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September 1, 2010

Honorable Ulysses Currie, Chair
Senate Budget & Taxation Committee
3 West, Miller Senate Building
Annapolis, Maryland 21401-1991

Hon. Brian E. Frosh, Chair
Senate Judicial Proceedings Com.
2 East, Miller Senate Office Bldg.
Annapolis, Maryland 21401-1991

Honorable Norman H. Conway, Chair
House Appropriations Committee
Lowe House Office Building, Room 131
Annapolis, Maryland 21401-1991

Hon. Joseph F. Vallario, Jr., Chair
House Judiciary Committee
Lowe House Office Bldg., Rm. 121
Annapolis, Maryland 21401-1991

Re: Circuit Court Real Property Records Improvement Fund

Dear Chairpersons:

In accordance with Chapter 556, Acts of 1995, as amended by Chapter 10, Acts of 1996, and Section 2-1246 of the State Government Article, this annual report covering Fiscal Year 2010 is submitted respectfully to account for the condition of the Circuit Court Real Property Records Improvement Fund (the Fund).

In 1991, the General Assembly enacted legislation creating the Circuit Court Real Property Records Improvement Fund in response to the deteriorating conditions and the state of operations in the land record departments of the Clerk of Court offices throughout the State. Through the assessment of a surcharge, the legislation established a non-lapsing fund. As a result of the Budget Reconciliation and Financing Act of 2003, the surcharge fee for recordable instruments is now \$20.

The Fund, when created in 1991, had an original sunset provision that was extended on three occasions and eventually was removed in 2007. During the 1995 Session of the General Assembly, a Fund Oversight Committee was created to serve as an advisory body to the State Court Administrator for the management of Fund expenditures. The five member committee consists of representatives from the Maryland Land Title Association, the Maryland State Bar Association, the Maryland State Archives, the Conference of Circuit Court Clerks and the Administrative Office of the Courts.

In 2005, the General Assembly mandated that all General Fund expenditures related to land records operations and support (including the salaries of over 200 positions) were to be appropriated from the Circuit Court Real Property Records Improvement Fund. In November 2007, during the Special Session, the General Assembly passed the Budget and Finance Reconciliation Act (HB 1/SB 1, Ch. 2

which repealed the sunset provision of the Real Property Records Improvement Fund and expanded the scope of the Fund to include the Judiciary's major information technology development projects for Fiscal Years 2009 and 2010 in the amounts of \$7.3 million and \$10.5 million, respectively. In 2010, the General Assembly in the Budget and Reconciliation and Financing Act, removed the sunset provision for the support of the Judiciary's major information technology projects thus making permanent the appropriation for such projects through the Fund. In addition, all interest on the Fund's balance was diverted to the General Fund.

Overview

The economy's continuing adverse effect on the real estate market and the current level of financial liabilities in the Fund portends disastrous consequences for Clerk Office staff and all Judiciary major IT projects which are supported exclusively through the Fund. The legal recording of real property transactions and the resulting surcharge revenues supporting the Fund are less than half of 2004 revenue levels. The following material is intended to provide a perspective on the viability of the Fund, as well as present a series of alternative actions available to the General Assembly to sustain the Fund through these difficult times.

Current Fund Conditions

As of June 30, the revenue for Fiscal Year 2010 was \$16.5 million generated from the \$20 surcharge. Chart 1 reflects actual revenue and expenditures that include a freeze on hiring, reductions in spending, and a small increase in recordings that also have improved the projected estimates for the out-years. Lacking a fuller recovery of the market, however, the Fund will not be able to meet its financial obligations after Fiscal Year 2012. Chart 1 assumes no public policy changes or reallocations of existing funds and no increases in the recording fees or surcharge, as well as a conservative level of revenues. As Chart 1 illustrates, without a substantial increase to the Fund surcharge or a similar shift of expenditures to the General Fund, the Fund's present balance will be depleted completely and the Fund will encounter deficits beginning in FY 2013.

Current Projections (Chart 1) – No Change to Fund Sources

	FY2010	FY2011	FY2012	FY2013	FY2014
Revenues	Actual	Appropriation	Estimate	Estimate	Estimate
Recordings/copy fees/interest*	16,522,199	16,500,000	16,500,000	16,500,000	16,500,000
Estimated Expenditures/encumbrances					
ELROI – maintenance	3,426,168	3,151,841	3,500,000	3,500,000	3,500,000
mdlandrec - maintenance	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Circuit Court Operations	13,178,468	16,679,198	16,500,000	16,500,000	16,500,000
Judiciary Major IT Projects	5,820,771	13,447,600	11,821,000	10,320,800	8,575,000
Total	27,425,407	38,278,639	36,821,000	35,320,800	33,575,000
Projected surplus/shortfall	(10,903,208)	(21,778,639)	(20,321,000)	(18,820,800)	(17,075,000)
Less Prior Year Encumbrances – FY 2009	3,013,054				
Less One Time Reversion to the General Fund**		1,300,000			
Total Fund Balance (Accrual Basis)	47,005,256	23,926,617	3,605,617	(15,215,183)	(32,290,183)

*As of June 1, 2010, interest on the Fund balance is directed to the General Fund.

**Result of legislative audit finding.

Oversight Committee Recommendations

In 2009, the Oversight Committee met and provided recommendations to the State Court Administrator (Appendix A). The Committee remains troubled by recent legislative actions to use the Fund for the Judiciary's major IT projects. Additionally, they have expressed disappointment that the eRecording project is on hold and they continue to argue that Clerk salaries and operational costs belong in the General Fund. Their discussions included increasing recording fees, cutting costs, and establishing an Archives subscription fee.

The Committee recommends a \$5 or \$10 increase to the recording fee to provide additional General Fund revenues to accommodate the removal of associated clerk expenditures from the LRIF. The current fee has not been increased since 1992: current recording fees are \$10 for releases, \$75 for longer documents, and \$20 for all others. Chart 2 provides the details of the current revenue to the General Fund.

Current Recording Fee Revenue (Chart 2)

		Recordings	Recording fee
Fiscal Year 2010		800,000	
Releases only cost \$10 *	\$10 fee	264,000	2,640,000
96% are less than 10 pages	\$20 fee	514,560	10,291,200
the rest are 10 or more pages	\$75 fee	21,440	1,608,000
<i>* releases are 1/3 of recordings</i>			<u>\$14,539,200</u>

Adopting the Committee's \$10 recommended increase, Chart 3 illustrates that State recording fee revenue would rise to \$22 million which appears sufficient to cover the Clerk Office expenses of approximately \$17 million.

Projections with Recording Fee Increase of \$10 (Chart 3)

		Recordings	Recording fee
rec fees increased by \$10		800,000	
Releases	\$20 fee	264,000	5,280,000
96% are less than 10 pages *	\$30 fee	514,560	15,436,800
the rest are 10 or more pages	\$85 fee	21,440	1,822,400
<i>* releases are 1/3 of recordings</i>			<u>\$22,539,200</u>

The \$10 increase provides an additional \$8 million and assumes that the General Assembly will direct \$17 million of the revenue stream to the Judiciary's General Fund budget to facilitate the transfer of Clerk's operational expenses from the Fund. There is no consideration of a revenue off-set to accommodate a projected \$12 million General Fund increase for major IT.

If Clerk Office operations and Judiciary major IT were to be transferred to the General Fund, it appears the Fund would become self-sustaining to weather the present economic downturn for the foreseeable future as indicated in Chart 4.

Projections without Clerk Operations or Major IT (Chart 4)

	FY2010	FY2011	FY2012	FY2013	FY2014
Revenues	Actual	Appropriation	Estimate	Estimate	Estimate
Recordings/copy fees/interest*	16,522,199	16,500,000	16,500,000	16,500,000	16,500,000
Estimated Expenditures/encumbrances					
ELROI – maintenance	3,426,168	3,151,841	3,500,000	3,500,000	3,500,000
mdlandrec - maintenance	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Circuit Court Operations	13,178,468	16,679,198			
Judiciary Major IT Projects	5,820,771	13,447,600			
Total	27,425,407	38,278,639	8,500,000	8,500,000	8,500,000
Projected surplus/shortfall	(10,903,208)	(21,778,639)	8,000,000	8,000,000	8,000,000
Less Prior Year Encumbrances – FY 2009	3,013,054				
Less One Time Reversion to the General Fund**		1,300,000			
Total Fund Balance (Accrual Basis)	47,005,256	23,926,617	31,926,617	39,926,617	47,926,617

*As of June 1, 2010, interest on the Fund balance is directed to the General Fund.

**Result of legislative audit finding.

Surcharge Increase

Budgetary actions by the General Assembly in 2010 seem to necessitate an increase in the surcharge as illustrated in Chart 5. This is based on the Fiscal Year 2010's economy and assumes no other policy changes that would add liability to the Fund.

Projections with Surcharge Increase of \$20 (Chart 5)

	FY2010	FY2011	FY2012	FY2013	FY2014
Revenues	Actual	Appropriation	Estimate	Estimate	Estimate
Recordings/copy fees/interest*	16,522,199	16,500,000	33,000,000	33,000,000	33,000,000
Estimated Expenditures/encumbrances					
ELROI – maintenance	3,426,168	3,151,841	3,500,000	3,500,000	3,500,000
mdlandrec - maintenance	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Circuit Court Operations	13,178,468	16,679,198	16,500,000	16,500,000	16,500,000
Judiciary Major IT Projects	5,820,771	13,447,600	11,821,000	10,320,800	8,575,000
Total	27,425,407	38,278,639	36,821,000	35,320,800	33,575,000
Projected surplus/shortfall	(10,903,208)	(21,778,639)	(3,821,000)	(2,320,800)	(575,000)
Less Prior Year Encumbrances – FY 2009	3,013,054				
Less One Time Reversion to the General Fund**		1,300,000			
Total Fund Balance (Accrual Basis)	47,005,256	23,926,617	20,105,617	17,784,817	17,209,817

*As of June 1, 2010, interest on the Fund balance is directed to the General Fund.

**Result of legislative audit finding.

Conclusion

Without legislative action to either increase Fund revenues or decrease Fund liabilities, it is likely that the Fund will become bankrupt in the first quarter of FY 2013. These alternative recommendations represent options for consideration. While it is possible that the economy will recover and the Fund will regain its health without changes to fees, there is a high degree of risk for staff and current and future automation improvements in the Judiciary.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frank Broccolina". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Frank Broccolina
State Court Administrator

cc: Honorable Robert M. Bell
Conference of Circuit Court Judges
Conference of Circuit Court Clerks
Faye D. Gaskin
Land Records Improvement Oversight Committee
Flora Arabo, Legislative Analyst
Kelley O'Connor

Appendix A – Letter from LRIFOC to Frank Broccolina

From: Circuit Court Real Property Records Improvement Fund Oversight Committee
To Mr. Frank Broccolina, State Court Administrator

January 26, 2009

The Circuit Court Real Property Records Improvement Fund Oversight Committee met with some urgency to review the status of the Fund and wants to meet with you to discuss options to return the Fund to health. As you are aware, the Fund as originally conceived in 1991, was meant to get Maryland's land recording operation over a temporary rough spot created by a real estate boom that caused the antiquated system to break down. In effect, the title industry forged a partnership with the AOC, the Maryland Archives and the Circuit Court Clerks to modernize the recording and retrieval of land record data by funding the acquisition of new equipment, making improvements to courthouse facilities and providing resources to eliminate the recording backlog. The fund was envisioned as a short-term solution to an immediate problem. The "sunset" provision was included in the original legislation as a safety valve against misuse and to insure that it would expire when the State provided adequate funding to sustain the land record system going forward. Needless to say the Fund has performed exceptionally well. In part, as a result of this success, the scope of the Fund was expanded. The Archives creation of *mdlandrec* is a particularly proud achievement. Maryland has gone from an obsolete recording system to a model for all states to emulate. However its work is not done. We need to continue our progress with the implementation of E-recording (which is a major challenge).

Over the years, the Legislature has expanded the responsibilities of the Fund. It now covers the cost of salaries for the land records clerks. Thanks to the 2007 Special Legislative Session, the Fund was gutted by the deletion of the "sunset" provision and requiring it to fund the Judiciary's IT initiatives. With the real estate market reaching historic lows and revenues plunging, **if nothing is changed, we project that the Fund will run out of money in 2011.**

The Committee discussed a number of options for the Fund and offers the following:

1. **Eliminate funding of the Judiciary's IT initiatives:** Such expenditures have no nexus to the Fund's purpose and should be funded as part of the Judiciary's budget or by a separate fund endowed by a surcharge on District/Circuit/Orphan Court case filings.
2. **Increase flat rate recording fees:** These fees have not increased since the early 1990's when documents submitted for recording were much shorter than they are today. Flat rate fees could be increased \$5 or \$10 per instrument with total recording charges being earmarked for Clerk's land record operations
3. **Return the salaries and Operational expenses of the Clerk's office to the general fund:** The Fund was never intended to cover personnel costs.
4. **Right sizing land record operations:** This needs to be done jurisdiction by jurisdiction and on a temporary vs. permanent basis. On an interim basis the number of operable work stations could be scaled back in each county. Inoperable work stations should remain in place until usage stabilizes and need can then be re-evaluated.

Staffing requirements should be adjusted to meet activity; vacant land record positions should be frozen until recording activity warrants filling them.

5. ***mdlandrec* Subscription Fee:** Although the Archives is authorized to collect user fees, charging a *mdlandrec* subscription fee would be problematic for several reasons. The Archives is charged with maintaining permanent State records and industry users will strongly object to paying a fee to an institution that is already being subsidized via a special fund. While there are approximately 70,000 registered *mdlandrec* users, there is no way of telling how many would pay (and how much they would pay) to access the system that is available for free in the courthouses. We do not know if a usage fee will raise any substantial portion of the \$5,000,000 currently provided annually from the Fund. We recommend further evaluation of a reasonable subscription fee.
6. **Re-institution of Sunset Provision:** The sunset provision gave us the opportunity to evaluate the Fund each time it came up for renewal and tweak if needed or let it expire. While it would cause problems in the short term, it may be better to reinstitute the 6/30/09 sunset and allow the Fund to expire. Doing so would require the State to properly fund a land recording system that will accommodate the needs of its citizenry.

Needless to say, the creation, maintenance and improvement of Maryland's land recording system are of concern to all of us. Whatever Fund monies are decided for any expenditures, there needs to be continuous rigid accountability. It is important that we provide a system that continues to utilize new technology to meet the needs of our citizens. In order to do so, we must have a reliable/dedicated funding source. The committee requests an opportunity to meet with you to discuss our suggestions.

Thanking you for your time and attention to the matter, we are,

Respectfully yours,
 James F. X. Cosgrove, MLTA
 Mark D. Dopkin, MSBA
 Kevin Swanson, Archives
 Robert Duckworth, Clerk
 Barbara Hansman, AOC