Office of County Clerk

- Established in Tennessee Constitution
  - Counties elect a legislative body, county executive, sheriff, trustee, register, county clerk, and assessor of property to 4-year term of office (Art. 7, Sec.1)

- Duties are defined by General Assembly
Qualifications

- U. S. Citizen
- County resident
- 18 years of age or older
- Not disqualified

T.C.A. § 8-18-101, 8-48-101
Disqualifications

- Convicted of bribery or other infamous crime
- Convicted of official misconduct
- Unpaid judgment in official capacity
- Defaulter to treasury
- U. S. Military (regular)
- Members of Congress and persons holding office under a foreign power, another state, or federal government T.C.A. § 8-18-101

Any disqualified person who takes office is guilty of a misdemeanor under T.C.A. § 8-18-102
Residency Requirement

- County clerk must reside within the county during the entire term of office
- T.C.A. § 2-2-122 sets legal guidelines for determining residence
- Generally, it is the physical presence of the person with the intention to make the place their residence
Oath of Office

- Constitutional oath and fidelity oath
- County Clerk can administer oath to all other officials (also county mayor and current/retired judges)
- Oath must be written and signed, dated, and filed in County Clerk’s office
- Failure to take and file oath is misdemeanor T.C.A. § 8-18-109, -110
Official Bond

- Promise by official to county:
  - perform all duties
  - pay over all funds
  - keep records
  - turn over records, funds and property to successor
  - not do anything illegal or improper

- Approved by CLB (certified by county clerk)
- Recorded in Register’s office
- Filed in County Clerk’s office
- Failure to file bond: OFFICE VACANT
County Clerk Bond Amount

Counties with populations of 15,000 or more
$100,000

Counties with populations of less than 15,000
$50,000
Insurance Instead of Bond

- Insurance alternative
  - Counties may purchase insurance policy rather than bond. Policy must provide government crime coverage, employee dishonesty insurance coverage, or equivalent coverage.
  - Must provide at least $400,000 coverage per occurrence.
  - Must file certificate of insurance with register of deeds.
Vacancies

- Causes of vacancy:
  - Death
  - Resignation
  - Moving out of county
  - Judicial decision
  - Sentencing to penitentiary
  - Adjudication of insanity
  - Ouster
  - Failure to give bond

T.C.A. § 8-48-101
Vacancies - Temporary Successor

- Temporary successor for County Clerk
  - Chief Deputy
  - Other deputy designated by County Clerk in writing

- Discharges duties only until CLB can act to fill the vacancy
  - T.C.A. § 18-6-115
Filling Vacancies

- Filled by county legislative body until next countywide election
  - County clerk gives notice to CLB members (may be waived by CLB if members have notice by another source)
  - Presiding officer gives 7 days newspaper notice
    - Office to be filled
    - Date/time/place of public meeting
- CLB has 120 days to fill vacancy (unless sufficient time to put on ballot in upcoming election)
  - T.C.A. § 5-1-104, 5-5-111
Public Records

- All records are “public” unless a statute declares them confidential
- Public records must be open for inspection and copying at all reasonable times
Confidential Records

- Credit card numbers, related numbers, and authorization codes
- Social Security numbers, passport numbers, fingerprints
- Tax returns and tax information (except hotel/motel tax)
- Personal information in motor vehicle records (Uniform Motor Vehicle Records Disclosure Act)
- Personal information in employee files
  - phone numbers, home address, bank account info, retirement account info, SSN, driver license info, personal email, emergency contact info, etc.
- Medical information in employee files

*Must redact confidential info and provide remainder of record if possible.*
If it is not practicable for a requested record to be promptly produced, you have seven (7) business days to either:

- Make the record available, OR
- Deny the request in writing stating the basis for denial, OR
- Furnish a response form stating the time reasonably necessary to produce the record
Fees - Public Records Requests

Office of Open Records Counsel
http://www.comptroller.tn.gov/openrecords

Schedule of Reasonable Charges and instructions for records custodians – on OORC’s website

OORC will answer questions and issue advisory opinions
Electronic Records

- T.C.A. 10-7-121 authorizes all government officials to maintain any records required to be kept by them on computer or removable computer storage media instead of in bound books, as long as the requirements of that statute are met.
Electronic Records

- Standards for electronic records:
  - Must be available for public inspection
  - Due care must be taken to maintain the record for time required by law for retention
  - All daily data generated must be copied to computer media daily, and newly-created computer media more than one week old must be stored off-site
  - The official must be able to provide a paper copy of the record when needed or requested by the public
Records Disposition

- Public Records Commission
  - County Clerk serves as member
  - Oversees storage and disposal
  - Must approve destruction

- Retention Schedules
  - CTAS website
Financial & Accounting Issues

- Fees
- Financials
- Bank Account
- Fee or Salary/Budget System
- Auditing
- Purchasing
- Budgeting
Fees
T.C.A. § 8-21-701

Collected by County Clerk
Fees

County clerks may not demand or receive any fees or compensation not specified by law (T.C.A. § 8-21-101) and may not receive any authorized fees until the duty or service for which the fee is granted has been performed, unless specifically allowed by law.

County clerks should always check the current statutes to confirm the correct amount of fees to be charged. The general fee statute (T.C.A. § 8-21-701) for the county clerk provides the fees for issuance of marriage licenses, issuing and transferring business licenses, certifying a notary public's election, recording official bonds, receiving and paying over revenue, for copies and certified copies of documents, and other fees.
Fees

- Motor vehicle titling and registration
- Hunting and fishing licenses
- County clerks are required to adopt a policy for handling refunds of amounts overpaid, which must include one or more of the following:
  - contacting the person or entity tendering the payment for specific instructions for handling the excess amount;
  - allowing the county clerk’s office to retain reasonable overage amounts as fees of the office;
  - or providing a refund of the excess money less a reasonable amount retained as fees of the office.
Official Bank Account

- Required to set up bank account in name/title of County Clerk
- Disbursements by pre-numbered checks
- Collateralization, if applicable
- Class C misdemeanor if violated
Cash Flow Process

1. Public pays fees
2. Balance drawer at end of day
3. Deposit within 3 business days
4. Fees turned over to trustee
Official Bank Accounts

■ The county clerk, 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 county clerk 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.
Official Bank Accounts

- The county clerk may also maintain a petty cash fund to transact official business of the office.
- Any violation of the provisions governing official bank accounts is a Class C misdemeanor.
Operating statements are made on a monthly, quarterly, & annual basis.

Special reports may be requested by the county legislative body.

Each department must file fiscal year annual financial report with the county mayor and county clerk.

Report must be filed before the 1st Monday in September.
Financials

- Operating statements are made on a monthly, quarterly and annual basis.
- Special reports may be requested by the county legislative body.
- The complexity of the accounting performed by the county clerk will depend in part on whether or not the county clerk turns over all fees to the County Trustee on a monthly basis, or whether only surplus fees are turned over quarterly.
Financials

- Each department must file an annual financial report for the fiscal year ending June 30 with the county mayor and the county clerk, who provides copies to members of the county legislative body. T.C.A. § 5-8-505.

- The report must be filed before the first Monday in September upon a form provided by the comptroller.
The sheriff, trustee, county clerk, register of deeds and court clerks receive fees from the public for services they perform; for this reason these officials are sometimes referred to as "fee officials."

The county legislative body, by resolution, determines whether the fees are remitted monthly, or whether excess fees are remitted quarterly. T.C.A. § 8-22-104.
Under this method, the county clerk only remits excess fees quarterly to the County Trustee, then the county clerk will have disbursements for such items as the salary of the deputies and assistants as well as the county clerk’s salary.

The county clerk is also authorized to maintain a reserve in an amount equal to three times the monthly salaries of the county clerk, deputies, and assistants.
Under this method, the county clerk pays over to the trustee all fees, commissions, and charges collected by the office on a monthly basis.

The county commission must, in return, budget for expenses, authorizing the trustee to pay the county clerk’s salary, salaries of deputies and assistants, and authorized expenses of the office.

These salaries and other proper costs of the county clerk are included in the budget and must be paid even if the fees are insufficient to cover them.
Fee or Salary/Budget System

- Finally, these two systems can be adopted for some or all county “fee” officials, except for the sheriff who is always under the salary/budget system.
- The county commission can also vote to move an official back to the fee system.
- Currently most counties operate under the salary/budget system.
County Clerk Compensation

- General Assembly sets county clerk’s minimum compensation by statute (T.C.A. § 8-24-102)
- Amount varies by county population
- Annual increase based on “average annualized increase in state employee compensation”
- County legislative body may raise pay above minimum but cannot lower it
- Educational incentive pay for COCTP (state/local)
Auditing

- The records of all county clerks must be audited on an annual basis.
- County clerks must use the uniform chart of accounts.
- Fraud reporting:
  - Fraud hotline 1-800-232-5454
  - Fraud form CT-0427
- [http://www.comptroller.tn.gov/la/LGSfraudReporting.asp](http://www.comptroller.tn.gov/la/LGSfraudReporting.asp)
Purchasing

- County Purchasing Law of 1983, which provides some minimum requirements for general fund purchases for counties in which no local option purchasing law is in effect.
  - 31 counties
- The County Purchasing Law of 1957
  - 16 counties
- The County Financial Management Act of 1981
  - 24 counties
- Metro
  - 3 counties
- Private Act
  - 21 counties
Budgeting

- General Law
  - 36 counties
- Fiscal Controls Act of 1957
  - 16 counties
- The County Financial Management Act of 1981
  - 24 counties
- Metro/Charter
  - 5 counties
- Private Act
  - 14 counties
Letter of Agreement or Salary Suit

- Generally, county "fee officials" (those county officials who regularly collect fees for their services) must have authority other than the county budget resolution before they can hire employees.

- The county clerk enters into a letter of agreement with the county mayor, using a form prepared by the state comptroller, that is then filed with the court.
LETTER OF AGREEMENT
COMPENSATION OF EMPLOYEES
_________________________________________
COUNTY, TENNESSEE

Pursuant to Tennessee Code Annotated, Section 8-20-101, this agreement by and between ________________________________ (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) to ________________________________ (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:

<table>
<thead>
<tr>
<th>Number of Employees</th>
<th>Annual Salary for Each Employee in Job Classification Not to Exceed</th>
</tr>
</thead>
<tbody>
<tr>
<td>in Job Classification</td>
<td>Job Classification</td>
</tr>
</tbody>
</table>

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

__________________________________________
COUNTY MAYOR

__________________________________________
DATE

__________________________________________
DATE

County Technical Assistance Service
INSTITUTE FOR PUBLIC SERVICE
Letter of Agreement or Salary Suit

- If the county official does not agree with the amount appropriated, a salary suit may be filed by petition of the county official.

- The county mayor is named as defendant and the county mayor is required to file an answer within five days after service of the petition.

- The petition must be filed by the fee official within 30 days after the final adoption of a budget by the county legislative body.

- Also, a new officeholder has 30 days from the day of taking office to file a petition.

- The court will then hold a hearing and issue an order determining the appropriate number and compensation of deputies and assistants.

- County clerk files salary suit in chancery court.
Duties of the County Clerk

- Clerk of County Legislative Body
- Motor Vehicle Titling and Registration
- Beer Permits
- Business Licenses
- Marriage Licenses and Taxes
- Notary Public

Applications
- Pawnbroker Licenses
- Manufactured Homes
- Privilege Taxes
- Personnel Policies
- Miscellaneous Duties

County Technical Assistance Service
INSTITUTE FOR PUBLIC SERVICE
Clerk of County Legislative Body

- Keeps records (including minutes)
- Sends notices
  - Special meetings
  - Vacancies
- Presents resolutions to County Mayor for signature (and report)
- Private Acts - notifies Secretary of State of local approval/disapproval
- Other duties required by local rules
Minutes - Minimum Requirements

- Persons present
- Motions, proposals and resolutions offered
- Results of votes taken
- Record of individual votes in case of roll call vote (required for elections and appointments of county officers)

Open to public inspection in Clerk’s office
Minutes - Usual Format

- Date, place, and time of meeting and whether regular or special meeting
- Members not in attendance
- Approval/correction of minutes of previous meeting
- Motions and amendments, with name of maker, and vote
- Resolutions (in full)
Minutes - Usual Format

■ Voting
  – Roll call - actual vote of each member
  – Voice vote - “approved/disapproved by voice vote”
  – Show of hands - count of the votes

■ Summaries or written reports appended to the minutes for committee reports

■ Committee appointments, elections to fill vacancies, confirmation of appointments

■ Special provisions (e.g., 2/3 vote)

■ Notation if meeting is public hearing

■ Time of Adjournment
Minutes

- Should be signed by CLB chairperson and County Clerk
- Kept as permanent record in clerk’s office
- Retain rough minutes until actual minutes are approved
Typical order of business:
- Call to order by Chairperson
- Roll call by County Clerk
- Reading and approval of minutes
- Resolutions and special recognition
- Elections, appointments and confirmations
- Reports of officials and committees
- Unfinished business
- New business
- Announcements and statements
- Adjournment
Open Meetings/Sunshine Law

- County legislative body meetings must be open to the public
- “Adequate notice” must be given to the public
- Actions taken in violation of this law are void
Beer Permits

- County Clerk acts as clerk of Beer Board
- Takes applications and fee
- Issues permits
- Collects annual privilege tax
Beer Permits

- Issued to owner of business
- Valid only for business named in permit
- Valid for only one location
- Non-transferable (cannot be transferred to another owner, another location or another business name)
Beer -
Application
Contents

- Name of applicant (owner)
- Name of business
- Location of business
- More than one business in building on same permit?
- All persons, firms, corporations, joint-stock companies, syndicates or associations with at least 5% ownership interest in the business (owners)
Beer - Application Contents

- Name and address of person to receive tax notices and other communications
- Statement that no owner or person involved in selling beer has been convicted of a violation of beer or alcoholic beverage laws or a crime of moral turpitude in past 10 years
Beer - Application Contents

- Whether applicant is applying for on-premises or off-premises permit, or both
- Any other information reasonably requested by the beer board
Beer Permit Application Fee

- Fee of $250.00 must be submitted with application
- Non-refundable, even if permit application is denied
Background Checks

- Under T.C.A. § 57-5-103, the beer board may obtain criminal background checks on applicants (with fingerprints), but cannot recover the fee from the applicant.

- Contact TBI for instructions – Melissa Smith
  - 615-744-4095
  - Melissa.R.Smith@tn.gov
Beer - Annual Privilege Tax

- $100.00 annual tax due January 1
- Mail notices no later than December 1
- Delinquent January 31 (or 30 days after notice, whichever is later)
- Send certified delinquency notice
- If not paid in 10 days, permit can be revoked by beer board
- Tax is prorated for new applications
Duration of Beer Permits

- Beer permits have no expiration date
- Permit becomes void upon:
  - termination of the business
  - change of ownership
  - relocation of business
  - change in name of business
- Otherwise, permit valid until
  suspended or revoked
Reciprocal Notice Requirement

- Under T.C.A. § 57-1-214, if the local beer board revokes or suspends a beer permit at an establishment with a liquor license, the beer board must notify the ABC (and the ABC must notify the beer board if they revoke or suspend a liquor license).
Reciprocal Notice Requirement

If local beer board revokes or suspends a beer permit at an establishment with a liquor license, beer board must notify ABC.

ABC must notify the beer board if they revoke or suspend a liquor license.
Marriage
General Rules

■ Prohibited degrees of relationship (T.C.A. § 36-3-101)
  ■ Adoption establishes the same relationship as a biological relationship
■ Bigamy is a Class A misdemeanor
■ Common law marriages cannot be created in Tennessee (but will be recognized if permitted in other states)
■ Same-sex marriage is legal under *Obergefell* (US Supreme Court)
■ Marriages are not valid without first obtaining a marriage license
■ License is valid for 30 days from issuance
Marriage License Application

- Written, sworn application required
- Personal appearance by both parties (unless disabled, incarcerated, or military deployed overseas - use affidavit)
- Name, age, and address of both parties, and name and address of parents
- Sworn to by both applicants
- Social Security Number (required only if they have one – see Attorney General Opinion 08-126 – no visa/passport required)
- Identification?
Minimum Age

**Under 17**

- No license can be issued

**Ages 17 – 18**

- Must be within 4 years in age
- Consent of parents, guardian, or next of kin (unless minor emancipated)

Parents, guardian, or next of kin may consent to application in person or by sworn affidavit
Three Day Waiting Period

- If either applicant is under 18, the law requires that the application remain on file for 3 days before license can be issued
  - Does not apply if the minor’s parents, legal guardian, or next of kin join in the application
  - This only applies if the marriage involves an emancipated minor, which does not require parental consent
If either applicant is under 18, the county clerk is required to send notice of the application by registered mail to the parents, legal guardian, or next of kin of the minor applicant(s)

- Does not apply if both parents, guardian or next of kin join in the application
- This only applies if the marriage involves an emancipated minor, which does not require parental consent
Who Performs the Ceremony?

- All of these can perform a ceremony in any county in Tennessee
  - County clerks and former county clerks (in office on or after July 1, 2014)
  - Ordained religious leaders
  - Current and former county commissioners
  - City mayors
  - Current and former county mayors/executives
  - Current and former judges (only current municipal court judges)
  - Governor
  - Current and former speakers of state senate and house of representatives
Who Performs the Ceremony?

- Deputy county clerks can also perform marriage ceremonies
- Internet-Mail-Order Ministers
  - *Probably not authorized by statute*
  - *Court probably would not invalidate if everything else in order*
  - *County Clerk has no authority to examine qualifications of persons who solemnize marriages*
Gratuities

County Clerks, County Mayors, and City Mayors may keep any gratuity received for performing ceremony.

Judges cannot accept payment.

CANNOT charge a fee for performing marriage ceremony.
Return of Documents

- The officiant is required to return license to county clerk within 3 days after the ceremony
  - County Clerk has no authority to require proof that officiant is authorized to perform ceremony, and must presume marriage is valid
- Vital Records form also must be completed and returned to the county clerk within 3 days
Marriage Certificate

Most County Clerks forward a certificate to the newly married couple after all documentation has been returned to the clerk’s office.
# Marriage Fees and Taxes

<table>
<thead>
<tr>
<th>Tax</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Privilege Tax</td>
<td>$15.00</td>
</tr>
<tr>
<td>State Privilege Tax</td>
<td>$5.00</td>
</tr>
<tr>
<td>Optional County Tax</td>
<td>$5.00</td>
</tr>
<tr>
<td>County Clerk’s Fee</td>
<td>$10.00</td>
</tr>
<tr>
<td>Optional Acts and Fees</td>
<td></td>
</tr>
<tr>
<td>Copy of License</td>
<td>$0.50</td>
</tr>
<tr>
<td>Marriage Certificate/Seal</td>
<td>$5.00</td>
</tr>
</tbody>
</table>
State Marriage Fee

- Additional state fee of $62.50
- $60.00 paid to the state (no deductions)
  - Exempt if both parties attend premarital counseling
  - AOC form must be used for exemption
  - Special rule only for Sevier County (non-residents exempt)
County Clerk Responsibility

- **Do not issue license:**
  - “When it appears” that either applicant is “drunk, insane or an imbecile”
  - To minor applicants (except with consent of both parents if 17-18, or minor emancipated)
  - To anyone between 17 and 18 where other person is 4 or more years older

- Do not unreasonably interfere with the fundamental constitutional right to marry

- GOOD FAITH is the key!
WHEEL TAXES
Wheel Tax Levy

- Three ways to levy wheel tax:
  - Resolution passed by 2/3 vote of county commission at two consecutive regular meetings
  - Call for referendum by majority vote of county commission (AG Op. 90-85)
  - Private Act
Wheel Tax – Amend or Repeal

- Wheel tax can be changed or repealed using the same methods used to enact the tax
Wheel Tax

- No limit to amount of wheel taxes
  (AG Op. 96-098 and 97-109)

- Wheel taxes can be levied at different rates for different vehicles
  (AG Op. 12-18)

- Counties may authorize additional exemptions
  (AG Op. 85-199 and 12-18)
Wheel Tax

- Wheel tax can only be levied on vehicles taxable by the state (T.C.A. § 5-8-102(b))
- Wheel tax cannot be collected from non-residents (T.C.A. § 7-51-702)
- Non-commercial vehicles must be renewed in county of owner’s residence
- Commercial vehicles may be renewed in –
  - County of owner’s principal place of business
  - County of incorporation
  - Any county where owner maintains an office or place of business
- Violation punished as Class B misdemeanor, fine only, if wheel tax due (T.C.A. § 55-4-105(e))
Wheel Tax Collection

- County Clerk can request list of names, driver license numbers, and addresses of drivers in the county (T.C.A. § 55-4-105(a)(2))

- Tennessee Department of Revenue Notice 08-15 (9/08) establishes acceptable forms of proof of residency (or for commercial vehicle, physical presence) for motor vehicle title and registration laws.
T.C.A. § 55-4-105(g) does not apply to wheel taxes

- Allows county clerks to refuse to renew a registration if there are delinquent registration fees outstanding.
Wheel Tax – Purchase Out of County

■ T.C.A. § 55-4-103(i) provides that “[c]ounty residents who purchase a vehicle out of their county of residence shall receive a county name strip from the county clerk of their county of residence upon proof of proper registration and payment of any county wheel tax or other applicable county fees.”
Wheel Taxes - City

- County clerks are not required to collect city vehicle regulatory fees/taxes unless they have an agreement with the city under T.C.A. § 7-51-703. If they do have an agreement, they collect the city sticker fee with the state registration. (AG Op. 82-20)
  - Agreement between county clerk and city council, approved by county commission (T.C.A. § 7-51-703)
HOTEL/MOTEL TAXES
Hotel/Motel Taxes

- Levied by Private Act
- Tax rate, who pays, what’s covered, who collects and fees, collection mechanisms, penalties/interest, and disposition of proceeds are all covered in Private Act
- No maximum rate (per Op. Tenn. Att’y Gen. 01-141)
- City vs. County
Hotel/Motel Taxes

- County Clerk (usually) collects county hotel/motel taxes
- Can publish names of delinquent taxpayers and amount of tax they owe if statutory requirements are met
Governmental Entities

- *Federal government is exempt*
- *State & local governments can be taxed IF private act specifically includes them*
- *Governments are exempt only when they pay directly*
- *Can tax government employees who pay and then are reimbursed by employer*

Hotel/Motel Tax Refunds

- County clerks are authorized to settle and adjust errors and double assessments of county taxes erroneously or illegally collected by them and direct the refunding of such taxes.
- Claims for refunds must be filed within one year from the date of payment or the claim is barred.

- T.C.A. § 67-1-707
Hotel/Motel Taxes -- Short-term Rentals

- Hotel/motel tax applies to short-term rentals
- Airbnb and VRBO are not required to collect and remit taxes
  - They will collect it by agreement with the county
Notary Public Applications

- Notaries are elected by the CLB in the county in which they reside or have their principal place of business
- Governor “approves” and issues Commission through Secretary of State
- $10,000 bond filed with County Clerk
- Oath of office
# Notary Public – Clerk’s Fees

<table>
<thead>
<tr>
<th>Fee</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Fee</td>
<td>$12.00 ($7.00 to county clerk; $5.00 to secretary of state)</td>
</tr>
<tr>
<td>Fee if county clerk procures seal</td>
<td>&lt; 20% of cost</td>
</tr>
<tr>
<td>Taking and recording bond</td>
<td>$2.00</td>
</tr>
<tr>
<td>Fee for moving to another county</td>
<td>$7.00 ($5.00 to county clerk; $2.00 to secretary of state)</td>
</tr>
</tbody>
</table>
Notary Commission

- County clerk certifies notary’s election and forwards fee to Secretary of State
- Notary’s commission issued by Governor, Secretary of State sends to County Clerk
- County clerk delivers commission to notary ONLY after oath taken and bond filed
  - Under T.C.A. § 8-16-107, “the county clerk shall make a record of the date of the issuance and the expiration of the commission, noting the same on the bond executed by the notary public and also in the minute entry showing the notary’s qualification as such notary public.”
Notary Public Seal

- Rubber type stamp in any color except black or yellow (must show up black when copied on non-color copier)
- Designed by secretary of state
- No penalty for using wrong color
- Documents not invalid with wrong seal
PAWNBROKERS
Pawnbroker vs. Title Pledge Lender

**Pawnbroker**
- T.C.A. § 45-6-201 et seq.
- Buy-sell agreements on personal property & loans secured by personal property
- Pawnbroker takes physical possession of the property
- County Clerk issues license

**Title Pledge Lender**
- Loans on certificates of title or on titled personal property
- State issues license, not County Clerk
Pawnbroker - Eligibility

- Good moral character
- "Net assets" of at least $75,000
- Fair and lawful operation of business
- No felony convictions within past 10 years directly related to pawnbrokering or would otherwise make person unfit to be pawnbroker
Application for License

- Name (partners, officers and shareholders)
- Street address of business
- Specify amount of net assets/capital, with unaudited CPA statement: “According to the information provided to me, the net assets, as defined in Tennessee Code Annotated, § 45-6-203, or proposed capital to be used by the applicant, [insert name] in the pawnbroker business, are valued at not less than seventy-five thousand dollars ($75,000)”
- Signature of 10 county residents and landowners attesting to moral character
- Applicant’s affidavit of no felony convictions in 10 years affecting business
- Police chief/sheriff/TBI certificate of good moral character and no felony convictions within past 10 years (applicant must pay fees)
- $50.00 in certified funds payable to county clerk (non-refundable)
Insurance

- Insurance sufficient to cover the property and pay the stated value on the pledge stubs
- Payable to County Clerk for benefit of pledgors
- Copy of policy deposited with County Clerk
Transferability of License

- Not transferable from one person to another
- Transferable from one location to another within the county by payment of $10.00 fee to County Clerk
- Not transferable outside county of issuance

Note that pawnbroker licenses have no expiration date
MANUFACTURED HOMES
Manufactured Homes

- Ownership legally recorded in one of two ways:
  - File affidavit of affixation with register of deeds if permanently affixed to land owned by owner of manufactured home
  - Obtain certificate of title from county clerk if not permanently affixed, or land not owned
Manufactured Homes

- County clerk issues installation permits to installers of manufactured homes (T.C.A. § 68-126-406)
  - Permit fee of $45 (one decal for each installation)
  - County clerk retains $8 and remits $37 to commissioner of commerce & insurance with monthly report, no later than 20th of month
  - Permit decal must be displayed on electrical box
    - Decals furnished by commissioner to clerk
    - Lost decal pays $45 fee, same split
Other Duties of County Clerk

- Motor vehicle titling and registration
- Issues business licenses
- Authorized to take depositions and affidavits, administer oaths, and take acknowledgments
- Keeps approved county road list
- Keeps county personnel policies
- Issues hunting and fishing licenses
Misconduct

- Conflict of Interest
- Bribery/Kickbacks
- Misuse of Public Property and Time
- Official Misconduct
- Falsify/Destroy Government Records
- Perjury
- Failure to pay over taxes
Conflict of Interest

- Basic Conflict of Interest statute (T.C.A. § 12-4-101)
  - Prohibits “direct interest”: when a county official has a direct financial interest and will be voting for, overlooking, letting out, or in some manner superintending the work or contract.
  - Requires public disclosure of indirect financial interest

- Penalty for Violation: Dismissal from office and ineligibility for ten (10) years
Conflict of Interest

■ 1981 Financial Management Act
  – Very strict conflict provisions – no county official or employee can have any financial interest (direct or indirect) in any purchase or contract anywhere in the county
  – Violation = misdemeanor and removal from office

■ County Purchasing Law of 1957
  – Same as 1981 Act, but doesn’t include employees
  – Violation = felony (not enforceable)
Ouster

- Misconduct in office (knowing or willing)
  - Failure to account for and pay over taxes
- Neglect of duty (knowing or willing)
- Public intoxication
- Illegal gambling
- Crime of moral turpitude
- Conflict of interest violation
Ouster Proceedings

- Attorney General, District Attorney, or County Attorney may institute proceedings on own, or after complaint
- Ten citizens and freeholders can file ouster suit
Liability Issues

■ TGTLA - tort liability under state law
■ Check to see what the county’s liability insurance policy covers
■ Make sure you have adequate coverage for personnel/employment liability
THAT’S ALL!