

August 16, 2010

## **Open Letter to Maine County Commissioners and Registers of Deeds**

From: John Simpson, Owner & General Manager, MacImage of Maine LLC  
5 Island View Drive, Cumberland Maine 04110

### **About MacImage of Maine**

As the founder and owner of MacImage of Maine, my goal has always been to provide services to Maine Registries of Deeds and public users of land records that save people time and money. MacImage is a small Maine business, but our products and services have typically been years ahead of much larger out-of-state competitors. MacImage was the first company in the Nation to provide Internet access to a registry of deeds' entire collection of land records. Presently, ten years after that accomplishment only one other Maine county has come close to digitizing all its land records.

### **The Purpose of this Letter**

The litigation between MacImage and the Counties may ultimately have no winners unless the parties rethink their positions, talk to each other and attempt to find middle ground. Fortunately, however, there are good settlement options that can address virtually every concern the Counties and MacImage have identified.

Later in this letter I will outline the terms of a settlement agreement that I believe is in the best interest of each County and its taxpayers, complies with every aspect of the law and provides an opportunity for my company to continue in business.

The settlement offer does not request special treatment or enable my company to profit unfairly at taxpayer expense. Registers of deeds will not be required to do more work, and there will be no negative financial impact on county budgets. In fact, county revenue could increase. If this sounds too good to be true, call me. Ask me questions. Suggest changes. I will put it all in writing and guarantee it.

If your lawyer advises you to not talk with me "because the matter is in litigation," ask why? Does he or she really think you will disclose some secret facts and compromise the case? Or, could your county possibly save tens of thousands of dollars by negotiating a sensible, win-win solution before trial.

The upcoming trial could go on for two weeks as one-by-one 30 county officials and hired experts try to explain why copying public records from one hard drive to another could cost tens or hundreds of thousands of dollars. County legal bills for this trial could easily total more than half a million dollars. And, the trial will cost some counties more than the revenue their registry websites generate in a year. Ask yourself: exactly how will this benefit taxpayers?

If another county official tells you MacImage of Maine is up to no good, ask for a clear and logical explanation. Is it really believable that MacImage could make a fortune at taxpayer expense by reselling county records? If that were true, why has no one else

tried this? Could it be true that MacImage is attempting to provide a valuable service that taxpayers want, but the counties cannot provide?

I have heard it said that the counties should join together and build their own statewide land records website. Do counties have staff with the technical expertise to provide this service? If not, whom would they hire to provide the service and how much will it cost taxpayers? Will the company hired to provide this service create jobs in your county?

I know my company's approach has offended some people, and for that I apologize. In retrospect, I probably should have used another approach. However, for years I have tried to convince county commissioners and registers of deeds of the merits of a statewide land records website and the value of my company's services. Time after time county officials ignored proposals and bids from my company that could have enabled their registries to provide better services at significantly lower costs.

Finally, I was faced with a choice, give up on the business I had spent 14 years building or try something new that would likely face resistance. I chose not to give up.

### **MacImage of Maine's FOAA Request for Land Records**

Last September, I sent a letter to each County requesting access to electronic copies of county land records. In that letter, I explained my intention was to build a single website that would provide access to all Maine land records. Currently, there are separate websites for each county's registry of deeds. Persons doing property title research in several counties must sign up for accounts with each county and search records in each county separately. In addition, most counties have not yet digitized all their records. As a result, title research is labor-intensive and costs Mainers much more than it should.

In my letter to each county, I explained that my desire was to provide a service that I believed, based on many years of experience and conversations with dozens of title researchers would be very valuable. I knew the counties had for many years relied on revenue from selling copies of land records. Thus, I expected my request for electronic records might be met with resistance by counties concerned about losing copy revenue to a competing statewide land records website. However, I also knew from experience that the revenue issue could be successfully addressed.

### **The Hancock County Experience**

My company, MacImage of Maine, helped Hancock County substantially increase its copy revenue. We did this by first working in partnership with the County to digitize all its land records. Our services cost the County several hundred thousand dollars less than any other vendor would have charged, and we created several jobs in the County by hiring and training local people to scan and index documents. In addition to saving the County a large amount of money, MacImage built a website for Hancock County that doubled its registry copy revenue by increasing the number of people who purchased copies from a few dozen to several thousand.

For more than ten years, MacImage and Hancock County worked together profitably. The County earned more revenue from its website than most other counties while providing a valuable service to more people than all the other counties combined. MacImage also benefited from the partnership by receiving a share of Hancock County's considerable website revenue.

Unfortunately, MacImage and Hancock County's win-win partnership fell apart when a new register of deeds decided the County would be better off going it alone. The Register also decided not to pay MacImage for prior work worth more than \$70,000. There are many other details, but to make a long story short, MacImage had to sue Hancock County in order to finally get paid, and efforts to re-establish a positive relationship have so far failed. Hancock County now earns tens of thousands of dollars less each year from its website than it did when the County was working with MacImage.

### **Current Law Relating to County Copy Fees for Land Records.**

Registries of deeds exist solely to provide public access to land records. Real estate markets could not function and people could not obtain mortgages if land records were not public. Thus, land records archived in registries of deeds are clearly public records. Maine's Freedom of Access Act (FOAA) limits the fees government may charge for copies of public records to the cost of copying. However, some county officials have claimed that land records should be exempt from the FOAA's limits on copy fees and that provisions in section 751 of Title 33 permit counties to set much higher fees.

In the *MacImage v. Hancock County* case, the court seemed to assume that both statutes could apply (the FOAA and section 751 of Title 33), and the Court's holding reflected the legal principal that overlapping statutes should be construed harmoniously if possible.

Instead of deciding which of the two statutes applied, the Court examined the legislative history of section 751 and established a standard for setting copy fees which, as a practical matter, is nearly the same as the standard set in the FOAA. This approach made it unnecessary for the Court to specifically address the question of whether counties must set copy fees which comply with the FOAA. However, on August 3, 2010, the Court did directly address that question in response to a motion by MacImage for partial summary judgment. The Court held unequivocally that, unless new and compelling facts are presented which prove otherwise, county land records are public records as defined by and governed by Maine's Freedom of Access Act.

In light of the Court's most recent ruling on the public records issue, I am confident the court will ultimately rule the current county fees for bulk copies of electronic land records are excessive and will order the counties to provide copies of the records MacImage requested for a relatively modest fee. The current case involves essentially the same facts as the Hancock County case and is being considered in the same court by the same judge and the applicable law is the same. Thus, the result of the current litigation is relatively certain. It seems the only thing we do not know is how much taxpayer money will be spent attempting to delay the Court's inevitable ruling.

## **Terms of a Possible Settlement Agreement offered by MacImage of Maine**

I have publicly stated on many occasions that MacImage of Maine wants to work with the Counties to improve access to public land records while addressing all county concerns, especially those related to revenue. The outline below contains the key terms of an agreement I believe would be a win-win solution for all parties involved, except perhaps, the trial lawyers.

MacImage would drop all litigation if the counties agree to the terms listed below. This outline represents my best attempt to propose a win-win agreement, but the list of terms is not set in cement. Counties should feel free to suggest changes or propose alternative settlement terms.

### Key Agreement Terms:

1. The Agreement may be cancelled at any time by providing 12 months prior notice to the other party. [If things don't work out, a county can get out of the agreement in only a year's time.]
2. MacImage will agree to not undercut County website prices for individual copies, and the County will agree to not sell copies for prices below its current copy prices.
3. MacImage will pay 1/2 cent (\$0.005)/document (regardless of page count) for copies of existing document images and index data.
4. MacImage will pay 2 cents (\$0.02)/document for updates (newly recorded documents and rescanned or re-indexed documents).
5. MacImage will pay for updates in advance via a subscription with the subscription price being based on each county's recording volume in the prior year.
6. Existing data will be paid for in 12 quarterly payments, with the first payment due immediately upon delivery of the data files.
7. MacImage will pay each county a 30 share percent of MacImage profits derived from website sales of that county's records.
8. If a county chooses to stop managing its own registry website, MacImage will manage a website for free for the county and pay that County a 70 percent share of the website's profits. In addition, **MacImage will guarantee that the county's share of profits is equal to or greater than profits from the County's current registry website.**
9. The County will arrange for its registry of deeds systems vendor to provide internet access to daily updates, and MacImage will pay the actual cost of programming required to provide daily updates (such programming may not be necessary).
10. The County may sign agreements that are substantially similar to this agreement with other persons or companies. However, while this agreement is in effect the County will agree not to provide copies in bulk to any other entity at lower prices than the prices specified in this agreement.

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Estimated Amounts to be Paid by MacImage of Maine to each County for Copies:\*

Androscoggin County	\$7,600
Aroostook County	\$6,300
Cumberland County	\$23,200
Franklin County	\$3,000
Hancock County	\$6,700
Kennebec County	\$10,700
Knox County	\$5,200
Lincoln County	\$4,100
Oxford County	\$9,200
Penobscot County	\$14,500
Piscataquis County	\$2,000
Sagadahoc County	\$2,900
Somerset County	\$5,000
Waldo County	\$3,300
Washington County	\$4,000
York County	\$18,200

\* The above estimates assume an agreement remains in effect for 5 years. Profit sharing would add many thousands of dollars to the above amounts.

Estimates have been provided for all counties even though some counties are not involved in the current litigation because it is MacImage of Maine's objective to eventually work cooperatively with all Maine Counties.

Thank you for reading this letter. I hope you will consider the merits of the above proposal with an open mind.

If you have questions, comments or suggestions or would like to discuss other settlement options please call me at 846-0921 (or send an email to [macimage@maine.rr.com](mailto:macimage@maine.rr.com)) before August 20 (this Friday).

Sincerely,



John P. Simpson  
General Manager and Owner  
MacImage of Maine LLC