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# **Predictable Recording Fees - Toolkit**

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## Getting Started

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This toolkit is intended to:

- Serve as a guide for recorders, lenders, title professionals, real estate agents and other stakeholders who may wish to consider evaluating and establishing some form of predictable recording fee structure<sup>1</sup>;
- Provide testimonial experiences and tools to address issues and questions related to implementing predictable recording fees;
- Explore how a predictable fee structure could benefit everyone: the recording jurisdictions, consumers and industry partners.

To address issues and questions related to predictable fees, all interested stakeholders begin by communicating within their respective organizations and with each other. Gaining statewide consensus and support is vital to ensuring seamless implementation. It is important to determine whether predictable fees offer an advantage to industry partners, consumers, and recording jurisdictions within a state.

Recorders, lenders, title professionals and other stakeholders may wish to form committees or working groups to gather information and data from all counties about fee policies and practices.

State association meetings with all stakeholders, as well as meetings with local PREP chapters offer opportunities for discussion. It is important to solicit feedback from recorders and business partners about their perspectives on predictable fees. Adopting a predictable fee structure is a major change and will require significant stakeholder engagement. When various viewpoints have all been expressed, consider the steps necessary to address those viewpoints and move forward.

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<sup>1</sup>As used in this paper, the term "predictable recording fees" or "predictable fees" is used to describe a fee structure that produces a consistent and reliable recording fee, without the necessity for time-consuming actions like counting pages. It can, but does not necessarily, refer to a flat-fee structure across all document types. It also is not meant to impact or affect "transfer taxes."

## Gathering Data

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- Develop new predictable fee structures that are grounded in good data and information.
- Collect actual recorded document, page count, and document type information from every recording jurisdiction within the state for 2-3 representative years. Be sure all recording jurisdictions are using the same representative years. Each jurisdiction's data contributes to the determination of a sound predictable fee structure.
- Consider the Land Records Management System (LRMS) vendor as a resource for gathering needed data.
- Create spreadsheets to develop multiple projected predictable fee models, including the data from every jurisdiction, for discussion.
  - Include all recording fees
    - Basic recording fee (per page)
    - Potential add-on fees (for example extra names, extra references, multiple titles)
    - Other fees imposed by the particular jurisdiction or state
  - Sample spreadsheets
    - [Option 1](#)
    - [Option 2](#)
- Use the data collected to project the effects of potential fee changes. The proposed predictable fees can be adjusted within the spreadsheets to compare the effects of different fee models against current revenue. The goal is to assure that no jurisdiction will experience a loss in revenue. The spreadsheet helps determine which fee structure will work for all jurisdictions within the state.
- Consider multiple options to project possible fee models.
  - Options to consider:
    - One fee for all document types, regardless of length
    - One fee for a set number of pages, with additions for extra pages
      - Example: \$30 up to 20 pages, then \$3 per extra page
      - Ex-ample: multi-title documents
    - Fee by document type

## Gaining Buy-In

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### From Recorders:

- Enlist help from LRMS vendors to gather the data, as necessary, for recorded document, page count, and document type information. Address concerns about loss of revenue.
  - Use information from states that have implemented predictable fees
  - Other jurisdiction office fees
- Consider including a technology fund fee on a per-document basis.
- Consider increasing an existing technology fund fee on a per-document basis.

### From Business Partners:

- Encourage title companies, attorneys, lenders and real estate agents to participate in the process;
- Determine needs and wants of all stakeholders. They may or may not offer input.

### From Lawmakers:

- Meet with lawmakers. Changes in fee structure are likely to require legislative action at the state or jurisdictional level. Recorders, lenders, title professionals and other stakeholders should involve lawmakers in the discussion and planning, based on the dynamics and circumstances in each state.
- Recognize that lawmakers may have their own ideas about fee structures, and be prepared to address those perspectives.

## Implementing Predictable Fees

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When a predictable fee structure change is approved, communications with all stakeholders is very important. Notify all stakeholders as soon as possible that the fee structure will be changing and provide an effective date.

### For the LRMS Vendor:

- Determine the date the fee structure change goes into effect and work with your recording jurisdictions to make any necessary system changes.
- Test your LRMS system.
  - Make sure the fees are calculating correctly; and
  - Ensure your system reports are accurate.
- Provide a method to handle documents sent after the effective date of the fee structure change but which are submitted with the old fee(s).

For the Recorder:

- Develop a Fact Sheet that explains why the fee structure change is being made and how it will be beneficial to recording partners and the counties.
- Revise the jurisdiction fee sheet(s) with the new fees and an effective date for the change. A fee sheet might be printed on paper in the office, on the Internet, or in materials typically distributed by the recording jurisdiction.
- Notify business partners of the upcoming change by multiple methods of communication, as soon as the change is final and for as long as deemed necessary.
  - Speak at local association meetings of stakeholders;
  - Send a notification email to local recording partners of the upcoming change and include a copy of the revised fee sheet;
  - Send a letter that includes a reference to the legislation and revised fee sheet with all outgoing recording mail.
- Ask eRecording vendors to help get the word out to their customers about the upcoming changes.
- Develop a plan for handling documents received after the effective date of the fee structure change but which are submitted with the old fee(s).
- Develop media.
  - Issue press releases;
  - Contact local media;
  - Inform state associations; and
  - Use social media.
- Post on recording jurisdiction website as soon as practical with links to the final fee structure change and a Fact Sheet.
- Make sure to change fees on the recording jurisdiction website on the effective date.



## Appendix A

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The following questions were posed to recorders in Michigan, Minnesota and Wisconsin, all states with predictable recording fees, to learn more about the process in each state.

### Predictable Recording Fees – State Questions

1. In what year did legislation pass to allow predictable fees?

**MI:** 2016

**MN:** 2005

**WI:** 2010

2. When did the legislative process start?

**MI:** Early 2015

**MN:** 2003

**WI:** District Level - 2005 & 2007; statewide - Late spring 2010

3. Who were the other stakeholders in the process?

**MI:** Michigan Land Title Association (MLTA), Real Estate Section of the Michigan Bar, Michigan Bankers Association, Oil and Gas Association, IRS, Michigan Treasury, Unemployment Insurance Agency, Michigan Association of Counties, Michigan Association of County Treasurers.

**MN:** Minnesota Land Title Association, Minnesota Bar Association, Minnesota county recorders, Minnesota Association of Counties, some Minnesota bankers associations, some with the Minnesota realtors associations.

**WI:** Wisconsin Register of Deeds Association, Wisconsin Real Property Listers Association, Wisconsin Land Title Association, Wisconsin Realtors, Wisconsin Bankers, Wisconsin County Treasurers Association.

4. Were there any surprises in terms of who got involved in the process?

**MI:** Governor's office liaison jumped in when Unemployment Insurance Agency realized the end result of the legislation – they had been paying \$2 per document, so this price

difference was huge to them, and ultimately they would have to be more accountable for the liens they placed on entities. Also surprised by the Michigan Association of County Treasurers' concerns

**MN:** The support from the stakeholders not only in the process of working on the legislation, but also working with lobbyists and even having the associations testifying in favor of the bill

**WI:** No

5. Who were biggest allies?

**MI:** The bill's sponsor, Senator MacGregor and his staff, the MLTA and Bankers' Association

**MN:** County recorders, MN Land Title and MN Bar Associations

**WI:** Wisconsin Real Property Listers and Wisconsin Land Title Associations

6. Who were biggest opponents?

**MI:** Oil and Gas Association, Michigan Association of Treasurers and Unemployment Insurance Agency

**MN:** The bankers and some larger counties. We worked with them so they would not oppose it during the legislative hearings.

**WI:** At first, Wisconsin Realtors but once we clarified intent, they jumped on board

7. Did the recorders lead the charge or were they in a supporting/approving role?

**MI:** An introductory meeting was called by the Registers of Deeds which included the Bankers Association, MLTA and the Real Estate section of the Bar. We discussed the pros and cons of predictable fees, and thought we came to consensus. Michigan Association of Registers of Deeds (MARD) were a bit blindsided when we heard that MLTA had already initiated a bill and hadn't mentioned it at our meeting, nor did the original bill follow what we had talked about during that meeting. The original bill changed the fee on two document types, mortgages and deeds. This narrow interpretation of "predictable fees" would have ultimately made register's responsible for interpreting what the document would accomplish. It also did not take into consideration other statutes that read, "fee same as a mortgage" or "fee same as a deed." It was truly a nightmare bill as originally proposed. When the bill's sponsor called us, we met with him and basically took lead on

the discussions as to why “our” predictable fee, “all documents, all the time” made more sense.

**MN:** Yes! We had only a couple of large counties grumble because they would be bringing in too much revenue. This is still a flaw in our fee structure.

**WI:** Registers led the charge

8. How did you get all the recorders on board?

**MI:** We don’t have “all” the registers on board, in my opinion, but we do have a majority of them. We discussed the pros and cons of predictable fees at three or four registers’ conferences, as well as had the spreadsheet available for their review so they could verify their county would remain whole for recording revenues.

**MN:** In 2003, MN had not had a fee increase in over 12 years. We were collecting 50 cents per document for our technology funds. Our counties did not have the funding needed to update systems for eRecording, digitizing records or even afford new computer equipment. We did need a fee increase to operate. All document types were \$19.50 and the state took \$4.50 of that for legal aid funding. It was easier to get the recorders in agreement because of this lack of funding. We also provided them with constant updates and materials to use for promoting the fee increase with their local business people and legislators.

**WI:** Gathering information and having data to share

9. Did you have to negotiate (give anything up) to get the support of other groups/business segments?

**MI:** We originally started with \$35/document and an automatic increase every 5 years, but we finished with no automatic rate indexer and \$30/document regardless of the number of pages, and \$3 for each liber and page after the first reference on assignments and discharges.

**MN:** The county offices such as the auditor, treasurers, planning and zoning, surveyors, assessors, and others were adding on fees to the recordings. The extra fees on top of the recording fee were charged for offices approving surveyors, reviewing plats, environment funding, searching, and other creative add-on fees to the recording process before our offices received the \$19.50 for recording. These fees needed to be eliminated to get back to the statewide flat fee for all document types. The page count fees and rejection fee was eliminated because of the needs of the title people. In calculating a new fee, we used the total of page counts, rejection fees, other office add on fees (as mentioned above) and

created an average increase to cover what we would normally have gotten with those old add on fees. So the fees were added back into technical funds to cover the loss of revenue from the add-on fees. The Realtor Association felt they need more money for legal aid as our recording fee already included a small sum for them. They had a very strong lobbyist and we could only work with reducing the sum they wanted to add on.

**WI:** No

10. How did you come up with the amount of your fee?

**MI:** We started with a general survey asking how many documents each county records, what was the amount collected for the General Fund (recording fee only), with many, many follow-up calls for clarification. Ultimately an Excel spreadsheet, that is poster-size when readable, was generated and used to determine the minimum amount we could collect per document and still keep every county “whole.”

**MN:** We surveyed counties to understand our realistic costs, added in future increase possibilities, asked title and the Bar Association what they felt the industry would tolerate. The legislative process added an additional \$6.50 onto the fee to pay for a meth bill and legal aid. The state wanted to have add-on fees as the counties worked hard to eliminate them for the public. We are still watching the state in every legislative session as they try to include more fees for special interest groups. So far our efforts have been successful, but we guard it closely. We have pushed back hard against any group who looks at adding an additional fee to our flat fee. We have testified multiple times against any legislative action that touches our fees. The title and attorney associations are still supportive of recorders after 11 years of having flat fees in place.

**WI:** Gathered facts, document totals, page counts, etc., and set number high enough that counties wouldn't lose money or have to go back to legislature to raise fees in a few years

11. What is your state's predictable fee?

**MI:** \$30/document regardless of the number of pages, and \$3 for each liber and page after the first reference on assignments and discharges

**MN:** \$46 all document types. Plats are \$56 because of the size and process at this time. The breakdown is: \$14.50 to the county, \$10 to the Recorder's Technology Fund, \$11 to a Compliance Fund\*, and \$10.50 to the state of MN. The plat fund allows the additional \$10 to go to the county portion to make it \$24.50.

\*This is used for all land records offices to keep current processing/recording times within so many business days. If the county offices are out of compliance with the turnaround times any land office auditor, assessor, Planning & Zoning can use the fund for technology to come into compliance within 6 months. If the county is always in compliance the fund is used for other technology for those offices like GIS, digitizing records, large equipment or software upgrades. Many counties have committees formed to use the compliance funds for land record offices.

**WI:** \$30 per document, except plats which are \$50

12. What surprised you the most during this process?

**MI:** That even after an agreement was struck with the stakeholders, we still had some individuals who were difficult to work with and created a negative atmosphere when their association had been appeased by the compromises we had reached.

*Also, I (Berrien Co.) didn't realize how much my staff depended upon the fees to know if their page count was accurate. With the prior system (\$14 for the first page, \$3 for each page thereafter), if you got a check for \$20 you knew to look for three pages; now if you miscount the pages for receipting, you don't know until after it is scanned and may have to change the receipt. In my county we use Liber and Page so we've had to add a few "A" (filler) pages*

**MN:** The people who opposed it and the reasoning behind it; equally, the people who supported it. That was amazing.

**WI:** How quickly the legislation passed, once it was introduced

13. What did you promote as benefits to the recorders?

**MI:** TIME – fewer rejections because of miscalculated funds, time spent reviewing the document, time spent on computing the per page fee, time spent on creating the rejection letter, time spent mailing the document and letter, time on receiving the document and reviewing again. Also, please see attached [“Points to Remember”](#) that MARC provided to our membership.

**MN:** Technology funding, flat statewide fee with no add-on fees at recording, years since a recorder fee increase, new turnaround times for consumers, and the working relationship with the industry partners. Also, included being the first in the nation to standardize fees.

**WI:** One fee for all documents would simplify processes, fewer rejections for incorrect fees, reduced expenses for postage, supplies and staff time

14. What did you promote as benefits to other stakeholders?

**MI:** ECONOMICS -- Quicker closings, less worry over fees – easier to meet TRID restrictions

**MN:** eRecording, technology, shorter turnaround times by law for recorders, flat fees with no add-ons statewide, working relationship with industry partners

**WI:** See #13

15. What has been the actual impact on recorders since implementation of your state's predictable fee?

**MI:** Too soon to tell

**MN:** Technology usage and new equipment in all sizes of counties, implementing eRecording, reduced backlog, implementing GIS in many rural counties, converting Torrens certificates, conversion of paper to digital, land records online, reduced rejections, improved revenue for the recorders offices and county government.

**WI:** See #13

16. Did you have any issues during implementation?

**MI:** Only one or two counties had last minute questions regarding fees and confirming the changes needed to their software

**MN:** We created a grace period for two months if the documents were dated before the legislation was passed. This caused some accounting issues with systems, but very little. Some county offices that lost their add-on fees complained until they understood the benefits. Since we dropped the standard document rejection fee, we had problems with document drafters. The old add on fees included rejecting documents for not following the law with our document standards. It was \$10. We had agreed to waive this fee in order to get the support we needed from the title association. After the law passed, we were still getting too many poorly drafted documents that did not follow document standards. We went back to the title folks and impressed upon them there are still document standards in law, we just took the document rejection fee away. Title has worked harder to improve drafting.

**WI:** Notifying out-of-state agencies like bankers, title companies and other that do not customarily conduct business in Wisconsin

17. If so, how could those issues have been anticipated and mitigated?

**MI:** Not convinced they could have been. We did multiple, small group, training opportunities, went through the fees again and again – just some last minute jitters.

**MN:** The grace period did work and customers were notified by recorders as soon as legislation passed. We provided letters, flyers, etc. to promote the new laws. We went back to the title, attorneys and bankers and asked them to help promote the use of MN document standards and requested better drafted documents. It did work as we pushed hard on it, but also at that time more states were adding document standards in law and our MN standards were in line with other states document standards.

**WI:** Hard to say but would rely on PRIA to get the word out better

18. What do you wish someone had told you at the beginning of this process/lessons learned?

**MI:** Have someone you can call and vent with after each meeting.

Stay resilient, but be flexible on how to accomplish the goal FOR YOUR CONSTITUENTS. For instance, we didn't know that the Unemployment Agency, nor IRS, nor Treasury, nor Treasurers could not collect back from the debtor recording fees, so we added language to accommodate that allowance or came up with a process for them to accomplish this oversight.

Don't just hear what the other stakeholders are saying, LISTEN to their concerns.

Have a bill sponsor who will keep the ultimate vision in sight and staff to remain steadfast. Be available to your bill's sponsor to attend meetings on short notice and to answer questions at all hours. Yes, give them your cell phone number.

**MN:** That the disparity of fees for technology funds would become a problem for larger counties. It should have been proportioned to a point of sharing revenue with greater MN counties. We did not have an avenue (association) that could or would handle the accounting of the money or transfer the funds to smaller counties. It would also be a red flag for commissioners and legislators to see the amount of revenue in reserve.

**WI:** Wisconsin missed two statutory references to documents when the change went into effect. Make sure you cross-reference all your statutes to identify all effected documents.