



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

March 13, 1998

The Honorable John Vance  
Dallas County District Attorney  
Administration Building, 411 Elm Street  
Dallas, Texas 75202

Letter Opinion No. 98-016

Re: Instruments that the county clerk must accept  
for filing and recording (RQ-950)

Dear Mr. Vance:

You ask what instruments the Dallas County Clerk must accept for filing and recording. You state that the Dallas County Clerk has recently noticed a great increase in the number of unusual documents presented for filing and recording in his office. Many of these do not belong in the traditional categories of documents filed with the clerk, such as land records, lien instruments, financing statements, probate records, or court pleadings. You identify some of the unusual instruments as follows:

1. Refusal to Pay Property Taxes,
2. Common Law Liens,
3. Affidavit Revoking Signature,
4. Affidavit of Refusal to Accept Post,
5. Affidavit of Direct Attack Upon Lawsuit,
6. Constructive Notice,
7. Notice of Non-Statutory Waiver of Tort Presented by Affidavit.

These examples of unusual documents presented for filing are often in affidavit form, while the following are not in affidavit form:

1. Surrender of Social Security Card,
2. Declaration of Person Being a Sovereign,

3. Notice of Asseveration,<sup>1</sup>
4. Notice of Waiver of Tort,
5. Notice Regarding Lack of Jurisdiction.

You do not submit copies of any of the unusual documents you inquire about, nor do you attempt to explain what the proponents of these documents hope to accomplish by filing them and having them recorded as public records. Since we can only speculate from the names of the documents what they relate to, we cannot determine as a matter of law whether or not the county clerk may accept them for filing. We can, however, review the law establishing the county clerk's duties, to assist you in advising the clerk how to deal with these documents.

Article V, section 20 of the Texas Constitution provides for the election of a county clerk, who will be clerk of the county and commissioners courts and recorder of the county, and "whose duties, perquisites and fees of office shall be prescribed by the Legislature." Thus, the county clerk's duties, including filing and recording duties, will be found in the statutes.<sup>2</sup> Section 192.001 of the Local Government Code provides that the county clerk "shall record each deed, mortgage, or other instrument that is required or permitted by law to be recorded."<sup>3</sup> Unless a statute provides that a document is authorized, required, or permitted to be recorded in the clerk's office, he may not accept it for filing.<sup>4</sup>

In *City of Abilene v. Fryar*, 143 S.W.2d 654 (Tex. Civ. App.—Eastland 1940, no writ), the court addressed the county clerk's refusal to file trust deeds securing city bonds unless stamps demonstrating payment of a tax were affixed to them, as required by statute.<sup>5</sup> The city provided the clerk with warrants covering the cost of stamps claimed to be necessary and then sued to enjoin the

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<sup>1</sup>"Asseveration" refers to an affirmation of fact, usually with no implication that an oath has been taken. BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE 77 (1987); see BLACK'S LAW DICTIONARY 152 (4th ed. 1968).

<sup>2</sup>See *Comm'rs Court of Titus County v. Agan*, 940 S.W.2d 77 (Tex. 1997) (construing similar language in Tex. Const. art. XVI, section 44(a), pertaining to county treasurer).

<sup>3</sup>See also Local Gov't Code § 191.001 (duty of clerk to record contents of each instrument filed for recording that clerk is authorized to record).

<sup>4</sup>*Turrentine v. Lasane*, 389 S.W.2d 336, 337 (Tex. Civ. App.—Waco 1965, no writ) (citing statutes that establish duty of county clerk to record all deposited written instruments authorized, required or permitted to be recorded in his office).

<sup>5</sup>Former article 7047e, V.T.C.S. (1925), imposed a stamp tax on certain promissory notes. See Act of Oct. 26, 1936, 44th Leg., 3d C.S., ch. 495, art. IV, § 9, 1936 Tex. Gen. Laws 2040, 2080, repealed by Act of May 21, 1941, 47th Leg., R.S., ch. 449, § 1, 1941 Tex. Gen. Laws 723, 723.

clerk from cashing the warrants. The court, explaining why the city had no right to litigate the question of its tax liability in an injunction suit, described the clerk's duty as follows:

[I]f the law imposed the tax in question it vested no authority in the Clerk to file or record the deeds of trust without being stamped; but to the contrary, expressly prohibited the Clerk from doing so. If the law did not impose said tax, under the circumstances, it was the ministerial duty of the Clerk to file and record the instruments without being stamped. The Clerk's duty was not affected by any mistaken understanding or construction of the law. The Clerk charged with a ministerial duty is presumed to know the law, and if she makes a mistake as to such question there is a plain and adequate legal remedy for requiring performance of the duty. . . . Such remedy is an action of mandamus.<sup>6</sup>

The court further stated that the clerk's "sole duty, other than to supply the stamps if requested, was to obey the statutory prohibition not to file or record the instruments unless they were stamped."<sup>7</sup>

The *Fryar* case makes it clear that the clerk may file and record a document only if authorized, required, or permitted to do so by a statute. In addition, numerous attorney general opinions on the county clerk's authority to file particular documents address this issue by construing the relevant statutes.<sup>8</sup> If a document covered by a filing statute is regular on its face, the clerk may not refuse to file it based on extraneous facts.<sup>9</sup> However, the clerk must be able to determine from the face of the document that it complies with the applicable statute. For example, this office held that the county clerk may not file an assumed business name certificate if the acknowledgment is written in a language other than English, because the clerk would then be unable to determine

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<sup>6</sup>*City of Abilene v. Fryar*, 143 S.W.2d 654, 657 (Tex. Civ. App.—Eastland 1940, no writ) (citation omitted).

<sup>7</sup>*Id.* at 659.

<sup>8</sup>Attorney General Opinions JM-1277 (1990) (county clerk may not accept cash bond in satisfaction of bond requirement in statute regulating charitable raffles); JM-825 (1987) (county clerk may not file assumed business name certificate if acknowledgment is written in a foreign language); H-1155 (1978) (county clerk may not refuse to file pleadings that appear inadequately certified but may flag them or otherwise bring them to the attention of the court); M-511 (1969) at 4 (unprobated will may not be recorded by county clerk except when attached as an exhibit to an otherwise recordable affidavit of heirship); C-695 (1966) at 3 (field notes of a subdivision cannot be recorded in plat records unless accompanied by map or plat of subdivision); V-1529 (1952) at 13 (county clerk must accept a certificate of nomination that is regular on its face, and may not determine questions of illegality in the nomination that depend upon an investigation of extraneous facts); V-1450 (1952) at 3-4 (clerk has authority and duty to file birth and death certificates only as provided by statute).

<sup>9</sup>Attorney General Opinions WW-908 (1960) at 9; V-1529 (1952) at 13 (county clerk must accept certificate of nomination that is regular on its face, and may not determine questions of illegality in nomination that depend upon an investigation of extraneous facts).

whether or not the instrument was regular on its face.<sup>10</sup> If the clerk, through a mistaken understanding of the statute, refuses to file a document that is statutorily required to be filed, the remedy is an action of mandamus, which enables the court to construe the recording statute and determine as a matter of law whether it applies to the document in question.

There are numerous provisions scattered throughout the Texas statutes and codes that authorize, require, or permit the county clerk to record documents.<sup>11</sup> We cannot discuss or even enumerate all such provisions, but we will mention some of the more important.<sup>12</sup> As already pointed out, section 192.001 of the Local Government Code provides that the county clerk "shall record each deed, mortgage, or other instrument that is required or permitted by law to be recorded," and other sections of chapter 192 refer to other kinds of documents that may be filed and recorded.<sup>13</sup> The Property Code includes provisions on filing liens and other instruments relating to real property.<sup>14</sup> Many provisions on the filing of litigation-related documents with the office of the clerk are found in the Texas Rules of Civil Procedure.<sup>15</sup>

Newly enacted legislation may assist the clerk in dealing with some of the unusual documents you inquire about. House Bill No. 1185,<sup>16</sup> adopted by the 75th Legislature, addresses fraudulent judgment liens issued by so-called "common law courts" and fraudulent documents purporting to create liens or claims on personal and real property that have been filed with court

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<sup>10</sup>Attorney General Opinion JM-825 (1987) at 2; *see also* Attorney General Opinion H-1155 (1978) at 2 (clerk may exercise discretion with respect to documents offered for filing only when expressly authorized by applicable statute).

<sup>11</sup>*See, e.g.*, V.T.C.S. art. 5192 (stevedore's bond); Agric. Code § 144.041 (livestock brands); Bus. & Com. Code §§ 9.401 (certain security interests), 35.07 (utility security interests), 36.10 (certificate assumed name under which business is conducted or professional services rendered).

<sup>12</sup>The statutes and rules of procedure that authorize, permit, or require the county clerk to accept documents for filing are included in the General Index to Vernon's Texas Statutes and Codes, Annotated, if the district attorney's office or the county clerk wishes to compile a list of them. *See also* TEXAS DEP'T OF HOUSING AND COMMUNITY AFFAIRS, GUIDE TO TEXAS LAWS FOR COUNTY OFFICIALS 82-94 (1995-96 ed.) (list of statutes stating duties and authority of county clerk).

<sup>13</sup>*See* Local Gov't Code §§ 192.002 (military discharge records), .004 (judgment lien and "every other instrument that is intended to create a lien"), .005 (certain probate records).

<sup>14</sup>Prop. Code §§ 11.001(a) (instruments relating to real property), 12.013 (judgment or abstract of judgment); chs. 14 (federal tax liens and other liens), 52 (judgment liens), 53 (mechanic's, contractor's, or materialman's lien).

<sup>15</sup>*See* Tex. R. Civ. P. 21 (filing of pleadings, pleas, and motions).

<sup>16</sup>Act of May 10, 1997, 75th Leg., R.S., ch. 189, 1997 Tex. Sess. Law Serv. 1045, 1045 (adopting and amending provisions to be codified in Penal Code, Government Code, and other codes).

clerks and the secretary of state.<sup>17</sup> Among other provisions, it establishes criminal offenses for filing a fraudulent court document or a fraudulent financing statement and provides a means of clearing public records of such documents.<sup>18</sup> We will focus on the provisions relating to the county clerk's duties.

House Bill No. 1185 amended the continuing education requirement applicable to county clerks, district clerks, and county and district clerks to require at least one hour regarding fraudulent court documents and fraudulent document filings.<sup>19</sup> It also added subchapter J to Government Code chapter 51,<sup>20</sup> which permits a person against whom a fraudulent judgment or lien against real or personal property has been filed to have it removed. A document is presumed to be fraudulent if it is "a purported judgment or other document purporting to memorialize an act, an order, a directive, or process of . . . a purported court or a purported judicial entity not expressly created or established under the constitution or the laws of this state or of the United States."<sup>21</sup> A document is also presumed to be fraudulent if it "purports to create a lien or assert a claim against real or personal property or an interest in real or personal property" and the lien is not provided for by law, created by consent of the obligor, debtor, or owner of the property or a representative of that person, or an equitable, constructive, or other lien imposed by a court.<sup>22</sup>

When the clerk of a court reasonably believes that a previously filed judgment, court order, or lien is fraudulent, he or she shall notify the person against whom the purported judgment or order is rendered, or who is affected by the purported lien.<sup>23</sup> The written notice is to be provided not later than the second business day after the date that the document or instrument is offered or submitted for filing, or, if it has already been filed or recorded, not later than the second business day after the date that the clerk becomes aware that the document or instrument may be fraudulent.<sup>24</sup> Persons who have reason to believe that their interests are affected by a fraudulent document may file a motion

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<sup>17</sup>Senate Research Center, Bill Analysis, H.B. 1185, 75th Leg., R.S. (1997), see Attorney General Opinion DM-389 (1996) (background on fraudulent judgment liens).

<sup>18</sup>Act of May 10, 1997, *supra*, §§ 8, 10, 14, 1997 Tex. Sess. Law Serv. 1045, 1048-50 (to be codified at Penal Code §§ 37.13, .101; Gov't Code § 51.901).

<sup>19</sup>*Id.* § 13, 1997 Tex. Sess. Law Serv. 1045, 1050 (to be codified at Gov't Code § 51.605(c)).

<sup>20</sup>*Id.* § 14, at 1045, 1050-56 (to be codified at Gov't Code §§ 51.901 - .905).

<sup>21</sup>*Id.* § 14, at 1045, 1050 (to be codified at Gov't Code §§ 51.901(c)(1)).

<sup>22</sup>*Id.* (to be codified at Gov't Code §§ 51.901(c)(2)).

<sup>23</sup>*Id.* (to be codified at Gov't Code § 51.901(a)).

<sup>24</sup>*Id.* (to be codified at Gov't Code § 51.901(b)).

with the district clerk requesting the court to determine the status of the document.<sup>25</sup> Subchapter J describes in detail the kind of fraudulent documents it applies to and sets out the text of a suggested motion for judicial review of a document. It also provides that a clerk of a court, including a county court, “shall post a sign in letters at least one inch in height, that is clearly visible to the general public in or near the clerk’s office stating that it is a crime to intentionally or knowingly file a fraudulent court record or a fraudulent instrument with the clerk.”<sup>26</sup>

Some of the unusual documents you describe may be subject to the procedures set out in subchapter J. In particular, the documents described as “common law liens” should be examined to determine if they are fraudulent documents within the legislation.

If the county clerk is presented with fraudulent documents for filing, despite the criminal penalties for filing such documents and the sign in the clerk’s office stating that it is a crime to intentionally or knowingly file a fraudulent court record or a fraudulent instrument with the clerk, he should give the written notice required by House Bill 1185.<sup>27</sup> When the clerk is presented with any other document, he has a ministerial duty to accept it for filing if a statute authorizes, requires or permits it to be recorded in the clerk’s office, and if it is regular on its face. If no statute authorizes, requires, or permits a document to be recorded in the clerk’s office, he may not accept it for filing. If the Dallas County Clerk is unable to determine whether a particular document or type of document is within a filing statute, he may seek advice from the criminal district attorney pursuant to section 41.007 of the Government Code.<sup>28</sup>

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<sup>25</sup>*Id.* § 14, at 1045, 1051-56 (to be codified at Gov’t Code § 51.902 - .903).

<sup>26</sup>*Id.* § 14, at 1045, 1056 (to be codified at Gov’t Code § 51.904).

<sup>27</sup>House Bill 1185 amended Property Code section 12.013 to provide that a judgment or an abstract of a judgment of a court may be recorded if the judgment is of a court “expressly created or established under the constitution or laws of this state or of the United States; . . . that is a court of a foreign country and that is recognized by an Act of congress or a treaty or other international convention to which the United States is a party; or . . . of any other jurisdiction, territory, or protectorate entitled to full faith and credit in this state under the Constitution of the United States,” and the judgment is attested under the signature and seal of the clerk of the court that rendered it. See Attorney General Opinion DM-389 (1996) (district or county clerk need not accept for filing document indicating on its face that it proceeds from a purported state or local court not named in the constitution or statutes of the state of Texas). Even though a fraudulent judgment is not authorized to be recorded, House Bill 1185 contemplates that the clerk will as a practical matter accept such documents on occasion and then implement the notice provisions.

<sup>28</sup>A “criminal district attorney” within the Texas Constitution is a class or kind of district attorney. *Hill County v. Sheppard*, 178 S.W.2d 261 (Tex. 1944); see also Attorney General Opinion JM-727 (1987).

S U M M A R Y

The county clerk has a ministerial duty to accept a document for filing and recording if a statute authorizes, requires or permits it to be filed in the clerk's office, and if it is regular on its face. If no statute authorizes, requires, or permits a document to be filed in the clerk's office, he may not accept it for filing. When the county clerk believes that a previously filed document or a document presented for filing is fraudulent within Government Code chapter 51, subchapter J, he is to provide the notice required by that provision.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison  
Assistant Attorney General  
Opinion Committee