

DOCUMENT RESUME

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[Real Estate Expenses--Attorney's Fees]. B-189487. August 5, 1977. 4 pp.

Decision re: Kirk Anderson; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Farmers Home Administration.

Authority: 5 U.S.C. 5724a(a)(4). F.T.R. (FPMR 101-7), para. 2-5.2c. B-174612 (1972). D-185976 (1977). B-186254 (1977). B-184290 (1975). B-183443 (1975). B-175076 (1972).

Orris C. Huet, an Authorized Certifying Officer for the Department of Agriculture, requested advice concerning a claim for reimbursement of certain attorney's fees incurred in the transfer of the title of an employee's residence to his estranged wife incident to a permanent change of station. The employee, who sold his interest in the residence, may be reimbursed for the legal expenses for preparation of the deed and of the affidavit of title. Reimbursement of the costs for the attorney's attendance at closing is not allowed since that expense was of an advisory nature. (Author/SC)

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Thomas Armstrong
Civ. Pers.



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-189487

DATE: August 5, 1977

MATTER OF: Kirk Anderson - Real Estate Expenses -
Attorney Fees

DIGEST: Transferred employee sold interest in residence to estranged wife. Employee may be reimbursed legal expenses for preparation of deed and preparation of affidavit of title since sale of interest in residence constitutes residence transaction within meaning of Federal Travel Regulations (FPMR 101-7) para. 2-6.2c. Reimbursement for costs of attorney's attendance at closing is not allowed as such expense is of an advisory nature.

This is in response to a request dated June 24, 1977, from Ms. Orris C. Huet, an authorized certifying officer of the Department of Agriculture, concerning the voucher of Mr. Kirk Anderson, an employee of the Farmers Home Administration of the Department of Agriculture, for reimbursement of certain attorney's fees incurred in the transfer of the title of his residence to his estranged wife incident to a permanent change of station.

Effective October 27, 1974, Mr. Anderson was transferred from Toms River, New Jersey, to Mt. Holly, New Jersey. Subsequently, Mr. Anderson and his estranged wife executed a property settlement agreement in anticipation of the eventual dissolution of their marriage. In accordance with that agreement, on August 14, 1975, Mr. Anderson sold all of his right, title, and interest in the marital residence at the old duty station to his wife in exchange for \$15,000 and certain other real estate. At the time of the transaction, Mr. Anderson was separated, but not divorced, from his wife. He has requested reimbursement of the following legal fees incurred in connection with this sale:

Preparation of Deed for property	\$ 25.00
Preparation of Affidavit of Title for property	15.00
Attendance at Closing (review of Closing statement; explanation of transactions and various documents; negotiations of various adjustments at Closing)	<u>135.00</u>
Total	\$175.00

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Since Mr. Anderson sold his interest in the residence to his estranged spouse, the certifying officer has questioned the propriety of reimbursement for the above expenses.

Statutory authority for reimbursement of the expenses of residence transactions of transferred employees is found at 5 U.S.C. § 5724a(a)(4) (1970). The regulations promulgated pursuant to this statute are found in the Federal Travel Regulations (FPMR 101-7, May 1973) para. 2-6.2c, and provide as follows:

"c. Legal and related expenses. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of the residence: costs of (1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

We have previously held that where a transferred employee and his divorced spouse sell a residence at the old duty station, each person receiving one-half of the proceeds and paying one-half of the closing costs, the employee may be reimbursed for his pro-rata share of such costs. B-174612, July 14, 1972. In the present case, both Mr. Anderson and his wife incurred separate legal fees for the sale and purchase aspects of the

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transaction, and Mr. Anderson has requested reimbursement only for the legal expenses which he personally incurred. It is our view that the sale of his interest in the residence constitutes a residence transaction within the meaning of FTR paragraph 2-6.2c (May 1973). Thus, the employee may be reimbursed to the extent permitted by the FTR and our decisions for such legal services as are customarily rendered incident to the sale of real estate in the locality of the transaction. In permitting reimbursement in similar instances, it is necessary to carefully distinguish between allowable real estate expenses which are ordinarily incurred in such transactions and are directly incurred by the employee in each case, and expenses which may have been paid by the employee, but which are the result of the divorce or property settlement. An example of the latter, unreimbursable, expenses would be a contractual provision for the employee to pay the spouse's legal fees incident to a residence transaction.

Our decision in George W. Lay, B-185976, April 27, 1977, 56 Comp. Gen. ____, which establishes a new policy with respect to the reimbursement of attorney's fees, is prospective only. The rules set forth in that decision may not be applied where the settlement date for the transaction for which reimbursement is claimed is prior to April 27, 1977. Since the settlement date of Mr. Anderson's transaction was August 14, 1975, the holding of that decision is not applicable.

With regard to residence transactions settled prior to April 27, 1977, we have held that only those portions of an attorney's fee that represent services of the type enumerated in this regulation are reimbursable. No reimbursement may be allowed for legal services of an advisory nature. Joseph R. Garcia, B-186254, March 16, 1977; Frank R. Smith, B-184290, October 3, 1975. Attendance of the attorney at closing as distinguished from the cost of conducting the closing, has been considered to be an advisory service. Thomas A. McDonnell, B-183443, July 14, 1975. Accordingly, the \$135 fee charged Mr. Anderson by his attorney for attendance at closing may not be certified for payment.

However, the other legal expenses in this case are reimbursable under the regulations. The cost of an attorney's services in preparing a deed is one such expense. Smith, supra.

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Accordingly, payment of the \$25 fee charged Mr. Anderson by his attorney for this function may be allowed. The regulations also provide for reimbursement of the costs of preparing other instruments required for legal purposes. Expenses incurred in the preparation of an Affidavit of Title have been held to be reimbursable under this provision. B-176876, November 27, 1972. Accordingly, Mr. Anderson's claim for reimbursement of \$15 for this legal service may also be allowed.

Action on the voucher should be taken in accordance with the foregoing.


Deputy Comptroller General
of the United States