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Recording, Filing and Indexing

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,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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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.

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