

Residential Tennessee Construction Lien Law Ten Question/Answer/Tips for Homeowners, Contractors, and Subcontractors

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Question 1: Where can I locate the Tennessee lien laws?

Answer: The lien laws are found in Tenn. Code Ann. § 66-11-101 *et seq.* Google it.

Practice Tip: Many Tennessee cases discuss the application of lien laws. Revised lien laws were passed in 2007, so be careful when reviewing cases and articles prior to 2007.

Question 2: How do I know if I qualify for a lien?

Answer: Any individual or business who supervises or performs work or labor or who furnishes material, services, equipment, or machinery in the furtherance of improvement to private real property, subject to certain limitations. Tenn. Code Ann. §§ 66-11-101(11) and (12).

Practice Tip: The lien laws can be confusing, so always consult with an attorney, especially since an improper lien can put you in a lot of trouble (more on that later). For example, different standards apply to residential and commercial.

Question 3: Does all work/material related to construction qualify?

Answer: Not all work/material qualifies, but the lien statutes cover a broad range of “improvements.” Tenn. Code Ann. §§ 66-11-101(4) and (5). An “improvement” is a result of any action or activity in furtherance of the construction, repair, demo, labor, etc. Surveying, engineer work, and architectural work is subject to limitations. To “furnish materials” also includes specially fabricated materials and equipment. Generally speaking, the materials must be on the site or incorporated into the improvement, unless specially fabricated.

Practice Tip: To many people’s surprise, landscaping and sodding are activities and materials that fall under lien protection.

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Question 4: I am a general contractor. The homeowner has asked me to sign a contract that says I waive all lien rights. I signed it. Is this legal?

Answer: No. Under Tennessee law, any contract provision that purports to waive any lien rights is void and unenforceable against public policy. Tenn. Code Ann. § 66-11-124(b)(1).

Question 5: I am a subcontractor working for a general contractor that is building a house as a personal residence for the property owner. Can I file a lien against the homeowner's property if I do not get paid?

Answer: Probably not, but it depends. The law in Tennessee references "prime contractors" and "remote contractors," as opposed to general contractor and subcontractor. Tenn. Code Ann. §§ 66-11-101. The prime contractor is normally the "general contractor" because the prime contractor has a contract with the owner or the owner's agent. But prime contractor and general contractor are not synonymous. The remote contractor, on the other hand, maintains a contract with a person other than the owner (such as the general contractor). The distinction between a prime contractor and a remote contractor is critical under Tennessee lien law.

- On a residential home project, if you are a subcontractor that does not have a contract with the owner and you are hired by the general contractor, then you are classified as a remote contractor. Remote contractors may not assert liens on residential real property. Tenn. Code Ann. § 66-11-146.
- Exceptions can exist (See Notice of nonpayment Tenn. Code Ann. § 66-11-145 --- properties that are not one, two, three, or four family residential units), often when the owner of the residential real property and the general contractor are one and the same. Tenn. Code Ann. § 66-11-146(b)(2).

Practice Tip: Let's assume you hire Bill the Handyman to renovate your kitchen and the contract is for \$25,000. Bill then hires Joe the Painter to provide painting services for \$1,500. Bill then stiffes Joe after the work is performed at your house. If Joe files a lien on your property, the lien is invalid.

Question 6: I am a general contractor. I am owed \$15,000 from John the Homeowner. I did not file a lien or follow lien procedures. Can I still sue John?

Answer: Yes, you can still sue John for the remainder of the fee owed to you if you did not file a lien. Of course, like a lot of legal issues, exceptions can exist to this answer. For example, your

contract with John might contain an arbitration provision, which means that you cannot sue in court.

Practice Tip: Following the lien procedures can be a tedious process. Most general contractors do not file liens against their client's property.

Question 7: I am a general contractor. I am owed \$35,000 from Susie the Homeowner. I followed the lien laws and timely recorded my lien. When will Susie send me my money?

Answer: Susie will probably not send you the money simply because you filed a lien. Rather, you are required to file a lawsuit to enforce the lien. In fact, you are required to file the lawsuit to enforce the lien within one year. Tenn. Code Ann. § 66-11-106.

Question 8: I am general contractor building a large home in East Nashville. My contract is directly with the homeowner, so I am considered a prime contractor. I want to make sure I get the benefit of lien laws. What do I need to do?

Answer: First, you need to know that the "lien" exists once you start commencing the work. However, the filing of the lien triggers certain rights and obligations. As the prime contractor, you need to make sure the Notice of Lien is filed and recorded with the Register of Deeds no later than 90 days after the project is completed or abandoned in order to preserve priority. Tenn. Code Ann. § 66-11-112(a).

Practice Tip: If you miss the 90-day filing window, you will not be able to assert priority over subsequent purchasers or encumbrances of the property, which can come into play if the owner is trying to flip the house.

- Tenn. Code Ann. § 66-11-112(d) provides a form that you can use to create a Notice of Lien (See last page of this document). The lien must be signed and notarized. Make sure your lien form substantially complies with form provided by Tennessee law.
- A wise homeowner will file and serve a Notice of Completion with the register of deeds to start the 90-day clock. Tenn. Code Ann. § 66-11-143. However, if the project was not actually finished or completed on the date that the Notice of Completion was recorded, then the Notice is void and cannot be used to shorten the time period.

Question 9: My uncle is a commercial general contractor in Georgia. I am a residential home builder here in Tennessee. Should I take advice from my uncle on how to file a lien against my homeowner client that stiffed me?

Answer: No, that is not a smart thing to do for two reasons. First, each state has different laws and requirements. Second, the laws between residential and commercial are very different.

Practice Tip: If you think that you will end having to sue the homeowner, you want to make sure you are following all of the laws at your disposal. Call an attorney for help.

Question 10: I am a homeowner. I've paid my contractor every penny with the exception of \$500 that I owe him for extra paint. My contractor is mad at me for reasons unknown and has filed a \$18,000 lien against my property. I found out about this lien when I got served with a lawsuit saying he is suing to enforce his \$18,000 lien. What are my options?

Answer: Well, you will have to respond to the lawsuit. However, if the contractor has "willfully and grossly" exaggerated the lien amount, then the entire amount of the lien may be disallowed, and a lienor may be held responsible for attorney fees. Tenn. Code Ann. § 66-11-139.

Practice Tip: If you do owe \$500, it is probably best to go ahead and pay that amount accompanied by a letter demanding dismissal of the lawsuit and removal of the lien. If the contractor refuses, you will be setting up a strong attorney fee claim in the litigation.

NOTICE OF LIEN (Sample Form)

State of _____
County _____

_____ of being first duly sworn, says that , the Lien Claimant, furnished certain material or performed certain work or labor in furtherance of improvements to the real property hereinafter described, in pursuance of a certain contract, with _____, [the owner, prime contractor, remote contractor, or other person, as the case may be]. The first of the work or labor was performed or the first of the material, services, equipment, or machinery was furnished on the day of _____, (year). The last of the work or labor was performed or the last of the material, services, equipment, or machinery was furnished on the day of , (year), and there is justly and truly due Lien Claimant therefor from , [the owner, prime contractor, remote contractor, or other person, as the case may be] over and above all legal setoffs, the sum of _____ dollars, for which amount Lien Claimant claims a lien under T.C.A. §§ 66-11-101, et seq. on the real property, of which is or was the owner, which is described as follows: _____(Description)

Lienor (signature): _____

[Notary Acknowledgment]