

County Clerks and Recorders—Fees for Assignment of Real Estate Mortgages—United States Patent—Classification of.

The fee for filing, recording and indexing an assignment of real estate mortgage and a United States patent is thirty cents for the first folio, fifteen cents for each subsequent folio, or fraction thereof, and ten cents for each entry in index.

Nov. 17th, 1917.

Hon. H. S. Magraw,
State Bank Examiner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 12th inst., submitting the following questions regarding fees to be charged by County Clerks and Recorders:

"First. What fee should be charged on an assignment of real estate mortgage which contains three hundred twenty-eight words?

"Second. Does a United States Patent issued to a homesteader come under the classification of Miscellaneous Instruments or a short form deed?

"Third. Is it necessary that the county clerk affix his seal to every instrument filed and recorded."

In explanation of the last question you state that it has been customary for a large number of the county clerks to place the seal on instruments of record when they contain the following words:

"I hereby certify that the within instrument was filed for record on the, etc,"

but when the wording on the instrument was:

"Filed for record on the,, etc.,"

it has not been felt necessary that the seal be affixed, and therefore, the fee of fifty cents, which is required for the seal, has not been charged.

Section 5751 Revised Codes, 1907, provides for the recording of mortgages of real property, while Section 5744 provides that an assignment of a mortgage may be recorded in like manner as a mortgage.

Section 3063, Revised Codes, 1907, as amended by Chapter 117, Session Laws 1909, fixes the fees to be charged by County Clerks and Recorders. This section, as amended, first provides a method for determining and fixing the fees to be charged for filing and recording instruments not thereafter particularly specified, such fees being thirty cents for the first folio and fifteen cents for each subsequent folio or fraction thereof; and ten cents for each entry in index, and for a certificate that such instrument has been filed and recorded

fifty cents. This section then fixes the fees to be charged for filing, recording, and indexing certain instruments therein specified, and for performing other services therein described, and concludes by providing that, for filing, or recording or indexing any other instrument not therein expressly provided for, the same fee shall be charged as therein provided for a similar service.

In this section an assignment of mortgage is not mentioned, neither is the fee for filing, recording, and indexing an assignment of mortgage specifically stated, and it follows that such fee must be determined and fixed under the last provision of said section, or, if it cannot be so determined and fixed thereunder, then it must be determined and fixed under the first provision of said section.

The words "similar service" used in the last provision of said section evidently means a service having more or less resemblance to a service particularly mentioned in said section. (4 Word and Phrases 2nd ed. 591). For instance said section fixes the fee to be charged for filing, recording, and indexing a declaratory statement of location of mining claim, but does not fix the fee for filing, recording, and indexing an amended declaratory statement of location of mining claim, yet the service is similar and the same fee should be charged. So, for filing, recording, and indexing, each affidavit of annual labor on mining claims, for each claim therein, the fee is fixed, but no fee is fixed for filing an affidavit of non-forfeiture under the resolutions of Congress when such work has not been performed, yet the service is similar and the same fee should be charged.

Giving this meaning to the words "similar service" there is no service particularly mentioned and specified in this section which is similar to the filing, recording, and indexing of an assignment of a real estate mortgage, and therefore, the fee for filing, recording, and indexing an assignment of a real estate mortgage must be determined and fixed in accordance with the first provision of said section.

In answer to your first question you are, therefore advised that the fee for filing, recording, and indexing an assignment of a real estate mortgage is thirty cents for the first folio, fifteen cents for each subsequent folio, or fraction thereof, and ten cents for each entry in index.

What I have said with reference to your first question is also applicable to your second question. There is no service mentioned and specified in this section which is similar to the filing, recording, and indexing of a homestead patent, and, therefore, the fee for such service must be determined and fixed in accordance with the first provision of said section, that is, thirty cents for the first folio, fifteen cents for each subsequent folio, and ten cents for each entry in index.

Regarding your third question the same is fully answered by the opinion given to the Board of County Commissioners of Silver Bow County, on May 26, 1909. (3 Op. Atty. Gen. 119).

Respectfully,

S. C. FORD,

Attorney General.