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Records-County Clerk

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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Records-County Clerk

Reference Number: CTAS-672

The county clerk serves as the custodian of a wide variety of records which are required to be filed and maintained in the office of the county clerk. Some of these documents are required to be filed and maintained in the office of the county clerk so that members of the public may verify certain information of public concern. The maintenance of these records is one of the most important duties of the county clerk, as the county clerk's office serves as one of the information centers for the county. Some of the many records maintained in the office of the county clerk are discussed below.

In all national, state, and most local elections, the County Election Commission files one copy of its certificate of election returns in the office of the county clerk immediately after the election. The county clerk must provide a receipt acknowledging that the documents have been filed in the county clerk's office. T.C.A. § 2-8-106.

After an election to abolish a city charter, if the majority of voters approve "no charter" the election commissioners are required to make triplicate certificates of the election, filing one with the original petition with the county clerk. When all certificates have been duly filed, the corporation becomes extinct. If the majority votes for the "charter," the commissioners make only one return which is filed with the county clerk with the original petition to abolish the charter. T.C.A. § 6-52-205.

Copies of a proposed metropolitan charter are filed by the charter commission with the county clerk and other designated officials. The proposed charter must be open to public inspection by any interested person. T.C.A. § 7-2-105. The election returns are sent by the election commission to the Secretary of State, who issues a proclamation of the adoption or rejection of the proposal. One copy is sent to the county clerk who attaches it to the copy of the proposed charter. If the charter was adopted, the clerk delivers the county clerk's copy of the charter and proclamation to the officer of the new government as the charter may direct. T.C.A. § 7-2-106.

Before a local bar association can receive a copy of each year's acts of the General Assembly for its library, the county clerk must certify the name and address of the association to the Secretary of State. In the event the association ceases to exist or to maintain a law library, all copies of the acts are to be turned over to the county clerk. T.C.A. § 12-6-102.

Pedigree books are maintained by the county clerk for registering the pedigree of jacks or bulls used for public breeding. The registrant makes an oath that the pedigree is genuine. T.C.A. § 44-7-301.

County indigent institution records of vouchers for expenditures and books of accounts are examined by the county mayor at the end of each year. If the vouchers are approved, they are filed in the county clerk's office and preserved in separate files. T.C.A. § 71-5-2208.

Counties are authorized to make appropriations to assist charities. Any charity desiring financial assistance must file an annual report, including a copy of its annual audit, its program which serves the residents of the county, and the proposed use of the county assistance, with the county clerk. Instead of the annual audit, the organization may file an annual report detailing all receipts and expenditures. The report must be prepared and certified by the chief financial officer of the organization. T.C.A. § 5-9-109.

General contractors are no longer required to record their licenses in the office of the county clerk, but the county clerk can obtain a roster of licensed contractors from the state board of licensing contractors by requesting the same in writing. T.C.A. § 62-6-110. Veterinarians also are no longer required to record their licenses in the county clerk's office. T.C.A. § 63-12-118, repealed. The requirement that real estate brokers file a bond with the county clerk has also been repealed. T.C.A. § 62-13-306, repealed. The former duties of the county clerk in filing contractors' bonds to discharge mechanics' and materialmen's liens were transferred to the register of deeds effective in 1994. T.C.A. § 66-11-142.

County clerks are required to index the records in their offices, and to cross-index records pertaining to more than one party. T.C.A. § 10-7-201. Records must be open to public inspection during business hours (T.C.A. § 10-7-503), and copies may be made of any public record. T.C.A. § 10-7-506.

The county legislative body is authorized to have the record books of the county clerk rebound in order to preserve them and keep them in proper condition. T.C.A. § 10-7-119. During the rebinding of these records, the liability of the county clerk on his or her official bond for the proper safekeeping of such books is suspended. T.C.A. § 10-7-120.

Public Records

Reference Number: CTAS-673

All county records, including those in the county clerk's office, must be open for personal inspection by any citizen of Tennessee during business hours of the office. County officials in charge of these records may not refuse the right of any citizen to inspect them unless another statute specifically provides otherwise or they are included in the list of specific records that are to be kept confidential under T.C.A. § 10-7-504 or some other legal authority. Information made confidential by statute must be redacted whenever possible. If it is not practicable for a requested record to be promptly made available for inspection, the records custodian must, within seven (7) business days, either: (i) make the record available; (ii) deny the request in writing stating the basis for the denial; or (iii) furnish the requestor a response form stating the time reasonably necessary to produce such record. T.C.A. § 10-7-503.

The state's Office of Open Records Counsel, created in 2008, was charged with developing a schedule of reasonable charges which may be used as a guideline in establishing charges or fees, if any, to charge a citizen requesting copies of public records. The Office of Open Records Counsel issued its Schedule of Reasonable Charges for Copies of Public Records in October 2008. Records custodians are authorized to charge reasonable costs consistent with the schedule. T.C.A. § 10-7-503. The schedule, together with instructions for records custodians, can be found on the website of the Office of Open Records Counsel.

Charges established under separate legal authority are not governed by the schedule, and are not to be added to or combined with charges authorized under the schedule. Questions regarding the schedule should be directed to the *Office of Open Records Counsel*.

A citizen denied access to a public record is entitled to file a petition for inspection in the circuit court or the chancery court of the county in which the records are located, or in any other court of that county having equity jurisdiction. The county official denying access to the record has the burden of proof to justify the reason for nondisclosure. If the court directs disclosure, the county official shall not be held criminally or civilly liable for the release of the records, nor shall he or she be responsible for any damages caused by the release of the information. If the refusal to disclose the record is willful, the court may assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the county official. T.C.A. § 10-7-505.

In addition to creating a schedule of charges for records requests, the Office of Open Records Counsel has been charged with the duty to answer questions and issue advisory opinions to public officials regarding public records. T.C.A. § 8-4-601. This office should be a valuable resource for questions on open records.

Confidential Tax Information

Reference Number: CTAS-674

There are specific statutes requiring confidentiality of state tax information. The general statute (T.C.A. § 67-1-1702(a)) provides:

Notwithstanding any law to the contrary, returns, tax information and tax administration information shall be confidential and, except as authorized by this part, no officer or employee of the department or of any office of a district attorney general or any state or local law enforcement agency, and no other person, or officer or employee of the state, who has or had access to such information shall disclose any such information obtained by such officer or employee in any manner in connection with such officer's or employee's service as an officer or employee, or obtained pursuant to this part, or obtained otherwise.

Violation of this confidentiality statute is a criminal offense.

Because the statute makes reference to "tax information" and "returns" which are defined with reference to taxes collected by or on behalf of the state (T.C.A. § 67-1-1701), there has been confusion over the release of tax information which is purely local, such as hotel/motel tax. The Tennessee Attorney General had issued an opinion that information regarding local hotel/motel taxes was subject to the state confidentiality statute (Attorney General Opinion No. U94-059 dated March 24, 1994), but T.C.A. § 67-1-1702 was amended in 2016 to state that these confidentiality provisions (T.C.A. § 67-1-1701 *et seq.*) do not apply to hotel/motel taxes. Accordingly, hotel/motel tax records are no longer confidential.

In addition to the general statute, business tax returns, statements, reports, and audits of the taxpayer's records are confidential and cannot be disclosed except to the taxpayer, the taxpayer's attorney, or an authorized governmental entity (T.C.A. § 67-4-722), but the name and address of any present or former business owner as appearing on a business license or application therefor is expressly declared to be a public record and not confidential. T.C.A. § 67-4-722.

Uniform Motor Vehicle Records Disclosure Act

Reference Number: CTAS-675

Personal information obtained in connection with motor vehicle records is declared confidential and cannot be disclosed except under specified circumstances. "Personal information" is defined as information that identifies a person, and includes an individual's photograph, computerized image, social security number, driver identification number, name, address (but not the five-digit zip code), telephone number, and medical or disability information, but it does not include information on vehicular accidents, driving or equipment-related violations, or driver license or registration status. T.C.A. § 55-25-103. Personal information may be disclosed only under the following circumstances:

1. For safety, environmental and federal compliance purposes, as provided in T.C.A. § 55-25-105.
2. With the written consent of the person who is the subject of the information. T.C.A. § 55-25-106.
3. For use by a government agency, including any court or law enforcement agency, in carrying out its functions, or any private person acting on behalf of a government agency in carrying out its functions. T.C.A. § 55-25-107.
4. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers. T.C.A. § 55-25-107.
5. For use in the normal course of business by a legitimate business, but only to verify the accuracy of personal information submitted by an individual to the business, and if the information submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against the individual. T.C.A. § 55-25-107.
6. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to a court order. T.C.A. § 55-25-107.
7. For use in research activities, and for use in producing statistical reports, so long as the information is not published, redisclosed or used to contact individuals. T.C.A. § 55-25-107.
8. For use by any insurer or insurance support organization, or by a self-insured entity, its agents, employees or contractors, in connection with claims investigation activities, anti-fraud activities, rating or underwriting. T.C.A. § 55-25-107.
9. For use in providing notice to owners of towed or impounded vehicles. T.C.A. § 55-25-107.
10. For use by any private investigative agency or licensed security service for any permitted purpose. T.C.A. § 55-25-107.
11. For use by any employer or its agent or insurer to obtain or verify information relating to the holder of a commercial driver license that is required under the Commercial Motor Vehicle Safety Act of 1986. T.C.A. § 55-25-107.
12. In connection with the operation of private toll transportation facilities. T.C.A. § 55-25-107.
13. For any other use in response to requests for individual motor vehicle records if the state has obtained the express consent of the person to whom the personal information pertains. T.C.A. § 55-25-107.
14. For bulk distribution for surveys, marketing or solicitation in accordance with procedures adopted by the department, after persons have been given an opportunity to prohibit such disclosure. T.C.A. § 55-25-107.
15. By any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains. T.C.A. § 55-25-107.
16. For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety. T.C.A. § 55-25-107.

Personal information may be disclosed to any requesting person, regardless of intended use, if the forms for issuance or renewal of licenses, registrations, titles or identification documents contain a conspicuous notice that the personal information may be disclosed to any person making a request for the information, and provide in a clear and conspicuous manner a method for the applicant to prohibit such disclosure. T.C.A. § 55-25-106. Thus, as long as the forms contain the proper disclosure information, it will be the

applicant's responsibility to take action to prohibit disclosure of his or her personal information. Otherwise, the information may be disclosed.

The Department of Safety is authorized to require the requesting person to meet certain conditions relative to the identity of the person, and if relevant, the authorized use of the information, or the consent of the subject. The conditions may include the filing of a written application containing such information and certification requirements as the department may prescribe. T.C.A. § 55-25-109. Anyone who misrepresents his or her identity or makes a false statement in connection with the request for disclosure of personal information is guilty of a Class C misdemeanor, punishable by a fine up to \$1,000. T.C.A. § 55-25-112.

Persons who obtain personal information are limited in their ability to resell or redisclose that information as provided in T.C.A. § 55-25-107, and are required to keep records of the information obtained and the permitted use for which it was obtained for a period of five years. These requirements do not apply, however, if the person who is the subject of the disclosure has not taken action to prohibit disclosure after having been given the opportunity to do so. T.C.A. § 55-25-107.

The department and the county clerk are authorized to charge a reasonable fee not over one dollar (\$1.00) for each person on whom information is requested. T.C.A. § 55-2-106.

Confidential Employee Records

Reference Number: CTAS-676

For county governments, one important class of confidential records involves personal information of state, county, municipal, and other public employees. An employee's, including a former employee's, home telephone and personal cell phone numbers, bank account information, health savings account information, retirement account information, pension account information, social security number, residential address, driver's license information (except where driving is a part of the employee's job), emergency contact information, and similar information for the employee's family and household members are confidential. Where this confidential information is part of a file or document that would otherwise be public information, such information shall be redacted if possible so that the public may still have access to the non-confidential portion of the file or document. T.C.A. § 10-7-504. The information made confidential under this statute is to be redacted whenever possible so that it does not limit the public's access to other information which is not confidential.

Records on Computer Media

Reference Number: CTAS-677

The county clerk and other governmental officials are authorized to maintain on a computer any information required to be kept as a record, instead of maintaining bound books or paper records, but only if certain standards are met. The standards for maintaining records on computer media are (T.C.A. § 10-7-121):

1. The information must be available for public inspection, unless it is a confidential record according to law;
2. Due care must be taken to maintain the information that is a public record during the time required for retention;
3. All daily information generated and stored in the computer must be copied daily to computer storage media, and all copied storage media over one week old must be stored at another location; and
4. The official must be able to provide a paper copy of the information when needed or when requested by a member of the public.

Also, upon the promulgation of proper rules by the secretary of state, county officers may destroy or archive elsewhere, as appropriate, original paper records upon reproduction onto computer storage media, or in any appropriate electronic medium, after following certain procedures and standards and having the destruction or record transfer approved by the County Public Records Commission and the State Library and Archives. T.C.A. § 10-7-404.

Effective in 2008, all municipalities and counties must create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by such municipality or county. Failure to comply creates a cause of action or claim for damages against the municipality or county if a citizen of this state proves by clear and convincing evidence that such citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen's confidential information. T.C.A. § 47-18-2901.

Storage and Disposition of Records

Reference Number: CTAS-678

A large number of records are required to be maintained by the county clerk. Storage problems usually occur which require the county clerk to seek a method to dispose of old and obsolete records. Since many of the records maintained by the county clerk are historically significant, great care must be taken in the storage and/or disposition of old or less frequently utilized records.

Recognizing the problems that counties encounter with records disposition, the General Assembly created a statutory framework for the storage or disposition of county records T.C.A. § 10-7-401 *et seq.* Each county is required to establish a County Public Records Commission to oversee the storage or disposal process. The county clerk serves as a member of the Commission. T.C.A. § 10-7-401. Original permanent records which have been reproduced or microfilmed cannot be legally destroyed without approval of the Commission. T.C.A. § 10-7-404. See Retention Schedules for county clerks.

Archives and Records Management Fee

Reference Number: CTAS-679

All counties with a County Public Records Commission are authorized to establish by resolution of the county legislative body, and collect through all entities creating public records (except the register of deeds and court clerks) an archives and records management fee of up to five dollars (\$5.00) per document filed. The county is authorized to collect an archives and records management fee of up to five dollars (\$5.00) through court clerks on documents filed with the clerk for the purpose of initiating a legal proceeding. Monies collected through these fees must be designated exclusively for duplicating, storing, and maintaining any records required by law to be kept permanently. T.C.A. § 10-7-408.

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