

## CHAPTER I

### OFFICE OF THE COUNTY CLERK

#### A. HISTORY AND GENERAL DUTIES OF THE COUNTY CLERK

The office of county clerk has been in existence in Texas since 1836, superseding the *escribano* (secretary) of Spanish-Mexican rule. Article V, Section 20 of the Texas Constitution provides:

Sec. 20. There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for four years, who shall be clerk of the County and Commissioners Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners Court, until the next general election; provided, that in counties having a population of less than 8,000 persons there may be an election of a single Clerk, who shall perform the duties of District and County Clerks.

*Const.*  
*Art. V, Sec. 20*

The county clerk:

- serves as clerk for the county court, county courts at law and the county
- keeps records pertaining to the county courts, real and personal property, and personal records
- records vital statistics
- issues marriage licenses
- administers other licensing and recording requirements
- conducts countywide special and general elections and handles early voting

*Local Gov't Code*  
*Sec. 81.024*

#### B. THE OFFICE OF THE COUNTY CLERK

##### 1. Oath and Affirmation of Office

County clerks often assist other elected officials in executing the required statements and oaths before entering upon the duties of office. An elected officer (including the county clerk), before entering upon the duties of office, must first subscribe to a statement of elected/appointed officer and then take the oath or affirmation of office.

*Const.*  
*Art. XVI, Sec. 1*

The statement. The statement of elected/appointed officer, sometimes referred to as the anti-bribery statement, must be subscribed before the oath or affirmation of office is taken. The statement of elected/appointed officer is as follows:

“I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or

*Art. XVI, Sec.*  
*1(b)*

confirmation, whichever the case may be, so help me God.”

The form and instructions concerning the execution of the statement are available from the Secretary of State's website at <http://www.sos.state.tx.us/statdoc/forms/2201.pdf>. Please note that this statement need not be executed in front of an officer authorized to administer oaths.

*1 TAC Sec. 73.44*

County, precinct and municipal officials (including the county clerk) are to retain this signed statement with the official records of their office. However, state and district officers such as state senators, state representatives, district attorneys and district judges are to file the statement with the Secretary of State prior to taking the Oath or Affirmation of office (described below). The statement may be faxed to the Office of the Secretary of State which will consider the faxed copy as satisfying the filing requirement.

*Const.  
Art. XVI, Sec.  
1(c)*

*1 TAC Sec. 73.43*

Oath and affirmation. After subscribing to (and, for certain officials, filing) the statement of elected/appointed official, elected officials (including the county clerk) are to take the following Oath or Affirmation of office:

“I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.”

*Const.  
Art. XVI, Sec.  
1(a)*

The form and instructions for completion of the oath are available from the Secretary of State's website at <http://www.sos.state.tx.us/statdoc/forms/2204.pdf>.

Some elected officials (including county commissioners, the county judge and the county auditor) must also swear in writing to additional language that is often added to the Oath or Affirmation above.

*Local Gov't  
Code  
Sec. 81.002(a)  
Sec. 84.007*

The county clerk records his or her oath in the county clerk's office and then deposits the oath in the office of the clerk of the district court. The oath is generally printed on the bond the county clerk must execute (*see* next section).

*Sec. 82.001(d)*

*Tax Code, Sec.  
6.28(e)*

The county clerk is required to record the oaths of certain other elected officials such as the tax assessor-collector. For more information on oaths or affirmations of office, please see the Texas Association of Counties' publication entitled "Outline of Official Oath and Bond Requirements." This publication is available on the Texas Association of Counties' website at <http://www.county.org/resources/legal/pdf/OutlineOfOath&Bond.pdf>.

## **2. Surety Bond Requirements**

The county clerk must, before beginning to perform the duties of office, execute a bond either with four or more good and sufficient sureties or with a surety company authorized to do business in the state as a surety. The bond must be:

*Sec. 82.001*

- (a) Approved by the commissioners court
- (b) Made payable to the county
- (c) Conditioned that the clerk will faithfully perform the duties of office
- (d) In an amount equal to at least 20 percent of the maximum amount of the fees collected in any year during the term of office preceding the term for which the bond is to be given, but not less than \$5,000 or more than \$500,000

After the official oath is taken and subscribe, it is endorsed on the bond. The bond and oath must be recorded in the county clerk's office and deposited in the office of the clerk of the district court.

Surety bonds for deputy clerks and other employees. If the county clerk has only a single deputy clerk, the county clerk must execute a surety bond to cover the deputy. The county clerk must execute a schedule surety bond or a blanket surety bond to cover all the deputy clerks, if there is more than one, and all other employees of the office.

*Sec. 82.002*

The bond covering a deputy clerk or an employee must be conditioned in the same manner and must be for the same amount as the bond for the county clerk. The bond must be made payable to the county for the use and benefit of the county clerk.

Self-insurance. In lieu of a clerk obtaining a bond to cover the clerk or a deputy clerk, the county may self-insure against losses that would have been covered by the bond.

*Secs. 82.001(b)  
82.002(b)*

### **3. Errors and Omissions Insurance and Indemnification**

The county clerk must obtain an insurance policy or similar coverage from a governmental pool operating under Chapter 119, Local Government Code, covering the clerk and each deputy clerk against liability incurred through errors and omissions in the performance of their official duties.

*Sec. 82.003*

The policy or other coverage must be in an amount equal to the amount of fees collected in the year before the policy is obtained. The policy or other coverage must be in an amount of at least \$10,000 but is not required to exceed \$500,000. If the policy or other coverage also covers other county officials, the policy or other coverage must be in an amount of at least \$1 million.

Contingency fee and fund if required coverage unavailable. The commissioners court may establish a contingency fund to provide the coverage required if the clerk determines that insurance coverage is unavailable at a reasonable cost. The commissioners court may set an additional filing fee in an amount not to exceed \$5 for each suit filed to be collected by the county clerk. The fee will be paid into the fund. When the contingency fund reaches an amount equal to that required for a bond, the clerk must stop collecting the additional fee.

The commissioners court of a county is directed by law to pay out of the general fund of the county the premiums for a required bond or insurance policy.

*Sec. 82.004*

*AG Op.*

*NOTE: AG Op. JM-1092 (1989) overrules the statements in AG Op. Nos. M-441 (1969) and MW-156 (1980) that the purchase of errors and omissions insurance coverage for a public officer or employee violates the Constitution unless it is part of compensation.*

*JM-1092 (1989)*

Indemnification of county clerks. The commissioners court by order may indemnify the county clerk and deputy county clerks against personal liability for the loss of county funds, or loss or damage to personal property, incurred by them in the performance of official duties if the loss was not the result of the clerk's or deputy clerk's gross negligence or criminal action.

*Local Gov't  
Code  
Sec. 157.903*

#### **4. Continuing Education Requirements**

The county clerk must complete 20 hours of instruction regarding the performance of the clerk's duties of office during each calendar year that begins after the clerk's election or appointment to office.

*Gov't Code  
Sec. 51.605*

The annual requirement of 20 hours of continuing education must include at least one hour of instruction regarding registry funds handled under Chapter 117, Local Government Code, and one hour of instruction regarding fraudulent court documents and fraudulent document filings.

The principal continuing education courses currently offered in Texas include, among others:

1. County and District Clerks' Seminar, College Station-Texas A&M Extension Service, V. G. Young Seminar (January)
2. University of Texas School of Law Program, Austin (April)
3. County and District Clerks' Association of Texas Annual Conference (location varies) (June)
4. Elections Seminar, Austin (dates vary)
5. Vital Statistics Seminar, Austin (December)
6. Probate Seminar, sponsored by the Texas College of Probate Judges (location varies) (dates vary)
7. Regional Meetings, County and District Clerks' Association (check with Regional Directors in each Region for locations and dates)

The County and District Clerks' Association of Texas is composed of county and district clerks as regular members and clerks' office employees, former clerks, and election administrators as associate members (*see* [www.texasclerks.org](http://www.texasclerks.org)). The Association holds an annual conference and area meetings and publishes a monthly newsletter.

#### **5. Authentication by Seal**

The county clerk is required to "authenticate" the official acts of:

*Gov't Code  
Sec. 26.005*

- (1) County-level courts
- (2) The county commissioners court

*Local Gov't Code  
Sec. 81.004(a)  
Sec. 191.001(b)*

(3) The county clerk as the county recorder

The term "authenticate" means to render authoritative or authentic through some legal formality. County clerks authenticate a particular act by the legal formality of applying a seal to a written document that describes the act.

*Black's Law Dictionary, 7th Ed., Pg. 127*

**a. Seals for County-Level Courts**

The county clerk is required to use the seal of the particular county-level court to authenticate the official acts of the county clerk and the judge of the county-level court. The impress of the seal is to be attached to all processes other than subpoenas that are issued in the name of the county-level court.

*Gov't Code Sec. 26.005(a) and (b)*

The constitutional county court seal must contain a star with five points engraved in the seal's center. The words "County Court of \_\_\_\_\_ County, Texas" must be engraved on the seal.

*Sec. 26.005(a)*

The clerk should not use the constitutional county court seal to authenticate the acts of statutory county courts and judges or statutory probate courts and judges.

*Sec. 25.0011  
Sec. 25.0031*

Each statutory county-level court has its own seal. For example, a county with four statutory county courts must have a separate seal for each of the four statutory county courts. The seal must have the five-pointed star engraved in the seal's center as well as the name of the statutory county court (*e.g.*, "County Court at Law No. \_\_\_\_ of \_\_\_\_\_ County, Texas").

**b. Separate Seal for the County Commissioners Court**

Each county is required to have a commissioners court seal that is separate and distinct from the seal of the constitutional county court. The words "Commissioners Court, \_\_\_\_\_ County, Texas" must be engraved on the seal. The seal must also be engraved with a five-pointed star or a design selected by the commissioners court and approved by the secretary of state.

*Local Gov't Code Sec. 81.004(a)*

The county clerk keeps the commissioners court seal and uses the seal "to authenticate official acts of the court or its presiding officer or clerk that requires a seal for authentication." The county clerk serves as the clerk of the county commissioners court

*Sec. 81.004(b)*

**c. Seal for the County Clerk's Acts as County Recorder**

The county clerk is to use the constitutional county court seal to authenticate all of the clerk's official acts as county recorder.

*Sec. 191.001(b)*

**C. APPOINTMENT OF DEPUTY CLERKS**

Deputy county clerks must be appointed in writing by the county clerk. A deputy clerk acts in the name of the county clerk and may perform all official acts that the county clerk may perform. The appointment must be signed by the county clerk and must bear the seal of the county court. The county clerk must record the appointment

*Local Gov't Code Sec. 82.005*

in the county clerk's office and must deposit the appointment in the office of the district clerk.

Upon appointment, deputy county clerks must subscribe to the statement of elected/appointed officer and must take the official oath or affirmation of office. The executed statement of elected/appointed official should be retained with the official records of the county clerk's office. The executed official oath or affirmation of office should be recorded in the county clerk's office and deposited in the office of the district clerk.