



COUNTY AUDITOR

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May 27, 2009

To: Mayor and Board of County Commissioners
From: Evan A. Lukic, County Auditor
Subject: Recording Court-Related Documents

We have been advised by the County Records Division that the Clerk of the Circuit Court receives recording services free of charge. Following the implementation of Revision 7 of Article V to the Florida Constitution in 2004, the County should have begun charging the Clerk for services rendered in the recording of court-related documents.

In 1998, Florida voters approved Revision 7 of Article V to the Florida Constitution, which requires the state to fund the majority of the costs for the Florida court system effective July 1, 2004. Section 14(c) of Article V states that no county shall be required to provide any funding for the offices of the clerks of the circuit and county courts performing court-related functions.

Unlike the vast majority of Florida counties where the recording of public documents is a duty of the Clerk of the Circuit Court, recording of public documents in Broward is performed by the Department of Finance and Administrative Services' County Records Division. The Clerk was not charged, nor did he pay for recording court-related documents prior to the implementation of Revision 7, since both the Clerk and the Division were funded by the General Fund.

In response to an attempt by Division management to implement charges for the services provided, the Clerk held that he has no statutory authority to pay the County fees. For fiscal year 2008, the Division recorded 271,388 orders of dismissals and final judgments and 8,588 certificates of title in foreclosure sales.

Orders of Dismissals and Final Judgments

With respect to orders of dismissals and final judgments, the County Attorney has opined (see attached) that there is no strong legal basis for seeking to collect a portion of the filing fee as payment for the recording of orders and judgments.

Certificates of Title in Foreclosure Sales

The County Attorney has opined that the portion of the \$70 service charge for certificates of title in foreclosure sales to which the County is entitled for recording is undetermined, given that Section 45.035, *Florida Statutes*, fails to indicate how the fee is apportioned among the three

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listed services: making, recording, and certifying. Allocation options include: (1) equally dividing the fee among the three listed services; (2) charging a fee based upon a pro rata allocation of the labor and costs required to perform each of the three services; or (3) imposing a charge in accordance with the fee schedule set forth in Section 28.24.

Cost to County for Recording Court Documents

There is a cost to the County for recording court-related documents. As shown in Table 1 below, the Division has estimated a cost of \$1,055,958 for fiscal year 2008.

Table 1: Cost to County to Record Court Documents

Fiscal Year	Total of All Documents Recorded	Court Documents Recorded	Court Documents as % of Total Documents	Estimated Division Cost To Record Total Documents	Estimated Division Cost to Record Court Documents
2005	1,038,808	174,447	16.8%	n/a	n/a
2006	1,056,173	169,924	16.1%	n/a	n/a
2007	939,230	205,906	21.9%	\$3,152,185	\$690,329
2008	761,040	279,976	36.8%	\$2,869,450	\$1,055,958
2009	456,707	201,545	44.1%	\$3,037,994	\$1,339,755

Source: County Records Division - Fiscal Year 2009 data is through May 21, 2009

According to Division staff, the County's cost could be mitigated, if the Clerk commenced E-filing of court-related documents.

Recommendations

In recognition of the County Attorney's opinion, we recommend that the Board of County Commissioners direct the County Administrator to 1) include in the legislative agenda a request for an amendment to the Florida Statutes to allow the County to recover its cost for recording orders of dismissals and final judgments, and 2) work with the Clerk to develop an appropriate charge to recover the cost of recording certificates of title in foreclosure sales. In the interim, direct the County Administrator to work with the Clerk to commence E-filing of court-related documents.

Attachment

EAL/dh/ng

cc: Bertha Henry, County Administrator
Jeffrey Newton, County Attorney

ATTACHMENT 1

February 27, 2009

Our Files: 09-014 & 09-199

MEMORANDUM

TO: Evan Lukic, County Auditor

FROM: Jeffrey J. Newton, County Attorney

RE: **Court-Related Recording Services**

On February 19, 2009, you requested that this office provide an opinion regarding the following questions:

1. Does the County have a legal obligation to record court-related documents without compensation?
2. Is there any legal impediment to charging the Clerk for the recording services provided?

As set forth below, the answers to these questions depend upon the type of court-related document involved.

A. Final Judgments and Dismissal Orders in Civil Actions.

As permitted by the Florida Constitution, Section 3.06(B) of the County Charter transfers "all fiscal functions and duties" relating to the "recordation of public documents" from the Clerk to the County. As the official recorder of public documents, the County is required by Section 28.29, Florida Statutes, to record civil final judgments, dismissal orders, and other orders as directed by the court in writing. Although Section 28.29 expressly requires a "statutory service charge" to be paid when a certified copy of a judgment or order is presented for recordation, no such requirement exists for judgments and orders initially recorded for the benefit of the court and litigants. The lack of an express payment requirement evinces the Legislature's intent not to require a service fee for the initial recording of judgments and orders under Section 28.29.

It could be argued that Section 28.24, Florida Statutes, which sets forth the fees to be charged for "services rendered ... in recording documents and instruments," provides an independent basis for charging the Clerk for the initial recording of judgments and orders under Section 28.29. However, when Sections 28.29 and 28.24 are construed in relation to each other, the better interpretation is that the recording fees prescribed by Section 28.24 apply to certified judgments and orders but not to the initial recording of such documents as a necessary step in the judicial process.

It is reasonable to surmise that the Legislature declined to impose a separate recording fee based on the theory that the recording services required by Section 28.29 are encompassed within the flat filing fee paid upon commencement of a lawsuit. If the Legislature implicitly intended for the filing fee to cover the cost of the recording services, there is no statutory guidance as what portion of the filing fee corresponds to the provision of

such services. Given the uncertainty regarding whether the flat filing fee was intended to cover the required recording services and, if so, what portion of the fee may be recoverable for such services, there is no strong legal basis for seeking to collect a portion of the filing fee as payment for the recording services required by Section 28.29.

This statutory analysis is not impacted by the passage of Revision 7 to Article V of the Florida Constitution which, in Section 14(c), provides that "[n]o county ... shall be required to provide any funding for ... the offices of the clerks of the circuit and county courts performing court-related functions." (Underline added.) The County is not being required to involuntarily fund court-related functions performed by the Clerk. Rather, the County electorate, by Charter, has voluntarily bestowed upon the County the responsibility of performing "all fiscal functions and duties" relating to the recordation of public documents. The electorate may, by Charter amendment, transfer these responsibilities back to the Clerk if it so desires.

B. Certificates of Motor Vehicle Sales and Certificates of Title in Foreclosure Sales.

1. Certificates of Motor Vehicle Sales.

Florida law authorizing sales of motor vehicles to enforce liens for labor and services requires the lienor to file a certificate of compliance with the statutory notice requirements. At the time of filing the certificate of compliance, the lienor "must pay to the clerk ... a service charge of \$10 for indexing and recording the certificate." Subsection 713.585(4), Florida Statutes. By letter dated June 13, 2008, the Clerk has agreed to forward the entire \$10.00 service charge to the County.

2. Certificates of Title in Foreclosure Sales.

Florida law governing foreclosure sales states that "[t]he clerk shall receive a service charge of \$70 for services in making, recording, and certifying the sale and title... ." Section 45.035, Florida Statutes (underline added). The Clerk has refused to pay the County a portion of the \$70 fee even though the Legislature has expressly stated that the fee covers recording services. The Clerk should not receive a windfall for a service he does not perform, and the County has a reasonably strong argument that it is entitled to collect a portion of the fee. Contrary to the Clerk's contention, we have found no authority prohibiting the Clerk from transferring a portion of the fee to the County.

The portion of the fee to which the County is entitled is undetermined, given that Section 45.035 fails to indicate how the fee is apportioned among the three listed services (making, recording, and certifying). Allocation options include: (1) equally dividing the fee among the three listed services; (2) charging a fee based upon a *pro rata* allocation of the labor and costs required to perform each of the three services; or (3) imposing a charge in accordance with the fee schedule set forth in Section 28.24.

Please contact me or James Rowlee, Assistant County Attorney, if you require further information about the issues addressed herein.