



County Technical Assistance Service

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Duties-Register of Deeds

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily 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 e-Li material.

Sincerely,

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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.

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.

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.

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 evidenced by an endorsement in writing on the plat. T.C.A. § 13-3-402.

The same definitions of a plat of a subdivision apply to plats in a municipality which require the approval of the municipal planning commission before the plat can be accepted for record 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.

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.

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).

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.

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; or
8. A deed executed by the trustee of a revocable living trust to implement a testamentary devise by the trustor of the trust.

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. 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 Chaten 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 offi-

cial, 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.

Redaction of Personally Identifying Information

Reference Number: CTAS-2202

T.C.A. § 10-7-515 prohibits document preparers from placing personally identifying information on documents, other than powers of attorney, filed or recorded in the register's office. However, registers cannot refuse to record a document based on failure of the preparer to comply with the law. The validity of the document is also not affected by failure of the preparer to comply with this law.

Certain persons may request the register redact their personally identifying information from a document by submitting a written request form to the register. If the record is in a format that permits redaction, the register shall record the request form and then redact the personally identifying information. If redaction is not practicable, the register should not record the request form and should inform the requestor why redaction cannot occur either verbally or in writing.

Registers are authorized, on their own initiative, to redact any personally identifying information that is found on a recorded document maintained on a computer or removable computer storage media, including CD-ROM disk, if the records are stored in a manner that permits redaction.

Compliance with the requirements in § 10-7-515 satisfies all of the obligations of a county register under Section 10-7-504(a)(28) relative to the nondisclosure of personally identifying information.

For purposes of T.C.A. § 10-7-515, "personally identifying information" means:

- (i) social security numbers
- (ii) official state or government issued driver licenses or identification numbers
- (iii) alien registration numbers or passport numbers
- (iv) employer or taxpayer identification numbers
- (v) unique biometric data (ex. fingerprints)
- (vi) unique electronic identification numbers, addresses, routing codes, etc., which would allow an individual to obtain merchandise or otherwise financially encumber the legitimate possessor of the data

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.

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