

2005 County Recorder Fee Legislation

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In recent years, improved technology has revolutionized the conduct of business and many aspects of providing government services as well. In 2005, a major piece of legislation was enacted to modernize the land recordation systems of Minnesota counties. Because my office has received many inquiries about the new law, I will take this opportunity to discuss the changes.

The new legislation added timelines for the recording of instruments by county recorders and altered the fees related to land recordation. In addition, a new provision was passed regarding the expenditure of "additional unallocated fees" resulting from the new fee schedule.

The new law phases in requirements that county recorders record and index instruments within a certain number of business days after delivery and payment of applicable fees. Initially, instruments must be recorded within 15 days, but for calendar year 2011 and thereafter, the maximum time allowed for completion of the recording process will be ten business days.

A county is considered in compliance if it meets these requirements for certain percentages of filings, which have been added to the statutes. The compliance percentages increase from 60 percent in 2007 to 90 percent in 2010 and later years. Compliance with these requirements may be suspended for up to six months "when a county undertakes material enhancements to its systems for receipt, handling, paying of deed and mortgage tax and conservation fees, recording, indexing, certification, and return of instruments." If difficulties arise, the suspension of the compliance percentages can be extended for an additional six months.

The new law also explains how additional unallocated fees resulting from the new fee schedule can be handled and spent. First, counties must segregate the additional unallocated fee in an appropriate account, in which the money must remain until it is spent for authorized purposes. Then, the money may be spent as authorized by the board of county commissioners (1) for supporting enhancements to the recording process, including electronic recording, (2) to fund compliance efforts by making material enhancements to county systems (as discussed in the previous paragraph), and (3) for "data integration and aggregation projects." This money must not be used to supplant the normal operating expenses for the office of county recorder or registrar of titles. It

appears that the primary purposes of expenditures under the new law should relate to improving the land recording process and meeting the new statutory timeframes and compliance percentages.

The State Auditor's Office has been asked whether this money is the same as the county recorder equipment fund. The answer is no. The equipment fund still exists, although it has been renamed the "technology fund." The technology fund is "for obtaining, maintaining, and updating current technology and equipment to provide services from the record system." Money from the technology fund is disbursed "at the county recorder's discretion to provide modern information services from the records system." As noted above, the additional unallocated fee is spent as authorized by the county board. So, although the additional unallocated fee account and the technology fund exist for similar reasons, they are subject to different requirements.

The State Auditor's Office looks forward to working with counties to address any issues that arise under the new law.

**MINNESOTA STATE AUDITOR'S OFFICE
MEMORANDUM**

To: Greg Mutchler

From: Mark Kerr

Date: September 14, 2005

Re: Recorder Fee Legislation
2005 Minn. Laws ch. 136, art. 14, §§ 6, 7; Minn. Stat. §§ 357.18-.182
(2005).

I. Introduction

In 2005, the Minnesota Legislature enacted statutory changes regarding county recorders' duties and the fees charged for recording and indexing instruments. The fee schedule for recorders was amended and supplemental fees were eliminated. Finally, a new provision was passed regarding the expenditure of "additional unallocated fees" resulting from the new fee schedule. This memorandum addresses questions originally posed by an audit client.¹

II. Questions

1. How can the additional unallocated fees be spent?
2. What accounting codes should be used for the additional unallocated fees?

III. Short Answers

1. The additional unallocated fees may be spent as authorized by the county board (a) for supporting enhancements to the recording process, including electronic recording, (b) to fund enhancements to systems to comply with new recording deadlines specified in the new statute, and (c) for use in undertaking data integration and aggregation projects. The main intent is to see that the statutory timeframes established in the new law are met.
2. To account for the additional unallocated fees, counties can create either (a) a separate department code, or (b) a separate program number within the county recorder's department.

¹ This memorandum is not legal advice and should not be relied upon in lieu of legal advice.

IV. Discussion

1. Expenditures

The new law phases in requirements that county recorders record and index instruments within a certain number of business days after delivery and payment of applicable fees. Initially, instruments must be recorded within 15 days, but for calendar year 2011 and thereafter, the maximum time allowed for completion of the recording process will be ten business days.²

A county is deemed in compliance if it meets these requirements for certain percentages of filings. The compliance percentages increase from 60 percent in 2007 to 90 percent in 2010 and later years.³ Compliance with these requirements may be suspended for up to six months “when a county undertakes material enhancements to its systems for receipt, handling, paying of deed and mortgage tax and conservation fees, recording, indexing, certification, and return of instruments, and if difficulties arise the suspension may be extended for an additional six months.”⁴

The new law also contains a subdivision explaining how additional unallocated fees resulting from the new fee schedule should be spent. This subdivision provides:

Notwithstanding any law to the contrary, for county budgets adopted after January 1, 2006, each county shall segregate *the additional unallocated fee . . .* in an appropriate account. *This money is available as authorized by the Board of County Commissioners for supporting enhancements to the recording process, including electronic recording, to fund compliance efforts specified in subdivision 5 [Material enhancements to systems, described above] and for use in undertaking data integration and aggregation projects.* Money remains in the account until expended for any of the authorized purposes set forth in this subdivision. This money must not be used to supplant the normal operating expenses for the office of county recorder or registrar of titles.⁵

This money is treated differently from money in a county recorder’s technology fund. The statutory provision on the county recorder technology fund was amended, but it remains separate from the money raised by additional unallocated fees.⁶ The provision on the county recorder technology fund provides that a \$10 fee charged under Minn. Stat. § 357.18 “shall be deposited in a technology fund for obtaining, maintaining, and

² Minn. Stat. § 357.182, Subd. 3 (2005).

³ Minn. Stat. § 357.182, Subd. 4 (2005).

⁴ Minn. Stat. § 357.182, Subd. 5 (2005).

⁵ Minn. Stat. § 357.182, Subd. 7 (2005) (Emphasis and bracketed language added).

⁶ See 2005 Minn. Laws, ch. 136, art. 14, § 6, Subd. 4 (2005); 2005 Minn. Laws, ch. 136, art. 14, § 6.

updating current technology and equipment to provide services from the record system. The fund shall be *disbursed at the county recorder's discretion* to provide modern information services from the records system.” This provision goes on to state that the technology fund “is a supplemental fund and shall not be construed to diminish the duty of the county governing body . . . to comply with the requirements of section 357.182.”⁷

So, unlike money in the technology fund, the additional unallocated fee is spent not at the discretion of the county recorder, but as authorized by the county board. It may be spent (a) for supporting enhancements to the recording process, including electronic recording, (b) to fund enhancements to systems to comply with new recording deadlines specified in the new statute, and (c) for use in undertaking data integration and aggregation projects.

In order to clarify the intent of the law, I contacted Luci Botzek of the Minnesota Association of County Officers (MACO). She followed the bill through the Legislature this year. The realtors and the Minnesota State Bar Association initiated it. The main reason for the new law was to establish the timeframes for getting instruments recorded. The overlying assumption is that the additional unallocated fees should be spent first and foremost to meet the new statutory timeframes. Once they are met, the expenditure of the additional unallocated fee is not as important. The intent was to use the money to improve the land recording process and meet the timeframes. The language about “integration and aggregation projects” probably is meant to allow expenditures on a subscription services being marketed that integrates and aggregates data – imaging records, electronic records, GIS, and parcel-based maps.⁸ She affirmed that the county recorder technology fund is separate.

2. Accounting Codes⁹

Since there is a need to track how these fees are expended, the County could use one of two methods to account for the fees. The first option is to create a separate department code for these fees. For most counties using COFARS the county recorder department is 101. So under the first option you would likely create another department with an available number nearby, such as 102. The other option is to create a separate program number within the county recorder’s department. A lot of counties may not use program numbers for county recorder or other departments so the program coding defaults to 000. For these new fees you would want to create a separate program, which for a general government-type department like the recorder would be somewhere in the range 000-0199. In this option the general operating recorder’s function department-program code would likely be 101-000 and the department-program code for these new fees could go into 101-100 or something similar. With either of the two options the activities would be recorded in the applicable revenue and expenditure object codes.

⁷ *Id.* (Emphasis added.).

⁸ See www.nazcainc.com.

⁹ Tom Karlson provided the information on accounting codes.