

V. Recording Fees

A. RP §3-601 – Recording Fee

1. Amounts:

NOTE: "Page" means one side of a leaf not larger than 8.5 inches wide by 14 inches long, or any portion of it [see RP § 3-601(a)(1)]

(a) RP § 3-601(a)(2)(i): \$10 — For a release of a mortgage or deed of trust, if the release is 9 pages or less

(b) RP § 3-601(a)(2)(iii): \$20 — For any instrument (other than above) "involving solely a principal residence"

NOTE: If the property consists of a portion that is a principal residence and other property that is not, then the instrument is not "involving solely a principal residence" and the fee is based on the length of the instrument.

"involving solely" clearly means that the property to which the instrument relates can only consist of a "principal residence" (*i.e.* if the property to which the instrument relates consists of a "principal residence" and some other property, such instrument would not be "involving solely a principal residence," and, therefore, recording fees would be based on the length of the instrument [see (c) and (d) below])

"principal residence," although not defined in the Real Property Article, has been interpreted for over two decades to mean only the residential structure and its curtilage (yard), even if that amount of real property is otherwise part of a larger structure or tract of land. [see Memorandum of Advice from Bruce L. Benshoof, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Oct. 22, 2004); Letter of Advice from Bonnie A. Travieso, Asst. Att'y Gen., to Hon. Frank W. Hales, Jr., Clerk of the Circuit Court for Worcester County (Sept. 24, 1981)]

For example, a farm has been viewed as consisting of both a portion of the farm that is a "principal residence" (the farmhouse and its yard) and the remainder that is not part of the "principal residence" (the farmlands). An instrument relating to such farm as a whole would not be "involving

solely a principal residence," and, therefore, recording fees would be based on the length of the instrument [see (c) and (d) below].

Also, if a person is occupying one unit in or on a property, and renting out other units in or on the same property (such as a duplex), the interpretation by this office has been that only the portion occupied by the owner counts as "principal residence" and the rest is not. An instrument relating to such a property as a whole would not be "involving solely a principal residence," and, therefore, recording fees would be based on the length of the instrument [see (c) and (d) below].

- (c) RP § 3-601(a)(2)(ii): \$20 — For any instrument (other than above) which is 9 pages or less
- (d) RP § 3-601(a)(2)(iv): \$75 — For any instrument (other than above) which is 10 pages or more

NOTE: Subject to trebling pursuant to RP § 3-104(e)(1) [see Part III-A-3-(b)]

NOTE: There is currently a contradiction between the Real Property Article and the Commercial Law Article regarding the proper fees to charge in connection with recording or filing of UCC financing statements. RP § 3-601(a)(2) states that the recording fees set forth therein must be collected by the Clerk "before recording any instrument among the land or financing records." In addition, RP § 3-601(a)(3) provides that recording fees in RP § 3-601(a) "also apply to instruments required to be recorded in the financing statement records of [SDAT]."

But, except with respect to mortgages and deeds of trust that act as financing statements in accordance with CL § 9-502(c) [see CL § 9-525(c)], CL § 9-525 provides for a fee of \$25 for UCC filings of 8 pages or less, and \$75 for UCC filings longer than 8 pages.

Our current interpretation and advice is that a UCC filing recorded in the Land Records are subject to the recording fee under RP § 3-601(a) (and the surcharge under CJP § 13-604, as discussed below), and would not be subject to the fee schedule contained in CL § 9-525.

2. Applies to: any instrument recorded in the Land Records [see RP § 3-601(a)(2)]
3. Exemptions: Instruments recorded on behalf of the following are exempt from the recording fee:
 - (a) State of Maryland – see Letter of Advice from Julia Andrew, Asst. Att'y Gen., to Nancy Russell-Forrester, Asst. Att'y Gen. (Dec. 21, 2001)
 - (b) RP § 3-603: any Maryland county, any Maryland municipality, the Maryland-National Capital Park and Planning Commission, and the Washington Suburban Sanitary Commission
4. Collected by the Clerk of the Circuit Court [see RP § 3-601(a)(2)]

B. CJP § 13-604 – Land Records Improvement Fund Surcharge

1. Amount: \$20 (until 7/1/2006, at which time it will revert back to an amount of up to \$5 as set by the AOC) (see CJP § 13-604(a))

2. Applies to: each "**recordable instrument**" recorded in the Land Records

"recordable instrument" is defined in CJP § 13-601(d) to mean: (1) a deed, as defined in RP § 1-101, and (2) any other instrument affecting property that may be recorded under RP § 3-102 [see *Part II-C above*] – due to the wording of § 13-604(a), "recordable instrument" has been interpreted to also include UCC filings recorded in the Land Records [see Memorandum of Advice from Julia M. Andrew, Asst. Att'y Gen., to all Clerks of the Circuit Courts (May 14, 2003)]

"recordable instrument" does not include (and thus the surcharge does not apply to) instruments that are recordable pursuant to other provisions of the Maryland Code (such as the instruments listed in Items II-C-5(b) through (i)) [see Memorandum of Advice from Julia M. Andrew, Asst. Att'y Gen., to all Clerks of the Circuit Courts (May 14, 2003); Memorandum of Advice from Julia M. Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Sept. 23, 1994); Letter of Advice from Julia M. Freit to Hon. Richard H. Outten, Clerk of the Circuit Court for Worcester County (January 23, 1992); Memorandum of Advice from Julia M. Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (June 27, 1991); Memorandum of Advice from Julia M. Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (June 13, 1991)]

3. Exemptions: same as those for recording fee (see CJP § 13-604(c))

4. Collected by the Clerk of the Circuit Court (see CJP § 13-604(b))