

D I S C U S S I O N    D R A F T

FOR HALL OF RECORDS COMMISSION MEMBERS ONLY

Proposed Policy Concerning Access to the  
Records of Public Officials at the Hall of Records

Whereas the legal status of the papers of public officials as public records subject to Article 76A, Section 1-5 of The Annotated Code of Maryland or any other law governing access to public records has not been established in the courts and

Whereas Article 54 of The Annotated Code of Maryland is unclear in the distinction between private and public papers of public officials except when it defines what are not public records as "acceptances or refusals of invitations or engagements and other personal business of public officers," the Hall of Records Commission of the Department of General Services hereby establishes the following policy governing access to the papers of public officials entrusted to its care pending further clarification through legislation and/or judicial review.

The public papers and records of the Governors of Maryland and other public officials transferred to the Hall of Records through the scheduling process or by any other means shall be open to the public at the close of the Governor's term (or terms if they be consecutive) in which they were created, subject only to the restrictions governing public handling of records established by the Hall of Records Commission to ensure the

permanent preservation of all records in the Hall of Records and any laws protecting the privacy of individuals as they may apply to public records; that any records transferred to the Hall of Records from any office shall be open to the public at the close of a Governor's term or terms unless it is specified in writing by box number and folder label, at the time of transfer, what records are to be considered private; that Governors and other public officials of Maryland are hereby encouraged to transfer their public and private papers, to the Hall of Records and with respect to private papers, may place any restrictions they deem appropriate for a period not to exceed twenty-five years from the date of transfer.

Approved by the Hall of Records Commission  
at its meeting

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Edward C. Papenfuse  
State Archivist and  
Secretary to the Commission

ECP:st



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Hall of Records Commission  
Agenda Item 12-Attachments  
June 27, 1977

Under the new Land Patents Law Real Property Article 13-203 "after consultation with the Commission and a committee of three clerks, the Hall of Records Commission shall adopt rules and regulations to carry out the provisions of this title."

Attached are the proposed rules as submitted to the Clerk's Committee for consideration of the Commission. The version approved by the committee with any corrections and substitutions they may have suggested will be presented verbally to the Commission by Dr. Papenfuse for its approval at this meeting.

RULES AND REGULATIONS OF THE COMMISSIONER OF  
LAND PATENTS ADOPTED PURSUANT TO REAL PROPERTY  
ARTICLE SECTIONS 13-203 and 13-205 OF THE ANNOTATED  
CODE OF MARYLAND (1974) AS AMENDED IN THE CURRENT  
CUMULATIVE SUPPLEMENT

1. APPLICATIONS

All applications for warrants shall be on forms prescribed by the Commissioner of Land Patents and shall be filed in triplicate with certified copies of documents, where required, attached to each copy. The application shall be accompanied by cash, check, or money order in the amount of \$50.00. No application shall be deemed filed until it has been determined complete and in order by the Commissioner or his duly authorized agent.

In complying with Section 13-302 (a)(2), that is, in supplying the names and addresses of all persons, other than the applicant, who would obtain a direct or indirect title interest in the land, the applicant may list a spouse but need not list all possible heirs to the title. It is to be understood that the purpose of Section 13-302 (a)(2) is to make certain that the applicant is applying solely on his own behalf and not on the behalf of any hidden partners, commercial enterprise, corporate or otherwise, or as an agent on behalf of any undisclosed principals.

2. WARRANTS

Warrants to survey or resurvey shall be on forms prescribed by the Commissioner of Land Patents and shall be sent to the surveyor by the said Commissioner with a copy of the application attached thereto. The notice of issuance of warrant required by Section 13-308 shall be prepared by the Commissioner and sent to the applicant who shall then see to its newspaper publication and posting and provide the Commissioner with the certificate of publication and the sheriff's certificate of posting. All costs of such publication and posting shall be borne by the applicant, and the Commissioner of Land Patents bears no responsibility therefor.

In his acknowledgment of receipt of the warrant, the surveyor shall understand "last publication of notice" in Section 13-307 (b)(2) to mean the last publication in a newspaper as specified at Section 13-308 (c)(i). That is to say, the surveyor shall set a date for making the survey which shall be no earlier than ten days and no later than six months after the appearance of the third weekly newspaper notice required by Section 13-308 (c)(i).

3. SURVEYS

Upon issuance of a warrant to survey or resurvey, the applicants shall immediately contact the surveyor and shall cooperate with said surveyor in all respects as he may require. Compensation of the surveyor shall be exclusively by the applicant, and the Commissioner of Land Patents assumes no responsibility therefor.

4. CERTIFICATES OF SURVEY

Certificates of survey shall be on forms prescribed by the Commissioner of Land Patents and shall be filed in duplicate.

The plat required by 13-310 (b)(i) shall be filed in duplicate. Both plats shall be submitted on linen sheets or on acceptable equivalent. The signature and seal of the surveyor shall be affixed to the plats as well as to the certificates of survey.

Upon receipt of the certificates, plats, and a metes and bounds description of the land to be patented, the Commissioner shall immediately forward copies to the Department of Transportation so that that agency, having been notified earlier by the Board of Public Works of the issuance of a warrant, can better determine whether the land will be needed for future highway use.

5. CERTIFICATE OF VALUATION

In providing the statement of the reasons for the valuation as required by Section 13-313 (b)(3), the assessors must be as specific as possible. Mere statements as "based on sales in the area" are inadequate. Examples of recent sales or valuations of similar property should be included in the reasons for the valuation.

## 6. OBJECTIONS

Persons entitled to object under Section 13-401 shall do so in the manner prescribed under Section 13-402 within six months after the issuance of the warrant to survey or sixty days after the surveyor's return of the certificate of survey, whichever is later.

## 7. DETERMINATION OF FORUM

Requests of parties to the proceeding for referral to the circuit court may be made in the manner and within the time prescribed in Section 13-405, and the Commission's determination of an appropriate forum shall be final.

## 8. HEARINGS BEFORE COMMISSIONER

Notice of hearing shall be given to all parties at least two weeks in advance. Hearings shall be held at such place as the Commissioner in his sole discretion shall deem proper and shall be conducted by the Commissioner with the advice and assistance of the assistant attorney general assigned. All witnesses are to be under oath. The proceedings are to be informal, but in all material respects are to be conducted in accordance with the Administrative Procedure Act.

At such hearings the applicants shall first present their case which may consist solely of the application with supporting documents, the warrant, and the certificate of survey, all of which shall be deemed in order. Caveators, if there be any, shall then present their case by way of testimony and/or filing of supporting documents. The burden of proof is to be upon the caveator. The applicants shall then have the opportunity to present rebuttal evidence. Caveators may then present argument after which applicants may present argument. At the end of each witness' testimony, he or she shall be subject to cross-examination by any interested party and/or the Commissioner. At the conclusion of all testimony related to any caveat which may have been entered, all parties may present arguments relating to the caveat. Finally, if there be any question

concerning the valuation of the land to be patented, the applicant may present evidence in accordance with the provisions of Section 13-313 (c) (2).

In all proceedings, unless the Commissioner requires or a party requests the presence of a court reporter, it will be sufficient to record the proceedings via tape recorder and to have a secretary take shorthand notes.

The Commissioner may charge any party to the hearing with any portion of the costs of such hearing.

9. PURCHASE PRICE

The purchase price shall be the fair market value of the land, as determined by the Commissioner under Section 13-313, less all expenses of the surveyor, reasonable attorney's fees, and costs charged by the Commissioner. Within fifteen days after the hearing, the applicant must submit an account of the expenses deductible by law. Publication costs are not deductible items under the current legislation.

10. PATENTS

After the Commissioner has prepared, sealed, and signed the patent, he shall forward it to the assistant attorney general assigned. The assistant attorney general shall then examine the patent as to form and legal sufficiency, and, if the contents be deemed in order, he shall endorse the patent in the space beneath the Commissioner's signature with the statement, "Approved as to form and legal sufficiency this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_," and affix his signature. The patent shall then be forwarded by the Commissioner to the Board of Public Works where required under Section 13-502. If the patent is approved, the patent shall be endorsed, "Approved by the Board of Public Works this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_," and signed by the Secretary of the Board of Public Works.

11. MAIL

In addition to using Restricted Delivery for mailing the warrant (Section 13-306), the notice of issuance of warrant [Section 13-308 (a)], the notice of the return of the certificate of survey [Section 13-311 (b)(2)], the order for hearing or order for referral of hearing [13-402 (2)], and the notice of purchase price (Section 13-409) as required by the Annotated Code of Maryland, the Commissioner shall use Restricted Delivery for requesting the valuation of the supervisor of assessments, for issuing copies of the final judgment, and for issuing the patent to the applicant.

12. GENERAL

These rules of procedure are not intended to change any part of Real Property Article Title 13. The intention is to clarify certain provisions thereof and to provide an orderly procedure for the issuance of land patents.







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Given the understandable difficulty in scheduling meetings of the Hall of Records Commission on an ad hoc basis, I would like to recommend the establishment of a regular semi-annual schedule such as the following:

The Hall of Records Commission shall meet every third Tuesday in May and November with other meetings to be scheduled as the need arises.