

# PUBLICATION

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## The "New" Tennessee Mechanic's and Materialmen's Lien Statute

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**Summary:** *As of July 1, 2007, Tennessee has a "new" statute on mechanic's and materialmen's liens. The new statute is the culmination of several years of effort on the part of a special committee of the Tennessee Bar Association (TBA). While the new statute replaces the old statute in its entirety, the new statute incorporates many of the provisions of the old statute. As a result, the new statute did not result in the drastic change in the law that the TBA committee originally envisioned.<sup>1</sup>*

The most significant change in the law is the legislature's adoption of a new standard as to how the statute will be applied. Until now, the mechanic's lien statute has been is the elimination of a "dead period" during which a material supplier could file a notice of lien which would not be effective for perfection. In *In re Premier Hotel Development Group*, 270 B.R. 234 (Bankr. E. D. Tenn. 2001), the Bankruptcy Court held that a materialman sent its notice of lien within the "dead period" ? i.e., more than ninety days after the end of its contract when it provided the last materials and before the completion of the project. As a result, the materialman failed to provide the statutory notice and lost its lien.<sup>2</sup> See *Id.* at 238-39.

The legislature eliminated the potential for a claimant to send its notice of lien in the "dead period." The notice of lien now has to be recorded "not 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 such purchasers or encumbrancers without such recordation." When this provision is read in conjunction with the old statute's language and the decision in *In re Premier Hotel*, it appears that the lien claimant has a 90-day window dating from completion or abandonment of the improvement in which to record the notice of lien. T.C.A. §66-11-112(a).

There are also a number of other changes in the statute which are helpful to the claimant but not as procedurally significant. For instance, if the owner records a payment bond for the full amount of the prime contract, there can be no lien on the real property. The claim is against the payment bond. T.C.A. §66-11-124(c). Similarly, if a bond to discharge the lien is recorded (T.C.A. §66-11-142), the claim attaches to the bond, and an attachment of the real property is not necessary. T.C.A. §66-11-126(5)(A).

One of the questions which has always arisen when an action to enforce the lien is filed is what the amount of the attachment bond should be. The answer is now \$1,000.00. If the owner thinks that amount is too small, it can file a motion to increase the amount of the bond. T.C.A. §66-11-126(4).

The legislature has now also clarified that "furnishing materials" includes materials that are normally wasted in the construction process and "tools, equipment and machinery." Materials that are specially made for a project, but are not incorporated into the project, can also now be the basis for a lien claim. T.C.A. §66-11-101(4).

The new statute, like its predecessor, remains a very complicated piece of legislation containing 48 sections with numerous subsections. The special committee attempted to remove and clarify some of the questionable elements of the statute, and the legislature utilized that blueprint with some changes to create the new statute. While the statute contains a number of new and revised provisions, the basic scheme remains the same. As a result, those familiar with the old statute should be comfortable with the new, claimant-friendly version of the statute.

1. The TBA special committee originally proposed a major, wholesale replacement of the statute utilizing the Ohio mechanic's lien statute as its model. The Ohio statutory scheme requires notices to be sent at the beginning of the project. There was widespread protest among the various groups representing potential lien claimants. As a result, the special committee went back to the drawing board and essentially updated the existing statute.
2. Edward Pratt from the Firm's Knoxville office successfully argued this case before the United States Bankruptcy Court for the Eastern District of Tennessee.