

DECISION

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

DROWN

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FILE: B-210604**DATE:** August 24, 1983**MATTER OF:** Reid T. Stone**DIGEST:**

Employee retained attorney to facilitate transfer of marketable title when seller's death prior to closing resulted in reversion of property being purchased to a trust and subjected it to claims for death-related taxes and construction liens. Since services were necessary to the transfer of title and customarily paid for by the purchaser within the meaning of Matter of Lay, 56 Comp. Gen. 561 (1977), fees may be reimbursed insofar as the number of hours billed is reasonable for the particular complications involved and the hourly rate charged is within the customary range of charges for such services.

The issue presented in this case is whether reimbursement of attorney fees incident to the purchase of a residence is limited by what is customary in the normal transaction, or whether fees incurred to facilitate the transfer of marketable title may be reimbursed where the purchase transaction is complicated by the seller's death prior to closing.

Mr. Reid T. Stone, an employee of the Geological Survey, United States Department of the Interior, was transferred from Menlo Park to Los Angeles, California, by a travel authorization dated September 20, 1981. In December 1981, the employee made an offer to purchase a unit in a residential building which was under construction. As no real estate agents were involved, he obtained the services of an attorney to draft a purchase offer and render related services. He has been reimbursed \$285 for these particular legal fees.

Before the transaction was completed, however, one of the sellers died and the employee incurred additional attorney fees for research, negotiations and drafting of additional documents. The additional legal work was necessitated by title complications that resulted from the fact that the property, which reverted to a trust, became subject to claims for estate and inheritance taxes. Also complications arose as a result of construction and materials liens. The bill submitted by the attorney is for 23.70 hours of work at \$150 per hour.

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The agency has requested an advance decision regarding reimbursement of these fees since most of the legal expenses were incurred as a result of the death of the seller and the legal documents and services required by Mr. Stone are not typically required in connection with the purchase of a residence.

Under 5 U.S.C. § 5724(a)(4) (1976) a transferred employee may be reimbursed for the expenses of selling a residence at his old station and of purchasing a home at his new official station, as long as the expenses do not exceed those customarily charged in the locality where the residence is located. Paragraph 2-6.2c of the Federal Travel Regulations (FPMR 101-7, May 1973) (FTR) makes broad provision for the payment of legal fees, not including fees for litigation, which are customarily paid by the purchaser of a residence at the new duty station, provided they do not exceed amounts charged in the locality of the new residence. Para. 2-6.2g of the FTR limits expenses that may be reimbursed in connection with the purchase of a residence to 5 percent of the purchase price or \$4,000, whichever is less.

We noted in Matter of Lay, 56 Comp. Gen. 561 (1977), that it is not only prudent but customary to obtain necessary and reasonable legal services incident to the purchase or sale of a residence. Accordingly, we held that necessary and reasonable legal costs and fees, except for the fees and costs of litigation, incurred by reason of the purchase or sale 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. The question of whether legal fees were necessarily incurred was addressed in Matter of Simonski, B-193945, April 29, 1980. In that case, the employee's sale of his residence was complicated by the fact that a structure on the property being sold was encroaching on an adjacent lot. Finding that the encroachment raised questions concerning the marketability of his title, we held that the employee necessarily incurred additional legal fees for redrafting of documents as well as negotiations with the purchaser and

B-210604

the owner of the adjacent parcel to establish marketable title and complete the sale. As a measure for determining whether the costs incurred were within the customary range of charges for the services rendered we considered the customary range of charges for a "land sale contract involving an encroachment." While it is ordinarily the seller's obligation to convey marketable title, we have recognized that it may be necessary for the purchaser as well to obtain legal services to assure good and marketable title to the property. Where financing was dependent upon the resolution of title complications we allowed reimbursement to the purchaser for a \$300 legal fee paid for that purpose. Matter of Petro, B-183160, November 17, 1975.

Accordingly, the attorney fee in question may be reimbursed to the extent the agency determines that it does not exceed the legal fees which would normally be charged in the area concerned for the services rendered. In that connection the local Office of the Department of Housing and Urban Development can often give an agency advice as to whether the number of hours billed is reasonable considering the title complications involved and as to whether the attorney's hourly rate is within the customary range of charges for such work. Also, the total reimbursement allowed for purchase of this residence may in no case exceed the maximum prescribed by regulation.

Harry R. Van Cleave
for Comptroller General
of the United States