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Special Considerations

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Special Considerations

Reference Number: CTAS-1194

Various law provides for some special considerations for certain records or types of records. These requirements should be considered when an official or the public records commission is making decisions about how to manage or dispose of these records

Financial Records and Audits

Reference Number: CTAS-1195

One important group of such records are those financial records that are needed for an audit. Most financial records of county offices are temporary records that must always be kept at least as long as is required for audit purposes. Regardless of whether or not an official thinks a financial or accounting record has served its useful purpose, it cannot be destroyed if the office of the comptroller deems it necessary for audit purposes.^[1] You will notice that most financial records listed in the retention schedules have a five-year retention period. This standard is based on the recommendation of the Division of County Audit in the Office of the Comptroller. Records that are important for audits need to be maintained through the time of the audit plus about three years afterwards in case any problems turn up. Formerly, the retention period for these records was based on keeping them for three years after the audit is complete. Since it was often difficult for a local official to know when an audit became final, the retention period was changed to five years from the date of creation of the record. This gives the official a definite time period to work from and also allows continuous destruction of financial records rather than lumping all records from a fiscal year together with a single retention date. Generally, this five-year period should suffice; however, if directed by the comptroller's office to preserve records for a longer period due to an ongoing audit investigation or some other unusual circumstance, the local official should comply.^[2]

^[1] T.C.A. § 10-7-404(a).

^[2] T.C.A. § 10-7-404(a).

Exhibits and Evidence in Court Cases

Reference Number: CTAS-1196

The law includes a number of special considerations for materials which have become evidence and exhibits in judicial proceedings. Although some of these materials are technically not "records" this information is related to records management for court clerks. Some of this information also appears in the retention schedules for court clerks. Exhibits are treated differently depending on whether they are documents or some other kind of physical evidence or firearms.

Documents

Unless local rules of court provide otherwise, the clerk can destroy certain records under the direction and order of the judge once the case has been finally disposed of for a period of 10 years. "Finally disposed of" means judgment has been entered and the appeal times have lapsed for all parties. The clerk has to retain the pleadings, original process and original opinion, original rules, appearance and execution dockets, minute books, and plat or plan books as permanent records. But all other records, dockets, books, ledgers and documents can be destroyed pursuant to a court order.^[1] In civil cases, the 10-year period is shortened for certain types of records. A judge may order the clerk to destroy discovery materials, briefs, cost bonds, subpoenas and other temporary records in civil cases three years after the final disposition of the case.^[2]

In addition to these procedures, clerks need to comply with T.C.A. § 18-1-204. That statute requires them to notify the Tennessee State Library and Archives of the records they intend to destroy and give them 90 days to examine and remove any significant historical records if they so choose. Also, once they get an order for destruction of records from their judge, the clerks should take the order to the records commission for approval prior to destruction pursuant to T.C.A. § 10-7-406.

For Physical Evidence Other than Documents and Firearms

Physical evidence has a more complicated set of procedures, but the good news is that you can destroy it sooner. If evidence is used in a case, once the case comes to judgment or conclusion and once all appeals have been settled, the clerk is to give 30 days notice to the attorneys of record in the case that they can

come pick up any thing that belongs to them or their clients. After 30 days, the clerk can dispose of the evidence by following the procedures in T.C.A. § 18-1-206(a)(2)–(7). This statute requires the clerk to make an inventory of the evidence to be destroyed with references to the case involved and the term of court in which the evidence was used. The clerk then publishes the inventory for three consecutive weeks in a newspaper of general circulation. Parties who want to object to the disposition of the property or make a claim for it have 30 days to file a petition with the court. Once that time passes, the clerk gives the inventory (and any petitions people may have filed) to the court for the judge to approve or reject each item on the list and decide if it should be—

1. Returned to the owner or the owner's attorney;
2. Preserved by an organization for historical purposes;
3. Sold; or
4. Destroyed.

The clerk then gives the court order and the items to be disposed of to the sheriff. Depending on the disposition ordered for the item, the sheriff then delivers the items to their owners or to historical organizations or advertizes and sells the items or destroys them and files an affidavit concerning the destruction of the items with the court.

For Firearms

If a court clerk has exhibits in his or her possession that are firearms they should be disposed of in accordance with the procedures spelled out in T.C.A. §§ 39-17-1317 and 39-17-1318.

[1] T.C.A. § 18-1-202.

[2] T.C.A. § 18-1-202(b).

Other Miscellaneous Special Considerations

Reference Number: CTAS-1197

Records and documents of proceedings in a court of record can only be destroyed after a judge has issued an order authorizing their destruction.^[1] Regardless of who approves it however, the law explicitly prohibits the destruction of any original process in a civil action or criminal proceeding.^[2] Records pertaining to mortgages and deeds of trust on personal property and chattel mortgages can only be destroyed after the term of the mortgage has expired and all conditions have been met and the register approves the destruction of the record.^[3] Finally, no record of a county office or a court of record can be destroyed if the county official or judge who has custody of the record objects to its destruction.^[4] Court case files commonly contain material that is rich in historical and genealogical significance. If the county has an archive or is considering establishing one, these records are excellent candidates to be preserved for their historical value.

[1] T.C.A. § 18-1-202.

[2] T.C.A. § 10-7-404(c).

[3] T.C.A. § 10-7-412.

[4] T.C.A. § 10-7-404.

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