

PUBLICATION

Bricks in the Wall - Volume I, Issue 4: Changes to Tennessee Lien Law Statute

Authors: Cameron Strawbridge Hill, Sr.

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The Tennessee General Assembly recently modified the mechanics' and materialmen's lien statutes, and the changes became effective on May 18, 2007. While some of the changes simply codify how Tennessee courts had handled various issues arising under the statutes, other changes are materially different from the procedures contractors and owners are accustomed to following.

The list below is not intended to be an exhaustive outline of the changes made to the statute. It is intended to identify certain, limited changes and to give you notice that you should pay particular attention to and learn about the new procedures you should follow under the revised statute.

- The new statute is to be "construed and applied liberally." T.C.A. § 66-11-148(a). This is a change from the former "strict construction" to a more "liberal construction." Under the changes, "substantial compliance" is all that is necessary to satisfy the lien statutes. T.C.A. § 66-11-148(b). Do not let this apparent relaxed approach, however, lull you into thinking you do not have to meet the fundamental requirements of the statute.
- The statute now includes a definition of "remote contractor," which opens up the provisions of the lien statutes to a broader group of claimants than under the old provisions. T.C.A. § 66-11-101(14) and T.C.A. § 66-11-102(a).
- The "gap period," which formerly allowed a lien claimant to file a Notice of Lien and Sworn Statement either 90 days after the date work is completed or 90 days after completion of the project, no longer exists. Under the new statute, the Notice of Lien and Sworn Statement must be filed no later than 90 days after the date the improvement is complete or is abandoned. T.C.A. § 66-11-112(a).
- Your Notice of Nonpayment now must be sent within 90 days of the last day of each month within which work or labor was provided. T.C.A. § 66-11-145(a).
- If the owner provides a Payment Bond equaling 100% of the prime contractor's contract price, an attachment on the real property is not necessary after the Payment Bond has been recorded. T.C.A. § § 66-11-124 and 126(5).
- To effect your lien rights where there is a Payment Bond, however, it appears still necessary to follow the procedures for giving notice of your lien rights because, even when there is an effective Payment Bond, defendants retain all defenses to the validity of the underlying lien. T.C.A. § 66-11-126(5)(C).
- Any required Attachment Bond must be in the amount of \$1,000. T.C.A. § 66-11-126(4).
- Under the new statute, if the lien claimant is a remote contractor, it is no longer necessary to sue the prime contractor or other entity with which the remote contractor has a contract in order to preserve the remote contractor's lien rights. T.C.A. § 66-11-126(2). For purposes of a claim for quantum meruit, however, the prime contractor should still be sued.
- Neither a prime contractor nor a remote contractor of a lessee of real property may encumber the owner's rights to the property unless the lessee is first determined to be the owner's agent. T.C.A. § 66-11-102(d).
- It now is clear under the statute that to "furnish materials" includes supplying tools, equipment, or machinery (T.C.A. § 66-11-101(4)(e)) and a claimant may bring a lien for furnishing tools, equipment, or machinery only to the extent permitted by the statute. T.C.A. § 66-11-102(g).

- Prior additional hurdles for architects and engineers, requiring special notice to the lender to have priority over the mortgage, have been eliminated. T.C.A. § 66-11-102(c)(2).