Circuit clerks and fees for recording by marginal entry

Number: AGO 74-34

Date: November 05, 1998

Subject:
Circuit clerks and fees for recording by marginal entry

RE: CIRCUIT COURT CLERKS--FEES FOR ATTESTATION OF RECORDING BY MARGINAL ENTRY

To: Eleanor B. Hawkins, Clerk, Circuit Court, Monticello

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General, and Gerald L. Knight, Legal Research Assistant

QUESTION:

What is the proper fee for the records custodian attesting the satisfaction of a mortgage, notice of lien, or judgment entitled to marginal entry on the record under s. 701.04, F. S.?

SUMMARY:

The fee of fifty cents established by subsection 28.24(17), F. S., for "oath, administering, attesting and sealing not otherwise provided for herein" is to be collected when a satisfaction of mortgage, lien, or judgment is recorded by the sole method of making a *marginal entry of such satisfaction* on the record pursuant to s. 701.04, F. S. On the other hand, the fee of one dollar established by subsection 28.24(11) for making *marginal notations* in excess of one on recorded mortgages or judgments is to be collected when a written and acknowledged instrument of satisfaction affecting such mortgages or judgments is recorded.

Section 28.222, F. S., provides that the clerk of the circuit court shall be the county recorder. As such, he is required to record, *inter alia*, satisfactions of mortgages, liens, and judgments. Section 28.222(3)(a) and (c). Two methods by which the recorded entry of a satisfaction of a mortgage, notice of lien, or judgment may be made are provided by s. 701.04, id. The first method mentioned, and the one to which your question pertains, permits the party entitled to payment to enter the satisfaction upon the margin of the record of such mortgage, notice of lien, or judgment, "in the presence of the custodian of such record, to be attested by said custodian." The second method under s. 701.04 is to execute and record a written and acknowledged instrument of satisfaction.

The question which you have posed concerns the applicable fee to be charged for a *marginal recording* of satisfaction, unaccompanied by a recorded instrument of satisfaction. Section 28.24, id., establishes a schedule of fees to be charged by the clerk of the circuit court for his services in connection with the recordation of various instruments. Subsection 28.24(17) provides for a fee of fifty cents for "[o]ath, administering, attesting and sealing, not otherwise

provided for herein." Since the circuit court clerk is expressly required to attest to *marginal recordings* of satisfactions made under s. 701.04, supra the fifty-cent fee of s. 28.24(17) would be applicable here unless a different provision of s. 28.24 provides otherwise.

The only other provision of s. 28.24 which might be applicable in the instant situation is subsection (11). It establishes a fee of one dollar for making each marginal *notation* in excess of one "on the record of satisfaction or assignment of mortgage or judgment." An earlier opinion of this office interpreted this fee to cover only the making of marginal notations on the record of mortgages or judgments when an instrument of satisfaction was recorded, as required by ss. 28.21(9) and 28.22(5), *id*. Attorney General Opinion 057-357. By Ch. 71-4, Laws of Florida, these latter provisions were repealed and their subject matter transferred to s. 28.222(3) -- which, as stated previously, provides for the recording of satisfactions of mortgages, liens, and judgments. The new provision does not mention the "marginal notations" which were formerly required by the repealed provisions to be made on the record of mortgages and judgments when a satisfaction, in writing and duly acknowledged, was recorded. However, as the same language concerning the making of marginal notations has been retained in the fee schedule under s. 28.24(11), it must be assumed that such notations may still be made by the circuit court clerk for the proper fee. Thus, the marginal notations which are covered by the subsection (11) fee are those, in excess of one, which are entered upon the record of a mortgage or judgment when a separate instrument of satisfaction, "in writing and duly acknowledged," is recorded. Attorney General Opinion 063-106. For example, this fee would include notations made on the record of a mortgage or judgment, after a written and acknowledged instrument satisfying more than one judgment or mortgage is recorded, pursuant to the alternative method of recording satisfactions provided for in s. 701.04, *supra*. On the other hand, the fee in s. 28.24(17) covers the type of marginal recording of satisfaction contemplated by s. 701.04 when there is no separate written instrument recorded and the only duty of the circuit court clerk is to "attest" the marginal entry of satisfaction made by the lienholder or lienholders and signed "with his, her or their hand." Section 701.04.