

REGISTER OF DEEDS

Legal Issues

Kristy Godsey Brown, CTAS Manager of Legal Services

Rick Hall, CTAS County Government Consultant

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County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE

PART ONE

LEGAL REQUIREMENTS AND DUTIES OF THE OFFICE



County Technical Assistance Service
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Legal Requirements for Holding Office

- Article 7, Section 1 of the Tennessee Constitution requires each county to elect a Register for a term of four years.
 - *No qualifications in state constitution-- legislature sets qualifications.*
- Legislative qualifications:
 - *Citizen of the United States and of Tennessee. T.C.A. § 8-18-101.*
 - *Eighteen (18) years of age upon taking office. T.C.A. § 8-18-101.*
 - *Must reside in the county during the term of office. T.C.A. § 8-13-104.*
 - *No requirements regarding education or experience.*



Method of Election and Term of Office

- Popular vote at the regular August general election.
- Term begins on September 1 and continues for four years or until a vacancy occurs or a successor is elected and qualified to take over the responsibilities of the office. T.C.A. § 8-13-101; Sections 1 and 5, Article 7, Tennessee Constitution.

Ouster

- The Register and other county officials may be ousted (removed) from office for any one of the following reasons:
 - *Willful misconduct in office*
 - *Willful neglect in the performance of the duties of the office*
 - *Voluntary, public intoxication*
 - *Illegal gambling*
 - *Committing a crime involving moral turpitude.*
T.C.A. § 8-47-101.
- An ouster proceeding is a civil, not a criminal, action.
- The actions are brought in the circuit, chancery, or criminal court of the county wherein the official holds office.
T.C.A. § 8-47-103.





Can be removed due to criminal convictions.



Defined in T.C.A. § 39-16-402 and constitutes a Class E felony.



Removal from office and barred from holding public office for ten (10) years from the date the conviction becomes final.
T.C.A. § 39-16-406.

Removal for Official Misconduct

Removal for Conflict of Interest

- Upon conviction for violation of the basic conflict of interest statute, T.C.A. § 12-4-101, the official will be dismissed from office and will be ineligible to hold the same or a similar office for ten (10) years. T.C.A. § 12-4-102.

Vacancy

- Tennessee Code Annotated, § 8-48-101, provides that any elective office in Tennessee may become vacant through the following circumstances:
 - *Death*
 - *Resignation*
 - *Moving out of district*
 - *Election/Appointment declared void*
 - *Act of General Assembly*



Vacancy

- *Being sentenced to prison*
- *Becoming insane*
- A vacancy also exists upon the ouster of the official.
- Failure of the Register to give bond will also cause a vacancy. T.C.A. § 8-13-104.

Vacancy

- How is vacancy filled?
 - *Vacancy is temporarily filled by the county legislative body.*
 - *That person serves until a successor is elected at the next general election in the county and is qualified according to law; provided that the candidates have sufficient time to qualify for the office as provided in T.C.A. § 2-14-106. T.C.A. § 5-1-104.*
- Who runs the office until then?
 - *The Register may appoint a deputy who, in the event of the death, resignation or removal of the incumbent, can carry out the duties of the office until an appointment to fill the vacancy on a temporary basis is made by the county legislative body. T.C.A. § 8-13-105.*

Duties of the Register

- Primary Duty: Make and preserve a record of instruments required or allowed by law to be filed or recorded in your office.
 - *Public Notice*
 - *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.*
 - There is an exception for repair of books. T.C.A. §§ 10-7-119, 120.
 - Registers are also now authorized to store their records at another suitable facility, which is defined as a location providing protection against theft and natural disasters. T.C.A. § 8-13-107.
- Documents recorded in your office include:
 - *Deeds, powers of attorney, deeds of trust, mortgages, liens, contracts, plats, leases, judgments, wills (probated), court orders, military discharges, UCC records and other types of documents. T.C.A. § 66-24-101.*

PART TWO

TYPES OF DOCUMENTS



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Bundle of Rights Theory

- Ownership interests = a bundle of sticks. A deed may convey one stick, two or three sticks, or the entire bundle.
 - *A full bundle of all the “sticks” (all that it is possible to own under our law) is a fee simple absolute estate in the real property.*
- The “owner” of real property may have the most “sticks,” but he or she may have conveyed many other “sticks”.
 - *Ex. Conveying an easement to a water company to run a pipeline under the surface and along a certain path or conveying mineral or subsurface rights to a coal company.*

Legal vs. Equitable Interests



“Legal” interests refer to formal legal title. Interest held “in trust” for the benefit of lenders.



Person conveying “legal” interest retains the “equitable” interest and is generally considered the “owner” of the property and must pay taxes as the owner.



Holder of the legal interest 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.

Property Interests

- 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.



Most Common Instruments Relating to Real Property

Affidavits of Affixation

Affidavits of Scrivener's
Error And Other Affidavits
Helping Identify Title To
Land

Appointment of a
Substitute Trustee



Most Common Instruments Relating to Real Property

Assignment of a Deed of Trust

Assumption Agreements

Most Common Instruments Relating to Real Property

Bond to
Discharge Lien

Court Decrees

Deed of
Correction

Most Common Instruments Relating to Real Property

Deed of Trust

Installment Deed

Instruments
Relating To Mineral
Claims

Most Common Instruments Relating to Real Property

Liens (Generally)

Negative Pledge

Notice of Meth Lab
Quarantine /
Certificate of Fitness



Most Common Instruments Relating to Real Property

Notice of Results of Tax
Sale

Oil, Gas or Mineral Lease

Order Sustaining Petition
For Condemnation of
Property

Partition Deed



Most Common Instruments Relating to Real Property

Plat

Quitclaim Deed

Real Estate Contract



Most Common Instruments Relating to Real Property

Restrictive
Covenant

Timber Deed

Warranty
Deed

Most Common Instruments Relating to Real Property

Wills

Must be probated to be recorded.

Identification and Purpose of UCC Records

Amendment

- *Includes assignment, continuation statement, collateral change, and termination statement, as well as the former amendment function. Must contain the file number of the initial financing statement that is being amended. T.C.A. § 47-9-512.*

Assignment

- *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. T.C.A. § 47-9-514.*

Continuation Statement

- *An amendment which is filed to continue the effectiveness of the identified financing statement. T.C.A. § 47-9-102(a)(27).*

Identification and Purpose of UCC Instruments (Records)

Financing Statement

- *An initial financing statement and any filed record relating to the initial financing statement.*

Information Statement

- *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. At a minimum, identifies the debtor and secured party and the collateral subject to the security agreement. May also include an assignment of the security interest to a new secured party. May state that the document is to be recorded in the real estate records. T.C.A. § 47-9-502.*

Identification and Purpose of UCC Instruments (Records)

Security Agreement

- *Basic instrument which creates or provides for a security interest and establishes the terms of the secured transaction. T.C.A. § 47-9-102(a)(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 Statement

- *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(a)(80), 47-9-513.*



Other Documents

- Depositions
- Officials' Bonds
- Powers of Attorney
- Revenue Reports

Documents Related to Annexation

- Municipalities are required to record annexation resolutions approved by referendum in the register of deeds' office in the county in which the annexation occurs. T.C.A. § 6-51-121.
- Municipalities are also required to record deannexation ordinances in the register of deeds' office in the county in which the deannexation occurs. T.C.A. § 6-51-203.

PART THREE

RECORDING REQUIREMENTS, FEES AND TAXES



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Requirements for Acceptance



- **Main Rule:** The Register should not try to determine the legal sufficiency of an instrument, but rather, must determine whether the instrument is acceptable for registration.

Requirements for Acceptance of Instruments

- Documents must:
 - *Be legible. T.C.A. § 66-24-101.*
 - *Be authenticated. T.C.A. § 66-22-101.*
 - *Have name and address of owner and taxpayer (deeds). T.C.A. § 66-24-114.*
 - *Contain derivation clause (except releases of liens). T.C.A. § 66-24-110.*
 - *Have name and address of preparer. T.C.A. § 66-24-115.*
 - *Contain parcel identification number (deeds). T.C.A. § 66-24-122.*
 - *Be accompanied by appropriate fees and transfer or mortgage tax (if due). T.C.A. §§ 8-13-111 and 67-4-409.*



Requirements for Acceptance

- Legibility
 - *May be the basis to refuse a document.*
 - There are some exceptions to this.
 - *May also refuse if document not written in English and there is no accompanying translation attached.*



Requirements for Acceptance

- Authentication
 - *Original signature requirements. T.C.A. § 66-22-101.*
 - *Foreign notaries. T.C.A. § 66-22-115.*
 - *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.*



Requirements for Acceptance



Must include the name and address of the owner and taxpayer if it is a deed.

T.C.A. § 66-24-114.



Must include name and address of preparer.

T.C.A. § 66-24-115.



Must provide reference to previously registered instruments.

T.C.A. § 66-24-110.



Must include parcel identification number.

T.C.A. § 66-24-122.



Must pay transfer or mortgage tax, if due.

T.C.A. § 67-4-409.

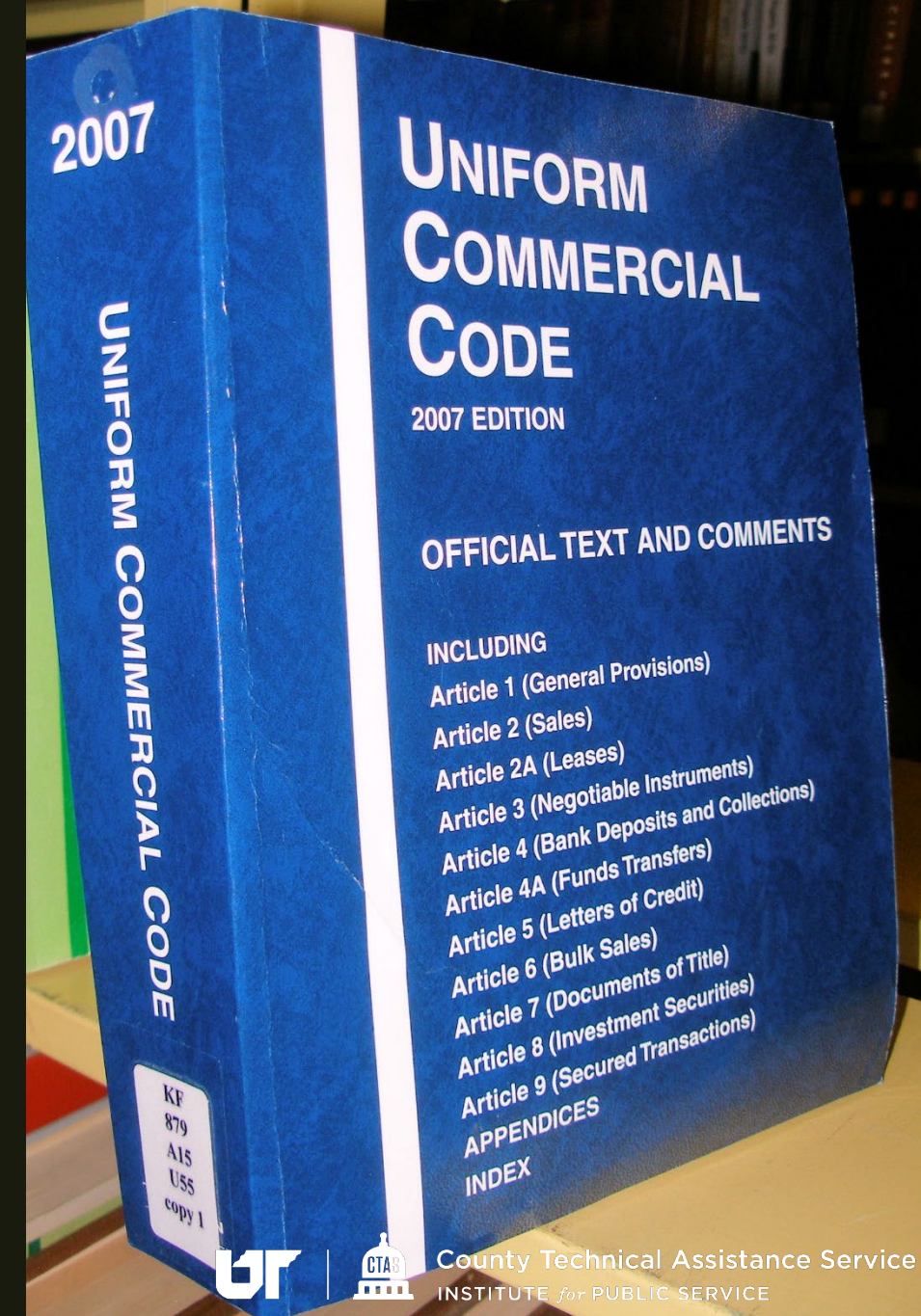


Must pay the statutory fees.

T.C.A. § 8-13-111.

Specific Rules for UCC Records

- Do not have to be acknowledged in order to be filed in the Register's office.
- The “mortgage tax”, if due, must be paid before the Register accepts the instrument. T.C.A. § 67-4-409.
- Register's fee must also be paid before the UCC instrument is accepted. T.C.A. § 8-13-111.
- T.C.A. § 47-9-516 lists the reasons a Register may refuse to accept and file or record a UCC record (ex. unable to index).
- Filing a UCC record in the wrong office is NOT a reason to reject it. 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

- RPC approval required. T.C.A. § 13-3-402 (may delegate approval of certain plats to staff).
- Seal of registered land surveyor who prepared the document required. T.C.A. § 66-24-116.
- All words and figures must be legible and provide sufficient clarity for reduction and/or reproduction. T.C.A. § 66-24-116.
- Each RPC approved plat 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.
- Amendments must also be approved by the planning commission. Exception: 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.



Fees

- Registers are entitled to receive required fees before accepting an instrument for registration. Generally, no person or entity, governmental or private, is exempt from the fee requirement (exceptions in Anderson and Shelby). T.C.A. § 8-13-111.
- 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.
- 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 records or corporate charters.*
- Registers may apply to a court to determine any question arising under the law regarding fees. T.C.A. § 8-21-105.



Fees

- Registers are required to extend credit to the State of Tennessee. Submit the bill for fees due from the state to the Commissioner of Finance and Administration. T.C.A. § 12-2-106.
- Registers must also 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. T.C.A. § 66-21-201.

A photograph of wooden blocks on a wooden surface. The word 'FEES' is spelled out using four blocks in a row: 'F' (4), 'E' (1), 'E' (1), and 'S' (1). Other blocks with letters 'B', 'C', 'E', 'R', 'N', and 'D' are scattered around.

Fees

- Computer Fee—Additional fee of \$2.00 per non-UCC instrument. Earmarked for computerization in all but three counties (Morgan, Scott and Sevier). For UCC instruments, it is \$2.00 of the \$15.00 standard fee. Jefferson County is authorized to charge an additional \$2.00 DP fee. Fees earmarked for computerization must be accounted for separately from the other “standard” fees of the office. T.C.A. § 8-21-1001.
- By a two-thirds (2/3) vote of the county legislative body, Registers in Marshall, Lincoln, Maury, Rutherford and Hamilton counties may use the revenue for other purposes directly related to the official functions of the office. Registers must also obtain county legislative body approval prior to making each purchase using these funds.
- Electronic Filing Fee. 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.

Fees

- Partnership Fee Issues. Standard fees apply to documents including 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. Revised Uniform Partnership Act of 2001 (RUPA), codified at T.C.A. § 61-1-101 *et seq.*
 - *Special fee structure applies to certain limited partnership and LLC documents as well as corporate charters and related documents.*

Fees

- UCC Fees (T.C.A. § 47-9-525)
 - Fee for UCC financing statements relating to fixtures recorded in the real estate records is \$15.00.
 - Fee for amendments and information statements is \$15.00.
 - For written records, Registers may charge \$15.00 for each additional debtor required to be indexed.
 - Where a husband and wife are both listed as debtors on an initial financing statement, this is two names and a fee of \$30.00 should be charged.
 - An individual or corporation may add an alias (DBA, AKA, etc.) as an additional debtor.
 - The keys to determining whether an additional fee should be charged are whether the record is communicated in writing and the additional name is required to be indexed under the UCC.

Fees

- Other Issues:

- 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. Each additional instrument is \$5.00. T.C.A. § 8-21-1001(b)(4).
- 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).

Fees

- The Register must adopt an overage policy. T.C.A. § 8-13-111. The policy 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.*

Collection of State Taxes

- 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.

Transfer Tax

- Tax on transfer of a freehold interest in real estate.
- Deed, court decree, partition deed or any other instrument (ex. easement).
- The grantee must pay the tax on the value of the property or the consideration given, *whichever is greater*. The rate of the transfer tax is thirty-seven cents (37¢) per one hundred dollars (\$100.00) of value or consideration.
- Quitclaim Deeds: 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 grantee, grantee's agent or a trustee acting for the grantee makes the oath.
- 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.
- No oath of value is required in any transaction which is exempt. Oath is required for quitclaim deeds.





Transfer Tax

- No transfer tax is due on the transfer of any real estate which is:
 - A leasehold estate (estate for a fixed number of years);
 - The creation or dissolution of a tenancy by the entirety;
 - A deed of division in kind of realty formerly held by tenants in common;
 - A release of a life estate to the beneficiaries of the remainder interest;
 - A deed or deeds executed by an executor to implement a testamentary devise;
 - A domestic settlement decree and/or domestic decrees and/or deeds which are an adjustment of property rights between divorcing parties;
 - 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;
 - A deed executed by the trustee of a revocable living trust to implement a testamentary devise by the trustor of the trust; or
 - A deed executed by the trustee of a testamentary trust or revocable living trust to implement the distribution of the real property to a trust beneficiary or beneficiaries.

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

Mortgage Tax



Tax on the privilege of recording or filing any instrument evidencing an indebtedness:

- Mortgages
- Deeds of trust
- Conditional sales contracts
- UCC financing statements
- Liens on personal property, other than motor vehicles

Not Subject to Tax:

- Judgment liens
- Contractor's liens
- Subcontractor's liens
- Furnisher's liens
- Laborer's liens
- Mechanic's and materialmen's liens
- 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.
- 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.



Mortgage Tax

- 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.
- 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.



Mortgage Tax

- 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. No link exists between whether tax is paid and priority of instruments filed under the provisions of the UCC.
- 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).

Mortgage Tax

- Increase in indebtedness / underpayment.
 - *Holder of the indebtedness pays 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 fails to pay or underpays the tax, including any tax increase due to an increase in indebtedness, then the holder is 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).*



Tax Exemptions

- A “municipality” is exempt when the grantee or transferee (transfer tax) and the holder or owner of the debt or the debtor (“mortgage” tax).
 - *“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.*
- The recording or filing of certain instruments is exempt from tax under federal law. For example, transfers that are made pursuant to bankruptcy court orders are exempt from tax.
- UCC instruments which secure an interest solely in “investment” property such as stocks and bonds are exempt from the mortgage tax.

More Tax Exemptions

- Instruments made pursuant to the following are exempt from both transfer and mortgage tax:
 - *Mergers*
 - *Consolidations*
 - *Sales/Transfers of substantially all corporate assets*
 - *Reorganizations*
 - The Department of Revenue interprets this subsection very liberally.

Common Tax Exemptions

- Certain Investment Companies: Applies to certain investment companies operating under T.C.A § 67-4-122 and to instruments evidencing an indebtedness of a health and educational facility corporation formed under Tennessee Code Annotated, Title 48, Chapter 3, Part 3.
- 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.
- 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. § 65-25-222.
- 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.



Common Tax Exemptions

- 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.
- 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.
- 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.
- FHA. Same as THDA.



Common Tax Exemptions

- Local Utilities. If the utility is a governmental entity, then the instrument is exempt from the mortgage tax if the utility is the owner or holder of the indebtedness (T.C.A. § 67-4-409(f)) or the debtor (sovereign immunity). The instrument is exempt from transfer tax if the utility is the grantee.
 - *Private utilities and cooperatives are subject to recording taxes unless another specific statute (federal or state) provides for an exemption (which is the case in some instances).*
- 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.
- 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).



PART FOUR

FINANCIAL ISSUES



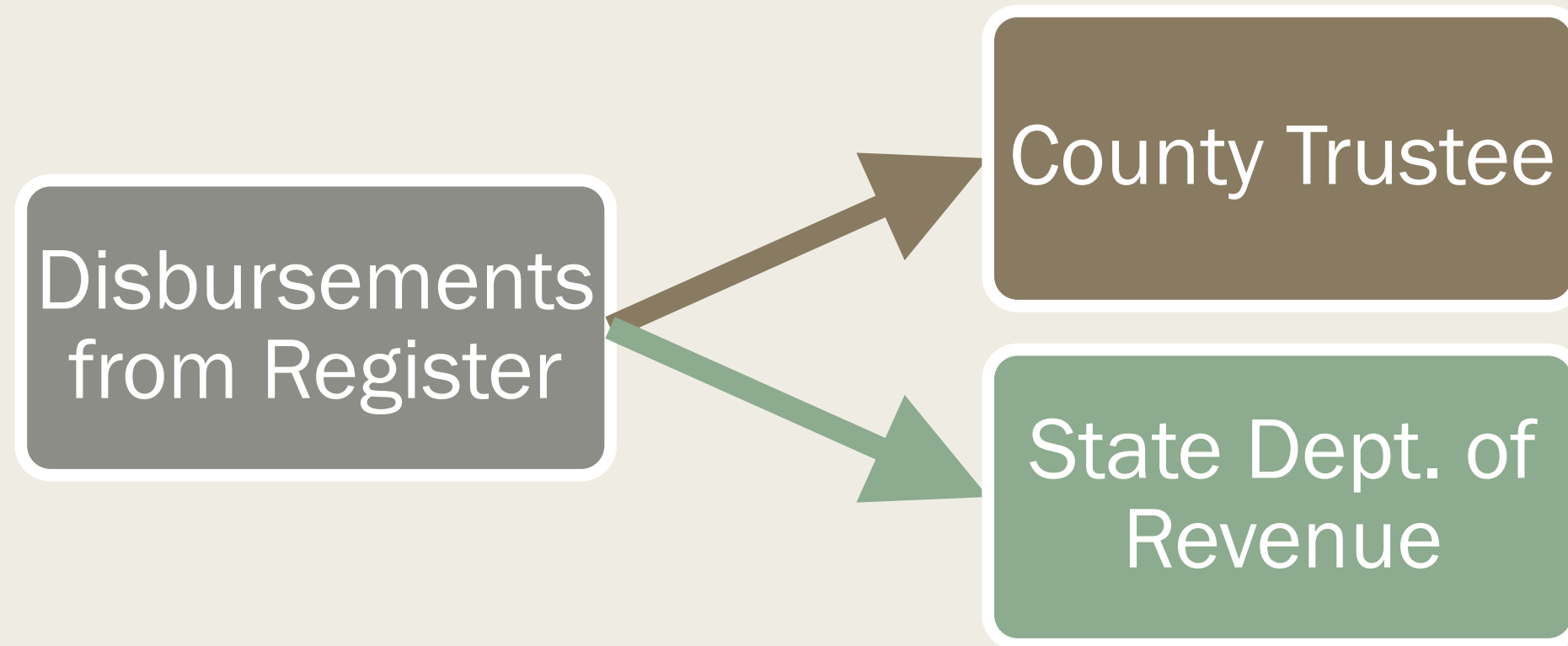
County Technical Assistance Service
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Financial & Accounting Duties

- Must keep a record of all funds received by the office
- Must use a system of accounting approved by the Comptroller of the Treasury
- Keep a cash journal (paper or electronic format)
 - *Date collected*
 - *Name of the person or entity*
 - *Amount collected*
 - *Whether funds are a fee or tax*



Financial & Accounting Duties



Financial & Accounting Duties

- County legislative body determines frequency of remittance
 - *Monthly – If under budget system & only disbursements sent to county trustee and Department of Revenue*
 - *Quarterly - If under fee system & only remitting excess fees to the county trustee (could include items such as salary)*



Official Bank Account



Required to maintain a bank account in name/title of Register of Deeds



Disbursements made by pre-numbered checks



Deposit all funds within 3 business days after receipt



Collateralization, if applicable



Class C misdemeanor if violated

Form of Payment

- Checks
- Money orders
- Credit or debit cards
 - *CLB can waive credit/debit card processing fees*



Receipts

- You must issue a receipt for money received and keep a duplicate in the office
- Duplicate receipts must be kept for at least 5 years & be available upon demand
- Receipts must be consecutively numbered & kept in a well-bound book or in a manner approved by the Comptroller of the Treasury

Budgetary vs Fee System

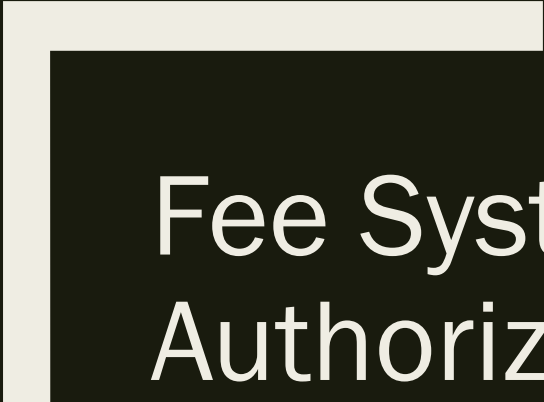
County commission decides whether fee offices are on Budgetary or Fee System:

■ Budgetary System

- *All fees are turned over to the general fund monthly*
- *All expenses of the office are budgeted*
- *Sheriff is always under budgetary system*

■ Fee System

- *Only “excess” fees are turned over quarterly*
- *Salaries and expenses are paid from fee account*
- *Population exception for a few counties regarding fee remittance*



Fee System – Authorized Reserve Funds

- An amount equal to 3 times the monthly salaries of the register of deeds, deputies, & assistants



Legal Authority - Budgeting

Private Act

General Law

1981/1957
Acts

Charter/Metro

Budgeting Laws

General Law

• 36 counties

Fiscal Controls Act of
1957

• 15 counties

The County Financial
Management Act of
1981

• 26 counties

Metro/Charter

• 5 counties

Private Act

• 12 counties



Role of County Commission (CLB)



Fiscal Responsibility

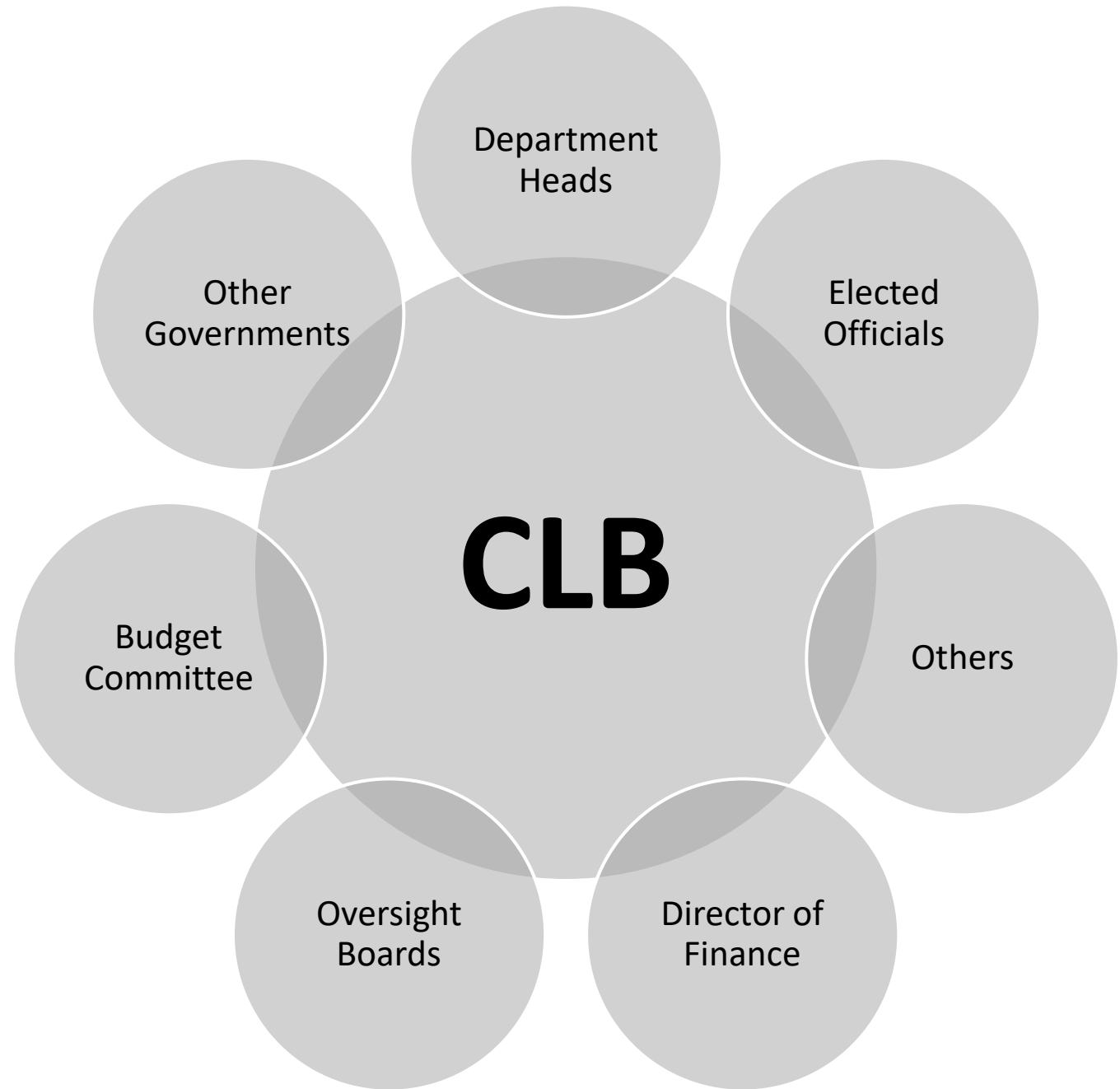
- Budget
- Tax Levies



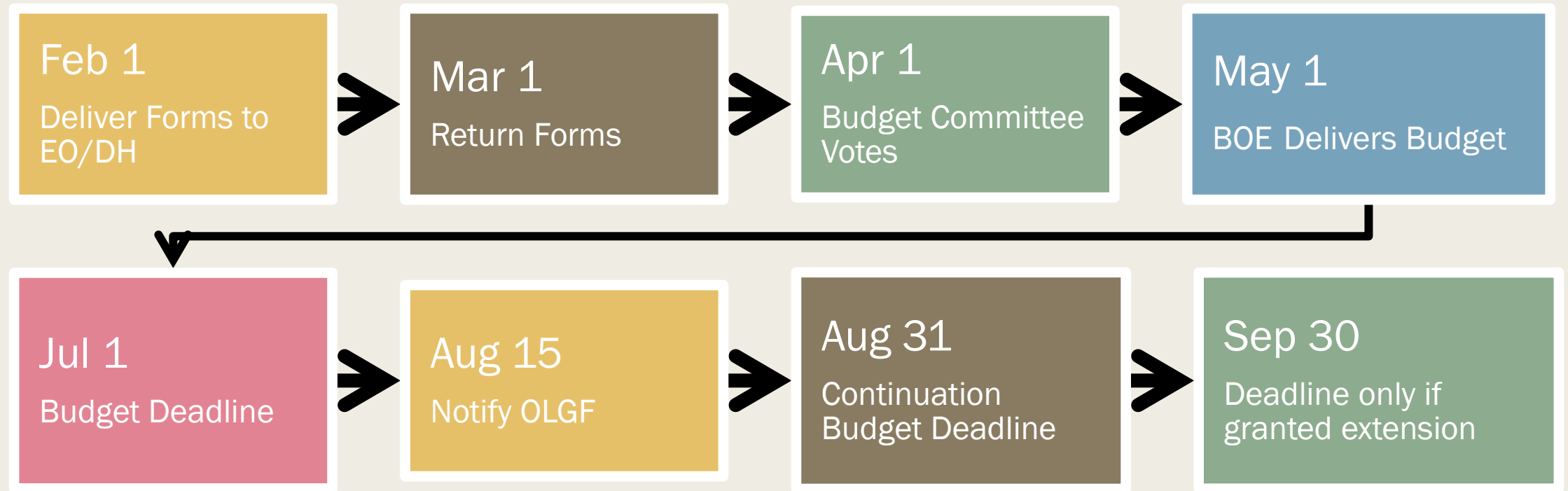
Legislative Responsibility

- Private Acts

Budget Players



Budget Calendar



Letter of Agreement/Salary Suit

- Agree with personnel budget?

Yes
Letter of
Agreement

No
Salary Suit

Either must be done within 30 days of
the budget's passing.

*Newly elected officials have 30 days from taking office (Sept 1) to sign letter of agreement or file a salary suit.

Your Budget – Letter of Agreement

- Generally, must have authority other than the county budget resolution before hiring employees.



Sample Letter of Agreement

**LETTER OF AGREEMENT
COMPENSATION OF EMPLOYEES
_____ COUNTY, TENNESSEE**

Pursuant to Tennessee Code Annotated, Section 8-20-101, this agreement by and between _____ and _____
(Official/Office) (County Mayor)
is for the purpose of establishing the number of employees and the authorized salaries for the _____.
(Office)

The parties named herein have agreed and do hereby enter into this agreement according to the provisions set forth herein:

A. The term of this agreement will be from _____ to _____
(Beginning Date) (Ending Date)

B. In order to ensure the efficient operation of the office, it is agreed that the official is authorized to employ the following employees at salaries not to exceed the specified amounts:

Number of Employees in Job Classification	Job Classification	Annual Salary for Each Employee in Job Classification Not to Exceed
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. It is further agreed that part-time help may be employed at a rate of up to \$_____ an hour with a total cost not to exceed \$_____ for the term of this agreement.

D. The parties agree to the following special provisions: _____
_____.

E. It is further agreed that in no event shall the amount of this agreement exceed \$_____.

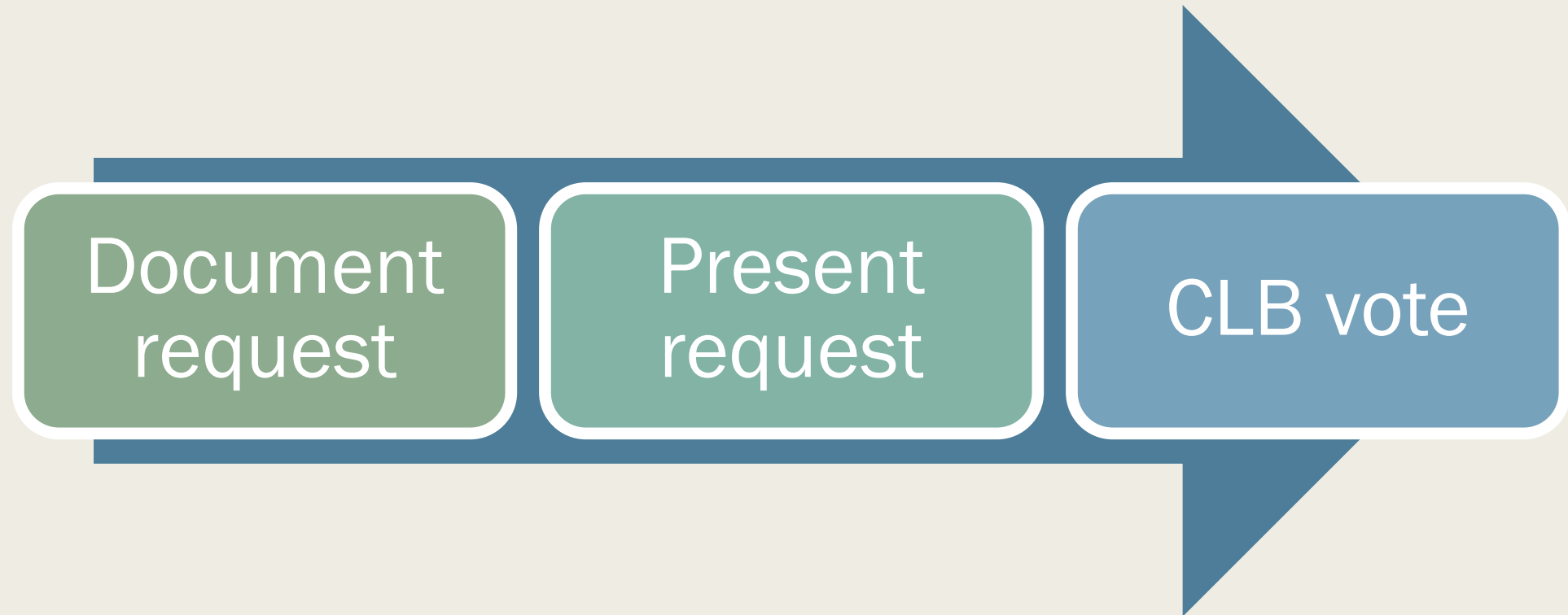
In witness whereof, the parties have set their signatures.

OFFICIAL DATE

COUNTY MAYOR DATE



Budget Amendments



Purchasing Authority

Private Act

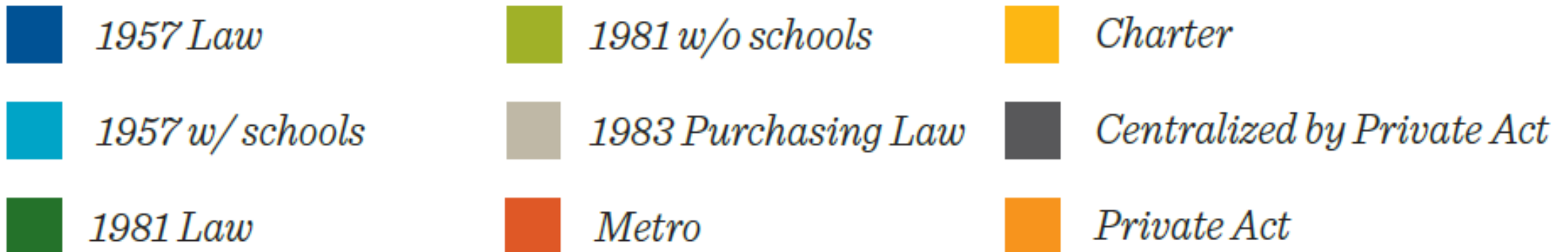
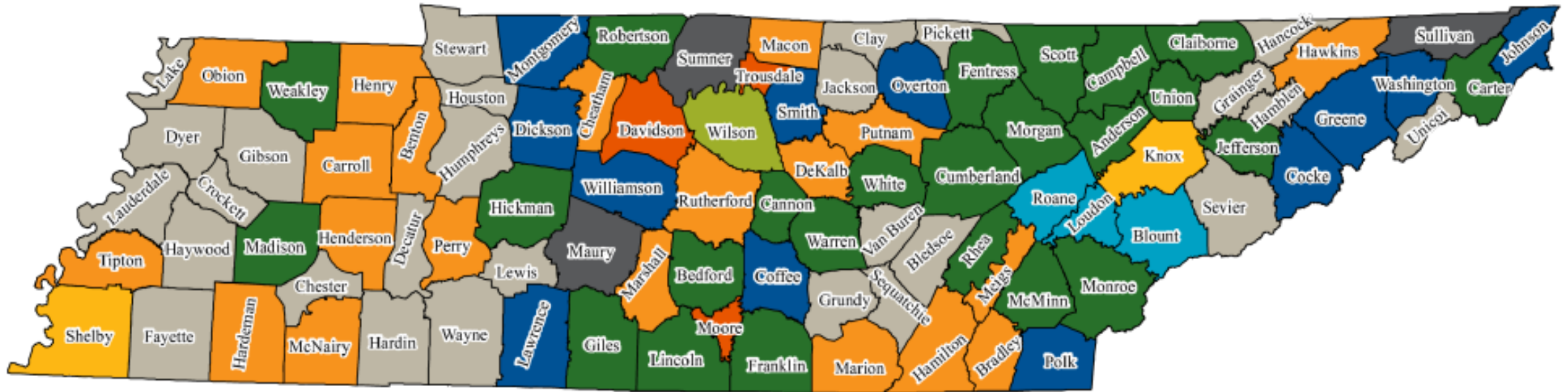
General Law

1981/1957
Acts

Charter/Metro

Tennessee

County Purchasing Laws



Purchasing Methods

- **Informal Quotations (informal quotes)**
- **Competitive Sealed Bids (ITB/IFBs)**
- **Competitive Sealed Proposals (RFPs)**
- **Request for Qualifications (RFQs)**



Purchasing Process

Need

Requisition

Purchase Order

Receiving Report



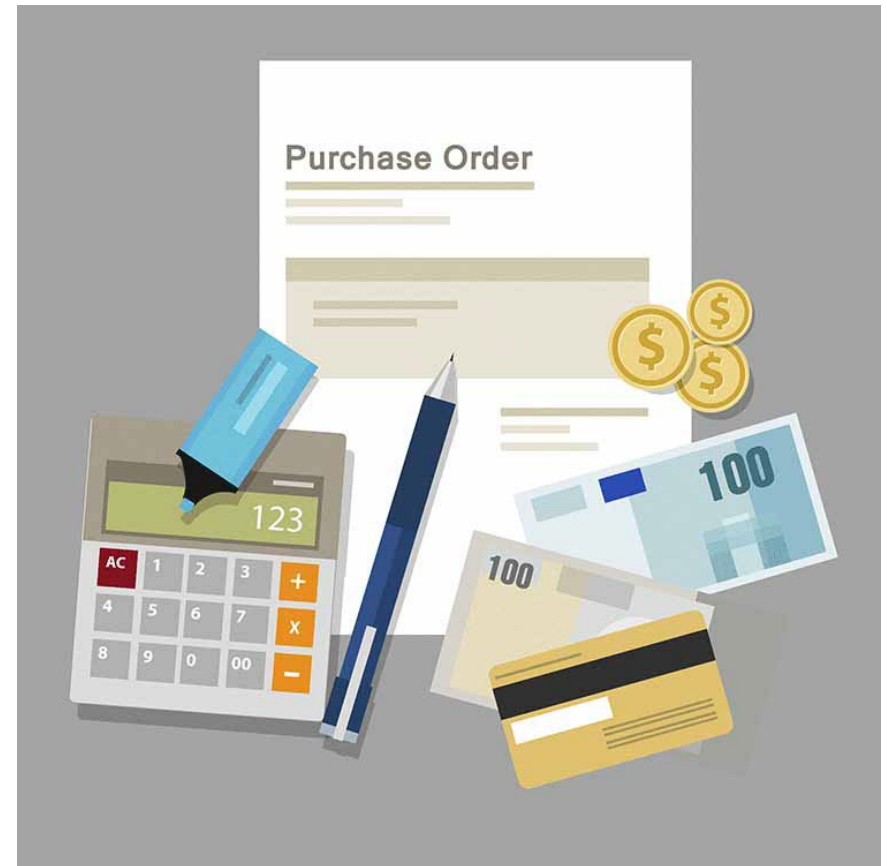
Requisition



- Requisitioning is the **formal request** for a purchase to be made.
 - It is the **first step** after the need for goods or services is recognized.
 - The user department's purchase requisition **authorizes** the purchasing department to enter into a **contract** with a vendor to purchase goods or services.
 - The **purpose** of the requisition is to **inform** the purchasing department of the department's needs and to **correctly identify** the item(s) or services required.
 - The purchase requisition should fully describe to the purchasing department **what** to buy, **when** it is required, and **where** the goods are to be delivered or the services are to be performed.

The Purchase Order

- The purchase order is the written evidence of a **contract between the buyer and supplier** for the purchase of goods or services at an agreed price and delivery date.
- The P.O. is a vehicle by which the buyer *formalizes* the contract with the supplier.
- It is a **legal document** and must therefore contain all the elements of the contract.
- It is the **supplier's authority to ship and charge** for the goods specified in the order.



The Receiving Report



After goods or services have been received, the final action required by the receiving department is to **confirm the receipt of the goods or services.**



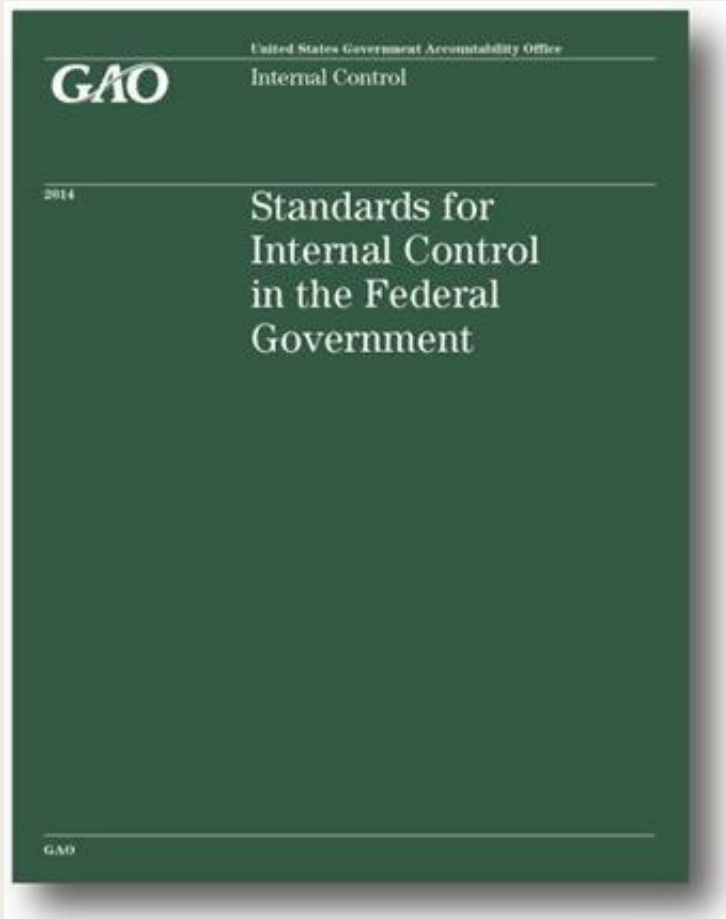
The receiving department **matches the items actually received**, the packing list provided by the supplier of the shipment, and the receiving copy of the purchase order. **Any discrepancies and partial shipments are noted.**



This information is forwarded to purchasing, central finance, or any other departments needing to know that the material has been received.



In lieu of official receiving reports, the department receiving the item(s) should provide documentation that someone received the item(s) purchased, such as an email, signed delivery ticket, etc.



WHAT ARE INTERNAL CONTROLS?

A process that provides reasonable assurance the objectives of an entity will be achieved.



T.C.A § 9-18-102(a)

Comply

Obligations and costs are in compliance with applicable law

Safeguard

Funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation;

Record

Revenues and expenditures are properly recorded and accounted for to permit the preparation of accurate and reliable financial and statistical reports and to maintain accountability over the assets.

Why Do County Governments Need Internal Controls?

- Reduce fraud & waste
- Ensure legal, regulatory, & policy compliance
- Protect county assets
- Promote transparency & accountability



Who is Responsible for Establishing Internal Controls?

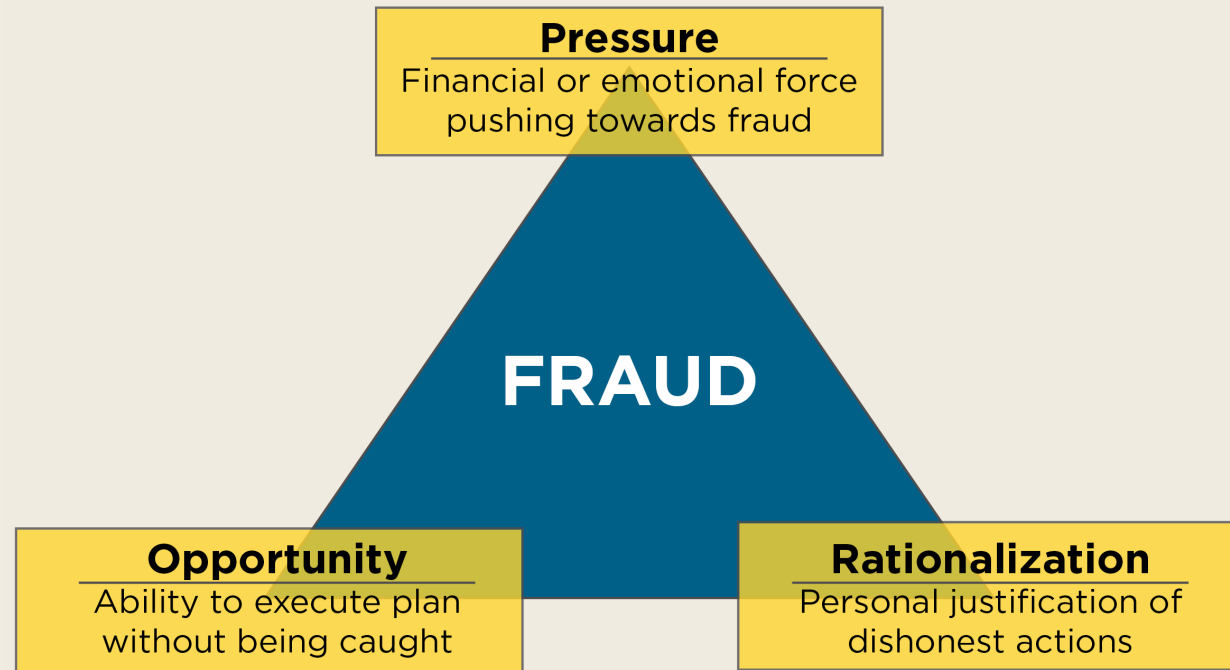


- County Management (elected/appointed officials) are responsible for: **design, implementation and maintenance** of adequate internal controls over their office/department.

Poor Internal Controls = Opportunity for FRAUD

The Fraud Triangle:

A framework for spotting high-risk fraud situations





Duties were not segregated adequately



Execution docket trial balances did not reconcile with the general ledger accounts



Multiple employees operating from the same cash drawer



Deficiencies in accounting records, reconciliations, timely deposits, and audit log reviews

Summary of Audit Findings



Components & Principles of Internal Controls

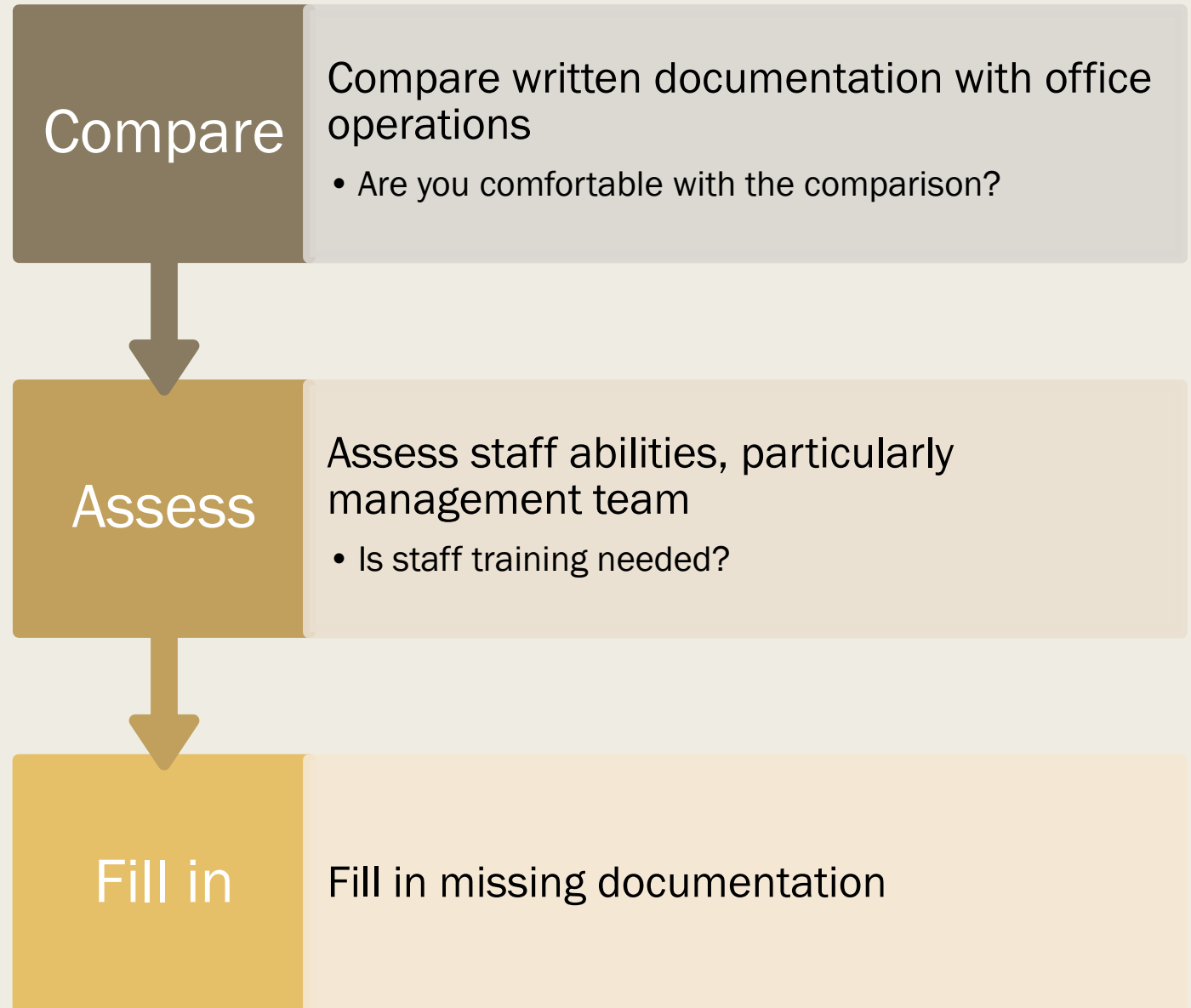


What should I do to ensure compliance?

- Review your written internal control procedures/assessment and ask yourself...
 - *Is the written documentation accurate according to my office's current operations?*
 - *Have I implemented new technology in my office?*
 - *Have I hired new staff or changed any financial duties of my staff?*
 - *Have I moved?*



Once you have reviewed your written procedures/policy...



What you are looking for in your Risk assessment...



Identify specific risks



Consider risk factors



Understand that the elected official is ultimately responsible

Tone is set at the top



Be sure to update your written procedures for any changes you deem necessary.

Reducing Risks to Tolerable Levels...

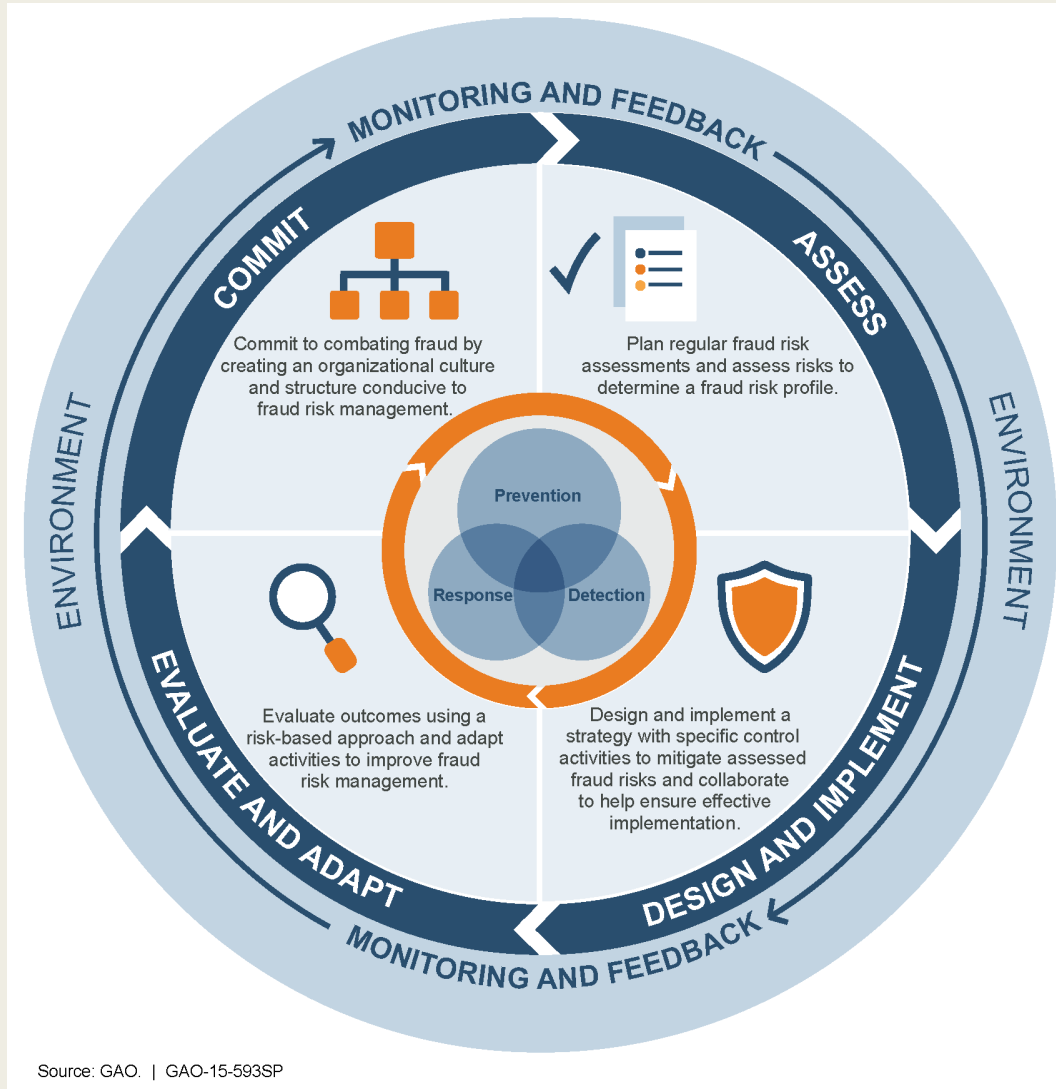
- Identify factors that may increase risk
 - *Lack of segregation of duties*
 - *Computer passwords taped onto computers*
 - *Employees operating out of same cash drawer, etc.*
- Determine the significance of risk and likelihood of fraud, waste, abuse and inaccurate financial reporting (think reducing risk vs. cost of control).
- Develop specific actions to reduce the risk to an acceptable level.

- A risk matrix is a very useful tool when you can't eliminate risk.



Remember...

- Once your internal controls are in place and you have assessed your risk -
 - *Ensure CONTROL*
 - *Keep COMMUNICATING*
 - *Keep MONITORING*



Source: GAO. | GAO-15-593SP

PART FIVE

FILING AND INDEXING



County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE

Notations When Instruments Received

- 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 is **the time of delivery** to the Register, and not the time the Register entered the instrument in the notebook. *Lee Chatten v. Knoxville Trust Company*, 154 Tenn. 345, 289 S.W.2d 536, 50 A.L.R. 537 (1926).*
 - *The Register's office should mark all documents as "received" when they are physically delivered, regardless of the method of delivery, and documents arriving in the same mail delivery should be marked with the same date and time. *Op. Tenn. Atty. Gen. 94-37 (March 21, 1994).**



Notations When Instruments Received

- The Register also enters certain information in a book known as the notebook. T.C.A. § 8-13-108.
 - *Names of the grantor(s) and grantee(s), the time the instrument was received (date, hour and minute), and the amount of fees received.*
 - *If instrument involves a trust, must index name of trust (if provided) and names of trustees.*
 - *Notebook must be maintained in a well bound book or in computer storage media in accordance with T.C.A. § 10-7-121.*
 - *The notebook must be maintained as a permanent record.*



Notations When Instruments Received

- Must certify the fact of registration upon every document registered and the time when it was received.
 - *This certification is accomplished with the signature of the Register.*
- Must 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.
- If there is not enough space for the certification, the Register may add a page to contain the certification and attach the page to the instrument. 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.



Notations When Instruments Received

- UCC Records. Registers may note the reception of UCC instruments in a separate notebook (not required), 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.



Filing and Indexing

- Register may keep separate books:
 - *Almost all instruments except those affecting land title, bankruptcies, and the UCC may be recorded with the deeds of trust. T.C.A. § 8-13-108.*
 - *The deed books should contain all documents which relate to equitable interests in land, such as court decrees and quitclaim deeds, and not just warranty deeds.*
 - *Liens must kept in separate book. T.C.A. §§ 66-11-111, 66-21-103.*
 - *Notices of completion may be kept in a separate book with a separate index. The Register may use only a direct index for notices of completion. T.C.A. § 10-7-202.*
 - *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.*
 - *Corporate charters and related documents often have separate books and indexes.*

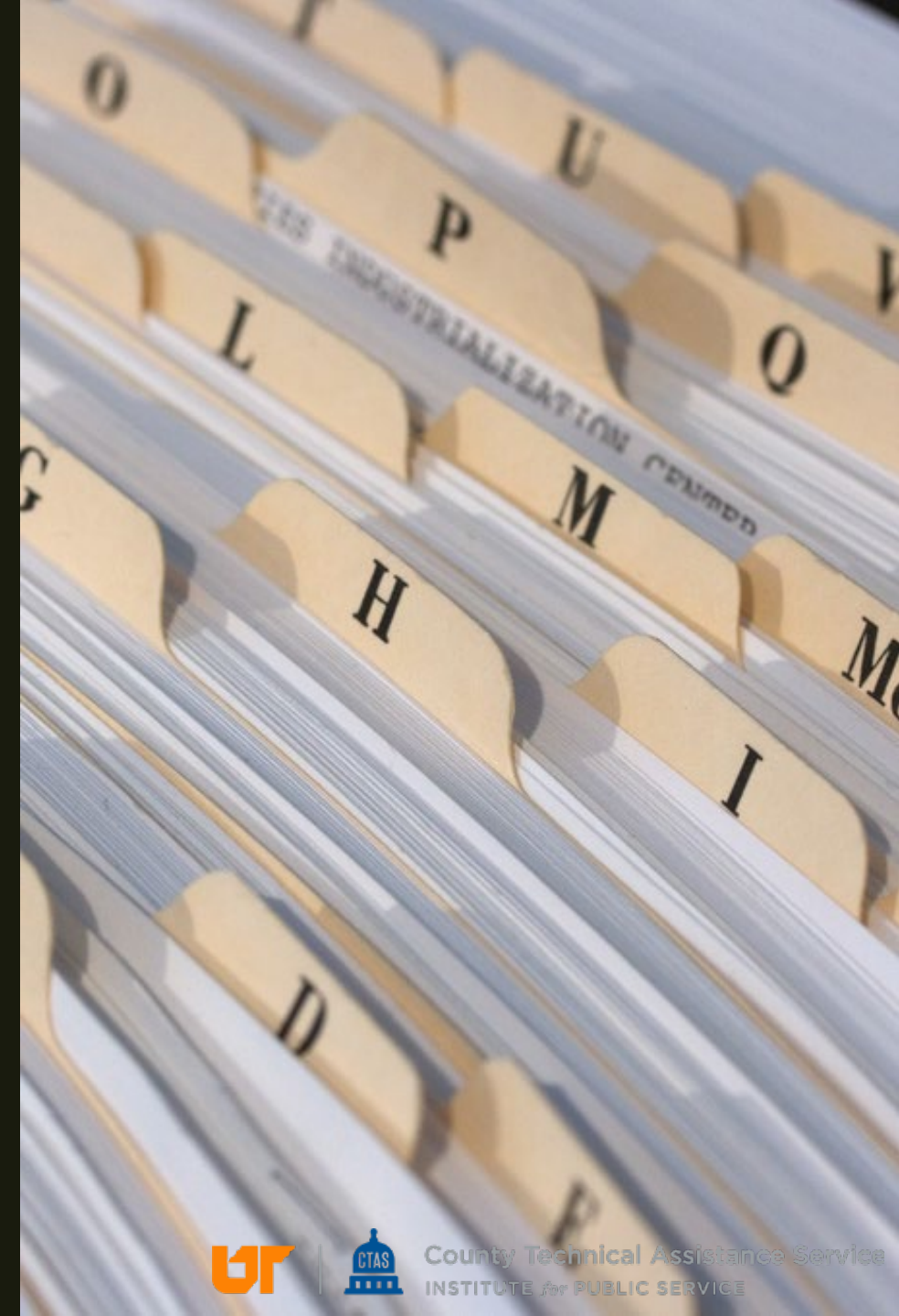
Filing and Indexing

- Plats 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.
- Registers may also 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.*
- Will also have separate indexes.
- The Register is required to index instruments immediately upon recording. T.C.A. § 10-7-205.



Filing and Indexing

- 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 first enters the name(s) of the grantors and then the names of the grantee(s), all in alphabetical order, then enters the type of instrument, the date of the instrument, the date it was received, and the book and page number where it is recorded. T.C.A. § 10-7-203.*
 - *In the reverse index, the Register first enters the names of the grantee(s) and then the names of the grantor(s), the type of instrument, the date the instrument was executed, the date it was received, and the book and page number where it is recorded. T.C.A. § 10-7-203.*

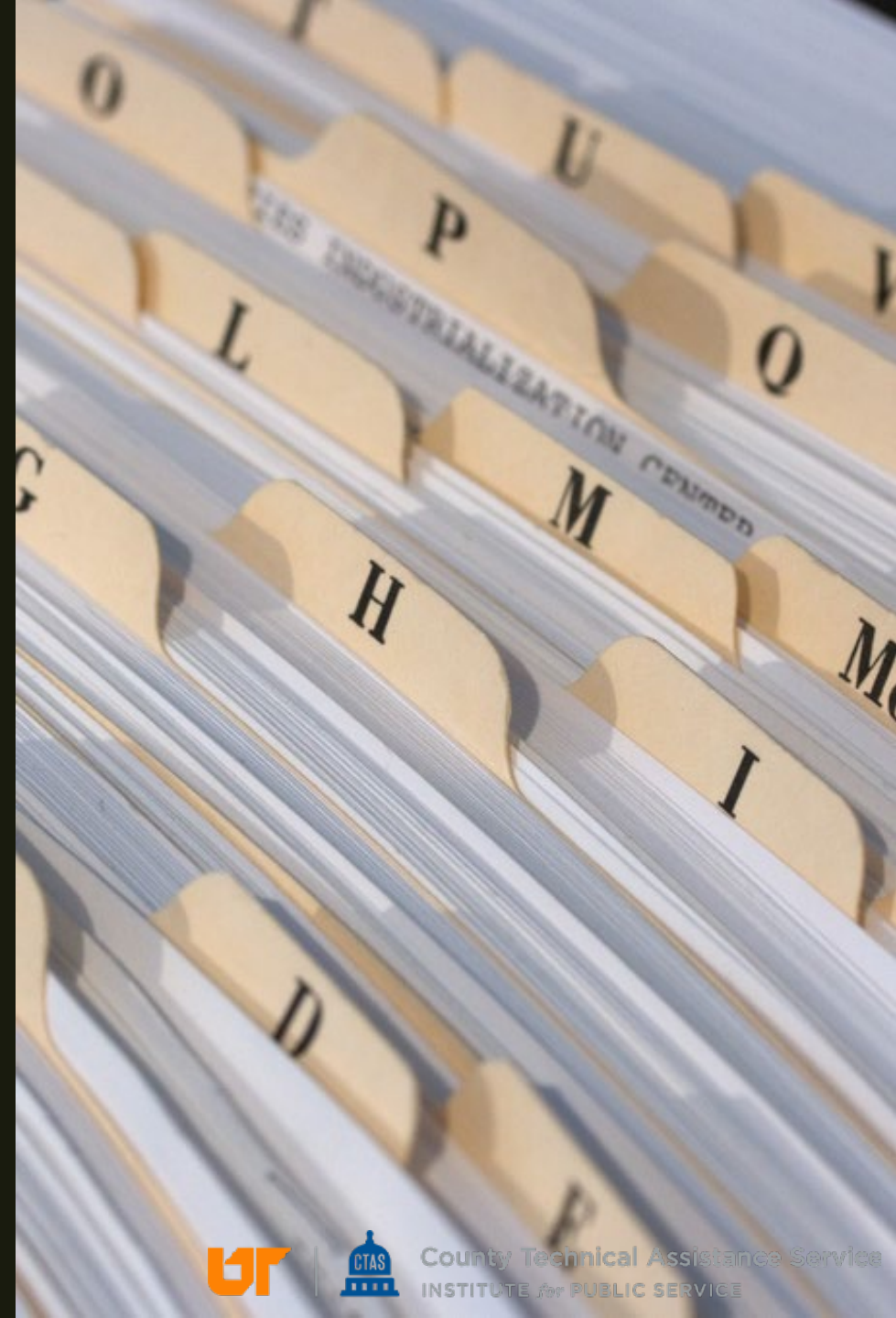


Filing and Indexing

- Deeds of trust (or amendments), assumption agreements, and like instruments are 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 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.*
 - *Deeds of trust are returned to the person offering it for recording, usually the mortgagee, after it is recorded, in the same manner as warranty deeds.*

Filing and Indexing

- UCC records must be indexed as follows:
 - *Initial financing statement: Index name of debtor and index all related records in manner that associates those records with the initial financing statement.*
 - *New debtor: Index to both the original debtor and the new debtor.*
 - *Fixture filing, “as-extracted” collateral or timber to be cut: Index 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 index under the name of the secured party as if the secured party were the mortgagee.*
 - An assignment (a type of amendment) of a financing statement filed as a fixture filing or covering “as-extracted” collateral or timber to be cut must be indexed under the name of the assignor or grantor and reverse indexed under the name of the assignee.
 - *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.*



Filing and Indexing

- Register may instead have a continuous recording system:
 - *Counties which have established a county public records commission are authorized to maintain one continuous recording of any and all instruments in one general series of books or film to be designated “official record book.”*
 - *When a system of microphotography is used to record all instruments, the references may be to “book,” “film,” “reel,” or other such designation. T.C.A. § 8-13-108.*
 - *Tennessee Code Annotated, § 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.*

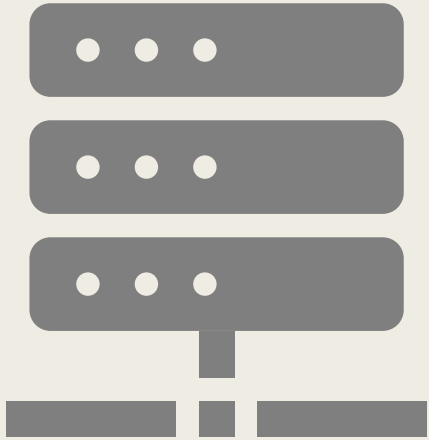


PART SIX

MISCELLANEOUS ISSUES

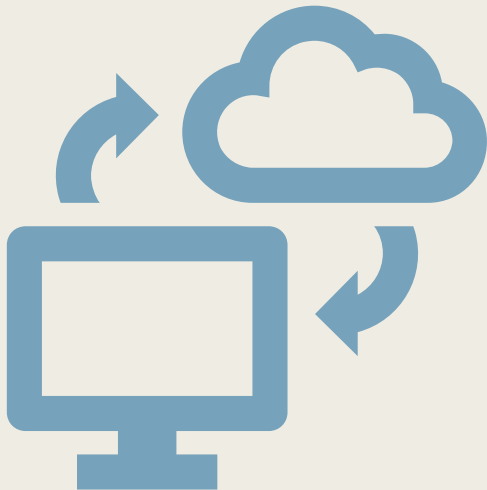
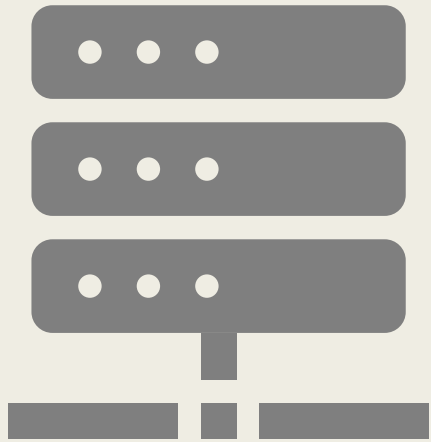


County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE



Electronic Records

- T.C.A. § 10-7-202(b) provides for the option of maintaining indexes on a computer. Registers are authorized to maintain all indices electronically in compliance with T.C.A. § 10-7-121.
- T.C.A. § 10-7-121 authorizes Registers to keep electronic records if the following standards are met:
 - *The information is available for public inspection, unless it is a confidential record according to law;*
 - *Due care is taken to maintain any information that is a public record during the time required by law for retention;*
 - *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*
 - *The official can provide a paper copy of the information when needed or when requested by a member of the public.*



Electronic Records

- **Remote Electronic Access.** 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 a reasonable amount sufficient to recover the costs of providing this service and may not charge any more for this service. This user 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. T.C.A. § 10-7-123.*

Electronic Recordings

- The Uniform Electronic Transactions Act, T.C.A. § 47-10-101 et seq., establishes standards and procedures for the conduct of business transactions via electronic means.
- County officials, including the Register, are specifically given the power under the act to determine whether, and the extent to which, they will send and accept electronic records. T.C.A. § 47-10-118(a)(2).
- Registers are not required to accept electronic transactions.

Electronic Recordings

- Should the Register choose to utilize electronic transactions:
 - *At least 30 days before implementing an electronic transactions system, 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 cost savings. T.C.A. § 47-10-119(a).*
 - *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).*

Electronic Recordings

- 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.*
 - *Standards are to be established by the information systems council.*

Electronic Documents

- Definition (T.C.A. § 66-24-101(d)): (A) A writing created or retained as an electronic record in accordance with the Uniform Electronic Transactions Act (UETA), compiled in title 47, chapter 10, or the Uniform Real Property Electronic Recording Act (URPERA), compiled in part 2 of this chapter, as codified in this state or a substantially similar law of another state as defined in the URPERA, and transmitted to the county register electronically, or a paper copy of such an electronic record; or (B) A writing that is a digitized image of a paper document (electronic copy) that is transmitted to the county register electronically.
- Certification form set out in T.C.A. § 66-24-101(d)(3).
 - *Minimum 10-point font.*
 - *Must be signed by licensed attorney or document custodian and acknowledged.*

Remote Notary Acknowledgements

- Persons can appear before a notary either in person or by two-way audio/video communications meeting specifications in rules promulgated by the SOS. The acknowledgment form will specify that the personal appearance was by audio/video communication.
- It is not the Register's responsibility to police this in any way. This is just something you may see, and you need to be aware of what it will look like.
- These acknowledgments may also be accompanied by an electronic signature, which means “an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document.” Tenn. Code Ann. § 8-16-302.



Child Support Liens

- Federal law (42 U.S.C.A. § 651 et seq.) requires states to adopt certain centralized procedures for enforcing child support.
- To enforce these liens, DHS can file locally (in the Register's office) or file the liens online.
- DHS may require the Register to furnish office space for a computer terminal dedicated to providing information regarding persons with overdue child support obligations. Register has no obligation other than to provide office space and to allow public access to the computer terminal. T.C.A. § 36-5-901.
- 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. DHS is authorized to enforce these out of state liens. T.C.A. § 36-5-902. Because the procedural rules in Tennessee direct DHS to file child support liens and name DHS as the enforcement agent, it is our opinion that out of state liens should be filed with DHS and not directly with the local Register.



Military Discharge Records

■ Inspection and Copying of Records:

- 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:
 - The veteran who is the subject of the record;
 - The legal guardian of the veteran;
 - 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;
 - The personal representative of the estate of the veteran;
 - The person named by the veteran, or by a person described by subdivision (2), (3), or (4), in an appropriate power of attorney;
 - Another governmental body; or
 - An authorized representative of the funeral home that assists with the burial of the veteran.

Military Discharge Records

- Redaction and Removal of Records:

- *Persons described in subdivisions (1) through (5) 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). Form provided in statute and is to be recorded.*
- *If 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.*

Military Discharge Records

■ Storage of Records:

- *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

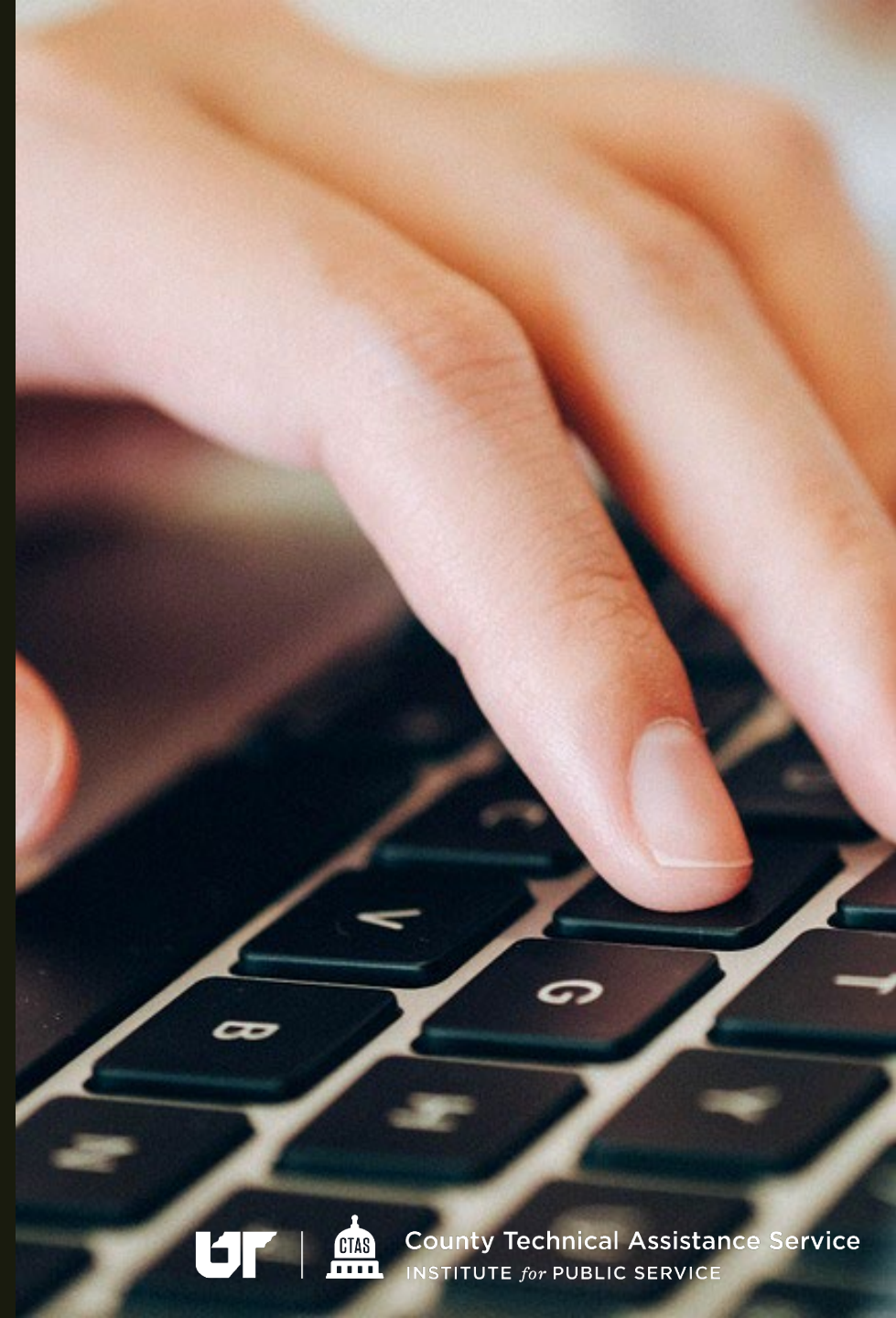
- Registers are required to redact personally identifying information from electronic databases upon request. Request can come from person, surviving spouse, attorney-in-fact or court-appointed guardian. Request form is provided in statute. Form is to be recorded unless redaction is not practicable. Registers are authorized to redact the information from electronic media. T.C.A. § 10-7-515.

* T.C.A. § 10-7-515 acts as safe harbor from disclosure prohibitions in T.C.A. § 10-7-504.



Redaction of Personally Identifying Information

- Social security numbers;
- Official state or government issued driver licenses or identification numbers;
- Alien registration numbers or passport numbers;
- Employer or taxpayer identification numbers;
- Unique biometric data, such as fingerprints, voice prints, retina or iris images, or other unique physical representations; and
- Unique electronic identification numbers, routing codes or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data.
- Participation in property alert service.



Unlawful to advertise or solicit in a way that looks like it is coming from a governmental entity.

Must have a disclaimer.

AG investigates and litigates.

Report violations to AG.

Gov't Imposter/ Deceptive Ads



Fraudulent Liens Against Public Officials



- Authorizes public officials who have fraudulent liens filed against them to file a notarized affidavit with the Register.
- Once an affidavit is filed, requires Register to note on any available indices that the document is “Contested—Under Review.”
- Requires the public official to send a copy of the affidavit to the filing party within three days of filing the affidavit. Provides for a process of review of the lien in chancery court.
- Provides that the prevailing party in the action may recover costs and expenses, including reasonable attorneys’ fees.
- Authorizes governmental entities to insure or indemnify any public official for the cost of defending and removing liens.

Records Requests

- All counties must have a written records request policy and records request coordinator.
- Policy must include:
 - *The process for making requests to inspect public records or receive copies of public records and a copy of any required request form;*
 - *The process for responding to requests, including redaction practices;*
 - *A statement of any fees charged for copies of public records and the procedures for billing and payment; and*
 - *The name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator.*

PART SEVEN

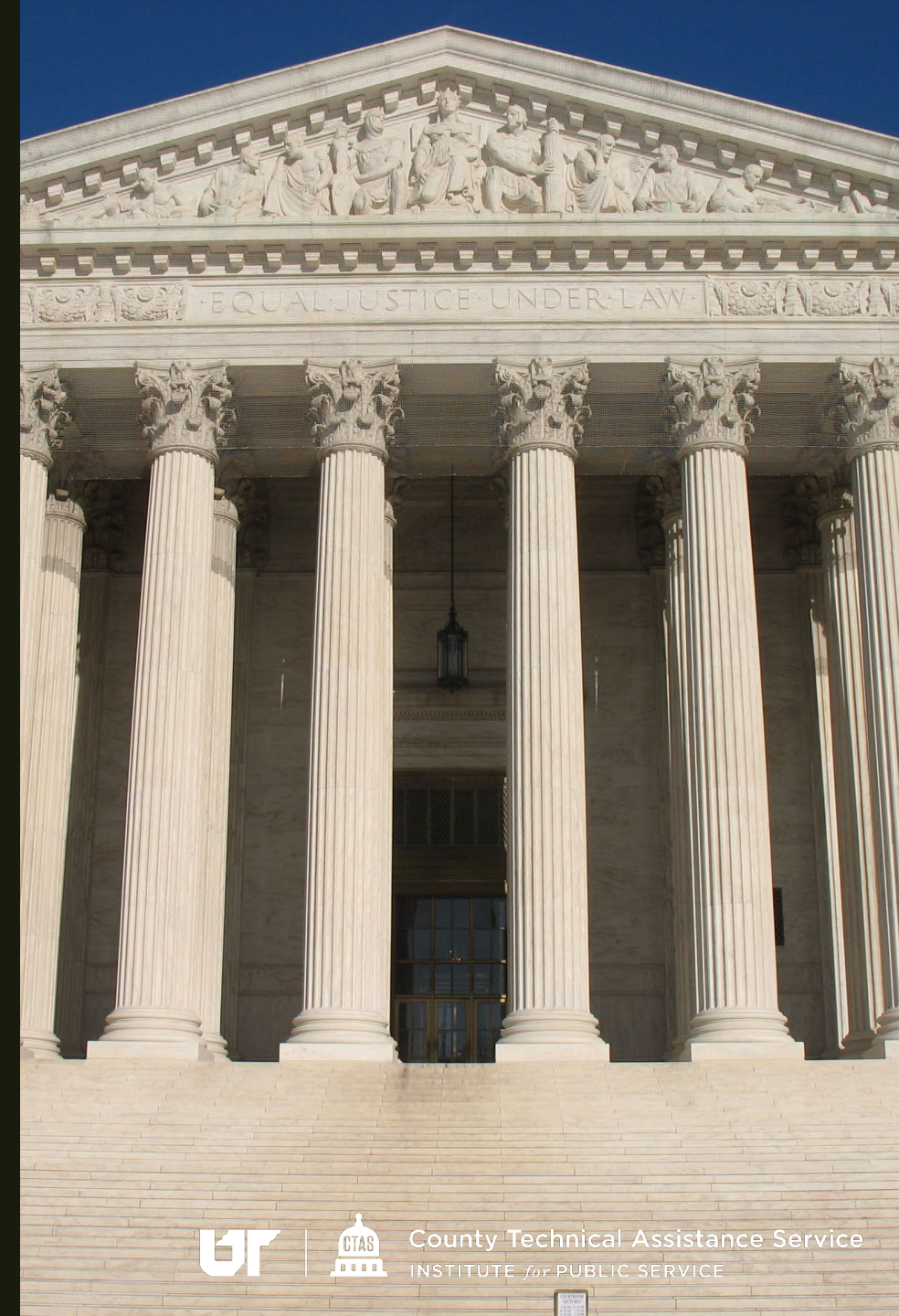
LIABILITY ISSUES



County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE

Liability

- What is a tort?
 - *Civil action based on violation of duty imposed by law*
 - *Can be the result of intentional or negligent act.*
 - Can be both a tort and a crime, as, for instance, an assault could result in criminal liability and civil liability. The Plaintiff who claims to have suffered a tort must show an act, intentional or negligent, which violates a duty imposed by law, generally the standard of care an ordinary person would exercise in the circumstances, and damages resulting from the breach of duty. The violation of duty can be through misfeasance, or the improper doing of an act, or by nonfeasance, omitting to do an act.



Liability

- Tennessee Governmental Tort Liability Act
 - *Counties are immune under state law from all suits arising out of their activities, either governmental or proprietary, unless immunity is specifically removed by the law. Federal law may preempt such immunity as state statutes cannot exempt counties, county officials, or employees from liability under federal law.*

- Removal of Governmental Immunity
 - *Areas in which the Tennessee Governmental Tort Liability Act removes governmental immunity are claims arising from:*
 - negligent operation of motor vehicles
 - negligently constructing or maintaining streets, alleys or sidewalks
 - negligent construction or maintenance of public improvements
 - negligence of county employees





Liability

- **Exceptions.** Here are exceptions to these areas where immunity has been removed. These activities, for which the county is immune under state law, but for which the Register or an employee may be liable, include claims arising from:
 1. *The exercise of discretion by an official or employee, even if the discretion is abused.*
 2. *False imprisonment, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contractual rights, infliction of emotional distress, invasion of privacy, and violation of civil rights.*
 3. *The issuance or failure to issue permits or licenses.*
 4. *Failure to inspect or negligent inspection.*
 5. *Institution of judicial or administrative proceedings.*
 6. *Negligent or intentional misrepresentation.*
 7. *Mob actions or riots.*
 8. *Assessment or collection of taxes.*

Liability

- In cases where the county is immune, the Register or employee may be liable up to the liability limits established in the Tennessee Governmental Tort Liability Act under state law.
- When the case is one where the county can be liable, the official or employee is immune (except for medical malpractice cases).
- Willful, malicious, or criminal acts, or acts committed for personal gain, do not fall under the personal liability protective provisions of the Tennessee Governmental Tort Liability Act, as amended.
- The county may now insure (either by self-insurance or by purchasing insurance) or indemnify (up to the limits set in the Tennessee Governmental Tort Liability Act) its employees and officials, including Registers and Registers' employees, for their liability exposure under the Tennessee Governmental Tort Liability Act.
- Unclear whether the Register may purchase liability insurance as an expense of the office for Registers operating out of the fees of the office.



Liability

- **Liability Limits.** The liability limits now provided in the Tennessee Governmental Tort Liability Act are as follows (T.C.A. § 29-20-403):

TYPE OF CLAIM:	
Personal injury or death, one person	\$300,000
Personal injury or death, one accident (more than one person)	\$700,000
Property damage	\$100,000

- **Important Note:** These limits do not apply to federal civil rights actions in state or federal courts.

Liability

■ Personal Liability

- *There are several areas, including both federal and state actions, where a Register could be held personally liable.*
- *Registers have no personal or official immunity from federal actions, including actions for violating an employee's civil rights. Additionally, there is no provision for a county to pay to defend most actions in which the Register may be a defendant. However, as a practical matter, defense counsel is often available through an insurance carrier.*
- *Upon failure to perform any of the duties of the office in regard to registration of most instruments, the Register may be indicted for a misdemeanor. T.C.A. § 8-13-110. See also T.C.A. § 9-13-117.*

Liability

Official Bonds

- Register, upon entering office, executes a bond payable to State of Tennessee for faithful performance of duties of office. T.C.A. §§ 8-13-102; 8-13-103.
- Register can become liable on their bond for failure to pay an account owed by county, even if negligence was not willful.
- General surety bond protects county and state up to its limits, but a Register may be sued by surety company to recover the company's loss under most bond agreements (AKA subrogation).

Insurance

- Counties have option of obtaining insurance policies on their officials and employees in place of a bond.
- Insurance coverage must provide a minimum of \$400k per occurrence.
- Insurance coverage does not affect GTLA liability limits. T.C.A. § 8-19-101.

Sources of Assistance



County Attorney



CTAS Legal Staff and Field Consultants



Department of Revenue



Local Government Audit