

# **Building Homes and Jobs Act Fee**

## **Frequently Asked Questions**

**December 2**

*All information is subject to change as new legal interpretations, rules and regulations are developed on this bill.*

### ***General Questions***

**Q1: What is the new Building Homes and Jobs Act Recording Fee?**

A: The new fee is an additional charge passed by the legislature and signed by the governor to fund Affordable Housing. The fee is assessed at the time documents are recorded into the public record with the county recorder's office.

**Q2: Does the new Recording Fee replace previous charges for recording?**

A: No, the new Recording Fee is charged in addition to previous recording charges collected by county recorders.

**Q3: When does the new recording fee become due?**

A: Effective January 1, 2018, the recording fee becomes due at the time an instrument, paper or notice is recorded with the county recorder's office that is not otherwise exempt.

**Q4: Is the Building Homes and Jobs Act Recording Fee charged on all documents presented for recording?**

A: No, the Building Homes and Jobs Act Recording Fee is charged on real estate instruments, papers or notices permitted by law to be recorded unless otherwise exempt.

**Q5: What is considered a "real estate instrument, paper or notice"?**

A: The new legislation defines this as a document relating to real property and includes, but is not limited to the following as examples: deed, grant deed, trustee's deed, deed of trust, reconveyance, quit claim deed, fictitious deed of trust, assignment of deed of trust, request for notice of default, abstract of judgment, subordination agreement, declaration of homestead, abandonment of homestead, notice of default, release or discharge, easement, notice of trustee sale, notice of completion, UCC financing statement, mechanic's lien, maps, and covenants conditions and restrictions.

**Q6: What is the amount of the assessment?**

A: The additional fee is \$75.00 per instrument, paper or notice per each single transaction per parcel of real property.

**Q7: What is considered a "Single Transaction"?**

A: The Recorder Association has defined transaction as "A transaction refers to instruments, paper or notice presented together and related to the same parties and property transfer.

**Q8: Is there a maximum aggregate housing fee charge per transaction?**

A: Yes. The maximum aggregate housing fee charge for real estate instrument, paper or notice recorded in a single transaction is \$225.00.

**Q9: What is considered a "Parcel of Real Property"?**

A: A parcel is defined, for the purposes of interpretation of new Government Code Section 27388.1, as a piece of land of any size that is in the same ownership. Thus, recorders will not be looking at Assessor Parcel Numbers (APNs) to make the determination on the "per parcel" portion of the fee. A document that had 3 APNs listed in the legal description would be charged \$75, not \$225 (1 title document). However, if there were 3 titles in 1 single document the fee would apply per title.

**Q10: How will a county recorder determine that the maximum has been paid, such that additional instruments recorded in connection with a single transaction are not charged an additional recording fee?**

A: After the maximum Building Homes and Jobs Act Recording Fee of \$225 has been met, the document submitter will need to note the valid exemption reason.

**Q11: What real estate instruments, papers or notices will be considered recorded "in connection with" a transfer subject to the imposition of documentary transfer tax?**

A: The instrument with documentary transfer tax stamped and paid on it is self-evident, and requires no additional stamp.

"In connection with" will be interpreted to mean documents involving the same parties and/or same property that are recorded *concurrently*. Documents recorded concurrently will have to include an exemption indicating they are part of an exempt transaction.

**Q12: What real estate instruments, papers or notices will be considered recorded "in connection with" a transfer of real property that is a residential dwelling to an owner-occupier?**

A: All instruments necessary to transfer ownership, relinquish debt and secure new debt recorded in a single transaction will be considered to be in connection with an exempt transfer, if an exemption is declared and presented with the document.

**Q13: For a real estate instrument paper or notice to be considered recorded “in connection with” a transfer of real property that is a residential dwelling to an owner-occupier, must such document(s) be recorded concurrently with the document transferring a residential dwelling to an owner-occupier?**

A: “In connection with” will be interpreted to mean documents involving the same parties and/or same property that are recorded *concurrently*. Documents recorded concurrently will have to include the exemption reason on the face of the document, indicating they are part of an exempt transaction.

**Q14: How are documents with multiple titles going to be charged Building Homes and Jobs Act Recording Fees?**

A: Documents with multiple titles will be charged *per title*. (e.g. (1) Substitution of Trustee and Full Reconveyance. The charge would be \$75 x 2 titles = \$150. (2) Assignment, Substitution of Trustee, Reconveyance Agreement (4 titles) would be charged the maximum \$225.)

### ***Exemption Questions***

**Q15: Are any real estate instruments exempt from the Building Homes and Jobs Act Recording Fee?**

A: Yes. The following real estate instruments, papers or notices are exempt from the additional Recording Fee:

- Those transfers subject to and paying DTT at the time of recording
- Those recorded in connection with a transfer subject to a documentary transfer tax; or
- Those recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier.
- Those which are not related to real property

**Q16: Are reconveyance and release documents recorded to release encumbrances paid prior to January 1st, 2018 subject to the Building Homes and Jobs Act Recording Fee charge?**

A: Yes, documents recorded after January 1st, 2018 related to transactions closed prior to that date will be charged the \$75 Building Homes and Jobs Act Recording Fee. The fee applies to all documents submitted on or after January 1, 2018.

**Q17: Are mining claims exempt?**

A: No, mining claims are not exempt, pursuant to R&T 104, which defines real property as

“All mines, minerals, and quarries in the land.”

**Q18: Are unsecured lien releases by governments exempt from the fee?**

A: No. R&T 2191.4 states that the unsecured lien “constitutes a lien upon all personal and real property” and is therefore related to real property.

**Q19: Are maps exempt?**

A: No. Maps are related to real property and specifically mentioned in GC 27388.1 as being assessed the fee.

**Q20: What documents are exempt because they are not related to real property?**

- Bonds (Legal Document Assistant, Notary, Process Server, Professional Photocopier, Unlawful Detainer Assistant)
- Cancellation of Bond
- Preliminary 20-Day Notice

## ***Scenario Questions***

**Q21: If recording a subdivision map describing multiple lots in a subdivision, is an Building Homes and Jobs Act Recording Fee due equal to (a) the number of lots in the subdivision times \$75, limited by the maximum assessment or (b) the number of lots in the subdivision times \$75?**

A: One \$75 fee would be charged for a single transaction regardless of the number of parcels.

**Q22: If, in addition to a subdivision map, a person simultaneously presents covenants conditions and restrictions (CCRs) on the same property, is an additional Building Homes and Jobs Act Recording Fee due equal to the number of lots in the subdivision times \$75, limited by the Recording Fee maximum?**

A: An additional \$75 Building Homes and Jobs Act Recording Fee would be due to record the CCRs.

**Q23: If a property is being refinanced, will the fee be due?**

A: Yes, unless it is being refinanced in connection with a transfer of a residential, owner-occupied property and the exemption is listed on the face of the document.

**Q24: If a residential property is being removed from a trust by an owner-occupier and is followed by refinancing documents, will the fee be due?**

A: No, if the deed and refinancing documents are recorded concurrently and they all have the exemptions listed on the face of the documents.

**Q25: Are documents re-recorded for reasons such as correcting a name or attaching a legal description exempt from the Building Homes and Jobs Act Recording Fee charge?**

A: No, previously recorded documents being re-recorded to correct a previous omission or error are subject to the Building Homes and Jobs Act Recording Fee charge. Minor corrections pursuant to 27201 (B) and (C) are exempt.

**Q26: Is a Lot Line Adjustment or Merger considered a transfer?**

A: It would be up to the submitter to determine if that is legally a transfer, and if there is an exemption that applies. Any exemption would need to be stated on the first page of the document.

## ***Process Questions***

**Q27: Will Sonoma County require exemption verbiage on a document that lists Documentary Transfer Tax?**

A: No, the documentary transfer tax is the exemption.

**Q28: Will Sonoma County require the exemption reason be list on every document in a transaction if it is exempt?**

A: Yes. To receive the exemption, either an exemption reason or Documentary Transfer Tax must be listed on the face of the document or coversheet.

**Q29: Will Sonoma County be providing a sample coversheet?**

A: Yes, it will be posted on our website, on the Clerk-Recorder Forms page.

**Q30: Is a coversheet required on all exempt documents?**

A: No, the coversheet is an option for those who wish to claim the exemption and it is not listed on the face of the documents.

**Q31: How will Sonoma County handle errors in collection – if the fee is charged with a valid exemption on the document, or if it was not charged the fee and it was due.**

A: It will depend on the situation and the timing.

- If the fee is due, and was missed during the receipting process and the error was caught the same day, we would process a receipt correction and charge the submitter for the correct fee, following current procedure. The correction would be communicated via email or in person.
- If the fee is due, and was missed during the receipting process, and the error was caught at a later time, we will need to determine the best course of action to correct it. The fee is not a County fee, and we have no legal jurisdiction to waive it.
- If the fee was collected in error, on a document that had the exemption on the face of the document, and it was caught the same day, we would process a receipt correction and adjust the account accordingly. The correction would be communicated via email or in person.
- If the fee was collected in error, on a document that had the exemption on the face of the document, and it was caught at a later time, we would issue a refund check. If the funds have already been distributed to the state, we will need to see what they allow in terms of refunds – they may handle it themselves, or they may allow us to refund the moneys.

***Questions:***

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