, other than the Family Part of the Chancery Division, of the Superior Court shall be provided at the expense of the State by the Administrative Director in cooperation with the Director of the Division of Purchase and Property in the Department of Treasury. These courtrooms and chambers shall be located in a courthouse or other public building so far as practicable.

b. Each county shall provide suitable courtrooms, chambers, equipment and supplies necessary for the processing and decision of cases from that county in the Law Division and the Family Part of the Chancery Division.

c. A flag of the United States shall be displayed in an appropriate place in each courtroom during all sessions of the court.

d. The sheriff of each county shall provide for security for the Law and Chancery Divisions of the Superior Court sitting in that county in the manner established by the assignment judge in that county.

Source: 2A:3-22, 2A:4-41, 2A: 11-3, 2A:11-4

COMMENT

Subsections a. and b. embody the division of costs between the county and the State. On this subject, see comment to section 2B:5-1. Subsection c. is a substantial reenactment of its source, 2A:11-3. Subsection d. is loosely based on 2A:11-32 (see also N.J.S., 40A: 9-117.6). It codifies the sheriff's role in providing courthouse security.

2B:6-2. Rental of chambers

Any justice of the Supreme Court may rent convenient and appropriate chambers for use as a study and library and for other official needs, subject to approval by the Chief Justice. If a lease is required, it may be entered into by the Director of the Division of Purchase and Property in the Department of

Treasury or by the justice with the Director's written approval. The rental of the chambers shall be certified by the Director and paid by the State Treasurer.

Source: 2A:1-9

COMMENT

The section is substantially identical to its source, 2A:1-9.

2B:6-3. Service of process

a. The sheriff shall be responsible for service, or execution and return of process, orders, warrants and judgments directed to the sheriff, and shall be entitled to the compensation provided for by law and subject to the regulations and penalties pertaining to this service, execution and return.

b. In counties where there are officers of the Special Civil Part of the Law Division of the Superior Court, those officers shall be responsible for any personal service or execution and return of process, orders, warrants and judgments of the Special Civil Part as provided by Court Rule and shall be entitled to the compensation provided by law for so doing. Where no Special Civil Part officers are available, these services shall be performed by the sheriff as provided by subsection (a) of this section. The sheriff shall receive the same compensation for performing these services as is provided by law for Special Civil Part Officers.

Source: 2A:3-22, 2A:3-24, 2A:6-15, 2A:6-25, 2A:6-29

COMMENT

Subsection a. is similar in substance to the source sections, 2A:3-22 and 2A:3-24 which applied to the county court. The persons serving process are now called Sheriff's Officers. See N.J.S. 40A:9-117.6. Subsection b. embodies the principle of the remaining source sections that the primary responsibility for service of process and related functions is borne by the Special Civil Part officers (formerly, constables) where those exist.

2B:6-4. Multi-county vicinage; apportionment of costs

Where a judge of the Law Division or of the Family Part of the Chancery Division is assigned to cases from a vicinage including more than one county, the salary of that judge and of any employee of that judge and any expenses related to that judge shall be apportioned between the counties composing the vicinage in the manner determined by the assignment judge for that vicinage.

Source: 2A:11-10

COMMENT

The section is necessary given county responsibility for costs of parts of a statewide court. The source section, 2A:11-10, deals only with the costs of secretaries, but the problem is broader, and so this section deals with all costs. This new section is in accordance with current practice.

2B:6-5. Expenses incurred by order of Supreme Court

Expenses incurred by order of the Supreme Court in the execution of its duties, the payment of which is not otherwise provided by law, shall be paid by the State Treasurer, from any appropriation available to the Court, when directed by the order of the Court, which order shall be attested by the justice presiding in the Court at the time the order is made.

Source: 2A:1-8

COMMENT

The section is identical to its source, 2A:1-8.

CHAPTER 7 - REPORTING OF COURT PROCEEDINGS

2B:7-1. Reporting of court proceedings; court reporters

a. The Supreme Court shall provide for the reporting of all proceedings in the Superior Court and any other proceedings it directs by the use of court reporters or any other means it directs. Court reporters shall be appointed by the Administrative Director of the Courts.

b. Except as provided by N.J.S. 2B:7-3, official court reporters appointed shall be certified shorthand reporters holding certificates issued by the State Board of Shorthand Reporting.

Source: 2A:11-11, 2A:11-12

COMMENT

Subsection a. of this section is based on language in 2A:11-11, but has been broadened to reflect the long-standing practice that some proceedings are recorded stenographically and some by tape recording equipment. Subsection b. is substantially similar to the relevant portion of 2A:11-11, except that the section reflects practice that appointments are made by the Administrative Director. Subsection c. is a substantial reenactment of 2A:11-12.

2B:7-2. Assignment; designation of supervisors

a. A reporter shall be assigned by the Administrative Director of the Courts with the approval of the Chief Justice, to report proceedings as the Supreme Court may direct. Such an assignment may be changed from time to time as occasion may require.

b. With the approval of the Chief Justice, the Director may designate, from among the reporters, supervisors and assistant supervisors for specified districts as may be necessary in maintaining efficient reporting service, and particularly in arranging, subject to the control of the Director, for the temporary transfer of one or more reporters to meet special requirements in any court or part thereof, and in employing and assigning reporters for temporary service either on a full-time or part-time basis. A reporter designated as a supervisor or

assistant supervisor shall perform these services in addition to regular duties, and for these additional services, shall be compensated in an amount fixed by the Supreme Court, which amount shall be added to and become part of the reporter's annual salary and paid as such.

Source: 2A:11-13

COMMENT

The section is a substantial reenactment of its source, 2A:11-13.

2B:7-3. Temporary service

The Administrative Director of the Courts may appoint and assign reporters for temporary service on a full-time or part-time basis, not to exceed 6 consecutive months at any one time, whenever the need may appear. These temporary appointments shall be subject to the approval of the Chief Justice. If a certified shorthand reporter, as defined by law, is not available for such purpose, then a reporter otherwise qualified may be so appointed until a certified shorthand reporter is available.

Source: 2A:11-14

COMMENT

The section is a substantial reenactment of its source, 2A:11-14, but the term of a temporary appointment has been lengthened to 6 months for administrative convenience.

2B:7-4. Transcript; fees

a. When a transcript of a stenographic record or other recording in any court or in any other proceeding recorded at the direction of the Supreme Court is made, at the request of any person, the original and copies thereof shall be prepared in the manner prescribed by Administrative Office of the Courts regulations and paid for at the rate of \$1.50 for each page of the original and \$0.50 for each of the copies. If the transcript is furnished to a judge of the court, by court order, the reporter shall be paid at the same rates, and in the same manner and from the same sources as the reporter's salary or per diem fees are paid.

b. Except as to transcripts that are to be paid for by the State or county, the person preparing the transcripts may require any person requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript.

Source: 2A:11-15

COMMENT

The section is substantially similar to 2A:11-15, but contains a few changes. First, the section provides that the same fees for transcripts shall apply whether the recordation was done stenographically or by tape recording equipment. Second, the rate for transcript is expressed in terms of pages rather than folios. While "folio" is a defined term, R.S. 1:1-2, a folio of transcript seldom contains the 100 words required by the definition. In practice, transcript is priced by the page, and the charge, if expressed in terms of folios, is based on a conversion of 2 1/2 folios equalling one page. The real definition of a page is not in terms of the exact number of words on it, but in that it contains the number of lines per page, characters per line, and arrangement of text specified by the Administrative Office of the Courts in its regulations. The last change introduced by the proposed section is the explicit provision for those regulations.

It should be noted that this section deals only with the cost of transcript purchased from reporters and transcribers. The cost of copies of public records is controlled by C. 47:1A-2. In addition, the courts have authority to control the cost of records needed for litigation.

2B:7-5. Employment of court reporters

a. Except as provided in this section, court reporters appointed to serve on a full-time basis pursuant to this chapter shall receive an annual salary to be fixed from time to time by the Supreme Court.

b. In lieu of an annual salary, a reporter employed on a part-time or temporary basis as provided in this chapter may be paid such a per diem fee rate as may be fixed from time to time by the Supreme Court. Such per diem fees shall be paid by the State upon certification of the Administrative Director of the Courts.

c. In addition to salary or per diem fees, a reporter may, upon the certification of the Director, be reimbursed for necessary travel and other expenses when assigned to serve in a county other than the one in which the reporter resides.

d. Each county shall pay annually to the State Treasurer, in equal quarterly installments, as its share of reporter expenses for the State fiscal year an amount equal to the net cost to such county for such expenses for each preceding fiscal year. Such net cost shall include only the amount paid for salaries and expenses of court reporters in the fiscal year ending June 30, 1948, transcripts furnished to a judge pursuant to N.J.S. 2B:7-4 and employer's contribution to the Public Employees' Retirement System and social security paid in the fiscal year ending June 30, 1967, which net cost shall be certified by the Director.

e. Every reporter shall be entitled to retain the fees collected for transcripts. All transcript supplies and equipment shall be furnished by the reporter at his or her own expense.

f. Reporters appointed to serve on a full-time basis shall be deemed to be State employees eligible for membership in the Public Employees' Retirement System; except, however, that reporters who prior to July 1, 1966,

were members of any county employees' retirement system pursuant to P.L.1943, c.160 (C. 43:10-18.1, 43:10-18.25) shall continue therein as county employees for the purposes of that enactment.

Source: 2A:11-16

COMMENT

The section is a substantial reenactment subsections a., c., e., f., and g. of 2A:11-16. Subsection b. of the source section was deleted as no longer necessary. Subsection d. was rewritten to reflect the interpretation of the source subsection following an opinion of the Attorney General dated May 9, 1978.

2B:7-6. Records and reports

The Administrative Director of the Courts, subject to the approval of the Chief Justice, shall prescribe records which shall be maintained and reports to be filed by the reporter. These records shall be open to inspection by the Supreme Court, the Chief Justice and the Director, and may include records showing (1) the quantity of transcripts prepared, (2) the fees charged and the fees collected for transcripts, (3) any expenses incurred by the reporter in connection with transcripts, (4) the amount of time the reporter is in attendance upon the court for the purpose of recording proceedings, and (5) other information as the Director may determine.

Source: 2A:11-17

COMMENT

The section is a substantial reenactment of subsection b. of 2A:11-17; subsection a. of that source section was deleted as unnecessary.

CHAPTER 8 - INTERPRETERS AND TRANSLATORS

2B:8-1. INTERPRETERS (Option A)

Each county shall provide interpreting services necessary for cases from that county in the Law Division and the Family Part of the Chancery Division. A county may provide interpreting services through the use of persons hired for that purpose. If interpreters are employed, they shall be appointed and shall perform their duties in the manner established by the Chief Justice, and shall

serve at the pleasure of the appointing authority. For the purpose of determining their compensation, these employees shall be considered county employees.

Source: 2A:11-28 to 30

COMMENT

The form of this section is significantly different from that of its sources. While those sections provide for the employment of particular types of interpreters in particular classes of counties, this section gives general authority to hire those interpreters needed. Following the pattern of proposed §§2B:5-1 and 5-2, this section makes explicit provision for the administrative relation of these employees to the courts and for the division of costs between the State and the counties. See the Comments to those sections.

2B:8-1. INTERPRETERS AND TRANSLATORS (Option B)

a. To assist in the performance of its duties as provided in [*the bill now pending as A2089 of the 1988 term*], the Administrative Office of the Courts may employ qualified interpreters and translators.

b. An interpreter or translator employed on a full-time basis shall receive an annual salary to be fixed from time to time by the Supreme Court. An interpreter or translator employed on a part-time or temporary basis may be paid a per diem fee rate as may be fixed from time to time by the Supreme Court.

c. An interpreter or translator shall be assigned as appropriate by the Administrative Director of the Courts with the approval of the Chief Justice. These assignments may be changed from time to time as required.

d. The salaries, fees and related expenses of interpreters and translators, whether for interpreters and translators employed by the Administrative Office of the Courts or appointed in any proceeding of any court, surrogate, arm of the judiciary, court support service, or court ordered evaluation or examination, shall be paid by the Administrative Office of the Courts.

COMMENT

While this section is new, it replaces a number of current provisions on court translators. See, N.J.S. 2A:11-28 to 30. The section was drafted to reflect new comprehensive provisions on interpreting services now pending in the Legislature as A2089 of the 1988 term. That bill would place the responsibility for the provision of interpreting services for all courts, including municipal courts, and for all agencies of the judiciary on the Administrative Office of the Courts. See §19 of A2089. Most of these services would be provided as they are now by full-time interpreters. The interpreting service would be organized in roughly the same manner as the court-reporting service now is. While A2089 seems to contemplate such an approach, see §§12(b), 14, and 15, it lacks a specific provision for it. As a result it seemed appropriate to draft the provisions found in subsections (a), (b), and (c) of the proposed section. These subsections are based on the provisions relating to court reporters.

Subsection (d) was added to codify the legislative intent that the cost of all interpreting services be borne by the State rather than by the counties and municipalities. An explicit provision for reimbursement of local governments for the costs incurred in connection with administrative agencies is found in §12(c) of A2089. Unfortunately, the parallel provision on the courts is less

explicit and might not be clear unless read in connection with the appropriation section, §19. In keeping with the policy of providing clear rules for the division of costs, it seemed desirable to add subsection (d) of the proposed section.

CHAPTER 9 - ABOLITION OF COURTS AND TRANSFER OF CASES

2B:9-1. Effect of abolition of particular courts

a. Where any court has been or is abolished:

1. Its property shall be the property of the court succeeding to its jurisdiction;

2. Its pending cases shall be cases of the court succeeding to its jurisdiction and thereafter shall be treated in the same manner as if originally brought in the court to which they are transferred;

3. Its records shall be disposed of in the manner determined by the Supreme Court.

b. A judgment of a court which has been abolished may be enforced in the court to which its jurisdiction has been transferred, but no abolition of any court or transfer to another court shall change the effect of a judgment of that court in any way.

c. No abolition of any court or any transfer of operations, management, or recordkeeping duties shall affect the position, title, compensation or rights under applicable Civil Service laws of any employee of the courts or of any other government employee whose position included performance of work for the courts. To the extent compatible with efficient administration of the courts, employees who performed work for abolished courts shall be transferred to perform equivalent functions in existing courts.

d. Any reference in a statute, ordinance or regulation to a court which has been abolished shall be given effect as if the reference were to the court to which the jurisdiction of the abolished court has been transferred.

Source: 2A:2-16, 2A:2-17, 2A:2-18, 2A:4-3b, 2A:4-3c, 2A:4-3d, 2A:6-1a, 2A:6-3.7, 2A:11-57, 2A:11-58

COMMENT

In the past, separate transfer sections were enacted on the abolition of each particular court. The sets of these transfer provisions were not usually as complete as the proposed section, and each was slightly different. These particular transfer provisions remained codified in the statutes long after they served any purpose.

To prevent this problem and to provide for the implications of the abolition of past and future courts, the proposed provision attempts to codify all of the implications of the abolition of a court. The basic rule is that cases, property, judgments and references pertaining to an abolished court should be transferred to the court succeeding that court's jurisdiction; the records of the abolished court should be dealt with as determined by the Supreme Court, and no employee who performed work for an abolished court should be affected in any substantial way by that abolition. Pursuant to C.47:3-17 to 20, an order providing for destruction of records would involve the Bureau of Archives and Records Preservation.

STATUTES TO BE COMPILED SEPARATELY

2A:8-24.1. Municipal housing courts [AMENDED SECTION]

Municipal housing courts in municipalities in counties of the first class that have established full-time municipal housing courts shall have exclusive jurisdiction over actions for eviction involving property in those municipalities transferred to the municipal housing court by the special civil part of the Superior Court [pursuant to the provisions of subsection b. of N.J.S. 2A:6-34;] and shall have concurrent jurisdiction to appoint receivers pursuant to section 6 of P.L.1966, c. 168 (C. 2A:42-79) and to enforce the provisions of P.L.1971, c. 224 (C. 2A:42-85 et seq.).

COMMENT

The proposed amendment removes the reference to N.J.S. 2A:6-34. Almost all of the relevant part of that section duplicates the content of this section. The one provision in N.J.S. 2A:6-34 which might be considered not fairly implied by this section is that which is proposed as an addition to this section.

2A:4A- . Court intake service [RECOMPILED SECTION]

There shall be established in each county a court intake service, which shall have among its responsibilities the screening of juvenile delinquency complaints and juvenile-family crisis referrals. The intake service shall operate in compliance with standards established by the Supreme Court, but in no instance shall the standards for personnel employed as counselors hired after the effective date of this act be less than a master's degree from an accredited institution in mental health or social or behavioral science discipline including degrees in social work, counseling, counseling psychology, mental health counseling or education. Equivalent experience is acceptable when it consists of a minimum of an associate's degree with a concentration in one of the behavioral sciences and a minimum of five years' experience working with troubled youth and their families or a bachelor's degree in one of the behavioral sciences and two years' experience working with troubled youth and their families. Intake personnel should also receive training in drug and alcohol abuse.

Source: 2A:2-20b.

COMMENT

The section is identical to the source subsection. It should be compiled within Title 2A, Chapter 4A to which it relates.

22A: Filing fees in Family Part [NEW SECTION]

No filing fees shall be imposed for any action in the Superior Court, Chancery Division, Family Part, except for actions for divorce, separate maintenance, annulment, and adoption.

Source: 2A:4-3e

COMMENT

This section embodies the substance of the relevant part of 2A:4-3e. The Commission proposes it as an amendment to Title 22A - Fees.

ALTERNATE PROVISIONS ASSUMING STATE TAKEOVER OF COSTS

2B:2-5. Responsibility for salaries

The State shall be responsible for the cost of the salaries of the justices of the Supreme Court, judges of the Superior Court and judges of the Tax Court.

Source: 2A:2-1.3

COMMENT

This version of 2B:2-5 together with the versions of 2B:5-1, 5-2, 6-1, and 7-5 which follow were drafted in light of current proposals which would place the financial responsibility for the courts on the State. These sections provide that the State pay all costs of the court system. The only county responsibility would be to provide courtrooms, chambers and other necessary space for the Law Division and for the Family Part of the Chancery Division of the Superior Court. See 2B:6-1(c). The Commission does not believe that it is appropriate to take a position as to whether the counties should be responsible for any part of the cost of the court system. For this reason, it presents these two sets of provisions in the alternative.

2B:5-1. Secretarial and legal staff of justices and judges

The State shall be responsible for the cost of secretarial and legal staff employees appointed by justices of the Supreme Court and judges of the Superior Court. Compensation of these employees shall be in accordance with Title IIA, Civil Service, of the New Jersey Statutes, but these employees shall serve at the pleasure of the judge.

Source: 2A:11-6, 2A:11-7, 2A:11-8

2B:5-2. Administrative staff for Superior Court

The State shall be responsible for the cost of employees necessary for the operation, management and recordkeeping of the Superior Court. These employees shall be appointed and perform their duties in the manner provided by the Chief Justice. Compensation of these employees shall be in accordance

with Title 11A, Civil Service, of the New Jersey Statutes, but any employees performing other than clerical functions shall serve at the pleasure of the appointing authority.

Source: 2A:11-10, 2A:11-31, 2A:4-41

2B:6-1. Courtrooms and equipment; security

a. Necessary equipment and supplies for the Superior Court shall be provided at the expense of the state by the Administrative Director of the Courts in cooperation with the Director of the Division of Purchase and Property in the Department of Treasury.

b. Suitable courtrooms, chambers and offices shall be provided for the Supreme Court, Appellate Division of the Superior Court and the Chancery Division, other than the Family Part of the Chancery Division of the Superior Court, at the expense of the State by the Administrative Director of the Courts in cooperation with the Department of Treasury. Such courtrooms and chambers shall be located in a courthouse or other public building so far as practicable.

c. Each county shall provide suitable courtrooms, chambers and offices necessary for the processing and decision of cases from that county in the Law Division and the Family Part of the Chancery Division.

d. A flag of the United States shall be displayed in an appropriate place in each courtroom during all sessions of court.

e. The sheriff of each county shall provide for security for the Law and Chancery Divisions of the Superior Court sitting in that county in the manner established by the assignment judge in that county.

Source: 2A:3-22, 2A:3-24, 2A:4-41, 2A:11-3, 2A:11-4

2B:7-5. Employment of court reporters

a. Except as provided in this section, court reporters appointed to serve on a full-time basis pursuant to this chapter shall receive an annual salary to be fixed from time to time by the Supreme Court.

b. In lieu of an annual salary, a reporter employed on a part-time or temporary basis as provided in this chapter may be paid such a per diem fee rate as may be fixed from time to time by the Supreme Court. Such per diem fees shall be paid by the State upon certification of the Administrative Director of the Courts.

c. In addition to salary or per diem fees, a reporter may, upon the certification of the Director, be reimbursed for necessary travel and other expenses when assigned to serve in a county other than the one in which the reporter resides.

d. Every reporter shall be entitled to retain the fees collected for transcripts. All transcript supplies and equipment shall be furnished by the reporter at his or her own expense.

e. Reporters appointed to serve on a full-time basis shall be deemed to be State employees eligible for membership in the Public Employees' Retirement System; except, however, that reporters who prior to July 1, 1966, were members of any county employees' retirement system pursuant to P.L.1943, c.160 (C. 43:10-18.1, 43:10-18.25) shall continue therein as county employees for the purposes of that enactment.

Source: 2A:11-16

TABLE OF DISPOSITIONS

<u>Sec.</u>	<u>Disp.</u>	<u>Comments</u>
2A:1-1	deleted	Superseded by 2A:1A-6; continued as 2B:2-4
2A:1-2	2B:3-1a	Substantial reenactment
2A:1-3	deleted	See note on this section
2A:1-4	2B:3-2a	Substantial reenactment
2A:1-5	deleted	See note on this section
2A:1-6	2B:3-1	Substantial reenactment
2A:1-7	deleted	See note on this section
2A:1-8	2B:6-5	Substantial reenactment
2A:1-9	2B:6-2	Substantial reenactment
2A:1-10	2B:4-1a	Substantial reenactment
2A:1-11	2B:4-1b	Substantial reenactment
2A:1-12	2B:1-3	Substantial reenactment
2A:1A-6	2B:2-4	Substantial reenactment
2A:1A-7	deleted	See note on this section
2A:1A-8	deleted	See note on this section
2A:1B-1 to 11	continued	No recommendation is made as to this chapter
2A:2-1	2B:2-1	Substantial reenactment
2A:2-1.1	deleted	See note on this section.
2A:2-1.2	deleted	See note to 2A:2-1.1, Judicial Vacancies
2A:2-1.3	2B:2-5	Substantial reenactment of subsection b.; other subsections have no continuing effect
2A:2-2	deleted	See note to 2A:1-7, Standing Masters
2A:2-3	2B:3-1b	Substantial reenactment
2A:2-4	deleted	See note to 2A:1-3, Bonds
2A:2-5	2B:3-2	Substantial reenactment
2A:2-6	deleted	See note to 2A:1-5
2A:2-7	2B:3-1b and c	Substantial reenactment
2A:2-8	2B:5-3	Substantial reenactment
2A:2-9	2B:3-4	Substantial reenactment
2A:2-10	deleted	Subsumed in 2B:3-3
2A:2-11	2B:3-3	Substantial reenactment
2A:2-12	deleted	See note on this section
2A:2-13	deleted	Unnecessary; controlled by Court Rules 3:14 and 4:3
2A:2-14	2B:9-1b	Generalized
2A:2-15	deleted	Unnecessary; see 2B:9-1
2A:2-16	2B:9-1a3	Generalized
2A:2-17	2B:9-1a2	Generalized
2A:2-18	2B:9-1a2	Generalized
2A:2-19	deleted	Specific provision unnecessary; see note to 2A:2-12
2A:2-20	New section to be compiled in Chapter 4A (statutes relating to Family Part) of Title 2A	Subsection b. substantially reenacted; subsection a. deleted as unnecessary
2A:3-1	deleted	Unnecessary; specific to county court
2A:3-2	deleted	Unnecessary; specific to county court; the role of surrogates is provided by <u>N.J. Const.</u> , Art. 11, §6
2A:3-3	deleted	See note on this section
2A:3-4	deleted	See note to 2A:3-3, Jurisdiction

2A:3-5	deleted	See note to 2A:3-3, Jurisdiction
2A:3-6	deleted	See note to 2A:3-3, Jurisdiction
2A:3-7	2B:2-2	Generalized
2A:3-8	deleted	See note on this section
2A:3-9	deleted	Unnecessary; specific to county court
2A:3-10	deleted	Unnecessary; specific to county court
2A:3-11	deleted	Unnecessary; specific to county court
2A:3-12	deleted	Unnecessary; specific to county court
2A:3-13.5	2B:9-1c	Generalized
2A:3-13.11	2B:9-1c	Generalized
2A:3-14	deleted	Unnecessary; specific to county court
2A:3-15	deleted	Unnecessary; specific to county court
2A:3-16	deleted	Unnecessary; specific to county court
2A:3-17	deleted	Superseded by 2A:1A-6, continued as 2B:2-4
2A:3-18	deleted	Superseded by 2A:1A-6, continued as 2B:2-4
2A:3-18.1	deleted	Superseded by 2A:1A-6, continued as 2B:2-4
2A:3-18.2	deleted	Superseded by 2A:1A-6, continued as 2B:2-4
2A:3-18.3	deleted	Superseded by 2A:1A-6, continued as 2B:2-4
2A:3-19	deleted	Unnecessary; specific to county court
2A:3-19.1	deleted	Unnecessary; specific to county court
2A:3-20	deleted	Unnecessary; specific to county court
2A:3-21	deleted	Unnecessary; specific to county court
2A:3-21.1	deleted	Unnecessary; specific to county court
2A:3-22	2B:6-3a	Substantial reenactment; see also <u>N.J.S.</u> 40A:9-117.6
2A:3-23	deleted	Unnecessary; see <u>N.J.S.</u> 40A:9-117.6
2A:3-24	2B:6-3a	Substantial reenactment
2A:3-25	deleted	Unnecessary; specific to county court
2A:3-26	deleted	Unnecessary; specific to county court; see also note to 2A:2-12
2A:3-27	deleted	Unnecessary; see 2A:61-3
2A:3A-1 to 29	continued	No recommendation is made as to this chapter
2A:4-3a	deleted	Unnecessary; see also note to 2B:9-1
2A:4-3b	deleted	Unnecessary; see <u>N.J. Const.</u> , Art. 6, §6, ¶1; see also 2B:9-1a as to references to abolished courts.
2A:4-3c	2B:9-1a	Generalized; see comment to 2B:9-1
2A:4-3d	2B:9-1d	Substantial reenactment
2A:4-3e	New section to be compiled in Title 22A	See dispositions of sections preserved temporarily. Last clause substantially reenacted. See also note on 2A:3-3, Jurisdiction.
2A:4-10	2B:5-1b and 5-2b	Generalized
2A:4-11	deleted	Unnecessary; specific to Juvenile and Domestic Relations Court
2A:4-30.24 through 2A:4-30.64	continued	No recommendation is made in regard to these sections
2A:4-41	2A:5-1, 5-2, 6-1a	See comment to 2B:5-1
2A:4-68	deleted	Compilation of repealer unnecessary
2A:4A-20 to 91	continued	No recommendation is made in regard to this chapter
2A:5-1 to 25	continued	No recommendation is made in regard to this chapter
2A:6-1	deleted	Unnecessary; specific to district court

2A:6-1a	2B:9-1	See also dispositions of sections preserved temporarily
2A:6-2	deleted	Unnecessary; specific to district court
2A:6-3	deleted	Unnecessary; specific to district court
2A:6-3.7	2B:9-1c	Generalized
2A:6-4	deleted	Unnecessary; specific to district court
2A:6-5	deleted	Unnecessary; specific to district court
2A:6-6	deleted	Unnecessary; specific to district court
2A:6-7	2B:1-1	Generalized
2A:6-8	deleted	Unnecessary; specific to district court
2A:6-8.1	deleted	Unnecessary; specific to district court
2A:6-9	deleted	Unnecessary; specific to district court
2A:6-10	deleted	Unnecessary; specific to district court
2A:6-11	2B:2-2	Generalized as to power to assign judges. Other provisions unnecessary; specific to district court
2A:6-12	deleted	Unnecessary; specific to district court
2A:6-13	deleted	Unnecessary; specific to district court
2A:6-15	2B:6-3b	Duties of special civil part officers and existing positions preserved by two recommended sections
	2B:9-1c	Existing positions preserved
2A:6-16	2B:9-1c	Unnecessary; specific to district court
2A:6-17	deleted	Unnecessary; specific to district court
2A:6-18	deleted	Unnecessary; specific to district court
2A:6-19	deleted	See note to 2A:1-3, Bonds
2A:6-20	2B:3-2b	Generalized
2A:6-21	deleted	Unnecessary; specific to district court
2A:6-22	deleted	Unnecessary; specific to district court
2A:6-23	deleted	Unnecessary; specific to district court, but see 2B:9-1c
2A:6-24	deleted	Unnecessary; specific to district court
2A:6-25	deleted	Unnecessary; specific to district court, but see 2B:9-1c
2A:6-26	deleted	Unnecessary; specific to district court, but see 2B:9-1c
2A:6-27	deleted	Unnecessary; specific to district court
2A:6-28	deleted	Unnecessary; specific to district court, but see 2B:9-1c
2A:6-29	2B:6-3b	Substantial reenactment
2A:6-30	deleted	Unnecessary; specific to district court
2A:6-31	2B:6-1b	Generalized
2A:6-31.1	deleted	Unnecessary; specific to district court
2A:6-32	deleted	Unnecessary; specific to district court
2A:6-33	deleted	Unnecessary; specific to district court
2A:6-33.1	deleted	Unnecessary; specific to district court
2A:6-34	deleted	See note on this section
2A:6-34.1	deleted	See note to 2A:6-34, Special Civil Part
2A:6-35	deleted	See note to 2A:6-34, Special Civil Part
2A:6-36	deleted	See note to 2A:6-34, Special Civil Part
2A:6-37	deleted	Unnecessary; see note on 2A:3-3, Jurisdiction
2A:6-38	deleted	Unnecessary; specific to district court
2A:6-39	deleted	Conflicts with <u>N.J.S.</u> 2C:46-4b which appears to control
2A:6-40	deleted	Unnecessary; specific to district court
2A:6-41	deleted	See note to 2A:6-34, Special Civil Part
2A:6-42	deleted	Unnecessary; specific to district court

2A:6-43	deleted	See note to 2A:6-34, Special Civil Part
2A:6-44	deleted	See note to 2A:6-34, Special Civil Part
2A:6-45	2B:1-2	Generalized
2A:6-46	2B:1-2	Generalized
2A:10-1 to 8	Continued	No recommendation is made in regard to this chapter
2A:11-1	2B:1-1	Substantial reenactment
2A:11-2	2B:2-3	Substantial reenactment
2A:11-3	2B:6-1c	Substantial reenactment
2A:11-4	2B:6-1a and b	Substantial reenactment
2A:11-5	deleted	Unnecessary; see note on 2A:3-3, Jurisdiction
2A:11-5.1	deleted	See note on this section
2A:11-5.2	deleted	See note to 2A:11-5.1, Reimbursement for Cases
2A:11-6	2B:4-3	Substantial reenactment
2A:11-7	2B:4-3	Substantial reenactment
2A:11-8	deleted	See 2B:4-3
2A:11-9	deleted	See 2B:4-3
2A:11-10	2B:4-3	Salary provision subsumed into more general 2B:4-3; apportionment of costs provision generalized as 2B:6-4
	2B:6-4	
2A:11-10.1	deleted	Unnecessary; no continuing effect
2A:11-11	2B:7-1 a and b	Substantial reenactment
2A:11-12	2B:7-1c	Certificate requirement substantially reenacted; oath provision deleted as unnecessary.
2A:11-13	2B:7-2	Substantial reenactment
2A:11-14	2B:7-3	Substantial reenactment
2A:11-15	2B:7-4	Substantial reenactment
2A:11-16	2B:7-5	Substantial reenactment
2A:11-17	2B:7-6	Subsection a. deleted as subsumed in 2B:5-2; subsection b. substantially reenacted
2A:11-19	deleted	Unnecessary, general authority is provided by 2B:4-2 and 4-3. <u>See also N.J.S. 40A:9-117.6</u>
2A:11-20	deleted	See 2B:6-1d and 2B:9-1c
2A:11-21	deleted	See 2B:4-3
2A:11-22	deleted	See 2B:4-3
2A:11-23	deleted	See 2B:4-3
2A:11-24	deleted	See 2B:4-3
2A:11-25	deleted	See 2B:4-3
2A:11-26	deleted	See 2B:4-3
2A:11-27	deleted	See 2B:4-3
2A:11-28	2B:8-1 et seq., 2B:4-2	Generalized
2A:11-29	2B:8-1 et seq., 2B:4-2	Generalized
2A:11-30	2B:8-1 et seq., 2B:4-2	Generalized
2A:11-31	2B:4-2	Substantial reenactment
2A:11-32	deleted	Superseded by <u>N.J.S. 40A:9-117.6</u>
2A:11-33	deleted	Superseded by <u>N.J.S. 40A:9-117.6</u>
2A:11-34	deleted	Superseded by <u>N.J.S. 40A:9-117.6</u>
2A:11-35	deleted	Superseded by <u>N.J.S. 40A:9-117.6</u>
2A:11-36	deleted	Superseded by <u>N.J.S. 40A:9-117.6</u>
2A:11-36.1	deleted	Superseded by <u>N.J.S. 40A:9-117.6</u>
2A:11-36.2	deleted	Superseded by <u>N.J.S. 40A:9-117.6</u>
2A:11-36.3	deleted	Superseded by <u>N.J.S. 40A:9-117.6</u>
2A:11-37	deleted	See 2B:5-2
2A:11-38	deleted	See 2B:6-1d

2A:11-45	deleted	Superseded by <u>N.J.S.</u> 40A:9-117.6
2A:11-46	deleted	Superseded by <u>N.J.S.</u> 40A:9-117.6
2A:11-47	deleted	Superseded by <u>N.J.S.</u> 40A:9-117.6
2A:11-48	2B:1-2	Generalized
2A:11-50	2B:1-2	Generalized
2A:11-51	2B:1-2	Generalized
2A:11-52	deleted	Unnecessary, see <u>N.J. Evid.R.</u> 63(17)
2A:11-53	2B:1-2	Generalized
2A:11-53.1	2B:1-2	Generalized
	2B:9-1a3	
2A:11-53.2	2B:1-2	Generalized
	2B:9-1a3	
2A:11-53.3	2B:1-2	Generalized
2A:11-55	deleted	Unnecessary, see <u>N.J. Evid. R.</u> 63(17)
2A:11-56	2B:9-1a	Generalized
2A:11-57	2B:9-1a	Generalized
2A:11-58	2B:9-1a	Generalized

NOTES

2A:1-3 Bonds

The statutes require the bonding of a number of court officials. However, bonds are not purchased for any of those officials. Instead, the State now purchases a general insurance policy covering whole classes of employees. In light of this change, these sections appear to serve no purpose and the Commission recommends their deletion.

2A:1-5 Acting Clerks

This section and 2A:2-6 allow the designation of persons to exercise the duties of the Clerk of the Supreme Court and of Clerk of the Superior Court in the clerk's absence. With the statutory establishment of offices of deputy clerk (see, e.g., 2A:1-6 continued as 2B:3-1a), these sections lose function. The Commission recommends their deletion.

2A:1-7 Standing Masters

This section and 2A:2-2 provide for the appointment of standing masters. At present, there are no standing masters of either the Supreme Court or the Superior Court. If it becomes desirable to reestablish these offices in the future, the general power found in proposed 2B:4-2 (now 2A:11-31) will provide authority to do so. As a result, 2A:1-7 and 2A:2-2 are unnecessary and the Commission recommends their deletion.

2A:1A-7

This section provides for the unclassified Civil Service titles of Administrative Director of the Courts and the Standing Master of the Supreme Court. The Administrative Director is provided for in Art. 6, §7, ¶1 of the Constitution and by N.J.S. 2A:12-1. At present, there is no Standing Master. See note to 2A:1-7, Standing Masters. As a result, this section is unnecessary and the Commission recommends its deletion.

2A:1A-8

This section was held unconstitutional in Vreeland v. Byrne, 72 N.J. 292 (1977). The Commission recommends its deletion.

2A:2-1.1 Judicial Vacancies

Two sections provide mechanisms for notification to the legislature of judicial vacancies. The part of N.J.S. 2A:2-1.1 requires the Governor to specify with each judicial nomination the particular vacancy which the nomination would fill. N.J.S. 2A:2-1.2 with permanent effect requires notification by the Administrative Office of the Courts at the time that a vacancy occurs.

The theory of both notification provisions is that there is a residence or service restriction applicable to particular judgeships rather than a requirement that a particular number of judges, whoever they may be at a particular time, must satisfy the requirements. That theory is open to question. See N.J. Const. Art. 6, §3, ¶1 and ¶3.

Given the controversial nature of the issue, the Commission has decided to delete the notice requirements. This decision recognizes that the Legislature is able to require, on an informal basis, any information which it deems necessary to the fulfillment of its role in judicial selection. Continuation of an informal accommodation among the branches of government seems a more appropriate solution to this problem than enactment of statutory notice requirements.

2A:2-12 Clerk's Records

This section requires the maintenance of particular docket books by the Clerk of the Superior Court. It is clear that the Supreme Court has the authority to specify the kinds of records which must be kept by clerk's offices, as well as the form of those records. See, e.g., N.J. Const., Art. 6, §6, ¶17, as well as proposed 2B:1-2. It seems unwise to mandate particular records by statute. The Commission recommends the deletion of this section.

2A:3-3 Jurisdiction

At present, there are many sections like 2A:3-3 granting jurisdiction over particular classes of cases to particular courts. These sections served a purpose in regard to the County Courts, since their jurisdiction could be affected by law. See N.J. Const., Art. 6, §4, ¶1 (repealed Nov. 7, 1978). The jurisdictional sections also served an important function in regard to courts of limited jurisdiction such as the district courts, which have only the jurisdiction granted by statute. N.J. Const., Art. 6, §1, ¶1.

Statutes granting jurisdiction to the Superior Court, however, are not necessary. The Superior Court has general jurisdiction in all causes. N.J. Const., Art. 6, §3, ¶2. The allocation of classes of cases to the various divisions and parts of the Superior Court is done by Supreme Court Rule and is not subject to statute. N.J. Const., Art. 6, §3, ¶3.

For that reason, the Commission recommends deletion of sections granting subject-matter jurisdiction to the Superior Court or to its divisions. Any references to the division or part of the Superior Court having cognizance of a kind of particular action have been included only in the interest of clarity.

2A:3-8

This section provides for the Board of Chosen Freeholders to make appointments where the judges of the County Courts are empowered but fail to make the appointment. The successors to the judges of the County Courts for this purpose are the Assignment Judges of the Superior Court. N.J.S. 2A:4-3d. Any such appointments would now seem to be within the judicial system and appointment by the Boards of Chosen Freeholders would seem inappropriate. The Commission recommends deletion of this section.

2A:6-34 Special Civil Part

Sections 2A:6-32, 2A:6-34.1, 2A:6-35, 2A:6-36, 2A:6-43 and 2A:6-44 provide for the ordinary civil jurisdiction and the small claims jurisdiction of the former County District Courts. That jurisdiction is now exercised by the Special Civil Part of the Superior Court, Law Division. Pressler, Current Court Rules, Part VI, "Rules Governing Practice in the County District Court." These sections are no longer necessary as grants of jurisdiction. See note to

2A:3-3, Jurisdiction. Whether the Special Civil Part continues to exist at all and the kinds of cases cognizable in it are matters left to Court Rule. N.J. Const., Art. 6, §3, ¶3.

While cases in the Special Civil Part are subject to the special provisions regarding fees and the effect of judgments which were formerly applicable to the District Courts, the appropriate method of providing for that applicability is by correcting the references in the relevant sections. See also the amendment proposed to N.J.S. 2A:8-24.1.

2A:11-5.1 Reimbursement for Cases

N.J.S. 2A:11-5.1 and 5.2 provide a mechanism for reimbursement by one county to another for the costs resulting from the wholesale transfer of cases from one county to another. However, those sections provide a fixed price per case which is unrelated to the actual costs involved. These sections seem never to have been used. If, in the future, it is necessary because of backlogs to transfer cases from one county to another, there is ample authority for the Court to order payment within the guidelines of 2B:5-2 and 6-1. As a result, there seems no need to continue 2A:11-5.1 and 5.2.

Respectfully submitted,

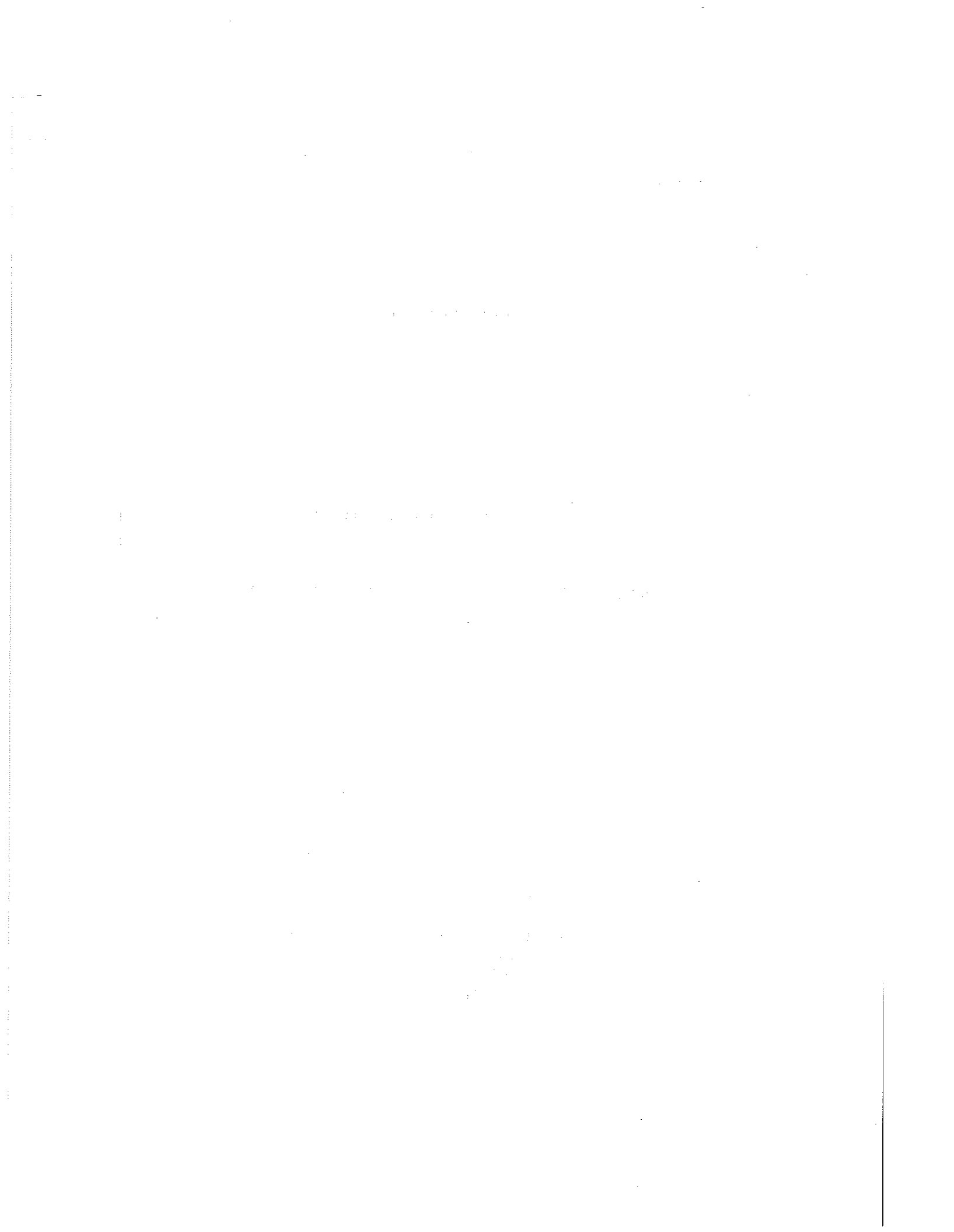
ALBERT BURSTEIN, Chairman
BERNARD CHAZEN
EDWARD T. O'CONNOR
HUGO M. PFALTZ, JR.
RONALD J. RICCIO
HOWARD T. ROSEN
THOMAS P. SHUSTED
PETER SIMMONS
RICHARD G. SINGER

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APPENDIX B

**REPORT AND RECOMMENDATIONS
ON
RECORDATION OF TITLE DOCUMENTS**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575
June, 1989**



INTRODUCTION AND SUMMARY

The Commission began this project in response to a request from the County Officer's Association, the membership of which includes the county clerks and registers of deeds who are responsible for maintaining the recordation system. The Association expressed the concern of the recording officers that the many detailed requirements for recordation that have accreted over the years were imposing a significant burden on recording offices. The requirements increase the time necessary to check documents for compliance, and necessitate the rejection of a great many documents lodged for recordation. The problem is exacerbated by the substantial increase in the number of land transactions over the last decade.

The issues raised by the recording officers are important not merely for the obvious public interest in the smooth functioning of government. The orderly operation of our real estate and financial markets depends upon the efficient operation of the land title recordation system. For example, if a document is lodged for recordation but must be rejected for some technical reason, the interest based on that document may be subordinated to one created by a later document recorded before resubmission of the first document, thus frustrating the expectations of the parties. Documents lodged for recordation but not promptly indexed due to backlogs may be more difficult for title searchers to locate, a situation which undermines the most basic function of the recordation system. The proliferation of technical requirements for recordation has substantially increased the risk that some documents which do not satisfy the prerequisites will nevertheless be recorded. The status of these improperly recorded documents is questionable.¹

¹ If an unacknowledged deed is recorded by mistake, the deed, even though it may otherwise be valid, will not have the standard constructive notice and evidentiary effects arising from the fact of recordation. E.g., R.S. 46:21-1 and -2; Turner & Seymour Mfg. Co. v. Acme Mfg. Co., 91 N.J. Eq. 348, 350 (Ch. 1920) and Fox v. Lambson, 8 N.J.L. 275, 280 (Sup. Ct. 1826).

If a subsequent purchaser, judgment creditor or mortgagee has actual notice of an unrecorded or improperly recorded instrument, however, that party's interest may nevertheless be subject to the unrecorded or improperly recorded instrument. R.S. 46:22-1 ("deed or instrument ... until duly recorded or lodged for record ... [is] void and of no effect against subsequent judgment creditors, without notice, and against all subsequent bona fide purchasers and mortgagees for valuable consideration, not having notice thereof") (emphasis added); Goldenstein v. Marlboro Construction Co., 7 N.J. Misc. 185 (Ch. 1929). In Goldenstein, a mortgage executed by a corporation but not properly proved was recorded. A subsequent judgment creditor attacked the priority of the mortgage in a foreclosure proceeding. The court upheld the priority of the improperly recorded mortgage because the subsequent judgment creditor had actual notice of the improperly recorded mortgage. The court, in construing the predecessor statute to R.S. 46:22-1, stated: "Our recording acts invalidate unrecorded, and, of course, improperly recorded mortgages only as to subsequent judgment creditors without actual notice. Comp. Stat., pp. 1553, 3414; Brinton v. Scull, 55 N.J. Eq. 747; Majewski v. Greenberg, 5 N.J. Adv. R. 566." Id. (emphasis added).

As a preliminary matter, the Commission began by considering all of the current requirements for recordation contained in Title 46 of the Revised Statutes with the purpose of reducing these requirements to the minimum number that would serve the purposes of recordation and meet any other important public interests. The function of recordation is to give notice to subsequent purchasers and encumbrancers. N.J. Bank v. Azco Realty Co., 148 N.J. Super 159,166 (App. Div., 1977). That function is aided by requirements limiting recordation to documents meeting minimum formal standards. However, requirements must be clear and simple enough to allow expeditious recordation. A delay between the lodging of a document for recordation and its recording and indexing interferes with the notice function. Requirements may also derive from public purposes independent of the recording acts. See e.g. C. 46:15-6. However the proliferation of these requirements can also contribute to delay and interfere with the basic purpose of recordation. Inclusion of each requirement must be based on a judgment that its need outweighs its costs.

In codifying the requirements for recordation, the Commission found it appropriate to revise certain related statutes in Title 46, which, although they do not set forth requirements for recordation, are critical to the interpretation of the recordation requirements. The extent of necessary revision was dictated by the current condition of the statutory material. Most of the relevant sections derive from the 1898 revision of the Conveyancing Act, see, e.g., R.S. 46:14-6, and some sections are older, e.g., R.S. 46:14-5. The archaic style and language of these sections was largely preserved in the 1937 revision; in fact, some sections are taken verbatim from the antecedent laws. Some of the problems with Title 46 are organizational. Sections were added either to deal with specific problems or to supplement the statutory scheme during the first years of this century. Some additions are not fully integrated into the older material; often the older and supplementary sections must be read together to get a true picture of the resulting legal principles. See, e.g., R.S. 46:13-1 and 13-3. Also, over the years, provisions have been added to deal with specific, temporary problems. These provisions now serve only to distract. See, e.g., R.S. 46:18-7 (provision on alien property custodian).

It is in this context that the sections establishing prerequisites to recordation must be considered. While some of the problem of imperfect compliance with the requirements for recordation results from the number and complexity of the requirements, some results from the complexity of their statutory context and the relation of the requirements to it.

As a result, the Commission recommends the revision of Chapters 12, 13, and 14, and part of Chapters 15 and 18 of Title 46. In place of the thirty sections in the current law, the Commission proposes only six sections. The first section is the key section of the proposal. It gathers in one place all of the prerequisites for recordation of an instrument affecting real estate. It reduces the number of requirements for recordation and makes clear that a recording officer is obliged to record any document which appears to meet

While there are no cases concerning the effect of failure to meet the requirements for recordation other than acknowledgment, the legal effect of any improperly recorded document must be considered unclear.

the requirements. It is understood, of course, that the recording officer is not certifying the validity of a document by accepting it for recordation. See, R.S. 46:2-2 and 25-1. Validity may turn on factors calling for legal judgments beyond the role of the recording officer. The second section outlines the requirements for cancellation of a mortgage. The current statutory material on this subject is now found in seven sections. The third, fourth and fifth sections together constitute a clearer statement of the methods for acknowledging or proving a document. At present, there is no such statement; the seven statutes dealing with this subject are neither complete nor consistent with each other. The last defines "signature." While such a definition is not now found in the law, it was considered important to add it. The Commission also recommends amendments to two sections of existing law, lessening the requirements imposed by these sections without impairing the purpose of the sections.

SECTION I. Prerequisites to Recordation.

a. Any instrument affecting title to or interest in real estate or containing any agreement in relation to real estate in this State shall be recorded on presentation to the recording officer of any county in which all or part of the real estate is located, if it appears that:

(1) the instrument is in English or accompanied by a translation into English;

(2) the instrument bears a signature;

(3) the instrument is acknowledged or proved in the manner provided by this title;

(4) beneath the signatures of any parties to the instrument and the officer before whom it was acknowledged or proved, the names appear typed, printed or stamped;

(5) any required recordation fee is paid; and

(6) if the instrument is a deed conveying real property, (A) it fulfills the requirements of P.L. 1968, c.49, §2 (C. 46:15-6) and (B) it includes a reference to the lot and block number of the property conveyed as designated on the tax map of the municipality at the time of the conveyance or the account number of the property. If the property has been subdivided, the reference shall be preceded by the words "part of." If no lot and block or account number has been assigned to the property, the deed shall state that fact.

b. An instrument, whether made by an individual or by a corporation or other entity, need not be executed under seal, nor need the document contain words referring to execution under seal, to be entitled to recordation.

Source: 46:15-1, 46:15-2.1, 46:15-3

Comment

One of the problems in the current law establishing requirements for recordation is that the numerous requirements are scattered throughout several chapters of Title 46. The Commission recommends that the number of requirements for recordation be reduced and that the statutes contain a single section either defining or referring to each of the

requirements so that a person attempting to file a document can easily discern what is necessary to meet the requirements. This purpose is expressed in subsection a. That subsection also expresses the intent of the section that the decision of the recording officer to record a document implies only that the officer has found that the statutory requirements appear to have been met. The officer is not called upon to make judgments concerning the accuracy of information supplied or the validity of documents. That is not a change from existing law. See, R.S. 46:2-2 and 25-1.

Under the Commission recommendation, the requirements for recordation would be as follows:

Subsection a.(1) -- English Language

That a document be written in the English language in order to be recorded is required by R.S. 47:1-2. The new provision would relax that requirement only to the extent that a foreign language document may be filed if accompanied by a translation. The Commission is not recommending that R.S. 47:1-2 be repealed, however, since that section deals with documents other than title documents.

Subsection a.(2) -- Signature

Title 46 does not contain a section explicitly requiring a signature on deeds or other instruments, either for the document to be valid or for it to be entitled to recordation. As a practical matter, however, a deed or other instrument must be signed in order to satisfy the Statute of Frauds, R.S. 25:1-1 to 1-9. In addition, the requirement that a deed or other instrument be proved or acknowledged to be recorded implicitly requires a signature. See R.S. 46:14-6 and 14-7. See the Comment to the proposed new section defining "signature" for a discussion of what constitutes a signature.

Subsection a.(3) -- Acknowledgment or Proof

R.S. 46:15-1 requires either acknowledgment or proof of execution of a deed or other instrument as a prerequisite to recordation. The provision states that "no deed or instrument ... shall be recorded ... unless the execution shall have been first acknowledged or proved" Acknowledgment is not, however, essential to the validity of a deed as between the parties to it. Van Solingen v. Town of Harrison, 39 N.J.L. 51, 52 (Sup. Ct. 1876); Campbell v. Hough, 73 N.J. Eq. 601, 606 (Ch. 1908); Moore v. Riddle, 82 N.J.Eq. 197, 203 (Ch. 1913).

Over the years, there have been many suggestions that the requirement of acknowledgment be abolished. See, e.g., Uniform Simplification of Land Transfers Act, §2-301(b). While the Commission is recommending some changes in the acknowledgment requirement, it is not recommending abolition of acknowledgment or proof of execution as a prerequisite to recordation. The requirement is continued as subsection a.(3) of the proposed section. Methods of acknowledgment and proof are set out in proposed Sections III and V.

Subsection a.(4) -- Typed or Printed Names

Currently, R.S. 46:15-3 requires a typed or printed name under every signature on a document. The Commission recommends the continuation of that requirement for the parties to a document and for the person taking the acknowledgment or proof. The requirement in regard to the names of witnesses would be eliminated. See subsection b.(4) of the proposed section.

Subsection a.(5) -- Fees

Two fees may be required for the filing of a title document. One fee is required for all documents by N.J.S. 22A:4-4.1, and a realty transfer fee is required only for certain deeds by C. 46:15-7. The reference to the payment of fees in the Commission's proposed section would alert a person seeking recordation to those current requirements, as well as to any other future fee, tax, or charge which may be made a prerequisite of recordation.

Subsection a.(6)(A) -- Statement of Consideration

A statement of consideration is required in certain deeds by C. 46:15-6. The Commission recommends change only in the detail of the requirement (see the Comment to the proposed amendments to C. 46:15-6 and C. 46:15-9 below). The reference in subsection a.(6)(A) is intended to alert a person seeking recordation to the requirement.

Subsection a.(6)(B) -- Lot and Block or Account Number

Under current law, R.S. 46:15-2 establishes a procedure for presenting deeds to city officials so that they may be mapped for tax purposes. With the completion of the mapping process, this section has lost its purpose and has largely been superseded by C. 46:15-2.1, which requires the placing of the lot and block or account number on the deed. As a result, the requirement of submission of the deed for mapping is obsolete. It is not now generally enforced. The Commission recommends its repeal.

The Commission recommends continuation of the requirement of C. 46:15-2.1 that lot and block numbers or tax account numbers appear on deeds. That requirement is continued in subsection a.(6)(B) of the proposed section on prerequisites to recordation.

Subsection b. -- Seal not Required

Despite the fact that Title 46 contains several sections defining what is acceptable as a seal, there is no express provision in this title or elsewhere in the statutes requiring that an instrument be executed under seal in order to be recorded. The absence of an express provision requiring sealing for recordation probably derives from the fact that execution under seal was a common law requirement for a valid conveyance of an interest in real property. See, e.g., Overseers of Poor of Hopewell v. Overseers of Poor of Amwell, 6 N.J.L. 169, 175 (Sup. Ct. 1822) ("An indenture in the language of the law, is a deed, that is, a writing sealed and delivered" (emphasis in original)); accord Moore v. Riddle, 82 N.J.Eq. at 202; M. Lieberman, "Abstracts and Titles," 13 New Jersey Practice §441 (3d ed. 1966). Thus, reference to execution under seal as a requirement for recordation may have been considered superfluous.

That execution under seal was presumed as to certain documents is also evidenced in the provisions in Title 46 concerning proof of deeds or other instruments to be recorded. The provision concerning proof of instruments executed by individuals, for example, specifies that the subscribing witness to an instrument must swear that the maker of the instrument being proved "signed, sealed and delivered" the instrument. R.S. 46:14-6 (emphasis added). Identical language was contained in prior versions of this section. E.g., L.1898, c.232, §22, p.678. R.S. 46:14-6 standing alone cannot, however, be read as requiring instruments to be sealed in order to be recorded. Such a construction of the statute was rejected by the court in Turner & Seymour Manufacturing Co. v. Acme Manufacturing Co., 91 N.J.Eq. 347, 350 (Ch. 1920), involving a challenge to the recordation of a conditional bill of sale which had been defectively acknowledged:

Originally, the recording acts applied only to instruments which required a seal to be valid. As time went on other instruments were added, some of which were never required to be under seal. Notwithstanding this, the language of the sections with respect to acknowledgments and certificates remained, in some instances, as originally drafted.

It is unclear whether a New Jersey court today would hold that a seal is necessary for a conveyance of an interest in property to be valid as a matter of common law. In most states, the necessity for seals on deeds has been abolished by statute. P. Basye, Clearing Land Titles, §233 at 520-21 (2d ed. 1970). Many authorities still state that a seal is required on deeds in New Jersey, citing dicta in Moore v. Riddle, 82 N.J.Eq. 197, 202 (Ch. 1913). E.g., 13 M. Lieberman, "Abstracts and Titles," supra, §441. Nevertheless, there does not appear to be any case invalidating a conveyance for lack of a seal. Moreover, a deed without a seal is enforceable in equity. Cowdrey v. Cowdrey, 71 N.J.Eq. 353, 362 (Ch. 1906), modified on other grounds, 72 N.J. Eq. 951 (E. & A. 1907). With the abolition of the distinction between law and equity, enforceability in equity could be considered validity. See N.J. Const., Art. 6, §3, ¶4; Milmed, The New Jersey Constitution of 1947, N.J.S.A. Constitution, p.106-108.

Whether or not a seal is required for validity of a conveyance, the act of sealing does retain some effect. An executed conveyance under seal imports a solemn act which the courts will enforce even if there is no consideration for the conveyance. In re Kirschenbaum, 44 N.J. Super. 391, 400 (App. Div. 1957). A sealed document is considered a "speciality"; the seal imparts a presumption of consideration. Wanamaker v. Van Buskirk, 1 N.J. Eq. 685, 689 (Ch. 1832). Certain documents under seal also enjoy a longer period of limitations than unsealed documents of the same type. See N.J.S. 2A:14-4; Fidelity Union Trust Company v. Fitzpatrick, 134 N.J.L. 250, 251 (E. & A. 1946). But see N.J.S. 12A:2-203 (affixing a seal to a sales contract does not "constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply...").

The Commission's recommendation is that it be made clear that neither execution under seal nor a reference to execution under seal is required for recordation of a document. Whether seals continue to be required for deeds to be considered valid would remain a matter of case law. Any desirable effects resulting from execution under seal, such as the applicability of certain presumptions, would also remain undisturbed.

SECTION II. Cancellation of mortgages.

A mortgage shall be cancelled of record by the recording officer of any county in which the mortgage was recorded if:

a. The original mortgage bearing on it the receipt given by the county recording officer at the time it was recorded is presented to the county recording officer with an endorsement on it authorizing its cancellation bearing the signature of the mortgagee or, if the mortgage has been assigned of record, of the last assignee of record of the mortgage. If the mortgagee or assignee of the mortgage is a corporation or other entity, the signature for the entity on the endorsement may be made by any person authorized by the entity to do so; or

b. An instrument constituting a satisfaction of mortgage meeting the requirements for recordation, including acknowledgment or proof, is filed with the county recording officer.

Source: 46:18-5, 46:18-6, 46:18-7, 46:18-8, 46:18-8.1

Comment

At present, there are seven sections dealing specifically with the cancellation of mortgages. Four of these sections deal with the requirements for cancellation of a mortgage by endorsement on the original of the mortgage: R.S. 46:18-5, as to mortgages held by individuals; R.S. 46:18-6, as to cancellation of mortgages held by corporations; R.S. 46:18-8, as to mortgages held by building and loan associations; and C.46:18-8.1 as to mortgages held by federal agencies. The four sections vary significantly in detail. The provision for individuals requires an acknowledgment, while the provisions for corporations, building and loan associations and federal agencies do not. However, the provisions dealing with corporations and building and loan associations require the signature of two particular officers and sealing with a corporate seal for cancellation of a mortgage. These requirements particularly present problems, especially when the mortgage is held by an out-of-state corporation which does not have the particular officers required or lacks a corporate seal.

The Commission recommends that cancellation of a mortgage by an endorsement on the mortgage require only the signature by the mortgage holder if that holder is an individual, or by any officer on behalf of the holder if the holder is a corporation. The requirement is that the endorsement be placed on the original mortgage bearing the receipt of the recording officer. This change would abolish the acknowledgment requirement for individuals, the named officer and seal requirements for corporations, as well as an additional requirement for building and loan association mortgages -- that the Commissioner of Banking be informed in writing of each cancellation by the recording officer. The current statutes state only that the endorsement be placed on "the mortgage." See, e.g., R.S. 46:18-5. However, what is implied is that "the mortgage" is the original mortgage kept by the mortgagee. See William L. Black Implement Co. v. Blair, 104 N.J.L. 229, 231 (Sup. Ct. 1927). The purpose of the requirement which the Commission proposes, that the endorsed original mortgage be the original bearing the recording office receipt, is to assure that only the original retained by the mortgagee, not other signed copies, be cancellable by endorsement.

An alternative method for cancellation of a mortgage, the recordation of a satisfaction of mortgage meeting all of the normal requirements for recordable instruments, is established by R.S. 46:18-7, R.S. 46:18-6 (last paragraph) and R.S. 46:18-8 (last paragraph) That option would be continued by subsection b. of the Commission proposal.

Two remaining sections of Chapter 18 of the current law seem unnecessary. R.S. 46:18-11 deals with situations where the original mortgage falls into the hands of the mortgagor, allowing him to forge a cancellation. Other provisions of civil and criminal law deal with this situation adequately. R.S. 46:18-11.1 deals generally with discharges of mortgages; its subject matter is covered by the section proposed by the Commission.

SECTION III. Acknowledgment and proof.

a. To acknowledge a deed or other instrument the maker of the instrument shall appear before an officer specified in Section IV* and acknowledge that it was executed as the maker's own act. To acknowledge a deed or other instrument made on behalf of a corporation or other entity, the maker shall appear before an officer specified in Section IV* and state that the maker was authorized to execute the instrument on behalf of the entity and that the maker executed the instrument as the act of the entity.

b. To prove a deed or other instrument, a subscribing witness shall appear before an officer specified in Section IV* and swear that he or she witnessed the maker of the instrument execute the instrument as the maker's own act. To prove a deed or other instrument executed on behalf of a corporation or other entity, a subscribing witness shall appear before an officer specified in Section IV* and swear that the representative was authorized to execute the instrument on behalf of the entity, and that he or she witnessed the representative execute the instrument as the act of the entity.

c. The officer taking an acknowledgment or proof shall sign a certificate stating that acknowledgment or proof. The certificate shall also state:

(1) that the maker or the witness personally appeared before the officer;

(2) that the officer was satisfied that the person who made the acknowledgment or proof was the maker of or the witness to the instrument;

(3) the jurisdiction in which the acknowledgment or proof was taken;

(4) the officer's name and title;

(5) the date on which the acknowledgment was taken.

d. The seal of the officer taking the acknowledgment or proof need not be affixed to the certificate stating that acknowledgment or proof.

Source: 46:14-2, 46:14-6

Comment

The only statutory source approaching a statement of what constitutes an individual acknowledgment is the first paragraph of R.S. 46:14-6. While that section requires the grantor to appear before the officer taking the acknowledgment and satisfy the officer that he is the grantor, it does not specify further what the grantor must state to acknowledge the instrument. The Commission recommendation is a redraft of this section so that it states clearly what acknowledgment involves. This section applies to the acknowledgment or proof of any kind of deed or instrument. As acknowledgment is most commonly used to satisfy the requirements of recordation, the instruments most commonly acknowledged will be those enumerated in R.S. 46:16-1.

R.S. 46:14-2 provides a form of acknowledgment for corporate instruments. The section specifies particular officers who may act for the corporation, requires the use of a corporate seal, and requires an acknowledgment that the instrument is the voluntary act of the

*NOTE: Cross-references now to "Section IV" entitled "Officers authorized to take acknowledgments" should be changed to the technically appropriate cross-references when this proposal is put into bill form.

corporation and by authority of its Board of Directors. As an alternative to acknowledgments executed pursuant to R.S. 46:14-2, there is case law authority for the use of acknowledgments like individual acknowledgments on corporate instruments. Hopper v. Lovejoy, 47 N.J. Eq. 573, 579 (E. & A. 1890); Turner & Seymour Mfg. Co. v. Acme Mfg. Co., 91 N.J. Eq. at 350; T. Usher, Textbook For Notaries Public and Commissioners of Deeds of N.J., 86-87 (1952). The Commission recommends simplification of the corporate acknowledgment provision to make corporate acknowledgment as similar to individual acknowledgment as possible. In addition, the Commission proposal, by use of the phrase "other legal entity" recognizes that entities other than corporations may transfer real property in their own names.

As an alternative to acknowledgment, a document may be proved by the oath of a subscribing witness asserting the facts that would be acknowledged by the grantor. R.S. 46:14-6.

The Commission's proposed section on acknowledgment attempts to state clearly what must be done by the maker of an instrument to acknowledge it (subsection a.), and what must be done by a witness to an instrument to prove it (subsection b.). These subsections omit any reference to seals, as the Commission's recommendation is that a seal not be required as a prerequisite to recordation. See the Comment below to Section I. entitled "Prerequisites to Recordation." The proposed section also specifies what must be done by the officer taking the acknowledgment or proof to certify that acknowledgment or proof (subsection c.).

Last, the section provides that the officer need not use an official seal in taking the acknowledgment or proof (subsection d.). At present, a seal is required for certain officers and not for others. Compare R.S. 46:14-7 b (3) with R.S. 46:14-7 b (6). Other provisions require a seal if the officer has one or if one is required in the officer's jurisdiction. See R.S. 46:14-7 b (7) and R.S. 46:14-8 (last paragraph). While the latter, flexible approach prevents problems where a jurisdiction does not provide for a seal for an officer, it makes it difficult to know when a seal must be on the certificate of acknowledgment. The Commission concluded that the requirement that certain officers use an official seal no longer serves any purpose.

SECTION IV. Officers authorized to take acknowledgments.

a. The officers of this State authorized to take acknowledgments or proofs in this State, or in any other United States or foreign jurisdiction, are:

- (1) an attorney-at-law;
- (2) a notary public;
- (3) a county clerk or deputy county clerk;
- (4) a register of deeds and mortgages or a deputy register;
- (5) a surrogate or deputy surrogate.

b. The officers authorized to take acknowledgments or proofs, in addition to those listed in subsection a., are:

(1) any officer of the United States, of a state, territory or district of the United States, or of a foreign nation authorized at the time and place of the acknowledgment or proof by the laws of that jurisdiction to take acknowledgments or proofs. If the certificate of acknowledgment or proof does not designate the officer as a justice, judge or notary, the certificate of acknowledgment or proof, or an affidavit appended to it, shall contain a statement of the officer's authority to take acknowledgments or proofs;

(2) a foreign commissioner of deeds for New Jersey within the jurisdiction of his or her commission;

(3) a foreign service or consular officer or other representative of the United States to any foreign nation, within the territory of that nation.

Source: 46:14-6, 46:14-7, 46:14-8

Comment

At present, the officers authorized to take acknowledgments or proofs are specified in three sections, R.S. 46:14-6, 14-7 and 14-8. The proposed section synthesizes the three sections, simplifying and clarifying the language and reducing the number of categories. It eliminates references to certain categories of officers which no longer exist in this State (e.g., "counsellor-at-law" as distinguished from an "attorney-at-law," and county commissioner of deeds). Under the proposed section, all New Jersey officers authorized to take acknowledgments or proofs would be authorized to do so anywhere inside or outside of the State. At present, certain officers are authorized to take acknowledgments or proofs only within the State. See R.S. 46:14-6. The proposed section would also eliminate most specific references to certain officials authorized to take acknowledgments and proofs outside this State but within the United States or outside of the United States in favor of a general provision for officers authorized by the law of their own jurisdiction to take acknowledgments and proofs.

It should also be noted that while current law distinguishes among officers, and requires that some use an official seal, the Commission proposal would eliminate any seal requirement. See Comment to Section III, "Acknowledgment and proof."

SECTION V. Proof of instruments not acknowledged or proved.

If a deed or other instrument cannot be acknowledged or proved for any reason, the instrument may be proved in Superior Court by proof of handwriting or otherwise to the satisfaction of the court. Notice of the application in accordance with the Rules of Court shall be given to any party whose interests may be affected.

Source: 46:14-4, 46:14-5

Comment

Current statutes allow an instrument to be proved in court where no acknowledgment or proof of execution was made at the time the instrument was executed and the maker and witnesses are no longer available. See R.S. 46:14-4 (proof of instruments in general) and -5 (proof of assignments of mortgages). The two current statutes vary in many details, including the standard of proof, procedure for proof, notice to be given, and the like. The Commission proposal is a single, simplified section leaving most procedural matters to court rule and case law. On one issue, however, the proposed section differs from both current statutes. The proposed section reflects the modern view that publication is not likely to give actual notice and that where adverse parties are known to exist, notice should be given to them. See also Township of Montville v. Block 69, Lot 10, 74 N.J. 1, 10-11 (1977); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 315 (1950).

SECTION VI. Signatures.

For purposes of this title, a signature includes any mark made on a document by a person who thereby intends to give legal effect to the document. A signature also includes any mark made on a document on behalf of a person, with that person's authority and to effectuate that person's intent.

Source: None.

Comment

The only section in Title 46 which pertains to signatures is R.S. 46:12-1. This section, which is in the nature of a validating act, provides that deeds or other instruments recorded as of March 1917 which have been signed by mark but which do not have the words "his mark" or "her mark" written near the mark, are to be considered valid. Thus, the only effect of this section is to relax the requirements of signature by mark for documents on record prior to 1917. The source of the assumed requirement of the words "his mark" or "her mark" is not clear. Nothing appears in the case law suggesting that such a requirement ever existed. See Mutual Benefit Insurance Co. v. Brown, 30 N.J.Eq. 193, 202-03 (Ch. 1878), affd, 32 N.J.Eq. 809 (E. & A. 1880). Whatever purpose the section may have had in the past is no longer necessary as part of the permanent law. The Commission recommends repeal of R.S. 46:12-1.

The Commission recommends the addition of a section defining the term "signature." The case law decided under the statute of frauds provides that:

A person physically unable or too illiterate to write his name may sign by making a cross, a straight or crooked line, or dot or any other symbol. Simply making a mark by bringing the pen in contact with the paper is sufficient.

Mutual Benefit Insurance Co. v. Brown, 30 N.J.Eq. at 203. The new provision recommended by the Commission is intended to codify the definition set forth in Mutual Benefit, which is broad enough to include any form of written signature, traditional signature by mark, and signatures made by stamp or mechanical device. The newly-drafted definition also includes signatures made on behalf of a person. Broad as the suggested definition is, however, it is narrower than the one used in the Commercial Code. See N.J.S. 12A:1-201. Under that section, letterhead is considered to be a sufficient "signature" for commercial transactions. Id., Uniform Commercial Code Comment ¶39. While this broad a definition is appropriate for contracts between commercial entities, it is not sufficiently formal for deeds and similar instruments. Compare N.J.S. 3B:3-2 which requires a witnessed signature on a will.

AMENDED SECTIONS

46:15-6. Additional prerequisites for recording.

In addition to other prerequisites for recording, no deed evidencing transfer of title to real property shall be recorded in the office of any county recording officer unless it satisfies one of the following requirements: [(a) the consideration therefor is recited therein and in the acknowledgment or proof of the execution thereof, or (b) an affidavit by one or more of the parties named therein or by their legal representatives declaring the consideration therefor is annexed thereto for recording with the deed.]

a. If the transfer is subject to the additional fee as provided in P.L. 1968, c.49, §3 (C. 46:15-7), a statement of the true consideration for the transfer is contained in (1) the deed, or (2) the acknowledgment, or (3) the proof of the execution, or (4) an appended affidavit by one of the parties to the deed or his or her legal representative,

b. If the transfer is exempt from the additional fee required by P.L. 1968, c.49, §3 (C. 46:15-7), an affidavit stating the basis for the exemption is appended to the deed.

46:15-9. Falsifying consideration; penalty.

Any person who [shall willfully falsify] knowingly falsifies the consideration recited in a deed or in the proof or acknowledgment of the execution of a deed or in an affidavit annexed to a deed declaring the consideration therefor or a declaration in an affidavit that a transfer is exempt from recording fee [annexed to a deed] shall be [adjudged a disorderly person] guilty of a crime of the fourth degree.

Comment

A statement of the consideration for the transfer of property is now required, both in the deed and in the acknowledgment or in a separate affidavit. C. 46:15-6. In addition, C. 46:15-9 provides that falsification of the statement of consideration in the deed or acknowledgment is a disorderly persons offense. While the purpose of the statement of consideration is to allow the assessment of a recording fee based on the consideration for the transfer, current law appears to require the statement even when, because of the circumstances of the transfer, no fee is due. In the opinion of the Commission, only a single statement of consideration should be required, either in the deed, in the acknowledgment, or in an accompanying affidavit, and no statement of consideration should be required if the deed is accompanied by an affidavit stating the factual basis for an exemption from the additional recording fee.

The amendments to C. 46:15-6 recommended by the Commission provide that a single statement of consideration is sufficient, and authorize the submission of an affidavit if an exemption from the realty transfer tax is being claimed. The Commission also recommends a conforming amendment to C. 46:15-9, the corresponding penalty provision, to include falsification of a statement that a transfer is exempt. Last, the Commission recommends increase in the penalty by making falsification a crime of the fourth degree.

TABLE OF DISPOSITIONS
RECORDATION

<u>Section</u>	<u>Disposition</u>	<u>Comment</u>
<u>Chapter 12</u>		
46:12-1	deleted	See comment to proposed Section VI.
<u>Chapter 13</u>		
46:13-1	deleted	See comment on proposed Section Ib. and note on Seals below.
46:13-2	deleted	See comment on proposed Section Ib. and note on Seals below.
46:13-3	deleted	See comment on proposed Section Ib. and note on Seals below.
46:13-4	deleted	See comment on proposed Section Ib. and note on Seals below.
46:13-7	deleted	See comment on proposed Section Ib. and note on Seals below.
<u>Chapter 14</u>		
46:14-1	deleted	See note on Acknowledgment by a Married Woman below.
46:14-2	Proposed Section III	
46:14-3	deleted	See comment to proposed Section III.
46:14-4	Proposed Section V	
46:14-5	Proposed Section V	
46:14-6	Proposed Sections III, IV	
46:14-7	Proposed Section IV	
46:14-8	Proposed Section IV	
<u>Chapter 15</u>		
46:15-1	Proposed Section Ia(3)	
46:15-2	deleted	See comment to proposed Section Ia(6).
46:15-2.1	Proposed Section Ia(6)	
46:15-3	Proposed Section Ia(4)	
46:15-4	deleted	See note on Address of Mortgage Holder below.
46:15-4.1	deleted	See note on Address of Mortgage Holder below.
46:15-5 to 11	retained	See amendments proposed to 46:15-6 and 46:15-9.
46:15-12	deleted	See note on Requirements for Mortgages below.
46:15-13 to 14	deleted	See note on Preparer's Name below.

Chapter 18

46:18-1 to 18-4

Retained

46:18-5

Proposed Section II

46:18-6

Proposed Section II

46:18-7

Proposed Section II

46:18-8

Proposed Section II

46:18-8.1

Proposed Section II

46:18-11

deleted

See comment to
proposed Section II.
See comment to
proposed Section II.

46:18-11.1

deleted

46:18-11.2 to

Retained

18-12

NOTES

R.S. 46:13-1, 13-2, 13-3, 13-4, 13-7: Seals

The current provisions on seals in the New Jersey statutes are found in R.S. 46:13-1, 13-2, 13-3, 13-4 and 13-7, and R.S. 1:1-2.1. These provisions do not deal with the question of whether a seal is required for a document to be valid and enforceable or with whether a seal is required for a document to be entitled to recordation. They merely specify the words or devices which constitute a seal. For discussion on whether seals are required, see the comment to proposed Section Ib.

What suffices as execution under seal has eroded substantially over time. At common law, sealing meant that a wax impression was affixed to the document. M. Lieberman, "Abstracts and Titles," 13 New Jersey Practice, §441 (3d ed. 1966). R.S. 1:1-2.1, the antecedents of which were enacted as early as 1875 (see Rev. 1877, p.387, §52) and 1855 (see Rev. 1877, p.741, §1), provides that a wax seal is not required for documents which are "required or permitted by law" to be sealed. Under R.S. 1:1-2.1, an instrument "shall be deemed to be sealed when there is affixed thereto, or printed, impressed or marked thereon a scroll or other device by way of a seal...." In 1898, a separate section paralleling those applicable to instruments generally was added to the Conveyancing Act. L. 1898, c.232, §20, p.677, now codified at R.S. 46:13-1. In 1904, the requisites for a seal on certain title documents were further degraded by the addition of L.1904, c.89, now codified as R.S. 46:13-3. This section, applicable to instruments made by individuals, provides that an instrument shall not be "void for lack of a seal, if the attestation or testimonium clause, or the acknowledgment or proof, shall recite that [the instrument] was signed and sealed by the makers thereof...." Under this statute, the mere reference to sealing in a deed or other document entitled to recordation, even if only in the acknowledgment or proof of execution, constitutes the act of sealing for purposes of Title 46. Thus, less may be required to constitute a seal for deeds and other instruments under Title 46 than is required to constitute a seal on other documents. See, Fidelity Union Trust Co. v. Fitzpatrick, 134 N.J.L. 250, 251 (E. & A. 1946) (construing R.S. 1:1-2.1, the general definition section concerning seals, and N.J.S. 2A:14-4, the statute of limitations provision applicable to certain documents under seal, to require not only a "scroll or other device" in lieu of a seal, but also a reference to sealing in the body of the instrument); accord Beneficial Finance Co. v. Dixon, 130 N.J. Super. 508, 512 (Cty. Dist. Ct. 1974).

The requisites for sealing on a document made by a corporation have undergone a similar degradation, although the statutory provisions were added at a later time. In 1928, a section was adopted which provides that "a scroll of ink, or other device by way of a seal" is sufficient in lieu of a corporate seal. L. 1928, c.183, §1, p.351, now codified as R.S. 46:13-2. In 1932, what is now R.S. 46:13-4 was added to the statutes. This section, which is in the nature of a validating act, provides that corporate deeds made prior to June 1932 which were not sealed with the corporate seal shall be considered valid if the attestation clause or the acknowledgment or proof recites that the deed was sealed. Finally, C.46:13-7 was added in 1942, and provides that deeds or other instruments executed by or on behalf a corporation which is an instrumentality or entity of the United States, by an attorney-in-fact, are valid provided that the power of attorney sealed with the corporate seal is recorded in the county recording office.

The Commission recommends that these sections be repealed. To the extent that parties who execute recordable documents wish to avail themselves of the benefits, if any, of sealing, they may do so by complying with R.S. 1:1-2.1. While this provision may be somewhat more strict in its definition of the act of sealing (see the discussion above of Fidelity Union Trust Co. v. Fitzpatrick), it still provides an acceptably simple method for sealing a document.

R.S. 46:14-1: Acknowledgment by a Married Woman

R.S. 46:14-1 presently provides that a special form of acknowledgment is not needed for a valid deed by a married woman. Prior to 1916, a deed made by a married woman needed a special acknowledgment in order to be valid. Section 39 of "An act respecting conveyances," L. 1898, c.232, §39, p.685); see Chassman v. Wiese, 90 N.J. Eq. 108 (Ch. 1919). L. 1916, c. 157, §1, p. 321, now codified at R.S. 46:14-1, changed the form of the acknowledgment requirement for married women by eliminating the provision that a married woman be examined separately and acknowledge that she was free of any compulsion of her husband in executing the deed. Chassman held, however, that the change in the form of acknowledgment did not remove the requirement of section 39 that a married woman's deed be acknowledged in some form to be valid. Thus, R.S. 46:14-1 served some purpose until the enactment of L. 1934, c. 208, which repealed section 39 of "An act respecting conveyances." The repeal of section 39 removed entirely the requirement of acknowledgment for validity of a married woman's deed. With the repeal of section 39, R.S. 46:14-1, no longer has any function.

The Commission recommends that R.S. 46:14-1 be repealed. In making that recommendation, the Commission is aware that this provision may be relevant in assessing the validity of old documents. The section standing alone is deceptive, however, in that, for example, it does not give notice that some form of acknowledgment was still necessary for a valid married woman's deed until 1934. Many old principles of law are necessary in the interpretation of old documents. The current, permanent law is not and cannot be the place to find such provisions. See, e.g., the requirement of the use of the word "heirs" for a fee simple transfer before 1902. Cowdrey v. Cowdrey, 71 N.J.Eq. 353, 354 (Ch. 1906), modified on other grounds 72 N.J.Eq. 951 (E. & A. 1907).

C. 46:15-4, 15-4.1: Address of Mortgage Holder

The post office address of a mortgagee or of an assignee of a mortgage is required to be on the mortgage or assignment by C. 15-4 and 15-4.1. The purpose of the requirement appears to be that an address facilitates service of process on a mortgage holder when a court action is brought in relation to the property. If this is the purpose, a requirement that the address be on the recorded document seems unnecessary. There is no question that an address may be included in filings with the county recording officer. In addition, a mortgage holder may, but need not, file an address with the local taxing authorities. N.J.S. 54:5-104.48. If an address is recorded or is filed with the taxing authorities pursuant to N.J.S. 54:5-104.48, any service of process would need to include notice to that address. See Montville Township v. Block 69, et al., 74 N.J. 1 (1977); Court Rule 4:4-5. In the absence of such a filing, service of process may be by publication. Court Rule 4:4-5c. If a mortgage holder wishes to receive notice of actions affecting his interest in the property, it will serve his purpose to see that a current address is on file. However, there appears to be no public purpose which justifies a requirement of an address as a prerequisite of recordation. The Commission recommends its deletion.

C. 46:15-12: Requirements for Mortgages

C. 46:15-12 now requires that the word "mortgage" be printed in 10-point or larger type on mortgages presented for recordation and also requires that the mortgage be accompanied by an acknowledgment that the mortgagor has received a copy of the mortgage. This requirement appears to have been enacted as a form of consumer protection legislation. Presumably, the requirement that the word "mortgage" appear on the document ensures that a consumer will know that what he is signing is a mortgage. The requirement that the mortgagor receive a copy of the mortgage presumably guarantees that the mortgagor has been apprised of the terms of the mortgage. The significance of these requirements, however, has been reduced by the subsequent enactment of the federal truth-in-lending law, 15 U.S.C. §1601 *et seq.* (1982 and Supp. 1986) and regulations under that law, commonly referred to as "Regulation Z," 12 C.F.R. 226.1 to 226.30 (1988).

The requirements of federal law are greater than those of the New Jersey statute. A disclosure in writing in a form the consumer may keep is required before consummation of a loan or three days after receipt of a mortgage application, whichever is sooner. 12 C.F.R. 226.17(a) and 226.19(a) (1988). Among the things which must be disclosed is the retention of a security interest in real property. 12 C.F.R. 226.23(b) (1988). All of this is enforceable by civil actions for damages and penalties of twice the amount of the finance charge plus costs and attorneys' fees. 15 U.S.C. §1640 (1982). There also are criminal penalties for willful violations. 15 U.S.C. §1611 (1982).

It should be noted, however, that the federal law is applicable only to creditors who are in the business of lending money. 15 U.S.C. §1602(f) (1982). The regulations cover a lender if it makes 25 loans within a calendar year or five loans secured by a dwelling within a calendar year. 12 C.F.R. 226.2(17), n. 3. Given the purpose of the New Jersey law to protect consumers from unscrupulous creditors, this difference would seem of limited consequence. As a practical matter, it would appear that the federal law provides at least as much protection as the New Jersey prerequisite for recordation of mortgages. As a result, there does not seem to be a reason to continue the New Jersey restriction. Cf. C. 56:12-1 to -13 (imposing generalized "plain language" requirements in consumer transactions).

The Commission recommends the repeal of C. 46:15-12.

C. 46:15-13 to 14: Preparer's Name

C. 46:15-13 and 15-14, enacted in 1969, require the preparer's name be on all documents filed with the county recording officer. The actual requirement is found in C. 46:15-13; C. 46:15-14 states the effective date of the requirement and should probably not have been codified in the permanent law. An amendment in 1981 specified that the preparer's name be on the first page of the document.

The purpose of the requirement appears to have been to allow local taxing authorities to reach knowledgeable parties to facilitate the acquisition of information necessary to transfer tax accounts. Placing the name of the preparer on a deed does, in fact, serve that purpose. However, there appears to be no reason that the requirement applies to documents other than deeds. The problem caused by this requirement occurs when a person submitting a document for recordation does not comply with it, either by failing to include the name, or by putting the name in the wrong place on the document. That causes substantial inconvenience to recording officers who are forced to reject documents and return them for correction.

On balance, the Commission has determined that the burdens of the preparer's name requirement outweighs its benefits. The Commission recommends deletion of the requirement.

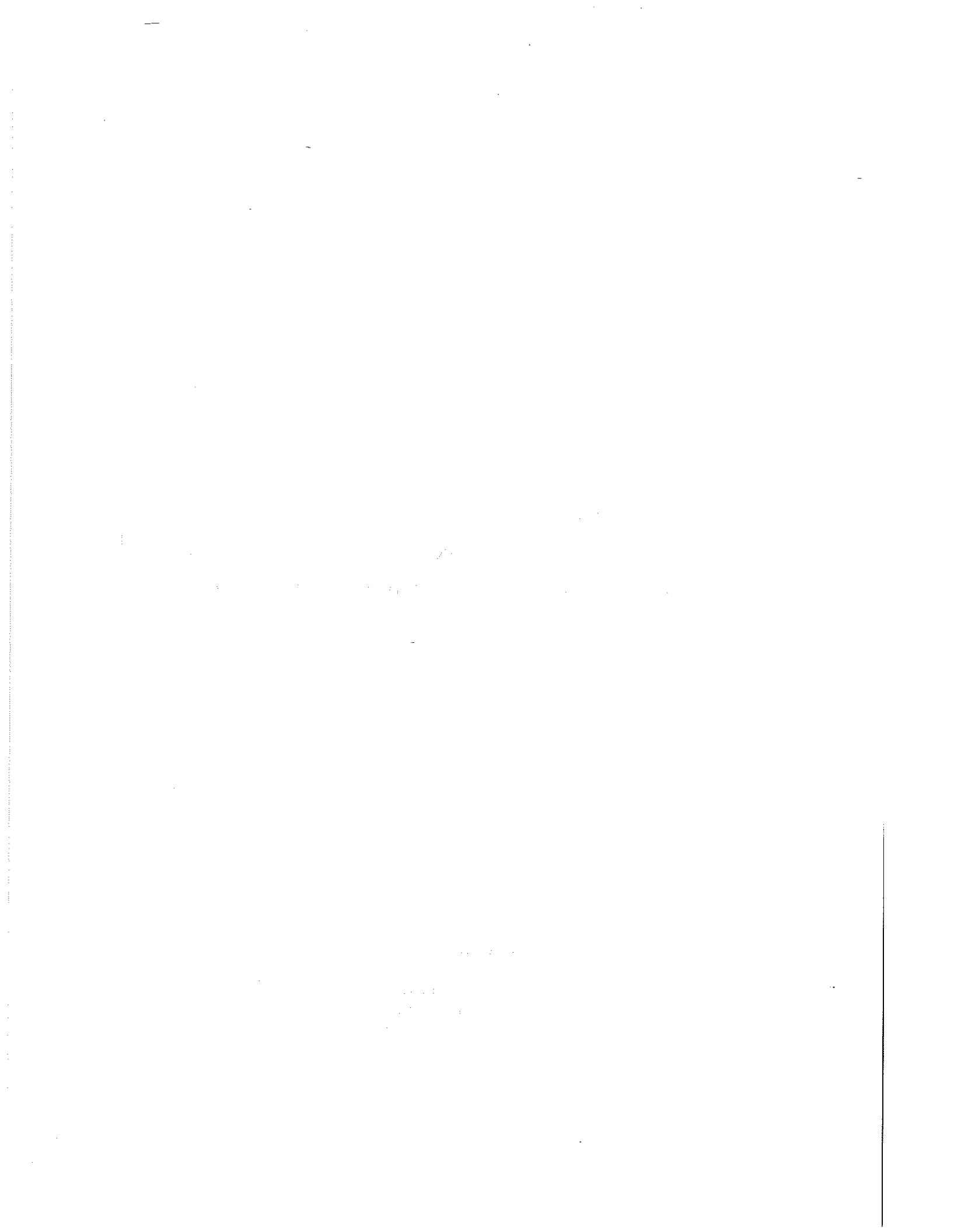
Respectfully submitted,

ALBERT BURSTEIN, Chairman
BERNARD CHAZEN
EDWARD T. O'CONNOR
HUGO M. PFALTZ, JR.
RONALD J. RICCIÓ
HOWARD T. ROSEN
THOMAS P. SHUSTED
PETER SIMMONS
RICHARD G. SINGER

APPENDIX C

**REPORT AND RECOMMENDATIONS
ON
NEW ARTICLE 2A (LEASES); UNIFORM COMMERCIAL
CODE**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575
November, 1989**



INTRODUCTION AND SUMMARY

The leasing industry has expanded significantly since the 1950's, and now represents a sizable sector of the economy. Despite the growth of personal property leasing in the United States, statutory and case law related to lease transactions has failed to provide a coherent framework for the regulation of leases. Scholars and practitioners alike urged uniform statutory treatment of personal property leasing to achieve certainty in the law.¹

In response to the need to codify leasing law, the Permanent Editorial Board of the Uniform Commercial Code, together with the National Conference of Commissioners on Uniform State Laws (hereinafter referred to as the Conference) and the American Law Institute, promulgated the official text of Article 2A. The new Article comprehensively governs lease contracts of personal property, a subject not previously covered by the Uniform Commercial Code. Lease transactions do not fall within the coverage of Uniform Commercial Code Article 2 on Sales; Article 9 on Secured Transactions applies only to leases intended to create security interests.

Commercial law experts and scholars found several shortcomings in the official text of Article 2A. See, Symposium: Article 2A of the Uniform Commercial Code, 39 Ala.L.Rev. 669 (1988). The California Bar Association formed a committee to study and comment on the new Article. The Association issued a highly regarded study of the new Article which criticized specific sections and proposed amendments. "Report of the Uniform Commercial Code Committee of the Business Law Section of the State Bar of California on Proposed California Commercial Code Division 10 (Article 2A)(Senate Bill 1580, as amended September 11, 1987)" (hereinafter referred to as "California Report"), 39 Ala.L.Rev. 979 (1988). The State of California enacted an amended version of Article 2A substantially based upon the Bar Association report. The State of Oregon enacted this version of Article 2A with some variations.

Thereafter, the State of Massachusetts prepared a bill similar to the California version of Article 2A.² Massachusetts amended the California statute primarily to clarify language and exclude California specific amendments. The bill is pending before the Massachusetts legislature. New York, Illinois and Delaware are considering adoption of the Massachusetts version of Article 2A. Although Minnesota, Nevada, Oklahoma, and South Dakota have enacted the official text, it appears that the Massachusetts version will become the model to other states.

The Commission examined the official text of Article 2A, the California statute and the Massachusetts bill. Differences among the three versions, and the effect of Article 2A upon New Jersey law, were identified and analyzed. Since the California and Massachusetts amendments both clarified and improved the official text, the Commission found that the

¹ See, Note, Uniform Commercial Code: Article 2A-Leases: Structuring Priorities of Competing Claimants to Leased Property, 73 Minn. L. Rev. 208 (1988).

² Massachusetts House Bill 3341 has passed the Assembly and is pending in the Senate.

Massachusetts bill embodied the best version of Article 2A. The Commission therefore recommends that the Massachusetts version of Article 2A with variations for local law be adopted in New Jersey.³

The adoption of Article 2A in New Jersey would displace existing contract and bailment law applied to lease transactions. The "intent of the parties" test, now used to determine whether a transaction is a true lease or creates a security interest, would be abolished. Compare General Electric Credit Corp. v. Castiglione, 142 N.J. Super. 80 (Law Div. 1976) with U.C.C. 1-201(37). Article 2A would also supplant the lessor's damage formula expressed in Locks v. Wade, 36 N.J. Super. 128 (App. Div. 1955). See U.C.C. 2A-528. However, since New Jersey has very little law specific to commercial lease transactions, adoption of Article 2A would not significantly change state law.

The Commission prepared a proposed version of Article 2A incorporating the California and Massachusetts revisions and containing the New Jersey amendments. This version is recommended for adoption. The Commission also prepared comments for every section of the proposed version which differs from the official text of Article 2A and its conforming amendments. The recommended text and comments are set forth below.

³ The amendments specific to New Jersey are found at:

Subsection 103(3)[list of definition of terms made parallel to similar list found in Article 9];

Section 104 [list of New Jersey Certificate of Title statutes];

Section 216 [warranty provision made to conform with parallel provision of Article 2];

Section 304 and Section 305 [minor language change to reflect vocabulary of New Jersey criminal law]; and

Section 309 [conforms vocabulary on fixture filings to that found in 9-313(1)(b)].

The conforming amendments specific to New Jersey are found at:

2-403 [made to conform with language change in 2A-304 and 2A-305], 9-302 [made to conform with 2A-104(1)(b)]; and

9-306 [term "proceeds" to include rent payments under lease contract].

NEW JERSEY COMMENTS TO ARTICLE 2A
AND CONFORMING AMENDMENTS

SECTION 103

Subsection 103(1)(e):

Subsection 103(1)(e) follows the California amendment to the Official Text.¹ The substitution of the phrase "who is a natural person" for the phrase "lessee, except an organization" is a clarification of the Official Text. The elimination of the \$25,000 limitation on a consumer lease contract is a substantive change, and broadens the definition of that term.

Subsection 103(1)(g):

Subsection 103(1)(g) follows the amendments made to the Official Text by the California statute, as further amended by the Massachusetts bill.² The California amendments expand the definition of a finance lease. The California statute gives the lessor two additional methods by which to create a statutory finance lease: (1) by providing a writing to the lessee containing information specified by the statute, or (2) by providing a lease contract containing terms specified by the statute.

Under the Massachusetts bill, the lessor cannot exercise the options of creating a statutory finance lease through a writing provided to the lessee, or through a lease contract containing a statement of warranties, when the finance lease is a consumer lease. Additionally, the Massachusetts bill makes it clear that, if a lessor elects to create a statutory finance lease by providing a writing pursuant to subsection (d), the disclosure of terms must be made on or before the date the lease contract is executed. This notice requirement is only implied in the California statute.

Subsection 103(3):

With three exceptions, Official Text Section 103(3) is followed. New Jersey uses the singular form of the following terms in Article 9 (Secured Transactions): (1) document (subsection 9-105(1)(f)); (2) instrument (subsection 9-105(1)(i)); and (3) account (subsection 9-106). The amendments to the Official Text 103(3) conform to the article on Secured Transactions. N.J.S. 12A:9-1 et seq.

¹ California's version of Article 2A is codified at Cal. Com. Code §§10101-10532 (West 1989 Supp.)

² The Massachusetts version of Article 2A is found in Massachusetts House Bill 3341. The bill is pending in the Legislature.

SECTION 104

Subsection 104(1)(b):

Subsection 104(1)(b) lists the applicable New Jersey certificate of title statutes, including the Boat Ownership Certificate Act. N.J.S. 12:7A-1 et seq. The list is based primarily upon the parallel list found in subsection 302(3)(b) of Article 9. N.J.S. 12A:9-302(3)(b).

Subsection 104(1)(d):

Subsection 104(1)(d) follows the Massachusetts amendment of the California version of this subsection. The Massachusetts amendment makes leases subject to decisional consumer protection law. The California version refers to specific statutes in addition to decisional law.

Subsection 104(2):

Subsection 104(2) is amended to conform to the amendment made to subsection 104(1)(d) substituting the word "law" for the word "statute." In the Official Text, subsection (1) contained only a list of statutes. Subsection (1)(d), however, was amended to include consumer decisional law. Hence, the term "law" in subsection (2) refers both to statutes and to judicial decisions.

SECTION 106

Section 106:

Section 106 follows the California amendment to the Official Text, as further amended by the Massachusetts bill. Section 106 limits abusive choice of law and choice of forum clauses in consumer leases. The purpose of this provision is to prevent a lessor from inducing a consumer lessee to agree that the applicable law will be that of a jurisdiction that has little effective consumer protection, or to agree that the proper forum for litigation be one that would be inconvenient to the lessee.

Subsection 106(1):

The Massachusetts revision to subsection 106(1) broadened the permissible choice of law clauses in consumer leases to include the law of the place where the consumer executed the lease, providing the goods are to be used in more than one jurisdiction, none of which is the residence of the lessee. For example, a car rental contract executed in Florida by a New Jersey resident for use of the car in several southern states may be governed by Florida law. Otherwise, the place of execution of the lease contract is not an enforceable choice of law. This choice of law limitation is intended to prevent abusive practices of lessors that might defeat the consumer protection purposes of this section.

SECTION 201

Subsection 201(1)(a):

Subsection 201(1)(a) follows the California amendment which limits the enforceability of oral lease contracts with aggregate payments of less than \$1,000 to non-consumer leases.

SECTION 209

Subsection 209(3):

Subsection 209(3) follows the California amendment to the Official Text. This Official Text subsection provides that, in the event a lessor and supplier modify or rescind the supply contract after the lessee has entered into a finance lease, the lessee has a cause of action against the lessor. The lessee also has a cause of action against the supplier, if the supplier knew the lessee had entered into the finance lease. The California amendment deletes the lessee's cause of action against the supplier, since the supplier cannot effectively modify or rescind the supply contract when the supplier has notice that the lessee has entered into a finance lease. When the modification or rescission is ineffective against the lessee, but the lessee is nevertheless damaged, for example, by non-performance, the lessee has a cause of action against the supplier and lessor under the original supply contract.

In addition, California added a new subsection (4). This subsection clarifies that the lessee retains all rights and remedies that the lessee may have against the supplier arising from any agreement between them or from any other law.

SECTION 216

Section 216 defines the extent of a lessor's warranties to persons injured by the goods as a result of a breach of warranty. The Official Text provides three alternatives. Section 216 is modeled after U.C.C. Section 2-318.

Alternative A was chosen to parallel the choice embodied in Section 318 of Article 2. Alternative A is not intended to displace principles of tort and negligence law that have developed in New Jersey since the enactment of Section 2-318. See, Spring Motors Distributors, Inc. v. Ford Motor Co., 98 N.J. 555 (1985) [claim by corporation under the U.C.C. of economic loss in a breach of warranty action recognized without regard to vertical privity]; Heavner v. Uniroyal, Inc., 63 N.J. 130 (1973); Rosenau v. Cty. of New Brunswick and Worthington Gamon Motor Co., 51 N.J. 130 (1968) [applying strict liability in tort, not the U.C.C., to an action for damages between a consumer and manufacturer not in privity]; Santor v. G. & M. Karagheusian, 44 N.J. 52 (1965) [consumer allowed to recover against manufacturer, though there was no privity between the parties and the action was for economic loss]; Cintrone v. Hertz Truck Leasing, etc., 45 N.J. 434 (1965) [lease agreement for personal property carries an implied warranty of fitness and person injured by product can recover in strict liability in tort]; and

Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358 (1960)[abolished notion of privity of contract from all cases involving the sale of defective goods that cause physical injury]. The common law of New Jersey extends protection to persons other than those identified by Sections 2-318 and 2A-216.

SECTION 303

Section 303:

Section 303 follows the California amendment of the Official Text. Subsection 3(a) makes ineffective any provision in a lease contract prohibiting the "creation or enforcement of a security interest of the lessor under a lease contract or the lessor's residual interest in the goods." This amendment facilitates the lessor's ability to obtain financing.

Further, subsection 3(c) clarifies that the creation of a security interest in "(i)...(A) the interest of the lessor under the lease contract or (B) the lessor's residual interest in the goods or (ii) the exercise of rights as a secured party pursuant to the security interest" does not materially change the duty of or materially increase the burden or risk imposed upon the lessee under subsection (1)(b). However, transfers of a lessor's interest under Section 9-504 or Section 9-505 can be challenged by a lessee as a material alteration of the lease contract.

Subsection 3(d) clarifies that a provision in a lease obligating the lessee to keep its interest in the lease contract and goods free from liens and encumbrances is effective, notwithstanding subsection 303(1)(b).

SECTION 304

Section 304:

The New Jersey Code of Criminal Justice (Title 2C) does not use the term "larceny." Thus, subsection 304(1)(D) is amended by substituting the phrase "fraud punishable under the criminal law" for the phrase "fraud punishable as larcenous under the criminal law." No substantive change is intended.

Subsection 304(2):

Subsection 304(2) follows the Massachusetts amendment to the Official Text. The "entrustee-lessor referred to is the lessor of the existing lessee." D. Rapson and H. Sigman, "Reasons for Revisions," 4 (as set forth in mark-up dated January 24, 1989 of Massachusetts House Bill No. 6269 (February 24, 1989)) (available from Mr. Rapson, The CIT Group, Inc., 650 CIT Drive, Livingston, New Jersey 07039-0490.)

SECTION 305

Section 305:

The New Jersey Code of Criminal Justice (Title 2C) does not use the term "larceny." Thus, subsection 305(1)(c) is amended by substituting the phrase "fraud punishable under the criminal law" for the phrase "fraud punishable as larcenous under the criminal law." No substantive change is intended.

SECTION 307

Subsection (2)(b) and (2)(c) "provide new tests to determine the priority of a security interest in the goods granted by the lessor as against a lessee not in the ordinary course of business. These tests replace the "hypothetical secured party" test in the Official Text of subsection 307(2)(b)." Rapson and Sigman, "Reasons for Revisions," 4-5, supra.

Subsection 307(2)(b):

Subsection 307(2)(b) follows the California amendment to the Official Text. Under subsection (2)(b), the secured party has priority over the lessee when the lessee knows of a pre-existing, unperfected security interest. This is consistent with the result in the case of a buyer not in the ordinary course of business under Section 9-301(1)(c). Official Text 307(2)(b), which makes knowledge irrelevant, results in an inconsistency with Section 9-301(1)(c).

"Under revised subsection (2)(c), the creditor has priority over the lessee if the security interest attached and was perfected before (i) the lease contract became enforceable or (ii) the lessee gave value and received delivery of the goods. In addition, a purchase money security interest will have priority, if the security interest attached and was perfected by the date that is ten days after the lessor or lessee received possession of the goods, whichever is earlier. The 10-day period corresponds to the grace period for perfection of a purchase money security interest under Section 9-312(4)." Rapson and Sigman, "Reasons for Revisions," 5, supra. The revision of subsection (2)(c) also achieves results that are consistent with Section 9-301(1)(c) in the case of buyers not in the ordinary course of business.

SECTION 308

Subsection 308(1):

Subsection 308(1) follows the California amendment of the Official Text, as further amended by the Massachusetts bill. The Massachusetts amendment adding the words "or voids the lease contract" found in the California statute is making only a grammatical change.

Subsection 308(2):

Subsection 308(2) also follows the California statute. California amended subsection 308(2) because the leasing article does not contain any provision analogous to Section 2-402(1), which subsection (2) was intended to limit, thereby rendering 308(2)(a) unnecessary and inappropriate. The California report stated the language was "inappropriate since any lease transaction which is a fraudulent transfer... ought to be avoidable, whether or not it is in the current course of trade." "California Report", 39 Ala.L.Rev. 979, 1025-26 (1988)(emphasis added).

SECTION 309

Subsection 309(1)(b):

Subsection 309(1)(b) amends the Official Text by conforming the section to the definition of "fixture filing" found in Section 9-313(1)(b), which indicates that a "fixture filing" is filed where a mortgage would be "filed or recorded." The word "covering" replaces the word "concerning" since "covering" is used in Section 9-313.

Subsection 309(4)(a):

Subsection (4)(a) conforms substantially to the style of Section 9-313(4)(a) dealing with purchase money security interests in fixtures.

SECTION 406

Section 406:

Section 406 follows the California amendment to the Official Text. Subsection 1(b) "excepts all finance leases from the right of a lessee to modify the lease for excused performance, not just non-consumer finance leases." Rapson and Sigman, "Reasons for Revisions," 6, supra.

SECTION 407

Section 407:

Section 407 follows the California amendment to the Official Text. Subsection (3) clarifies that Section 407 "does not govern the validity under other applicable law of "hell or high water" clauses in lease contracts." Rapson and Sigman, "Reasons for Revisions," 6, supra.

SECTION 506

Subsection 506(1):

Subsection 506(1) follows the California amendment to the Official Text that exempts consumer leases from the provision allowing the parties to reduce the statute of limitations to not less than one year.

Subsection 506(2) also follows the California amendment to the Official Text. The California amendment differentiates the accrual of a cause of action for indemnity from indemnity based upon loss or damage. A cause of action for indemnification accrues upon discovery of the claim; a cause of action based upon loss or damage accrues upon payment.

SECTION 508

Subsection 508(3):

Subsection 508(3) follows the Massachusetts amendment to the Official Text. The amendment clarifies that Article 2A remedies are available to a lessee for any default under the lease contract not identified in subsections (1) and (2), providing the lease contract does not specifically exclude the remedy. The parallel provision for lessors is found at subsection 523(2).

SECTION 513

Subsection 513(1):

The addition of "it is" following the word "because" is a style change.

SECTION 516

Subsection 516(2):

Subsection 516(2) follows the California amendment to the Official Text. Amended subsection (2) allows a consumer lessee to revoke acceptance of non-conforming goods in a finance lease when the supplier assisted in the preparation of the lease contract or negotiated the terms with the lessor.

Subsection 516(3):

Amended subsection (3), which also follows the California amendment, requires the lessee, in the case of a finance lease, to notify the supplier within a reasonable time after the lessee discovers or should have discovered any default. Consumer leases are excepted from this rule under amended subsection (6). Subsection (3)(b) deletes reference to consumer leases because of the broad exception provided consumer leases in subsection (6).

SECTION 518

Section 518 follows the California amendments to the Official Text, as further amended by the Massachusetts bill.

Subsection 518(1):

Subsection (1), following the Massachusetts amendment, deletes the reference to "subsection (1)" of 2A-508 to conform to the Massachusetts revision of subsection 508(3).

Subsection 518(2):

The California statute amended subsection (2) to redefine the date from which the lessee's damages are calculated in the event the lessee covers by entering into a substantially similar lease agreement. In the Official Text, damages are calculated from the date of the lessor's default. In the California statute, however, the lessee's damages are calculated from the date of the commencement of the term of the new lease agreement. This is consistent with the damage formula established for lessors in Sections 527 and 528 as amended by California and followed by Massachusetts. The word "then" is also inserted before the phrase "remaining lease term of the original lease agreement."

The Massachusetts bill further amended subsection (2) to delete the cross-reference to Section 503. This amendment is not followed.

Subsection 518(3):

The California statute also amended subsection (3) by giving the lessee that qualifies for treatment under subsection (2) the option to recover damages under either subsection (2) or Section 519. The latter section provides a damage recovery measured by market rent. The Official Text does not explicitly give this option to the lessee. Again, this change is consistent with the lessor's options contained within Sections 527 and 528 as amended by California and followed by Massachusetts.

The California statute further amended subsection (3) by deleting the words "and Section 2A-519 governs" that appear at the end of subsection (3) and inserting the words "under Section 2A-519" following the word "lessor." This is essentially a non-substantive change.

SECTION 519

Section 519:

Section 519 follows the California amendment to the Official Text, as further amended by the Massachusetts bill. The California statute amended subsection (1) to substitute the phrase "whether or not the lease agreement qualifies" for "that for any reason does not qualify." This amendment makes it clear that the lessee has the option of recovering damages under either Section 518 or Section 519 regardless of the lessee's decision to cover. This amendment also conforms Section 519 with Section 528.

The California statute also amended subsection (1) to substitute the phrase "default by the lessor (subsection 1 of Section 2A-508) is" for "nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is." The Official Text version was rejected because the list fails to mention non-payment of rent as a type of default. This amendment conforms Section 519 with Section 528.

The Massachusetts bill further amended subsection (1) to delete the reference to "subsection 1" of 2A-508 to conform to the revision to Section 508. The Massachusetts bill also amended subsection (1) to delete the cross-reference to Section 503. This latter amendment is not followed.

SECTION 523

Section 523:

Section 523 follows the Massachusetts amendment to the Official Text. Subsection (2) clarifies the right and remedies of a lessor for defaults other than those specified in subsection (1) by making Article 2A remedies available for any default under the lease contract, unless excluded or modified by the lease contract.

SECTION 524

Subsection 524(1):

The reference to "subsection (1)" of 2A-523 is deleted to conform this section to the revision made to subsection 523(2).

SECTION 527

Section 527:

Section 527 follows the California amendment of the Official Text, as further amended by the Massachusetts bill. The California statute amended subsection (2) by establishing the date of the new lease term as the date from which the lessor's damages are calculated and discounted to present value. The lessor recovers the full amount of unpaid rent until the date of the commencement of the new lease agreement. The lessor also receives the present value, as of the date of the commencement of the new lease, of the difference between the total rent then remaining under the original lease and the total rent for the lease term of the new lease agreement.

Under the Official Text, the damages are determined "as of the date of default" which will usually be prior to the time that the lessor can obtain possession of and re-lease the goods. Under this view, the lessor is not entitled to be paid the full rent during the time the defaulting lessee still has possession of the goods. The lessor will only receive a damage recovery during that gap period measured by "the present value as of the date of default of the difference between the total rent for the remaining lease term of the original lease agreement and the total rent for the lease term of the new lease agreement." Rapson, "Deficiencies and Ambiguities in Lessor's Remedies Under Article 2A: Using Official Comments to Cure Problems in the Statute," 39 Ala.L.Rev. 875, 898, n.73 (1988). The California amendment is intended to correct this unfair result. However, the lessor cannot unduly delay obtaining possession of its goods in order to get a higher damage award because the substitute lease must be made in good faith and in a commercially reasonable manner.

The California statute also amended subsection (3) to make clear that, in the event the lessor enters into a substantially similar lease agreement, the lessor has the option to proceed under either Section 527 or Section 528 to recover damages.

The Massachusetts bill further amended subsection (1) by deleting the reference to "subsection 1" of 2A-523 to conform to the revision to subsection 523(2). The Massachusetts bill also amended subsection (2) to delete the cross-reference to Section 503. This latter amendment is not followed.

SECTION 528

Section 528:

Section 528 follows the California amendment of the Official Text, as further amended by the Massachusetts bill. The California statute amended subsection (1) by substituting the phrase "whether or not the lease agreement qualifies for treatment under subdivision (2) of Section 10527" for the phrase "that for any reason does not qualify for treatment under Section 527(2)" used in the Official Text. Cross-references to Section 503 and Section 523 were added.

The California amendment also substitutes the phrase "damages for default by the lessee" for the phrase "damages for non-acceptance or repudiation by the lessee" to make it clear that this provision applies to a lessee's payment default, as well as to a lessee's repudiation or non-acceptance.

Furthermore, the California statute changes the date from which damages are calculated in subsection (1)(a) to the date the lessor either obtained possession of the goods or the date the lessee made a tender of possession of the goods back to the lessor, whichever date is earlier. Reference to this date is made in subsection (1)(b). The Official Text measures damages from the date of default. As a result, the lessor is not entitled to be paid the agreed rent during the time the lessee still has possession of the goods. Under the Official Text, the lessor's damages for the gap period are measured by "the present value as of the date of default of the difference between the total rent for the remaining lease term of the original lease agreement and the market rent." This formula produces a damage recovery less than that provided under the California statute.

The California statute amends subsection (2) by making the "present value" of the profit, not the profit itself as the Official Text indicates, the lessor's measure of damages, if the damages provided in subsection (1) are insufficient to make the lessor whole.

The Massachusetts bill amended subsection (1) to delete the reference to "subsection (1)" of Section 523. The Massachusetts bill also substituted the words "on the date" for "at the time" in subsection (1). This amendment is a clarification, not a substantive change. In addition, the Massachusetts bill deleted the cross-reference to Section 503 in subsection (1). However, this amendment is not followed.

SECTION 529

Section 529:

Section 529 follows the California amendment to the Official Text, as further amended by the Massachusetts bill. The California amendment to subsection (1)(a) "limits the right of the lessor to recover, in the case of accepted goods, accrued and unpaid rent plus the present value of the rent for the remaining lease term of the lease agreement, to those instances where the goods are not repossessed by or effectively tendered back to the lessor." Rapson and Sigman, "Reasons for Revisions," 11, supra. If the goods have been repossessed or tendered back, subsection (1)(b) applies.

California further amended subsection (1)(a) by determining the lessor's damages "as of the date of entry of judgment in favor of the lessor" instead of the "date of default." Because the lessor is "being deprived of the possession of the goods, it is entitled to full rent, not just the present value of future rentals." Rapson and Sigman, "Reasons for Revisions," 11, supra. The phrase "within a commercially reasonable time" is deleted to simplify the statute.

California amended subsection (1)(b) by adding the language "where the lessor has not delivered the goods or has taken possession of them or the lessee has effectively tendered them back to the lessor". The phrase "identified to the lease contract" encompasses goods the lessor has never delivered. Under this subsection, if the goods have never been delivered or are repossessed by the lessor or effectively tendered back by the lessee, the lessor must first attempt to mitigate damages. The lessor can recover unmitigated damages only upon a showing that his attempts to mitigate damages have failed. The unmitigated damage recovery is measured by the present value "of the rent for the then remaining lease term of the lease agreement." The measure of damages is the same under both subsection (1)(a) and subsection (1)(b); the difference is that under subsection (1)(b) the lessor must first attempt to mitigate damages. As in the case of subsection (1)(a), subsection (1)(b) determines the lessor's damages "as of the date of entry of judgment in favor of the lessor."

California amended subsection (3) to clarify that a lessor who obtains a judgment under Section 529(1), and later disposes of the goods before the end of the remaining lease term, must cause an appropriate credit against the judgment "to the extent that the amount of the judgment exceeds the recovery available" under Section 527 and 528.

California amended subsection (4) to add the requirement that, after payment of the judgment for damages, a lessee is entitled to use and have possession of the goods during the remaining lease term, provided the lessee complies with all other terms and conditions of the lease agreement.

The Massachusetts bill further amended the California statute by deleting the reference to subsection (1) of Section 523.

SECTION 532

Section 532:

Section 532 follows the California amendment. Section 532 was added to Article 2A by California because there was no specific reference in the Official Text of Article 2A to the lessor's reversionary interest. The purpose of Section 532 is "to clearly provide for the right of a lessor to the reversionary interest in the goods leased and to make clear that the preceding remedial sections relate to the lease term and are in addition to and do not negate protection of the reversion." "California Report," 39 Ala. L.Rev. 979, 1045-46 (1988).

AMENDMENTS

SECTION 2-403

Former subsection (1)(d) used the sentence "the delivery was procured through fraud punishable as larcenous under the criminal law" to state the rule that a person who obtains goods through fraud can transfer good title to a bonafide purchaser. The Code of Criminal Justice does not recognize larceny as a criminal offense. Thus, the phrase "fraud punishable under the criminal law" has been substituted for the phrase "fraud punishable as larcenous under the criminal law." This amendment conforms this subsection to Sections 304 and 305 of Article 2A.

SECTION 9-302

Former subsection 9-302(3)(b), which listed the certificate of title statutes of New Jersey, did not include the Boat Ownership Certificate Act found in N.J.S. 12:7A-1 et seq. The enactment of amended Section 302 in 1981 preceded the enactment in 1987 of the Boat Ownership Certificate Act. Reference to the latter statute has been added to subsection (3)(b) to complete the list of certificate of title statutes in New Jersey.

SECTION 9-306

The amendment to subsection 9-306(1) expands the definition of the term "proceeds" to include rent received from a lease contract. This amendment makes clear that rental payments are the proceeds of collateral that the debtor leases to others. Thus, a security interest continues in collateral notwithstanding the debtor's unauthorized disposition by lease contract. In effect, the secured party is given a perfected security interest in the lease contract itself by operation of law. This is viewed as the correct result under Section 9-306. See, Harris, "Rights of Creditors under Article 2A," 39 Ala. L.Rev. 803, 824-26 (1988). A few cases have held, however, that rent is not a Section 306 proceed because a rental of property is not a permanent disposition of property. See, e.g., General Electric Credit Corp. v. Cleary Brothers Construction Co., 30 U.C.C. Rep. 1444, 1445-46 (S.D. Fla. 1980). But see, Feldman v. Philadelphia National Bank, 408 F.Supp. 24, 37 (E.D. Pa. 1976). Amended Section 9-306 adopts the view that a lease contract is a disposition of collateral within the meaning of the statute, since the lease of the collateral has the capacity to limit its value.

SECTION 9-318(4)

The amendment to subsection (4) follows the California amendment to this subsection. The phrase "security interest in chattel paper" is added to make clear that any term in a lease contract purporting to prohibit the lessor from granting a security interest in the lease contract is ineffective. This amendment follows from the amendment made to 2A-303.

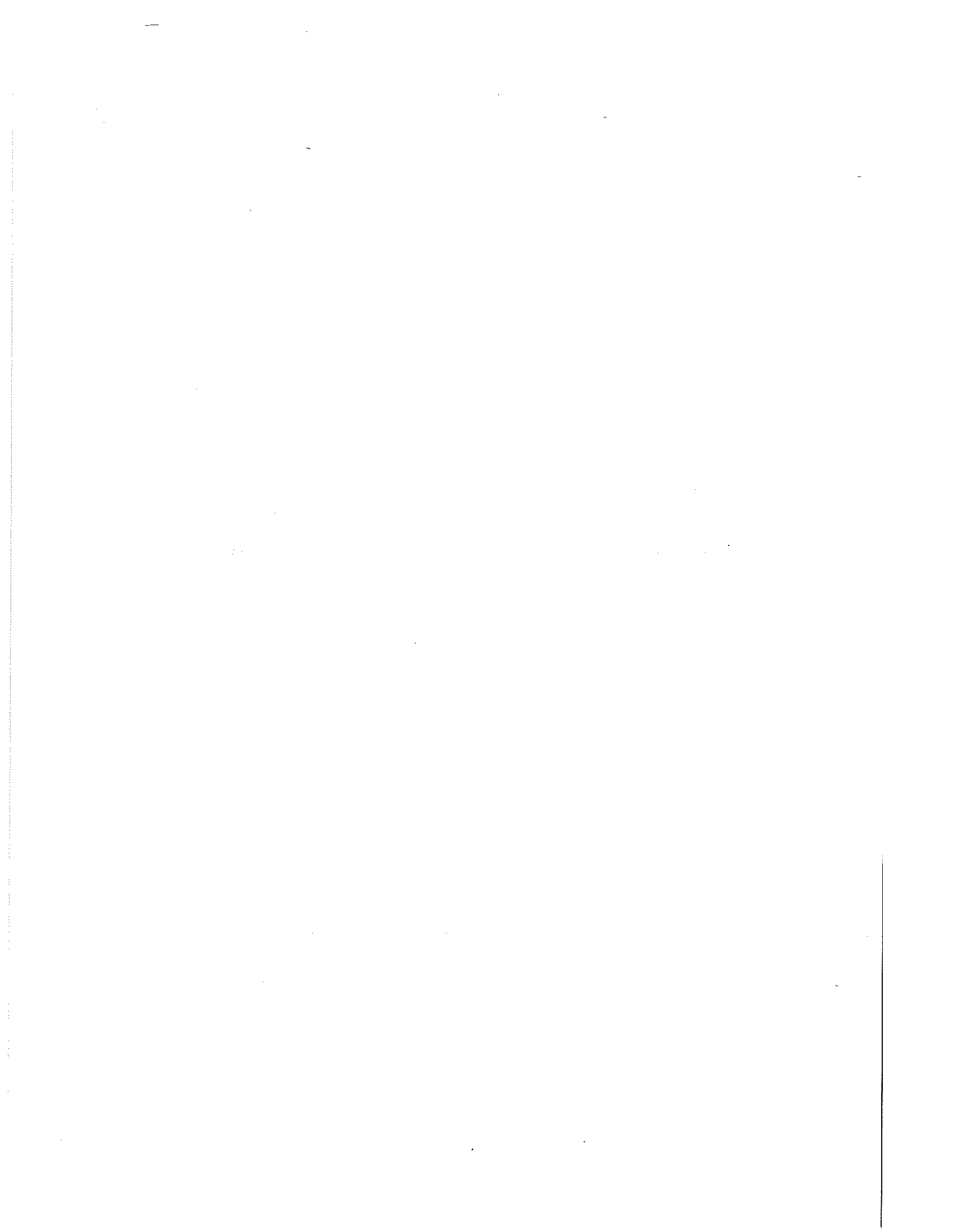
Respectfully submitted,

ALBERT BURSTEIN, Chairman
BERNARD CHAZEN
EDWARD T. O'CONNOR
HUGO M. PFALTZ, JR.
RONALD J. RICCIO
PAUL H. ROBINSON
HOWARD T. ROSEN
THOMAS P. SHUSTED
PETER SIMMONS

APPENDIX D

**REPORT AND RECOMMENDATIONS
CONCERNING THE ADMINISTRATIVE PROCEDURE
ACT**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575
November , 1989**



This project was suggested by the opinion in DiMaria v. Board of Trustees of the Public Employees Retirement System, 225 N.J. Super. 341 (App. Div. 1988). In his opinion in that case Judge Skillman pointed out a gap in the provisions of the Administrative Procedure Act, C. 52:14B-1 to -15, which govern the issuance of decisions in contested cases decided by administrative agencies. Contested cases are those in which an administrative law judge takes evidence and hears arguments, and makes a recommendation to the agency as to how the case should be resolved. The gap results from the interplay between subsections (c) and (d) of section 10 of the Act, C. 52:14B-10.

Subsection (c) of section 10 requires an agency to announce whether it will "adopt, reject or modify" the recommendation of an administrative law judge within 45 days of receiving the judge's recommendation. C. 52:14B-10(c). Id. If the agency fails to act upon the recommendation within the 45-day period the administrative law judge's recommendation is automatically adopted as that of the agency. Id. If the agency does act within the 45 days, subsection (d) of section 10 requires an agency to support its action to adopting, rejecting or modifying the recommendation of the administrative law judge with a final decision including findings of fact and conclusions of law. C. 52:14B-(d). Subsection (d), however, does not specify whether the final decision must be adopted concurrently with the agency action or whether it may be adopted at some later time.

Since the adoption of the Administrative Procedure Act, some agencies have interpreted subsections (c) and (d) of section 10 as permitting them to use a bifurcated decision-making process in contested cases. Those agencies may announce the determination to "adopt, reject or modify" the recommendation of an administrative law judge within the 45 days required by subsection (c), but may issue the findings and conclusions required by subsection (d) at a later date. In most of these cases the agencies issue findings of fact and conclusions of law relatively soon after they announce their actions. However, since no time limit is expressed in subsection (d), there have been cases in which inordinate delays have occurred in the issuance of final decisions upon which the parties may rely and from which the parties may appeal.

The court in DiMaria held that the statute allowed this bifurcated decision process and suggested that legislation was needed to provide a time limit for the adoption of a final decision including findings of fact and conclusions of law:

We add a cautionary comment. It is vitally important that an agency issue findings of fact and conclusion of law in compliance with N.J.S.A. 52:14B-10(d), and that it do so expeditiously. An administrative agency's explanation of the reasons for its decision is required not only for appellate review but also to assure the parties that their factual allegations and legal arguments have been fully considered. See Riverside General Hospital v. N.J. Hospital Rate Setting Com'n, 98 N.J. 458, 468 (1985); Application of Howard Savings Institution of Newark, 32 N.J. 29, 52 (1960). Therefore, this

opinion should not be understood to condone delay in an agency's issuance of findings of fact and conclusions of law. In fact, we suggest that the Legislature consider amending the Administrative Procedure Act to place an outside limit on the time within which an agency head must issue findings and conclusions. [225 N.J. Super at 349]

After carefully considering a number of possible statutory amendments providing various systems of time limits and consequences for failure to act within them, the Commission has concluded that the agency action and final decision setting out the reasons for the action should be filed concurrently. The Commission rejects any system of time limits which separates the agency action from its legal basis. Such a bifurcated system encourages agencies to render decisions that are divorced from the detailed factual and legal reasoning that is supposed to underlie their actions.

The formal final decision with its findings of fact and conclusions of law fulfills a number of critical roles in the administrative process. The final decision provides a basis for an appellate court to assess whether an agency action is sufficiently grounded in relevant facts and is not based on improper considerations. Riverside General Hospital v. N.J. Hospital Rate Setting Com'n, 98 N.J. 458, 468 (1985); Application of Howard Savings Institution of Newark, 32 N.J. 29, 52 (1960). It also serves to keep the agency within its jurisdiction and to inform the parties of the reasons for the action and assure them that their arguments have been considered. State Department of Health v. Tegnazian, 194 N.J. Super. 435 (App. Div. 1984); Application of Howard Savings Institution of Newark, supra. These purposes can only be served by concurrent filing of the final decision. When the findings of fact and conclusions of law are not made until after the agency action is announced, there is at least a possible perception that the findings are made to justify the action rather than the action taken as required by the findings. If the statute is to assure that an agency will act as the facts and law require and that the public will trust that that is so, it must provide that an agency give its reasons at the time it acts.

These considerations lead the Commission to recommend an amendment to the Administrative Procedure Act to provide that an agency may adopt, reject or modify the recommendation of an administrative law judge only by filing a final decision. The inherent implication of this course is that if the final decision is not filed within the time period provided, the agency has not acted within time and the administrative law judge's recommendation is deemed adopted. This remedy is a serious one, and the Commission does not suggest it lightly. As the courts have noted, failure to make findings of fact is not a mere technical flaw; it is the findings which give an agency action its presumed validity. State Department of Health v. Tegnazian, supra. A less stringent rule is appropriate in cases involving technical flaws, and no change is recommended as to such cases. King v. N.J. Racing Commission, 103 N.J. 412, 420-423 (1986); Town of Belleville v. Coppla, 187 N.J. Super. 147, 152 (App. Div. 1982). Nor does the Commission recommend that this remedy apply where an agency makes inadequate findings. Where an agency has made findings, but their form is inappropriate or additional facts are needed, it has been the practice for a court to remand the matter to the agency. See, e.g. St. Vincent's Hospital v. Finley, 154 N.J. Super. 24 (App. Div. 1977); State Department of Health v. Tegnazian, supra.

The caseload of some agencies is large, but the amendment recommended would not increase the work necessary to decide a case. There are situations where an agency cannot meet a time limit, but the Administrative Procedure Act provides a method for extension of time limits. C. 52:14B-10; subsection (c), (last sentence). It may be that the proposed amendment will increase slightly the number of cases where an agency must seek an extension, but extensions have been given freely in the past, and there is nothing in the proposed amendment which would change that practice.

For the reasons stated, the Commission recommends the following amendment to subsection (c) of C. 52:14B-10:

52:14B-10. Evidence; judicial notice; recommended report and decision; final decision; effective date

In contested cases:

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted formally by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein. The administrative law judge may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either (i) necessitate undue consumption of time or (ii) create substantial danger of undue prejudice or confusion. The administrative law judge shall give effect to the rules of privilege recognized by law. Any party in a contested case may present his case or defense by oral and documentary evidence, submit rebuttal evidence and conduct such cross-examination as may be required, in the discretion of the administrative law judge, for a full and true disclosure of the facts.

(b) Notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or administrative law judge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The experience, technical competence, and specialized knowledge of the agency or administrative law judge may be utilized in the evaluation of the evidence, provided this is disclosed of record.

(c) All hearings of a State agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director of the Office of Administrative Law, except as provided by this amendatory and supplementary act. A recommended report and decision which contains recommended findings of fact and conclusions of law and which shall be based upon sufficient, competent, and credible evidence shall be filed, not later than 45 days after the hearing is concluded, with the agency in such form that it may be adopted as the decision in the case and delivered or mailed, to the parties of record with an indication of the date of receipt by the agency head; and an opportunity shall be afforded each party of record to file exceptions, objections, and replies thereto, and to present argument to

the head of the agency or a majority thereof, either orally or in writing, as the agency may direct. The head of the agency, upon a review of the record submitted by the administrative law judge, shall [adopt, reject or modify] issue a final decision adopting, rejecting or modifying the recommended report and decision no later than 45 days after receipt of such recommendations. Unless the head of the agency [modifies or rejects] issues a final decision, including findings of fact and conclusions of law, adopting, rejecting or modifying the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency. The recommended report and decision shall be a part of the record in the case. For good cause shown, upon certification by the director and the agency head, the time limits established herein may be subject to extension.

(d) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated and shall be based only upon the evidence of record at the hearing, as such evidence may be established by rules of evidence and procedure promulgated by the director.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The final decision may incorporate by reference any or all of the recommendations of the administrative law judge. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party and to his attorney of record.

(e) Except where otherwise provided by law, the administrative adjudication of the agency shall be effective on the date of delivery or on the date of mailing, of the final decision to the parties of record, whichever shall occur first, or shall be effective on any date after the date of delivery or mailing, as the agency may provide by general rule or by order in the case. The date of delivery or mailing shall be stamped on the face of the decision.

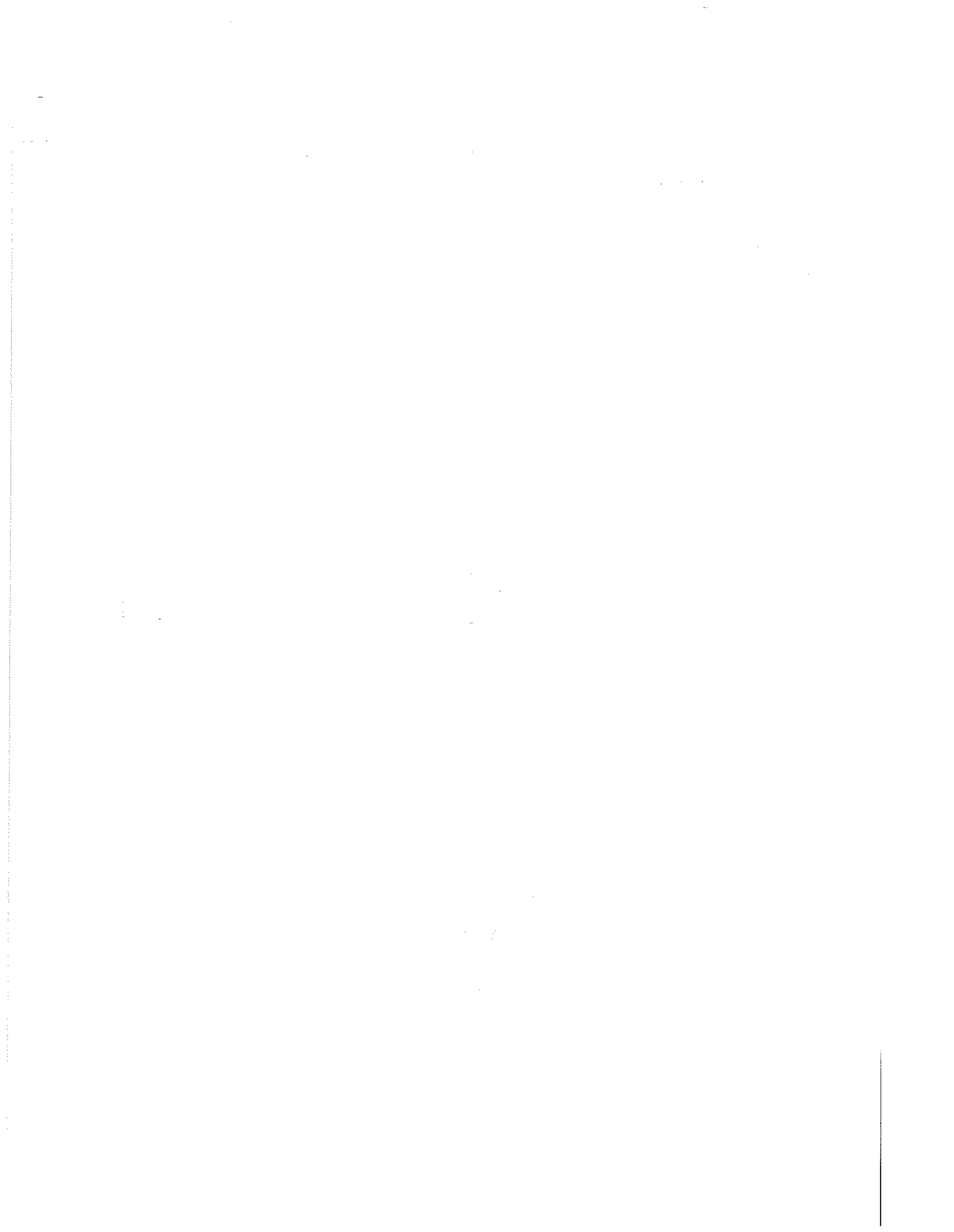
Respectfully submitted,

ALBERT BURSTEIN, Chairman
BERNARD CHAZEN
EDWARD T. O'CONNOR
HUGO M. PFALTZ, JR.
PAUL H. ROBINSON
RONALD J. RICCIO
HOWARD T. ROSEN
THOMAS P. SHUSTED
PETER SIMMONS

APPENDIX E

**REPORT AND RECOMMENDATIONS
ON
NOTARIES' LIABILITY**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575
August, 1989**



REPORT AND RECOMMENDATIONS ON NOTARIES' LIABILITY

The statutes establishing the office of notary are found at C. 52:7-10 to 21. These sections provide in detail for the appointment of notaries. R.S. 41:2-1 includes notaries among those who may take oaths, and R.S. 46:14-6 includes notaries among those who may take acknowledgments. An inclusive list of the notarial functions is found not in the statutes, but in the case law. See Commercial Union Ins. Co. v. Thomas-Aitken Constr. Co., 49 N.J. 389, 393 (1967), aff'd, 54 N.J. 76 (1969). C. 41:1-4 to 6 describes the taking of oaths, but contains little about the role of the officer administering the oath. R.S. 46:14-6 refers only obliquely to the officer's duty in regard to acknowledgments.

For a statement of the duty owed by a notary, one must turn to judicial opinions. A notarial officer must use reasonable care to satisfy himself of the identity of the person whose oath or acknowledgment is being taken. Immerman v. Ostertag, 83 N.J. Super. 364, 370 (Law Div. 1964); In re H.C., Jr., 81 N.J. Eq. 8, 15 (Ch. 1912). The method of ascertaining the identity is not material. In re H.C., Jr., supra at 16. The notary must actually administer an oath to a person whose oath or acknowledgment is taken. Immerman v. Ostertag, supra at 371, 372. While a notarial officer is not an insurer of the truth of what is sworn to or of the identity of the persons swearing, he must exercise due care in performing his functions and may be held civilly liable for failure to exercise such care. Commercial Union Ins. Co. v. Thomas-Aitken Constr. Co., 54 N.J. 76, 81 (1969).

A notary is often called on to take an oath or acknowledgment for a person whom he has not previously met. If the person is not who he represents himself to be, then despite having exercised due care, the notary may be civilly liable. The cost of subsequent litigation may be high. Some notarial officers, such as attorneys, may have malpractice insurance; for others, insurance is impractical or unavailable. The burden of civil liability must be judged in light of the fees set by statute for notarial acts -- \$.50 for administering an oath or taking an affidavit and \$1.00 for taking an acknowledgment. N.J.S. 22A:4-14.

The Commission considered it appropriate to provide protection from civil liability for a notarial officer. Such protection for public officers is common. The immunity which the Commission recommends is qualified. It would protect against claims based on negligence. It would not protect against knowing participation in fraud or other affirmative misconduct.

NEW SECTION

A notary or other officer authorized to perform notarial acts shall be immune from civil liability for negligence in any act or omission in the performance of a notarial act.

Respectfully submitted,

ALBERT BURSTEIN, Chairman
BERNARD CHAZEN
EDWARD T. O'CONNOR
HUGO M. PFALTZ, JR.
RONALD J. RICCIO
HOWARD T. ROSEN
THOMAS P. SHUSTED
PETER SIMMONS
RICHARD G. SINGER

APPENDIX F

**REPORT AND RECOMMENDATIONS
ON
CONSUMER LEASES**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575
December, 1989**



INTRODUCTION AND SUMMARY

Consumer leases have become a popular form of financing the possession and use of personal property. Leasing accounts for a large percentage of consumer transactions, and provides an attractive alternative to the purchase of consumer goods. While leases serve an important commercial purpose by expanding access to the market, the technical language of the contract often conceals pitfalls for the consumer.

The leasing industry generally uses standard contracts to facilitate the lease transaction. The standard contract contains few protections for the lessee. A lessee cannot negotiate the terms of the lease agreement other than the price and method of payment. The agreements reached, therefore, typically are "contracts of adhesion" and contain onerous clauses. Existing law does not comprehensively address the problems with consumer leases arising from the use of standard contracts. The Commission concluded that additional consumer legislation is necessary to protect the public and fill the gap in existing law for lease transactions.

The consumer protection problems in lease transactions are similar to the problems that arose in secured transactions. Court decisions and legislation have gradually eliminated the most egregious abuses in secured transactions. Leases of personal property and secured transactions are very similar from the consumer's point of view, which may lead consumers to assume incorrectly that the protections afforded them in secured transactions apply to leases. Though the business setting may justify some differences in legal treatment between leases and secured transactions, the Commission believes that abuses which are not tolerated in secured transactions should not be allowed in lease contracts.

The Commission has identified a number of specific problems in consumer lease contracts. A primary problem involves the measure of damages upon the lessee's default. In some cases, a lessee is charged the full amount of all future payments due on the lease without recognition of the economic benefit to the lessor of early payment. In cases where the lessee receives some credit, it is substantially less than full reduction to present value. The lessee is also not given credit for the early return of the leased goods. Thus, a lessor receives more profit from a default than from a completed performance of the lease contract. In contrast, damages in a secured transaction are limited by law.

The limitation on damages in secured transactions also applies to early termination of the contract. The buyer in a secured transaction can terminate the contract early by selling the goods and paying the remaining principal on the debt. Because a lessee does not own the leased property, the lessee cannot freely dispose of it by sale. The only way the lessee can terminate the lease contract early is to default and pay the full amount of damages. This difference in result makes the measure of damages in a lease an important subject for consumer protection legislation.

The issue of insurance further complicates the measure of damages problem. A consumer may believe that insurance provides full coverage against loss or damage to the leased property. However, under most leases, the consumer is liable for damages in excess of the amount paid by insurance when the leased property is damaged or destroyed. For example, in an

automobile lease, if the car is damaged and the insurance proceeds are used to repair it, the consumer may still be liable to the lessor at the end of the term for a reduction in the value of the car. If the car is destroyed, the consumer may be liable for damages in addition to the insurance recovery. In both situations, the consumer may not foresee this financial exposure.

Several laws in New Jersey affect consumer lease transactions: see, Consumer Fraud Act, C. 56:8-1 et seq.; Retail Installment Sales Act, C. 17:16C-1; Lemon Law, C. 56:12-29; Plain Language Law, C. 56:12-1; Fair Credit Billing Act, C. 56:11-1; Truth-in-Consumer Contract, Warranty and Notice Act, C. 56:12-14; Motor Vehicle Rental Statute, C. 45:21-1. Consumer leases are also governed by the Federal Consumer Leasing Act and its implementing Regulation M, 15 U.S.C. §1667 and 12 C.F.R. §213 (1989). The Uniform Commercial Code Article 2A (hereinafter referred to as Article 2A on Leases) applies to leases, but contains few consumer protections. See, U.C.C. 2A-106, 2A-108(1) and (2), 2A-108(4), 2A-221, 2A-309, 2A-406, 2A-504, 2A-516(3) (1987). Neither New Jersey consumer law nor Article 2A on Leases contain provisions solving the problems in consumer lease transactions identified by the Commission.

Although the Consumer Fraud Act inadequately regulates consumer leases, the Commission nevertheless advises adoption of the Consumer Lessee Protection Act as an amendment to the Consumer Fraud Act. This alternative has several advantages over a free-standing act. The Consumer Fraud Act gives the state and private individuals the authority to enforce the Act and obtain damages and penalties. The Consumer Lessee Protection Act presently does not provide for state enforcement and, if enacted as an amendment to the Consumer Fraud Act, would provide the advantage of state enforcement and regulation that it would not have as an independent statute. If the Consumer Lessee Protection Act is adopted, but not as an amendment to the Consumer Fraud Act, penalty and enforcement provisions must be added.

The Commission also considered consumer problems raised by rent-to-own transactions. It decided that the problems raised by these contracts were distinct from those raised by other forms of consumer leases because rent-to-own contracts are more analogous to sales. The problems raised by these transactions can best be dealt with in a sales context. Therefore, the Commission recommends an amendment to the Retail Installment Sales Act to include rent-to-own contracts within the definition of retail installment contracts.

SECTION 1. Title.

This Act shall be known and may be cited as the "Consumer-Lessee Protection Act."

COMMENT

This section states the title of the Act.

SECTION 2. Findings.

The Legislature finds that consumer lease contracts account for a large percentage of consumer transactions. Most consumer lease contracts contain provisions that are unfair to the consumer. Individual consumers generally have less economic power than lessors and cannot negotiate the terms of the lease contract. The terms of the lease contract are established by the lessor and submitted to the consumer on a "take it or leave it" basis. Consumer lease contracts are therefore contracts of adhesion. Existing law does not protect lessees adequately. This legislation establishes standards of conduct in the marketplace for consumer lease transactions.

COMMENT

This Act recognizes that important differences exist between a commercial transaction and a consumer transaction. A commercial transaction implies parties of comparable knowledge and economic position and an agreement negotiated at arm's length. Conversely, a consumer transaction implies parties of unequal economic position, whereby the party with the greater knowledge and economic position dictates the terms of the contract. The standardized mass contract is "typically used by enterprises with strong bargaining power, and the weaker party is frequently not in a position to shop around for better terms." Kessler, *Contracts of Adhesion-Some Thoughts About Freedom of Contract*, 43 Colum. L. Rev. 630, 632 (1943). Standardized contracts are usually "contracts of adhesion," that is they are not subject to negotiation. Consumer leases are prepared by lessors and designed to protect its interests. They are therefore "contracts of adhesion."

"Adhesion contracts" perform an important role in modern society. These contracts reduce transaction costs and facilitate the transfer of goods from the producer to the consumer. However, because "adhesion contracts" are not subject to the bargaining process, a discrete set of principles must apply to them. The purpose of this Act is to establish such principles and correct market inequities resulting from the use of adhesion contracts in consumer lease transactions.

SECTION 3. Definitions.

a. A "consumer lease" is a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is a natural person and takes under the lease primarily for a personal, family or household purpose.

b. "Present value" is the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time of the transaction.

COMMENT

The definition of consumer lease is identical to the definition of "consumer lease" contained in the version of Article 2A of the Uniform Commercial Code proposed by the Commission. Unlike federal consumer legislation and the official text of Article 2A, the definition of consumer lease in this Act does not contain a maximum dollar limitation for a lease of personal property primarily for personal, family, or household purposes. The Consumer Leasing Act and the official text of Article 2A do not apply to leases with a total lease obligation more than \$25,000. *See*, 15 U.S.C. §§1667-1667(e) (1982), and Regulation M, 12 C.F.R. §213 (1988); U.C.C. 2A-103(e).

The definition of "present value" in subsection (c) follows the definition of "present value" in Article 2A on Leases. *See*, U.C.C. 2A-103(u). The second sentence of the Article 2A definition is excluded; a consumer lease is not allowed to specify the interest rate of the discount.

SECTION 4. Waiver; agreement to forego rights.

Any term of a lease agreement inconsistent with the provisions of this Act, and any waiver of the protections of this act shall be unenforceable.

COMMENT

Section 4 makes this Act applicable to all lease agreements that fall within the definition of a consumer lease. Consumer lease agreements are usually form contracts drafted by the lessor and the terms of the contract are presented to the consumer. Since consumer leases are not the product of arm's length negotiations, it is inappropriate to allow them to supersede the provisions of this Act.

SECTION 5. Three-day grace period; refund of payment.

a. A lessee has the right to cancel an executed lease contract within three business days from the date the lease contract is executed, provided the lessee has not taken possession of the property.

b. Any payment made by a lessee to a lessor pending the execution of a lease contract shall be refunded to the lessee in the event the lease contract is not executed. Any payment made by a lessee to a lessor, whether before or after the execution of a lease contract, shall be refunded if the contract is cancelled pursuant to subsection (a).

c. The lessor shall give written notice to the lessee of his rights under this section.

COMMENT

Section 5 gives the consumer an option to cancel an executed lease contract within three business days. The option to cancel enables the consumer to reconsider the decision to enter into a lease contract. The consumer has the right to cancel the lease contract within the three-day period providing the consumer has not taken possession of the leased property.

The three-day cancellation clause derives from the "Door to Door Retail Installment Sales Act of 1968," C, 17:16-61.5; the "Door to Door Home Repair Sales Act of 1968," C,

17:16C-99; and the attorney review clause in contracts of sale of real property, N.J. State Bar Ass'n. v. N.J. Realtor Bds. Ass'n., 93 N.J. 470, 475 (1983), supplemented, 94 N.J. 449 (1983).

Section 5(b) requires the lessor to refund any payments made by a lessee who exercises the right to cancel the lease contract. This section derives from the California Vehicle Leasing Act. See, Cal. Civ. Code §2985.7-§2990, §2986.13 (West Supp. 1989).

SECTION 6. Warranties.

In a consumer lease, a disclaimer of any warranty is unenforceable.

COMMENT

Section 6 corrects the failure of Uniform Commercial Code Article 2A to protect the consumer against disclaimers of warranties. Article 2A permits the lessor to exclude both express and implied warranties. See, U.C.C. 2A-214. While such an option may be appropriate in contracts between businesses of equal bargaining power, "[l]imitations on the methods of disclaiming ... warranties of quality illustrate the significant failing of the U.C.C. as a consumer protection statute." Miller, *Consumer Leases Under Uniform Commercial Code Article 2A*, 39 Ala. L.Rev. 957, 961 (1988).

Section 6 prohibits the disclaimer of any express or implied warranty made to the lessee. Once a warranty arises either by operation of law or otherwise, the warranty is irrevocable. However, this section is not intended to displace remedies a consumer may have to enforce warranties under other law. See, e.g., C. 56:12-19.

SECTION 7. Liens.

Any provision in a consumer lease that gives the lessor a lien on property, other than the leased property or a security deposit, is unenforceable.

COMMENT

Section 7 prohibits the lessor from taking a security interest in the lessee's property, other than the leased good itself, to secure the lessee's performance under the lease contract. Consumer protection policies justify the limitation on free alienation of property that results from this section. Upon default by the lessee, the lessor can obtain a judicial lien against other property owned by the lessee. Section 7 derives from the California Vehicle Leasing Act, which contains a similar prohibition for lease contracts of motor vehicles. See, Cal. Civ. Code §2986.6 (West. Supp. 1989); see also, C. 17:16C-39.1.

SECTION 8. Assignment of consumer leases.

With prior consent of the lessor, a lessee may assign a consumer lease with a term of one year or more by giving notice of the proposed assignment to the lessor. The lessor shall not unreasonably withhold his consent to the assignment. The original lessee and the assignee are jointly and severally liable under the assigned lease. If the lessor unreasonably withholds his consent, the lessee has the option to terminate the lease without liability for future rental payments, lost profits, penalties or other charges.

COMMENT

Most lease contracts prohibit the lessee from assigning the lease contract to another person. This bar to assignment prevents the lessee from avoiding an anticipated default or mitigating damages upon default. Section 8 gives the lessee a right to assign a lease before the end of its term so that the lessee can avoid an anticipated default under the lease. For example, assume that the lessee enters into a lease contract for an automobile, and the lease term is for a period of 48 months. After two years, the lessee, who resides in New Jersey, relocates to Europe. Section 8 enables the lessee to assign the lease to another person and avoid having to choose between defaulting on the contract or continuing to pay for an automobile he can no longer use. A lessee who cannot afford the rental payments would also be able to avoid a default by assigning the lease contract.

In a secured transaction, the buyer has the option to avoid a default or mitigate damages upon early termination of the lease agreement. The purchased goods can be sold and the remaining balance of the debt paid off. A lessee does not have this option because the lessee does not own the leased property. The lessee's right to assign the lease is thus the equivalent to the buyer's right to sell the goods.

When the lease contract is assigned, both the original lessee and assignee are jointly and severally liable to the lessor. The contractual obligations of the original lessee are continued after the assignment is made to strike a balance between the lessor's rights to receive performance under the lease contract and the lessee's right to terminate the contract early. While the original lessee is allowed to assign the lease, the lessor can demand performance from both the original lessee and assignee upon default.

The lessor can disapprove an assignment, but must set forth specific facts that show the assignment actually increases the risk to the leased property or materially changes the contract. An assignment of the lease is not a factor that alone increases risk to the leased property or materially changes the terms of the contract. This section is intended to facilitate the assignment of lease contracts by the lessee while at the same time protecting the interests of the lessor. If the lessor's disapproval of the assignment is unreasonable, the lessee has the option to terminate the lease contract without further obligation to the lessor.

SECTION 9. Assignee subject to claims and defenses.

An assignee of the lessor's rights is subject to all claims and defenses of the lessee against the lessor arising from the lease limited only by the amount of the lessee's total payments under the lease.

COMMENT

Section 9 makes the lessor's assignee of a consumer lease contract subject to the claims and defenses the lessee had against the original lessor. The consumer is thus protected from the harshness of the holder in due course doctrine, and financial institutions that take assignments of lease contracts are held accountable for the original lessor's violation of this Act. Section 9 is modeled upon the Uniform Consumer Credit Code, 1974 Act, (U.L.A.), §3.404(1) [cited as U.C.C.C.].

Unlike U.C.C.C. §3.404(2), however, the lessee has no duty under Section 9 to obtain satisfaction from the original lessor. Rather, the lessee has the right to assert the claim or defense directly against the assignee. The amount of the claim that the lessee has against the lessor's assignee is limited to the unpaid balance of the lease contract, plus actual damages, and penalties provided by Section 19 of this Act. No prior notice of asserting the claim or

defense against the assignee is required. Cf., U.C.C.C. §3.404(2). The phrase "arising from the lease" refers to claims and defenses resulting from a breach of contract, including but not limited to fraud, breach of warranty, failure of consideration and consumer lease disclosure claims. The phrase does not include tort claims.

SECTION 10. Liability of dealers and remote lessors.

In a finance lease, in addition to the lessor named on the lease, a person who negotiates the lease with a consumer lessee is a lessor for purposes of this Act.

COMMENT

Section 10 addresses the problem that arises when a person other than the lessor named in the lease contract negotiates the lease contract with the lessee. For example, a dealer engaged in the business of leasing or selling personal property to consumers often negotiates the lease contract on behalf of a bank that is the lessor named in the lease contract. In this situation, the bank may claim it is not bound by the representations made by the dealer, or is not bound by this Act, if it is not a lessor regularly engaged in the business of leasing or selling personal property. Similarly, the dealer may claim that since it is not the lessor named in the lease, it is not liable to the consumer.

Section 10 closes this potential loophole for dealers and remote lessors. The dealer who negotiates the lease contract is considered a lessor for purpose of this Act. Likewise, any subsequent person named in the lease contract as lessor is considered an assignee of the original lessor. The net effect is to make both the initial dealer and subsequent lessor subject to the terms of this Act.

SECTION 11. Specificity of payment terms.

a. For any "consumer lease" defined in this Act that is not subject to the federal regulations regarding disclosure of lease terms, the lessor shall state the date any payment is due and shall:

- 1) specify the amount of the payment, or
- 2) provide a formula which allows the amount to be calculated arithmetically.

b. A requirement that makes the lessee responsible for damage to the leased property shall not be construed to be a violation of subsection (a) of this section, and shall be permissible to the extent allowed by Sections 12 and 13 of this Act.

COMMENT

The Consumer Leasing Act, and its implementing regulation, Regulation M, mandate the disclosure of certain terms of consumer leases of personal property. See, 15 U.S.C. §1667-1667(e) (1982); 12 C.F.R. §213 (1988). However, the disclosure requirements apply only to consumer leases defined within the Act. The term "consumer lease" in the federal statute means a contract for the use of personal property by a natural person for a period exceeding 4 months, primarily for personal, family, or household purposes, and for a contractual obligation not exceeding \$25,000. Since the definition of "consumer lease" in this Act is broader than the

one in the federal statute, disclosure requirements are needed for consumer leases not covered by federal law.

Section 11 requires the lessor to disclose in the lease contract all payments the lessee is obligated to make and to set forth the dates by which the payments must be made. All regular required payments must be disclosed in the lease contract. In addition, payments contingent upon the happening of an event, such as default and damage, also must be disclosed. The purpose of this provision is to give the lessee a complete statement of his liabilities under the lease contract.

Section 11(b) makes any clause in the lease contract requiring the lessee to make a required payment when the leased property is damaged before the end of the contract subject to Sections 12 and 13.

SECTION 12. Risk of loss.

The lessor bears the risk of loss of the leased property unless the lease specifies the nature and extent of the risk allocated to the lessee.

COMMENT

Section 12 states the general rule that the lessor bears the risk of loss or damage to leased property. However, if the lease so specifies, this section allows the lessor to transfer particular risks to the lessee.

SECTION 13. Insurance.

a. This section applies when the lessee bears risk of loss for the leased property, and the goods are in the possession of the lessee, and the consumer lease provides for insurance against this risk.

b. If the leased property is damaged, and can be restored to its condition prior to damage, the lessor shall elect one of the following options:

1. apply the amount of the damage as determined by the insurance company (the proceeds of the insurance plus any deductible amount as provided in the insurance policy owed by the lessee) to repair the leased property, and continue the lease, or

2. retain the amount of the damage as determined by the insurance company and terminate the lease contract.

c. The lease shall be suspended, and the lessee need not make any required payments during the period that the leased property is repaired pursuant to this section. The lease term shall be extended for a period equal to the period of suspension.

d. If the leased property is damaged, and cannot be restored to its condition prior to damage, the lessor shall retain the amount of the damage as determined by the insurance company and terminate the lease.

e. Damage or loss to the leased property does not constitute a default on the part of the lessee, and if the lease is terminated pursuant to this section, the lessor may not recover future rental payments, lost profits, penalties, or other charges.

f. If the lease requires the lessee to carry insurance, and the lessee fails to comply with this requirement, this section shall not apply.

COMMENT

Section 13 contains the rules governing insurance, damage and loss of leased property. The rules for insurance limit the measure of damages the lessor receives when insured property is damaged or destroyed. The lessee does not incur any liability on account of the damage or loss to the insured property, except for payment of the deductible amount of the insurance policy.

When the insured property is damaged and can be repaired, the lessor must select one of two options. First, the lessor can elect to apply the proceeds of the insurance policy to repair the leased property. Second, the lessor can elect to retain the insurance proceeds and terminate the contract. Under the first option, the risk of applying the proceeds to the leased property is placed upon the lessor. The lessor cannot decide to repair the leased property, and then, at the end of the contract, demand that the lessee pay an additional sum for reduced residual value. Under the second option, where the lease is terminated, the lessee has no further obligation to the lessor.

If the lessor decides to have the leased property repaired, the lease contract is suspended for the duration of the repair period. The lessee does not make any required payments while the lease is suspended. Rather, when the leased property is returned to the lessee, the lease continues, and the term of the lease is extended for the duration of the suspension.

When the insured property is damaged, and cannot be restored to its prior condition, the lessor does not have any options. The lessor must accept the insurance payment and terminate the contract. The lessee is obligated to pay only the deductible amount of the insurance policy.

Section 13(d) clarifies that damage to property covered by insurance is not a default by the lessee. Similarly, Section 13(e) clarifies that, in the event of damage to insured property, the rules governing damage upon default do not apply. The lessor's recovery is limited to the options set forth in this section.

SECTION 14. Late fees.

a. A late payment fee of no more than five percent of the monthly payment in default, or the sum of \$5.00, whichever is less, may be charged by the lessor for the lessee's failure to make a payment on time.

b. A payment is made on time if made within ten days of the due date set by the lease contract.

c. Any late payment fee not claimed by notice in writing within 40 days from the date of default is waived.

COMMENT

Section 14 is modeled upon a similar provision in the Retail Installment Sales Act limiting late payment of fees. C. 17:16C-42. The differences between the two provisions reflect structural differences between a lease contract and a retail installment contract. The provision in the Retail Installment Sales Act allowing the creditor attorney's fees was omitted deliberately. C.17:16-42(b). Given the possibility of large deficiency claims, a provision allowing the lessor attorney's fees based upon the amount of the default has the potential to produce unjust results.

SECTION 15. Notice of consumer's right to cure.

a. After a lessee has failed to make a required payment for ten days, the lessor may declare a default by giving the lessee written notice of the default and the right to cure the default. The notice shall contain: the name, address, and telephone number of the lessor to whom payment should be made; the amount of the payment; the right to cure the default, and the date by which the payment must be received to cure the default.

b. For twenty days after the notice is given, the lessee may cure all defaults consisting of a failure to make a required payment by paying all unpaid sums due at that time.

c. If the lessee does not make payment within the time allowed to cure the default, the lessor may exercise his rights under the law.

COMMENT

Section 15 allows the lessee to cure a default for failure to make a required payment without impairing the contractual relationship with the lessor. Section 15(a) requires the lessor to send a written notice to the lessee upon default for failure to make a required payment. A default occurs when the lessee fails to make a required payment on the due date of the payment. The notice informs the lessee of his right to cure a default by making the required payment and sets the date by which the default must be cured. Section 15(a) is modeled upon the U.C.C.C. §5.110.

Section 15(b) delineates the consumer's right to cure the default for non-payment of rent. The lessee cures a default by paying all unpaid sums due the lessor within twenty days from the date the notice is given to the lessee. The lessor may not exercise any remedy for default until the twenty day time period has expired and the lessee has failed to make the required payment. The term "all unpaid sums" is limited to unpaid rent payments and late fees permitted by this Act. If the lessee cures the default by making the required payment, the lease contract continues as if the default never occurred. Section 15(b) is modeled upon the U.C.C.C. §5.111.

SECTION 16. Default by lessee.

a. If the lessee defaults or wrongfully terminates a consumer lease, the lessor may cancel the lease, repossess the leased property and recover no more than the following damages:

1. Any payments due at the time of default plus interest at prevailing rates on those payments;

2. The present value at the time of default of any payments due in the future;
 3. The reasonable cost of repossession;
 4. Any damage allowed by the Act for loss or injury to the leased property; and
 5. The value of the leased property at the end of the lease term reduced to the present value as of the time of default.
- b. The lessor's damages are reduced by the value of the leased property at the time of default.

COMMENT

This section is designed to provide a fair result for both parties in the event that a lessee defaults. The formulas for the calculation of damages sometimes found at present in consumer lease contracts provide damages far in excess of the actual economic loss to the lessor due to default. This section is designed to prevent this kind of overreaching.

Section 16 is patterned after the provisions on default found in Article 2A on Leases. However, Article 2A allows the measure of damages to be varied in the lease contract. See, U.C.C. 2A-503 and 504. The option to vary the measure of damages is inappropriate in consumer transactions. Like its source provisions, this section provides that damages are based on unpaid past and future rents, the cost of repossession (compare U.C.C. 2A-529), and any damage to the leased goods (compare U.C.C. 2A-532).

This section differs from Article 2A on the issue of credit against damages for the economic value of the early return of the leased goods. In Article 2A, this credit is based on the rental value of the goods returned. See, U.C.C. 2A-527(2) and 528(1). While the Article 2A standard is reasonable for commercial leases, it is not practical in consumer leases where there is no market value for the re-rental of the goods. In lieu of this standard, Section 16 provides a credit based on the value of the goods. This credit reflects that the goods will have a higher value at the time of default than they would have had at the end of the lease term, and that the lessor gains an economic advantage from early realization of that value. The standard used by this section is similar to that now used in calculation of damages in consumer leases.

As an illustration of the way the measure of damages on default works, assume a five-year lease of an automobile with a retail price of \$13,000. The lease provides for a \$1,000 down payment, sixty monthly payments of \$210, and an option to purchase the car at the end of the lease term for \$5,000. Assuming a default at the end of the twenty-fourth month, the damages would be:

\$6605	the present value of thirty-six monthly payments of \$210 (assuming 9% interest).
\$3846	the present value of \$5,000 (assuming 9% interest compounded yearly).
(\$8557)	the credit for the value of the car (assuming the 150% declining balance method).
\$1894	net damages.

From the lessee's standpoint, the \$1894 damages plus the \$6040 paid in the down payment and twenty-four monthly rental payments amounts to \$7934 for the use of the automobile for two years. From the lessor's standpoint, the value of the car, damages and the amount already paid add up to over \$1000 more than the \$13,000 retail price of the automobile with interest over two years. Although this measure of damages can be considered favorable to a lessor, it is far less so than any currently in use.

SECTION 17. Calculation of value of leased property.

For determination of damages on default of a lessee, the value of leased property shall be determined in the following manner:

a. The value at the beginning of the lease term is the retail sales price of the leased property. This price shall be stated in the lease contract.

b. The value at the end of the lease term is the option price established for the purchase of the leased property at the end of the lease term. If no option price is stated in the lease, the value is the average retail market price for similar property.

c. The value at any other time within the lease term is the option price established for the purchase of the leased property exercisable at that time.

d. If the value at default is not defined by subsection (a), (b), or (c), it shall be determined by interpolation. To interpolate, locate the values between the nearest time before default and the nearest time after default for which a value is established by subsection (a), (b), or (c) of this section. These are the established prior value and the established subsequent value.

e. When the value at default is determined by interpolation pursuant to subsection (d), the interpolation shall be done by use of the straight-line method unless the lease provides for use of the 150% declining balance method in which case that method shall be used.

f. When the straight-line method is used, the value at default shall be equal to the established prior value less the product of: 1) the difference between the established prior value and the established subsequent value and, 2) the number of months from the time of the established prior value to the time of default, divided by the number of months from the time of the established prior value to the time of the established subsequent value.

g. When the 150% declining balance method is used, the value of the leased property shall be determined for each month beginning with the first month after the established prior value and continuing through the month of default. The value in the first month after the established prior value is equal to the established prior value less 1.5 times the amount of decline in value for one month under the straight-line method. The value in any subsequent month shall be determined by multiplying the value for the prior month by the declining balance fraction. The declining balance fraction is equal to the value in the first month divided by the established prior value.

COMMENT

The determination of damages upon default requires the calculation of the value of the leased goods at any time during the period of the lease. The purpose of this section is to provide a basis for that calculation. Traditionally, the sale price of the goods at the time of default has been used. The difficulty has been that repossessed goods are sold at a price that

the consumer thinks is unfairly low. Often that price is lower than the price set in the lease contract for the consumer's option to buy the goods at the end of the lease. Regulation in the nature of the sale applicable to credit sales transactions has not been particularly effective in bringing the actual sales price closer to what is considered appropriate, and there is no reason to think that similar regulation will be more effective in regard to leases. The consumer has an option in a credit sale situation to avoid a sale by the secured party by selling the goods and paying off the principal balance. This option is unavailable in the lease transaction. As a result, the problem caused by low sales prices of goods repossessed after default can be expected to be more frequent and less avoidable by the consumer.

The value of the goods at the end of the lease is often set in the lease contract in the form of an option to purchase. This option price is subject to negotiation and can be considered as a fair judgment of the value of the goods at that time. As a result, it can serve as a firm starting place for calculation of value at other times. To provide a second point from which value can be determined, this section requires that the lease contract specify the retail price of the goods at the beginning of the contract. Economic considerations should result in this price also being relatively accurate. A low initial retail price would be an advantage to the lessor in the event of default, but marketing considerations should prevent the specification of an unrealistically low price.

Finding prices during the lease contract becomes then a matter of interpolation. Two options are provided, the straight line method and the 150% declining balance method. Each is set out in words in this section. An equation for each form of interpolation is as follows:

Where V_d = value at the time of default, and T_d = time of default in months; V_p = prior established value, and T_p = time in months to which that value is applicable; V_s = subsequent established value, and T_s = time in month to which that value is applicable.

STRAIGHT LINE:

$$V_d = V_p - \frac{(V_p - V_s)(T_d - T_p)}{(T_s - T_p)}$$

Where V_{m1} = value at the end of the first month; V_{mn} = value at the end of the n^{th} month; and V_{mn-1} = value at the beginning of the n^{th} month.

150% DECLINING BALANCE:

$$V_{m1} = V_p - 1.5 \frac{(V_p - V_s)}{(T_s - T_p)}$$

$$V_{mn} = V_{mn-1} \frac{V_{m1}}{V_p}$$

An example of the application of the standards for setting value can be seen using the same example set out in the comment to Section 16. If the established prior value is the \$13,000 retail price, the established subsequent value is the \$5,000 option price at the end of the lease, and the time of default is the twenty-fourth month:

By the straight line method, the \$13,000 prior value is reduced by the difference between the two values (\$8,000) multiplied by 24/60 (the number of months to default divided by the number of months to the option price). The value by this method is \$9,800.

By the 150% declining balance method, the value at the end of the first month is \$12,800 or \$13,000 less \$200 (1.5 times the first month reduction under the straight line method). The value for each month thereafter is produced by multiplying the value for the previous month by .9844 (\$12,800 divided by \$13,000). By this method, the value at the end of the twenty-fourth month is \$8957.

A third course is open to a lessor if he considers that neither of these two interpolation methods accurately reflects depreciation of the leased goods. The lessor may provide options to purchase the leased goods at other times during the lease. If these options are provided, they are taken as dispositive of the value of the goods at those times. Again, economic factors should guarantee that the option prices will be accurate. A low option price would be an advantage to the lessor in case of default, but an unrealistically low option price could be exercised by the lessee terminating the lease.

SECTION 18. Lessor's right to take possession after default.

a. Upon default by a lessee, and compliance by the lessor with Section 15, the lessor is entitled to possession of the leased property. The lessor may take possession of the property without judicial process only if possession can be taken without trespass and without the use of force or other breach of the peace.

b. The lessor is liable to the lessee for any damages arising out of any repossession in violation of this section.

COMMENT

Section 18 limits the right of the lessor to repossess leased goods upon the lessee's default. Section 18(a) permits the lessor to take possession of leased goods without judicial process in two situations only: (1) the repossession can take place without any trespass upon the property of the lessee, or (2) the lessor obtains the consent of the lessee. Section 18 prohibits all self-help methods of repossession that involve a trespass upon the lessee's property, the use of force, or a breach of the peace.

Section 18 specifically rejects the standard for repossession established for secured creditors under Article 9 of the Uniform Commercial Code. *See*, U.C.C. 9-503. That standard, which permits trespass upon the property of the lessee, is inappropriate for dwelling places, where many leased goods are kept. The Article 9 standard is also inconsistent with the consumer protection purposes of this Act.

SECTION 19. Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of this Act, other principles of law relative to contracts and consumer protection shall apply to lease contracts.

COMMENT

This section indicates the continued applicability to consumer lease contracts of all supplemental bodies of law except insofar as they are displaced by this Act. The particular practices prohibited by the Act are not intended to define an exhaustive list of unconscionable commercial practices.

Amended section:

17:16C-1. Definitions

In this act, unless the context otherwise requires, the following words and terms shall have the following meanings:

(a) ...

(b) "Retail installment contract" means any contract, other than a retail charge account or an instrument reflecting a sale pursuant thereto, entered into in this State between a retail seller and a retail buyer evidencing an agreement to pay the retail purchase price of goods or services, which are primarily for personal, family or household purposes, or any part thereof, in two or more installments over a period of time. This term includes a security agreement, chattel mortgage, conditional sales contract, or other similar instrument, [and any contract for the bailment or leasing of goods by which the bailee or lessee agrees to pay as compensation a sum substantially equivalent to or in excess of the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of such goods upon full compliance with the terms of such retail installment contract.] Any lease of goods which includes an option to purchase and in which the payments prior to the option to purchase are equal to, or more than, the cash price of the goods plus interest at prevailing commercial rates for the term of the lease, whether or not the lessee is permitted to terminate the contract early without penalty, is a retail installment contract. For purposes of this act, a series of leases is a single lease if:

(1) the leases are of the same goods and to the same lessee; and

(2) the goods remain in the possession of the lessee,

* * *

(v) Option to purchase means a term of a lease, or an understanding by the parties to a lease created by advertising or any oral or written representations made by the lessor, which provides that the lessee has the right to acquire ownership of the leased goods,

COMMENT

The amendment of Section 1(b) makes rent-to-own (RTO) lease transactions subject to the Retail Installment Sales Act. A RTO lease transaction is a series of short term (usually weekly) agreements to rent an appliance or other good to the consumer. Since the parties usually intend that the lessee will purchase the product, most RTO lease transactions in essence are contracts of sale of personal property. The RTO contract may not be governed by existing law applicable to other types of consumer financing because of the form of the RTO

transaction. This amendment brings RTO leases within the scope of this act, and treats the RTO lease agreement as a secured transaction.

The principal abuse of some RTO lease transactions is the exorbitant price charged for the goods. For example, assume a consumer rents a \$200 appliance under an RTO lease which provides for 87 weekly payments at \$11.55 per week. The consumer who makes all payments under the contract will pay \$1004.85 to own the \$200 item. This represents an annual percentage rate of 298%, a percentage rate that is unlawful in this state. By contrast, a consumer who bought the same appliance under a credit sale which provided for 20 monthly payments of \$12.83 would only pay \$256.60 for the appliance. The finance charge of \$56.60 represents an annual percentage rate of 30%. The gross disparity in price and annual percentage rate between some RTO leases and credit sales is unfair to the consumer and not justified by any benefit the consumer may receive from the RTO lease. Therefore, an RTO lease transaction should be deemed a sale and governed by the Retail Installment Sales Act.

Respectfully submitted,

ALBERT BURSTEIN, Chairman
BERNARD CHAZEN
EDWARD T. O'CONNOR
HUGO M. PFALTZ, JR.
RONALD J. RICCIO
PAUL H. ROBINSON
HOWARD T. ROSEN
THOMAS P. SHUSTED
PETER SIMMONS

APPENDIX G

**REPORT AND RECOMMENDATIONS
ON
STATUTES TO BE REPEALED**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575
March 1989**



REPORT AND RECOMMENDATIONS

This project grew out of a general survey of the statutes undertaken by the Commission as a preliminary step toward recompilation. In the process of that survey, the Commission identified a substantial number of statutory sections which have ceased having any practical effect. The Commission recommends that these statutes be repealed.

The reasons that particular statutes should be repealed vary, but fall into several categories. Some statutes are invalid because they have been found unconstitutional or have been superseded. See, for instance, C. 56:7-1 to 7-17, declared unconstitutional in Lane Distributors v. Tilton, 7 N.J. 349 (1951) and N.J.S. 2A:82-8, one of a number of statutes superseded by the New Jersey Evidence Rules as provided by N.J.S. 2A:84A-40 (Official footnote to Evid. R. 70).

A larger number of statutes are those which may well be legally enforceable but which have ceased to have any operative effect with the passage of time. Some are anachronistic because they relate to offices or institutions which no longer exist. See, for instance, R.S. 44:1-73 to 1-79, dealing with overseers of the poor. Others are anachronistic because they deal with problems which were important at one time but which have ceased to be relevant to modern society. In their modern context they amount to unnecessary regulation. See, for instance, R.S. 45:20-1 to 20-3 regulating millers of grain. Still others deal with problems which have relevance but deal with a problem in a way which has become totally unacceptable. See, for instance, R.S. 8-14 which limits the amount to be spent on food for a prisoner to \$.50 a day.

The following analysis of these statutes divides them into the categories outlined above and explains the reasons for recommending repeal as to each. In addition, the Appendix to this memorandum lists the statutes in order by title and section and summarizes briefly the reasons for each recommendation.

The particular sections proposed for repeal are not all of the anachronistic or superseded sections in the New Jersey statutes. It appears that perhaps as much as ten to twenty percent of the current statutory material falls into those categories. The Commission intends to continue this project and report periodically, identifying sections which should be repealed.

This Commission is explicitly directed to identify anachronistic and redundant provisions in the law. C. 1:12A-8(a). Thus, this project falls directly within the Commission's duties. However, this project has added importance. Many of these provisions, especially those which have been superseded, continue to look like valid law. Removal of some of these provisions serves the function of removing ambiguities from the law. Their retention can be deceptive.

I. SUPERSEDED STATUTES

2A:11-55 - Records and certified copies as evidence
2A:81-1 - General rule on witness competency
2A:81-8 - Privilege of criminal defendant
2A:81-12 to 2A:81-14 - Competency of various witnesses
2A:82-2 - Authentication of signatures
2A:82-8 to 2A:82-9 - Documents as evidence
2A:82-11 - Surveys as evidence
2A:82-14 to 2A:82-16 - Ordinances and municipal records as evidence
2A:82-20 to 2A:82-23 - Instruments as evidence
2A:82-25 - Evidence of foreign law
2A:82-27 - to 2A:82-37 Evidence of foreign law; judicial notice; definitions of terms

All of these statutes were specifically identified in a footnote to a rule of evidence as inconsistent with, or included by, that rule. These references make the statutes in question invalid. See, N.J.S. 2A:84A-40.

II. STATUTES HELD UNCONSTITUTIONAL

C.51:7-1 to C.51:7-9 - Interstate transportation of anthracite

These sections regulate the interstate shipment of anthracite. They were held to be a violation of the United States Constitution in Dickerson v. N.J. State Dept. of Weights and Measures, 33 F.Supp. 431 (D.C.N.J. 1940) rev'd on other grounds 312 U.S. 656. Notwithstanding that the ruling of unconstitutionality is not legally definitive, it appears to have been accepted as correct, and the provisions have never been enforced.

C.56:7-1 to C.56:7-17 - Unfair Cigarette Sales Act of 1948

These sections comprise the Unfair Cigarette Sales Act of 1948 held unconstitutional by Lane Distributors, Inc. v. Tilton, 7 N.J. 349 (1951). After that ruling, the Legislature passed a new act correcting the defects but never repealed the old one. See C.56:7-18 et seq.

III. ANACHRONISTIC STATUTES

4:21-8 to 4:21-10 - Trespass by swine

These sections, dating from the early 19th century, provide remedies for trespass by swine, allowing slaughter of the offending animals and delivery of the meat to the county overseer of the poor. The matter is covered by more modern statutes dealing generally with trespass by animals. See, e.g., 4:20-22 to 24 and 4:21-1 to 7.

26:4-10 - Public drinking cups

This penal provision forbids the use of public drinking cups. Such a specific prohibition is unnecessary in light of present standards of sanitation.

26:4-11 - Transportation of infected persons and items

This section limits acceptance by a common carrier of persons infected with communicable diseases, or their infected clothing or bedding.

26:4-50 to 26:4-53 and 26:4-57 - Involuntary commitment of typhoid carriers

These sections provide for involuntary examination and commitment of typhoid and paratyphoid carriers. Advances in medical treatment make this section unnecessary.

30:8-14 - Victualing county prisoners

This section limits the amount to be spent for victualing a prisoner in county jail to \$.50 a day. Inflation has made this provision unenforceable.

38:21-1 - World War I veterans

This section prohibits the garnishment of wages of a World War I veteran for debts incurred before or during that war. Over the years statutes of limitations have made this provision irrelevant.

41:2-18 to 41:2-20 - Administration of oaths

46:27-1 to 46:27-2 - Surveyors General

These sections relate to the Proprietors of East Jersey and West Jersey, the body which governed the territory now comprising this State in colonial times. The Proprietors lost most of their governing power in 1708.

The provisions in Title 41 which relate to the Proprietors allow the West Jersey Proprietors to take oaths in matters in which they are settling disputes. However, their power to settle disputes seems to have been lost before the Revised Statutes of 1937. The Title 46 provisions establish the Surveyors General of East Jersey and West Jersey as public officers. While the Surveyors General continue to exist, they are private officers now of the East and West Jersey boards of proprietors, which function as private land companies.

44:1-134 to 44:1-138 - Children committed to almshouses

These sections require the overseer of the poor to inform the State Board of Child Guardians of children who are committed to almshouses.

44:1-155 to 44:1-156 - Liability of master landing sick or incapable poor persons

44:4-116 to 44:4-117 - Liability of master landing sick or incapable poor persons

These parallel pairs of sections make the master of a vessel liable if he lands poor people in the State of New Jersey.

48:18-1 to 48:18-17 - Tunnel companies

These sections provide for the establishment of companies building tunnels under the Delaware River.

48:18A-1 to 48:18A-4 - Turnpike and plank road companies

These sections provide procedures for the termination of private turnpike and plank road companies. No such companies remain.

III. UNNECESSARY REGULATIONS

29:4-1 to 29:4-4 - Guest registers

These sections require guest registers in hotels containing ten or fewer rooms. There is no similar requirement for larger hotels.

45:20-1 to 45:20-3 - Millers of grain

These sections limit millers of grain to a fee of 1/10th of the grain ground and requires them to have on their premises a standard bushel measure and a strike to level the grain in it.

48:8-1 to 48:8-17 - Ferries and steamboats

These sections separately regulate ferries and steamboats. Even with the reinstatement of water transportation, the subjects of these sections seem inappropriate to modern concerns.

51:1-30 to 31 - Milk bottles

51:1-31.1 to 31.10 - Frozen desserts

51:1-32 - Thread

51:1-36 to 51:1-37.1 - Ice

51:1-38 - Solid fuel

51:1-39 - Charcoal

These sections regulate the quantity marking and package sizes permitted for milk bottles, ice cream, thread, ice, solid fuels and charcoal. All seem unnecessary given general regulation of these subjects by such sections as 51:1-29, 51:1-61 and 51:1-97 which provide for marking of packages, regulation concerning size of packages and penalties for false weight or measure. In addition, the particular regulations on ice and charcoal are unenforceable given the change in the nature of most sales of those commodities.

IV. RELATING TO NONEXISTENT OFFICERS OR INSTITUTIONS

30:9-28, 30:9-29, 30:9-35 to 30:9-44.3 and 30:9-61 to 30:9-69 - County Hospitals for Communicable Diseases

These sections regulate County Hospitals for Communicable Diseases. While there seem to be some county hospitals which originally had this function, the institution provided for in this material is one dealing exclusively with communicable diseases. No such institution now exists.

30:9-70 to 30:9-81 and 30:9-85 to 30:9-86 - Municipal Hospitals for Communicable Diseases

These sections regulate municipal hospitals for communicable diseases. No such institution now exists.

44:1-3 to 44:1-9, 44:1-64 to 44:1-72, 44:2-1 to 44:2-9 and 44:3-3 to 44:3-4 - Welfare houses

These sections provide for regulation of municipal and county welfare houses. These institutions, originally called "poor houses" or "almshouses," provided a system of indoor relief superseded by the current welfare system in the 1930's.

44:1-73 to 44:1-79, 44:1-81 to 44:1-85, and 44:1-87 to 44:1-94 - Overseers of the poor

These sections provide for municipal overseers of the poor. This office was abolished and replaced by that of municipal welfare director. See 44:1-73.1.

STATUTES RECOMMENDED FOR REPEAL

<u>SECTIONS</u>	<u>DESCRIPTION</u>	<u>REASONS</u>
<u>N.J.S.</u> 2A:11-51, 81-1, 81-8, 81-12, 81-13, 81-14, 82-2, 82-8, 82-9, 82-11, 82-14, 82-15, 82-16, 82-20, 82-21, 82-22, 82-23, 82-25, 82-27, 82-28, 82-29, 82-30, 82-31, 82-32, 82-33, 82-34, 82-35, 82-36, 82-37.	Law on admission of evidence.	Specifically superseded by New Jersey Rules of Evidence, <u>N.J.S.</u> 2A:84A-40.
<u>R.S.</u> 4:21-8, 21-9, 21-10.	Remedy for trespass by swine.	Anachronistic.
<u>R.S.</u> 26:4-10.	Forbids public drinking cups.	Anachronistic.
<u>R.S.</u> 26:4-11.	Forbids acceptance by a common carrier of clothing or bedding of a person infected with communicable disease.	Anachronistic.
<u>R.S.</u> 26:4-50, 4-51, 4-52, 4-53 and 4-57.	Allows involuntary commitment of typhoid and paratyphoid carriers.	Anachronistic.
<u>R.S.</u> 29:4-1, 4-2, 4-3, 4-4.	Requires guest registers in hotels containing fewer than 11 rooms.	Unnecessary regulation.
<u>R.S.</u> 30:8-14.	Limits to \$.50 a day the amount to be spent for feeding prisoners.	Anachronistic.
<u>R.S.</u> 30:9-28, 9-29, 9-35, 9-36, 9-37, 9-38, 9-38.1, 9-39, 9-40, 9-41, 9-42, 9-43, 9-44, 9-44.1, 9-44.2, 9-44.3, 9-61, 9-62, 9-63, 9-64, 9-65, 9-66, 9-67, 9-68, 9-69.	Regulates county hospitals for communicable diseases.	Relates to nonexistent institution.
<u>R.S.</u> 30:9-70, 9-71, 9-72, 9-73, 9-74, 9-75, 9-76, 9-77, 9-78, 9-79, 9-80, 9-81, 9-85, 9-86.	Regulates municipal hospitals for communicable diseases.	Relates to nonexistent institution.
<u>R.S.</u> 38:21-1.	Prohibits the garnishment of the wages of a World War I veteran for debts incurred before or during that war.	Anachronistic.
<u>R.S.</u> 41:2-18, 2-19, 2-20	Empowers the proprietors of West Jersey to administer oaths.	Anachronistic.
<u>R.S.</u> 44:1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-9, 1-64, 1-65, 1-66, 1-67, 1-68, 1-69, 1-70, 1-71, 1-72, <u>R.S.</u> 44:2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 2-7, 2-8, 2-9, <u>R.S.</u> 44:3-3, 3-4.	Regulates municipal and county welfare houses.	Relates to nonexistent institutions; largely superseded by 44:8-1 <u>et seq.</u>

<u>R.S.</u> 44:1-73, 1-73.1, 1-73.2, 1-73.3, 1-73.4, 1-73.5, 1-73.6, 1-73.7, 1-74, 1-75, 1-76, 1-77, 1-78, 1-79, 1-81, 1-82, 1-83, 1-84, 1-85, 1-87, 1-88, 1-89, 1-90, 1-91, 1-92, 1-93, 1-94.	Provides for municipal overseers of the poor.	Relates to office abolished by statute; <u>C.</u> 44:1-73.1 <u>et seq.</u>
<u>R.S.</u> 44:1-134, 1-135, 1-136, 1-137, 1-138.	Requires the Overseer of the Poor to inform the State Board of Child Guardians of children who are committed to almshouses.	Anachronistic.
<u>R.S.</u> 44:1-155, 1-156, <u>R.S.</u> 44:4-116, 4-117.	Makes the master of a vessel liable if the master lands poor people in the State of New Jersey.	Anachronistic.
<u>R.S.</u> 45:20-1, 20-2, 20-3.	Limits fee charged by millers.	Unnecessary regulation.
<u>R.S.</u> 46:27-1, 27-2.	Provides for the public office of Surveyor General of the Eastern and Western Divisions of the Province of New Jersey.	Anachronistic.
<u>R.S.</u> 48:8-1, 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8, 8-9, 8-10, 8-11, 8-12, 8-13, 8-14, 8-15, 8-16, 8-17.	Regulates ferries and steamboats.	Unnecessary regulation.
<u>R.S.</u> 48:18-1, 18-2, 18-3, 18-4, 18-5, 18-6, 18-7, 18-8, 18-9, 18-10, 18-11, 18-12, 18-13, 18-14, 18-15, 18-16, 18-17.	Provides for the establishment of companies to build tunnels under the Delaware River.	Anachronistic.
<u>R.S.</u> 48:18A-1, 18A-2, 18A-3, 18A-4.	Termination of private turnpikes and plank roads.	Anachronistic.
<u>R.S.</u> 51:1-30, 51:1-31, 1-31.1, 1-31.2, 1-31.3, 1-31.4, 1-31.5, 1-31.6, 1-31.7, 1-31.8, 1-31.9, 1-31.10, 1-32, 1-36, 1-37, 1-37.1, 1-38, 1-39.	Regulates quantity, marking and package sizes for milk bottles, ice cream, thread, solid fuels and charcoal.	Unnecessary regulation; superseded, <u>see</u> <u>R.S.</u> 51:1-29, 1-61, and 1-97.
<u>R.S.</u> 51:7-1, 7-2, 7-3, 7-4, 7-5, 7-6, 7-7, 7-8, 7-9	Regulates interstate shipment of anthracite.	Unconstitutional; <u>see</u> <u>Dickerson v. N.J. Dept. of Weights and Measures</u> , 33 F.Supp. 431 (D.C.N.J. 1940) rev'd on other grounds 312 U.S. 656.
<u>C.</u> 56:7-1, 7-2, 7-3, 7-4, 7-5, 7-6, 7-7, 7-8, 7-9, 7-10, 7-11, 7-12, 7-13, 7-14, 7-15, 7-16, 7-17.	Unfair Cigarette Sales Act of 1948.	Unconstitutional; <u>see</u> <u>Lane Distributors v. Tilton</u> , 7 N.J. 349 (1951).

Respectfully submitted,

ALBERT BURSTEIN, Chairman
BERNARD CHAZEN
EDWARD T. O'CONNOR
HUGO M. PFALTZ, JR.
RONALD J. RICCIO
HOWARD T. ROSEN
THOMAS P. SHUSTED
PETER SIMMONS
RICHARD G. SINGER