

County Clerk and Recorder—Fees—Mortgages—Recording—Building and Loan Associations.

The fee for recording mortgages depends upon the number of folios contained in the mortgage as indicated in the opinion.

Dwight N. Mason, Esq.,
County Attorney,
Missoula, Montana.

My dear Mr. Mason:

You have requested my opinion with reference to the proper fee to be charged by the County Clerk and Recorder for recording mortgages given to the Western Montana Building and Loan Association, and enclose a copy of the form of mortgage used by such association together with a copy of a letter from Mr. A. Besancon regarding the same.

Section 8263, Revised Codes of 1921, gives a statutory form of mortgage, this form being generally known and called a "short form mortgage." Comparing the form used by the Western Montana Building and Loan Association with this statutory form it will be seen that there is a very considerable difference, so much in fact that the form used can hardly be classed as a short form mortgage, and must, therefore, be classed as a long form mortgage.

Section 4917, Revised Codes of 1921, fixes the fees to be charged and collected by County Clerks and Recorders for services performed by them. Such section first provides that the Clerk and Recorder must collect for filing each instrument authorized by law to be recorded, except as hereinafter provided, the fee to be determined by taking the first folio at thirty cents, and each subsequent folio or fraction thereof at fifteen cents. Such section then specifically provides that the fee for recording and indexing a short form real estate mortgage shall be one dollar and fifty cents; and for recording and indexing a long form real estate mortgage two dollars, except when such mortgage exceeds ten folios, in which case for every folio over ten an additional twenty cents must be collected.

All of the provisions of Section 4917 must be read together, and when this is done it is my opinion that the Legislature intended the following fees to be charged for recording and indexing a long form real estate mortgage: If it contains ten folios or less the fee is two dollars; if it contains more than ten folios the fee is two dollars for the first ten folios and in addition twenty cents for each folio, or fraction of a folio, in excess of ten. Thus, if there should be fifteen and a fraction folios the fee would be two dollars for the first ten folios, twenty cents for each of the next five folios and twenty cents for the fraction of the sixteenth folio, or three dollars and twenty cents in all.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.