



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Frank W. Hahnenberg  
**File:** B-248506  
**Date:** October 26, 1992

## DIGEST

1. A transferred employee may be reimbursed for survey costs incurred in connection with the purchase of a residence at his new permanent duty station where the purpose of the survey is to establish the perimeter and configuration of the property to comply with requirements for recording the deed or where the lender requires such a survey for financing purposes. Reimbursement is subject to the agency's determination that survey costs are customarily incurred by the purchaser incident to real estate transactions in the particular area in accordance with paragraph 302-6.2(c) of the Federal Travel Regulations. Reimbursement is not authorized for costs related to the survey of the plot of land from which the employee's plot was subdivided to qualify the seller's land for subdivision.

2. A transferred employee incurred attorney's fees for the drafting of the sales agreement with revisions, representation through 3 different attempts at financing with financing being obtained in part from a private party, preparation of deed, loan notes and review of bank documents, representation at closing and other itemized services. Under applicable law and regulations, necessary and reasonable legal fees and costs incurred by reason of the purchase of a residence incident to a permanent change of station may be reimbursed provided that the costs are within the customary range of charges for such services within the locality of the residence transaction. However, attorney's fees for locating a lender and subdivision of seller's land are not reimbursable.

## DECISION

This decision responds to a request from the Department of Agriculture, National Finance Center (NFC)<sup>1</sup>, concerning the extent of the entitlement of Mr. Frank W. Hahnenberg, a

<sup>1</sup>Ms. Sandra S. Williams, Authorized Certifying Officer, National Finance Center.

Forest Service Employee, to be reimbursed certain real estate related expenses incident to a permanent change of station. The agency initially disallowed the expenses, and Mr. Hahnenberg has appealed that disallowance incident to which the agency requested our decision. We conclude that his entitlement to reimbursement is limited in accordance with the guidelines explained below.

#### BACKGROUND

Mr. Hahnenberg was authorized a permanent change of station from Houston, Missouri, to Meeker, Colorado, effective April 4, 1989, with a reporting date of June 4, 1989. In accordance with that transfer he was also authorized relocation expenses under the Federal Travel Regulations (FTR).

Mr. Hahnenberg entered into an option agreement dated January 29, 1991, to purchase a house and 6 acres of land which was part of a previously undivided 18 acre parcel, and a 600-foot access lane over which the seller apparently wished to retain a right of way. A survey was required to comply with local government zoning regulations and to secure financing, and the option agreement called for the survey to be the purchaser's responsibility. The option agreement was conditioned, in part, on local planning and zoning approval in the form of a county subdivision exemption based upon physical separation of the land or other satisfactory zoning clearance. Mr. Hahnenberg assumed the obligation of all related costs other than title insurance and preparation of the deed.

Mr. Hahnenberg chose to obtain unconventional financing since, he reports, "it is difficult if not impossible to obtain conventional financing in many rural areas of Colorado," and "to avoid the high finance costs" associated with conventional financing. Although Mr. Hahnenberg did incur higher legal fees due to the unconventional financing, he suggests that these costs were offset since there was very little additional cost to obtain financing and no loan origination fee.

Mr. Hahnenberg submitted a voucher for reimbursement of several costs associated with the purchase of the residence. After examination by NFC, the following 2 items, have been questioned: (1) legal fees (\$2,126.85) for the drafting of the sales agreement with revisions, representation through 3 different attempts at financing, preparation of deed, loan notes and review of bank documents, representation at closing, and numerous other itemized services; and (2) property survey (\$2,265) of a complex nature requiring a new metes and bounds description of the property perimeter and requiring additional monumentation required to comply with

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local zoning and subdivision regulations and to secure financing. In addition, in view of the size of the lot Mr. Hahnenberg purchased (6 acres), the agency questions whether it must limit any reimbursement to a pro rata amount based on the amount of the land reasonably related to the residence.

#### ATTORNEY'S FEES

The statute authorizing reimbursement of the legal expenses of transferred employees in connection with the sale or purchase of a residence, 5 U.S.C. § 5724a(a)(4)(A), expressly limits entitlement to those amounts "customarily charged in the locality where the residence is located." The implementing regulations restrict reimbursable legal expenses for the employee buying a house to expenses "customarily paid by a 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. These expenses are:

"costs of (1) searching title, preparing abstract, and legal fees for a title opinion, . . . 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." FTR, 41 C.F.R. § 302-6.2(c).

We have held that the expenses of advisory and representational services may be allowed as well as the expenses of title searches and other services specifically described under the regulations quoted above. John C. Bisbee, 65 Comp. Gen. 473 (1986). We have also held that in considering what is customary, one must consider the complexity of the transaction and the legal services required to effectuate such transaction. See generally George W. Lay, 56 Comp. Gen. 561 (1977).

Legal expenses incurred but not falling within the above quoted provisions, however, are not reimbursable. Thus, to the extent legal fees were incurred for obtaining financing for Mr. Hahnenberg, such as finding a lender, they are not reimbursable. Such a charge is considered a finance charge which is not reimbursable even if the charge were incurred by use of a mortgage broker. See Roy Dye, 69 Comp. Gen. 340 (1990). Also, any legal fees which Mr. Hahnenberg may have incurred for the purpose of obtaining the necessary local government zoning approval in the form of a county subdivision exemption applicable to the seller's 18 acre plot likewise would not be reimbursable. These are costs ordinarily borne by the seller of the property to be

subdivided and are recovered by him in the selling price of the property being sold and the value of the property being retained. Costs reimbursable to an employee are only those which are customarily paid by a purchaser of a residence and not extraordinary costs which may arise in connection with a particular transaction, albeit, he may agree by contract to pay them. See Douglas D. Walldorff, 57 Comp. Gen. 669, 673 (1978).

#### SURVEY EXPENSE

One purpose of a survey is to establish the perimeter and configuration of the property being purchased. Where a lender requires such a survey for financing purposes, reimbursement is proper, subject to a determination that the amount of the charge is customary for the area. Dennis R. Smetana, B-206051, Sept. 29, 1982.

In this case Mr. Hahnenberg states that the survey performed was necessary to comply with the local zoning and subdivision regulations "without which there could have been no sale." The record does not indicate whether the expense of a survey is customarily paid by the purchaser at the new official duty station in the locality where Mr. Hahnenberg purchased property. See 5 U.S.C. § 5724a(a)(4)(A) and FTR 41 C.F.R. § 302-6.2(c) discussed above.

If the survey expense is customarily paid by the purchaser in the vicinity of Meeker, Colorado, and if such a survey is required in order to comply with local zoning and subdivision regulations in order for the deed to be acceptable for recordation, or if a survey was required by as a condition of the mortgage loan, then the customary expense may be paid. However, to the extent that the survey covered more than the parcel Mr. Hahnenberg purchased or was for zoning or subdivision of the 18 acre plot, those costs are not reimbursable under the FTR.

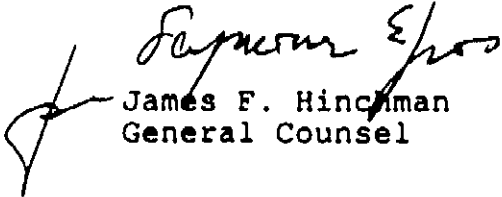
In accordance with paragraph 302-6.3(c) of the FTR, technical assistance in determining the reasonableness of an expense, including the customary range of charges for legal fees and costs for the various types of legal and other services provided, may be obtained from the local area office of the Department of Housing and Urban Development (HUD) serving the area in which the expense occurred. See Judy Wynkoop, B-205503, June 2, 1982; John C. Bisbee, 65 Comp. Gen. 473 (1986). We note that Mr. Hahnenberg states that there are no HUD offices in his part of Colorado and "certainly none familiar with what might be a reasonable and customary fee for the area." However, as noted, the regulations provide for obtaining HUD assistance and for using HUD's schedule of typical closing costs relating to the purchase of a single family property in the local area

as guidelines (not as rigid limitations) in determining whether the expenses claimed are reasonable. In view of the unusual situation involved in this case, we think the agency should follow this procedure. If Mr. Hahnenberg is unable to provide information for the agency to satisfactorily separate the reimbursable from nonreimbursable amounts, as discussed above, we would not object to the agency limiting reimbursement to the customary legal fees and survey charges for the purchase of a residence in the local area based on HUD's advice.

#### LOT SIZE

Additionally, the certifying officer asks whether FTR paragraph 302-6.1(f), which limits an employee to pro rata reimbursement when he purchases land in excess of that which reasonably relates to the residence site, is applicable here where Mr. Hahnenberg's new residence is situated on a 6 acre lot. After reviewing the administrative record we are satisfied that in the circumstances of this case the lot size is not excessive within the meaning of the cited FTR provision.<sup>2</sup>

Accordingly, NFC should obtain the additional information required so that Mr. Hahnenberg's claim can be paid to the extent consistent with the above.

  
James F. Hinchman  
General Counsel

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<sup>2</sup>Specifically, the Rio Blanco County Department of Development (Meeker, Colorado) has stated by letter dated April 6, 1992, that the property is zoned agricultural and that many sites contain limitations which require significantly more acreage than the minimum 2 acre lot size because of a variety of factors. The record also contains a description of the property which suggests many factors which could require greater than the 2 acre minimum lot size. Further, the Department of Development reviewed and approved Mr. Hahnenberg's lot as suitable for one dwelling.