

# THE COUNTY BULLETIN

## And Uniform Compliance Guidelines

### ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 374

July 2010

#### REMINDER OF ORDER OF BUSINESS

#### July

- 5 Legal Holiday - Independence Day [IC 1-1-9-1]
- 12 Distribute congressional interest to school corporations - second Monday. [IC 20-42-2-7]
- 20 Last day to report and make payment of balance of State and County Income Tax withheld in the month of June to Indiana Department of Revenue.
- 30 In those counties participating in Public Employee's Retirement Fund, last day to make pension report and payment for the second quarter of 2010 to the Public Employee's Retirement Fund. [5-10.3-7-12.5]
- 31 Last day to file quarterly unemployment compensation reports with Indiana Department of Workforce Development.  
  
Last day for county treasurer to mail demand notices to delinquent personal property taxpayers. [IC 6-1.1-23-1]

#### August

- 4-6 County Treasurer's Annual Conference – Vevay
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of July to Indiana Department of Revenue.

#### September

- 6 Legal Holiday - Labor Day. [IC 1-1-9-1]
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of August to Indiana Department of Revenue.

#### FORM APPROVALS

We are now sending form approvals via e-mail. Please include the e-mail address of the person who is to receive the approval with your form approval request. If you desire a hard copy approval letter, please provide a pre-addressed stamp envelope. In order to facilitate the approval process, we are also giving the option of submitting form approval requests via e-mail. As you would with hard copy, send a request of which forms you are seeking approval for and attach a sample of the proposed form. You may e-mail to dgibson@sboa.in.gov, twhite@sboa.in.gov, or dbacon@sboa.in.gov. Please send to only one e-mail address. No form, other than that prescribed, may be used by an official until prior approval has been given.

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**CORRECTION**

Volume 372 under Reminder of Order of Business, the bulletin states: "June 10 – Last day for filing applications for tax deductions to obtain deduction on 2009 payable 2010 taxes." The Department of Local Government Finance states the property owner had to date and complete the application by December 31, 2009 and file the application by January 5, 2010. Please see the DLGF calendar of taxation and budget deadlines on their website at [www.in.gov/dlgef](http://www.in.gov/dlgef).

**TRANSFER ON DEATH DEED**

After review of IC 36-2-11-14, it appears the transfer on death deed and the affidavit following would both need the county auditor's endorsement. The deed would be a conveyance of land under IC 36-2-11-14(a)(2) even though it would not take effect until the affidavit is filed. The deed is the conveyance document that would contain the name of the grantor, grantee, legal description, the words of conveyance and other requirements for recording a deed. The affidavit does not seem to be the conveyance document itself as it would not have the legal description and other information required of a deed. Even though we would not consider the affidavit to be the conveyance document it needs to be endorsed by the county auditor because it appears to be a vital part of the documentation that conveys, creates, encumbers, assigns, or otherwise disposes of an interest in the real property.

We realize that the county auditor's customary endorsement may not fit the needs of the county for the transfer on death deed. IC 36-2-11-14(a) offers three types of endorsements that the auditor can provide, one of which is: "duly entered for taxation subject to final acceptance for transfer." An additional option for endorsement is also in IC 6-1.1-5-4(b). Because we find no statutory exception for transfer on death deeds from the endorsement requirements of IC 36-2-11-14, we hope the county will find a suitable endorsement for these documents within the Indiana Code. Procedures should be established and maintained in each county to comply with the endorsement requirements of the Indiana Code for transfer on death deeds in addition to the general procedures used for all deeds.

Our position is not a legal opinion but is the position we would take during an audit of the county. During an audit we will respect the written legal opinion of the county attorney regarding the application of and compliance with Indiana Code as it relates to the endorsement of transfer on death deeds.

**SOLID WASTE MANAGEMENT DISTRICTS**

IC 13-21-3-1 states:

“(a) Except as provided in subsection (b), each county shall, by ordinance of the county executive:

(1) join with one (1) or more other counties in establishing a joint solid waste management district that includes the entire area of all the acting counties; or

(2) designate itself as a county solid waste management district.

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**SOLID WASTE MANAGEMENT DISTRICTS (Continued)**

(b) Notwithstanding subsection (a)(1), if a county withdraws from a joint solid waste management district under IC 13-21-4, the county executive of the county may adopt an ordinance to join another or establish another joint solid waste management district with one (1) or more other counties:

(1) not earlier than fifteen (15) days; or

(2) not later than forty-five (45) days;

after the date the ordinance is introduced.

(c) An ordinance adopted under subsection (a)(1) or (b) must include the approval of an agreement governing the operation of the joint district.

(d) If a county fails to comply with this section, the commissioner shall designate the county as a solid waste management district.”

Once a district is established, a board of directors shall be established in accordance with IC 13-21-3-5. The powers of the board of directors are listed in IC 13-21-3-12.

IC 13-21-5-1 states:

“Each district shall adopt and submit to the commissioner for approval a district solid waste management plan that meets:

(1) the requirements of this chapter; and

(2) the criteria and other elements set forth in the state plan.

Details as to what is to be in the Solid Waste Management Plan are in IC 13-21-5.

**TORNADO/FLOOD DISASTER RELIEF FUNDS - ACCOUNTING PROCEDURES**

Money received or expected to be received from the Federal Emergency Management Agency (F.E.M.A.) or the State Emergency Management Agency, for tornado and/or flood damages should be accounted for in the following manner:

1. If the money is to be used to reimburse funds for expenditures already incurred and paid and the conditions of IC 10-14-3-17 (l)(5) have been met, the amount received may be added back to the appropriation balances from which expenditures have been previously made.
2. If the money is to be used for future expenditures, a separate fund should be set up entitled “Disaster Relief Fund.” Such fund would not require appropriation or an additional appropriation prior to expenditure.

It is recommended that all related expenditure records (claims, minutes, correspondence, contracts, etc.) be maintained in a separate file for future audits required by State and Federal agencies.

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**FIREARMS TRAINING FUND – USES**

IC 35-47-2-3(b) states in part:

“(b) The law enforcement agency which accepts an application for a handgun license shall collect the following application fees:

(1) From a person applying for a four (4) year handgun license, a ten dollar (\$10) application fee, five dollars (\$5) of which shall be refunded if the license is not issued.

(2) From a person applying for a lifetime handgun license who does not currently possess a valid Indiana handgun license, a fifty dollar (\$50) application fee, thirty dollars (\$30) of which shall be refunded if the license is not issued.

(3) From a person applying for a lifetime handgun license who currently possesses a valid Indiana handgun license, a forty dollar (\$40) application fee, thirty dollars (\$30) of which shall be refunded if the license is not issued.

... the fee shall be deposited into the law enforcement agency's firearms training fund or other appropriate training activities fund and used by the agency to train law enforcement officers in the proper use of firearms or in other law enforcement duties, or to purchase firearms or firearm related equipment, or both for the law enforcement officers employed by the law enforcement agency...”

**PUBLIC WORKS PROJECTS – INTEREST FOR LATE PAYMENT**

IC 36-1-12-17 states:

“(a) A contract for road or street work must contain a provision for the timely payment of claims made by the contractor.

(b) Each contract must provide for final payment within one hundred twenty (120) days after final acceptance and completion of the contract. Final payment may not be made on any amount that is in dispute, but final payment may be made on that part of a contract or those amounts that are not in dispute.

(c) For each day after one hundred twenty (120) days, the board shall pay to the contractor interest for late payment of money due to the contractor. However, interest may not be paid for those days that the delay in payment is not directly attributable to the board. The annual percentage rate of interest that the board shall pay on the unpaid balance is twelve percent (12%).”

**PUBLIC WORKS PROJECTS ESTIMATED TO COST LESS THAN \$100,000**

IC 36-1-12-2 states in part: "... "public work" means the construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also

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**PUBLIC WORKS PROJECTS ESTIMATED TO COST LESS THAN \$100,000 (Continued)**

includes any public work leased by a political subdivision under a lease containing an option to purchase.”

IC 36-1-12-3(a) states:

“The board may purchase or lease materials in the manner provided in IC 5-22 and perform any public work, by means of its own workforce, without awarding a contract whenever the cost of that public work project is estimated to be less than one hundred thousand dollars (\$100,000). Before a board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work. For purposes of this subsection, the cost of a public work project includes the actual cost of materials, labor, equipment, rental, a reasonable rate for use of trucks and heavy equipment owned, and all other expenses incidental to the performance of the project.”

**PUBLIC WORKS PROJECTS OVER \$200,000 – PAYMENT BOND OF CONTRACTOR**

IC 36-1-12-13.1 states in part:

“(a)...the appropriate political subdivision or agency:

(1) shall require the contractor to execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price if the cost of the public work is estimated to be more than two hundred thousand dollars (\$200,000); and

(2) may require the contractor to execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price if the cost of the public work is estimated to be not more than two hundred thousand dollars (\$200,000).

The payment bond is binding on the contractor, the subcontractor, and their successors and assigns for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The payment bond must state that it is for the benefit of the subcontractors, laborers, material suppliers, and those performing services.

(b) The payment bond shall be deposited with the board. The payment bond must specify that:

(1) a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile;

(2) a defect in the public work contract; or

(3) a defect in the proceedings preliminary to the letting and awarding of the public work contract does not discharge the surety. The surety of the payment bond may not be released until one (1) year after the board's final settlement with the contractor.

(c) A person to whom money is due for labor performed, material furnished, or services provided shall, within sixty (60) days after the completion of the labor or service, or within sixty (60) days after the last item of material has been furnished, file with the board signed duplicate statements of the amount due. The board shall forward to the surety of the payment bond one (1) of the signed duplicate statements. However, failure of the board to forward a signed duplicate statement does not affect the rights of a person to whom money is due. In addition, a failure to forward the statement does not operate as a defense for the surety.

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**PUBLIC WORKS PROJECTS OVER \$200,000 – PAYMENT BOND OF CONTRACTOR (Continued)**

(d) An action may not be brought against the surety until thirty (30) days after the filing of the signed duplicate statements with the board. If the indebtedness is not paid in full at the end of that thirty (30) day period the person may bring an action in court. The court action must be brought within sixty (60) days after the date of the final completion and acceptance of the public work.”

**PUBLIC WORKS PROJECTS OVER \$200,000 – PERFORMANCE BOND**

IC 36-1-12-14 states in part:

“(e)... the contractor shall furnish the board with a performance bond equal to the contract price. If acceptable to the board, the performance bond may provide for incremental bonding in the form of multiple or chronological bonds that, when taken as a whole, equal the contract price. The surety on the performance bond may not be released until one (1) year after the date of the board's final settlement with the contractor. The performance bond must specify that:

- (1) a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile;
- (2) a defect in the public work contract; or
- (3) a defect in the proceedings preliminary to the letting and awarding of the public work contract;

does not discharge the surety.

(f) The board or escrow agent shall pay the contractor within sixty-one (61) days after the date of substantial completion, subject to sections 11 and 12 of this chapter. Payment by the escrow agent shall include all escrowed principal and escrowed income. If within sixty-one (61) days after the date of substantial completion there remain uncompleted minor items, an amount equal to two hundred percent (200%) of the value of each item as determined by the architect-engineer shall be withheld until the item is completed. Required warranties begin not later than the date of substantial completion.

(g) Actions against a surety on a performance bond must be brought within one (1) year after the date of the board's final settlement with the contractor.

(h) This subsection applies to public work contracts of less than two hundred fifty thousand dollars (\$250,000). The board may waive the performance bond requirement of subsection (e) and accept from a contractor an irrevocable letter of credit for an equivalent amount from an Indiana financial institution approved by the department of financial institutions instead of a performance bond. Subsections (e) through (g) apply to a letter of credit submitted under this subsection.”

**COUNTY DRUG FREE COMMUNITY FUND**

IC 5-2-11-5 states:

“(a) As used in this section, “commission” means the commission for a drug free Indiana established by IC 5-2-6-16. (b) subject to subsections (c) and (d), a county fiscal body shall annually appropriate from the fund amounts allocated by the county legislative body for the use of persons, organizations, agencies, and political subdivisions to carry out recommended actions contained in a comprehensive drug free communities plan submitted by the local coordinating council and approved by the commission as follows:

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**COUNTY DRUG FREE COMMUNITY FUND (Continued)**

(1) For persons, organizations, agencies, and political subdivisions to provide prevention and education services, at least twenty-five percent (25%) of the money in the fund.

(2) For persons, organizations, agencies, and political subdivisions to provide intervention and treatment services, at least twenty-five percent (25%) of the money in the fund.

(3) For persons, organizations, agencies, and political subdivisions to provide criminal justice services and activities, at least twenty-five percent (25%) of the money in the fund.

(4) A county fiscal body shall allocate the remaining twenty-five percent (25%) of the money in the fund to persons, organizations, agencies, and political subdivisions to provide services and activities under subdivisions (1) through (3) based on the comprehensive drug free communities plan submitted by the local coordinating council and approved by the commission.

(c) In the comprehensive drug free communities plan, the local coordinating council shall determine the amount of funds the county fiscal body shall appropriate to implement the objectives approved in the comprehensive drug free communities plan.

(d) If the comprehensive drug free communities plan is not approved by the commission, the county fiscal body may not appropriate any funds at the request of the local coordinating council or any other local entity."

(e) If funds are allocated by a county legislative body under subsection (b) and the commission has not approved the comprehensive drug free communities plan for the county, the commission may:(1) approve and appoint a new local coordinating council for the county;(2) freeze funds allocated by the county legislative body; or (3) reevaluate the comprehensive drug free communities plan.

**HANDLING APPEALS ON ASSESSMENTS**

IC 6-1.1-15-10 states:

(a) If a petition for review to any board or a proceeding for judicial review in the tax court regarding an assessment or increase in assessment is pending, the taxes resulting from the assessment or increase in assessment are, notwithstanding the provisions of IC 6-1.1-22-9, not due until after the petition for review, or the proceeding for judicial review, is finally adjudicated and the assessment or increase in assessment is finally determined. However, even though a petition for review or proceeding for judicial review is pending, the taxpayer shall pay taxes on the tangible property when the property tax installments come due, unless the collection of the taxes is enjoined under IC 33-3-5 pending a final determination in the proceeding for judicial review. The amount of taxes which the taxpayer is required to pay, pending the final determination of the assessment or increase in assessment, shall be based on:

(1) the assessed value reported by the taxpayer on the taxpayer's personal property return if a personal property assessment, or an increase in such an assessment, is involved; or

(2) an amount based on the immediately preceding year's assessment of real property if an assessment, or increase in assessment, of real property is involved.

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**HANDLING APPEALS ON ASSESSMENTS (Continued)**

(b) If the petition for review or the proceeding for judicial review is not finally determined by the last installment date for the taxes, the taxpayer, upon showing of cause by a taxing official or at the tax court's discretion, may be required to post a bond or provide other security in an amount not to exceed the taxes resulting from the contested assessment or increase in assessment.

(c) Each county auditor shall keep separate on the tax duplicate a record of that portion of the assessed value of property that is described in IC 6-1.1-17-0.5(b). When establishing rates and calculating state school support, the department of local government finance shall exclude from assessed value in the county assessed value of property kept separate on the tax duplicate by the county auditor under IC 6-1.1-17-0.5."

IC 6-1.1-15-11 states:

"(a) If a review or appeal authorized under this chapter results in a reduction of the amount of an assessment or if the department of local government finance on its own motion reduces an assessment, the taxpayer is entitled to a credit in the amount of any overpayment of tax on the next successive tax installment, if any, due in that year. After the credit is given, the county auditor shall:

- (1) determine if a further amount is due the tax payer; and
- (2) If a further amount is due the taxpayer, notwithstanding IC 5-11-10-1 and IC 36-2-6-2, without a claim or an appropriation being required, pay the amount due the tax payer.

The county auditor shall charge the amount refunded to the tax payer against the accounts of the various taxing units to which the overpayment has been paid. The county auditor shall notify the county executive of the payment of the amount due.

(b) The notice provided under subsection (a) shall be treated as a claim by the taxpayer for the amount due referred to in subsection (a)(2)."

**UNIFORM ELECTRONIC TRANSACTIONS ACT**

The Uniform Electronic Act IC 26-2-8 allows governmental units to determine the extent that the entity will create and retain electronic records and convert written records to electronic records. In addition, the Act allows the governmental unit to send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely upon electronic records and signatures.

The State Board of Accounts Accounting and Uniform Compliance Guidelines Manuals document the requirements for computerized accounting systems and storage of accounting information on electronic media. These requirements are documented in the chapter on computer systems and within the section of Information Technology Services Controls.

The required areas of control include:

Disaster Recovery  
Back Up Processing  
Physical Security  
Logical Security  
Change Controls  
Audit Trails  
Input Controls  
Segregation of Duties

Output Controls  
Interface Controls  
Internal Processing  
Error Correction  
Programming Documentation  
Operations Documentation  
User Documentation  
Computer Output

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**UNIFORM ELECTRONIC TRANSACTIONS ACT (Continued)**

If a governmental unit is utilizing only electronic records with no supporting documentation and deficiencies are noted in the required areas of computer controls, an audit result and comment and a federal finding could be included in the audit report for this governmental unit. Severe deficiencies could also adversely affect the audit opinion provided for the governmental unit.

If there are questions on the application of required computer controls related to electronic records or transactions, please contact the State Board of Accounts.

**REAL ESTATE TAX SALE**

**IC 6-1.1-24-1 states:**

“(a) On or after January 1 of each calendar year in which a tax sale will be held in a county and not later than in that calendar year fifty-one (51) days after the first tax payment due date in that calendar year, the county treasurer (or county executive, in the case of property described in subdivision (2)) shall certify to the county auditor a list of real property on which any of the following exist:

(1) In the case of real property other than real property described in subdivision (2), any property taxes or special assessments certified to the county auditor for collection by the county treasurer from the prior year's spring installment or before are delinquent as determined under IC 6-1.1-37-10.

(2) In the case of real property for which a county executive has certified to the county auditor that the real property is:

(A) vacant; or

(B) abandoned;

any property taxes or special assessments from the prior year's fall installment or before that are delinquent as determined under IC 6-1.1-37-10. The county executive must make a certification under this subdivision not later than sixty-one (61) days before the earliest date on which application for judgment and order for sale may be made.

(3) Any unpaid costs are due under section 2(b) of this chapter from a prior tax sale.

(b) The county auditor shall maintain a list of all real property eligible for sale. Except as provided in section 1.2 or another provision of this chapter, the taxpayer's property shall remain on the list. The list must:

(1) describe the real property by parcel number and common address, if any;

(2) for a tract or item of real property with a single owner, indicate the name of the owner; and

(3) for a tract or item with multiple owners, indicate the name of at least one (1) of the owners.

(c) Except as otherwise provided in this chapter, the real property so listed is eligible for sale in the manner prescribed in this chapter.

(d) Not later than fifteen (15) days after the date of the county treasurer's certification under subsection (a), the county auditor shall mail by certified mail a copy of the list described in subsection (b) to each mortgagee who

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**REAL ESTATE TAX SALE (Continued)**

requests from the county auditor by certified mail a copy of the list. Failure of the county auditor to mail the list under this subsection does not invalidate an otherwise valid sale.”

**IC 6-1.1-24-2 states:**

“(a) In addition to the delinquency list required under section 1 of this chapter, each county auditor shall prepare a notice. The notice shall contain the following:

- (1) A list of tracts or real property eligible for sale under this chapter.
- (2) A statement that the tracts or real property included in the list will be sold at public auction to the highest bidder, subject to the right of redemption.
- (3) A statement that the tracts or real property will not be sold for an amount which is less than the sum of:
  - (A) the delinquent taxes and special assessments on each tract or item of real property;
  - (B) the taxes and special assessments on each tract or item of real property that are due and payable in the year of the sale, whether or not they are delinquent;
  - (C) all penalties due on the delinquencies;
  - (D) an amount prescribed by the county auditor that equals the sum of:
    - (i) the greater of twenty-five dollars (\$25) or postage and publication costs; and
    - (ii) any other actual costs incurred by the county that are directly attributable to the tax sale;and
  - (E) any unpaid costs due under subsection (b) from a prior tax sale.
- (4) A statement that a person redeeming each tract or item of real property after the sale must pay:
  - (A) one hundred ten percent (110%) of the amount of the minimum bid for which the tract or item of real property was offered at the time of sale if the tract or item of real property is redeemed not more than six (6) months after the date of sale;
  - (B) one hundred fifteen percent (115%) of the amount of the minimum bid for which the tract or item of real property was offered at the time of sale if the tract or item of real property is redeemed more than six (6) months after the date of sale;
  - (C) the amount by which the purchase price exceeds the minimum bid on the tract or item of real property plus ten percent (10%) per annum on the amount by which the purchase price exceeds the minimum bid; and
  - (D) all taxes and special assessments on the tract or item of real property paid by the purchaser after the tax sale plus interest at the rate of ten percent (10%) per annum on the amount of taxes and special assessments paid by the purchaser on the redeemed property.
- (5) A statement for informational purposes only, of the location of each tract or item of real property by key number, if any, and street address, if any, or a common description of the property other than a legal description. The township assessor, or the county assessor if there is no township assessor for the township,

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**REAL ESTATE TAX SALE (Continued)**

upon written request from the county auditor, shall provide the information to be in the notice required by this subsection. A misstatement in the key number or street address does not invalidate an otherwise valid sale.

(6) A statement that the county does not warrant the accuracy of the street address or common description of the property.

(7) A statement indicating:

(A) the name of the owner of each tract or item of real property with a single owner; or

(B) the name of at least one (1) of the owners of each tract or item of real property with multiple owners.

(8) A statement of the procedure to be followed for obtaining or objecting to a judgment and order of sale, that must include the following:

(A) A statement:

(i) that the county auditor and county treasurer will apply on or after a date designated in the notice for a court judgment against the tracts or real property for an amount that is not less than the amount set under subdivision (3), and for an order to sell the tracts or real property at public auction to the highest bidder, subject to the right of redemption; and

(ii) indicating the date when the period of redemption specified in IC 6-1.1-25-4 will expire.

(B) A statement that any defense to the application for judgment must be:

(i) filed with the court; and

(ii) served on the county auditor and the county treasurer;

before the date designated as the earliest date on which the application for judgment may be filed.

(C) A statement that the county auditor and the county treasurer are entitled to receive all pleadings, motions, petitions, and other filings related to the defense to the application for judgment.

(D) A statement that the court will set a date for a hearing at least seven (7) days before the advertised date and that the court will determine any defenses to the application for judgment at the hearing.

(9) A statement that the sale will be conducted at a place designated in the notice and that the sale will continue until all tracts and real property have been offered for sale.

(10) A statement that the sale will take place at the times and dates designated in the notice. Whenever the public auction is to be conducted as an electronic sale, the notice must include a statement indicating that the public auction will be conducted as an electronic sale and a description of the procedures that must be followed to participate in the electronic sale.

(11) A statement that a person redeeming each tract or item after the sale must pay the costs described in IC 6-1.1-25-2(e).

(12) If a county auditor and county treasurer have entered into an agreement under IC 6-1.1-25-4.7, a

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**REAL ESTATE TAX SALE (Continued)**

statement that the county auditor will perform the duties of the notification and title search under IC 6-1.1-25-4.5 and the notification and petition to the court for the tax deed under IC 6-1.1-25-4.6.

(13) A statement that, if the tract or item of real property is sold for an amount more than the minimum bid and the property is not redeemed, the owner of record of the tract or item of real property who is divested of ownership at the time the tax deed is issued may have a right to the tax sale surplus.

(14) If a determination has been made under subsection (d), a statement that tracts or items will be sold together.

(b) If within sixty (60) days before the date of the tax sale the county incurs costs set under subsection (a)(3)(D) and those costs are not paid, the county auditor shall enter the amount of costs that remain unpaid upon the tax duplicate of the property for which the costs were set. The county treasurer shall mail notice of unpaid costs entered upon a tax duplicate under this subsection to the owner of the property identified in the tax duplicate.

(c) The amount of unpaid costs entered upon a tax duplicate under subsection (b) must be paid no later than the date upon which the next installment of real estate taxes for the property is due. Unpaid costs entered upon a tax duplicate under subsection (b) are a lien against the property described in the tax duplicate, and amounts remaining unpaid on the date the next installment of real estate taxes is due may be collected in the same manner that delinquent property taxes are collected.

(d) The county auditor and county treasurer may establish the condition that a tract or item will be sold and may be redeemed under this chapter only if the tract or item is sold or redeemed together with one (1) or more other tracts or items. Property may be sold together only if the tract or item is owned by the same person.

**IC 6-1.1-24-3 states:**

“(a) When real property is eligible for sale under this chapter, the county auditor shall post a copy of the notice required by sections 2 and 2.2 of this chapter at a public place of posting in the county courthouse or in another public county building at least twenty-one (21) days before the earliest date of application for judgment. In addition, the county auditor shall, in accordance with IC 5-3-1-4, publish the notice required in sections 2 and 2.2 of this chapter once each week for three (3) consecutive weeks before the earliest date on which the application for judgment may be made. The expenses of this publication shall be paid out of the county general fund without prior appropriation.

(b) At least twenty-one (21) days before the application for judgment is made, the county auditor shall mail a copy of the notice required by sections 2 and 2.2 of this chapter by certified mail, return receipt requested, to any mortgagee who annually requests, by certified mail, a copy of the notice. However, the failure of the county auditor to mail this notice or its nondelivery does not affect the validity of the judgment and order.

(c) The notices mailed under this section and the advertisement published under section 4(b) of this chapter are considered sufficient notice of the intended application for judgment and of the sale of real property under the order of the court.

**IC 6-1.1-24-4 states:**

“(a) Not less than twenty-one (21) days before the earliest date on which the application for judgment and order for sale of real property eligible for sale may be made, the county auditor shall send a notice of the sale

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**REAL ESTATE TAX SALE (Continued)**

by certified mail, return receipt requested, to:

- (1) the owner of record of real property with a single owner; or
- (2) at least one (1) of the owners, as of the date of certification, of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date that the tax sale list is certified. In addition, the county auditor shall mail a duplicate notice to the owner of record, as described in subdivisions (1) and (2), by first class mail to the owners from whom the certified mail return receipt was not signed and returned. Additionally, the county auditor may determine that mailing a first class notice to or serving a notice on the property is a reasonable step to notify the owner, if the address of the owner is not the same address as the physical location of the property. If both notices are returned due to incorrect or insufficient addresses, the county auditor shall research the county auditor records to determine a more complete or accurate address. If a more complete or accurate address is found, the county auditor shall resend the notices to the address that is found in accordance with this section. Failure to obtain a more complete or accurate address does not invalidate an otherwise valid sale. The county auditor shall prepare the notice in the form prescribed by the state board of accounts. The notice must set forth the key number, if any, of the real property and a street address, if any, or other common description of the property other than a legal description. The notice must include the statement set forth in section 2(a)(4) of this chapter. The county auditor must present proof of this mailing to the court along with the application for judgment and order for sale. Failure by an owner to receive or accept the notice required by this section does not affect the validity of the judgment and order. The owner of real property shall notify the county auditor of the owner's correct address. The notice required under this section is considered sufficient if the notice is mailed to the address or addresses required by this section.

(b) In addition to the notice required under subsection (a) for real property on the list prepared under section 1(a)(2) or 1.5(d) of this chapter, the county auditor shall prepare and mail the notice required under section 2.2 of this chapter no later than forty-five (45) days after the county auditor receives the certified list from the county treasurer under section 1(a) of this chapter.

(c) On or before the day of sale, the county auditor shall list, on the tax sale record required by IC 6-1.1-25-8, all properties that will be offered for sale.

**IC 6-1.1-24-4.6 states:**

“(a) On the day on which the application for judgment and order for sale is made, the county treasurer shall report to the county auditor all of the tracts and real property listed in the notice required by section 2 of this chapter upon which all delinquent taxes and special assessments, all penalties due on the delinquencies, any unpaid costs due from a prior tax sale, and the amount due under section 2(a)(3)(D) of this chapter have been paid up to that time. The county auditor, assisted by the county treasurer, shall compare and correct the list, removing tracts and real property for which all delinquencies have been paid, and shall make and subscribe an affidavit in substantially the following form:

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**REAL ESTATE TAX SALE (Continued)**

State of Indiana)

)ss

County of \_\_\_\_\_)

I, \_\_\_\_\_, treasurer of the county of \_\_\_\_\_, and I, \_\_\_\_\_, auditor of the county of \_\_\_\_\_, do solemnly affirm that the foregoing is a true and correct list of the real property within the county of \_\_\_\_\_ upon which have remained delinquent uncollected taxes, special assessments, penalties and costs, as required by law for the time periods set forth, to the best of my knowledge and belief.

\_\_\_\_\_

County Treasurer

\_\_\_\_\_

County Auditor

Dated \_\_\_\_\_

I, \_\_\_\_\_, auditor of the county of \_\_\_\_\_, do solemnly affirm that notice of the application for judgment and order for sale was mailed via certified mail to the owners on the foregoing list, and publication made, as required by law.

\_\_\_\_\_

County Auditor

Dated \_\_\_\_\_

(b) Application for judgment and order for sale shall be made as one (1) cause of action to any court of competent jurisdiction jointly by the county treasurer and county auditor. The application shall include the names of at least one (1) of the owners of each tract or item of real property, the dates of mailing of the notice required by sections 2 and 2.2 of this chapter, the dates of publication required by section 3 of this chapter, and the affidavit and corrected list as provided in subsection (a).

(c) Any defense to the application for judgment and order of sale shall be filed with the court on or before the earliest date on which the application may be made as set forth in the notice required under section 2 of this chapter. The county auditor and the county treasurer for the county where the real property is located are entitled to receive all pleadings, motions, petitions, and other filings related to a defense to the application for judgment and order of sale.

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**REAL ESTATE TAX SALE (Continued)**

**IC 6-1.1-24-4.7 states:**

“(a) No later than fifteen (15) days before the advertised date of the tax sale, the court shall examine the list of tracts and real property as provided under section 4.6 of this chapter. No later than three (3) days before the advertised date of the tax sale, the court shall enter judgment for those taxes, special assessments, penalties, and costs that appear to be due. This judgment is considered as a judgment against each tract or item of real property for each kind of tax, special assessment, penalty, or cost included in it. The affidavit provided under section 4.6 of this chapter is prima facie evidence of delinquency for purposes of proceedings under this section. The court shall also direct the clerk to prepare and enter an order for the sale of those tracts and real property against which judgment is entered.

(b) Not later than seven (7) days before the advertised date of the tax sale, the court shall conduct a hearing. At the hearing, the court shall hear any defense offered by any person interested in any of the tracts or items of real property to the entry of judgment against them, hear and determine the matter in a summary manner, without pleadings, and enter its judgment. The court shall enter a judgment under this subsection not later than three (3) days before the advertised date of the tax sale. The objection must be in writing, and no person may offer any defense unless the writing specifying the objection is accompanied by an original or a duplicate tax receipt or other supporting documentation. At least seven (7) days before the date set for the hearing, notice of the date, time, and place of the hearing shall be provided by the court to any person filing a defense to the application for judgment and order of sale.

(c) If judgment is entered in favor of the respondent under these proceedings or if judgment is not entered for any particular tract, part of a tract, or items of real property because of an unresolved objection made under subsection (b), the court shall remove those tracts, parts of tracts, or items of real property from the list of tracts and real property provided under section 4.6 of this chapter.

(d) A judgment and order for sale shall contain the final listing of affected properties and the name of at least one (1) of the owners of each tract or item of real property, and shall substantially follow this form:

"Whereas, notice has been given of the intended application for a judgment against these tracts and real property, and no sufficient defense has been made or cause has been shown why judgment should not be entered against these tracts for taxes, and real property special assessments, penalties, and costs due and unpaid on them, therefore it is considered by the court that judgment is hereby entered against the below listed tracts and real property in favor of the state of Indiana for the amount of taxes, special assessments, penalties, and costs due severally on them; and it is ordered by the court that the several tracts or items of real property be sold as the law directs. Payments for taxes, special assessments, penalties, and costs made after this judgment but before the sale shall reduce the judgment accordingly."

(e) The order of the court constitutes the list of tracts and real property that shall be offered for sale under section 5 of this chapter.

(f) The court that enters judgment under this section shall retain exclusive continuing supervisory jurisdiction over all matters and claims relating to the tax sale.

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**REAL ESTATE TAX SALE (Continued)**

(g) No error or informality in the proceedings of any of the officers connected with the assessment, levying, or collection of the taxes that does not affect the substantial justice of the tax itself shall invalidate or in any manner affect the tax or the assessment, levying, or collection of the tax.

(h) Any irregularity, informality, omission, or defective act of one (1) or more officers connected with the assessment or levying of the taxes may be, in the discretion of the court, corrected, supplied, and made to conform to law by the court, or by the officer (in the presence of the court)."

**QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE**

**Question #1:** Is county form 17T going to be revised to add columns for HEA 1001 HSC and circuit breaker caps or any other credits?

**Answer #1:** Yes, it needs to be revised along with other forms like the county form 9, Tax Duplicate as soon as resources can be allocated to form revisions.

**Question #2:** Distributing to taxing units. Now that we are distributing monthly (at least) to our taxing units, we would like to set up direct deposits with the units. What special approvals do we need to make this change? How do we handle form 22s & e-mail notices to the units? Can we do this all electronically? Will the State Board of Accounts accept this or do we still need to send originals (approved forms & colors) to the units?

**Answer #2:** You will need to work with the other governments in the county to establish procedures but the Uniform Electronic Transaction Act in IC 26-2-8 allows you to perform these duties electronically if the county establishes adequate procedures.

**Question #3:** Our community corrections program receives DOC funding. DOC historically has been extremely slow in reimbursing the county. So much so, that the county has to cover the community corrections fund because of cash flow issues. The DOC has told our community corrections director that it is not a problem for them to run their cash balance in the red. The State Board of Accounts representatives do not seem to be in agreement. Would it be too much to ask for the 2 state agencies to come to agreement on this & leave us out of the middle?

**Answer #3:** We will not take exception during an audit to a negative cash balance in a fund when you can show us your award letter for a federal or state reimbursement basis grant and you can show you are submitting requests for reimbursement in a timely manner. The negative balance will be reported as such in the notes to the financial statements as required. It is important to note that this happens only in counties and not in other types of governments we audit. This exception is due to the low financial risk of not getting reimbursed and the amount should be immaterial if reimbursements are requested timely.

**Question #4:** Do members of the county election board by some state law, have to reside in the county? The chairman of our election board cannot qualify for a homestead credit because the county of his residence notified us he resided there. We had to remove his homestead also filed in our county. Can you refer us to someone who can do something about this? The clerk refuses to do anything.

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**QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE (Continued)**

**Answer #4:** We are not sure the IC prohibits this person from continued participation on the county election board. IC 3-6-5 establishes the county election board as the circuit court clerk and 2 persons appointed by the clerk, one from each of the major political parties of the county. This may take legal interpretation by the county attorney. You may also contact the Indiana Election Division to see if this question has been raised in other counties and what actions they may have taken.

**Question #5:** Is it possible to fund county highway out of the revenue from the innkeeper's tax? If so, are there any limitations, i.e. no salaries, no building overhead, etc.?

**Answer #5:** No, per IC 8-18-8-5 all expenses incurred in the maintenance of county highways shall be paid from: gasoline tax; special fuel tax; motor vehicle registration fees that are paid from the state; and surtax, wheel tax, CAGIT, COIT, riverboat admissions, or riverboat wagering. General fund may be used for highway personal services costs.

**Question #6:** When a customer comes into the office and requests a copy of something we charge a fee. Lately, I have been getting requests to e-mail the information. Can we also charge for these copies and send a bill with the e-mail?

**Answer #6:** This question came up at the April County Recordors Conference as well. The answer we received from the Public Access Counselor, with which we agree, is that there is no authority to charge for an e-mail, even if you provide a copy of a document within the e-mail. However, there is no requirement for you to provide inspection of a record or a copy by e-mail.

**Question #7:** If a county employee owes the county for personal use of a county cell phone, can the county garnish wages like we do for delinquent taxes?

**Answer #7:** You will need to review what documentation you have in writing with the employee whether that is a policy statement, user agreement or other type of contract. This documentation may provide guidance on how the county is to proceed. Garnishments are usually only allowed by statute or court order. Please consult the county attorney as this may be a legal matter.

**Question #8:** Can a county council member also be a full time sheriff's deputy?

**Answer #8:** There is not a problem with lucrative offices (dual office holding). However, the county attorney should be consulted regarding potential conflicts of interest. The Office of Special Counsel would be able to provide guidance about Hatch Act applicability to the sheriff deputy position that would be fact specific to see if they can retain their deputy sheriff position and run in a partisan public election for county council. You can find more information and contact that office at [www.osc.gov](http://www.osc.gov).

**Question #9:** In the past when our county receives remittances from INDOT it has been difficult to find out what it is for. Is there any way that on or with the remittance it could be tagged or marked what the remittance is for?

**Answer #9:** Using the agency contact listing provided by Dan Bastin, Auditor of State's Office, you should be able to request directly from INDOT additional information. Feel free to provide them with your recommendations for the "payment information" section of the EFT notices and warrant remittances.

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**QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE (Continued)**

**Question #10:** Please provide the IC reference for not being able to run accounts in the red?

**Answer #10:** If by accounts you mean funds, the uniform compliance guidelines state that the cash balance of any fund may not be reduced below zero. Routinely overdrawn funds could be an indicator of serious financial problems which should be investigated. Additionally, IC 36-1-8 contains provisions for debt and borrowing which is what is essentially happening between funds of the county when you spend a fund into the red. IC 36-1-8-4 specifically gives authority for borrowing between funds of the county to the county council when a fund doesn't have sufficient cash flow. By spending a fund's cash balance into the negative you are in essence allowing the fund to borrow from other county funds without going through the statutory process outlined for the county council.

**Question #11:** We have a full time employee who is paid from the highway fund. This employee works approximately 6 hours a week at the highway department doing highway work. The other 34 hours a week are spent at the county office building doing non-highway related jobs, while being paid from the highway fund. We don't feel this is right. How do we handle this situation?

**Answer #11:** IC 8-14-1-4 states that the motor vehicle highway fund may be used for construction, reconstruction and maintenance of county highways. If an employee does work that does not meet this criteria his salary should be allocated to other appropriate available funds for the type of work performed.

**QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE**

**Question #1:** What are we supposed to do with the bankruptcy notices?

**Answer #1:** We recommend you forward them to the county treasurer unless recording fees accompany the notice.

**Question #2:** Do employees in the recorder's office have to have the same qualifications of residency as the county recorder? If they do not reside within the county is there any restrictions to their employment? For example: certifying documents

**Answer #2:** We find no statutory guidance to require a deputy recorder to live within the county, unless the deputy would be appointed to fill a vacancy.

**Question #3:** Does the county recorder's office receive any federal funds or grants?

**Answer #3:** It is possible for a county to receive federal emergency management agency funding if there is a disaster that requires clean up of county records some of those funds may be used by the recorder. Other grants may also be available in the future but it is not likely that the recorder's office would receive a grant as an ordinary, normal, foreseeable duty.

**Question #4:** We have a local title company that insists on getting images on CD daily instead of weekly as we do with other companies. Can we charge them for the actual cost of the CD?

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**QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (continued)**

**Answer #4:** If the records request is for all images daily or all indexes or both, IC 36-7-10.1 on bulk form copies would apply. The cost for the daily CD that you could charge is \$0.07 per page of recorded document or \$0.07 per document on the indexes.

**Question #5:** Do the state auditors have an ID to show the local office? Do we have the right to ask for the ID?

**Answer #5:** Yes, all field examiners of the State Board of Accounts have state issued identification and it is appropriate for you to request to see the ID before they access your records.

**Question #6:** If a document has a social security number should the number be blacked out permanently or can removable tape be used to cover the number during scanning?

**Answer #6:** IC 36-2-7.5-4 states a document may not be submitted to the county recorder for recording or filing if the document contains the social security number of an individual, unless required by law. How a document is altered or redacted prior to submitting it for recording is up to the client. However, the recorder must be satisfied that the method of redacting is sufficient that when the document is imaged the social security number cannot be detected.

**Question #7:** We have customers who want us to e-mail documents. Do we still charge for copies?

**Answer #7:** Per Andrew Kossack, Public Access Counselor, generally public agencies may not charge for sending records via e-mail because there is no cost for doing so (other than the labor costs associated with the employee/official who sends the records, but the Access to Public Records Act (APRA) does not allow agencies to recoup labor or overhead costs). Moreover, an attachment received via e-mail could be construed as an inspection under the APRA because the definition of "inspect" includes the right to duplicate electronically stored data onto another medium of electronic storage. For these reasons, recorders are advised not to charge for sending records via e-mail. I note that the recorders are under no obligation to e-mail records to a requester, so this does not affect their ability to charge the authorized fees for other forms of copies.

**Question #8:** Do bonds need an affirmation and "prepared by?"

**Answer #8:** IC 36-2-11-15 would not require the affirmation statement and prepared by because an officials bond does not: convey, create, encumber, assign, or otherwise dispose of an interest in or lien on property.

**Question #9:** We are buying a new server for replicating. Can the redaction fund be used since there is redacting technology on the server?

**Answer #9:** Only the portion of the cost that can be attributed to the purchase of "redacting technology" should be paid from the identification security protection fund. IC 36-2-7.5-2 defines redacting technology as technology that has the ability to: (1) search recorded and filed documents; and (2) redact social security numbers from recorded and filed documents. Therefore the purchase and installation of the redacting software on the new server could be paid from the identification security protection fund.

**Question #10:** Should or can the first deputy recorder attend the required education training?

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**QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (continued)**

**Answer #10:** The deputies may be allowed to attend as is provided for in State Board of Accounts called meeting statute. However, IC 36-2-7-19 would not allow the use of the county elected officials training fund for anyone other than the elected official.

**Question #11:** On accounts receivable copy accounts, can we charge interest or late fee on overdue accounts? If so, how much can we charge?

**Answer #11:** There is no statutory authority under IC 36-2-7-10 (recorder's fee statute) to have accounts receivable copy accounts. If you do allow these, it is because of a county office policy. Therefore, you will need to check with the county attorney to see if and how late fees could be added to help with timely collections. During an audit, we will expect you to collect according to statute for the services you provide and you must be complying with county policy. We also would like to see a written legal support from the county attorney for interest or late fees charged.

**Question #12:** What is the requirement for recording an environmental restrictive covenant?

**Answer #12:** The requirements for recording are the same as for other documents as stated in IC 36-2-11.

**Question #13:** Record as presented? Should a state licensed surveyor be allowed to record a portfolio of surveys as one document so that the fee is \$2 for each survey and \$1 per cross reference?

**Answer #13:** If you accept this type of blanket document for recording there is no special provision for calculating fees more than a single document plus cross references. You will have to make the call on what is best to maintain the integrity of the county's records for the public and searchers. There is some support for plats of survey needing more immediate recording under IC 36-2-19-4 and you might also check the legal survey record book at the county surveyor's office to see if these are indeed separate surveys in that book which is the official record.

**Question #14:** Do we charge IDEM for copies?

**Answer #14:** State agencies are required to pay the fees in IC 36-2-7-10, including the copy fee unless they can provide you with a statute that states otherwise. We are not aware of such a statute for documents related to IDEM. The known exceptions are listed in the Accounting and Uniform Compliance Guidelines Manual for County Recorders, chapter 4.

**Question #15:** Does our office record tax levies (IRS) or do they go to the treasurer's office?

**Answer #15:** We are not aware of a requirement to record tax levies. However, there are federal tax liens and other liens that are recorded and may start out being a tax or end up on the tax rolls. For example: federal tax liens and sewer liens. For guidance on a specific type of document, you must review the statutes that guide that specific process.

**Question #16:** At the time of transferring a deed, can the owner handwrite and initial that they retain a lifetime estate on the property?

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**QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (continued)**

**Answer #16:** After review of the Indiana Code provisions for deeds and life estates, we do not see any provisions that would keep you from recording a document that contained this kind of notation if it otherwise meets the recording requirements. The note may or may not be sufficient to establish or reference a lifetime estate on the property in the eyes of the law.

**Question #17:** Are hospital documents to be open for public viewing?

**Answer #17:** Per Andrew Kossack, Public Access Counselor: The statutes on hospital bonds and hospital liens do not contain any indication that the records cannot be released. Because the presumption under the APRA is that all public records are disclosable, in his opinion the liens and bonds should be disclosed upon request.

**Question #18:** Should the recorders make a note in the indexes and or document when a federal tax lien has been filed for over 10 years without a release form the IRS and does not contain a self releasing statement? If so, what sort of note should we make?

**Answer #18:** Per Joe Budd, Internal Revenue Service: It is up to the recording official. In some offices, recorders periodically go through the liens, look to see if there has been a re-file, and if there is no re-file, they move the old self released liens to another book or system of records. However, the IRS will not make that decision. If recorders do something like this, they have to be certain that the lien has self-released and that is has not been re-filed.

**Question #19:** One of our local banks called and asked if a UCC could be filed if it is printed on both sides of the page. I could not find any guidance in revised Article 9.

**Answer #19:** Per Liz Keele, Secretary of State's Office: The Secretary of State's office has not experienced this before and do not find this as a rejection reason. The Secretary of State's office would file the document upon receipt and be certain the image of the back side of the filing was available for the public record.

**Question #20:** Does a contract need a grantee's address on it?

**Answer #20:** IC 32-21-2-3 requires the grantee's address if it is a contract that conveys real property recorded after June 30, 2007.

**Question #21:** How are we supposed to handle Affidavit to Transfer to Real Estate? Please go over what these documents need to contain.

**Answer #21:** IC 9-17-6-15.1 requires the owner to record the Affidavit to Transfer to Real Estate form received from the Indiana Bureau of Motor Vehicles in the office of the county recorder where the property is located. The form is required to have the county auditor's endorsement. The person filing the affidavit should produce the retired certificate of title if it is available.

**Question #22:** What do we do with the certification of identity forms we have customers fill out for the DD 214's?

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**QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (continued)**

**Answer #22:** Per the County Recorder's Association: the certification of identity forms should no longer be used.

**Question #23:** Does a transfer on death deed need a grantee address?

**Answer #23:** Yes, the deed meets the definition of a conveyance document.

**Question #24:** In reference to death deeds and the affidavit that is recorded after the person passes away, they are to attach a certified copy of the death certificate that has a full social security number but yet the affidavit should contain the social security redaction clause. Is this a dilemma?

**Answer #24:** The affirmation statement required by IC 36-2-11-15 states that the social security numbers in the document have been redacted unless required by law. The death certificate is required to have a full social security number by law. Therefore, the person should not have a problem signing the affirmation statement while attaching a death certificate as long as any social security numbers not on the death certificate have been redacted.