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Obtaining a Marriage License

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.

Sincerely,

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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).

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.

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