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Requirements for Acceptance of Instruments

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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Requirements for Acceptance of Instruments 3
Legibility/Language 3
Authentication/Acknowledgment 3
Name and Address of Owner and Taxpayer 4
Reference to Previously Registered Instruments 4
Name and Address of Preparer 4
Parcel Identification Number 4
Payment of Transfer or Mortgage Tax 5
Electronic Records 5
Specific Rules for UCC Records 5
Specific Rules for Plats 6
Payment of the Statutory Fees 7

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.

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