

Subject: Land Patent Application

From: Richard Richardson <richardr@mdsa.net>

Date: Wed, 08 Sep 2010 14:27:45 -0400

To: pjk@lawbrown.com

September 8, 2010

Philip Kotschenreuther, Esq.
Brown, Brown & Young, Attorneys
200 South Main Street
Belair, MD 21014
410-879-2220

Dear Mr. Kotschenreuther:

Thank you for requesting information about the modern land patent process. I have attached a cover letter, application form, information sheet and COMAR 14.18.01 as you requested. Please contact me at if you have any questions.

Sincerely yours,

Richard H. Richardson
Deputy Commissioner of Land Patents
Maryland State Archives
350 Rowe Blvd.
Annapolis, MD 21401
410-260-6407
FAX 410-974-3895

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STATE OF MARYLAND

COMMISSIONER OF LAND PATENTS

EDWARD C. PAPENFUSE STATE ARCHIVES BUILDING
350 ROWE BOULEVARD
ANNAPOLIS, MARYLAND 21401

September 8, 2010

Philip Kotschenreuther, Esq.
Brown, Brown & Young, Attorneys
200 South Main Street
Belair, MD 21014

Dear Mr. Kotschenreuther,:

Thank you for your request to apply for a land patent. I have enclosed an application form for your convenience. The land patent process is governed by Title 13, Real Property Article, Annotated Code of Maryland (2010 Repl. Vol.) and COMAR 14.18.01, which are the regulations adopted to clarify Title 13. Please read the enclosed "Modern Land Patents Information Sheet." It provides a general overview of the current land patent process.

A person may obtain a patent for vacant land or for land that has been previously patented and is owned in fee simple by the person. I have enclosed application forms for a warrant to survey vacant land. Please provide three notarized originals of the application. The application fee is \$100.00. Please make the check payable to the Maryland State Archives.

Because this is an application for a warrant to survey vacant land, you must submit a completed title search back to the original patents, surveys and plats of the adjoining tracts of land and a copy of the latest tax map showing the location of the alleged vacancy. Please submit any additional information that you feel would be helpful in making the determination that the land-in-question is vacant, i.e., "...land for which a patent never has been issued."

Philip Kotschenreuther, Esq., September 8, 2010, p. 2

Please keep in mind that you will be asked at a public hearing to present your title search and evidence that the subject land is vacant. In the event the Commissioner determines that an applicant acted without substantial justification in seeking a patent, for example, is unable to prove that a vacancy exists as shown on the certificate of survey and plat, or submits an incomplete title search, the Commissioner may require the applicant to pay the reasonable expenses of the objectors and the reasonable expenses of the Commissioner as provided for in Section 13-413, Real Property Article. Please make sure you fully understand this before you apply.

If you have any questions please contact me at 410-260-6407.

Sincerely yours,

Richard H. Richardson
Deputy Commissioner of Land Patents

RHR/rhr

Enclosures

the aforesaid being all the owners of land adjoining the land sought to be surveyed according to the assessment records of _____ County.

Further, I, we, the undersigned, and each of us, represent to the best of my, our knowledge, information, and belief that

(1) If there are any persons other than the applicant who would obtain a direct or indirect title interest in the land for which the warrant is sought, their names and addresses are: (If there are none, enter "none").

(2) The following are the names and address of each person or governmental body possessing under claim of title any portion of the land sought to be surveyed: (If there are none, enter "none").

(3) The following are the names and addresses of all persons who possess any portion of the land under claim of ownership in the manner that, either directly or by tacking, is actual, open, notorious, exclusive, and continuous and uninterrupted for the 20 years immediately preceding the date of filing this application: (If there are none, enter "none").

(4) The following are the names and address of all agencies of the State using any portion of the land for public purposes or claiming that any portion of the land is required for public purposes: (If agency name is not known, write "State of Maryland." If no agency is involved, write "none").

(5) Except for those named under 2, 3 and 4 above, (a) no person or governmental body possesses any portion of the land under claim of title; (b) no person possesses any portion of the land under claim of ownership in a manner that, either directly or by tacking, is actual, open, notorious, exclusive, and continuous and uninterrupted for the 20 years immediately preceding the date of filing this application; and (c) neither the State nor any agency of the State uses any portion of the land for public purposes or claims that any portion of the land is required for public purposes.

(6) By virtue of a title search and the research done on the history of the property in question no land patent encompasses any portion of the land for which warrant is sought. Enclosed is a copy of the title search for the land-in-question.

(7) Further, I, we request that the warrant to survey be directed

to the following professional land surveyor or property line surveyor licensed under the Maryland Professional Land Surveyors Act:

Name	Address	City & State	Zip
<hr/>			
<hr/>			

and whose family, business, or financial relationship to all persons signing this application is _____.

(8) Further, I, we verify that if a patent is issued for the land sought to be surveyed the land will then be known as
" _____ "

(9) Further, I, we request that a warrant to survey said land be issued and upon the return of the certificate of such warrant a patent therefore be issued to me, us.

_____(SEAL)
_____(SEAL)
_____(SEAL)
_____(SEAL)

STATE OF MARYLAND

_____ County

Before me, the undersigned, a notary public for the State and

County aforesaid personally appeared _____

_____, and _____

_____ on _____,

who made oath in due form of law that the matters contained in the foregoing application are true to the best of his, her, their information, knowledge and belief and that the complete application has been read and everything contained therein understood.

Notary Public

Attorney for Applicant

Address

City State Zip

Phone

Received for filing this _____ day of

Edward C. Papenfuse Date
Commissioner of Land Patents



Land Office Modern Land Patents

The obsolete doctrine of our laws are frequently the foundation upon which what remains is erected; and it is impractical to comprehend many rules of modern law, in a scholarly scientific manner, without having recourse to the ancient.

2 Blackstone 44

A land patent is a land grant from Lord Baltimore or later from the State of Maryland to a person. Originally written on parchment, it is the first instrument of conveyance for the land. If a patentee sold the land or a portion of it, the transaction was noted on the back of the original patent. When the original patent could no longer serve to convey title, a new conveyance instrument became necessary. This new conveyance was a deed. Land patents are recorded in volumes formerly kept by the Land Office and now in the custody of the Maryland State Archives in Annapolis. Deeds are recorded in volumes kept at each circuit court or at the Archives. The Archives also maintains microform copies of all recorded deeds.

In theory, all land in the state has been patented. However, because of survey errors or land simply not being included in an original patent, some land may be legally vacant. Land is not vacant simply because it is no longer on the property tax assessment rolls or because it does not have a current deed reference. For land to be vacant for the purposes of applying for a land patent, it must meet the legal definition of vacant land, viz., "land for which a patent never has been issued."

A vacancy is found by a title search back through deeds, probate records, equity court cases, surveys and patent records to the earliest surveys and patents in the area in which the alleged vacancy is located. If land is found that is not included in a patent, it may meet the legal definition of vacant land.

Before applying for a land patent, you should be reasonably certain that the land meets the legal definition of vacant land. Generally, this can best be determined by a title search on the adjoining properties which have current deed references. In your research, you will no doubt review other types of land, survey and court records.

In conducting your title search, you are encouraged to check the indexed land, survey and court records kept in the circuit court and older land, survey and court records and the Land Office records kept at the Maryland State Archives. Staff archivists will be happy to assist you with your research at the Archives.

The land patent process also provides for the repatenting of land which is owned in fee simple by a person and therefore has been previously patented. This option allows fee simple property owners the opportunity, in certain instances, to clarify the extent of that fee simple ownership. The applicant must present evidence that he is the fee simple owner and that the land has been patented.

The land patent process provides safeguards for the legal rights of the applicant, adjoining property owners and others who may have an interest in the land. The Commissioner of Land Patents is required to notify adjoining property owners and others that a warrant to survey or resurvey has been issued. The adjoining property owners and others may file objections to the issuance of a land patent. A public hearing is held to determine the merits of the applicant's evidence and the issues raised by objectors.

If you have any questions regarding these matters, would like to apply for a warrant to survey or would like to object to the issuance of a land patent, please contact the Commissioner of Land Patents, Hall of Records Building, 350 Rowe Boulevard, Annapolis, Maryland 21401 (phone: (410) 260-6400 or Maryland toll free 800-235-4045; TTY/Voice 800-735-2258; fax 410-974-3895; e-mail address: richardr@mdarchives.state.md.us; Internet address: <http://www.mdarchives.state.md.us>)

Title 14
INDEPENDENT AGENCIES
Subtitle 18 STATE ARCHIVES

Chapter 01 Certificates of Reservation and Land Patents

Authority: State Government Article, §9-1007, Annotated Code of Maryland

.01 Application for Certificates of Reservation.

All applications for certificates of reservation shall be on forms required by the Commissioner of Land Patents and shall, in the case of a unit of State government, be filed with a copy of the Board of Public Works agenda item approving the request to apply or, in the case of any other governmental body, be filed with a copy of a document from the appropriate authority approving the request to apply. An application may not be considered filed until it has been determined complete and in order by the Commissioner or the Commissioner's authorized agent.

.02 Applications for Warrants to Survey or Resurvey.

A. All applications for warrants to survey or resurvey shall be on forms required 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 \$100. An application may not be considered filed until it has been determined complete and in order by the Commissioner or his duly authorized agent.

B. In complying with Real Property Article, §13-302(a)(2), Annotated Code of Maryland, that is, in supplying the names and addresses of all persons other than the applicant who would obtain direct or indirect title interest in the land, the applicant may list spouse but need not list all possible heirs to the title. It is to be understood that the purpose of Real Property Article, §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.

.03 Warrants.

A. Warrants to survey or resurvey shall only be issued to a professional land surveyor or property line surveyor licensed under the Maryland Professional Land Surveyors Act.

B. 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 Commissioner with a copy of the application attached. The notice of issuance of warrant required by Real Property Article, §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 the publication and posting shall be borne by the applicant, and the Commissioner of Land Patents bears no responsibility for it.

C. In his acknowledgment of receipt of the warrant, the surveyor shall understand "last publication of notice" in Real Property Article, §13-307(b)(2) to mean the last publication in a newspaper as specified in Real Property Article, §13-308(c)(1)(i). That is to say, the surveyor shall set a date for making the survey which shall be no earlier than 10 days and no later than 6 months after the appearance of the third weekly newspaper notice required by Real Property Article, §13-308(c)(1)(i).

.04 Surveys.

Upon issuance of a warranty to survey or resurvey, the applicant shall immediately contact the surveyor and shall cooperate with the surveyor in all respects as he may require. Compensation of the surveyor shall be the exclusive responsibility of the applicant, and the Commissioner of Land Patents assumes no responsibility for it.

.05 Previously Performed Surveys.

A. The Commissioner may accept a previously performed survey upon finding that the surveyor is a qualified professional land surveyor or property line surveyor licensed under the Maryland Professional Land Surveyors Act, that the survey was conducted in accordance with standards required by the Commissioner, and that adjoining landowners were given written notice of the survey.

B. Unless as otherwise provided, the provisions of Real Property Article, Title 13, Annotated Code of Maryland, and this chapter applicable to a survey performed pursuant to a warrant issued by the Commissioner are applicable to a previously performed survey.

.06 Certificates of Survey.

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

B. The plat required by Real Property Article, §13-310(b)(1), shall be filed in duplicate. Both plats shall be submitted on linen sheets or

(See page 439)

an acceptable equivalent. The signature and seal of the surveyor shall be affixed to the plats as well as to the certificates of survey.

C. Upon receipt of the certificates, plats, and the surveyor's description of the land to be patented, the Commissioner shall immediately forward copies to the Department of Transportation and the Department of Natural Resources so those agencies can better determine whether the land will be needed for future public use.

.07 Certificate of Valuation.

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

B. In the case of an application by a governmental body for a certificate of reservation, the Supervisor of Assessments is not required to assess the value of the land.

.08 Objections.

A. Persons entitled to object under Real Property Article, §13-401, shall do so in the manner prescribed under Real Property Article, §13-402, within 6 months after the issuance of the warrant to survey or 60 days after the surveyor's return of the certificate of survey, whichever is later.

B. Acceptance of a previously performed survey does not preclude an objector from raising any objection that might otherwise have been raised had the survey been performed pursuant to a warrant issued by the Commissioner.

.09 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 required by Real Property Article, §13-405, Annotated Code of Maryland, and the Commissioner's determination of an appropriate forum shall be final.

.10 Hearings Before Commissioner.

A. This regulation governs hearings on an application for a land patent or a certificate of reservation. To the extent that is practical, as determined by the Commissioner, this regulation also governs other hearings conducted by the Commissioner.

B. Location and Date. The hearing shall take place at the State Archives, 350 Rowe Boulevard, Annapolis, Maryland, on the date and at a time specified by the Commissioner. For cause, the Commissioner may designate another site as the place for the hearing. At the request of a party or at the Commissioner's initiative, a hearing may be postponed or continued to another date and time or moved to another site.

C. Notice. At least 15 days before the hearing, the Commissioner shall send a written notice to all parties advising them of the place, date, and time of the hearing. To the extent that the issues have been defined, the notice shall state the issues to be considered and decided. In the event of a postponement or continuance, the Commissioner shall give notice as may be effective in the circumstances.

D. Parties. The applicant and a person or governmental entity which has filed an objection are parties.

E. Representation. Parties may appear in proper person or by counsel. Parties represented by counsel shall advise the Commissioner of the counsel's name at least 10 days before the hearing.

F. Presiding Officer. The Commissioner is the presiding officer at the hearing. The Commissioner has complete charge of the hearing and shall conduct it in accordance with the Administrative Procedure Act.

G. Counsel to the Presiding Officer. If requested by the Commissioner, counsel to the State Archives or another attorney designated by the Attorney General shall serve as counsel to the Commissioner. Counsel to the Commissioner has all the rights and privileges that counsel for a party would have.

H. Prehearing Conference. The Commissioner may, upon due notice, hold a prehearing conference with the parties for the purpose of defining the issues, entering stipulations, and resolving other matters preliminary to the hearing.

I. List of Witnesses, Exhibits, and Documents. Before the hearing, the Commissioner may order the parties to file a list of witnesses, exhibits, and documents which they expect to call or introduce into evidence. Copies of the list shall be made available to all parties.

J. Record and Transcript.

(1) The Commissioner shall prepare an official record, which includes the pleadings, testimony, exhibits, and other memoranda or material filed in the proceeding.

(2) Unless waived by all parties, a stenographic record of the hearing shall be made and the expense shall be one of the costs of the hearing. If the record is transcribed at the direction of the Commissioner, a party may obtain a copy upon paying the cost of reproduction. If the record is not transcribed at the direction of the Commissioner, a party may, at the party's own expense, request that the record be transcribed and the Commissioner and any party may obtain a copy upon payment of the cost of reproduction.

K. Order of Procedure. Unless directed otherwise by the Commissioner, the applicant shall call witnesses and present evidence first. The objecting parties shall then call witnesses and present evidence. The applicant may then call witnesses and present evidence in rebuttal.

L. Opening Statements. The parties or their counsel may make opening statements.

M. Witnesses, Evidence, and Motions.

(1) Subject to the rules of evidence of the Administrative Procedure Act, the parties and the Commissioner may call witnesses and present evidence.

(2) Witnesses shall testify under oath and are subject to cross-examination by the other parties and the Commissioner, or the Commissioner's counsel.

(3) Parties may make motions, exceptions, and objections. As the Commissioner considers appropriate, the Commissioner may allow other parties to respond. Except for good cause, the Commissioner shall promptly rule on all motions, exceptions, and objections.

(4) Parties represented by counsel may only examine and cross-examine witnesses and make motions, exceptions, objections, and responses by counsel.

(5) The burden of proof is on the applicant.

N. Memoranda and Briefs. The Commissioner may allow the parties to submit memoranda and briefs in the form and number as the Commissioner may direct.

O. Closing Arguments. The parties or their counsel may make closing arguments.

P. Opinions. The Commissioner shall issue a written opinion within 30 days of the end of the hearing. A copy shall be promptly sent to each party.

Q. Costs. The Commissioner may assess a party with any part of the costs of the hearing.

.11 Purchase Price.

A. The purchase price shall be the fair market value of the land, as determined by the Commissioner under Real Property Article, §13-313, as amended by Acts of 1977, Chapter 162, less all expenses of the surveyor, reasonable attorney's fees, and costs charged by the Commissioner. Within 15 days after the hearing, the applicant must submit an account of the expenses deductible by law. Publication costs are not deductible items under current legislation.

B. A governmental body requesting a certificate of reservation is not required to pay the purchase price of the land.

.12 Certificates of Reservation.

In the case of an application for a certificate of reservation, the Commissioner's opinion and findings shall constitute the certificate of reservation and the description of the land provided by the surveyor shall be made an attachment thereto.

.13 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 as required under Real Property Article, §13-502, as amended by Acts of 1977, Chapter 162. 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.

.14 Mail.

In addition to using restricted delivery for mailing the warrant (Real Property Article, §13-306), the notice of issuance of warrant (Real Property Article, §13-308(a)), the notice of the return of the certificate of survey (Real Property Article, §13-311(b)(2)), the order for hearing or order for referral of hearing (Real Property Article,

§13-405(c)(2)), and the notice of purchase price (Real Property Article, §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.

.15 Expenses.

If the Commissioner finds that an applicant for a land patent acted in bad faith and without substantial justification, the Commissioner may require the applicant to pay the reasonable expenses of the objectors, including the objector's attorneys' fees and expert witness fees, and the reasonable expenses of the Commissioner, including administration, research, and hearing expenses.

.16 General.

A. These procedural regulations are not intended to change any part of the Real Property Article, Title 13, Annotated Code of Maryland. The intention is to clarify certain provisions thereof and to provide an orderly procedure for the granting of certificates of reservation or the issuance of land patents.

B. Except as otherwise provided, the provisions of Real Property Article, Title 13, Annotated Code of Maryland, and this chapter applicable to the issuing of land patents are applicable to the granting of certificates of reservation.

Administrative History

Effective date: October 6, 1978 (5:20 Md. R. 1498)

Chapter recodified from COMAR 04.01.01 to 04.20.01

Chapter recodified from COMAR 04.20.01 to 14.18.01 effective June 29, 1987 (14:13 Md. R. 1474)

Regulation .04C amended effective June 29, 1987 (14:13 Md. R. 1474)

Regulation .08A amended effective June 29, 1987 (14:13 Md. R. 1474)

Chapter revised effective July 4, 1994 (21:13 Md. R. 1159)

Regulation .03 amended effective December 17, 2007 (34:25 Md. R. 2214)

Regulation .05A amended effective December 17, 2007 (34:25 Md. R. 2214)