

PUBLICATION

Bricks In The Wall - Volume 2 Issue 3, June 2008: Changes to Tennessee Lien Law Statute Effective July 1, 2008

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The Tennessee General Assembly recently modified the mechanics' and materialmen's lien statutes, and the changes will become effective on July 1, 2008. For the most part, these modifications are technical changes or clarifications that do not affect the substance of the lien statutes; however, you should review the statute and seek advice concerning how the lien statutes may apply to your particular facts and circumstances.

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 that you should follow under the revised statute.

Notice of Completion

- The statute allows any party authorized by the owner or purchaser of improved real property to record and then serve a copy of a notice of completion on the prime contractor in order to protect the owner or purchaser from a mechanics' and materialmen's lien claim that has not been recorded in the office of the register of deeds. T.C.A. § 66-11-143(a).
- Under the statute, if the owner or an entity controlled by the owner acts as the general contractor, it is no longer necessary to serve the notice of completion on a prime contractor to protect the owner or purchaser from a mechanics' and materialmen's lien claim. T.C.A. §66-11-143(a).
- A notice of completion should include the name and address of the person who prepares it. T.C.A. § 66-11-143(b).

Notice of Nonpayment

- A notice of nonpayment must be served on the prime contractor and on remote contractors who have served a notice of nonpayment. T.C.A. § 66-11-143(d).
- In the case of improvements to or on real property for one-family, two-family, three-family, and four-family residential units, a notice of nonpayment should be sent within 10 days from the service of the notice of completion. Failure to serve such notice would result in expiration of the claimant's lien rights. T.C.A. § 66-11-143(d).
- For all other contracts, a notice of nonpayment should be sent within 30 days of service of the notice of completion. Failure to serve such notice would result in expiration of the claimant's lien rights. T.C.A. § 66-11-143(d).

Lien in Favor of the General Contractor and Lienor

- The statute now includes a definition of "general contractor," which may open up the provisions of the lien statutes to a broader group of claimants than under the old provisions, but at least helps clarify the statute. T.C.A. § 66-11- 146(b)(1).

- A general contractor is the person responsible for the supervision or performance of substantially all of the work, labor, and the furnishing of materials in furtherance of the improvement to the property. T.C.A. § 66-11-146(b)(1).
- When the owner of residential real property and the general contractor (instead of a prime contractor) are the same person, or such a person controls entities owning the property and a general contracting business on contracts to improve residential real property, a mechanics' and materialmen's lien only exists in favor of the general contractor and lienor in contractual privity with the owner or general contractor. T.C.A. § 66-11-146(b)(2).

Presumption against a Lien in Favor of the Remote Contractor Abolished

- Prior to the recent amendments, there was a presumption against the existence of a lien in favor of the remote contractor. However, this is no longer the case because the new statute deletes certain provisions of the old statute.

Limited Validity of the Information in a Building Permit

- The information in a building permit about the name of any owner, any prime contractor, any remote contractor, or any other person, their addresses, and the real property description are presumed to be correct and sufficient for the purposes of serving a notice of nonpayment. In addition, an owner may be required to supply a certified copy of the building permit to the purchaser, lender, or their agents. T.C.A. § 66-11-149(a).

This information is provided for informational purposes only and does not constitute legal advice. It is intended to give you a broad overview of very limited issues; it is not intended to apply to every situation or to address every circumstance that may arise.