

# *Registry of the Court*

***2014 On the Road Training  
Amarillo***

*Paul S. Lyon, CPA  
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# Contact Information

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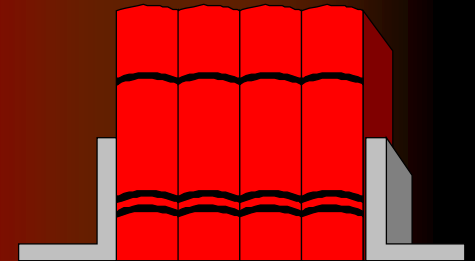
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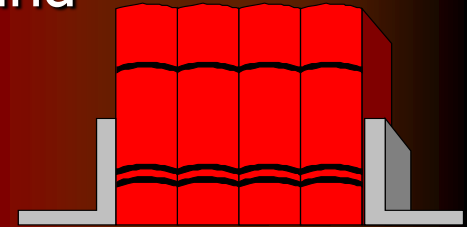
# What to Cover

- Introduction
  - Definitions: Registry & Accounts
  - Registry Contents
  - Custodian not Trustee
  - Clerk's Liability and Insurance
- Types of funds
- Depositories
  - When is a Contract Needed?
  - FDIC Insurance
  - What should be Included?



# What to Cover

- Disbursements and expenses
  - Court Orders
  - Expenses paid from interest-bearing and
  - Non-interest-bearing accounts
  - Calculations
- Investments
- Accounting, Reporting and Auditing
  - Reconciliation, Interest Allocation, Check-writing, Auditing, 1099s
- Abandoned funds



# INTRODUCTION

# LGC Chapter 117

## Depositories for Certain Trust Funds and Court Registry Funds

- Applies only to county and district clerks; not to JPs or sheriffs
- Therefore, only clerks can deduct an administrative fee.
- But JPs and Sheriffs must allocate interest, if earned and transfer abandoned funds to state.

# Definition of Registry Funds

**“Funds tendered to the clerk for deposit into the registry of the court.”**

No further definition is found in the statutes; however, registry generally means a place where a written record is maintained.

# Other Important Concepts

Contents (money & tangible assets)

Accounts

- Special
- Separate

Custodian vs Trustee

Primary responsibilities

- Safeguard assets
- Maintain proper accounts



# Clerk's Liability

- Money (LGC § 117.081, 117.083)
- Tangible property (Civil Practices and Remedies Code §7.02)
- Investments
- County is still liable even after deposit
- Bond, insurance and contingency funds
  - District Clerk (Govt. Code §51.302)
  - County Clerk (LGC §82.003)
  - Check with your insurance agent

# TYPES OF FUNDS

# Funds of Minors and Incapacitated Persons

- Also called “custodial” or “trust” accounts,
- Money owed to minors & other incapacitated persons with no legal guardian
  - Estates in uncontested cases where the creditor owes \$100k or less (Probate Code 887)
  - In judgments where there is a “next friend” but no guardian (Prop. Code 142.02)

# Funds held in Civil Cases

- Ownership disputes of specific property
- A holder of the property can avoid paying the wrong party by:
  - pursuing a judicial determination and
  - depositing the disputed property with the court
- May include rent or property pending distribution in divorce cases

## **Funds Paid to Satisfy a Judgment**

To provide for a court record that proper payment has been made or to clear the judgment debtor's credit or title to property

## **Child Support Funds**

Receipts held more than 3 days must be deposited. If the check is made out to the custodial parent, this is not possible.

# Cash Bonds Required in Civil Cases

Includes bonds required in civil cases such as those requiring specific performance, injunctions, sequestrations, temporary restraining orders, and others

# Cash Bail Bonds – JC 0195

1. No case filed – not registry ?
2. Sheriff **may** retain and refund
3. Interest **must** be paid
4. No Fees Deducted by Sheriff
5. Sheriff is “holder” for abandoned funds
6. Auditor/treasurer signatures
7. Dormancy begins with no-file letter.

# Sheriff's Duties for Cash Bail bonds

- Maintain a separate bank account
- Maintain separate accounts for each defendant
- Allocate interest to each bond prior to distribution to defendant or clerk
- Account for, report and disburse abandoned bonds or



# Turn Them over to the Clerk



# CCP 17.02 – GA-0960

1. Art 17.02 amended in 2011
  - Full amount of bond must be refunded
  - Allows refund to person on receipt
2. Abbott opinion
  - Clerks may no longer deduct Admin Fee
  - Interest **must** be paid
3. Refund questions remain

## **Proceeds from Eminent Domain**

Held either because the parties involved are contesting the amount or they are held pending distribution

## **Funds from forced sales**

Undistributed funds from forced sales of property for delinquent taxes and any unclaimed proceeds in excess of the liability

## **Escheat funds**

Estates subject to transfer to the state because the deceased had no valid will and no known heirs

## **Probate funds**

A valid will has been submitted to a probate court but one of the heirs cannot be located



# Deposits

- Deposit if held more than three days
- “Special account”  
an account in a depository in which registry funds are placed
- “Separate account”  
funds transferred from a special account into a separate interest-bearing account
- If no depository has been selected –  
put it in the safe (LGC 117.027) (Civ. Remedies Code 7.002 for tangible items.)

# When is a Contract Needed?

- If the accounts are in the County's EIN
- If the accounts in the individual's SSN exceed FDIC coverage.
- Clerks may have as many depository banks as needed.

# FDIC Insurance

- [www.fdic.gov/deposit/deposits/basics.html](http://www.fdic.gov/deposit/deposits/basics.html)
- Covers : checking, NOW, savings, Money markets, and CDs
- Does not cover: stocks, bonds, mutual funds, or safe deposit boxes
- Doesn't cover Treasury bills (allowable Investment by 117.053c); bonds or notes; All are backed by the US Government



# How Much Coverage?

- Depends on categories of accounts
  - Single
  - Joint
  - IRA
  - Revocable Trusts (POD & Living Trust)
- For example: Husband, wife and two children could qualify for \$3 million in coverage at one bank
- **Stay up to date.** These change.

# What to Include in Contract

- Bank's ability to:
  - Track multiple ownership accounts within one bank account
  - Allocate interest to each owner
  - Issue 1099's to each owner
  - Provide on-line reports & management
- Collateral, interest & service fees
- Penalties on early withdrawal from CDs

# Style of Account

- Special Account (commingled using County ID)
  - *Janet Doe, Big County, County Clerk*
- Separate Account (in Owner's ID)
  - *Johnny Minor by Janet Doe, Big County, County Clerk*

# Contract Items

- Interest-bearing – request in writing 30 days prior to notice
- Advertise 20 days before submission date
- Commissioners may:
  - Contract for 2 or 4 years or extend 2 yr contract for an additional 2 years
  - Negotiate rates in last 2 years of 4 yr contract and prior to the extension of a 2 yr contract

# Selection & Qualification

- Bank submits check for  $\frac{1}{2}$  of 1% Average Daily Balance of registry funds in prior year.
  - Clerks calculate at least 10 days prior to deadline
- Court may use a negotiated bid, competitive bids (LGC 262) or enter applications in minutes and select one (LGC 117.023).
- Bank is qualified by submitting collateral

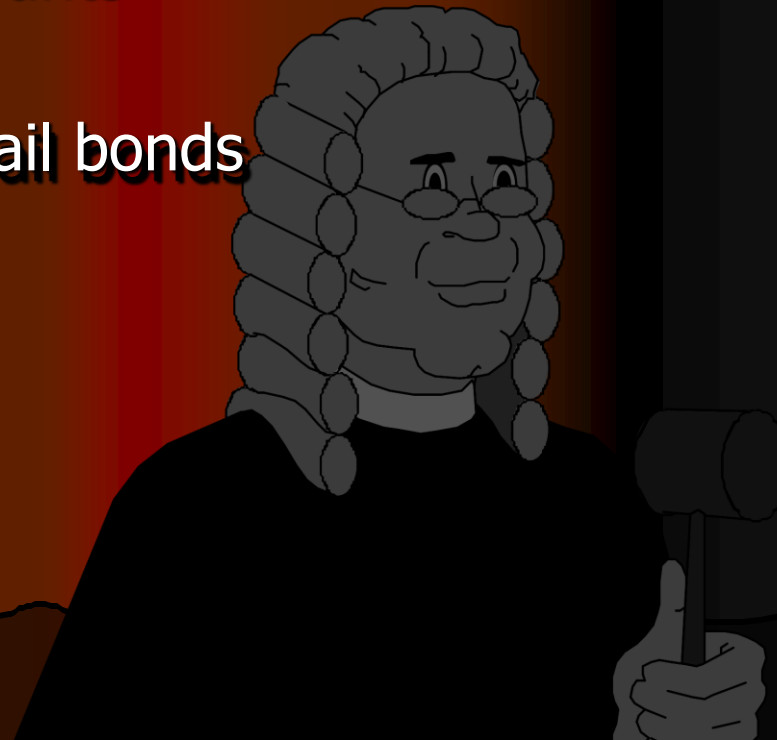
# Collateral

- Personal surety - highest daily balance determined by CC
  - Court's estimate may not be less than 75 % of Prior Year
- Investment securities – in amount equal to deposits
- Clerks should notify Treasurer and bank when expecting new large deposits

# **DISBURSEMENTS & ADMINISTRATIVE EXPENSES**

# Disbursements Requiring Court Order

- General rule (LGC 117.053): no disbursement without a court order:
  - Investment in "separate" accounts
  - Refunds of cash bail bonds
  - Transfer of abandoned cash bail bonds
  - Distributions
  - All other disbursements not specifically exempted by law





# Disbursements Without Court Order

- Transfers to a new trust fund depository account
- Refunds of appeal bonds
- Disbursement of certain probate funds to custodians after posting a bond equal to twice the amount (PC 887)
- Transfer of abandoned funds to the county treasurer and Comptroller (with the exception of cash bail bonds)
- Payment to the IRS for taxes due on investment earnings
- In counties with population of 190,000 or more - follow auditor's regulations

# Administrative Fees

- Not Optional
- Deducted from Every Payment
- Applies to disbursements from Special & Separate
- Interest-bearing accounts
  - 10% of interest earnings
  - Interest on structured settlements is exempt
- Non-interest-bearing accounts
  - 5% of withdrawal up to \$50 on each withdrawal
  - Family Code cases do not pay this fee

# Calculation of Fee

Scenario 1 – Lump Sum Payment  
(Interest and Non-Interest)

Scenario 2 – Multiple or Periodic Pmts  
(Interest and Non-Interest)

# Conclusion 1 & 2

- Interest-bearing accounts
  - No difference in 1&2 (same fee)
  - Recipient receives more
- Non-Interest-bearing
  - Penalizes those with smaller distributions and those with multiple distributions
  - County and recipient lose money

# Calculation of Fee with Expense Payments

Fees deducted when expenses paid

Scenario 3 – Non-Interest

Scenario 4 – Interest-bearing

Scenario 5 - Interest-bearing

Fees paid at final distribution

# Conclusion 3, 4 & 5

- Scenario 3 – Non-interest accounts.
  - Deduct fees when paying expenses
- Interest-bearing accounts
  - Scenario 4 – Correct but impractical
  - Scenario 5 – Deduct fees at final Distribution
- Yields essentially same results
- Clerk must track total interest earned & Retain enough to pay all admin. fees

# INVESTMENTS

- Generally only with court order
- Only in authorized instrument or instrument vehicle
- With reasonableness when instrument not specified
- Bond and errors and omissions insurance
- **Investment priorities: Safety, Liquidity & Yield**



# Authorized Investments

- Interest-bearing accounts insured by FDIC
- US Treasury Bills
- Public Funds Investment Pools
- Certain No-Load Mutual Funds



# Investments for Minors & Incapacitated Persons

- Property Code Chapter 142 limits these additional investments to those represented by “next friend” or “guardian ad litem.”
- Texas Guaranteed Tuition Plan
  - Not currently accepting new contracts
  - Distributions may be taxable
- Structured settlements
  - Parties must request and the court must order
  - Periodic payments funded by annuities or US obligations

# ACCOUNTING, REPORTING & AUDITING

# Accounting

- Maintain proper segregation
- Reconcile detail to book balance
- Reconcile book balance to bank statement
- Interest allocation program
- County Auditor Requirements for
  - Banking, Check-writing & Auditing

# County Auditor Audit Requirements

- 190,000 or less (LGC 114.041)
  - Annual by county auditor or commissioners court
- More than 190,000 (LGC 114.043)
  - Implied monthly or annual audit by county auditor
- Counties over 1.3 million pop (LGC 117.123)
  - Annual audit by CPA
  - County auditor



# County Auditor Requirements

## **Signature Requirements**

the county auditor may require that the county auditor be a signatory pursuant to that officer's authority to prescribe procedures to be used by all county officers. JC-0195 (2000) and H-183 (1973)

## **Deposit Requirements**

county auditor under section 112.002 may require clerk to place trust funds in separate accounts JM-1162 (1990) and DM 282 (1994)

# 1099 Requirements

- Special account –
  - Bank issues Clerk 1099
  - Owners provide clerks their tax id
  - Clerks issue 1099s (unless bank required to do so)
- Separate accounts –
  - Banks issue 1099s
- Report full amount of interest (don't deduct fee)
- When to prepare 1099 (Annual vs. Disbursement)
  - May have to deal directly with regional IRS office

# ABANDONED PROPERTY

- Property Subject to Chapters 72,74,75 & 76
- Registry Funds subject by reference
- Other Registry Funds
  - True Escheat Funds - Chapter 71
  - Probate Funds - Probate Code
  - Tax Sales - Tax Code
  - Cash Bail Bonds - Code of Criminal Procedure

# Abandoned Property Generally

- March 1
  - review accounts exceeding Dormancy period
- May 1
  - Deadline for mailing notifications
- July 1
  - Report and transfer to Comptroller as of March 1
- Abandoned property - \$100 or Less
  - Reported annually to county treasurer
  - Funds transferred to Unclaimed Money Fund



# Comptroller Help



- **Contact the Holder Reporting Section:**
  - *General #: 1-800-654-3463 or 512-463-3120*
- *email: [up.holder@cpa.state.tx.us](mailto:up.holder@cpa.state.tx.us)*
- **Website:**
  - <http://www.window.state.tx.us/up/reporting.html>
  - Instructions for many of your questions.

# CREATE YOUR OWN AUDIT PROGRAM

1. Know the Rules
2. Know the Risks
  - Rank the Risks
3. Identify Compensating Controls to Minimize the "Riskiest" Risks
  - Develop Tests of Controls
4. Evaluate Results
5. Make Recommendations
6. Report Results
7. Follow up on Recommendations

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