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Solemnizing a Marriage

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,

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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.

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