



County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE

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Register of Deeds

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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Qualifications-Register of Deeds

Reference Number:

CTAS-60

The office of register does not carry any qualifications beyond the qualifications listed under the General Information tab for county officers.

Qualifications

Reference Number:

CTAS-2152

General qualifications of officeholders are located in the Tennessee Code Annotated, which provides that all persons 18 years old and over, who are citizens of the United States and of Tennessee, and who meet certain residency requirements are qualified to hold office unless the person:

1. Has been convicted of offering or giving a bribe, of larceny, or, of any other offense declared infamous by law, unless the person has been restored to citizenship (except those who have been convicted of an infamous crime if the offense was committed in the person's official capacity or involved the duties of the person's office, in which case the person shall forever be disqualified from holding office);
2. Has not paid a judgment for money received in an official capacity, which is due to the United States, Tennessee, or any county;
3. Has defaulted to the treasury at the time of election (in which case the election is void);
4. Is a soldier, seaman, marine, or airman in the regular United States Army, Navy or Air Force; or
5. Is a member of Congress or holds any office of profit or trust under any foreign power, other state of the Union, or the United States.

T.C.A. § 8-18-101.

A crime declared infamous by law essentially means a felony, or a crime which is partially punishable by disenfranchisement (loss of the right to vote). Also, there are several criminal statutes related to an official's misconduct in office, such as official misconduct (T.C.A. § 39-16-402), official oppression (T.C.A. § 39-16-403), misuse of official information (T.C.A. § 39-16-404), and conflict of interest (T.C.A. § 12-4-101), which, upon conviction, will result in disqualification to hold office for a period of ten (10) years from the date of conviction (T.C.A. §§ 39-16-406, 12-4-102). Any disqualified person who takes office is guilty of a misdemeanor (T.C.A. § 8-18-102).

The principles for determination of residence for purposes of the election code are (T.C.A. § 2-2-122):

1. The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has a definite intention to return.
2. A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one residence.
3. A person does not become a resident of a place solely by intending to make it the person's residence. There must be appropriate action consistent with the intention.
4. A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state, or place within this state for temporary purposes, even if of years duration.
5. The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides.
6. A person may be a resident of a place regardless of the nature of the person's habitation, whether house or apartment, mobile home or public institution, owned or rented.
7. A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation.
8. No member of the armed forces of the United States, or such member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

The following factors, among other relevant factors, may be considered in the determination of where a person is a resident (T.C.A. § 2-2-122):

- The person’s possession, acquisition or surrender of inhabitable property.
- Location of the person’s occupation.
- Place of licensing or registration of the person’s personal property.
- Place of payment of taxes which are governed by residence.
- Purpose of the person’s presence in a particular place.
- Place of licensing activities, such as driving.

These same principles, basically the physical presence with intention to make a place your residence, are also used by the courts in determining residence for other purposes.

Additional statutory qualifications are required for certain county offices, such as sheriff, and are discussed in the individual county office section. The offices and duties may vary in counties with a metropolitan government charter or a county government charter.

Oath of Office and Bond-Register of Deeds

Reference Number:

CTAS-61

Before entering into office, the register must take and subscribe to the constitutional oath and the oath of office known as the fidelity oath as well as give bond as required. Oaths of office are covered under the General Information tab of the County Offices topic. The deputy's oath of office is the same as that of the register; it must be certified, filed, and endorsed in the same manner. T.C.A. § 8-18-112.

The register enters into a four-year term of office only after taking the prescribed oath and posting the required bond. T.C.A. §§ 8-13-101, 8-13-102. Bonds are covered under the General Information tab of the County Offices topic.

Oaths

Reference Number:

CTAS-30

Before taking office, the Tennessee Constitution, Article X, Section 1, provides that every person chosen to any office of trust must take an oath to "support the Constitution of this state and of the United States, and an oath of office." Review Oaths of Office for examples of different oaths.

There are various statutes throughout the Tennessee code providing for administering oaths to particular officials. There is also a general provision found at T.C.A. § 8-18-109(b), which provides that oaths of office for any elected or appointed official may be administered by the county mayor, the county clerk, a judge (current or retired) of any court of record in the county, or a current or retired judge of the general sessions court. In addition, under § T.C.A. 8-18-107, the governor, an active or retired supreme court justice, an active or retired inferior court judge, or an active or retired general sessions judge may administer the oath of office to an inferior court judge and, except as otherwise provided by law, to any other elected or appointed official. Notaries public are authorized to administer oaths pursuant to T.C.A. § 8-16-112. Members of the general assembly are also authorized to administer oaths to county officials. T.C.A. § 3-1-105. The oath of office for any county official required to file an oath may be administered at any time after the certification of the election returns by the appropriate legal authority in the case of elected officials, or after appointment in the case of appointed officials. However, even if the official files an oath before the scheduled start of a term of office, the official may not take office until the term officially begins. T.C.A. § 8-18-109.

The oath must be written and subscribed by the person taking it. Accompanying the oath must be a certificate executed by the officer administering the oath specifying the day and the year it was taken. T.C.A. § 8-18-107. The oath and the certificate are filed in the office of the county clerk, who endorses on them the day and year of filing, and signs the endorsement. T.C.A. §§ 8-18-109, 8-18-110. Any county official who fails to take and file the required oaths is guilty of a misdemeanor. T.C.A. § 8-18-113.

Bonds

Reference Number:

CTAS-31

An official bond is an instrument that requires the sureties to pay a specified sum of money if the official who executes the bond fails to perform certain acts or performs wrongful and injurious acts in the office. In other words, an official bond is a written promise, made by a public official (1) to perform all the duties of the office, (2) to pay over to authorized persons all funds received in an official capacity, (3) to keep all records required by law, (4) to turn over to his or her successor all records, money, and property, and (5) to refrain from anything that is illegal, improper, or harmful while acting in an official capacity. If the official fails to perform the duties, violates the law, or commits a harmful act, the person who is injured may collect damages from the sureties on the official bond. The sureties must be surety companies authorized to do business in Tennessee. If no surety company is willing to serve as surety for a particular person, the county legislative body may, by resolution, authorize the use of personal sureties approved by the mayor or the use of a cash bond approved by the mayor. T.C.A. §§ 8-19-111, 8-19-101, 8-19-102, 8-19-301.

The bond protects the state, the county, and the citizens in the event the county official fails to perform his or her duties properly. The bond does not protect county officials from liability. If a payment is made under the bond, the county official's sureties may have a right to recover the amount paid from the county official. This action against the county official by the sureties is known as subrogation. The following county constitutional officials must execute a surety bond: county clerk, court clerks, sheriff, register, property assessor, and trustee. Also, bonds are required for the finance director, director of accounts and budgets, county auditor, constable, coroner, road commissioners, county surveyor, director of schools, purchasing agent, and notaries. A blanket bond is required for all county employees that are not otherwise covered. The specific bond amounts are set out in the table entitled County Officials'/Employees' Minimum Bond.

The form of official bonds is prescribed by the comptroller of the treasury, with the approval of the attorney general. T.C.A. § 8-19-101. Blank copies of official bonds, ready for use, are available from the comptroller, Division of Local Finance.

The official bond of every county public official must be conditioned in the following manner: T.C.A. § 8-19-111.

That if the _____ (principal) shall:

1. Faithfully perform the duties of the office of _____ of _____ County during such person's term of office or continuance therein; and
2. Pay over to the persons authorized by law to receive them, all moneys, properties, or things of value that may come into such principal's hands during such principal's term of office or continuance therein without fraud or delay, and shall faithfully and safely keep all records required in such principal's official capacity, and at the expiration of the term, or in case of resignation or removal from office, shall turn over to the successor all records and property which have come into such principal's hands, then this obligation shall be null and void; otherwise to remain in full force and effect.

Some counties also use "blanket bonds" for all of the county officeholders. T.C.A. § 8-19-101.

Additionally, counties that have chosen to self-insure their liability under the GTLA may also elect to self-insure their risk of loss rather than obtain bonds or insurance. Such an election must be made by resolution, adopted by a 2/3 vote of the governing body. T.C.A. § 8-19-101.

Official bonds of the sheriff, county trustee, county clerk, register of deeds, assessors of property, and persons vested by law with the authority to administer county highway and bridge funds must be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-19-103, 67-1-505, 54-4-103(c), 54-7-108. Official bonds of clerks of court must be approved and certified by the court, entered into the minutes of the court, recorded in the office of register of deeds and transmitted to the county clerk for safekeeping. T.C.A. § 18-2-205. The official bond of the director of schools must be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. §§ 49-2-102, 9-3-301. The official bonds of other county officials, constables, and county employees required to have bonds shall be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-19-103. Official bonds of officers which must be transmitted to the county clerk must be filed in the clerk's office within thirty (30) days after the election or appointment of the person named in the bond.

T.C.A. § 8-19-115.

The register of deeds must endorse on the bond the day and year on which it was recorded and sign the endorsement. Similarly, the county clerk, with respect to bonds filed for safekeeping in the office of county clerk, must endorse the filing date and sign the endorsement. Failure of the register or county clerk to endorse and sign the bond is a misdemeanor. T.C.A. § 8-19-116.

An officer required by law to give an official bond who fails to execute the bond when the bond is available and transmit the bond to the proper officer for approval within thirty (30) days from the time the bond becomes available for execution, forfeits the office and a vacancy in the office occurs, whether or not the officer has taken an oath of office. It is the duty of the officer who is to receive the executed official bond to certify the failure to execute and transmit the bond in the time required by this section to the official or body who has the power to elect or appoint a successor to the office. T.C.A. § 8-19-117. Upon the filing of a complaint alleging the failure of a county officer or constable to enter into an official bond as required by law, the circuit court clerk or the clerk and master having jurisdiction issues a summons that is served, together with a copy of the complaint, upon the county officer or constable in accordance with the Tennessee Rules of Civil Procedure. T.C.A. § 8-19-205. If the official fails or refuses to execute the required bond after receiving a copy of the complaint and a hearing, the court will enter a judgment declaring the office vacant, and the vacancy will be filled according to law. T.C.A. § 8-19-206.

County officials must enter into a new bond at the beginning of each term. If the original of any bond is lost or destroyed, the record of the bond will be considered the original and suit may be instituted on the recorded bond. T.C.A. § 8-19-105. The county pays the premiums for official bonds and registration fees of county officials and employees. T.C.A. § 8-19-106.

Compensation-Registers of Deed

Reference Number:

CTAS-62

The register must receive an annual minimum salary in the amount for a general officer as formulated in T.C.A. § 8-24-102. Compensation is covered under the General Information tab for County Offices.

Compensation

Reference Number:

CTAS-32

There are specific statutes regarding compensation for each office. In general, though, statutes prescribe salaries according to county population classes for many officials. The General Assembly has established 17 population classes for the purpose of determining the compensation of county officers. T.C.A. § 8-24-102. This statute provides base minimum salary schedules for three categories of county officers: (1) "general officers," which include assessors of property, county clerks, clerks of court, trustees, and registers of deeds; (2) sheriffs and chief administrative officers of highway departments; and (3) county mayors. These specified minimum salaries cannot be raised or lowered except through subsequent legislation, but since they are minimum salaries, the actual salary may be increased by resolution of the county legislative body, but the class of general officers must all receive the same amount of any increase.

The minimum salaries are adjusted annually on July 1 by a dollar amount equal to the average annualized increase in state employees' compensation during the prior fiscal year multiplied by the compensation established for the county officials of the county with the median population of all counties. The adjustment cannot exceed 5 percent in any year; provided, however, the annual percentage increase in the minimum compensation of county officials shall not be less than the percentage increase established for county officials of the county with the median population of all counties. The average annualized general increase in state employees' compensation for purposes of calculating the adjustment in salary for county officials means the average increase in base salary plus the equivalent percentage increase represented by appropriated funds made available to address classification compensation issues, plus the equivalent percentage increase represented by recurring appropriation amounts provided to improve the level of retirement benefits, longevity benefits, deferred compensation benefits and other similar benefits not including health insurance benefits. These adjustments are calculated and certified by May 1 of each year by the commissioner of finance and administration. T.C.A. § 8-24-102.

Full-time county officials, not including general sessions judges, who complete the County Officials Certificate Training Program (COCTP) administered by the University of Tennessee's County Technical Assistance Service (CTAS) and become a "Certified Public Administrator" may receive an annual incentive payment up to a maximum of \$1,500 from state-appropriated funds. To continue receiving these payments, certified county officials must take additional training annually. If an official receives incentive pay from the state through other professional development programs, such amounts will be offset so that

no official receives more than \$1,500 of incentive pay from the state per year; provided, however, certified public administrator educational incentive payments to assessors shall not be offset by the compensation received by assessors for obtaining certain professional designations pursuant to T.C.A. §§ 67-1-508; 5-1-310(e). These amounts are subject to annual appropriations from the General Assembly and have not reached the maximum allowed by law.

County legislative bodies may appropriate additional amounts as incentive payments to county officials and employees who have become Certified Public Administrators in an amount not exceeding \$3,000 minus payments made by the state. Educational incentive pay received by an official does not affect the calculation of compensation for officials provided in other statutes. CTAS is required to submit a list to the state treasurer, by August 31 each year, of all county officers who have completed all requirements of the COCTP to attain or maintain the designation of Certified Public Administrator. This list replaces individual applications submitted by county officials for purposes of determining eligibility for the educational incentive payment. T.C.A. § 5-1-310.

Deputies and Assistants

Reference Number:

CTAS-34

Generally, county "fee officials" (those county officials who regularly collect fees for their services) must have authority other than the county budget resolution before they can hire employees. This authority may come directly from statute, by court order, or through a letter of agreement. T.C.A. § 8-20-101. If the county official's own salary and that of deputies and assistants is paid directly from the county general fund and the county fee official agrees with the amount appropriated for deputies and assistants as set forth in the budget adopted by the county legislative body, the official enters into a letter of agreement with the county mayor, using a form prepared by the state comptroller, that is then filed with the court. T.C.A. § 8-20-101.

If the county official does not agree with the amount appropriated, a salary suit may be filed by petition of the county official under T.C.A. § 8-20-101. The court in which the petition is filed depends on the official. Clerks of court file their petitions with any one of the judges of their respective courts; sheriffs file in circuit or criminal court; clerks and masters, trustees, county clerks and clerks of probate court, and registers of deeds file with the chancery court. The county mayor is named as defendant and the county mayor is required to file an answer within five days after service of the petition. The petition must be filed by the fee official within 30 days after the final adoption of a budget by the county legislative body. Also, a new officeholder has 30 days from the day of taking office to file a petition. The court will then hold a hearing and issue an order determining the appropriate number and compensation of deputies and assistants. T.C.A. § 8-20-102. If the fee official is under the fee system and pays deputies and assistants directly from the official's bank account, the official can negotiate a letter of agreement with the county for the number and compensation of deputies and assistants. If the fee official cannot reach an agreement with the county mayor, the fee official must file suit to obtain authority to hire deputies and assistants.

County officials have the power to employ and discharge employees. The court decree or letter of agreement merely sets the maximum number and maximum compensation of the employees. It is the county official's duty to reduce the number of deputies and assistants or their salaries when it can reasonably be done. T.C.A. § 8-20-105.

The compensation for deputies and assistants established by court decree or letter of agreement must be sufficient to comply with the Federal Fair Labor Standards Act (FLSA) and its minimum wage and overtime provisions. In general, nonexempt employees must receive overtime compensation at the rate of one and one-half their regular rate of pay for all hours worked in excess of 40 in a week. Compensatory time off is allowed in lieu of overtime compensation, but the employee must receive one and one-half hours off for each hour worked in excess of forty (40), and as a general rule, an employee may not accrue more than two hundred forty (240) hours of compensatory time.

Duties-Register of Deeds

Reference Number:

CTAS-64

The primary function of the register is to make and preserve a record of instruments required or allowed by law to be filed or recorded, including but not limited to deeds, powers of attorney, deeds of trust, mortgages, liens, contracts, plats, leases, judgments, wills, court orders, military discharges, records under the Uniform Commercial Code (primarily fixture filings), and other types of documents. T.C.A. § 66-24-101. The records provide public notice of property ownership, liens, contracts, and other transactions that affect the public interest. The register's office is in the county seat, and the records and

papers must remain in the office at all times. T.C.A. §§ 8-13-106, 8-13-107.

Relationship to Other County Officials-Registers of Deeds

Reference Number:

CTAS-65

County Mayor and County Legislative Body. The register must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the register's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting, or has a private act dealing with this subject. However, all registers must submit budget requests in a timely manner in the first half of each calendar year for inclusion in the county's annual budget. Most counties have budget committees that may recommend appropriations for the register's budget that differ from those submitted by the register. The county legislative body determines the amount of the register's budget, subject to certain restrictions, such as following the requirements of any court order regarding a salary suit for deputies or assistants. In many counties, depending upon the applicable law, the county mayor has the authority to approve line item amendments to the register's budget within major categories unrelated to personnel costs, whereas major category amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

Assessor of Property. The register interacts with the assessor to assist in providing information regarding the value of property. The grantee or preparer of a deed of conveyance must obtain from the assessor's office the parcel identification number (map and page) of the property being conveyed before the deed is recorded in the register's office. Also, the assessor is interested in maintaining current information on the market value of real property, and as the requirements for the transfer tax mandate an oath of value or consideration on most transfers, the assessor will want to review the deeds recorded in the register's office.

Tennessee Code Annotated, Section 67-5-806(b), requires the assessor to file tax maps (duplicates or microfilm copies) with the register by April 15 of each year which show the status of property as of January 1 of that year. These records are not "recorded" but are open for public inspection.

After a parcel of land has been classified by the assessor as agricultural, forest, or open space land under the so-called Greenbelt Law (T.C.A. § 67-5-1001, et seq.), the assessor is to record with the register the classification of this property. The recording fees are to be paid by the property owner. T.C.A. § 67-5-1008(b). The statutes do not state explicitly in what books these instruments are to be recorded. Since they constitute a form of lien (roll back taxes are due when the use of the land is converted), it may be advisable to record these instruments with other state tax liens.

Tennessee Department of Revenue. The Tennessee Department of Revenue is charged with overseeing the collection and reporting of the state privilege taxes on the transfer of real estate and the recording of instruments evidencing an indebtedness. The register must report on forms required by the Department. The Department will issue memoranda to be used as guides in the administration and collection of these taxes. It is important for the proper conduct of the office of register that the register understands when tax is due. Legal questions in this area should be addressed to the legal staff of the Department.

The register's office is always subject to audit by the Department of Revenue's auditors concerning the collection of tax in addition to the regular audits of the office as a whole, which are conducted by the Division of County Audit, Office of the Comptroller of the Treasury.

Other Offices. The register also records the official bonds of all county officials. The register deals with the trustee regarding the remittance of fees (monthly or quarterly) to the general fund. The register, as an ex officio member of the county public records commission, interacts with other records commission members, such as the county clerk, and with the Tennessee State Library and Archives.

Bundle of Rights Theory

Reference Number:

CTAS-771

Interests in real property are usually conveyed; that is, ownership interests are transferred, by instruments known as deeds. A person may convey all or part of what he or she owns by deed. Ownership interests or estates in land may be thought of as a bundle of sticks. A deed may convey one stick, two or three sticks, or the entire bundle. The person or group of persons, or legal entity such as a corporation, which owns a full bundle of all the "sticks" (all that it is possible to own under our law) has what is known as a fee simple absolute estate in the real property. This type of ownership involves complete control of the land, subject only to the requirements of government such as taxes which can

encumber the property, the right of government to take the property for a public purpose for just compensation (power of eminent domain), and land use restrictions in the form of zoning and the prohibition against creating a public nuisance. The owner of the fee can convey interests and still be considered the owner of the fee. An example of this is an easement, which is a right to use the land for a certain purpose, such as movement over the land. Another example is mineral interests. The interests which can be conveyed by deed are known as freehold interests because they do not end at a certain time. Most are perpetual, but need not be, as in the case of the life estate, which is a transfer of interests for the duration of the life of someone alive at the time of the conveyance. The person who has the ownership interest in the future after the expiration of the life estate has a remainder interest. The interest which does not constitute a form of "ownership" but represents a possessory interest for a fixed period of time is a leasehold interest. The transfer of a leasehold interest is by an instrument referred to as a lease agreement or contract.

Even within freehold estates alone, there exists the major division possibility between so-called "legal" and "equitable" interests. "Legal" interests refer to formal legal title and are commonly conveyed to someone who holds this interest "in trust" for the benefit of lenders of money, such as banks and savings and loan associations, by instruments known as deeds of trust which is the usual method in Tennessee of establishing a mortgage. The person conveying the "legal" interest retains the "equitable" interest (an interest a court doing equity will enforce) and is generally considered the "owner" of the property and must pay taxes as the owner, although many mortgage companies pay this and recoup this by payments from the equitable owner. The holder of the legal interest, of course, cannot take possession of the land unless there is default on the loan and unless the terms of the deed of trust allow the trustee to sell the property and to use the proceeds to satisfy the lender.

Going back to our analogy, the "owner" of real property may have the most "sticks," but he or she may have conveyed many other "sticks," such as an easement to a water company to run a pipe line under the surface and along a certain path, mineral or subsurface rights to a coal company, and the "legal" interest to a trustee for the benefit of a bank to secure a loan. Most of these types of transfers of interest are evidenced by some form of deed.

Instruments to be Recorded or Filed

Reference Number:

CTAS-772

Most of the instruments recorded or filed in the register's office relate to determining interests or rights in either real or personal property. Some instruments received also deal with a person's legal status with regard to other persons or legal entities.

Identification and Purpose of Most Common Instruments Relating to Real Property

Reference Number:

CTAS-773

Affidavits of Affixation. An affidavit of affixation is filed where a party who has legal ownership of both real property and a manufactured home(s) on the parcel states that the manufactured home has become affixed to the real property. Pursuant to T.C.A. § 55-3-128, affidavits of affixation are to be filed with the register as separate documents.

Affidavits of Scrivener's Error And Other Affidavits Helping Identify Title To Land. These are affidavits filed to correct drafting errors in instruments or to clarify the identity of title holders to land. The affiant in the case of any affidavit of scrivener's error may attach a document, including a document previously recorded with corrections made by the affiant, with the affidavit. T.C.A. § 66-24-101(a)(27).

Appointment of a Substitute Trustee. An appointment of a substitute trustee is an instrument which designates a person as a successor to the trustee originally named in a deed of trust.

Assignment of a Deed of Trust. An assignment of a deed of trust is the transfer of the rights of the lender or mortgagee to another person or institution.

Assumption Agreements. An assumption agreement is an instrument whereby the maker assumes the mortgage (the obligation to pay the loan evidenced by the original note and deed of trust) and becomes personally liable for its payment. The assumption agreement usually appears in a deed and is registered with it, but occasionally it is prepared as a separate document.

Bond to Discharge Lien. A bond to discharge a lien is really a bond to indemnify against a mechanic's or materialmen's lien claim which operates as a discharge of the lien. The bond is conditioned upon the

obligor satisfying any judgment that may be rendered in favor of the person asserting the lien.

Court Decrees. Various types of court decrees or orders may be registered which affect title or interests in real estate. Examples are: (1) memoranda of judgments; (2) certified copies of decrees divesting title to land from one person and vesting it in another; (3) certified copies of petitions in bankruptcy and decrees of adjudication.

Deed of Correction. As the name implies, this instrument is used to correct errors made in an original deed. These corrections may be made by the parties in interest or by judicial order.

Deed of Trust. This is an instrument taking the place of and serving the uses of a common law mortgage, by which the legal title to realty is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions. See T.C.A. § 66-24-117 to see how to treat master forms of mortgages or deeds of trust.

Installment Deed. An installment deed provides for the conveyance of equitable interests with the equitable owner paying the consideration in installments, with conveyance of full legal title occurring upon completion of the payments. Until the payments are complete, the seller (grantor) is in a position similar to the beneficiary under a deed of trust.

Instruments Relating To Mineral Claims. Two (2) types of instruments relate to mineral claims.

Declaration of Interest. A declaration of interest is an instrument filed in the register's office by a surface owner to claim an abandoned mineral interest. T.C.A. § 67-5-2502.

Statement of Claim. A statement of claim is an instrument filed in the register's office by a mineral interest owner to preserve that person's claim to an abandoned mineral interest. T.C.A. § 66-5-108.

Liens (Generally). A lien is a claim made on certain real estate to serve as security for a debt. A lien may be voluntarily granted or may arise by operation of law. It constitutes an encumbrance on the real estate. Various types of liens exist, such as tax liens, liens created against a leasehold of gas, oil, or minerals to secure the payment of labor or materials furnished to the lessee, mechanic's (e.g., laborers) and materialmen's liens.

Negative Pledge. An instrument that provides that a party agrees not to take any action regarding any interest in real property, such as a pledge not to mortgage or encumber or transfer certain real property.

Notice of Meth Lab Quarantine / Certificate of Fitness. A notice of meth lab quarantine is a notice filed by a law enforcement official identifying real property where methamphetamine has been manufactured. The signature of a law enforcement official shall be accepted in lieu of acknowledgment. The owner of the real property is deemed the grantor and the agency giving notice is deemed the grantee on this notice. No fees shall be collected by the register for recording the quarantine notice. When the property is deemed safe for human use by an industrial hygienist, a *Certificate of Fitness* may be filed for recording. The owner of the real property is deemed the grantee, and the law enforcement agency that issued the quarantine is the grantor. This certificate must be acknowledged, and fees shall be collected for recording it. T.C.A. § 68-212-507.

Oil, Gas or Mineral Lease. An oil, gas, or mineral lease is a contract conveying a leasehold interest in real property for a specified period to allow the lessee to explore for and remove oil, gas, or minerals for a certain consideration.

Order Sustaining Petition For Condemnation Of Property. This instrument evidences the transfer of private real property to a government or governmental instrumentality by the government's exercise of the power of eminent domain. The land is taken for a public use without the landowner's consent but with compensation to be awarded according to law.

Partition Deed. A partition deed is a conveyance between two or more property holders by which they divide property they hold in common among themselves or as joint tenants each taking a distinct part.

NOTE: Property may be held in common where each person owns a fraction or share, as joint tenants where the interests are undivided and the surviving tenant has a right to the interest of the other joint tenant in the property, and as tenants by the entirety which is a joint tenancy with right of survivorship among married couples.

Plat. A plat is a map or survey of land showing the division of land into parcels or lots and delineating streets, utility easements, and other information relevant to the future use of the land. Once a properly approved plat is registered, lots may be conveyed by reference to the plat's lot number instead of by more particular metes and bounds descriptions.

Quitclaim Deed. A quitclaim deed is a conveyance by the grantor to the grantee of whatever interest, title

or claim the grantor has in the property described in the deed. The quitclaim deed does not guarantee title. Such an instrument may convey what is described, or it may not, depending on the status of the grantor's title in the property. These deeds have historically been used to clear up title disputes and to convey supposed interest where title is unclear; but in recent years, it has been used in lieu of a warranty deed to try to avoid the state real estate transfer tax. This subject will be dealt with further in the later section on the state taxes.

Real Estate Contract. A real estate contract is an agreement between the seller (grantor) and buyer (grantee) for the seller to convey certain described real estate for a certain consideration. This is not an option contract because the rights and duties of the parties have become fixed. The buyer obtains an equitable interest in the real estate through the contract, but does not obtain legal title until the deed is actually delivered.

Restrictive Covenant. A restrictive covenant is an agreement between grantor and grantee restricting or regulating the use of the real property or the location, kind or character of buildings or structures which may be erected. The restrictive covenant generally binds the grantee's successors in title. Restrictive covenants are usually incorporated in a deed, but these agreements may be created in a separate instrument.

Timber Deed. A timber deed is a conveyance of living trees upon certain described land. Timber is considered to be a part of the real estate until cut and removed from the land, whence it becomes personal property.

Warranty Deed. A warranty deed is the most common form of conveyance of a freehold interest, whether it is the conveyance of a fee simple or a life estate. This instrument is called a warranty deed because the grantor warrants or guarantees to the grantee that the grantor is the lawful holder of the interest or interests which are conveyed and is obligated to defend the title, which is to say, to bear the expense of defending the title in court.

Wills. A will is an instrument effective upon the death of a testator (maker of the will) wherein the testator transfers his or her property. Title to real estate may be devised (transferred) by will in Tennessee. Wills are probated (proved) and are of record in the office of the probate court clerk (usually clerk and master, sometimes county clerk). Copies of probated wills, certified by the clerk of the court where probated, in this state or another state, may be registered in the county where the land lies as a muniment (evidence of title) T.C.A. § 32-5-109. Wills devising land in Tennessee or certified copies thereof may be recorded only if duly admitted to probate in Tennessee and the will is presented for recording together with copies of related probate orders. T.C.A. § 66-24-101(a)(16).

Instruments Affecting Interests in Personal Property

Reference Number:

CTAS-774

Instruments evidencing ownership interests in personal property, such as bills of sale or simple contracts of sale of personal property, usually are not registered, but may be registered. (See T.C.A. § 66-24-101 for a listing of most instruments eligible for registration.) All agreements for the conveyance of real or personal property are eligible for registration. T.C.A. § 66-24-101(a)(1) & (5).

Uniform Commercial Code Records

Reference Number:

CTAS-775

When personal property, including personal property affixed to real estate, is used as security for debt, the Uniform Commercial Code (UCC) usually governs the transaction. The UCC is a body of statutory law based on a model code which has been adopted by almost all of the states of the Union, with minor variations from state to state, so that the law governing commercial transactions such as the law of sales, commercial paper, bank deposits and collection, letters of credit, bulk transfers, and secured transactions will be as similar as possible across the nation in order to facilitate commerce. The register's office is impacted by the requirements of Article 9 of the UCC dealing with secured transactions, and more particularly, Part 5 dealing with filing. The Tennessee version of Article 9 is found in Chapter 9 of Title 47, Tennessee Code Annotated. Basically, the Chapter (Article) 9 framework involves the filing of documents to provide notice of liens on personal property and fixtures. Not all UCC Article 9 records are filed with the Register. Most are filed with the Secretary of State. Initial financing statements that are filed in Tennessee should be filed with the Secretary of State except the following which should be filed with the Register of Deeds:

1. Initial financing statements with "as extracted" collateral; "as extracted" collateral means

oil, gas, or other minerals that are subject to a security interest that is created by a debtor having an interest in the minerals before extraction and attaches to the minerals as extracted, or accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

2. Initial financing statements with timber to be cut as collateral;
3. Fixture filings--initial financing statements where the collateral is goods that are or are to become fixtures (goods that have become so related to particular real property that an interest in them arises under real property law), except where the filing's collateral, including fixtures, is of a transmitting utility -- these should be filed with the Secretary of State. A "transmitting utility" includes railways, pipelines, sewers, transmitting communications (whether electrically, electromagnetically or by light). T.C.A. §§ 47-9-501, 47-9-102.

Some financing statements formerly filed in Tennessee should be filed in another state under the new law.

The Register should not advise the customer regarding the proper place to file a UCC record, but may suggest that the customer should consult with his attorney to determine the proper place to file to perfect the security interest.

Identification and Purpose of UCC Instruments (Records)

Reference Number:

CTAS-776

Amendment. A record which modifies a filed financing statement; includes the formerly separate assignment, continuation statement, release (now referred to as a collateral change), and termination statement as well as the former amendment function. An amendment must contain the file number of the initial financing statement that is being amended.

Assignment. An amendment to the initial financing statement or a component of an initial financing statement that transfers a security interest to a new secured party. A separate amendment with an assignment must contain the file number of the initial financing statement.

Continuation Statement. An amendment to the initial financing statement which identifies, by its file number, the initial financing statement to which it relates and indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement. T.C.A. § 47-9-102(27).

Financing Statement. This record is a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

Information Statement. A record which identifies the record to which it relates by file number assigned to the initial financing statement, indicates that it is an information statement and provides the basis for the person's belief that the earlier filed record is inaccurate and indicates the manner in which the person believes the record should be amended to cure any inaccuracy or the basis for the person's belief that the earlier record should not have been filed. T.C.A. § 47-9-518.

Initial Financing Statement. A summary or abstract of a security agreement that contains information designed to place the public on notice concerning the basic facts of the security interest that has been created. At a minimum, it identifies the debtor and secured party and the collateral subject to the security agreement. An initial financing statement may also include an assignment of the security interest to a new secured party. The initial financing statement may state that the document is to be recorded in the real estate records.

Release. An amendment whereby a secured party ceases to have a lien on certain "released" collateral. This was a separate instrument under the former UCC. The current UCC provides for the deletion of collateral on the amendment form. The term "release" is not a part of the vocabulary of the current UCC law. Instead, the partial release of collateral is referred to as a collateral change. The amendment deleting collateral from that given in the initial financing statement must contain the file number of the initial financing statement.

Security Agreement. The security agreement is the basic instrument which creates or provides for a security interest and establishes the terms of the secured transaction. T.C.A. § 47-9-102(74). This is often a long and detailed legal instrument and usually is not filed with either the register or the Secretary of State.

Termination Statements. A termination statement is an amendment of a financing statement which identifies, by its file number, the initial financing statement to which it relates, and indicates either that it

is a termination statement or that the identified financing statement is no longer effective. T.C.A. § 47-9-102(80).

Other Documents

Reference Number:

CTAS-777

The register's office receives for registration documents which have legal significance other than the ones already mentioned affecting real or personal property. The following is a short description of some of the other instruments that the Register is likely to encounter.

Depositions. Under the Rules of Civil Procedure (Rule 27.04), a deposition to perpetuate testimony is filed with the clerk of the court in which the action is pending or in which the petition was filed. A copy of the deposition may also be sent to the register in the county where the petition was filed, and the register records such copies.

Officials' Bonds. The various county officials are required to obtain bonds payable to the state or county which protect the state or county against loss of funds handled by these officials. These bonds are recorded in the register's office. T.C.A. § 8-19-103.

Powers Of Attorney. Powers of attorney are instruments whereby the maker grants to another party or parties the authority to act for the maker with regard to some or all of the maker's property and to exercise some or all of the maker's legal rights. Also, durable powers of attorney for health care allow the maker to grant to another party the power to make certain decisions regarding health care for the maker. Powers of attorney may be revoked by the maker in a later document.

Revenue Reports. The clerks of the various courts operating in the county are required by statute (T.C.A. § 9-2-109) to file with the register reports on the revenue collected by the clerk.

Requirements for Acceptance of Instruments

Reference Number:

CTAS-778

Depending upon the skill and care of the draftsman, an instrument may or may not accomplish what it is intended to do. In other words, an instrument may or may not be legally sufficient. Although the statutory law places certain duties upon a register to determine whether an instrument is acceptable for registration, this is not a determination of legal sufficiency. For example, a deed must have upon it a reference to the last recorded instrument relating to the property referred to in the deed before the register may record the deed. But, even if not recorded, the deed may be effective between the parties to convey the legal and equitable title. Conversely, a deed may meet all of the requirements for acceptance and yet contain defects in draftsmanship which would make the deed functionally inoperative.

The register should not try to determine the legal sufficiency of an instrument, but must determine whether or not it is acceptable for registration.

Legibility/Language

Reference Number:

CTAS-779

The register may refuse to register any writing listed in T.C.A. § 66-24-101(a) (which includes documents relating to real property and some other documents, but not UCC records or corporate charters and certificates of limited partnership) if such writing, in the opinion of the register, is illegible or cannot be legibly reproduced, unless the person seeking to register the writing attaches to the document for recording an affidavit providing the following:

1. A statement that the writing is the best available original;
2. The type of document or instrument;
3. The grantor(s) and grantee(s);
4. The date of execution;
5. The name of the person or persons authenticating or acknowledging the signature of the grantor, and their title, if any;
6. A description of the real property, if any, being affected; and
7. All other information or recitals required by law for registration.

The register may also refuse to register any writing eligible to be recorded if the writing or a substantial

portion of it is written in a language other than English unless the person seeking to register it attaches an affidavit which gives a complete translation of the writing into English. This affidavit must be recorded with the original writing. The original writing and the affidavit shall be treated as one instrument.

Authentication/Acknowledgment

Reference Number:

CTAS-780

Tennessee Code Annotated, Section 66-22-101 states:

Unless otherwise provided by law, to authenticate an instrument or document for registration or recording in the office of the county register, the maker or the natural person acting on behalf of the maker shall execute the instrument or document by that person's original signature and such signature shall be either acknowledged according to law or proved by at least two (2) subscribing witnesses. The county register may refuse to record any instrument or document not authenticated in accordance with this section. [T.C.A. § 66-22-101 was amended in 2004 to clearly authorize the register to refuse to register documents not signed or authenticated according to statute.]

The courts in Tennessee have held that before a writing listed in T.C.A. § 66-24-101 as being eligible for registration can be recorded, it must be acknowledged. McDonnell v. Amo, 162 Tenn. 36, S.W.2d 212 (1931); Henderson v. Watson, 25 Tenn. App. 506, 106 S.W.2d 429 (1942); Chattanooga Lumber & Coal Corp. v. Phillips, 202 Tenn. 266, 304 S.W.2d 82 (1957). However, the Tennessee Supreme Court has also held that notices of federal tax liens need not be acknowledged or witnessed as required by the Tennessee statutes, as federal law controls the practice. Howard v. United States, 566 S.W.2d 521 (Tenn. 1978); Copus v. Tidwell, 601 S.W.2d 708 (Tenn. 1980). Master forms for a mortgage or deed of trust do not need to be acknowledged to be eligible for recording. T.C.A. § 66-24-117.

T.C.A. § 66-22-115 provides that the form of a certificate of acknowledgment used by a person whose authority is recognized under T.C.A. §§ 66-22-103 and -104 to take acknowledgments in others states, territories or countries, shall be accepted in Tennessee if the certificate is in a form prescribed by the laws or regulations of Tennessee, or the certificate is in the form prescribed by the laws or regulations applicable in the other state, territory, or foreign country in which the acknowledgment is taken.

The register is not eligible to take an acknowledgment. The persons who are eligible to take acknowledgments are listed in T.C.A. § 66-22-102; they are county clerks or legally appointed deputy county clerks, clerks and masters of chancery courts, or a notary public of some county in this state. If a person executing an instrument is not a resident of this state, but resides within the Union or its territories, the instrument must be acknowledged by the procedure found in T.C.A. § 66-22-103 requiring special certification of the taker of the acknowledgment in some instances. **Any certificate clearly evidencing intent to authenticate, acknowledge or verify a document constitutes a valid certificate of acknowledgment. No specific form or wording is required.** T.C.A. § 66-22-114.

Name and Address of Owner and Taxpayer

Reference Number:

CTAS-781

The register is prohibited from recording a deed of conveyance of real property, except for a deed of trust or mortgage, unless there is included on the instrument, the name and address of a property owner and the name and address of the person or entity responsible for the payment of the real property taxes. T.C.A. § 66-24-114.

Reference to Previously Registered Instruments

Reference Number:

CTAS-782

The register may not register any instrument affecting interests in real property, except releases of liens, unless the instrument contains a recital designating the deed, will, court decree or other source from which the grantor received the equitable interest. If the source of equitable interest is a deed or other instrument recorded in the register's office or a will or court decree of record in the county, the type of instrument, office, book and page number of such instrument shall be recited on the instrument offered for registration. If the source of equitable title is inheritance under the laws of intestate succession, then it shall be recited that the grantor took title by inheritance and the last recorded instrument conveying the equitable interest shall be named with the office, book and page number where such instrument is recorded. If no such preceding instrument has been recorded, this must be recited on the instrument. Also, the register may not record an instrument releasing a lien on real property unless it contains a

recital designating the type of instrument, office, book and page number of the instrument which created the lien being released. In most cases, the preparer of the instrument is required to enter this information. However, there is an exception to the general rule that the preparer must complete a recital referencing the deed or other recorded instrument wherein the grantor of an instrument received the equitable interest in the real estate. Under this exception, if the deed or other instrument from which the grantor received the equitable interest is received by the register simultaneously with the instrument upon which the recital is required, then the preparer is required to leave blanks in the recital for the book and page number or other appropriate reference and the register is then obligated to enter the appropriate reference after the deed or other instrument has been recorded. T.C.A. § 66-24-110.

Name and Address of Preparer

Reference Number:

CTAS-783

No instrument, by which title to real or personal property passes or any interest therein passes or is encumbered, is eligible for registration without the name and address of the person or governmental agency which prepared the instrument appearing within the instrument, except for Uniform Commercial Code instruments (including fixture filings). Powers of attorney, including durable powers of attorney for health care, must also have the name and address of the preparer. T.C.A. § 66-24-115.

Parcel Identification Number

Reference Number:

CTAS-784

No deed or other instrument transferring ownership of real property, but not including a deed of trust or mortgage, may be recorded unless it shall contain the parcel identification number assigned by the county assessor of property or a sworn affidavit that such information was requested from the assessor and was not furnished promptly. T.C.A. § 66-24-122.

Payment of Transfer or Mortgage Tax

Reference Number:

CTAS-785

When either the state tax on the transfer of freehold interests in real property or the state tax on the recording of instruments evidencing an indebtedness is due, the register must receive these taxes before the offered instrument is registered. However, certain instruments are exempt from either the transfer tax or the tax on instruments evidencing an indebtedness. T.C.A. § 67-4-409.

Electronic Records

Reference Number:

CTAS-786

With some exceptions, Tennessee law allows records that have to be created or retained to be kept in electronic format. If such a record created or retained in electronic format is a writing eligible to be recorded, a copy of such writing, in lieu of the original electronic format record, may be registered. The original electronic record must have been created or retained in accordance with the *Electronic Transactions Act* (T.C.A. §§ 47-10-101 through 47-10-123) or other provision of law. A licensed attorney or other custodian of the record must certify that the copy is a true and accurate copy of the original electronic record and the signature of the attorney or custodian must be notarized. The register may specify whether the copy to be registered shall be in paper or electronic form. The certification of electronic document shall be notarized and shall substantially follow the form prescribed in statute. T.C.A. § 66-24-101(d).

Specific Rules for UCC Records

Reference Number:

CTAS-787

Uniform Commercial Code (UCC) records do not have to be acknowledged in order to be filed in the register's office. However, the state tax on the filing or recording of instruments evidencing an indebtedness ("mortgage" tax), if due, must be paid before the register accepts the instrument. T.C.A. § 67-4-409. The register's fee must also be paid before the UCC instrument is accepted.

T.C.A. § 47-9-516 lists the reasons a register may refuse to accept and file or record a UCC record:

1. The record is not communicated by a method or medium of communication authorized by

the register.

2. The amount tendered is not equal to or greater than the sum of the filing fee plus recording tax ("mortgage" tax) on indebtedness, if any.
3. The register is unable to index the record because:
 - a. In the case of an initial financing statement, a name for the debtor is not provided.
 - b. In the case of an amendment or information statement, the record does not identify the initial financing statement or identifies an initial financing statement whose effectiveness has lapsed.
 - c. Where the debtor's name is given in the initial financing statement or an amendment as an individual and the record does not identify the debtor's last name.
 - d. In a fixture filing, the record does not provide the name of the debtor and a sufficient description of the real property to which it relates (we would advise you to accept the filing if any attempt to describe the property is made).
4. In the case of an initial financing statement or an amendment that adds a secured party, the record does not provide a name and mailing address for the secured party of record.
5. In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement, the record does not provide a mailing address for the debtor or indicate whether the debtor is an individual or an organization.
6. In the case of an assignment reflected in an initial financing statement or an amendment, the record does not provide a name and mailing address of the assignee.
7. In the case of a continuation statement, the record is not filed within the 6-month period.
8. The record does not contain, either on its face or in an accompanying sworn statement, the language required under the "mortgage" tax law.
9. If the information in the record is unable to be read or deciphered by the Register's office.

Filing a UCC in the wrong office is NOT a reason to reject a UCC record. Also, lack of a signature is NOT a reason to reject a UCC record. Generally, if the register receives sufficient fees and taxes due and can properly index the UCC record, it is advisable to accept the record.

Specific Rules for Plats

Reference Number:

CTAS-788

Plats of certain subdivisions of real estate require particular endorsements before the register can accept the plat for registration. A plat of a subdivision under the regional planning regulations is defined as a plan of division of a tract or parcel of land into two (2) or more lots, sites, or other divisions requiring new street or utility construction, or any division of less than five (5) acres for the purpose, whether immediate or future, of sale or building development, and includes re-subdivision. T.C.A. § 13-3-401. In any county which has a regional planning commission that has filed a certified copy of a major road plan in the register's office, the register cannot file for record or record a plat of a subdivision, as defined in T.C.A. § 13-3-401, for the area outside of the boundaries of a municipal corporation without the approval of the regional planning commission, or planning staff in certain situations, evidenced by an endorsement in writing on the plat. T.C.A. § 13-3-402.

The same provisions relating to a plat of a subdivision apply to plats in a municipality when the municipal planning commission has filed a major street plan with the register. T.C.A. § 13-4-301, -302. Also, additional rules for what constitutes a subdivision apply to municipalities in Marion County. T.C.A. § 13-4-301.

Plats dividing a tract into no more than twenty-five lots, if the development received preliminary plan approval through the planning commission, or five lots if the development did not require preliminary plan approval through the planning commission do not require planning commission approval. Such plats may be endorsed by the secretary or other designee of the planning commission. T.C.A. § 13-3-402.

Further, the register may not register a plat or a survey unless the document has impressed on it the seal of a registered land surveyor who prepared the document. Also, such instruments may not be accepted for registration as a plat, map or survey unless all the words and figures are legible and provide sufficient clarity for reduction and/or reproduction. T.C.A. § 66-24-116.

Although the local planning commissions must ensure that plats of subdivisions receive the approval of the local health authorities before approving the plat, it is no longer the responsibility of the register to require the approval of the local health authorities before registering the plat. T.C.A. § 68-211-407.

Each plat approved by a regional planning commission must contain the most recent recorded deed book number and page number for each deed constituting part of the property being platted. T.C.A. § 13-3-402. This same requirement does not appear in the law applicable to municipal planning commission approval. But, as noted above, all plats, maps and surveys must contain sufficient words necessary for clear and accurate determination of metes, bounds, and easements that can be reproduced.

Any change to a plat (regardless of whether it is designated as an amendment, modification, correction, etc.) must also receive approval of the planning commission in the same manner as described above for the original plat before it can be recorded. The only exception to this rule is that an easement or survey attached to an easement is not considered to be a change to the plat when the grantee is the state, a county, municipality, metropolitan government, or any entity of such government.

Plats and plans related to condominiums are treated differently under the *Tennessee Condominium Act of 2008*, codified in Title 66, chapter 27, parts 2-5. Under T.C.A. § 66-27-309, plats and plans are a part of the condominium declaration. Separate plats and plans are not required if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and must contain all information required by this section. The plat or plan, or both, can be attached to the declaration and incorporated therein, or it or they may be referenced in the declaration and recorded in a plat book at the appropriate register's office. In either event, the plat(s) or plan(s), or both, shall be deemed acceptable for recording without further action if it or they comply with this section. Each plat or plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

Payment of the Statutory Fees

Reference Number:

CTAS-789

The register is entitled to demand and receive the fees listed in the statutes for recording various instruments before accepting an instrument for registration. Generally, no person or entity, governmental or private, is exempt from the fee requirement. T.C.A. § 8-13-111. However, no fee is to be charged for the filing of a county growth plan. T.C.A. § 6-58-104(C)(2). Although the State of Tennessee generally has to pay recording fees, the register is required to extend credit to the State of Tennessee. The register submits the bill for fees due from the State to the Commissioner of Finance and Administration. T.C.A. § 12-2-106. Also, the register must extend credit to the United States for recording fees due on notices of federal liens and submit the bill at the end of the month to the district director of the Internal Revenue Service or other appropriate federal official in order to obtain payment. T.C.A. § 66-21-201.

Proper Fees for Recording or Filing

Reference Number:

CTAS-790

The register is not obligated to receive any deed or other document whereupon a fee attaches unless the fees accompany the document. T.C.A. §§ 8-13-111; 47-9-403. Registers are not allowed to receive any fees or other compensation for any service other than those expressly provided by law. T.C.A. § 8-21-101. In most cases, the fee must accompany the instrument, but T.C.A. § 12-2-106 requires registers to extend credit to the Commissioner of Finance and Administration for recording documents for the State of Tennessee and to submit a bill for the same. Also, the register must extend credit to the United States for recording fees related to notices of federal liens and certificates discharging the federal liens. T.C.A. § 66-21-201. If a question arises as to the proper fee to charge for the service of a register, the register may apply to a court to determine any question arising under the law. T.C.A. § 8-21-105.

The most basic statute relating to Register's fees is T.C.A. § 8-21-1001. Other fees are generally found with the statutes relating to the subject matter, e.g., UCC instruments or corporate charters.

The register must also adopt a policy setting out the procedure to be followed in cases where fees accompanying an instrument for recording exceed the required amount. T.C.A. § 8-13-111. The procedure must include one (1) or more of the following:

1. Establishing a credit, debit or a copy account for individual customers;
2. Contacting the person or entity tendering the instrument to get specific instructions regarding the excess fee;
3. Retaining as fees of the register's office a reasonable overage amount; or
4. Registering every eligible instrument and refunding excess fees, less a reasonable amount of the excess payments retained as fees of the office.

Data Processing Fee

Reference Number:

CTAS-791

A fee of \$2.00 per non-UCC instrument filed or recorded is collected in addition to the standard fees collected in all counties and this \$2.00 fee is earmarked for computerization of the office of register in all but three counties (Morgan, Scott and Sevier). Also, \$2.00 of the \$15.00 standard fee for filing or recording UCC records is earmarked for computerization of the register's office in all but the three counties noted above.

The law which imposed this fee superseded (put aside) the private acts that some counties had which allowed the register to charge additional fees in his or her particular county so that the total amount of fees collected across the state is now uniform. However, if a county under prior law (general law exception or private act) was authorized to charge an additional register's fee of \$1 or \$2 per document, and this fee was not earmarked for a particular purpose, the additional general law fee of \$2.00 is not earmarked for computerization in those counties (Morgan, Scott and Sevier have been so identified).

The fees earmarked for computerization must be accounted for separately from the other "standard" fees of the office. T.C.A. § 8-21-1001. In addition, as of 2010, upon approval by a two-thirds (2/3) vote of the county legislative body, registers in Marshall, Lincoln, Maury, Rutherford and Hamilton counties may utilize revenue from the data processing fee that is above what is necessary to purchase computer equipment and software, upgrades to computer equipment and software, and supplies, maintenance and services relating to computer equipment and software for other purposes directly related to the official functions of the office. After initial approval by the county legislative body, registers must obtain county legislative body approval prior to making each purchase using this revenue.

Electronic Filing Fee

Reference Number:

CTAS-792

T.C.A. § 8-21-1001(j) permits registers, upon receiving county legislative body approval, to charge a \$2.00 filing fee for documents filed through the register's county electronic filing portal. Documents filed by federal, state and local governmental entities are exempt from this fee.

Partnership Fee Issues

Reference Number:

CTAS-793

The *Revised Uniform Partnership Act of 2001* (RUPA), codified at T.C.A. § 61-1-101 et seq., created a new class of documents that have titles such as statement of partnership, statement of partnership authority, statement of denial of partnership, statement of dissociation, statement of dissolution, statement of merger and amendment or cancellation of any of these statements. The standard fees apply to the recording of these types of partnership documents. However, this act did not repeal the older law that provides for the recording of certificates of limited partnership and certificates of merger of limited partnerships and the fee for recording these certificates continues to be \$5.00 plus fifty cents per page for each page in excess of five pages. T.C.A. §§ 61-2-206, -211. This same special fee structure of \$5.00 plus fifty cents (50¢) per page for each page in excess of five (5) pages also applies to documents of limited liability companies as well as corporate charters and related documents. T.C.A. §§ 48-247-103, 48-11-303, 48-51-303.

Standard Fees

Reference Number:

CTAS-794

The standard fees which a register may charge are summarized as follows:

(1)	Military discharges (T.C.A. § 8-21-1001)	No charge
(2)	For each plat, map or survey (T.C.A. § 8-21-1001)	15.00
(3)	For each document (other than UCC military discharge, plat, map, survey, corporate charter), page size not to exceed 8 1/2 x 14" (T.C.A. § 8-21-1001)	10.00
(4)	For each instrument in a document in excess of one instrument (T.C.A. § 8-21-1001)	5.00
(5)	For each page in a document in excess of two pages (T.C.A. § 8-21-1001)	5.00

(6)	For a certified copy of a plat, map or survey (T.C.A. § 8-21-1001)	5.00
(7)	For a certified copy of a document other than a plat, map or survey, page size not to exceed 8 1/2 x 14," per page (T.C.A. § 8-21-1001)	1.00
(8)	For filing or recording a UCC record plus per page in excess of ten pages (T.C.A. § 47-9-525)	15.00 .50
(9)	For each additional name in a UCC record required to be indexed (T.C.A. § 47-9-525)	15.00
(10)	For a copy of any UCC record, per page (T.C.A. § 47-9-525)	1.00
(11)	For issuing each receipt for state taxes (T.C.A. § 67-4-409)	1.00
(12)	For recording any corporate charters or related documents plus fifty cents (50¢) per page in excess of five (T.C.A. § 48-11-303)	5.00 .50
(13)	For recording certificates of limited partnership plus \$.50 per page in excess of five (T.C.A. § 61-2-206)	5.00 .50
(14)	For recording limited liability company (LLC) documents plus per page in excess of five (T.C.A. § 48-204-101)	5.00 .50
(15)	For making a transcript, collation, and index regarding worn or mutilated records per 100 words (T.C.A. § 10-7-114)	1.00

A document is defined as the entire writing offered for registration, which may contain one or more instruments. An instrument is defined as a legal writing that gives formal expression to or evidence of a complete legal act or agreement requiring a separate index entry. For example, a document that contains a deed and a release of a deed of trust contains two instruments, and a document that contains three assignments of a deed of trust contains three instruments.

Military discharges are recorded without any fee being charged (standard fee or computer fee). T.C.A. § 8-21-1001(a)(1). Op. Tenn. Atty. Gen. 98-192 (October 8, 1998).

UCC Fee Issues

Reference Number:
CTAS-795

Confusion has existed in the past concerning the proper charge for UCC financing statements relating to fixtures which are recorded with deeds of trust instead of being filed with the other financing statements. The Attorney General has opined (Op. Tenn. Atty. Gen. No. 333, October 5, 1983) that the proper fee is the fee charged on other UCC financing statements, which is \$15.00. The UCC law provides that registers may charge an additional \$15.00 for each name required to be indexed. This is usually for additional debtors, but a name such as an individual or corporation d/b/a another name is to be treated as one name. Where a husband and wife are both listed as a debtor on an initial financing statement, this is two names and a fee of \$30.00 should be charged. The key to determining whether the extra name should be charged is whether or not the additional name is required to be indexed under the new UCC law.

Collection of State Taxes

Reference Number:
CTAS-797

The register is responsible for the collection and transmittal to the Department of Revenue of two related privilege taxes, the state transfer tax, and the state "mortgage" tax (tax on the recording or filing of an instrument evidencing an indebtedness). Both taxes are levied by T.C.A. § 67-4-409. Registers collect a five percent (5%) commission on state transfer and "mortgage" taxes collected. T.C.A. § 67-4-409(d). Fifty-two percent (52%) of this five percent (5%) commission is remitted monthly to the state treasurer. The remaining forty-eight percent (48%) of this five percent (5%) commission is treated as a standard fee of the office.

Transfer Tax

Reference Number:
CTAS-798

The transfer tax is a tax on the privilege of having an instrument recorded where the instrument transfers a freehold interest in real estate, whether by deed, court decree, partition deed or any other instrument. The grantee must pay the tax on the value of the property or the consideration given, whichever is

greater, unless the transfer is by quitclaim, whereupon the grantee pays on the basis of the actual consideration for the transfer. The value of the property means the market value or what the property would bring at a fair and voluntary sale.

The rate of the transfer tax is thirty-seven cents (37¢) per one hundred dollars (\$100.00) of value or consideration.

Certain transactions listed in T.C.A. § 67-4-409 are exempt from the transfer tax. No transfer tax is due on the transfer of any real estate which is:

1. A leasehold estate (estate for a fixed number of years);
2. The creation or dissolution of a tenancy by the entirety:
 - a.) By the conveyance from one (1) spouse to the other;
 - b.) By the conveyance from one (1) spouse or both spouses to the original grantor or grantors in the instrument and the original grantor's spouse; or
 - c.) By the conveyance from one (1) spouse or both spouses to a trustee and immediate reconveyance by the trustee in the same instrument as tenants in common, tenants in common with right of survivorship, joint tenants or joint tenants with right of survivorship;
3. A deed of division in kind of realty formerly held by tenants in common;
4. A release of a life estate to the beneficiaries of the remainder interest;
5. A deed or deeds executed by an executor to implement a testamentary devise;
6. A domestic settlement decree and/or domestic decrees and/or deeds which are an adjustment of property rights between divorcing parties;
7. A transfer by a transferor of real estate to a revocable living trust created by the same transferor or by a spouse of the transferor, or transfers by the trustee of a revocable living trust back to the same transferor or to the transferor's spouse;
8. A deed executed by the trustee of a revocable living trust to implement a testamentary devise by the trustor of the trust; or
9. A deed executed by the trustee of a testamentary trust or revocable living trust to implement the distribution of the real property to a trust beneficiary or beneficiaries.

No transfer tax is due until the title to the property is transferred by deed.

The grantee, his agent, or a trustee acting for the grantee is required to state under oath upon the face of the instrument offered for record in the presence of the register, or before an officer authorized to administer oaths, the actual consideration or value, whichever is greater, for the transfer of a freehold estate, except that no oath of value is required in any transaction which is exempt, and in the case of the quitclaim deed, the oath must reflect the actual consideration given for that conveyance. Quitclaim deeds are only entitled to this different tax treatment if they merely convey the grantor's interest, whatever that may be. Consideration reflects anything of pecuniary value and need not be money, but its value must be able to be expressed in monetary terms. The Department of Revenue has promulgated rules for the valuation of a life estate and remainder interest based on life expectancy. These should be consulted where deeds convey these interests. Knowingly making a false affidavit is perjury (T.C.A. § 39-16-702), and if the register knows this has been done, it should be reported to the District Attorney General and to the Department of Revenue.

Mortgage Tax

Reference Number:

CTAS-799

The "mortgage" tax is a tax on the privilege of recording or filing any instrument evidencing an indebtedness, including but not limited to mortgages, deeds of trust, conditional sales contracts, UCC financing statements and liens on personal property, other than motor vehicles. The mortgage tax is not levied on the recording of judgment liens, contractor's liens, subcontractor's liens, furnisher's liens, laborer's liens, and mechanic's and materialmen's liens, nor is the tax due on mortgages or deeds of trust issued under the *Home Equity Conversion Act* (i.e., reverse mortgages) and which are labeled as such on the face of the instrument. Also, no mortgage tax is due on the recording of instruments giving notice of the creation of a lien, security interest or pledge wherein an energy acquisition corporation formed for the benefit of a local government is either the secured party or the debtor.

The rate of the mortgage tax is \$.115 on each one hundred dollars (\$100.00) over two thousand dollars (\$2,000.00) of indebtedness. The incidence of the tax is declared to be on the mortgagor, grantor or debtor, as evidenced by the instrument offered for recording.

The word "indebtedness" as used in this tax law means the principal debt or obligation which is reasonably contemplated by the parties to be included within the terms of the agreement. If the principal indebtedness secured is not determinable from the terms of the instrument, then the statute calls for the tax to be determined according to the value of the property covered by the instrument.

Every recorded instrument evidencing an indebtedness must contain the following language on the face of the instrument or in an attached sworn statement:

Maximum principal indebtedness for Tennessee recording tax purposes is \$_____.

When the collateral is located both within and outside of Tennessee, the tax is calculated according to the value of the collateral located within Tennessee as a percentage of the total value of collateral securing the debt.

Except for Uniform Commercial Code transactions, the taxpayer's security interest will be entitled to priority only to the amount on which tax has been paid. American City Bank of Tullahoma v. Western Auto Supply Co., 631 S.W.2d 410 (Tenn. Ct. App. 1981), appeal denied April 12, 1982. However, no link exists between whether tax is paid and priority of instruments filed under the provisions of the Uniform Commercial Code. T.C.A. § 47-9-403.

There is a special governmental exemption not mentioned earlier. The recording or re-recording of all transfers of realty in which a "municipality" is the grantee or transferee and all instruments evidencing an indebtedness in which a "municipality" is the holder or owner of the indebtedness is exempt from the transfer or "mortgage" tax as the case may be. For the purposes of these two taxes, "municipality" means the state of Tennessee or any county, or incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political subdivision of this state and any agency, authority, branch, bureau, or instrumentality of this state. T.C.A. § 67-4-409(f). Additionally, when a governmental entity (federal, state or local) is the debtor, the instrument is exempt from the "mortgage" tax under the judicial doctrine of sovereign immunity.

In transactions involving certain manufacturing type facilities, the total tax is capped at one hundred thousand dollars (\$100,000.00) for the transfer tax and five hundred thousand dollars (\$500,000.00) for the "mortgage" tax. T.C.A. § 67-4-409(h).

Also exempt from the mortgage tax are UCC instruments which secure an interest solely in "investment" property such as stocks and bonds.

Also, the recording or filing of certain instruments is exempt under federal law. For example, transfers that are made pursuant to bankruptcy court orders are exempt from the tax.

Most Common Exemptions from Tax

Reference Number:
CTAS-800

The following are some of the most common exemptions from tax:

1. *Certain Investment Companies*: There are exemptions for certain investment companies and for instruments evidencing an indebtedness of a health and educational facility corporation formed under Tennessee Code Annotated, Title 48, Chapter 101, Part 3.
2. *Credit Unions (state chartered)*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 45-4-803.
3. *Electric Cooperatives and Electric Membership Corporations*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 65-25-122.
4. *Fannie Mae, Freddie Mac and Sallie Mae*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. 12 U.S.C. § 1723a and 12 U.S.C. § 1452.
5. *Farm Credit Services (production credit associations)*. Exempt when entity is the debtor or secured party (mortgage tax) or the grantee (transfer tax). 12 U.S.C. § 2077.
6. *Farmer's Cooperatives*: Exempt when entity is the debtor (mortgage tax) or the grantee

- (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 43-16-145.
7. *Federal Credit Unions*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 45-4-803 and 12 U.S.C. § 1768.
 8. *FHA*. Same as THDA.
 9. *Governmental Entities*. All transfers of realty in which a "municipality" is the grantee or transferee and all instruments evidencing an indebtedness in which a "municipality" is the holder or owner of the indebtedness are exempt from the transfer or "mortgage" tax as the case may be. For the purposes of these two taxes, "municipality" means the state of Tennessee or any county, or incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political subdivision of this state and any agency, authority, branch, bureau, or instrumentality of this state. T.C.A. § 67-4-409(f). Additionally, when a governmental entity (federal, state or local) is the debtor, the instrument is exempt from the "mortgage" tax under the judicial doctrine of sovereign immunity.
 10. *Local Utilities*. If the utility is a "municipality" that is a governmental entity (such as a county, municipality, utility district, power district, sanitary district or local authority) then the instrument is exempt from the recording tax if the utility is the owner or holder of the indebtedness (mortgage tax) or is the grantee of a freehold interest in real estate (transfer tax). T.C.A. § 67-4-409(f). A utility that is a governmental entity and is the debtor in an instrument evidencing indebtedness is exempt from paying the mortgage tax under the doctrine of sovereign immunity. Utilities that are not governmental entities, such as private utilities and cooperatives, are not exempt from the transfer or mortgage tax under T.C.A. § 67-4-409(f) and are subject to the recording taxes unless another specific statute (federal or state) provides for an exemption (which is the case in some instances).
 11. *Telephone Cooperatives*. Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 65-29-129.
 12. *THDA*. Exempt when entity is the debtor or the secured party (mortgage tax) or the grantee (transfer tax). This entity is not exempt from the mortgage tax when it is the guarantor and a private party, such as a bank, is the secured party and the debtor is a private party. The recording is exempt from the mortgage tax when THDA is assigned a security interest in the document. T.C.A. §§ 13-23-127(a) and 67-4-409(f).

Other Tax Issues

Reference Number:

CTAS-801

Increase in indebtedness / underpayment. In the event of an increase in indebtedness beyond the amount stated when the instrument was recorded, the holder of the indebtedness shall pay the tax on the amount of the increase. Such payment is due on the date of the increase, but may be made without penalty if made within sixty (60) days after the increase occurs (time begins on the execution date). T.C.A. § 67-4-409(b)(8).

If the holder of the indebtedness fails to pay or underpays the "mortgage tax" including any tax increase due to an increase in indebtedness, then the holder of the indebtedness shall be liable for a penalty, in addition to the tax. The penalty is double the unpaid tax due or two hundred fifty dollars (\$250), whichever is greater. T.C.A. § 67-4-409(b)(12).

The register must report all collections monthly to the Commissioner of Revenue on forms prescribed by the Commissioner and remit such collections by the fifteenth (15th) day of the month following the month of collection. For collecting and reporting these taxes, the register retains as a commission five percent (5%) of the taxes collected, with fifty-two percent (52%) of this amount remitted to the state treasurer and forty-eight (48%) retained by the register and treated as a standard fee of the office. T.C.A. § 67-4-409(d).

Also, registers may charge and collect a fee of one dollar (\$1.00) for issuing each tax receipt. This fee is collected along with the other recording or filing fees. T.C.A. § 67-4-409(d).

Notations When Instrument Received

Reference Number:
CTAS-802

After a register has determined that an instrument should be received and accepted for recording, the register must note on the instrument the time (date, hour and minute) the register actually received the instrument. T.C.A. § 8-13-108(a)(2). The time of reception of the instrument, that is the time of delivery to the register, and not the time when the register entered the instrument in the notebook, is the proper time to be entered on the notebook and the instrument. Lee Chatten v. Knoxville Trust Company, 154 Tenn. 345, 289 S.W.2d 536, 50 A.L.R. 537 (1926). The register's office should mark all documents as "received" when they are physically delivered, regardless of the method of delivery, and documents arriving in the same mail delivery should be marked with the same date and time. Op. Tenn. Atty. Gen. 94-37 (March 21, 1994). The proper notation of time is of vital importance to all interested parties as the time of reception can affect priority of title.

The register also enters certain information in a book known as the notebook. The duties of the register in regard to the notebook are specified in T.C.A. § 8-13-108. The register enters into the notebook the names of the grantor(s) and grantee(s), the time the instrument was received (date, hour and minute), and the amount of fees received. The notebook must be maintained in a well bound book or in computer storage media in accordance with T.C.A. § 10-7-121, which describes the procedures required to maintain safe copies of the information. The notebook must be maintained as a permanent record.

The register is to note and record the instruments in order of time of reception as nearly as can practically be done, but entries are to be made without undue delay even if due to the volume of instruments received the exact order of time of reception cannot be maintained. Nevertheless, no instrument received on a given day can be entered into the notebook after instruments received on a later day. T.C.A. § 8-13-108(a)(4).

The register is required to certify the fact of registration upon every document registered and the time when it was received. The register is also required to enter on the document the book and page or other reference where it is recorded or filed, the amount of fees received, if any, and the amount of taxes received, if any. This certification is accomplished with the signature of the register. If the register determines that insufficient space exists on the instrument to enter the certification without overlaying writing on the instrument, then the register may add a page to contain the certification and attach the page to the instrument, whereupon it becomes a part of the original instrument being registered, and the register may charge a fee for this additional page. T.C.A. § 8-13-108.

UCC Records. Although the statutes do not require a separate notebook, registers may note the reception of UCC instruments in a separate notebook for Uniform Commercial Code instruments, naming the secured party and the debtor, entering the date and time of reception, and the fees received. T.C.A. § 8-13-108(a)(3).

Each UCC record must be assigned a unique number. The register must create a record that bears the number assigned to the filed record and the date and time of filing. T.C.A. § 47-9-519(a).

Under UCC law, a termination statement is treated as an amendment and recorded as any other amendment. The entire UCC record series from initial financing statement through termination must remain of record for at least one year after the termination is filed or the financing statement has lapsed. T.C.A. § 47-9-522.

Recording, Filing and Indexing

Reference Number:
CTAS-803

The law for many years required the register of deeds to maintain separate sets of books and indexes for various recorded or filed instruments. This remains the law if the register has not adopted some form of combined system of recording or "continuous" recording system.

Real Estate Deeds of Title

Reference Number:
CTAS-804

After entering the necessary information in the notebook and on the original, the register photocopies or otherwise images the document if the document is to be recorded as opposed to merely being filed. After imaging the document, the register must determine the proper book or record series in which to place the document. If the document deals with equitable title to real estate, such as a standard warranty deed

(which also conveys legal title), then the register places the photocopy in the deed book, also called warranty deed book in many counties. The deed books should contain all documents which relate to equitable interest in land, such as court decrees and quitclaim deeds, and not just warranty deeds.

After determining the proper book in which to place the document, the register adds the book and page number and places the document in the book. This book and page number may be added to the notebook although this is not a legal requirement.

The register is required to index the deed or other instrument immediately upon recording it. T.C.A. § 10-7-205. Deeds and related instruments conveying full title or affecting equitable interests in real property are indexed in a direct or grantor index and in a reverse or grantee index.

In the direct index, the register enters first the name(s) of the grantors and then the names of the grantee(s), all in alphabetical order, then enters the kind of instrument, the date of the instrument, the date it was received for recording, and the book and page number where it is recorded. T.C.A. § 10-7-203. Many index books now in use provide space for additional information, such as the civil district where the property is located, the number of acres transferred, and space for comments. The space for comments should be used to inform the public of any unusual references or characteristics of the instrument.

Similarly, the register enters in the reverse index first the names of the grantee(s) and then the names of the grantor(s), the kind of instrument, the date the instrument was executed, the date it was received for recording, and the book and page number where it is recorded. T.C.A. § 10-7-203.

After the register has indexed the instrument, it is returned to the person offering it for recording, if this has not already been done (after photocopy). Although it is not legally required, many registers note in the notebook the date and means by which the instrument is returned.

Deeds of Trust

Reference Number:

CTAS-805

After deeds of trust or amendments, assumption agreements, and like instruments are received and noted in the notebook, they are photocopied and placed in a set of books separate and apart from the deeds and other instruments related to transfers of equitable interests in real property. The books are generally known as trust deed books. T.C.A. § 8-13-108.

The register is required to index the deed of trust amendments and other instruments affecting or modifying the original deed of trust in separate direct and reverse indexes in the same manner as warranty deeds are indexed. T.C.A. § 10-7-205. Also in the same manner as warranty deeds, the deed of trust is returned to the person offering it for recording, usually the mortgagee, after it is recorded.

UCC Records

Reference Number:

CTAS-806

The UCC allows either the filing or recording through imaging of UCC records. However, fixture filings must be recorded with the real estate records. UCC records must be indexed as follows:

1. Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement.
2. Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.
3. If a financing statement is filed as a fixture filing or covers "as-extracted" collateral or timber to be cut, it must be indexed under the names of the debtor and each owner of record shown on the financing statement as if they were mortgagors under a mortgage of the real property described and also reverse indexed under the name of the secured party as if the secured party were the mortgagee.
4. If a financing statement is filed as a fixture filing or covers "as-extracted" collateral or timber to be cut, an assignment or amendment must be indexed under the name of the assignor or grantor, and reverse indexed under the name of the assignee in the case of an assignment. T.C.A. § 47-9-519.

The register is required to maintain the capability to retrieve a UCC record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates. T.C.A. § 47-9-519.

Miscellaneous Records

Reference Number:
CTAS-807

After making a notation in the notebook, the register must decide where to record a variety of miscellaneous records. T.C.A. § 8-13-108 indicates that almost all instruments except those affecting land title, bankruptcies, and the UCC may be recorded with the deeds of trust. However, the statutes referring to mechanic's and materialmen's liens and other types of liens (T.C.A. § 66-11-111, 66-21-103) require the register to keep a lien book. The register must index the recordings of liens and releases and must note the nature of the lien in the index. The register has discretion to maintain a separate direct and reverse index, or to combine the index with the federal lien direct and reverse index or to combine it with the other indexes of the office in a master direct and reverse index. T.C.A. § 66-21-103. For further information on federal tax liens, please refer to Title 66, chapter 21, part 2.

After the completion of improvements to real property, the owner or purchaser, or the contractor, may register a notice of completion in the register's office in order to be protected from lien claims. T.C.A. § 66-11-143. The register is required to make a permanent record of these notices. The register may find it useful to have a separate book for these records and a separate index. The register may use only a direct index for notices of completion. T.C.A. § 10-7-202.

As mentioned above, T.C.A. § 8-13-108 requires a separate book known as record of bankruptcies, where certified copies of petitions in bankruptcy, decrees of adjudication of bankruptcy, and other orders of the bankruptcy court are recorded.

Another group of records which often have separate books and indexes is that of corporate charters and related documents. Also, plats of subdivisions and surveys are usually maintained as separate records. Because of the important legal distinction between a plat which has the approval of a planning commission, and a survey, which does not, these two types of records should be segregated in some fashion.

Statements of claim, declarations of interest and court decrees relating to mineral interests must be recorded in a book known as the Dormant Mineral Interest Record. When a statement of claim is recorded, it must be entered in the index for this type of record and a notation must be made in the index where the instrument creating the original mineral interest is indexed referencing the statement of claim. Orders involving mineral interests must also be referenced in the indexes for the instrument creating the original mineral interest and the instrument creating the interest of the current owner. T.C.A. § 66-5-108. Declaration of interest (in mineral estates) forms must be available in the office of the register. Declaration of interest forms are indexed under the names of the mineral interest owners as grantors and under the names of the surface owners as grantees. T.C.A. § 67-5-2502.

Even if all of the separate books mentioned above are maintained, registers still may keep a miscellaneous book for entry of contracts, leases, powers of attorney and other instruments which do not fit into the other categories. If a separate book is maintained for these records, then a separate direct and reverse index should also be kept.

Combined or Continuous Records

Reference Number:
CTAS-808

Tennessee Code Annotated, Section 8-13-108, authorizes counties which have established a county public records commission to forego the various sets of books noted previously and maintain one continuous recording of any and all instruments in one general series of books or film to be designated "official record book." Likewise, when a system of microphotography is used to record all instruments, the references may be to "book," "film," "reel," or other such designation. Also, some special rules have been allowed for Davidson County in regard to notebook records.

Tennessee Code Annotated, Section 10-7-202(a), authorizes the combining of indexes into a general direct and reverse index. This law supersedes the earlier laws which appear to require separate indexes.

Records and Computers

Reference Number:

CTAS-809

Reflecting the more modern systems of maintaining records, T.C.A. § 10-7-202(b) provides for the option of maintaining indexes on a computer. Furthermore, T.C.A. § 10-7-121 authorizes all government officials, including registers, to keep any information required to be kept as a record on a computer or removable storage media, including any appropriate electronic medium, instead of bound books or paper records if the following standards are met:

1. Such information is available for public inspection, unless it is a confidential record according to law;
2. Due care is taken to maintain any information that is a public record during the time required by law for retention;
3. All daily data generated and stored within the computer system must be copied to computer storage media daily, and the newly created computer storage media more than one week old must be stored at a location other than at the building where the original is maintained; and
4. The official can provide a paper copy of the information when needed or when requested by a member of the public.

A new procedure is available for the destruction of original public records which have been reproduced onto computer storage media, including any appropriate electronic medium. These reproductions are required to be done according to regulations promulgated by the Secretary of State regarding approved technology, standards and procedures. Once original permanent records are reproduced properly, they may be destroyed or transferred to a suitable institution upon the approval of the county public records commission. It is important to remember that original public records may not be destroyed without the approval of the county public records commission and after the statutory and regulatory rules have been followed. T.C.A. § 10-7-404.

Registers and other county officials are authorized to provide remote electronic access for viewing of records of the office which are maintained on computer storage media during regular business hours. Registers are authorized to charge users of information through remote access a reasonable amount sufficient to recover the costs of providing this service, and may not charge any more for this service. This charge may not include the cost of storage and maintenance of the records or the cost of the electronic record storage system. Registers may not charge a fee for viewing records in the office, electronically or otherwise. A remote viewing system must not allow the alteration or impairment of the records by the remote viewer. Registers who provide remote electronic access for viewing records must file a statement with the Comptroller of the Treasury describing the computer equipment, software and procedures thirty (30) days prior to offering this service. This statement must describe how the remote access system will prevent remote users from altering the records. Once a remote information system is in place, all members of the public who are willing to pay the user fee must be given access to the system. T.C.A. § 10-7-123.

Uniform Electronic Transactions Act

Reference Number:
CTAS-810

The "*Uniform Electronic Transactions Act*," T.C.A. § 47-10-101 et seq., is intended to establish standards and procedures for the conduct of business transactions via electronic means. The prime concept embodied in the law is that where the law requires a record to be in writing, an electronic record can satisfy that requirement. Similarly, where the law requires a signature, an electronic signature can satisfy the law. Also, the *Act* states that where a record or signature is required to be notarized, acknowledged, verified or made under oath, the electronic signature of persons authorized to perform those acts can satisfy such requirement. T.C.A. § 47-10-111. The *Electronic Transactions Act* does not eliminate or alter the need for a transaction to comply with other substantive requirements of law that may affect the transaction.

The law does not require a record or signature to be created, communicated, or stored via electronic means and only applies to transactions between parties that have agreed to conduct transactions by electronic means. Unless otherwise specifically required, the *Act* also states that county officials shall have the power to determine whether, and the extent to which, they will create and retain electronic records and convert written records to electronic records. T.C.A. § 47-10-117(b). Also, county officials, including the register, are specifically given the power to determine whether, and the extent to which, they will send and accept electronic records. T.C.A. § 47-10-118(a)(2). Therefore, no register is required to accept electronic transactions.

Should the register choose to utilize electronic transactions, the following principles set forth in the law are of particular importance:

1. Before implementing an electronic transactions system, a county official must file a statement with the comptroller's office containing information about the hardware and software to be used, policies and procedures related to implementation, estimated costs of the implementation and estimated costs savings. T.C.A. 47-10-119(a).
2. Between twelve (12) and eighteen (18) months after implementation of the system, a post-implementation review must be filed with the comptroller's office. T.C.A. § 47-10-119(b).
3. An electronic record is received when it enters an information processing system that the recipient has designated to be used and from which the recipient is able to retrieve the electronic record. T.C.A. § 47-10-115(b)(1).

Even if the register does not accept electronic transactions, copies of documents created or retained electronically may be recorded with the appropriate authentication. T.C.A. § 66-24-101(d).

Uniform Real Property Electronic Recording Act ("URPERA")

Reference Number:

CTAS-811

The *Uniform Real Property Electronic Recording Act* ("URPERA") was adopted in 2007 with the goal of making the electronic recording process more uniform throughout the country. Highlights of the URPERA, codified in Title 66, chapter 24, part 2, include:

- Any sort of original document requirement may be satisfied by an electronic document.
- Any signature requirement may be met by an electronic signature or a digitized image of a wet signature.
- Any notary or acknowledgment requirement may be met if the electronic signature or digitized signature of the person notarizing or acknowledging the document is attached or logically associated with the document. Also, a physical or electronic image of the notary stamp or seal does not have to accompany the electronic signature.
- Registers may take an electronic copy of a paper document (as long as the proper certification is attached).
- Registers may accept fees electronically.
- Registers may convert recorded paper documents into electronic format.
- Finally, the standards for registers implementing these functions are to be established by the information systems council.

Notice of Child Support Liens

Reference Number:

CTAS-812

Federal law has tried to create a uniform system for enforcing child support. The federal law is found at 42 U.S.C.A. § 651 *et seq.*—most notably, sections 654, 654(a), and 666. These sections require states to adopt certain centralized procedures for enforcing child support. Tennessee's procedures are set forth in T.C.A. § 36-5-901 and in regulations found at Tenn. Comp. R. & Regs. 1240-2-5-.01 *et seq.* The agency in Tennessee that is responsible for enforcement of child support liens is the Department of Human Services. To enforce these liens, the Department can file locally (in the register's office) or file the liens online.

The Department may require that the register furnish space in his or her office for a computer terminal dedicated to providing information regarding persons with overdue child support obligations. The overdue child support obligation causes, by operation of law, a lien to be placed on the real and personal property of the obligor whenever notice of such lien is placed on the computer showing the existence, amount and date of the lien. T.C.A. § 36-5-901. The register appears to have no obligation regarding the computer terminal other than the provision of space and allowing the public access to the computer terminal.

Issues sometimes arise with regard to out of state liens. Pursuant to T.C.A. § 36-5-902, Tennessee must honor liens arising out of state, as long as the liens are filed in accordance with Tennessee's procedural rules. Furthermore, the Department is authorized to enforce these out of state liens. T.C.A. § 36-5-902. Because the procedural rules in Tennessee direct the Department to file child support liens and name the Department as the enforcement agent, it is our opinion that out of state liens should be filed with the

Department and not directly with the local register.

Other Records Duties

Reference Number:

CTAS-813

All counties are now required to have a county public records commission, and the register serves as an ex-officio member. The register may appoint a designee to serve on the county public records commission instead of the register personally. The county public records commission serves an important function in keeping an efficient records management program. Certain records, after microfilming, may be destroyed or transferred to the state library and archives or some other institution. T.C.A. § 10-7-401 et seq. Otherwise, these originals would be required by law to be kept in the office. The University of Tennessee's County Technical Assistance Service publishes manuals which may be used as guides on the retention and disposition of public records. The county public records commission can affect all of the county offices, but each officeholder may prevent the transfer or destruction of any record in that office.

Generally, the records of the register's office are to be available for public inspection during regular business hours. T.C.A. § 10-7-503. However, certain employee records are confidential. These records include home telephone and personal cell phone numbers, bank account information, Social Security numbers, residential addresses, driver's license information (except where driving is a part of the employee's job), and similar information for the employee's family and household members. Where this confidential information is part of a file or document that would otherwise be public information (such as compensation records) the confidential information must be redacted so that the public may still have access to the non-confidential portions of the file or document. T.C.A. § 10-7-504.

Military Discharge Records

Reference Number:

CTAS-814

Under T.C.A. § 10-7-513, military discharge records are confidential for 75 years from the time the records are recorded or otherwise come into a register's possession. During this 75-year period, the register may disclose information or may permit inspection or copying only in accordance with § 10-7-513 or a court order.

Only certain persons may inspect or copy military records. Those persons must present proper identification before inspecting or copying the records. The following persons are allowed to inspect or copy military discharge records:

1. The veteran who is the subject of the record;
2. The legal guardian of the veteran;
3. The spouse or a child or parent of the veteran or, if there is no living spouse, child, or parent, the nearest living relative of the veteran;
4. The personal representative of the estate of the veteran;
5. The person named by the veteran, or by a person described by subdivision (2), (3), or (4), in an appropriate power of attorney;
6. Another governmental body; or
7. An authorized representative of the funeral home that assists with the burial of the veteran.

In addition to being authorized to inspect or copy the records, persons described in subdivisions (1) through (5) above are authorized to request removal of the record (except for records preserved on microfilm) or redaction of the social security number from the record (if the record is stored on a medium which allows for redaction). The revised law requires the request be made on a statutorily prescribed form; however, only the form's heading, and not the form itself, appears in the revised law (the entire form was set forth in the prior version of the law). Hopefully this omission will be corrected. Until then, it is our recommendation that the prior statutory form (with some minor revisions) be used. Sample Military Discharge form. Under the revised § 10-7-513, the register is to record the request form.

You should note that if you receive a form requesting redaction and redaction is not practicable, then you should not record the request form, but rather, you are directed to inform the requesting party, either verbally or in writing, that redaction is not practicable and that the person may instead submit a form requesting that the record be removed entirely.

Storage Of Military Discharge Records. Under Title 8, chapter 13, registers are required to record the official discharge of persons who after 1915 have served as members of the United States armed forces,

the United States armed forces reserve, or the United States armed forces auxiliary. Those offices that do not store documents electronically, are required to store discharges recorded after September 1, 2010 in a separate book that only contains official discharge records. All registers must keep books originating prior to, as well as after, September 1, 2010, and which have been designated specifically for the storage of official military discharge records in a location not accessible to the general public, so long as the books do not contain other public documents. In counties that record and store documents electronically, registers shall not make available to the general public any display of military discharge records and shall only provide copies of such records in compliance with § 10-7-513.

Financial Accounting Duties

Reference Number:
CTAS-815

The register must keep a record of all funds received by the office. The register is under a duty to use a system of accounting approved by the Comptroller of the Treasury. T.C.A. § 9-2-102. The register should enter in a cash journal (whether kept in book form or on computer media) the date of collection, the name of the person or entity from whom funds are collected, the amount collected, and an earmarking of these funds as a fee or tax. The cash journal should also show disbursements from the account of the register to the county trustee or to the State Department of Revenue.

The accounting system is a double entry system which allows for verification of accounting accuracy through trial balances wherein debits and credits should equal. At least two accounts are affected by each transaction. Debits, or charges, increase the balance of asset and expenditure accounts and decrease the balance of liability, revenue, reserve, or surplus accounts. Credits perform the opposite of debits. Credits decrease the balance of asset and expenditure accounts, and increase the balance of liability, revenue, reserve, or surplus accounts. The trial balance tests whether or not the total debit entries equal the total credit entries. Depending upon whether or not the county has centralized accounting, either the register or the accounting officials use this information to form a general ledger, and from the general ledger an operating statement may be made which details the financial transactions of the office. Operating statements are made on a monthly, quarterly and annual basis. Also, special reports may be requested by the county legislative body.

The complexity of the accounting performed by the register will depend in part on whether or not the register turns over all fees to the county trustee on a monthly basis, or whether only surplus fees are turned over quarterly. The county legislative body, by resolution, determines whether or not the fees are remitted monthly, or whether excess fees are remitted quarterly. T.C.A. § 8-22-104. If the fees are remitted monthly, the only disbursements that a register will have will be to the county trustee and to the State Department of Revenue. Conversely, if the register only remits excess fees quarterly to the county trustee, then the register will have disbursements for such items as the salary of the deputies and assistants as well as the register's salary.

Deposits and Bank Accounts-Register of Deeds

Reference Number:
CTAS-817

The register, along with every other county official that handles public funds, is required to maintain an official bank account in a bank within this state, and is required to deposit all public funds received into an official bank account within three (3) days of receipt of the funds. Also, the register is authorized to enter into agreements with the bank and with other financial institutions as necessary for the maintenance of collateral to secure the funds on deposit.

The register is required to make all disbursements by consecutively pre-numbered checks drawn on the official bank account. T.C.A. § 5-8-207(b).

A violation of any of the duties regarding deposits and the official bank account is a Class C misdemeanor. T.C.A. § 5-8-207.

Form of Payment

Reference Number:
CTAS-818

A register may receive in payment of fees and taxes currency of the United States, checks, money orders, credit cards or debit cards. The county legislative body is authorized by resolution to waive the processing fee that is otherwise added to the amount collected when payment is by credit card or debit card. T.C.A.

§ 9-1-108.

Receipts

Reference Number:

CTAS-819

Whenever the register receives any money in his or her official capacity, the register must issue to the payer a receipt and retain a duplicate in the office. T.C.A. § 9-2-103. The duplicate copy of the receipt must be retained by the register (for at least five (5) years) and be available to state auditors upon demand. The receipts must be consecutively numbered and kept in a well-bound book or in a manner approved by the Comptroller of the Treasury. T.C.A. § 9-2-104.

Reports-Register of Deeds

Reference Number:

CTAS-820

County Reports. The register is required to keep a complete account of every fee collected and file an itemized statement monthly, under oath, with the county mayor / executive. T.C.A. § 8-22-104(a). This is often called the "fee and commission" report. Also, in each county which does not have a central accounting system approved by the Comptroller of the Treasury, the register must file a sworn quarterly report with the county mayor / executive showing financial activity by fund accounts which must show all accounts payable and other obligations. A copy of this report must be filed with the county clerk. T.C.A. § 9-2-137. For counties under centralized accounting systems, the register should consult with the financial officers of the county to insure compliance with the reporting rules applicable in the county.

Report of State Taxes Collected. All registers must make monthly reports of the state taxes collected to the Department of Revenue on forms prescribed by the Commissioner of Revenue. T.C.A. § 67-4-409(d). These reports are filed with the Department of Revenue and the taxes collected are remitted by the fifteenth day of the month following the month wherein the funds were collected. T.C.A. § 67-4-213, 67-4-409(d). If the reports and remittances to the state are not made on time, the register forfeits the commission on the delinquent amount and is subject to payment of a penalty of five percent (5%) of the unpaid tax amount for each thirty (30) days or fraction thereof that the tax remains unpaid, up to a maximum of twenty-five percent (25%) of the unpaid amount. When a report or return is delinquent, a minimum penalty of fifteen dollars (\$15.00) is imposed, regardless of the amount of tax due or whether there is any tax due. Additionally, if the Commissioner of the Department of Revenue determines that the failure to report and pay is due to negligence, a penalty of ten percent (10%) of the underpayment is imposed. T.C.A. § 67-1-804.

Fee System or Salary System-Register of Deeds

Reference Number:

CTAS-821

The county legislative body determines whether or not the register maintains a fee account for the payment of the expenses of the office. The two methods for accounting for fees and commissions received by the register, the Fee System and the Salary System, are covered under the County Offices General Information tab.

Fee System or Salary System

Reference Number:

CTAS-33

The sheriff, trustee, county clerk, register of deeds and court clerks receive fees from the public for services they perform; for this reason, these officials are sometimes referred to as "fee officials." There are two methods of accounting for the fees received by these officers. The first and oldest is the "fee system." Under this system, each official remits to the trustee quarterly all of the fees and charges collected by the official in excess of expenses for the following items: salaries of the official's deputies and assistants, necessary expenses of the office, and the official's salary as established by statute. The official is also authorized to maintain a reserve in an amount equal to three times the monthly salaries of the official, deputies, and assistants. T.C.A. § 8-22-104. If in any month the total amount of fees and commissions are insufficient to pay the total amount of the official's salary, the salaries of deputies and assistants, plus the other expenses of the office for the month, the amount of the deficiency may be paid out of any excess fees received by the official during any preceding or succeeding months of the terms for which the official is elected. T.C.A. § 8-22-108. If the fees are insufficient to pay the regular expenses of the office, including the statutory salary of the official and the salaries of deputies and assistants, the

minimum salary of the official is to be paid out of county general funds. T.C.A. § 8-24-107. Excess fees are placed in the county general fund as a source of county revenue.

The county commission is authorized to adopt an alternative system for fee officials, often called the "budget" or "salary" system, although the sheriff is always under this alternative system. T.C.A. § 8-24-103. This budget system can be adopted for some or all of the officials. T.C.A. § 8-22-104. Under this method, the official pays over to the trustee all of the fees, commissions, and charges collected by the office on a monthly basis. The county commission must, in return, budget for expenses, authorizing the trustee to pay the official's salary, salaries of deputies and assistants, and authorized expenses of the office. These salaries and other proper costs of the office are included in the budget and must be paid even if the fees are insufficient to cover them.

Sources of Assistance for Register of Deeds

Reference Number:

CTAS-822

The legal issues which face the register day-to-day almost always may be solved by reference to statutory law, whether the issue is whether or not to accept an instrument, what fee is due, whether state tax is due, where to record or file the instrument, how to index the instrument, or any number of other questions involving personnel and responsibilities toward other officials or the public. Therefore, the register should obtain and maintain in current form the most relevant volumes of Tennessee Code Annotated. These are Volumes 3, 3A, 8A, 8B (UCC), 8D (Corporations), 11A (Property), and 12 (Taxes).

If the register is unable to solve a problem after reference to the statutes, there are sources of assistance available.

Local Level. At the local level, the county attorney may be able to offer assistance. This will vary from county to county, as not all county attorneys are obligated to assist the register. The local District Attorney General is obligated by law to respond to questions posed regarding the register's official duties. T.C.A. § 8-7-103(4).

State Level. At the state level, the University of Tennessee's County Technical Assistance Service provides assistance through the regional county government consultants, who are supported by lawyers and other professionals. The County Technical Assistance Service (CTAS) publishes information and emails these items to the register in the form of technical bulletins and "spotlight" memoranda throughout the year.

Tax Matters. The Department of Revenue, located in Nashville, can assist the register in administering the state transfer and mortgage taxes. The Department offers memoranda on this subject.

Financial Reporting. Division of County Audit, Office of the Comptroller, and its field agents, may be of assistance to the register in financial reporting matters.

Retention Schedules

Reference Number:

CTAS-202

The County Technical Assistance Service, in cooperation with the Tennessee State Library and Archives and the Division of Records Management, is authorized to publish schedules which are to be used as guides by all county public records commissions, county offices, and judges of courts of record in determining which records should, can, and may not be destroyed. T.C.A. § 10-7-404. Those schedules are called the Retention Schedules. The retention schedules describe more than 650 different records series for multiple county offices. This material is organized by county office and by subject. Obviously CTAS recommends that all county public record commissions adopt these schedules as the basis for determining the disposition of county records in their county. When the schedules were developed, they were reviewed and revised by the legal and technical staff of CTAS, by the Division of County Audit in the office of the comptroller, by representatives of the Tennessee State Library and Archives and the Division of Records Management in the State Department of General Services, and by committees and groups of numerous county officials. The language of the statute says that county officials and records commissions shall use these schedules as "guides" in determining whether a record should be kept or destroyed. This does not mean that a County Public Records Commission can never deviate from the CTAS schedules. However, any decision to use a different retention period should be thoughtfully considered and the reasons well documented by the records commission. Any decision to destroy a record sooner than is recommended by the schedules certainly needs to be taken seriously. If your records commission decides that there is a significant reason why a record should be destroyed before the recommended retention

period has elapsed, contact CTAS first to discuss the retention period and see if there is a reason why the recommended retention period in the manual should be shortened.

For additional information, see Appraisal and Disposition of Records, Tennessee Archives Management Advisory.

Current Retention Schedules

Reference Number:

CTAS-2068

Policy Statement

The Tennessee State Library and Archives (TSLA) is given authority by T.C.A. § 10-7-413 to review proposed destruction of county records and to take into the state archives such records proposed for destruction as may have historical research value. TSLA has reviewed and approved these retention guidelines prepared by the County Technical Assistance Service (CTAS).

Permanent Records.

With respect to records designated in these guidelines as "permanent," TSLA-

1. Concurs entirely with all guidelines herein that appraise records series to be of permanent value;
2. Reminds local governments that they are obliged by the provisions of T.C.A. § 10-7-503 to make such records permanently and consistently available for public inspection;
3. Advises that a county archives, which is an integral office of local government and responsible to the local county mayor through the public records commission, is the most effective and economical means of doing this; and
4. Encourages local governments to establish, support, and maintain such archives.

In cooperation with CTAS and other agencies, TSLA has designated certain records as permanent based on their value as legal and historical evidence to document the collective experience of the citizens of the community. Such records should be retained and made available to the public in public archives in accordance with T.C.A. § 10-7-503.

Temporary Records.

TSLA has appraised for historical value the descriptions of temporary records series that are herein recommended for destruction at the ends of their retention terms. Because of the confidence we have in this review and in the guidelines, TSLA certifies that-

- Destruction of records in accordance with these guidelines may be authorized by local public records commissions;
- Public records commissions may issue continuing records disposition authorizations for routine disposals, so that local offices do not have to present repeated requests to the public records commission; and that
- Disposal may then proceed without further review by TSLA;

provided that

- (1) Local officials report all such disposals to the local public records commission;
- (2) The local public records commission certifies to the county mayor that destruction has been authorized in accordance with these guidelines;
- (3) The certification cites the specific applicable guideline in each case of authorized destruction; and that
- (4) Local public records commissions consider carefully the needs of local historical and genealogical societies, consult with them, and upon their advice or request use the provisions of T.C.A. § 10-7-414(a) to authorize transfer of records otherwise scheduled for destruction (e.g. marriage bonds or court case files) to the local historical society for retention and historical research.

In the interest of building and maintaining a strong sense of community history, TSLA further encourages local public records commissions, executives, and legislative bodies to provide material and financial support for the local preservation and public inspection of such transferred records in accordance with T.C.A. § 10-7-414(c).

Questions about the possible disposition of county records and the establishment of a county archives and records program for the preservation of permanent value records can be referred to-

Tennessee State Library and Archives
 403 7th Avenue North
 Nashville, Tennessee 37243
 (615) 741-2764

Register of Deeds Records

Reference Number:
 CTAS-2059

Register of Deeds Records. The records included in this schedule are only those specific to the office of the county register of deeds. Records that may be kept in the same format by several county offices (such as employment records, purchasing records, etc.) will be found listed under topical retention schedules in this manual. Included in this table is a listing of “obsolete” records. Your office should no longer be generating these records. They are still included in the disposition schedule so that anyone discovering those materials in older records of the office will know how to deal with them. To a certain extent, the records kept by county offices vary from county to county in either the format of record kept, the name given to the record, or the frequency of its occurrence. The fact that a certain record is listed in this schedule does not necessarily indicate that you should have it in your office. It may be a format for record-keeping that was never utilized in your county, or you may keep the record under a different name. If you have records in your office that are not listed in this schedule by name, check the descriptions of the records to see if we may have called it by a different term. If you still cannot locate any entry relative to the record, contact us at the County Technical Assistance Service for guidance in determining the proper disposition of the record and so that we can make note of that record’s existence to include it in future revisions of this manual.

Retention Schedule for Register of Deeds

Description of Record	Retention Period	Legal Authority/ Rationale
11-001 Affidavit Releases —Recorded affidavits effecting the release of notes or other instruments which cannot be produced by the holder thereof, showing name of owner or holder of instrument, nature of instrument, extent of release, reason why instrument cannot be produced, names of affiant and official acknowledging affidavit, and register's certificate of registration.	Keep recorded copy permanently. Additional copies are merely working papers and may be destroyed when no longer needed in accordance with rules of the Public Records Commission.	T.C.A. § 66-25-207. T.C.A. § 10-7-406(b). Note: after 1990 these procedures only apply to Warren County by narrow population class.
11-002 Articles of Association —Articles filed with the register of deeds office evidencing the conversion of a partnership to a limited liability partnership. Originals are filed with the secretary of state.	Permanent record.	Provides local source for vital partnership records (T.C.A. § 48-204-101).
11-003 Articles of Conversion —Articles filed with the register of deeds office evidencing the conversion of a partnership to a limited liability company or partnership. Originals are filed with the secretary of state.	Permanent record.	Provides local source for vital partnership records (T.C.A. § 48-204-101).
11-004 Bills of Sale (May be recorded in deed books) —A record of items and land sold and purchased giving names of parties, description of property sold, and terms of sale.	Permanent record.	Eligible for recordation under T.C.A. § 66-24-101(1). This record affects land title.
11-005 Bonds of County Officials, Register of	Permanent record.	T.C.A. § 8-19-102.
11-006 Bond to Discharge Lien — Original bond, or copy of bond, filed by land owner to discharge lien and clear land titles from mechanics and materialmans liens.	Permanent record.	T.C.A. § 66-11-142 Record has affect on land title.
11-007 Certificate of Limited Partnership — Document filed to evidence creation of limited partnership. Similar to articles of incorporation. Also filed with Secretary of State.	Permanent record.	Provides local source for vital limited partnership records.
11-008 Certificate of Merger —Document filed	Permanent record.	Provides local source for vital

Retention Schedule for Register of Deeds

Description of Record	Retention Period	Legal Authority/ Rationale
to evidence merger of partnerships. Also filed with secretary of state.		partnership records. T.C.A. § 61-2-211.
11-009 Charters, Record of —Recorded copies of incorporation charters granted by the state showing names of incorporators, name of corporation, location, nature of business, amount of capital stock, power and limitations of charter, date executed, acknowledgment before notary public, date recorded, register's certificate of recordation, and certification of Secretary of State that charter has been granted. These charters have been filed with the register of deeds and the secretary of state since 1929.	Permanent record.	Provides local source for vital corporate records, both profit and non-profit.
11-010 Contracts (Personal Property) —Recorded contracts showing names of contracting parties, amount of consideration, terms of agreement, and register's certificate of registration.	Permanent record.	Eligible for recordation under T.C.A. § 66-24-101(1).
11-011 Deed Indexes, Direct and Indirect	Permanent record.	Necessary for use of other records.
11-012 Deeds, Record of —Recorded copies of absolute conveyances of real property, showing names of grantor and grantee, date of instrument, location and description of property, consideration, terms of payments, acknowledgment before notary public, and the register's certificate of recordation.	Permanent record.	Eligible for recordation under T.C.A. § 66-24-101(4). Kept permanently pursuant to T.C.A. § 8-13-108(a)(4).
11-013 Deeds of Trust, Record of —Deeds conveying title to real estate to secure performance of contract with power to sell in case of default, showing names of parties, terms of contract, location, description, and valuation of property.	Permanent record.	Eligible for recordation under T.C.A. § 66-24-101(8). Kept permanently pursuant to T.C.A. § 8-13-108(a)(4).
11-014 Dormant Mineral Interest Book —Includes declarations of interest and statements of claim. Declarations of mineral interests are instruments transferring by grant, assignment, or reservation or otherwise, an interest of any kind in coal, oil, gas and other minerals. Statements of claim are documents or instruments filed by the owner of an interest to make claim to that interest.	Permanent record.	T.C.A. § 66-5-108. Affects property rights not only for leases, but transfers of mineral interests. Preservation of some of these records are necessary for preserving mineral rights.
11-015 Farm Names, Register of	Permanent record.	This is an historical record. Maintain it if it is present in the office. T.C.A. § 67-5-1008.
11-016 Greenbelt Applications —Applications for special tax treatment afforded certain agricultural, forest and open space land which have been approved by the assessor of property or county or state boards of equalization.	Permanent record.	Can have long term implications regarding roll-back taxes. Keep since there is no way to know when it has been re-certified.
11-017 Greenbelt Certifications of Agricultural Use —Certifications by owner that property will produce a certain level of gross agricultural income.	Retain for seven years, then destroy.	T.C.A. § 67-5-1005. Re-certification necessary at least every 6 years.
11-018 Judgment Enrollment Records —Recorded copies of abstracts of judgments, bills,	Permanent record.	Could affect land title and property rights.

Retention Schedule for Register of Deeds

Description of Record	Retention Period	Legal Authority/ Rationale
<p>and attachments from court cases involving real estate. Judgments show names of plaintiff and defendant, case number, name of court, date and amount of judgment, and date of registration. Bills show names of plaintiff and defendant, date of filing, name of court, date of levy, description of property, case number, and date recorded. Attachments show date registered, names of plaintiff and defendant, name of court, case number, date attachment issued, date of levy, and description of property.</p>		
<p>11-019 Land Entries—Initial applications for public land.</p>	Permanent record.	Keep for historical purposes.
<p>11-020 Land Grants—Recorded copies of absolute conveyances of real property from public to private ownership, showing names of grantor and grantee, date of instrument, location and description of property, consideration, terms of payment, and certificate of recordation.</p>	Permanent record.	Keep for historical purposes.
<p>11-021 Land Sold for Taxes, Record of—Record of court land sales, showing name of the court, style of case, location and description of property, by what process land was sold, and date of sale.</p>	Permanent record.	Record affects land title.
<p>11-022 Leases—Copies of leases or rental contracts on real estate filed for recording, showing names of lessor and lessee, description of property, terms of the contract, date of execution, and signatures of parties involved.</p>	Permanent record.	Eligible for recordation under T.C.A. § 66-24-101(15). Difficult to separate from other permanent records.
<p>11-023 Liens, Mechanic—Notices of lawsuits to be filed in one year from date.</p>	Permanent record.	Impractical to ascertain expiration of lien to know when record could be destroyed.
<p>11-024 Liens, Mechanic and Materialmans—Contract wherein lien is established in writing providing notice of existence of such a lien. Writing sets forth contract price and describes the real estate to be affected with reasonable certainty. In lieu of registration of contract, lienor may file a sworn statement. Pre-dates notices of completion that were not discharged.</p>	Permanent record.	Impractical to ascertain expiration of lien to know when record could be destroyed.
<p>11-025 Liens, Notice of Lawsuit—Notices of lawsuits to be filed to enforce liens.</p>	Permanent record.	T.C.A. § 66-21-201 authorizes recording.
<p>11-026 Liens, Tax—Record of tax lien notices filed against property owners, including violators of the internal revenue law, showing name and address of property owner, date of filing, amount of assessment and penalty, and discharge notice date.</p>	Permanent record.	Impractical to ascertain expiration of lien to know when record could be destroyed.
<p>11-027 Maps and Map Books—County and civil district maps as well as single parcel maps (not part of subdivision).</p>	Permanent record.	Keep for historical purposes.
<p>11-028 Military Discharges, Record of—Recorded copies of discharges from military service, showing name of veteran, date of discharge, reason for discharge, place of birth, age and occupation at time of enlistment, commanding officer's oath, physical description,</p>	Permanent record unless a proper petition to remove is filed. This is voluntary for the individual to record, but it is recommended. Also	Eligible for recordation under T.C.A. § 66-24-101(20). May be removed or redacted pursuant to T.C.A. § 10-7-513

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enlistment record, and register's certificate of registration. DD2-14.	available through the VA, but easier to get locally.	Important historical record. Necessary for use of recorded documents.
<p>11-029 Mortgages, Real Estate, Index to 11-030 Mortgages, Real Estate, Record of (Trust Deeds)—Recorded copies of conditional conveyances of real property, showing names of grantor and grantee, dates instrument executed and recorded, location and description of property, consideration, terms of payment, provisions in case of non-payment, acknowledgment before notary public, and register's certificate of recordation.</p>	Permanent record.	Eligible for recordation under T.C.A. § 66-24-101(8). Keep permanently pursuant to T.C.A. § 8-13-108(a)(4).
<p>11-031 Notebooks—Register's record of instruments received for recording in his or her office, showing date and hour of reception, names of grantor and grantee, name of county, number of acres, and fees received.</p>	Permanent record.	T.C.A. § 8-13-108(a)(3).
<p>11-032 Notice and Terminations of Lis Pendens— An abstract of filing a lien lis pendens on real estate, certified by the clerk, containing the names of the parties to such suit, a description of the real estate affected, its ownership, and a brief statement of the nature and amount of the lien sought to be fixed. Termination orders or notices of termination should also be noted or recorded in the lien book.</p>	Keep five years after termination of lien, then destroy if kept in a format that allows destruction.	T.C.A. § 20-3-101 and following.
<p>11-033 Notice of Completion—Notice filed by owner or purchaser or contractor of improved real property that the improvement is complete. Notice contains the name of the owner of the land, name of contractor, location and description of the property, the date of completion of the structure improvement or demolition, a statement that a settlement of claims of parties entitled to benefits will take place after ten days, name and address of party to whom notice of claims may be sent, and acknowledgment by the person filing the notice, or by his agent or attorney.</p>	If maintained in a separate book and all records within the books are at least 10 years old, then records are eligible for destruction.	T.C.A. § 66-11-205. Affects property rights regarding improvements.
<p>11-034 Oil and Gas Leases—Recorded copies of leases on mineral resources, showing names of lessor and lessee, consideration, location and description of property, terms of the agreement, acknowledgment before a notary public, and the register's certificate of recordation.</p>	Essentially a permanent record.	T.C.A. § 66-24-101. Leases were often for extremely long periods of time (e.g. 99 years or longer).
<p>11-035 Options to Purchase Land—Recorded copies of purchase options showing amount of consideration, parties to the contract, period of time for which option is extended, terms of agreement, description of property, date instrument executed, and register's certificate of registration.</p>	Retain five years after the option or the last extension has expired, then destroy.	Retention based on useful life of contract.
<p>11-036 Plats, Plat Books, and Indexes—Drawings and blueprints of farms, subdivisions, plants, and electric lines, showing name of subject, date drawn, boundaries, scale used, location, name of engineer making survey, name of draftsman, and register's certificate of</p>	Permanent record.	Eligible for recordation (T.C.A. §§ 13-3-402, 13-4-302, 66-24-116).

Retention Schedule for Register of Deeds

Description of Record	Retention Period	Legal Authority/ Rationale
<p>registration. 11-037 Powers of Attorney, Record of—A record of appointment or authorization for another party to act in an individual's behalf.</p>	Permanent record.	Record has long term significance for the parties.
<p>11-038 Releases of Mortgages, Liens and Deeds of Trust on land, Record of— Record of releases made as notes are paid, showing names of parties, dates, amount of fee, and book and page number where original instrument is recorded. These are non-U.C.C. documents.</p>	Permanent record.	Record affects land title.
<p>11-039 Reports of Register to County Mayor and/or County Commission—Reports containing data on revenue received, expenditures, work performed, plans, personnel, etc.</p>	Retain five years after creation of document, then destroy. Should be read into minutes of county commission and made a permanent record there.	Keep for audit purposes (T.C.A. § 10-7-404(a)).
<p>11-040 Reports of State Transfer and Mortgage Taxes to Dept. of Revenue—Monthly report of Register detailing state mortgage and transfer taxes.</p>	Retain five years, then destroy.	Keep for audit purposes (T.C.A. § 10-7-404(a)).
<p>11-041 Surveyor's Books—Survey showing civil district in which property is located surveyor's description, date survey made, and name of surveyor.</p>	Permanent record.	Establishes parcel boundaries. Important document for property owners. T.C.A. § 66-24-116.
<p>11-042 Underground Utilities, Notice of—Notices filed by individuals, corporations or governments that operate underground utilities in the county, including a list of towns or cities where the facilities are located and the name, title, address and telephone number of the operator's representative.</p>	Permanent record.	T.C.A. § 65-31-105. Eligible for recordation.
<p>11-043 Uniform Commercial Code Instruments— Financing statements, amendments, continuations, releases, terminations, etc.</p>	If no termination is filed, retain for three years after maturity date of financing statement or continuation statement, whichever is later. If you have a microfilm of the financing state and a termination is filed, destroy other records upon receipt of termination statement; without microfilm, keep one year, then destroy.	T.C.A. § 47-9-404(2). Necessary for access to U.C.C. filings.
<p>11-044 U.C.C. Instruments, Index for</p>	Permanent record.	
OBSOLETE RECORDS		
<p>11-045 Bankruptcies, Record of— Recorded copies of petitions in bankruptcy, decrees of adjudication of bankruptcy, and court orders approving trustee's bonds.</p>	Retain 60 years, then destroy. Not usually filed in the Register's office any longer. Kept for probable lifetime of the debtor. Eligible for recordation under T.C.A. § 66-24-101(21).	

Retention Schedule for Register of Deeds

Description of Record	Retention Period	Legal Authority/ Rationale
11-046 Chattel Mortgage Indexes		Obsolete record. See Chattel Mortgages, Record of, listed below for retention.
11-047 Chattel Mortgages, Record of —Recorded copies of mortgages given to secure loans on personal property, showing names of mortgages and mortgagees, location and description of chattels, amount of consideration involved, course of action in case any part of agreement is broken, date instrument executed, acknowledgment before notary public, and register's certificate of registration. This record is basically obsolete. It is a pre-U.C.C. filing. Most records would be before early 1960s.		Obsolete record. Most likely this record is combined with trust deeds in a book, and kept together as a permanent record. Has much the same historical value as trust deeds. Whereas trust deeds recorded mortgages on real estate, chattel mortgages recorded liens on tools, equipment, livestock and other forms of personal property. Both kinds of instruments began with and are reflective of the onset of sharecropping tenancy following the Civil War. Even if kept separately from trust deeds, retain permanently for historical purposes.
11-048 Register's Dockets (Bills of Sales) —Record of sales of slaves, land, and deeds of gift, showing date instrument executed, amount involved, description of the property, names of interested parties, power of attorney, date of filing, name of person to whom power is conveyed, conditions of the grant, and signature of person making the conveyance.		Permanent record, but no longer generated by the off. Obsolete. Has historical value. These records pre-date modern system of recordation. Can affect property rights.
11-049 Tobacco Loan Books —A record of loans made on crops showing amount of money borrowed, crop acreage and location, due date, and notary statement.		Obsolete, now covered by the U.C.C. Previously destroyed ten years after last entry in book. Check for historical significance and destroy.

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