

Mechanics' Liens in Practice (Prime Contractor Rights) (TN)

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A Practice Note discussing statutory mechanics' liens that arise out of construction projects for the improvement of privately owned residential and commercial real property in Tennessee. This Note focuses on providing practical guidance on the processes and procedures a contractor in direct privity of contract with the property owner (also known as a prime contractor) or a supplier dealing directly with the property owner must follow to perfect, enforce, and release mechanics' liens in Tennessee.

A mechanics' lien or materialmen's lien (mechanics' lien) can be a powerful tool to secure payment for work or services performed or materials furnished to improve real property. Title 66 of the Tennessee Code governs mechanics' liens on residential and commercial real property in Tennessee. (T.C.A. §§ 66-11-101 to 66-11-150 and 66-11-201 to 66-11-208.)

In Tennessee, there are two classes of contractors entitled to assert a mechanics' lien against real property:

- A prime contractor contracting directly with the property owner (T.C.A. § 66-11-101(12)).
- A remote contractor contracting with a person or entity other than the property owner (T.C.A. § 66-11-101(14)).

This Note discusses the processes and procedures a prime contractor must follow when:

- Giving a notice of lien.
- Perfecting and enforcing lien rights.
- Determining the priority of lien rights.
- Discharging a mechanics' lien.

This Note does not address claims arising out of labor performed or materials supplied by a remote contractor (T.C.A. § 66-11-101(14) and see Practice Note, Mechanics' Liens in Practice (Remote Contractor Rights) (TN)).

Substantial compliance with Tennessee's lien law is sufficient to create, perfect, and enforce a valid mechanics' lien. Tennessee lien law should be construed and applied liberally to secure its beneficial results, intents, and purposes. (T.C.A. § 66-11-148.)

Pre-Lien Matters

Before a potential lien claimant can create and perfect a mechanics' lien, it must determine:

- If it is entitled to a mechanics' lien.
- If the property is subject to a mechanics' lien.
- When the lien attaches.
- The priority of its lien as against other mechanics' liens.

Persons Entitled to a Mechanics' Lien

Any person or entity which supplies labor or materials for the improvement of real property is entitled to assert a mechanics' lien (T.C.A. § 66-11-102(a)). Under Tennessee law, potential lien claimants include:

- A prime contractor. A prime contractor is a person directly contracting with a property owner or its agent that is either.
 - a licensed architect or engineer (T.C.A. § 62-6-102(4)(A)(iii));
 - a person supervising or performing work or labor or furnishing materials, services, equipment, or machinery to further any improvement; or
 - a well driller (T.C.A. § 66-11-141).

(T.C.A. § 66-11-101(12).)

- A remote contractor. A remote contractor is any person providing work or labor or furnishing materials, services, or equipment or machinery to further an improvement

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to real property under a contract with a person other than an owner, such as:

- land surveyors (T.C.A. § 62-18-102);
- licensed architects and engineers (T.C.A. § 62-6-102(4)(A)(iii));
- well drillers, other than wells for gas or oil (T.C.A. § 66-11-101(5));
- subcontractors;
- material suppliers;
- equipment suppliers;
- tool suppliers; and
- laborers.

(T.C.A. § 66-11-101(14).)

Only a prime contractor can assert a mechanics' lien against residential real property (T.C.A. § 66-11-146(a)(2)). Residential property is defined as a building in which the property owner resides or intends to reside as its principal residence and consisting of one to four dwelling units (T.C.A. § 66-11-146(a)(1)).

Unlicensed contractors and tradesman cannot assert a mechanics' lien if that contractor or tradesman must be licensed (T.C.A. §§ 66-11-102(a) and 62-6-103(a)).

When a Lien Attaches and Property Interests Subject to a Mechanics' Lien

Potential lien claimants must determine:

- When a mechanics' lien attaches to real property.
- If the property is subject to a mechanics' lien.
- The priority of a mechanics' lien regarding other liens and judgments.

Lien Attaches on Visible Commencement of Operations

The mechanics' lien attaches only to the fee interest of the owner of the real property existing at the time of visible commencement of operations (T.C.A. § 66-11-105(a)).

Visible commencement of operations occurs when the first actual work of improving the land commences or when materials are first delivered to the site.

Visible commencement of operations does not include:

- Demolition;
- Surveying;

- Excavating;
- Clearing;
- Filling or grading;
- Placement of sewer, drainage, or other utility lines and related preparatory work;
- The erection of temporary security fencing and the delivery of related materials.

(T.C.A. § 66-11-101(16).)

If there is a stoppage of all operations at the site of improvement for more than 90 days, the mechanics' lien attaches and takes effect only from the time of the recommencement of operations (T.C.A. § 66-11-104(b)).

Leasehold Interests

If a person performs labor or furnished materials, supplies, fixtures, machinery, or other things of value to a tenant (including under a lease for gas, oil, or mineral rights), the lien attaches only to the tenant's 's leasehold interest (T.C.A. §§ 66-11-101(8) and 66-11-147(a)). The lien takes effect either from the time of the delivery of the materials, supplies, fixtures, or machinery or from the date labor is furnished. (T.C.A. § 66-11-147(b).)

Multiple Lien Claimants on the Same Project

Under Tennessee law, all mechanics' liens, excepting the lien claims of laborers, have equal priority and relate back to the visible commencement of operations of the first contractor. Lien claims of laborers have priority over all other liens and are paid on a pro rata basis. (T.C.A. § 66-11-107.)

Other Prior Liens and Judgments

Tennessee is a first-to-file state regarding lien priority. Liens, such as mortgages, deeds of trust, and statutory liens, filed before visible commencement of operations have priority over mechanics' liens.

Tennessee law provides a mechanism by which a lien claimant can obtain priority over mortgages, deeds of trust, and other liens. The lien claimant must serve notice to a mortgagee of real property before work is begun or materials are provided that it seeks priority over the existing lien. The lien claimant obtains priority if either:

- The mortgagee consents.
- The mortgagee fails to respond within ten days after its receipt of the notice.

(T.C.A. §§ 66-11-108 and 66-11-109.)

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Mechanics' liens have priority over judgment liens (T.C.A. § 66-11-110).

For more information on lien priority in Tennessee, see [State Q&A, Real Estate Finance: Tennessee: Priority](#).

Perfecting a Mechanics' Lien

Perfecting a mechanics' lien is a multi-step process that requires:

- Calculating the amount of the lien.
- Timely filing, serving, and recording the lien.

Calculating the Amount of the Lien

The amount of a lien is limited to work, materials, services, or equipment furnished in the improvement of the real property. The lien amount does not include:

- Interest.
- Service charges.
- Late fees.
- Attorney fees.
- Other amounts to which the lienor may be entitled by contract or law that do not result in an improvement to the real property.

(T.C.A. § 66-11-102(e).)

Notice Requirements

Tennessee law does not require that a prime contractor gives notice of its lien to the property owner to protect its lien. The owner is presumed to know it has not paid the prime contractor. However, Tennessee law does provide the following additional notices to protect the prime contractor's rights under specific circumstances:

- A notice of lien to bona fide purchasers or encumbrancers for value to preserve the priority of its lien.
- A notice of potential lien claim to residential property owners.
- A notice of completion.

Notice to Bona Fide Purchasers or Encumbrancers for Value

The prime contractor must record a notice of lien (in the form of a sworn statement) in the office of the register of deeds in the county where the real property or any affected portion of it is located. However, it is a distinct and separate document from the notice of lien that a

remote contractor must serve on the property owner to protect its lien (see Practice Note, Mechanics' Liens in Practice (Remote Contractor Rights) (TN): Notice of Lien). The prime contractor must record the sworn statement no later than 90 days after the date the improvement is complete or is abandoned. (T.C.A. § 66-11-112(a).)

The sworn statement protects the priority of the remote contractor's lien against later purchasers or encumbrancers for valuable consideration without notice of the lien (T.C.A. § 66-11-112(b)).

Tennessee law prescribes the form for the sworn statement. However, a self-drafted sworn statement that is in substantially the same form is acceptable. (T.C.A. § 66-11-112(d).) The sworn statement must include:

- The name of the lien claimant.
- The nature of labor and material supplied.
- The contract under which the lien is claimed.
- The name of the party with which the lien claimant contracted.
- The first date that material was supplied or that work was first performed.
- The last date that material was supplied or that work was last performed.
- The amount owed.
- A reasonably certain description of the improved property.

The sworn statement must be verified and acknowledged by a person with knowledge of the facts contained in the statement (T.C.A. § 66-22-101 and see *Don Huckaby Plumbing Co., Inc. v. Cardinal Indus. Mortg. Co.*, 848 S.W. 2d 57 (Tenn. 1993)).

Notice of Potential Residential Lien Claim

Although rarely used, the prime contractor may send a written notice of potential lien claim to the real property owner before either:

- Entering into a contract for the improvement of residential real property.
- Commencing the improvement of the residential real property.

(T.C.A. § 66-11-203.)

Tennessee law sets out the form for the notice of potential lien claim. However, a self-drafted notice in substantially the same form is acceptable. The notice should be sent to the owner by registered mail.

The failure of the prime contractor to deliver the notice of potential lien claim is a Class B misdemeanor (T.C.A. § 66-11-206(a)). Failure to send the notice does not prevent the prime contractor from asserting its lien (T.C.A. § 66-11-206(c)).

Recording and Serving a Notice of Completion

A prime contractor must file an action to enforce its lien within one year after completing the improvement to the real property unless the owner or purchaser of improved property or their agent or representative records a notice of completion once the improvements to the property are completed. Recording a notice of completion shortens the time within which a lien claimant must file a notice of lien.

Any lien claimant with actual or constructive notice of the notice of completion must file a notice of lien:

- Within ten days for one-to-four family residential units.
- Within 30 days for all other improvements.

(T.C.A. § 66-11-143(e)(2)(a).)

A notice of completion must:

- Be recorded in the register of deeds of the county where the property is located.
- Served on the prime contractor.
- Contain the following information:
 - the legal name of the owner or owners of the real property;
 - the legal name of any prime contractors;
 - the location and description of the real property;
 - the date of the completion of the improvement;
 - a statement that any pending transfer of ownership or encumbrance of the improved residential property does not occur until at least ten days after the date of the recording of the notice of completion or that a transfer of ownership or encumbrance of the improved commercial property does not occur until at least 30 days after the date of the recording of the notice of completion;
 - An address for receipt of a notice of claim (including the name of the party);
 - an acknowledgement by the person filing the notice of completion; and
 - the preparer's name and address.

(T.C.A. § 66-11-143(a).)

Any notice of completion recorded before the completion of the improvement is void (T.C.A. § 66-11-143(f)).

The notice of completion may be substantially in the form set out by statute (T.C.A. § 66-11-143(g)).

Amending a Notice of Lien

A lien claimant may amend any notice of lien in the mechanics' lien statute at any time during the period allowed for serving or recording the applicable notice (T.C.A. § 66-11-119(a) and see Notice Requirements). Any amendment must be served or recorded in the same manner as the original notice (T.C.A. § 66-11-119(b)).

Waiving the Mechanics' Lien

A claimant cannot prospectively waive its lien. Any contract provision that purports to waive any lien right is void and unenforceable as against public policy. (T.C.A. § 66-11-124(b).) However, no liens by remote contractors are allowed if, before visible commencement of operations (see Visible Commencement of Operations), a property owner or its agent provides a payment bond:

- In an amount equal to 100% of the prime contractor's price.
- In favor of the remote contractors providing work or labor or furnish materials, services, equipment, or machinery in furtherance of the improvement under a contract.

The payment bond must be:

- Executed with sufficient surety by one or more sureties authorized to do business in Tennessee.
- Recorded in the office of the register of deeds of every county where the real property to be improved, or any affected part, is located.

(T.C.A. § 66-11-124(c) and see Payment Bond.)

Enforcing the Mechanics' Lien

The lien claimant must enforce its mechanics' lien by filing a court action. A claimant may file its enforcement action in either:

- A court of equity (chancery court).
- A court of general sessions.

(T.C.A. § 66-11-126.)

Lien enforcement actions are typically brought in chancery court. The action may be brought in the court of general

sessions, but there are special rules that must be followed (T.C.A. § 66-11-134 and see Filing the Complaint).

Time Limitation

A prime contractor must file an action to enforce its lien within one year after completing the improvement to the real property unless the property owner or its agent delivers a written demand for enforcement action. The lien continues until a final decision is rendered. (T.C.A. § 66-11-106.)

Giving a Written Demand for Enforcement Action

The property owner or its agent can require a lien claimant to file a complaint to enforce its lien by serving a written demand requiring that the lien claimant commence an action. The demand must describe the real property. The lien claimant must commence proceedings within 60 days after service of the demand or else the claimant forfeits its lien by operation of law. (T.C.A. § 66-11-130.)

Serve the demand by one or more of the following methods:

- Registered or certified mail, return receipt requested.
- Hand delivery, evidenced by a sworn statement, properly notarized, confirming delivery.
- Any other commercial delivery service that provides confirmation of delivery.

(T.C.A. §§ 66-11-149(c)(1)-(3).)

Commencing the Action

The lien claimant commences the action to enforce its lien by:

- Filing a complaint in a court of law or a chancery court within one year after completing the improvement to the real property unless the property owner or its agent delivers a written demand for enforcement action.
- Obtaining service on necessary parties.
- Securing a writ of attachment on the improved property or obtaining a bond (see Discharging the Lien).

Filing the Complaint

The complaint to enforce a mechanics' lien must:

- Be filed under oath.
- Set out facts supporting the lien claimant's lien.

- Include the sum claimed.
- Describe the improved real property.
- Name the person or persons the interests of which the lien claimant seeks to attach and sell.
- Include a prayer for the issuance of a writ of attachment.

(T.C.A. §§ 66-11-126(1) and (2).)

It is customary to join other related claims in the complaint, such as breach of contract or unjust enrichment (Tenn. R.Civ.P., Rule 18.01).

Naming Necessary Parties

All persons with a recorded interest in the real property must be named as parties in the complaint (T.C.A. § 66-11-126(1) and (2)). Counsel should consider conducting a title search to determine the property owner and all other parties with an interest in the real property, including other lien claimants.

The lien claimant should join as parties to the action:

- The owner of the improved real property.
- Any lenders with liens against the real property.
- The prime contractor, if applicable.
- Any remote contractors, if applicable.

All or any number of lien claimants on the same property may join in one suit. State their respective claims in separate paragraphs.

If suits are brought by different lien claimants and are pending at the same time, the court may order them to be consolidated (Tenn. R.Civ.P., Rule 42.01).

Serving the Complaint

After filing of the complaint, the clerk of court issues the summons and causes them to be delivered for service to any person authorized to serve process, typically a sheriff (Tenn. R.Civ.P., Rule 4.01).

For more information on litigation in Tennessee, see [State Q&A, Litigation Overview: Tennessee](#).

Obtaining a Writ of Attachment

After the claimant files the complaint, the clerk of the court:

- Issues the writ of attachment and causes it to be served along with the complaint and summons (Tenn. R.Civ.P., Rule 4.01).

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- Requires the plaintiff to execute a surety bond payable to the defendant in the amount of one thousand dollars or the amount claimed, whichever is less.

(T.C.A. § 66-11-126(3)-(4).)

An attachment is not necessary when a bond has already been recorded (T.C.A. § 66-11-126(5)(A)).

Discharging the Lien

The Tennessee mechanics' lien statute provides two methods by which a mechanics' lien may be discharged without a judgment:

- A bond to discharge lien (T.C.A. § 66-11-142(a)).
- A payment bond (T.C.A. § 66-11-142(b)(1)-(2)).

Bond to Discharge Lien

A bond to discharge lien is the most commonly used bond for indemnifying against a lien. The bond must be:

- In the amount of the lien claimed.
- Obtained from a corporate surety licensed to do business in Tennessee.
- Conditioned on the obligor satisfying any judgment that may be rendered in favor of the person asserting the lien.

The bond also must include the book and page number and the office where the lien is recorded.

The bond to discharge lien must be recorded. Once the bond is recorded with the register of deeds for the county where the property is located:

- The lien on the real property is discharged.
- The claim transfers to the bond.

- The lien claimant pursues its claim against the principal and surety on the bond.

(T.C.A. § 66-11-142(a).)

Payment Bond

A prime contractor may provide a payment bond for the benefit of potential lien claimants. Once the payment bond is recorded with the register of deeds for the county where the property is located, the lien is discharged and the claim transfers to the obligors on the bond. The payment bond must:

- Be in a penal sum at least equal to the total of the original contract amount.
- Be in favor of the owner.
- Be executed by:
 - the original prime contractor or remote contractor as principal; and
 - a sufficient corporate surety licensed to do business in Tennessee.
- Provide for payment to the lien claimant that either:
 - was employed by the person originally contracting with the property owner;
 - subcontracted with the person originally contracting with the property owner; or
 - subcontracted with a remote contractor.

(T.C.A. §§ 66-11-142(b)(1)-(2).)

The lien claimant may pursue its claim against the principal and surety on the bond.

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