



Tennessee

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Statutory Outline

TITLE 66. PROPERTY.

CHAPTER 11. MECHANICS' AND MATERIALMEN'S LIENS.

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Part 1. General Provisions.

66-11-101. Chapter definitions. As used in this chapter, unless the context otherwise requires:

- (1) "**Contract**" means an agreement for improving real property, written or unwritten, express or implied, and includes extras as defined in this section;
- (2) "**Contract price**" means the amount agreed upon by the contracting parties to be paid for performing work or labor or for furnishing materials, machinery, equipment, services, overhead and profit, included in the contract, increased or diminished by the price of extras or breach of contract, including defects in workmanship or materials. If no price is agreed upon by the contracting parties, "**contract price**" means the reasonable value of all work, labor, materials, services, equipment, machinery, overhead and profit included in the contract;
- (3) "**Extras**" means labor, materials, services, equipment, machinery, overhead and profit, for improving real property, authorized by the owner and not included in previous contracts;
- (4) (A) "**Furnish materials**" means:
 - (i) To supply materials that are intended to be and are incorporated in the improvement;

- (ii) To supply materials that are intended to be and are delivered to the site of the improvement and become normal wastage in construction operations;
- (iii) To specially fabricate materials for incorporation in the improvement and, if not delivered to the site of the improvement, are not readily resalable by the lienor;
- (iv) To supply materials that are used for the construction and do not remain in the improvement, subject to diminution by the salvage value of such material; or
- (v) To supply tools, equipment, or machinery as permitted by § 66-11-102(g);
- (B) The delivery of materials to the site of the improvement shall be prima facie evidence of incorporation of such materials in the improvement;
- (5) "**Improvement**" means the result of any action or any activity in furtherance of constructing, erecting, altering, repairing, demolishing, removing, or furnishing materials or labor for any building, structure, appurtenance to the building or structure, fixture, bridge, driveway, private roadway, sidewalk, walkway, wharf, sewer, utility, watering system, or other similar enhancement, or any part thereof, on, connected with, or beneath the surface; the drilling and finishing of a well, other than a well for gas or oil; the furnishing of any work and labor relating to the placement of tile for the drainage of any lot or land; the excavation, cleanup, or removal of hazardous and nonhazardous material or waste from real property; the enhancement or embellishment of real property by seeding, sodding, or the planting on real property of any shrubs, trees, plants, vines, small fruits, flowers, nursery stock, or vegetation or decorative materials of any kind; the taking down, cleanup, or removal of any existing shrubs, trees, plants, vines, small fruits, flowers, nursery stock, or vegetation or decorative materials of any kind then existing; excavating, grading or filling to establish a grade; the work of land surveying, as defined in § 62-18-102, and the performance of architectural or engineering work, as defined in title 62, chapter 2, with respect to an improvement actually made to the real estate. As the context requires, "**improvement**" also means the real property thus improved;
- (6) "**Laborer**" means any individual who, under contract, of any degree of remoteness, personally performs labor for improving real property on the site of the improvement;
- (7) "**Lienor**" means any person having a lien or right of lien on real property by virtue of this chapter, and includes the person's successor in interest;
- (8) "**Owner**" includes the owner in fee of real property, or of a less estate in real property, a lessee for a term of years, a vendee in possession under a contract for the purchase of real property, and any person having any right, title or interest, legal or equitable, in real property, that may be sold under process;
- (9) "**Owner-occupant**" means any owner of real property who, at the time the owner contracts for the improvement of the real property, occupies the real property as the owner's principal place of residence;
- (10) "**Perform,**" when used in connection with the words labor or services, means performance by the lienor or by another for the lienor;
- (11) "**Person**" means an individual, corporation, limited liability company, partnership, limited partnership, sole proprietorship, joint venture, association, trust, estate, or other legal or commercial entity;
- (12) "**Prime contractor**" means a person, including a land surveyor as defined in § 62-18-102, a person licensed to practice architecture or engineering under title 62, chapter 2, and any person other than a remote contractor who supervises or performs work or labor or who furnishes material, services, equipment, or machinery in furtherance of any improvement; provided, that the person is in direct privity of contract with an owner, or the owner's agent, of the improvement. A "**prime contractor**" also includes a person who takes over from a prime contractor the entire remaining work under such a contract;

(13) "**Real property**" includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, and fixtures and improvements thereon;

(14) "**Remote contractor**" means a person, including a land surveyor as defined in § 62-18-102 and a person licensed to practice architecture or engineering under title 62, chapter 2, who provides work or labor or who furnishes material, services, equipment or machinery in furtherance of any improvement under a contract with a person other than an owner;

(15) "**Single family residence**" means any real property owned and occupied by no one other than the owner and the owner's immediate family; and

(16) "**Visible commencement of operations**" means the first actual work of improving upon the land or the first delivery to the site of the improvement of materials, that remain on the land until actually incorporated in the improvement, of such manifest and substantial character as to notify interested persons that an improvement is being made or is about to be made on the land, excluding, however, demolition, surveying, excavating, clearing, filling or grading, placement of sewer or drainage lines or other utility lines or work preparatory therefor, erection of temporary security fencing and the delivery of materials therefor.

66-11-102. Lien for work and materials.

(a) There shall be a lien on any lot or tract of real property upon which an improvement has been made by a prime contractor or any remote contractor; provided, that the lienor has complied with title 62, chapter 6. If the lienor has not fully complied with title 62, chapter 6, no lien is established by this chapter. The lien shall secure the contract price.

(b) The lien established by this section shall include a lien on any lot or tract of real property in favor of any land surveyor who has, by contract with the owner or agent of the owner of the real property, performed on the property the practice of land surveying, as defined in § 62-18-102(3). The lien shall secure the contract price.

(c) (1) The lien established by this section shall include a lien on any lot or tract of real property upon which an improvement has been made, by contract with the owner or the owner's agent, in favor of any person licensed to practice architecture or engineering under title 62, chapter 2, for architectural or engineering services performed with respect to the improvement actually made. The lien shall secure the contract price.

(2) The lien provided for in subdivision (c)(1) shall attach as of the time of visible commencement of operations as provided in § 66-11-104.

(3) The provisions of this subsection (c) shall not apply to owner-occupants of one-family or two-family detached unit homes.

(d) Notwithstanding any other provision of this chapter, no prime contractor or remote contractor of a lessee of real property may encumber the fee estate unless the lessee is deemed to be the fee owner's agent. In determining whether a lessee is the fee owner's agent, the court shall determine whether the fee owner has the right to control the conduct of the lessee with respect to the improvement and shall consider:

(1) Whether the lease requires the lessee to construct a specific improvement on the fee owner's property;

(2) Whether the cost of the improvement actually is borne by the fee owner through corresponding offsets in the amount of rent the lessee pays;

(3) Whether the fee owner maintains control over the improvement; and

(4) Whether the improvement becomes the property of the fee owner at the end of the lease.

(e) A lien arising under this chapter shall not include in the lien amount any interest, service charges, late fees, attorney fees, or other amounts to which the lienor may be entitled by contract or law that do not result in an improvement to the real property or are otherwise not permitted by this chapter.

(f) When a lienor, without default, is prevented from completely performing the lienor's part, the lienor is entitled to a lien for as much of the contract price as the lienor has performed in proportion to the contract price for the whole, and the lienor's claim shall be adjusted accordingly.

(g) A lien for furnishing tools, equipment, or machinery arises under this chapter to the following extent:

(1) For the reasonable rental value for the period of actual use and any reasonable period of nonuse taken into account in the rental contract; except that the reasonable rental value and reasonable periods of use and nonuse need not be determined solely by the contract; or

(2) For the purchase price of the tools, equipment or machinery, but the lien for the price only arises if the tools, equipment or machinery were purchased for use in the course of the particular improvement and have no substantial value to the lienor after the completion of the improvement on which they were used.

When the contract for improving real property is made with a husband or a wife who is not separated and living apart from that person's spouse, and the property is owned by the other spouse or by both spouses, the spouse who is the contracting party shall be deemed to be the agent of the other spouse unless the other spouse serves the prime contractor with written notice of that spouse's objection to the contract within ten (10) days after learning of the contract.

66-11-103. Contract with owner's spouse.

When the contract for improving real property is made with a husband or a wife who is not separated and living apart from that person's spouse, and the property is owned by the other spouse or by both spouses, the spouse who is the contracting party shall be deemed to be the agent of the other spouse unless the other spouse serves the prime contractor with written notice of that spouse's objection to the contract within ten (10) days after learning of the contract.

66-11-104. Time of attachment of lien.

(a) The lien provided by this chapter shall attach and take effect from the time of the visible commencement of operations, excluding however, demolition, surveying, excavating, clearing, filling or grading, placement of sewer or drainage lines, or other utility lines or work preparatory therefor, erection of temporary security fencing and the delivery of materials therefor.

(b) If there is a cessation of all operations at the site of the improvement for more than ninety (90) days and a subsequent visible resumption of operations, any lien for labor performed or for materials furnished after the visible resumption of operations shall attach and take effect only from the visible resumption of operations.

(c) Nothing in this section shall affect the priority or parity of any liens as established by any section of this chapter.

66-11-105. Extent of lien—Removal of property.

(a) The lien shall extend to, and only to, the owner's right, title or interest in the real property and improvements on the real property existing at the time of the visible commencement of operations or thereafter acquired or constructed.

(b) If any part of the real property or improvements subject to the lien is removed by the owner or any other person at any time before discharge of the lien, the removal shall not affect the rights of the lienor either in respect to the real property and improvements or the part so removed.

66-11-106. Duration of lien.

A prime contractor's lien shall continue for one (1) year after the date the improvement is complete or is abandoned, and until the final decision of any suit properly brought within that time for its enforcement.

66-11-107. Parity of liens—Priority of laborers' liens.

All liens provided by this chapter, except those of laborers, shall be on a parity, and shall be treated pro rata. All liens of laborers shall be on a parity one with another, and shall have priority over all other liens created by this chapter.

66-11-108. Priority over mortgage.

If the contract for an improvement is made with a mortgagor, and the lienor has served the mortgagee with written notice of the same by certified or registered mail before the work is begun or materials furnished by the lienor, and the mortgagee gives written consent thereto by certified or registered mail, the lien provided by this chapter to that lienor shall have priority over the mortgage; and if the mortgagee fails to serve a written objection by certified or registered mail within ten (10) days after receipt of the notice, the mortgagee's consent shall be implied; provided, that the person giving notice shall include a name and return address to which the written objection shall be served. If notice is not served in accordance with the provisions of this section, then the lien shall not have priority over a mortgage otherwise entitled to priority over the lien under applicable law.

66-11-109. Priority for other liens not created by this chapter.

The provisions in § 66-11-108 shall also apply to any other person claiming a lien not created by this chapter.

66-11-110. Effect of judgment lien.

A judgment lien of record shall not defeat a lien provided by this chapter, if the lien provided by this chapter is fixed on the real property in good faith and without collusion.

66-11-111. Authentication and registration of lien.

Where the lienor's contract is in writing, and has been acknowledged, or in lieu of acknowledgment is sworn to by the prime contractor as to its execution by the owner, it may be recorded in the lien book in the register of deeds of the county where the real property, or any part of the affected real property, lies. Subsequent purchasers or encumbrancers for value shall be deemed to have notice of the lien so long as the recorded contract sets forth the contract price and describes the real property with reasonable certainty.

66-11-112. Preservation of priority of lien for subsequent purchasers or encumbrancers—Abandonment—Lien on structure with water furnished by well—Form for notice of lien.

(a) In order to preserve the priority of the lien provided by this chapter as of the date of its attachment, as concerns subsequent purchasers or encumbrancers for a valuable consideration without notice of the lien, though not as concerns the owner, the lienor, who has not recorded

the lienor's contract pursuant to § 66-11-111, is required to record in the office of the register of deeds of the county where the real property, or any part affected, lies, a sworn statement of the amount for, and a reasonably certain description of the real property on, which the lien is claimed. The recording party shall pay filing fees, and shall be provided a receipt for the filing fees, which amount shall be part of the lien amount. Recordation is required to be done no later than ninety (90) days after the date the improvement is complete or is abandoned, prior to which time the lien shall be effective as against the purchasers or encumbrancers without the recordation. The owner shall serve thirty (30) days' notice on prime contractors and on all of those lienors who have served notice in accordance with § 66-11-145 prior to the owner's transfer of any interest to a subsequent purchaser or encumbrancer for a valuable consideration. If the sworn statement is not recorded within that time, the lien's priority as to subsequent purchases or encumbrancers shall be determined as if it attached as of the time the sworn statement is recorded.

(b) A building, structure or improvement shall be deemed to have been abandoned for purposes of this chapter when there is a cessation of operation for a period of ninety (90) days and an intent on the part of the owner or prime contractor to cease operations permanently, or at least for an indefinite period.

(c) Any other provision to the contrary notwithstanding, any lien acquired under contract executed on or after April 17, 1972, by virtue of § 66-11-141, may be filed within ninety (90) days after completion of the structure that is, or is intended to be, furnished water by virtue of drilling a well.

(d) The statement provided for in subsection (a) may be in substantially the following form:

NOTICE OF LIEN

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: _____

_____ Lienor

[Notary Acknowledgment]

66-11-113. Materials exempt from attachment, execution or other process to enforce debt.

Whenever materials have been furnished to improve real property and delivered to the real property by or for a lienor, and payment for the materials has not been made by the owner of the real property, the materials shall not be subject to attachment, execution, or other legal

process to enforce any debt due by the purchaser of the materials, except a debt due for the purchase price of the materials, so long as in good faith the materials are about to be applied to improve the real property; but if the owner has made payment for materials furnished, the materials shall not be subject to attachment, execution, or other process to enforce any debt, including the debt due for the purchase price for the materials.

66-11-114. Repossession and removal of materials.

(a) If for any reason an improvement is abandoned before completion or, though completed, materials delivered are not used for the improvement, a person who furnished materials for the improvement that have not been incorporated in the improvement, and for which the person has not received payment, may repossess and remove the materials; and thereupon the person shall not be entitled to any lien on the real property or improvements for the price of the materials, but shall have the same rights in regard to the materials as if the person had never parted with the possession.

(b) (1) The right to repossess and remove the materials shall not be affected by their sale, encumbrance, attachment or transfer from the site of the improvement subsequent to delivery to the site, except that the right to repossess shall not be effective as against a purchaser or encumbrancer of the materials in good faith whose interest in the materials arose since removal from the site of the improvement, or as against a creditor attaching after the removal.

(2) The right of repossession and removal given by this section shall extend only to materials whose purchase price does not exceed the amount remaining due to the person repossessing; but where materials have been partly paid for, the person delivering them may repossess them as allowed in this section on refunding the part of the purchase price that has been paid.

66-11-115. Liens by remote contractors.

(a) Every remote contractor shall have the lien provided by this part for work or labor performed or materials, services, equipment, or machinery furnished by the remote contractor in furtherance of the improvement; provided, that the remote contractor:

(1) Satisfies all of the requirements set forth in § 66-11-145, if applicable; and

(2) Within the time provided for recording sworn statements set out in § 66-11-112(a), serves a notice of lien, in writing, on the owner of the property on which the improvement is being made.

(b) The lien shall continue for the period of ninety (90) days from the date of service of notice in favor of the remote contractor, and until the final termination of any suit for its enforcement properly brought pursuant to § 66-11-126 within that period.

(c) The notice of lien may be in substantially the form provided in § 66-11-112(d).

66-11-116. [Repealed.]

66-11-117. [Repealed.]

66-11-118. Multiple lots or improvements.

(a) (1) Where the amount due is for work or labor performed or materials, services, equipment, or machinery furnished for a single improvement on contiguous or adjacent lots, parcels or tracts of land and the work or labor is performed or the materials, services, equipment, or machinery is furnished under the same contract or contracts, a lienor shall be required to serve or record only one (1) claim of lien covering the entire claim against the real property.

(2) If two (2) or more lots, parcels, or tracts of land are improved under the same contract or contracts and the improvements are not to be operated as a single improvement, a lienor who has performed work or labor or furnished materials, services, equipment, or machinery for the improvement shall, in claiming a lien, apportion the lienor's contract price between the several lots, parcels, or tracts of land and improvements on the lots, parcels, or tracts of land, and serve a separate notice of lien for the amount claimed against each lot, parcel, or tract of land and the improvements on the lot, parcel, or tract of land.

(b) (1) Unless the improvements are to be operated as a single improvement, whenever more than one (1) building or unit is constructed upon or other improvement is made to a single lot, parcel or tract of land or to contiguous lots, parcels or tracts of land, the visible commencement of operations as defined in this chapter with respect to each separate building, unit or other improvement shall not be deemed to constitute or otherwise relate to the visible commencement of operations with respect to any other building, unit or improvement on any single lot, parcel or tract of land or any contiguous lots, parcels or tracts of land. In connection therewith, a lienor who has performed work or labor or furnished materials, services, equipment, or machinery shall, in claiming a lien, apportion the lienor's contract price between the separate buildings, units or improvements on the buildings or units as applicable and serve or record a separate claim of lien for the amount claimed against each separate building, unit or improvement; in such event, the time prescribed in §§ 66-11-112 and 66-11-115 for serving or recording notice of lien shall commence to run with respect to each building, unit or improvement immediately upon the completion or abandonment of the building, unit or improvement.

(2) Whenever a lienor has furnished work, labor, or materials, services, equipment, or machinery for improvements that are to be operated as a single improvement on a single lot, parcel or tract of land or contiguous lots, parcels or tracts of land, the lienor shall be required to serve or record only a single notice of lien covering the lienor's entire claim against the real property.

(c) Except as expressly provided in the Horizontal Property Act, compiled in chapter 27 of this title, and notwithstanding any other provision of this chapter, a lien arising under this chapter by reason of an improvement that is part of a common interest community does not attach to the common elements, but attaches to the units as follows:

(1) If the improvement was contracted for by the association of unit owners, however denominated, the lien attaches to all the units in the common interest community for which the association acts, unless the association notifies the lienor, when the contract is made, that the lien may attach only to the unit or units on or for the benefit of which the improvement was made; and

(2) If the improvement was contracted for by a unit owner, the lien attaches only to that owner's unit.

66-11-119. Amendment of notice of lien.

(a) Any notice of lien served or recorded as provided in this chapter may be amended at any time during the period allowed for serving or recording the notice; provided, that the notice and amendment are served or recorded in good faith and the amendment is not shown to be prejudicial to another interested person.

(b) Any amendment of the notice of lien shall be served or recorded in the same manner as is provided for the original notice.

66-11-120. Lien limited to contract price and extras in the contract.

The claims secured by lien for work, labor, materials, equipment, services, machinery, overhead and profit, shall not exceed the contract price and extras in the contract between the owner and the prime contractor.

66-11-121. Insurance proceeds subject to liens.

(a) The proceeds of any insurance that by the terms of the policy are payable to the owner of real property improved, and are actually received by or are to be received by the owner because of the destruction or removal by fire or other casualty of an improvement on which lienors have performed labor, or for which they have furnished materials, services, equipment, or machinery shall, after the owner has been reimbursed from the proceeds for premiums paid for the insurance by the owner, if any, be subject to liens provided by this chapter to the same extent and in the same order of priority as the real property would have been had the improvement not been so destroyed or removed.

(b) The proceeds of any insurance that by the terms of the policy are payable to a prime contractor or remote contractor, and are received or to be received by the prime contractor or remote contractor, shall, after the prime contractor or remote contractor has been reimbursed from the proceeds for premiums paid for the insurance by the prime contractor or remote contractor, if any, be liable for the payment for labor or materials, services, equipment, or machinery furnished and for which the prime contractor or remote contractor is liable in the same manner and under the same conditions as payments to the prime contractor or remote contractor under the contract would have been had the improvements not been so destroyed or removed.

66-11-122. Transfer of debt without notice.

This lien shall not pass to any person to whom the debt is transferred without notice of the lien.

66-11-123. Transfer of debt by contractor.

The lien of another shall not be lost where any prime contractor or remote contractor has transferred or assigned the debt or charge due that lienor.

66-11-124. Waiver of lien—Payment bonds.

(a) The acceptance by the lienor of a note or notes for all or any part of the amount of the lienor's claim shall not constitute a waiver of the lienor's lien, unless expressly so agreed in writing, nor shall it in any way affect the period for serving or recording the notice of lien under this chapter.

(b) (1) Any contract provision that purports to waive any right of lien under this chapter is void and unenforceable as against the public policy of this state.

(2) (A) If a contractor solicits any person to sign a contract requiring the person to waive a right of lien in violation of this section, the person shall notify the state board for licensing contractors of that fact. Upon receiving the information, the executive director of the board shall notify the contractor within a reasonable time after receiving the information that the contract is against the public policy of this state and in violation of this section. If the contractor voluntarily deletes the waiver of lien provision from the contract and affirmatively states that the language will not be included in any future contracts to perform construction work in this state, no further action shall be taken by the board against the contractor unless a later complaint is filed against the contractor.

(B) If the contractor does not delete the waiver of lien provision, then the executive director shall schedule a hearing for appropriate action by the board. If the board finds after a hearing that the contracts of the contractor are in violation of this section, the contractor's license shall be immediately revoked.

(C) Notice of the revocation shall be sent by the board to the contractor's licensing authority in all states in which the contractor is licensed as a contractor.

(D) In any action for damages based on the waiver of a right of lien filed by a person solicited by the contractor, the person shall have the right to recover from the contractor reasonable attorney's fees and costs in connection with the enforcement of the lien.

(c) Notwithstanding any other provision of this chapter, no liens by remote contractors are allowed under this chapter if, prior to any work or labor being provided or materials, services, equipment, or machinery furnished in furtherance of the improvement, the owner, or the owner's agent, provides a payment bond, equal in amount to one hundred percent (100%) of the prime contractor's contract price, in favor of the remote contractors who provide work or labor or furnish materials, services, equipment, or machinery in furtherance of the improvement pursuant to a contract. The payment bond shall be executed with sufficient surety by one (1) or more sureties authorized to do business in the state of Tennessee. The bond shall be recorded in the office of the register of deeds of every county where the real property to be improved, or any affected part, lies.

66-11-125. Maintaining an action on a contract not precluded.

Nothing in this chapter shall be construed to prevent any lienor under any contract from maintaining an action on the contract as if the lienor had no lien for the security of the lienor's debt, and the bringing of the action shall not prejudice the lienor's rights under this chapter.

66-11-126. Methods of enforcement.

Liens under this chapter, except as provided in subdivision (5)(A), shall be enforced only by the filing of an action seeking the issuance of an attachment in the manner as follows:

(1) For a prime contractor, the lien shall be enforced in a court of law or equity by complaint and writ of attachment or in a court of general sessions having jurisdiction by a warrant for the sum claimed and writ of attachment, filed under oath, setting forth the facts, describing the real property, with process to be served on the person or persons whose interests the prime contractor seeks to attach and sell;

(2) For a remote contractor, the lien shall be enforced in a court of law or equity by complaint and writ of attachment or in a court of general sessions having jurisdiction by a warrant for the sum claimed and writ of attachment, filed under oath, setting forth the facts and describing the real property with process to be served on the person or persons whose interests the remote contractor seeks to attach and sell. In the discretion of the plaintiff or complainant, the complaint or warrant may also be served on the prime contractor or remote contractor in any degree, with whom the plaintiff or complainant is in contractual privity. In either event, the person or persons whose interest the remote contractor seeks to attach and sell shall have the right to make the prime contractor or remote contractor a defendant by third-party complaint or cross-claim as is otherwise provided by law;

(3) An action under this chapter is timely filed if a suit seeking the issuance of an attachment is filed within the applicable period of time, even if the attachment is not issued or served within the applicable period. The clerk of the court in which the suit is brought shall issue the attachment writ without obtaining fiat of a judge or chancellor;

(4) The clerk of the court to whom application for attachment is made shall, before issuing the attachment, require the plaintiff, or the plaintiff's agent or attorney to execute a bond with sufficient surety, payable to the defendant or defendants in the amount of one thousand dollars (\$1,000) or the amount of the lien claimed, whichever is less; provided, that a party may petition the court for an increase in the amount for good cause shown, and conditioned that the plaintiff will prosecute the attachment with effect or, in case of failure, pay the defendant or defendants all costs that may be adjudged against the defendant or defendants and all such damages as the defendant or defendants may sustain by the wrongful suing out of the attachment; and

(5) (A) Where a bond has been provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, an attachment on the real property shall not be necessary after the bond has been recorded, and the claim shall be enforced by an action on the bond before the circuit or chancery court, or before a court of general sessions where the amount is within its jurisdiction, filed under oath, setting forth the facts and describing the real property with process to be served on the obligors on the bond. In the discretion of the plaintiff or complainant, the complaint or warrant may also be served on the owner or owner's agent, prime contractor or remote contractor in any degree with whom the plaintiff is in contractual privity. In either event, the obligors on the bond shall have the right to make the owner or owner's agent, prime contractor, or any remote contractor of any degree a defendant by third-party complaint or cross-claim as is otherwise provided by law. Any action on the bond shall be filed in the county where any portion of the real property is located;

(B) Where a lien is enforced pursuant to this subdivision (5), or after suit is commenced on a bond provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, the plaintiff shall, in case of failure to prosecute the suit with effect, pay the defendant or defendants all costs adjudged against the defendant or defendants and all the damages the defendant or defendants may sustain by the wrongful assertion of the lien; and

(C) Where an action is brought pursuant to this subdivision (5), or after suit is commenced on a bond provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, the defendants shall retain all defenses to the validity of the underlying lien.

66-11-127. Suits against personal representatives.

The provision of title 30, chapter 2, part 5, prohibiting the bringing of suits against personal representatives after the grant of letters shall not apply to suits brought under the provisions of this chapter.

66-11-128. Enforcement against persons adjudicated incompetent.

(a) If the labor, improvements, materials, services, equipment, or machinery are furnished for work done on the lands of any infant, person adjudicated incompetent, or cestui que trust, and in excusable ignorance on the part of the prime contractors or remote contractors, of the person's lack of legal capacity, the prime contractors or remote contractors shall have the right, after serving ten (10) days' notice on any guardian, conservator or trustee of the person, within which period satisfaction may be made, to take and remove the parts of the property on which their labor was performed, or their materials, services, equipment, or machinery or other property was used, the removal to be only of enough to satisfy their true claim and to be without substantial injury to the property of the person as it stood prior to improvement.

(b) As an alternative to the remedy under subsection (a), the court, in the enforcement of a lien provided by this chapter, may order the improvement to be separately sold and the purchaser may remove the improvement within such reasonable time as the court may fix. The purchase price for the improvement shall be paid into court. The owner of the land upon which the

improvement was made may demand that the land be restored to substantially its condition before the improvement was commenced, in which case the court shall order its restoration, and the reasonable charge for the restoration shall be first paid out of the purchase price and the balance shall be paid to lienors and other encumbrancers in accordance with their respective rights.

66-11-129. Right of removal from lands of persons under disability.

The right of removal provided in § 66-11-128 shall apply on like terms and in like manner as in other cases of superior titles or liens, when the work was done by the prime contractor or remote contractor in excusable ignorance of the rights of such persons.

66-11-130. Demand for enforcement of lien.

Upon written demand of the owner, the owner's agent, or prime contractor, served on the lienor, requiring the lienor to commence action to enforce the lienor's lien, and describing the real property in the demand, the action shall be commenced, or the claim filed in a creditors' or foreclosure proceeding, within sixty (60) days after service, or the lien shall be forfeited.

66-11-131. Joinder of petitioners.

Where there are several persons entitled to the lien given by this chapter, all or any number of them may join in one (1) suit; or upon the filing by one (1) or more of the lienors of an action for the benefit of all lienors, any other lienor may come in by petition, under oath, without suing out a new attachment, by giving bond and security, with effect as if the attachment, if any, had been taken out by the petitioner.

66-11-132. Consolidation of actions.

If separate actions to enforce liens provided by this chapter are brought in the same court, they shall be consolidated; and if in different courts, the actions may, upon application, be removed into the court, if a court of record, in which the first action was instituted, and there consolidated, unless the later action is one for the benefit of all lienors, in the nature of a lien-creditors' bill, in which event earlier actions not of that nature shall be consolidated into the lien-creditors' bill, on petition.

66-11-133. Adjudication of conflicting rights in consolidated action.

The court is authorized to adjudicate, in a consolidated action, the conflicting rights of the parties claiming liens, among themselves; and to enforce the same according to priorities, if any.

66-11-134. Enforcement in general sessions court.

(a) When the lien is enforced by an action before a court of general sessions, and when an attachment has been levied on the lot or land and judgment rendered, the papers shall be returned to the circuit court, there to be proceeded with as in the case of a court of general sessions execution levied on land.

(b) (1) No court of general sessions' attachment in any such case shall be a lien on the land, unless, within twenty (20) days after the levy of attachment, an abstract of the levy of attachment, showing the name of the plaintiff and defendant, the date and amount of the claim, and a description of the premises affected, is filed for registration in the lien book in the office of the register of the county in which the real property, or any affected portion of the real property, lies.

(2) The register shall index the abstract, as the indexer is required to index deeds, and, for the registration and indexing, the indexer shall receive the sum prescribed by § 8-21-1001.

66-11-135. Release of lien—Recording release.

(a) If a lienor whose lien has been forfeited, expired, satisfied or adjudged against the lienor in an action on the lien, fails to cause the lien provided by this chapter to be released within thirty (30) days after service of written notice demanding release, the lienor shall be liable to the owner for all damages arising therefrom, and costs, including reasonable attorneys' fees, incurred by the owner.

(b) The release shall be recorded in the office where the notice of lien was recorded. The fee for recording shall be the fee required for the recording of a release or satisfaction of a mortgage as provided by law.

(c) For the purpose of this section, a lien shall be deemed released on the day on which the release of the lien is recorded in the proper office.

66-11-136. Property owner's right to bond against enforcement of liens.

The owner of the property on which the improvement is made has the right to demand a bond from the prime contractor to protect the owner in case of the enforcement of a lien under this chapter by one (1) or more remote contractors; and in the event the prime contractor is paid for the work done, or any part of it, that is subject to a lien by a remote contractor, then on payment by the owner to the remote contractor of the amount due, the owner shall have judgment for the amount by action on the bond in any court having jurisdiction in such cases; but the prime contractor shall have the right to contest the legality and amount of the claim of the remote contractors before the prime contractor is held liable.

66-11-137. Owner's misapplication of loan proceeds—Violation.

(a) Any owner who procures a loan secured by a mortgage or other encumbrance on certain real property, representing that the proceeds of the loan are to be used for the purpose of improving real property, and who, with intent to defraud, uses the proceeds or any part of the proceeds for any other purpose than to pay for labor performed on, or materials, services, equipment, or machinery furnished for the real property, and overhead and profit related thereto while any amount for the labor, materials, services, equipment, machinery, overhead or profit remains unpaid, or while any amount of which the owner has received notice of nonpayment prescribed by this chapter remains unpaid, shall be liable to an injured party for any damages and actual expenses incurred, including attorneys' fees, if the damages and expenses incurred are the result of the misapplication of the loan proceeds.

(b) A violation of subsection (a) is a Class E felony.

66-11-138. Contractor's misapplication of payments—Violation.

(a) (1) Any prime contractor or remote contractor who, with intent to defraud, uses the proceeds of any payment made to that contractor on account of improving certain real property for any purpose other than to pay for labor performed on, or materials, services, equipment, or machinery furnished by that contractor's order for the real property, and overhead and profit related thereto, while any amount for the labor, materials, services, equipment, machinery, overhead, or profit remains unpaid shall be liable to an injured party for any damages and actual expenses incurred, including attorneys' fees, if the damages and expenses incurred are the result of the misapplication of the payment.

- (2) A violation of subdivision (a)(1) is a Class E felony.
- (b) Notwithstanding the provisions of subsection (a), there is no violation of this section when:
- (1) Funds are disbursed pursuant to written agreement; or
 - (2) The use of funds received and deposited in a business account for use on multiple construction projects is based on the allocation of costs and profits in accordance with generally accepted accounting principles for construction projects.

66-11-139. Exaggeration of claims by lienor.

If, in any action to enforce the lien provided by this chapter, the court finds that any lienor has willfully and grossly exaggerated the amount for which that person claims a lien, as stated in that person's notice of lien or pleading filed, in the discretion of the court, no recovery may be allowed thereon, and the lienor may be liable for any actual expenses incurred by the injured party, including attorneys' fees, as a result of the lienor's exaggeration.

66-11-140. Misuse of proceeds prima facie evidence of intent to defraud.

Use of the proceeds as enumerated in §§ 66-11-137—66-11-139 for any purpose other than either payment pursuant to written agreement between the parties or in accordance with the allocation of costs and profits under generally accepted accounting principles for construction projects shall be prima facie evidence of intent to defraud. Use of a single business bank account for multiple projects shall not be evidence of intent to defraud.

66-11-141. Well-drilling lien.

- (a) There is created a lien against the tract of land, on which any person, firm or corporation has drilled a well by contract with the owners of the land or their duly authorized agent, for all labor, materials and equipment used or furnished by the driller of the well, including any pump, apparatus or other fixtures attached to the well, installed by the driller.
- (b) The lien shall remain against the land for a period of two (2) years after the completion of the well or after the furnishing of any pump or apparatus attached to the well, unless sooner discharged by full payment.
- (c) The lien may be enforced by attachment of the land in a proceeding brought in any court of competent jurisdiction prior to the expiration of the lien, and the land may be sold in satisfaction of the unpaid indebtedness owing to the driller.
- (d) The rights of the lienor under this section shall be subject to the terms of § 66-11-112.

66-11-142. Bond to indemnify against recorded lien—Recording bond—Recording of contractor's payment bond.

(a) If a lien, other than a lien granted in a written contract, is fixed or is attempted to be fixed by a recorded instrument under this chapter, any person may record a bond to indemnify against the lien. The bond shall be recorded with the register of deeds of the county in which the lien was recorded. The bond shall be for the amount of the lien claimed and with sufficient corporate surety authorized and admitted to do business in the state and licensed by the state to execute bonds as surety, and the bond shall be conditioned upon the obligor or obligors on the bond satisfying any judgment that may be rendered in favor of the person asserting the lien. The bond shall state the book and page or other reference and the office where the lien is of record. The recording by the register of a bond to indemnify against a lien shall operate as a discharge of the lien. After recording the bond, the register shall return the original bond to the person providing the bond. The register shall index the recording of the bond to indemnify

against the lien in the same manner as a release of lien. The person asserting the lien may make the obligors on the bond parties to any action to enforce the claim, and any judgment recovered may be against all or any of the obligors on the bond.

(b) (1) When a prime contractor or remote contractor has provided a valid payment bond for the benefit of potential lien claimants, a copy of that bond may be recorded, in lieu of the recording of another bond, to discharge a lien asserted by the lien claimants. A copy of the bond may be recorded with the register of deeds in lieu of the bond provided in subsection (a) to discharge such a lien. Upon recording with the register of deeds, the contractor or owner shall notify the surety executing the bond, and the lien on the property shall be discharged. The person asserting the lien may make the obligors on the bond parties to any action to enforce the claim, and any judgment recovered may be against all or any of the obligors on the bond.

(2) The bond recorded pursuant to this subsection (b) shall:

(A) Be in a penal sum at least equal to the total of the original contract amount;

(B) Be in favor of the owner;

(C) Be executed by:

(i) The original contractor as principal; and

(ii) A sufficient corporate surety authorized and admitted to do business in this state and licensed by this state to execute bonds as surety; and

(D) Provide for payment of the lien claimant, whether the lien claimant was employed or contracted with by the person who originally contracted with the owner of the premises or by a remote contractor.

(c) The register of deeds may record any bond recorded under this section and return the original to the person providing the bond.

66-11-143. Protection from unrecorded lien claims—Notice of completion—Expiration of lien rights—Form of notice of completion.

(a) In order to be protected from lien claims that have not previously been recorded, as provided in § 66-11-111 or § 66-11-112, the owner or purchaser of improved real property or their agent or attorney may, upon the completion of the improvement, record in the office of the register of deeds in the county where the real property or any affected part of the real property is located a notice of completion, or the owner or purchaser may require a person or organization with whom the owner or purchaser has contracted for the improvement to do so upon the completion of the improvement, and the owner or purchaser of improved real property or any other authorized party shall simultaneously serve a copy of any notice of completion recorded with the register of deeds on the prime contractor; provided, however, that no copy of the notice of completion is required to be served on any prime contractor when the owner, or an entity controlled by the owner, also acts as the general contractor, as defined in § 66-11-146(b)(1), in furtherance of the improvement to the property. If a prime contractor is entitled to be served with a copy of any notice of completion recorded with the register of deeds, then the lien rights of the prime contractor not so served a copy shall not be affected by the notice of completion.

(b) The notice of completion shall contain the following:

(1) The legal name of the owner or owners of the real property;

(2) The name of the prime contractor or prime contractors;

(3) The location and description of the real property;

(4) Date of the completion of the improvement;

(5) A statement that a transfer of ownership of all or a part of the real property or an interest in the real property and encumbrance on the real property, or a settlement of the claims of

parties entitled to the benefits of this part, will take place not less than ten (10) days after the date of the recording of the notice of completion; provided, that the ten-day expiration for lien claimants shall only apply to contracts for improvement to or on real property, for one-family, two-family, three-family and four-family residential units. On all other contracts for improvement to or on real property, the expiration time for lien claimants shall be thirty (30) days after the date of the recording of the notice of completion in the register's office;

(6) The name and address of the person, firm, or organization on which parties entitled to the benefits of this chapter may serve notice of claim;

(7) Acknowledgment by the person filing the notice, or by that person's agent or attorney; and

(8) The name and address of the preparer of the instrument in compliance with § 66-24-115.

(c) The register of deeds shall make a permanent record of all notices of completion filed in the office of the register and the records shall be available for public examination. The register of deeds shall be entitled to the fees, provided in § 8-21-1001, for the register's services in receiving and maintaining notices of completion required in this section.

(d) If a remote contractor has served a required notice of nonpayment pursuant to § 66-11-145, then any party recording a notice of completion shall simultaneously serve a copy of the notice of completion on the remote contractor. The remote contractor shall have thirty (30) days from the date of the recording of the notice of completion to serve a written notice in response to the notice of completion in accordance with subsection (e). The lien rights of a remote contractor that has not been served a copy, shall not be affected by the notice of completion.

(e) (1) Any prime contractor or remote contractor claiming a lien under this chapter on the property described in the notice of completion, who has not previously registered the person's contract as provided in § 66-11-111 or registered a sworn statement as provided in § 66-11-112 and served a copy of the registration to the owner, shall serve written notice, addressed to the person, firm or organization and at the address designated in the notice of completion for receiving notice of claim, stating the amount of the claim and certifying that the claim does not include any amount owed to the claimant on any other job or under any other contract.

(2) (A) For improvements to or on real property for one-family, two-family, three-family and four-family residential units, the written notice shall be served not more than ten (10) days from the date of the recording of the notice of completion in the register's office, and if notice is not served within that time, the lien rights of the claimant shall expire.

(B) For all other contracts for improvements to or on real property, the written notice shall be served not more than thirty (30) days from the date of the recording of the notice of completion in the register's office, and if notice is not served within that time, the lien rights of the claimant shall expire.

(f) Any notice of completion recorded as provided in this section before the completion of the improvement or the demolition is void and of no effect whatsoever.

(g) The notice of completion may be in substantially the following form:

This Instrument prepared by:

Name _____

Address _____

NOTICE OF COMPLETION

Legal name of owner or owners of the real property: _____

Names of all applicable prime contractors: _____

The location and description of the real property: _____

Date of completion of the entire improvement: _____

A transfer of ownership of all or part of the real property or an interest therein and

encumbrance thereon or a settlement of the claims of parties entitled to the benefits of Title 66, Chapter 11 of the Tennessee Code Annotated will take place not less than ten (10) days after the date of the recording of this Notice of Completion; provided, that the ten-day expiration for lien claimants shall only apply to contracts for improvements to or on real property for one-family, two-family, three-family, and four-family residential units. On all other contracts for improvement to or on real property, the expiration time for lien claimants shall be thirty (30) days after the date of the recording of this Notice of Completion. The name and address of the person, firm, or organization on which parties entitled to the benefits of Title 66, Chapter 11, may serve notice is as follows:

Name: _____
Street Address: _____
City: _____
State: Zip Code: _____
Dated this the _____ day of _____, 20

Signature

(Check One)

_____, Owner

_____, Purchaser

_____, Prime Contractor

[Notary Acknowledgment]

66-11-144. [Transferred.]

66-11-145. Notice of nonpayment—Form of notice.

(a) Every remote contractor with respect to an improvement, except one-family, two-family, three-family and four-family residential units, shall serve, within ninety (90) days of the last day of each month within which work or labor was provided or materials, services, equipment, or machinery furnished and for which the remote contractor intends to claim a lien under this chapter, a notice of nonpayment for the work, labor, materials, services, machinery, or equipment to the owner and prime contractor in contractual privity with the remote contractor if its account is, in fact, unpaid. The notice shall contain:

(1) The name of the remote contractor and the address to which the owner and the prime contractor in contractual relation with the remote contractor may send communications to the remote contractor;

(2) A general description of the work, labor, materials, services, equipment, or machinery provided;

(3) The amount owed as of the date of the notice;

(4) A statement of the last date the claimant performed work and/or provided labor or materials, services, equipment, or machinery in connection with the improvements; and

(5) A description sufficient to identify the real property against which a lien may be claimed.

(b) A remote contractor who fails to provide the notice of nonpayment in compliance with this section shall have no right to claim a lien under this chapter, except this section shall not apply to a certain amount or percentage of the contract amount retained to guarantee performance of the remote contractor.

(c) A notice of nonpayment provided in accordance with this section shall not be considered notice required by § 66-11-115.

(d) The notice of nonpayment may be in substantially the following form:

NOTICE OF NONPAYMENT

TO: _____

_____ [Owner]

_____ [Contractor contracting w/ Owner]

Pursuant to Tennessee Code Annotated, § 66-11-145, notice is hereby given that _____ [Lienor] has not been paid for certain labor, materials, services, equipment, or machinery it supplied in the _____ [description of work] of the _____ [description of project], located at _____ [description of property].

The amount presently due and owing is \$_____. The last date labor, materials, services, equipment, or machinery were provided in connection with the improvements was _____ [date]. You may send any communications regarding this matter to the following name and address: _____

_____ Lienor

Dated: _____

66-11-146. "Residential real property" defined—"General contractor" defined—Liens on residential real property.

(a) (1) As used in this subsection (a), "**residential real property**" means a building consisting of one (1) dwelling unit in which the owner of the real property intends to reside or resides as the owner's principal place of residence, including improvements to or on the parcel of property where the residential building is located, and also means a building consisting of two (2), three (3) or four (4) dwelling units where the owner of the real property intends to reside or resides in one (1) of the units as the owner's principal place of residence, including improvements to or on the parcel of property where the residential building is located.

(2) Notwithstanding any other provision of law to the contrary, except as provided in subsection (b), on contracts to improve residential real property, a lien or right of lien on the property shall exist only in favor of a prime contractor.

(b) (1) As used in this subsection (b):

(A) "**Residential real property**" means improvements to or on a parcel of property upon which a building is constructed or is to be constructed consisting of one (1) dwelling unit intended as the principal place of residence of a person or family; and

(B) "**General contractor**" means 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.

(2) When the owner of residential real property and the general contractor are one and the same person, or a person controls entities owning the property and a general contracting business, a lien or right of lien upon the property shall exist only in favor of the lienors in contractual privity with the owner or general contractor.

66-11-147. Liens on gas, oil or other mineral leaseholds.

(a) Any person who performs labor or furnishes materials, supplies, fixtures, machinery or other things of value to a lessee holding or owning a leasehold, or any right conferred by a lease, relating to oil, gas or other minerals, in the development or improvement of the leasehold, by contract with or by the written consent of the owner or the agent or representative of the owner of the leasehold, shall have a lien on the leasehold or the entire interest of the lessee, including oil or gas wells, machinery and equipment, to secure the payment for the labor or things furnished. If the labor or things are furnished at the written request or by written consent of any prime contractor or remote contractor, or the agent of either, the lien shall be for the

benefit of whomever furnishes any of the labor or things mentioned. The lien provided for in this section shall be effective against the leasehold, or the entire interest of the lessee, including all improvements belonging to the lessee.

(b) The lien shall relate to and take effect from the time of the delivery of the materials, supplies, fixtures, or machinery, or from the date of furnishing of any labor.

(c) If unpaid, the lien shall expire and be of no effect after ninety (90) days, unless the person furnishing the labor, materials, or supplies, files with the register's office in the county in which the leasehold is located, the sworn statement as provided in § 66-11-112. A copy of the notice shall also be served to the owner of the property and the holder of the leasehold.

(d) A lien provided in this section shall have precedence over all other subsequent liens or conveyances after the time of attachment, provided that the sworn statement is filed within the ninety-day period provided in this section.

(e) The provisions of § 66-11-120 shall apply to this lien.

66-11-148. Construction of chapter—Jurisdiction of courts to enforce—Errors and omissions.

(a) This chapter is to be construed and applied liberally to secure the beneficial results, intents, and purposes of the chapter.

(b) Substantial compliance with this chapter is sufficient for the validity of liens arising under this chapter and to give jurisdiction to the court to enforce the liens.

(c) Any document required or permitted to be served, recorded or filed by this chapter that substantially satisfies the applicable requirements of this chapter is effective even if it has nonprejudicial errors or omissions.

66-11-149. Presumption of correctness of information on building permit—Service on listed agents or owners—Method of service—Presumption of complete service.

(a) For purposes of § 66-11-145, the name of any owner, the owner's agent, any prime contractor, any remote contractor, or any other person, their addresses, and the real property description stated in a building permit authorizing the improvement shall be presumed to be correct and, in the case of property description, sufficient to identify the real property.

(b) If one (1) or more agents are specified on the building permit, service on a listed agent shall be deemed to be service on all of the agent's principals, including those who have not separately listed an agent. If one (1) or more owners are specified on the building permit, service on the listed owner or owners shall be deemed to be service on all owners, including those not listed.

(c) For the purposes of this chapter, except as provided in § 66-11-108, any notice or other document required or permitted to be served shall be served by one (1) or more of the following means:

(1) Registered or certified mail, return receipt requested;

(2) Hand delivery, evidenced by a sworn statement, properly notarized, confirming delivery; or

(3) Any other commercial delivery service that provides written confirmation of delivery.

(d) For purposes of this chapter, there is a rebuttable presumption that service is complete:

(1) Upon receipt by the party being served by hand delivery;

(2) Within three (3) business days of mailing if served by registered or certified mail, return receipt requested; or

(3) One (1) business day after commercial, overnight delivery if served by that means.

66-11-150. Prohibited liens.

Notwithstanding any law in this chapter or any other law to the contrary, no lien, otherwise authorized pursuant to this chapter, shall be available on residential real property, as that term

is defined by § 66-11-146(b)(1)(A), to any person, firm or corporation that performs residential construction, including home improvement as defined by § 62-6-501(4), if:

- (1) The person, firm or corporation is not licensed pursuant to title 62, chapter 6; and
- (2) The jurisdiction in which the work is performed requires such person, firm or corporation to be licensed in accordance with such chapter.

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