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Pawnbrokers

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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Pawnbrokers

Reference Number: CTAS-399

As a general rule, pawnbrokers make loans of money on the security of personal property which the pawnbroker holds until the loan is repaid, and title pledge lenders make loans on the security of automobiles and other titled property, with the pledgor usually retaining possession of the vehicle and the title pledge lender holding the certificate of title as security. Although a single business can and often does operate as both a pawnbroker and a title pledge lender, each activity is separately regulated under Tennessee law. In order to conduct a pawnbroker business, the business must obtain a pawnbroker license and operate under the requirements of the Tennessee Pawnbrokers Act of 1988. In order to conduct a title pledge lender business, the business must obtain a title pledge lender license and operate under the requirements of the Tennessee Title Pledge Act. The requirements of each act are similar, but there are significant differences both in the requirements for licensure and in the rules for operation of the business.

A pawnbroker license does not authorize its holder to act as a title pledge lender, and a title pledge license does not authorize its holder to act as a pawnbroker. The requirements for each license must be met separately. With the appropriate license(s), a business can operate as either a pawnbroker, a title pledge lender, or both.

Overview

Reference Number: CTAS-400

The current law regulating the licensing and operations of pawnbrokers is the Tennessee Pawnbrokers Act of 1988, codified as T.C.A. § 45-6-201 *et seq.* Pawnbrokers who were under the law as it existed prior to that law's effective date of July 1, 1988, were granted special "grandfather" rights to continue to operate under the prior law. These persons, firms and corporations may remain subject to the bonding and licensing requirements which were applicable to them on June 30, 1988, as long as they retain their valid pawnbroker licenses.

Since the 1988 act repealed the prior law, it can no longer be found in Tennessee Code Annotated. Former Law Governing Pawnbrokers contains selected statutes from the repealed laws for reference purposes. All pawnbrokers licensed after July 1, 1988 must operate under current law.

License Required

Reference Number: CTAS-401

It is unlawful for any person, firm, or corporation to establish or conduct a business of pawnbroker without having first procured a pawnbroker license. T.C.A. § 45-6-205. Operating without a license is a Class A misdemeanor which, upon conviction, subjects the violator to a fine not exceeding two thousand five hundred dollars (\$2,500.00) for each offense, or imprisonment not greater than eleven (11) months and twenty-nine (29) days, or both. T.C.A. § 45-6-218, T.C.A. § 40-35-111.

Eligibility for License

Reference Number: CTAS-402

To be eligible for a pawnbroker's license, an applicant (and if the applicant is a business entity, each operator or beneficial owner, and as to a corporation, each officer, shareholder, and director) must:

- (a) Be of good moral character;
- (b) Have net assets¹ of at least seventy-five thousand dollars (\$75,000), readily available for use exclusively in conducting the business of each licensed pawnbroker;
- (c) Show that the business will be operated lawfully and fairly within the purpose of the act; and
- (d) Not have had a prior felony conviction within ten (10) years immediately preceding the date of the application which directly relates to the duties and responsibilities of the occupation of pawnbroker, or otherwise makes the applicant presently unfit for a pawnbroker's license, as determined by the county clerk.

T.C.A. § 45-6-206.

County clerks have little direct guidance on exactly what felony offenses would make a person ineligible to hold a pawnbroker license. However, general guidance could be gleaned from the cases interpreting felonies which make a person unfit to hold public office and offenses which are the basis for denial of a

beer permit. In addition, other provisions of the law require an affidavit from each applicant stating that he or she has not been convicted of a felony within the past ten (10) years that directly affects his or her ability to lawfully and fairly operate a pawnbroker business, and a certificate from the sheriff/chief of police/Tennessee bureau of investigation that the applicant has not been convicted of any felony within the past ten (10) years. T.C.A. § 45-6-207. Applicants are no longer required to be Tennessee residents in order to obtain a pawnbroker license; that requirement was deleted from T.C.A. § 45-6-206 in 1995.

In addition to the above requirements, in counties where the local law enforcement agency has requested pawnbrokers to transfer pawn transactions electronically, the applicant must also have a computer system that is capable of electronically transferring information so that when licensed, the pawnbroker can comply with the requirements of T.C.A. § 45-6-221. T.C.A. § 45-6-206(a)(4).

If an applicant is a business entity, the eligibility requirements apply to each operator or beneficial owner. If the applicant is a corporation, the eligibility requirements apply to each officer, shareholder, and director. T.C.A. § 45-6-206(c).

¹"Net assets" is defined as the book value of the current assets of a person or pawnbroker less its applicable liabilities. "Current assets" include the investment made in cash, bank deposits, merchandise inventory, and loans due from customers excluding the pawnshop charge; "current assets" do *not* include investments made in fixed assets of real estate, furniture, fixtures, or equipment, investments made in stocks, bonds, or other securities or investments made in prepaid expenses or other general intangibles. "Applicable liabilities" include trade or other accounts payable; accrued sales, income, or other taxes; accrued expenses and notes or other payable that are unsecured or secured in whole or part by current assets; "applicable liabilities" do not include liabilities secured by assets other than current assets. Net assets must be represented by capital investment unencumbered by any liens or other encumbrances to be subject to the claims of general creditors. If the pawnshop is a corporation, the capital investment consists of common or preferred shares and capital or earned surplus as those terms are defined by the Tennessee Business Corporation Act, as amended; if it is any other form of business entity, the capital investment consists of a substantial equivalent of that of a corporation and is determined by generally accepted accounting principles. T.C.A. § 45-6-203.

Application for License

Reference Number: CTAS-403

In order to receive a pawnbroker license, an eligible person, firm or corporation is required to make application to the county clerk in the county in which the business is to be operated. T.C.A. § 45-6-207. The application must contain the following:

- (1) The name of the person¹, and in case of a firm or corporation, the names of the persons composing the firm or the officers and stockholders of the corporation;
- (2) The place, street, and number where the business is to be carried on;
- (3) Specify the amount of net assets or capital proposed to be used in the business, accompanied by an unaudited statement from a certified public accountant containing the following statement:

"According to the information provided to me, the net assets, as defined in Tennessee Code Annotated, § 45-6-203, or proposed capital to be used by the applicant, _____ (name), in the pawnbroker business, are valued at not less than seventy-five thousand dollars (\$75,000)."
- (4) The signature of at least ten (10) freeholders, citizens of the county in which the applicant resides, of good reputation, certifying to the good reputation and moral character of the applicant or applicants;
- (5) An affidavit by each applicant that he or she has not been convicted of a felony within the past ten (10) years that directly affects the applicant's ability to lawfully and fairly operate under the provisions of the law;
- (6) A certificate from the chief of police and/or sheriff and/or the Tennessee bureau of investigation that the applicant (each operator, beneficial owner, officer, shareholder and director) is of good moral character and has not been convicted of a felony within the past ten (10) years; and
- (7) Certified funds in the amount of fifty dollars (\$50.00) payable to the county clerk.

T.C.A. § 45-6-207.

The county clerk has no authority to refund the fifty dollar fee once received. The funds are to be used to defray the costs of the county clerk's investigation of the application. In addition, the applicant is required to pay directly the costs of the city, sheriff, and/or Tennessee bureau of investigation investigating the

applicant. T.C.A. § 45-6-207. Sample application.

¹ "Person" is defined as any individual, corporation, joint venture, association or any other legal entity however organized. T.C.A. § 45-6-203.

Issuance of License

Reference Number: CTAS-404

Persons, firms, or corporations having satisfied the qualification requirements and having paid the business tax and any other taxes, and having produced to the county clerk satisfactory evidence of good character as to being a suitable person or persons to carry on the business of pawnbroker, shall be granted a license. The license must contain the following information:

- (1) The name of the person, firm, or corporation to whom issued;
- (2) The place of business and street number where the business is located; and
- (3) The amount of capital employed in the business.

T.C.A. § 45-6-208.

The license entitles the holder to do business at the place designated. Only one place of business may be operated under a license. T.C.A. § 45-6-212. Therefore, the requirements of the act must be met separately for each location.

Insurance Requirement

Reference Number: CTAS-405

Every licensed pawnbroker is required to maintain sufficient insurance coverage on the property held on the pledge for the benefit of the pledgor, to pay the stated value as recited on the pawn stub of the pawned article, in case of fire or other catastrophe. The policy must be payable in case of loss to the county clerk or city clerk for the benefit of the pledgor, and the policy must be deposited with the county or city clerk. T.C.A. § 45-6-215. If the county clerk knows of a violation of this provision or believes the insurance policy filed with the county clerk's office is insufficient to cover the aggregate stated values of pawned articles, the county clerk should notify the district attorney general serving the county clerk's district. Failure to meet the insurance requirement is a Class A misdemeanor. T.C.A. § 45-6-218.

Transferability of License

Reference Number: CTAS-406

Licenses may not be transferred from one person to another but may be transferred from one location to another within the same county by consent of the county clerk on payment of a transfer fee of ten dollars (\$10.00) to the county clerk. T.C.A. § 45-6-208; *Op. Tenn. Att'y Gen.* 90-88 (9/19/90) (a license cannot be transferred outside the county in which it was issued; a new license must be obtained from the county clerk in the new county).

Authority of Licensed Pawnbrokers

Reference Number: CTAS-407

A pawnbroker license entitles the holder to do any or all of the following:

- (1) Make loans on the security of pledged goods¹ as a pawn or pawn transaction;
- (2) Purchase tangible personal property under a buy-sell agreement from individuals as a pawn transaction on the condition it may be redeemed or repurchased by the seller at a fixed price within a fixed time not to be less than sixty (60) days;
- (3) Lend money on bottomry (ships) and respondentia (cargo) security, at marine interest;
- (4) Deal in bullion, stocks and public securities;
- (5) Make loans on real estate, stocks and personal property;
- (6) Purchase merchandise for resale from dealers and traders;
- (7) Make over-the-counter purchases of goods which the seller does not intend to buy back. The pawnbroker is required to hold such goods for a period of not less than fifteen (15) days before offering the merchandise for resale; and

(8) Use its capital and funds in any lawful manner within the general purposes and scope of its creation. Notwithstanding the foregoing, however, before engaging in any of the above-listed transactions other than a "pawn" or "pawn transaction,"² a pawnbroker must comply with the provisions of any other applicable laws regulating such transactions. T.C.A. § 45-6-204.

¹ "Pledged goods" means tangible personal property, other than choses in action, securities, printed evidences of indebtedness or title documents, which tangible personal property is purchased by, deposited with, or otherwise actually delivered into the possession of the pawnbroker. T.C.A. § 45-6-203.

² "Pawn" or "pawn transaction" includes buy-sell agreements and loans of money. "Buy-sell agreement" is defined as any agreement whereby a pawnbroker agrees to hold property (pledged goods) for a specified period of time not less than sixty (60) days to allow the seller the exclusive right to repurchase the property; a buy sell agreement is not a loan of money, but must still meet all recording procedures to law enforcement officers as with a pawn transaction. A loan of money is defined as any loan of money on the security of pledged goods and being a written bailment of pledged goods as a security lien for such loan, for the cash advanced, interest and fees authorized by the pawnbroker law, redeemable on certain terms and with the implied power of sale on default. T.C.A. § 45-6-203.

Operation of the Business and Recordkeeping Requirements

Reference Number: CTAS-408

The operating, recordkeeping, and inspection rules under current law apply to all pawnbrokers, even those licensed under provisions of prior law. A general discussion of the basic requirements for operation of the pawnbroker business follows. However, county clerks should never attempt to advise pawnbrokers as to specific legal requirements for operation of the business; pawnbrokers should always be advised to consult their attorneys for advice.

Recordkeeping and Notice Requirements

Reference Number: CTAS-409

Pawnbrokers are required to keep a consecutively numbered record of each pawn transaction which must correspond in all essential particulars to the detachable pawn ticket attached. At the time of making a pawn and/or buy sell transaction, the pawnbroker is required to record the following information, in ink and in English, on the pawnshop copy as well as on the pawn ticket:

- (1) A clear and accurate description of the property, including the serial number if the pledged article has one;
- (2) The date of the pawn transaction;
- (3) The amount of cash loan advanced on the pawn transaction;
- (4) The exact value of the property as stated by the pledgor;
- (5) The maturity date of the pawn transaction, which date shall not be less than thirty (30) days after the date of the pawn transaction; and
- (6) The name, race, sex, height, weight, date of birth, residence address, and numbers from the item(s) used as identification. (Acceptable items of identification are one of the following: state-issued driver license, state-issued identification card, passport, valid military identification, resident or nonresident alien border crossing card, or U.S. immigration and naturalization service identification.)

T.C.A. §§ 45-6-209, 45-6-213.

In addition to the foregoing, the following language is required to be printed on all tickets:

ANY PERSONAL PROPERTY PLEDGED TO A PAWNBROKER WITHIN THIS STATE IS SUBJECT TO SALE OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT MADE ON THE ACCOUNT FOR A PERIOD OF THIRTY (30) DAYS AFTER THE MATURITY DATE OF THE PAWN TRANSACTION AND NO FURTHER NOTICE IS NECESSARY.

THE PLEDGOR OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, IT HAS NO LIENS OR ENCUMBRANCES AGAINST IT AND THE PLEDGOR HAS THE RIGHT TO SELL OR PAWN THE ITEM. THE ITEM PAWNED IS REDEEMABLE ONLY BY THE BEARER OF THIS TICKET.

T.C.A. § 45-6-211.

Both the pledgor and the pawnbroker are required to sign the stub, and the detached pawn ticket must be given to the pledgor. T.C.A. § 45-6-209. The records are required to be delivered to the appropriate law

enforcement agency, by mail or in person, within forty-eight (48) hours following the day of the transactions. The records also must be available for inspection each business day, except Sunday, by the sheriff of the county and the chief of police of the municipality (if applicable) in which the pawnshop is located. Records must be carefully preserved without alterations. T.C.A. § 45-6-209. If requested by the law enforcement agency, the pawnbroker is required to transfer the required information electronically in text file format to the law enforcement agency in accordance with T.C.A. § 45-6-221.

Pawnbrokers are also required to furnish to law enforcement agencies, upon request, the names of suppliers from whom the pawnbroker has purchased merchandise for resale. This information is not to be recorded nor sent to the law enforcement agency, but shall be maintained at the pawnshop for a period of at least one (1) year from the date of purchase. T.C.A. § 45-6-216.

Interest Rate and Fees

Reference Number: CTAS-410

The interest rate charged by pawnbrokers is limited to two percent (2%) per month. The pawnbroker also may charge a fee not to exceed one fifth (1/5) of the amount of the loan advance for investigating the title, storage, insuring the pledged goods, closing the loan, making reports to local law enforcement officials, and for other expenses, losses of every nature, and all other services. No other charge of any description may be made by the pawnbroker. The allowable interest and fee are deemed owing on the date of the pawn transaction and on the same day of each subsequent month. T.C.A. § 45-6-210.

Default

Reference Number: CTAS-411

The pawnbroker must retain the pledged goods for thirty (30) days after the maturity date of the transaction. If the pledgor fails to redeem the pledged goods within the thirty (30) day period, the pawnbroker acquires absolute title to the goods and the debt becomes satisfied. The pawnbroker may then sell or otherwise dispose of the goods. T.C.A. § 45-6-211.

Hours of Operation

Reference Number: CTAS-412

Pawnbrokers may operate their businesses from eight o'clock in the morning (8:00 a.m.) until six o'clock in the evening (6:00 p.m.). From November 25 through December 24 each year, the business may remain open until nine o'clock in the evening (9:00 p.m.). T.C.A. § 45-6-212.

Prohibited Acts

Reference Number: CTAS-413

There are prohibited acts for pawnbrokers that, like any other violation of the act, constitute Class A misdemeanors that will subject the violator upon conviction to a fine of up to two thousand five hundred dollars (\$2,500.00) for each offense and imprisonment for up to eleven (11) months and twenty-nine (29) days under T.C.A. § 45-6-218. These prohibited acts include:

- (1) Accepting a pledge from a person under the age of eighteen (18) years; from a person who appears intoxicated; or from any person the pawnbroker knows to be a thief, or to have been convicted of larceny, burglary or robbery, without first notifying a police officer;
- (2) Making any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;
- (3) Accepting any waiver (in writing or otherwise) of any right or protection accorded a pledgor under the act;
- (4) Failing to exercise reasonable care to protect pledged goods from loss or damage;
- (5) Failing to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event the pledged goods are lost or damaged while in the possession of the pawnbroker, it is the responsibility of the pawnbroker to replace the goods with like kinds of merchandise or make reimbursement;
- (6) Purchasing property in a pawn transaction for the pawnbroker's own personal use;
- (7) Taking any article that is known to the pawnbroker to be stolen;
- (8) Selling, exchanging, bartering, or removing from the business, or permitting to be redeemed, any

- goods for a period of forty-eight (48) hours after making the required report to law enforcement agencies;
- (9) Operating more than one house, shop or place of business under one license;
- (10) Keeping the business open during prohibited hours; and
- (11) Entering into a pawn transaction with a maturity date of less than thirty (30) days after the date of the pawn transaction.

T.C.A. § 45-6-212.

If the violation is knowingly committed by an owner or major stockholder and/or managing partner, T.C.A. § 45-6-218 provides that the license of the pawnbroker may be suspended or revoked at the discretion of the county clerk. However, the Tennessee Attorney General has opined that this portion of that statute is unconstitutional. Op. Tenn. Att'y Gen. 89-53 (4/10/89).

Recovery of Stolen Property

Reference Number: CTAS-414

To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated or stolen, the claimant must notify the pawnbroker by certified mail or in person, giving a complete and accurate description of the goods together with a copy of the applicable law enforcement agency's report on the misappropriation or theft of the property. The claimant and the pawnbroker must in good faith attempt to resolve the claim within 10 days after notification to the pawnbroker. T.C.A. § 45-6-213.

If the claim is not resolved within the 10-day period, either (1) the claimant may petition a court for the return of the property and the pawnbroker must hold the property until either the claim is settled or the court orders disposition of the property, or (2) a law enforcement official having probable cause to believe that the property is misappropriated or stolen may place a hold order on the property. The hold order cannot exceed 90 days unless extended by court order. Upon expiration of the holding period, the pawnbroker must notify the law enforcement official by certified mail that the holding period has expired. If, within 10 days, the pawnbroker has not received a court order extending the hold order on the property and the property is not the subject of a court proceeding, the pawnbroker obtains title to the property. T.C.A. § 45-6-213.

A pawnbroker is not required to relinquish an item believed to be misappropriated or stolen unless a court has ordered the pawnbroker to do so. T.C.A. § 45-6-303.

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