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# Marriage

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Dear Reader:

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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.

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# Marriage

Reference Number: CTAS-390

In Tennessee, marriage is controlled by statute and not governed by common law rules. Obtaining a marriage license is a condition precedent to the solemnization of a valid marriage under Tennessee law. See, e.g., *Ochalek v. Richmond*, 2008 WL 2600692 (Tenn. Ct. App. 2008), and cases cited therein. See also Op. Tenn. Att'y Gen. 06-110 (July 12, 2006) (no one can be legally married in Tennessee without first obtaining a valid marriage license). Marriage licenses are issued by the county clerk. T.C.A. § 36-3-103.

Marriage is a civil contract, *Cole v. Cole*, 37 Tenn. 57, 5 Sneed 57 (Tenn. 1857), but unlike most civil contracts that can be voluntarily entered into and terminated by the parties, marriages contracted under Tennessee law require state action to be entered into and to be dissolved. Public policy considerations make the marriage contract one of the most ceremonious and serious contracts a person enters and the public policy of Tennessee is to sustain the validity of marriages. *Madewell v. U.S.*, 84 F. Supp. 329 (D. C. Tenn. 1949).

Forced marriages are against public policy in Tennessee. A marriage entered into without valid, freely-given consent from both parties is void and unenforceable upon a court's finding of forced marriage, under T.C.A. § 36-3-201. A party who is forced into marriage, whether by violence, threats, or coercion, has a cause of action against any party who forced the person to marry. Damages include liquidated damages of two hundred fifty thousand dollars (\$250,000), attorneys' fees, and court costs.

## Who Can Marry?

Reference Number: CTAS-391

### Prohibited Degrees of Relationship

Tennessee law defines prohibited degrees of relationship for marriages, generally considered "incestuous." Marriage cannot be contracted with a lineal ancestor (parents, grandparents, great-grandparents, etc.) or descendant (children, grandchildren, great-grandchildren, etc.), nor the lineal ancestor of either parent (grandparents, great-grandparents, etc.) or descendant of either parent (brothers, sisters, half-brothers, half-sisters, nieces and nephews, grandnieces and grandnephews, etc.), nor the lineal descendant of a grandparent (aunts, uncles, first cousins), nor the lineal descendants of spouse (spouse's children, grandchildren, stepchildren, step-grandchildren, etc.), nor the husband or wife of a parent (stepmother, stepfather) or lineal descendent. T.C.A. § 36-3-101. A marriage entered into in violation of this statute is void in Tennessee regardless of whether the marriage was entered into in Tennessee or in another state where the marriage would be valid. *Rhodes v. McAfee*, 224 Tenn. 495, 457 S.W.2d 522 (1970) (declaring void the marriage of a stepdaughter to her stepfather after the divorce of the stepfather and the mother).

### Effect of Adoption

The signing of a final order of adoption establishes the relationship of parent and child between the adoptive parent and the adoptive child as if the adopted child had been born to the adoptive parent, and the adopted child is deemed the lawful child of the adoptive parent for all legal consequences and incidents of the biological relation of parents and children. T.C.A. § 36-1-121.

## Bigamy

Reference Number: CTAS-421

A second marriage cannot be contracted before the dissolution of the first. However, the first marriage is regarded as dissolved for this purpose if either party has been absent five (5) years, and is not known to the other to be living. T.C.A. § 36-3-102; *Douglas v. Douglas*, 6 Tenn. App. 12 (1927); *Hall v. Hall*, 13 Tenn. App. 683 (1932). Bigamy is a Class A misdemeanor. T.C.A. § 39-15-301.

Because bigamous marriages are prohibited by statute, such marriages are void ab initio (i.e., void from the beginning). These marriages are not recognized by the courts and cannot be ratified by the parties. *Guzman v. Alvares*, 205 S.W.3d 375 (Tenn. 2006).

## Common Law Marriages

Reference Number: CTAS-423

Marriage is controlled by statute and not common law in Tennessee. Although Tennessee does not

recognize common law marriages, Tennessee will recognize a valid common law marriage entered into in a jurisdiction which recognizes common law marriages. *In re Estate of Glover*, 882 S.W.2d 789 (Tenn. App. 1994); *Andrew v. Signal Auto Parts, Inc.*, 492 S.W.2d 222 (Tenn. 1972); *Lightsey v. Lightsey*, 407 S.W.2d 684, 56 Tenn. App. 394 (Tenn. App. 1966); *Troxel v. Jones*, 322 S.W.2d 251, 45 Tenn. App. 264 (Tenn. App. 1959). *But see Crawford v. Crawford*, 198 Tenn. 9, 277 S.W.2d 389 (1955) (under exceptional circumstances, parties may be estopped to deny their marriage under the doctrine of marriage by estoppel).

## Obtaining a Marriage License

Reference Number: CTAS-392

Before being joined in marriage, the parties must present to the minister or other official performing the ceremony a license issued by a county clerk in the State of Tennessee, authorizing the solemnization of a marriage between the parties. The license may be issued by the county clerk in any county in Tennessee, without regard to the residence of the parties or the county where the ceremony is to be performed. A marriage license is valid for thirty (30) days from the date of issuance by the county clerk. T.C.A.

§ 36-3-103. A marriage license may be issued to persons otherwise complying with the requirements of the law who intend to have their marriage solemnized outside the state of Tennessee. Ops. Tenn. Att’y Gen. 06-110 (July 12, 2006) and 85-243 (9/18/85). A valid marriage will not result from a ceremony performed in Tennessee without first obtaining a marriage license. *Stovall v. City of Memphis*, 2004 WL 1872896 (Tenn. Ct. App. 2004); Op. Tenn. Att’y Gen. 90-49 (4/9/90).

## Requirements of a License

Reference Number: CTAS-424

Before being joined in marriage, the parties must present to the minister or other official performing the ceremony a license issued by a county clerk in the State of Tennessee, authorizing the solemnization of a marriage between the parties. The license may be issued by the county clerk in any county in Tennessee, without regard to the residence of the parties or the county where the ceremony is to be performed. A marriage license is valid for thirty (30) days from the date of issuance by the county clerk. T.C.A.

§ 36-3-103. A marriage license may be issued to persons otherwise complying with the requirements of the law who intend to have their marriage solemnized outside the state of Tennessee. Ops. Tenn. Att’y Gen. 06-110 (July 12, 2006) and 85-243 (9/18/85). A valid marriage will not result from a ceremony performed in Tennessee without first obtaining a marriage license. *Stovall v. City of Memphis*, 2004 WL 1872896 (Tenn. Ct. App. 2004); Op. Tenn. Att’y Gen. 90-49 (4/9/90).

## Issuance of the License

Reference Number: CTAS-425

County clerks, and deputy county clerks, are authorized to issue a marriage license only upon the following conditions:

1. **Written Application.** Each of the parties must appear and make application in writing, stating the names, ages and addresses of the proposed contracting parties. Applicants under the age of 18 are required to provide the names and addresses of the parents, guardian or next of kin. The application must be sworn to by both applicants. T.C.A. § 36-3-104. Sample Marriage License application.
2. **Social Security Number.** Under T.C.A. § 36-3-104, applicants are required to provide their social security numbers on the application for a marriage license. However, the statute does not require that an applicant have a social security number to qualify for a marriage license, so applicants who have not been issued a social security number are not required to provide one in order to obtain a marriage license. Op. Tenn. Att’y Gen. 08-126 (July 22, 2008). For opinions of the Attorney General discussing the collection and disclosure of social security numbers, see Ops. Tenn. Att’y Gen. 98-065 (March 17, 1998), 99-132 (July 7, 1999), 02-003 (January 2, 2002), and 02-016 (February 6, 2002).
3. **Appearance by Affidavit (incarcerated, disabled, or deployed military applicants).** If either individual is incarcerated at the time, the inmate is not required to appear but may instead submit a notarized statement containing the name, age, current address, and the name and address of the person’s parents, guardian or next of kin. If either individual has a disability which prevents the person from appearing, that person may submit a notarized statement containing the name, age, current address, and the name and address of the person’s parents, guardian or next of kin. T.C.A. § 36-3-104. Sample affidavit (incarcerated) Sample affidavit (disability)

If an applicant is a member of the armed forces of the United States stationed in another country in

support of combat or another military operation, the applicant shall submit: (a) a notarized statement containing the applicant's name, age, address in the United States, if applicable, and the names and addresses of the applicant's parents, guardian, or next of kin; (b) a certified copy of the applicant's deployment orders; and (c) an affidavit from the battalion, ship, or squadron commander, as applicable, notarized by the judge advocate stating that the applicant is deployed. If the applicant intends to appear for the marriage ceremony via video conferencing pursuant to T.C.A. § 36-3-302, the applicant must indicate that intention in the statement. T.C.A. § 36-3-104. Sample affidavit (military)

4. **Parental Consent.** In addition to the requirements set out above, T.C.A. § 36-3-106 provides that if either applicant is under 18 years of age, the parents, next of kin, guardian, or person having custody of the applicant are required to join in the application, under oath, stating that the applicant is 17 years of age or over and that the applicant has their consent to marry. The term "parent" or "parents" is defined in T.C.A. § 36-3-106 to mean a person or persons listed as a parent on the child's birth certificate or who have been adjudicated to be the legal parent of the child by a court of competent jurisdiction. If the applicant is in the legal custody of any public or private agency or in the legal custody of any person other than a parent, guardian or next of kin, then such person or the duly authorized representative of such agency must join in the application with the parent, guardian or next of kin, stating under oath that the applicant is 17 years of age or older but less than 18 years of age and that the applicant has their consent to marry. This provision does not apply to applicants who are in the custody of the department of mental health or the department of intellectual and developmental disabilities. T.C.A. § 36-3-106. The parents may join in the application by submitting a sworn affidavit as authorized under T.C.A. § 36-3-104(b)(3). Sample Affidavit (Parent/Guardian/Next-of-Kin) Parental consent is not required if the minor has been emancipated. T.C.A. § 36-3-106.

The law does not prescribe a particular form for the application, as long as the required information is obtained. The application may, but is not required to, contain a space to be completed by the county clerk as a permanent public record showing that the marriage was solemnized.

## Minimum Age of Applicants

Reference Number: CTAS-426

It is unlawful for any county clerk or deputy county clerk in this state to issue a marriage license when either of the contracting parties is under the age of seventeen (17) years, or where one of the parties is at least seventeen (17) years of age but less than eighteen (18) years of age and the other party is four (4) or more years older than the minor party. Any marriage contracted in violation of this provision may be annulled upon proper proceedings. T.C.A. § 36-3-105. However, a marriage entered into in violation of this section is valid until set aside by a court. The court has discretion whether to set aside the marriage, and the court is not required to declare the marriage void. Further, cohabitation after attaining marriageable age may validate the marriage. See *Keith v. Pack*, 182 Tenn. 420, 187 S.W.2d 618 (1945).

When either applicant is under the age of eighteen (18), the parents, next of kin, guardian or party having custody of the applicant shall join in the application, under oath, stating that the applicant is seventeen (17) years of age or over and that the applicant has their consent to marry. The term "parent" or "parents" is defined in T.C.A. § 36-3-106 to mean a person or persons listed as a parent on the child's birth certificate or who have been adjudicated to be the legal parent of the child by a court of competent jurisdiction. If the applicant is in the legal custody of any public or private agency or is in the legal custody of any person other than a parent, next of kin, or guardian, then such person or the duly authorized representative of such agency shall join in the application with the parent, next of kin, or guardian stating, under oath, that the applicant has their consent to marry. The parents, guardian, next of kin, other person having custody of the applicant, or duly authorized representative of a public or private agency having legal custody of the applicant may join in the application either by personal appearance before the county clerk or deputy county clerk, or by submitting a sworn and notarized affidavit. This provision does not apply to applicants who are in the legal custody of the department of mental health and mental retardation. Consent also is not required if the minor applicant has been emancipated, by court order or by previous marriage. T.C.A. § 36-3-106.

## Issuance to Incapacitated Persons Forbidden

Reference Number: CTAS-427

No license shall be issued when it appears that the applicants or either of them is at the time drunk, insane or an imbecile. T.C.A. § 36-3-109. This statute must be very narrowly construed to avoid a finding of unconstitutionality as a result of unreasonable interference with the fundamental right of

persons to marry. Op. Tenn. Att'y Gen. 98-011 (January 9, 1998). Marriages entered into in disregard of this statutory requirement are not void, but merely voidable after an appropriate proceeding. *Bryant v. Townsend*, 188 Tenn. 630, 221 S.W.2d 949 (1949); *Hunt v. Hunt*, 56 Tenn. App. 683, 412 S.W.2d 7 (1965); *Coulter v. Hendricks*, 918 S.W.2d 424 (Tenn. App. 1995).

## False Documents

Reference Number: CTAS-428

Fraudulently signing or knowingly using any false document purporting to be one provided for in T.C.A. § 36-3-104(a) or § 36-3-106 is a Class C misdemeanor, punishable by imprisonment not greater than thirty (30) days or a fine not to exceed fifty dollars (\$50.00) or both. T.C.A. §§ 36-3-112, 40-35-111.

## County Clerk Violations

Reference Number: CTAS-429

Any county clerk or deputy clerk who, not acting in good faith, issues a marriage license without compliance with the provisions of the last sentence in T.C.A. § 36-3-103(c)(1), §§ 36-3-104 through 36-3-106, § 36-3-109, § 36-3-110, or § 36-3-113 (regarding § 36-3-113, see *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015); see also Op. Tenn. Att'y Gen. 17-29) is guilty of a Class C misdemeanor, which is punishable by imprisonment not greater than thirty (30) days or a fine not to exceed fifty dollars (\$50.00) or both. T.C.A. §§ 36-3-111, 40-35-111.

## Contesting the Issuance of a Marriage License

Reference Number: CTAS-393

Any interested person has the right to contest the issuance of the marriage license, which contest must be filed, heard and determined by the judge of the probate court, or judge of the juvenile court, or any judge or chancellor; provided, that a contest cannot be filed without a cost bond in the sum of at least fifty dollars (\$50.00) with solvent sureties executed by the contestant, conditioned as in civil cases, and the cost of the contest will be adjudged against the losing party. T.C.A. § 36-3-110.

## Solemnizing a Marriage

Reference Number: CTAS-394

### Who Can Solemnize a Marriage?

The rite of matrimony may be solemnized by any of the persons listed in T.C.A. § 36-3-301:

1. All regular ministers, preachers, pastors, priests, rabbis and other religious leaders of every religious belief, more than eighteen (18) years of age, having the care of souls.
2. Current and former members of county legislative bodies.
3. County mayors/executives and former county mayors/executives.
4. Current and former judges and chancellors of this state, including federal judges and federal administrative law judges.
5. Current and former judges of general sessions courts.
6. Current and former municipal court judges.
7. The governor.
8. The county clerk of each county, and former county clerks who occupied the office on or after July 1, 2014.
9. Current and former speakers of the senate and speakers of the house of representatives.
10. Mayors of municipalities.
11. Current and former members of the general assembly who have filed notice with the office of vital records. Former members must have filed notice with the office of vital records while serving the general assembly.
12. Law enforcement chaplains duly appointed by the heads of authorized state and local law enforcement agencies.
13. Members of municipal legislative bodies.
14. Notaries Public.
15. District attorneys general and former district attorneys general who have filed notice with

the office of vital records.

The statute provides that in order to solemnize the rite of matrimony a minister, preacher, pastor, priest, rabbi or other spiritual leader must be ordained or otherwise designated in conformity with the customs of a church, temple or other religious group or organization, and such customs must provide for ordination or designation by a considered, deliberate and responsible act. T.C.A. § 36-3-301(a)(2). Courts look to the tenets of the particular religion to determine whether a particular person is a regular minister or other spiritual leader having the care of souls. Op. Tenn. Att'y Gen. 14-90 (9/30/14). The county clerk has neither the authority nor the duty to examine the qualifications of persons seeking to solemnize the rite of matrimony. Op. Tenn. Att'y Gen. 97-139 (10/9/97). The county clerk cannot require proof that an officiant is, in fact, a minister or other authorized person. Op. Tenn. Att'y Gen. 87-151 (9/17/87).

Ordinarily, elected officials are not authorized to act outside the jurisdiction from which they were elected. See Op. Tenn. Att'y Gen. 85-189 (6/10/85) (under prior law, elected officials had no jurisdiction to perform marriages outside their jurisdiction). However, in 1997 the General Assembly authorized all elected officials and former officials who are authorized to perform marriages to do so in any county in the State of Tennessee. T.C.A. § 36-3-301(i).

For marriage purposes, the several judges of the United States courts, including United States magistrates and United States bankruptcy judges, who are citizens of Tennessee are deemed to be judges of this state. However, the term "former judges" does not include any judge who has been convicted of a felony or who has been removed from office. T.C.A. § 36-3-301(a). The term "retired judges of this state" includes persons who served as judges of any municipal or county court in any county which has adopted a metropolitan form of government and persons who served as county judges (judges of the quarterly county court) prior to the 1978 constitutional amendments. T.C.A. § 36-3-301(e). Also, any person who was a member of a quarterly county court on August 1, 1984 can perform marriages. T.C.A. § 17-1-206.

All judges, including city judges, are included among the officials who may solemnize marriages. A city judge may perform a marriage in any county in Tennessee, regardless of whether the judge was elected or appointed. T.C.A. § 36-3-301(k).

Deputy county clerks who are duly authorized by the county clerk have the power to perform marriage ceremonies, under the authority granted under T.C.A. § 18-1-108(4). Op. Tenn. Att'y Gen. 85-243 (9/18/85).

## Marriage Ceremony

Reference Number: CTAS-431

No formula need be observed in solemnizing a marriage, except that the parties must respectively declare, in the presence of the minister or officer, that they accept each other in marriage. T.C.A. § 36-3-302. This statute has been interpreted by the Attorney General as requiring that the parties personally appear together before a person authorized by law to solemnize marriages, so that a marriage ceremony cannot be performed by telephone. Op. Tenn. Att'y Gen. 90-71 (7/16/90). The statute was amended in 2017 to authorize participation by video conference, but only for members of the armed forces who are stationed in another country in support of combat or another military operation.

Since many officials asked to perform marriage ceremonies may do so infrequently, here is an example of a typical ceremony. This sample ceremony certainly is not legally required, and it may be altered as the persons being married desire, so long as the parties do each declare in the presence of the marrying official that they accept each other as spouses, respectively. The traditional marriage rite of the Religious Society of Friends (Quakers), whereby the parties simply pledge their vows one to another in the presence of the congregation, constitutes an equally effective solemnization. T.C.A. § 36-3-301(b).

## Out-of-State Ceremonies

Reference Number: CTAS-432

If a marriage license issued by a county clerk in Tennessee is used to solemnize a marriage outside Tennessee, the marriage and parties, their property and their children have the same status as if the marriage were performed in Tennessee. T.C.A. § 36-3-103(c). However, the officials who are authorized under T.C.A. § 36-3-301 to solemnize marriages in Tennessee are not authorized to perform marriage ceremonies outside Tennessee. Op. Tenn. Att'y Gen. 15-47 (June 3, 2015).

## Remuneration for Solemnizing a Marriage

Reference Number: CTAS-433

Any gratuity received by a county mayor/executive, municipal mayor, county commissioner, or county

clerk for the solemnization of a marriage, whether performed during or after their regular working hours, shall be retained by them as personal remuneration for such services in addition to any other sources of compensation they might receive, and such gratuity shall not be paid into the county general fund. T.C.A. § 36-3-301. However, a county mayor/executive, municipal mayor, county commissioner, or county clerk is prohibited from charging a fee or demanding compensation of any kind for the solemnization of a marriage. Such a public officer who knowingly charges a fee or demands compensation of any kind for the solemnization of a marriage commits a Class C misdemeanor, and such violation creates a rebuttable presumption that there is an actionable basis to institute ouster proceedings. T.C.A. § 36-3-301.

A judge's receipt of compensation for performing a marriage ceremony violates Article VI, Section 7 of the Tennessee Constitution, T.C.A. § 8-21-101, and the Code of Judicial Conduct. Op. Tenn. Att'y Gen. 84-286 (10/25/84). It appears it is permissible for a judge to accept a check made out to a charity as long as the judge does not treat the funds as income for tax purposes or take a tax deduction for the charitable contribution. Op. Tenn. Att'y Gen. U87-18 (2/10/87).

## Certification and Return of the License

Reference Number: CTAS-434

The county clerk is required to place on each license the following form of certificate, to be signed by the person solemnizing the marriage:

*"I solemnized the rite of matrimony between the above (or within) named parties on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_." T.C.A. § 36-3-304.*

Sample marriage license with the required certificate.

The authorized officiant who performs the marriage ceremony is required to endorse on the license the fact and time of the marriage, and sign his or her name thereto, and return the license to the county clerk within three (3) days from the date of the marriage. Failure to return the license as required is a misdemeanor. T.C.A. § 36-3-303. The Certificate of Marriage required by the Tennessee Department of Health, Office of Vital Records, also must be completed and returned to the county clerk within this three-day time frame. T.C.A. § 68-3-401. In the case of marriages solemnized among the Religious Society of Friends (Quakers), the functions, duties and liabilities of the party solemnizing marriages are incumbent upon the clerk of the congregation, or in the clerk's absence, the clerk's duly designated alternate. T.C.A. § 36-3-303.

A county clerk has no authority to require proof that an officiant is a "regular minister of the gospel" or other authorized person who meets the criteria of T.C.A. § 36-3-301, and must presume that the marriage is valid. Op. Tenn. Att'y Gen. 87-151 (9/17/87).

Failure of an officiant to return the marriage license to the issuing clerk within three days after the ceremony as required by the statute does not invalidate the marriage. *Aghili v. Saadatnejadi*, 958 S.W.2d 784 (Tenn. Ct. App. 1997).

## Solemnizing Marriage Between Incapable Persons

Reference Number: CTAS-438

If any minister or officer knowingly joins together in matrimony two persons not capable thereof, he or she shall be guilty of a misdemeanor, and shall also forfeit and pay the sum of five hundred dollars (\$500), to be recovered by action of debt, for the use of the person suing. T.C.A. § 36-3-305.

## Marriage Records

Reference Number: CTAS-395

### Marriage Book

The county clerk is required to record in a well-bound book the names of the parties and the date of the issuance of the marriage license, and to copy immediately under or opposite thereto the return of the proper officiant who solemnized the rite of matrimony and the date thereof. T.C.A. § 18-6-109.

### Marriage Certificate

Most county clerks, after receiving the completed and signed marriage license after the ceremony has been performed, forward a marriage certificate to the newly married couple, showing the fact that the marriage has been duly recorded in the county's marriage records. However, some county clerks have a two part license with a detachable certificate. Sample marriage certificate.

State Marriage Records filed with the Office of Vital Records



A record of each marriage performed in this state is required to be filed with the Tennessee Department of Health, Office of Vital Records, and shall be registered if it has been properly completed and filed. The county clerk who issues the marriage license is required to prepare the record on the form Certificate of Marriage furnished by the state registrar upon the basis of information obtained from the parties to be married. The Certificate of Marriage requires the signature of both the applicants in the presence of the county clerk; however, where an applicant is authorized by T.C.A. § 36-3-104 to apply by submitting a sworn affidavit, personal appearance before the county clerk is not required. The Certificate of Marriage also contains spaces for the officiant who performs the ceremony to certify the marriage of the persons, a witness to the marriage to sign (although a witness is not required by law), the county of marriage, and whether the marriage is a religious or civil service. This Certificate of Marriage, like the marriage license, must be returned to the county clerk within three (3) days of the performing of the marriage ceremony. T.C.A. § 68-3-401. Certificate of Marriage form required by the TN Department of Health, Office of Vital Records

The county clerk must complete and forward the records of marriages filed during the preceding calendar month on or before the tenth day of each calendar month to the Office of Vital Records. A marriage not filed within these time requirements may be registered in accordance with the regulations of the Office of Vital Records. If a marriage license has been obtained by incorrect identification, the fraudulent records should be voided and a correct certificate of marriage placed on file by order of a court in the county where the license was issued in accordance with the regulations established by the Department of Health. T.C.A. § 68-3-401. The requirements and procedures for amending state vital records, including marriage records, are found in T.C.A. § 68-3-203 and Tenn. Comp. R. & Regs. 1200-07-01-.10.

The county clerk is authorized to record and certify any license used to solemnize a marriage which is properly signed by the officiant when the license is returned to the issuing county clerk. The issuing county clerk then forwards the record to the Office of Vital Records to be filed and registered. This includes Tennessee marriage licenses which are used to officiate out-of-state ceremonies. T.C.A. § 36-3-103(c)(1).

## Fees and Taxes

Reference Number: CTAS-396

### State and Local Taxes and Fees

There are two (2) state privilege taxes on marriage, and one (1) local option tax which can be levied in an amount up to \$5.00. T.C.A. §§ 67-4-411, 67-4-502, 67-4-505. The collector of both state and local marriage taxes is the county clerk. The county clerk earns fees for performing these duties. The taxes and fees associated with the issuance of a marriage license are as follows:

State Privilege Tax, T.C.A. § 67-4-411	\$15.00
State Privilege Tax, T.C.A. § 67-4-505	5.00
Optional County Tax, T.C.A. § 67-4-502	5.00
County Clerk's fee for issuance of marriage license, T.C.A. § 8-21-701(1)	10.00

The following fees may or may not apply, depending on whether the services are provided:

County Clerk's fee if copies requested by the parties, per page, T.C.A. § 8-21-701(12)	\$.50
County Clerk's fee for certifying a copy of a document, T.C.A. 8-21-701(11)	5.00

The \$5.00 state tax is retained by the county and must be used for county school purposes. T.C.A. § 67-4-505. The local option tax, if levied, is retained by the county and used as directed by the county legislative body. The \$15.00 state tax is paid over to the state commissioner of revenue. T.C.A. § 67-4-411.

## State and Local Taxes and Fees

Reference Number: CTAS-439

There are two (2) state privilege taxes on marriage, and one (1) local option tax which can be levied in an amount up to \$5.00. T.C.A. §§ 67-4-411, 67-4-502, 67-4-505. The collector of both state and local marriage taxes is the county clerk. The county clerk earns fees for performing these duties. The taxes and fees associated with the issuance of a marriage license are as follows:

State Privilege Tax, T.C.A. § 67-4-411	\$15.00
State Privilege Tax, T.C.A. § 67-4-505	5.00
Optional County Tax, T.C.A. § 67-4-502	5.00
County Clerk's fee for issuance of marriage license, T.C.A. § 8-21-701(1)	10.00

The following fees may or may not apply, depending on whether the services are provided:

County Clerk's fee if copies requested by the parties, per page, T.C.A. § 8-21-701(12)	\$ .50
County Clerk's fee for certifying a copy of a document, T.C.A. 8-21-701(11)	5.00

The \$5.00 state tax is retained by the county and must be used for county school purposes. T.C.A. § 67-4-505. The local option tax, if levied, is retained by the county and used as directed by the county legislative body. The \$15.00 state tax is paid over to the state commissioner of revenue. T.C.A. § 67-4-411.

## Additional Fee, Premarital Preparation Course

Reference Number: CTAS-440

Under T.C.A. § 36-6-413, there is imposed an additional fee of \$62.50 on the issuance of a marriage license. This \$62.50 fee is in addition to all of the fees county clerks charge for issuance of a marriage license.

Applicants are exempt from payment of \$60.00 of the fee if:

1. They have completed a four-hour premarital preparation course and provide the county clerk with a valid and timely Certificate of Completion; or
2. They obtain their marriage license in a county having a municipality defined as a premier type tourist resort pursuant to T.C.A. § 67-6-103(a)(3)(B)<sup>2</sup> and both applicants provide the county clerk with an affidavit of non-residency or valid driver license establishing that they are not Tennessee residents.

To qualify for the exemption by attending a premarital preparation course, both applicants must submit a Certificate of Completion<sup>1</sup> showing that they have attended a course, together or separately, within one year of the date of the application for the marriage license. The course must have been at least four (4) hours in length.

The law does not provide details as to the content of the course, other than to say that it may include conflict management, communication skills, financial responsibilities, children and parenting responsibilities, and data concerning problems reported by married couples who seek counseling.

Premarital preparation courses may be taught by any of the following:

1. Psychologist
2. Clinical social worker
3. Licensed marital and family therapist
4. Clinical pastoral therapist
5. Professional counselor
6. Psychological examiner
7. Official representative of a religious institution
8. Any other approved instructor who meets qualifying guidelines that may be established by the judicial district for the county in which the marriage license is issued.

The Certificate of Completion form is to be completed by the instructor of the course. Applicants for a marriage license must present a copy of the completed form to the county clerk in order to qualify for the exemption on this basis.

The entire \$60.00 fee (when it is collected) is to be remitted by the county clerk to the state. The state is responsible for distribution of the fee to various agencies in accordance with the provisions of the law. T.C.A. § 36-6-413.

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<sup>1</sup>The Certificate of Completion form has been developed by the Administrative Office of the Courts.

<sup>2</sup>Currently, this exemption includes only Sevier County. Non-residents in all other counties must

pay the \$60.00 fee unless they have completed a premarital preparation course.

## Failure to Perform Collection Duties

Reference Number: CTAS-441

Any county clerk or other official who fails or refuses to collect and pay over any taxes he or she is legally charged to collect and pay over to the department of revenue is liable therefor and his or her official bondsman is also liable for the amount of such failure. T.C.A. § 67-4-210(b). Any county clerk failing in any way, either in person or by agent, to enforce these tax statutes shall be forfeit in each case the sum of \$250 to the state and shall be subject to ouster proceedings. T.C.A. § 67-4-211(a).

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