

**PROPOSED  
TENNESSEE CONSTRUCTION LIEN ACT**

**DRAFT**

**RELEASED FOR COMMENT ONLY**

# TABLE OF CONTENTS

Historical Note

Special Committee Membership

Reporter

Prefatory Note

Article I: General Provisions

§ 101. Short Title.

§ 102. Liberal Construction; Substantial Compliance.

§ 103. Definitions.

§ 104. No Variation by Agreement.

§ 105. Service.

§ 106. Other Rights.

Article II: Construction Liens: Existence, Priority, Assignment, Waiver

§ 201. Construction Lien Upon Improvements to Real Property.

§ 202. Governmental Exemption from Construction Lien.

§ 203. Real Estate Subject to Construction Lien.

§ 204. Construction Lien for Furnishing Materials.

§ 205. Notice of Furnishing.

§ 206. Attaching of Construction Liens; Priority.

§ 207. Priority of Mortgage Lien.

§ 208. Priority of Construction Lien as Against Claims Other Than Construction Lien Claims and Mortgage Liens.

§ 209. Superiority of Construction Liens; Assignment.

§ 210. Waiver of Claimant's Construction Lien Rights; Release.

§ 211. Residential Real Property.

§ 212. Notice of Completion.

#### Article III: Recording

§ 301. Notice of Commencement; Recording.

§ 302. Termination of Notice of Commencement.

§ 303. Amendment of Notice of Commencement.

§ 304. Contents and Recording of Affidavit for Construction Lien; Times for Filing.

§ 305. Amendment of Affidavit for Construction Lien.

§ 306. Recording of Discharge of Construction Lien.

§ 307. Effect of Errors or Omissions.

#### Article IV: Enforcement of Construction Lien

§ 401. Enforcement.

§ 402. Notice to Lienholder to Commence Suit; Procedure; Effects; Security as Substitute for Construction Lien.

§ 403. Notice of Intention to Claim a Construction Lien.

§ 404. Loan Proceeds Misapplication.

§ 405. Contract Payments Misapplication.

§ 406. Amount Exaggeration.

§ 407. Intent to Defraud—Prima Facie Evidence.

§ 408. Sale of Part of Premises.

§ 409. Damages for Neglect or Refusal to Release a Construction Lien.

§ 410. Subordinated Obligations.

§ 411. Indemnification Upon Discharge of Lien.

#### Article V: Effective Date, Transition, Repeals

§ 501. Effective Date.

§ 502. Provisions for Transition.

§ 503. Repeals.

Article VI: Model Forms

§ 601. Model Forms for Tennessee Construction Lien Act.

## **HISTORICAL NOTE**

The proposed Tennessee Construction Lien Act was approved by the Special Committee on Lien Law of the Tennessee Bar Association in December 2004.

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## PREFATORY NOTE

The Tennessee Construction Lien Act is based primarily upon the Ohio Mechanic's Lien Act, sections 1311.01 to 1311.22 of the Ohio Revised Code. Additional provisions are drawn, with varying degrees of modification, from the Uniform Construction Lien Act and, by analogy, from the Uniform Commercial Code, both of which were promulgated by the National Conference of Commissioners on Uniform State Laws. The Tennessee Construction Lien Act also incorporates several existing provisions of Tennessee statutory law which deal with foreclosure proceedings and penalties for lien exaggeration and misapplication of funds.

In 2002, the Tennessee Bar Association appointed a Special Committee on Lien Law ("Special Committee"). The Special Committee was charged with considering the possible need to revise Tennessee's then-existing mechanic's lien statutes and, if required, with recommending revisions to those statutes. After due consideration, the Special Committee decided to draft a free-standing construction lien act based on the Ohio Mechanic's Lien Act. The Special Committee's decision was based on three conclusions: First, the then-existing Tennessee statutory scheme and its judicial interpretations and embellishments resulted in a cumbersome, expensive, inefficient, and time-consuming construction lien process that frequently left the resolution of disputes in doubt. Second, the then-existing Tennessee statutory scheme could not be adequately repaired by amendment. Third, the Ohio Mechanic's Lien Act presented an efficient and workable model that embodied an appropriate balance of the concerns and interests of all relevant parties. The Tennessee Construction Lien Act ("Act") establishes a simple and efficient procedure for creating construction liens by, and for satisfying the claims of, prime contractors and remote contractors who provide work or labor upon or furnish material in furtherance of an improvement if they are not paid.

If adopted, the proposed Act will supersede the provisions of Tennessee law dealing with mechanic's and materialman's liens found at T.C.A. § 66-11-101 et seq. The Act is intended to provide a comprehensive scheme for the regulation of construction liens with respect to non-governmental real property.

The Act, it will be noted, is titled "Tennessee Construction Lien Act." This title, suggested by the Uniform Construction Lien Act, is adopted because the use of "Mechanic's Lien" in the title improperly would imply that laborers are the primary beneficiaries of the Act. Given the current practice by contractors of paying wages weekly or bi-weekly, claims for wages no longer represent a significant portion of construction lien claims.

Although the Act is based primarily on the Ohio Mechanic's Lien Act, the Special Committee offers no opinion concerning the role of specific Ohio judicial precedents in interpreting and applying the Act. In addition, the Special Committee offers no opinion concerning the role of specific precedents in interpreting and applying those portions of the Act drawn from the Uniform Construction Lien Act and from the Uniform Commercial Code. The Special Committee believes that the role of such precedents is a matter best left to the sound discretion of the Tennessee courts on a case-by-case basis.

The following portion of the Prefatory Note briefly describes the Act.

### **Who May Secure a Lien?**

The Act provides for a statutory construction lien against real estate being improved by persons who supply work, labor, or materials for the improvement. As a general rule, a lien is allowed to any person with the necessary contractual relationship who furnishes work, labor, or materials for the improvement regardless of how far he<sup>1</sup> is removed from the contracting owner. No inflexible limitation is placed on a person's

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<sup>1</sup> The Special Committee adopts two common drafting conventions in order to promote clarity and readability. First, the Special Committee adopts the convention of using personal pronouns in situations in which the pronoun may refer to either natural or legal persons. Second, the Special Committee adopts the

ability to obtain a construction lien based on how many “tiers” removed the lien claimant is from the contracting owner. Thus, the lien claimant and the contracting owner do not need to have a direct contractual relationship; indeed, a valid construction lien may arise even though the contracting owner has no prior knowledge of the lien claimant, much less any knowledge of the nature, extent, and cost of the work, labor, or material provided by the lien claimant.

The Act allows a construction lien to suppliers of materials only when they have in some way indicated that they sell with the belief that the materials are to be used on the particular real estate improvement project. Therefore, a material supplier who delivers materials to a prime contractor without knowing the particular real estate on which the materials are to be used may not later claim a construction lien on the real estate on which the materials actually were used. Many existing construction lien statutes provide a construction lien to a material supplier only if the materials are delivered to the site. The Act relaxes that requirement somewhat and allows a construction lien if the seller's belief that the goods are to be used on a particular site is evidenced by a notation on the sales contract or by a delivery order, as well as by actual delivery to the site. However, except with respect to materials specially fabricated for the particular real estate improvement project and not salable in the ordinary course of the material supplier's business, a material supplier may not obtain a construction lien unless the materials actually are used in furtherance of the improvement. A construction lien is given to persons who supply materials such as gasoline, which are consumed in the course of the improvement, and also to lessors of machinery and tools used in furtherance of the improvement. The requirement of actual use is ameliorated somewhat by the creation of a rebuttable presumption that materials delivered to the site were incorporated into the improvement, consumed as normal wastage in the course of the improvement, or used in a manner reasonably necessary for the construction of the project.

Surveyors, architects, and engineers who perform land surveys or prepare architectural or engineering plans are allowed a construction lien under the Act, thus continuing the existing practice. The Act does not create or authorize a so-called “broker's lien” for work performed by a broker or agent in connection with the identification of property or clients, preparation of property for purchase, sale, or lease, or any action involved with or connected to a purchase, sale, or lease of property or an improvement thereon. Finally, the Act does not cover public construction projects.

### **Priority over Third Parties.**

The Act adopts a notice recording device, first developed in Florida, under which the contracting owner, prior to the beginning of work on an improvement, records a "notice of commencement" which puts third parties on notice that construction liens may be claimed against the real estate. If a lien claimant timely takes the other steps set out in this Act, his priority date is the date on which the notice of commencement was recorded.

By adopting a notice recording device, the Act deviates from the existing mechanic's lien law in Tennessee that dates a lien claimant's priority from the time of "visible commencement of operations" (see 66-11-104(a) of the Tennessee Code). A priority rule based on the visible commencement of operations makes it difficult for persons who deal with real estate to determine whether it may be subject to subsequently asserted construction lien claims since a record title examination will not provide the necessary information. In effect, a priority rule based on the visible commencement of operations gives the lien claimant a secret construction lien. The secret construction lien is of limited duration since a claimant is required to record a notice of the lien within a fairly short period of time if he is to realize on the lien. Nevertheless, the title difficulties created by a visible-commencement-of-operations rule may be substantial.

A priority rule based on the visible commencement of operations also may create difficulties for construction lenders. A construction lender usually records his mortgage at about the time the work is beginning. And, with some regularity, a construction lender will discover that work had commenced prior

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convention of using the masculine form of the pronoun rather than “he or she” or “(s)he” or “s/he” or the like.

to the time he recorded, so that he is junior to the construction lien claimant. Under the visible-commencement-of-operations priority rule, a careful construction lender makes an on-site inspection prior to recording any mortgage and makes an effort to preserve evidence that no work had commenced before the mortgage was recorded. Such efforts involve additional expense and do not guarantee that a court will later agree that recording by the mortgagee predated visible commencement of operations.

The Act adopts the “notice of commencement” as a notice recording device to place third parties on notice that construction liens may be claimed against the real estate. If a construction lien claimant records his lien during the effective period of a notice of commencement, his priority date is the date on which the notice of commencement was recorded. The notice of commencement, somewhat like a Uniform Commercial Code Article 9 financing statement, need not describe the proposed improvement in minute detail. In general, the notice of commencement protects any person who furnishes work, labor, or materials in furtherance of the described improvement. The goals of providing a simple and inexpensive procedure are furthered by the use of a safe-harbor notice of commencement form that does not require extensive details and that may be completed quickly.

A notice of commencement does not automatically cease to be effective after either a time stated in the notice of commencement or a time fixed by statute. In this respect the Tennessee Construction Lien Act differs from the Uniform Construction Lien Act, which provides that the notice of commencement is effective for the time stated in the notice (but at least six months) or, if no time is stated in the notice, for three years, except that the notice is effective for only one year as against a protected party buyer of residential real estate. The effective length of a notice of commencement may be relevant if two or more notices of commencement are filed with respect to the same real property. The Special Committee believes, however, that the interests of all parties can adequately be protected (1) through a careful comparison of the scope of each of the multiple notices of commencement or (2) by having the owner complete the procedure necessary to terminate one of the notices of commencement, either in whole or in part.

If a notice of commencement is not recorded, lien claimants take priority from visible commencement of operations.

The notice-of-commencement system permits third parties to rely on the record and, at the same time, gives all claimants on a particular improvement the same effective date no matter how many prime contractors there are and no matter when the particular lien claimant comes on the job.

Particularly in smaller, owner-financed improvements, it may be uneconomical to record a notice of commencement, and, in such cases, as already noted, lien claimants are protected by giving them a visible commencement effective date. The Act seeks to encourage owners to record a notice of commencement even with respect to smaller, owner-financed improvements by providing a simple-to-complete, standard form.

The Act follows prior Tennessee practice—as well as the practice in practically all states—by denying to construction liens a priority over prior-recorded mortgages.

ARTICLE I  
GENERAL PROVISIONS

§ 101. Short Title.

This Article may be cited as Tennessee Construction Lien Act.

§ 102. Liberal Construction; Substantial Compliance.

(a) The provisions of this Act are to be construed and applied liberally to secure the beneficial results, intents, and purposes thereof.

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

§ 103. Definitions.

As used in this Act, the words and phrases defined in this section having the meanings stated:

- (1) "Affidavit for construction lien" means the affidavit specified in Section 304 of this Act.
- (2) "Common interest community" means real estate described in an instrument with respect to which a person by reason of ownership of a part of the real estate is obligated to pay for real estate taxes or assessments, insurance premiums, maintenance, or improvement of another part of the real estate. The term includes, but is not limited to, real estate comprising a condominium or condominium property that has been submitted to the provisions of the Horizontal Property Act, T.C.A. § 66-27-101 et seq.
- (3) "Construction lien" means a lien arising under this Act.
- (4) "Construction manager" means a person with substantial discretion and authority to manage or direct an improvement, provided that the person is in direct privity of contract with a contracting owner.
- (5) "Contract price" means the amount agreed upon by the contracting parties to be paid for performing work or labor and for furnishing materials, plus overhead and profit, covered by the contract, increased or diminished by the price of change orders or extras, amounts attributable to amended specifications, or breach of contract, including defects in workmanship or materials. Liquidation of damages between the contracting owner and a prime contractor does not diminish the contract price as to other claimants. If no price is agreed upon by the contracting parties, "contract price" means the reasonable value of all work, labor, materials, overhead, and profit covered by the contract.
- (6) "Contracting owner" means a person who owns real estate and who, personally or through an agent, enters into a contract, express or implied, written or oral, for the improvement of the real estate.
- (7) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the conduct or transaction involved.
- (8) A person is a member of the "immediate family" of an individual if that person is
  - (a) the spouse of the individual;
  - (b) a brother, brother-in-law, sister, or sister-in-law of the individual;
  - (c) an ancestor, descendant, step-child, or adopted child of either the individual or the individual's spouse;
  - (d) any other relative by blood, marriage, or adoption of the individual or of the individual's spouse if the relative shares the same residence with the individual; or
  - (e) any foster child, child awaiting adoption, or the like who shares the same residence with the individual, whether or not the individual has legal responsibility for the child.
- (9) "Improvement" means constructing, erecting, altering, repairing, demolishing, or removing any building, structure, or appurtenance thereto, fixture, bridge, driveway, private roadway, sidewalk, walkway, wharf, sewer, utility, watering system, or the like, or any part thereof, upon, connected with, or beneath the surface; the drilling and finishing of a well, other than a well for gas or oil; the furnishing of and all 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 non-hazardous material or waste from real property; the enhancement or embellishment of real property by seeding, sodding, or the planting thereon 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; and excavating, grading or filling to establish a grade; the work of land surveying, as defined in Tennessee Code § 62-18-102; and the

performance of architectural or engineering work, as defined in Tennessee Code 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.

(10) “Laborer” means a natural person, of any degree of remoteness from an owner, who personally performs work or labor on the site of an improvement in furtherance of the improvement and who is not an employee of a contracting owner, a prime contractor, or a remote contractor with respect to the work or labor performed on the improvement.

(11) “Lending institution” means a person engaged in the business of providing financing for the purchase of real estate or for improvements made thereon and includes a savings bank, savings and loan association, credit union, and trust company.

(12) “Lien” means a “construction lien” unless the context specifically requires otherwise.

(13) “Lien claimant” means a person who has acquired or who has the right to acquire a construction lien under this Act, including a successor-in-interest.

(14) “Material” means all supplies, items, products, fixtures, and substances including, without limitation, any gasoline, lubricating oil, petroleum products, powder, dynamite, blasting supplies and other explosives, tools, equipment, or machinery furnished in furtherance of an improvement.

(15) “Notice of commencement” means the notice specified in Section 301 of this Act.

(16) “Notice of furnishing” means the notice specified in Section 205 of the Act.

(17) “Organization” means a person other than an individual.

(18) “Owner” means a person having any right, title, or interest, legal or equitable, in fee or of lesser estate, as a result of a writing or otherwise, in the real estate to which an improvement is made, including, but not limited to, a land contract vendee and a lessee, but excluding a mortgagee. “Owner” includes “contracting owner” when the context so provides.

(19) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or other legal or commercial entity.

(20) “Prime contractor” means a construction manager, laborer, land surveyor as defined in Tennessee Code § 62-18-102, person licensed to practice architecture or engineering under Tennessee Code title 62, chapter 2, and any person other than a remote contractor who performs work or labor or who furnishes material 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, as defined in this subsection, the entire remaining work under such a contract.

(21) “Real estate” and “real property” mean an estate or interest in, on, over, or under land, including minerals, structures, fixtures, and all other things that by custom, usage, or law pass with a conveyance of land though not described or mentioned in the contract of sale or instrument of conveyance. If appropriate to the context, the terms include the land, structures, fixtures, minerals, and other things in which the interest is claimed. The terms include rent, the interest of a landlord or tenant, and interests in a common interest community.

(22) “Remote contractor” means a person, including a land surveyor as defined in Tennessee Code § 62-18-102 and a person licensed to practice architecture or engineering under Tennessee Code title 62, chapter 2 who provides work or labor or who furnishes material in furtherance of any improvement under a contract with a person other than an owner.

(23) “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 such 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 such residential building is located.

(24) “Serve” shall have the meaning set forth in Section 105 of this Act.

(25) “Signed” means any symbol executed or adopted by a party with present intention to authenticate a writing, regardless of being witnessed.

(26) “Termination of notice of commencement” means the termination of notice of commencement specified in Section 302 of this Act.

(27) “Visible commencement of operations” means the first actual work of improving upon the real property or the first delivery to the site of the improvement of materials that remain thereon 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 to the real property.

(28) “Writing” or “written” includes printing, typewriting, or any other intentional reduction to tangible form.

§ 104. No Variation by Agreement.

Unless specifically and expressly permitted by this Act, the requirements and effects of provisions of this Act may not be varied by agreement; provided, however, that lien waivers shall be permitted pursuant to §210.

§ 105. Service.

(a) Except as otherwise provided in Section 402 of this Act and division (c) of this section, any notice, affidavit, or other document required or permitted to be served under this Act shall be served by one of the following means:

(1) The sheriff of the county in which the person to be served resides or maintains the person's principal place of business, in one or more of the methods and upon the person or persons provided in Tennessee Rule of Civil Procedure 4.04, for which service the sheriff may charge a reasonable fee; or

(2) Certified or registered mail, return receipt requested, overnight delivery service, hand delivery, or any other method which includes a written evidence of receipt upon the person or persons.

(b) For purposes of this Act, service is complete upon receipt by the party being served except that (1) if service of a notice of furnishing is made by certified or registered mail, return receipt requested, service is complete on the date of the mailing and (2) if service is attempted upon an owner or the owner's designee at the address contained in the notice of commencement required by Section 301 of this Act, and if the notice, affidavit, or other document is returned unclaimed or is refused, service is complete when first attempted.

(c) A notice, affidavit, or other document required or permitted to be served under this Act is considered served, whether or not the notice, affidavit, or other document was served by the means described in divisions (a)(1) and (a)(2) of this section, and service is complete on the date the notice, affidavit, or other document is received, if either of the following is true regarding the notice, affidavit, or other document:

(1) The person served acknowledges receipt of the notice, affidavit, or other document, either at the time of receipt or later.

(2) It can be proved by a preponderance of evidence that the person being served actually received the notice, affidavit, or other document.

(d) A notice, affidavit, or other document to which this Section applies is presumed to have been received three days after the date of the mailing of the notice, affidavit, or other document, unless a written acknowledgement, receipt, or other evidence provides proof to the contrary.

§ 106. Other Rights.

The failure of a prime contractor or a remote contractor to properly exercise his rights under this Act does not limit his right to pursue any other legal or equitable remedy.

**ARTICLE II**  
**CONSTRUCTION LIENS: EXISTENCE, PRIORITY, ASSIGNMENT, WAIVER**

§ 201. Construction Lien Upon Improvements to Real Property.

(a) The following persons shall have a construction lien for the contract price upon an improvement and all interests the owner may have or may subsequently acquire in the real estate to which the improvement was made, to the extent permitted in this Act:

(1) every person who performs work or labor upon or furnishes material in furtherance of any improvement undertaken by virtue of a contract, express or implied, written or oral, with an owner;

(2) every person who as a remote contractor performs any work or labor or furnishes any material to a prime contractor or to another remote contractor in carrying forward, performing, or completing any improvement;

(3) every land surveyor who has, by virtue of a contract, express or implied, written or oral, with an owner, a prime contractor, or a remote contractor performed on some or all of the real estate the work of land surveying, as defined in Tennessee Code § 62-18-102;

(4) every person licensed to practice architecture or engineering under title 62, chapter 2 who has, by virtue of a contract, express or implied, written or oral, with an owner, a prime contractor, or a remote contractor, performed architectural or engineering work with respect to an improvement actually made to the real estate; provided, however, that (a) any such construction lien for architectural or engineering work shall be subordinate to the lien of any mortgagee unless the lien claimant has given written notice of the construction lien claimant's lien to such mortgagee prior to the recordation of the mortgage.

(b) A remote contractor who, in good faith and pursuant to the direction of a prime contractor or another remote contractor, performs any work or labor or furnishes any material to a prime contractor or another remote contractor in carrying forward, performing, or completing any improvement shall have a construction lien under this Act even if the work or labor performed or the material furnished exceeded the scope of the prime contractor's or the other remote contractor's authority.

(c) Notwithstanding any other provision of this Act, no lessee may encumber the freehold estate unless the lessee is deemed to be the lessor's agent. In determining whether a lessee is the lessor's agent, the court shall determine whether the lessor 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 lessor's property; (2) whether the cost of the improvement actually is borne by the lessor through corresponding offsets in the amount of rent the lessee pays; (3) whether the lessor maintains control over the improvement; and (4) whether the improvement becomes the property of the lessor at the end of the lease.

(d) 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 or by both, the husband or wife who contracts shall be deemed to be the agent of the other unless such other shall within ten (10) days after learning of the contract give the other party to the contract written notice of that person's objection thereto.

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

(f) When the owner fails to perform his part of the contract, and by reason thereof the lien claimant without his default, is prevented from completely performing his part, the lien claimant is entitled to a lien for as much of the contract as he has performed in proportion to the contract price attributable to the whole, and

the court shall adjust his claim accordingly.

§ 202. Governmental Exemption from Construction Lien.

(a) Real estate owned by the State of Tennessee or by a county, a municipality, a governmental agency, or a political subdivision of the State of Tennessee is exempt from a construction lien under this Act.

(b) The fact that a nongovernmental entity owns real estate jointly with a governmental unit or agency or the fact that a governmental unit or agency has an interest in land in which a nongovernmental entity also has an interest does not prevent a construction lien from arising under this Act against the interest of the nongovernmental entity.

§ 203. Real Estate Subject to Construction Lien.

(a) The real estate to which a recorded construction lien applies is the real estate of the contracting owner improved.

(b) Notwithstanding any other provision of this Act:

(1)(A) Where the amount due is for work or labor performed or materials 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 are furnished under the same direct contract or contracts, a lien claimant shall be required to serve only one notice of furnishing and to file only one affidavit for construction lien covering the entire demand against such real property.

(B) If two or more lots, parcels, or tracts of land are improved under the same direct contract or contracts and the improvements are not to be operated as a single improvement, a lien claimant who has performed work or labor or furnished materials therefor shall, in claiming a lien, apportion such lien claimant's contract price between the several lots, parcels, or tracts of land and improvements thereon and file a separate affidavit for construction lien for the amount demanded against each lot, parcel, or tract of land and the improvements on such lot, parcel, or tract of land. In such case, proof of delivery, at the order of the purchaser, to any of such lots, parcels, or tracts of land of materials to be used in one or more of such improvements shall, prima facie, be sufficient proof of delivery to support a claim of lien on any or all of such lots, parcels, or tracts. The lien claimant shall be required to serve only one notice of furnishing for all work or labor performed or materials furnished pursuant to a given contract.

(2)(A) Unless the improvements are to be operated as a single improvement, whenever more than one 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 Act with respect to each such 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 such single lot, parcel or tract of land on any contiguous lots, parcels or tracts of land. In connection therewith, a lien claimant who has performed work or labor or furnished materials therefor shall, in claiming a lien, apportion the lien claimant's contract price between the separate buildings, units, or improvements thereon as applicable and file a separate affidavit for construction lien for the amount demanded against each such separate building, unit or improvement; in such event, the time prescribed for serving a notice of furnishing or filing and serving an affidavit for lien shall commence to run with respect to each such building, unit, or improvement immediately upon the completion of the same.

(B) Whenever a lien claimant has furnished work, labor, or materials 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 lien claimant shall be required to serve only one notice of furnishing and to file and serve only one affidavit of lien covering the lien claimant's entire demand against such real property.

(c) Except as expressly provided in the Horizontal Property Act, Tennessee Code § 66-27-101 et seq. and notwithstanding any other provision of this Act, a construction lien arising under this Act by reason of an improvement to real estate 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 lien claimant, when the contract is made, that the lien may attach only to the units on or for the benefit of which the improvement is being made; and

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

(d) Except as provided in subsection (c), if a construction lien attaches to two or more units in a common interest community, the unit owner of an affected unit may pay to the lien claimant the amount of the

construction lien liability attributable to the owner's unit, and the lien claimant, upon receipt of payment, promptly shall deliver a release of the construction lien covering that unit. The amount of the payment must be in the proportion the unit owner's common-expense liability bears to the common-expense liabilities of all unit owners whose units are subject to the construction lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with the construction lien.

§ 204. Construction Lien for Furnishing Materials.

(a) A construction lien for furnishing materials arises under this Act only:

(1) If the materials are furnished with the intent, as evidenced by the contract of sale, the delivery order, delivery to the site by the lien claimant or at the lien claimant's direction, or by other evidence, that the materials are to be used in the course of the improvement with respect to which the construction lien arises; and

(2) If the materials are

(A) incorporated in the improvement;

(B) consumed as normal wastage in the course of the improvement or are reasonably necessary for construction of the improvement;

(C) specifically fabricated for incorporation in the improvement and are not readily resalable in the ordinary course of the fabricator's business if the materials are not actually delivered to the site or incorporated in the improvement;

(D) used for the improvement or for the operation of machinery or equipment used in the course of the improvement and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(E) tools or machinery used on the particular improvement, subject to division (c) of this section.

(b) The delivery of materials to the site of the improvement, whether by the lien claimant or by someone else, creates a rebuttable presumption that the materials were incorporated into the improvement, consumed as normal wastage in the course of the improvement, or used in a manner reasonably necessary for the construction of the project.

(c) A construction lien for furnishing tools or machinery which arises under division (a)(2)(E) of this section is limited to either of the following:

(1) If the tools or machinery are rented, the construction lien is for the reasonable rental value for the period of actual use and any reasonable period of nonuse taken into account in the rental contract; provided that the reasonable rental value and reasonable periods of use and nonuse are not determinable by the contract for rental unless at least one of the real property's owners is a party to the contract.

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

(d) All of the deliveries or the sales of materials, or both, under a single contract, to or for an improvement give rise to one construction lien for the unpaid portion of the deliveries or sales, or both.

§ 205. Notice of Furnishing.

(a) Except as provided in Section 301 of this Act and in this section, if any person required to do so has recorded a notice of commencement in accordance with Section 301 of this Act, a remote contractor who performs work or labor upon or furnishes material in furtherance of an improvement to real property and who wishes to preserve his lien rights shall serve a notice of furnishing upon the owner's designee (or, if no designee has been named, upon the owner) and upon any prime contractor(s) named in the notice of commencement within ten (10) days after the remote contractor first performed work or labor or furnished materials; provided, however, that:

(1) If any person has recorded a notice of commencement in accordance with Section 301 of this Act for an improvement and if that notice states that multiple prime contractors are involved in the improvement, a remote contractor does not have to serve a notice of furnishing upon any prime contractor in order to preserve his lien rights.

(2) A remote contractor who serves a notice of furnishing in conformity with this section does not have to serve an amended notice of furnishing on any party if he receives an amended notice of commencement subsequent to serving his notice of furnishing. If a remote contractor serves a notice of furnishing based upon information contained in any notice of commencement or amended notice of commencement relative to the improvement for which he performs work or labor or furnishes material, the notice of furnishing is deemed effective even if the notice of commencement or amended notice of commencement already has been amended or is amended in the future.

(3) The mere receipt of a notice of furnishing by a lending institution imposes no duty upon the lending institution by implication or otherwise with respect to the disbursement of any loan proceeds or to the payment to any prime contractor, remote contractor, or other person.

(4) No prime contractor has to serve a notice of furnishing to preserve construction lien rights arising from a contract with an owner.

(b) A notice of furnishing required or permitted under division (a) of this section shall contain the following information, and shall be in substantially the following form:

"Notice of Furnishing

To:

(Name of the owner's designee (or, if no designee has been named, the name of the owner)  
from the notice of commencement)

(Address of the owner's designee (or, if no designee has been named, the address of the owner) from the  
notice of commencement)

To:

(Name(s) of prime contractor(s) from notice of commencement)

(Address(es) of prime contractor(s) from notice of commencement)

Please take notice that the undersigned is performing certain work or labor or is furnishing certain materials to \_\_\_\_\_ (name and address of other contracting party) \_\_\_\_\_ in connection with the improvement to the real property located at \_\_\_\_\_. The work, labor, or materials were performed or furnished first or will be performed or furnished first on or about \_\_\_\_\_ (date).

WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE TENNESSEE CONSTRUCTION LIEN ACT. IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS AND DUTIES UNDER THESE STATUTES YOU SHOULD SEEK LEGAL ASSISTANCE TO PROTECT YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO YOUR PROPERTY.

\_\_\_\_\_  
(Name and address of lien claimant)

By \_\_\_\_\_  
(Name and capacity of party signing for lien claimant)

\_\_\_\_\_  
(Address of party signing)

Date: \_\_\_\_\_ "

(c) The description of the location of the property required in the notice of furnishing is sufficient if it reasonably identifies the real property upon which the work or labor is performed or for which the material is furnished.

(d) A notice of furnishing served more than ten days after a remote contractor who is required by this section to serve a notice of furnishing first performed work or labor or furnished material in furtherance of the improvement preserves the remote contractor's construction lien rights for amounts owing for work and labor performed and materials furnished within the ten-day period immediately preceding service of the notice of furnishing and thereafter, but does not revive any prior lien rights for work or labor performed or materials furnished in furtherance of the improvement prior to the ten days immediately preceding service of the notice of furnishing.

(e) No remote contractor who performs work or labor or furnishes material in furtherance of an improvement has to serve a notice of furnishing in accordance with this section in order to preserve his construction lien rights if the owner who contracted for the labor, work, or materials fails to record a notice of commencement in accordance with Section 301 of this Act.

§ 206. Attaching of Construction Liens; Priority.

(a)(1) Construction liens arising under this Act for work or labor performed or materials furnished prior to the recording of a notice of commencement pursuant to Section 301 of this Act are effective from the date of the visible commencement of operations.

(2) Construction liens arising under this Act for work or labor performed or materials furnished after the recording of a notice of commencement pursuant to Section 301 of this Act are effective from the date of the recording of the notice of commencement.

(b) A construction lien securing the claim of a lien claimant who has performed work or labor or furnished materials both prior to and after the recording of the notice of commencement pursuant to Section 301 of this Act has two effective dates. That portion of the construction lien which arises from work or labor performed or materials furnished prior to the filing of the notice of commencement has the effective date described in division (a)(1) of this section and that portion of the construction lien which arises from work or labor performed or materials furnished on or after the date of the filing of the notice of commencement has the effective date described in division (a)(2) of this section. Any payment received by a lien claimant either before or after the filing of an affidavit for construction lien shall be applied first to the work or labor performed or materials furnished prior to date of the filing of the notice of commencement, and then to the work or labor performed or the materials furnished on and after the date of the filing of the notice of commencement.

(c) A construction lien arising under this Act continues in force for ninety days after an affidavit for construction lien is filed in the office of the county recorder under Section 304 of this Act. If an action is brought to enforce the construction lien within the ninety-day period, the construction lien continues in force until final adjudication thereof.

(d) If several construction liens are obtained by several persons upon the same real estate they have no priority among themselves, except as follows: Construction liens which have an effective date described in division (a)(1) of this section have priority over all other construction liens. Within each priority class that has the same effective date, all construction liens have equal priority and share the amount received upon foreclosure of the construction liens and available for distribution to construction lien claimants in the proportions the respective construction liens bear to the total amount of all construction liens attaching at that time.

(e) Construction liens which have an effective date described in division (a)(1) of this section shall be preferred to the extent of the value of the work or labor performed or materials furnished prior to the recording of the notice of commencement, to all other titles, liens, or encumbrances which may attach to or upon the improvement or to or upon the land upon which it is situated, which either shall be given or recorded subsequent to the effective date of the construction liens described in division (a)(1) of this section.

(f) Construction liens which have an effective date described in division (a)(2) of this section shall be preferred to all other titles, liens, or encumbrances which may attach to or upon such improvement or to or upon the land upon which it is situated, which either are given or recorded subsequent to the recording of the notice of commencement.

§ 207. Priority of Mortgage Lien.

(a) As to the mortgages described in this section, this section controls over all other sections of this Act and over all construction liens that can be had under this Act. This section of the Act shall be liberally construed in favor of such mortgagees, a substantial compliance by such mortgagees being sufficient.

(b) The lien of a mortgage which is given in whole or in part to improve or benefit real estate, or to pay off prior encumbrances on real estate, or both and which contains the correct name and address of the mortgagee shall be prior to all construction liens provided for in this Act that are filed for record after the mortgage is filed for record, to the extent that the mortgage proceeds are used and applied to improve or benefit real estate, or to pay off prior encumbrances on real estate, or both. Such a mortgage is a lien on the premises described in the mortgage from the time it is filed for record for the full amount that is ultimately and actually paid out under the mortgage, regardless of the time when the money secured thereby is advanced.

§ 208. Priority of Construction Lien as Against Claims Other Than Construction Lien Claims and Mortgage Liens.

(a) Except as provided in Section 207 and in this section, a construction lien has priority over adverse claims against the real estate as if the construction lien claimant were a purchaser for value without knowledge whose interest was of record when the construction lien attached.

(b) Except as provided in subsection (c), a construction lien has priority over subsequent advances made under a previously recorded security interest if the subsequent advances were made with knowledge that the construction lien had attached.

(c) Notwithstanding knowledge that the construction lien has attached or the advance exceeds the maximum amount stated in the recorded security agreement, and whether or not the advance is made pursuant to a commitment, a subsequent advance made under a security agreement recorded before the construction lien attached has priority over the lien if:

(1) the subsequent advance is made under a construction security agreement and is made in payment of the price of the agreed improvements;

(2) the subsequent advance is made or incurred for the reasonable protection of the security interest in the real estate, such as payment for real property taxes, hazard insurance premiums, or maintenance charges imposed under a common interest community declaration or other covenant; or

(3) the subsequent advance was applied to the payment of any lien or encumbrance that was prior to the construction lien.

(d) To the extent that a subsequent security interest is given to secure funds used to pay a debt secured by a security interest having priority over a construction lien under this section, the subsequent security interest is also prior to the construction lien.

§ 209. Superiority of Construction Liens; Assignment.

(a) The construction lien of a remote contractor is superior to any construction lien in respect of the same work, labor, or material already filed or to be filed by a prime contractor or another who is indebted to the remote contractor in respect of such work, labor, or material.

(b) An assignment or transfer by a prime contractor of his contract with an owner or an assignment or transfer by a remote contractor of his contract with a prime contractor is subject to the claims of every remote contractor who performs labor or work or furnishes any material in furtherance of any improvement in accordance with this Act. All proceedings in attachment or otherwise against the prime contractor or a remote contractor to subject or encumber his interest in a contract is subject to the claims of every remote contractor who performs any work or labor or furnishes any material in furtherance of any improvement in accordance with this Act.

§ 210. Waiver of Claimant's Construction Lien Rights; Release.

- (a) A written waiver of construction lien rights signed by a lien claimant is enforceable, whether signed before or after the work, labor, or materials were contracted for or were provided. Any ambiguity in a written waiver of construction lien rights shall be construed against the lien claimant.
- (b) A written waiver of construction lien rights waives all the lien claimant's construction lien rights as to the improvement to which the waiver relates unless the waiver is specifically limited to a particular construction lien right or to a particular portion of the work, labor, or material already provided at the time the waiver is signed.
- (c) A waiver of construction lien rights does not affect contract rights of the claimant otherwise existing.
- (d) Acceptance of a promissory note or other evidence of debt is not a waiver of construction lien rights unless the instrument evidencing the debt expressly so provides.
- (e) A written waiver by a lien claimant is effective only as to the construction lien rights of that lien claimant and does not affect the rights of other construction lien claimants, whether or not they may claim through or under the lien claimant who has waived his construction lien rights.
- (f) An owner, purchaser, or lending institution may make payment jointly to the prime contractor and to a remote contractor as a condition to giving a lien release.

§ 211. Residential Real Property.

Notwithstanding any other provisions of this Act, on contracts to improve residential real property, a lien or right of lien upon such property shall exist only in favor of a prime contractor.

§ 212. Notice of Completion.

(a) In order to be protected from construction lien claims by persons who have not previously filed a notice of furnishing or affidavit for construction lien as provided in this Act, (1) the owner or purchaser of improved real property shall, upon completion of the improvement thereof, register in the office of the register of deeds in the county where the real property or any affected part thereof is located a notice of completion, or the owner or purchaser may require a person with whom the owner or purchaser has contracted for the improvement to do so upon completion of the improvement and (2) the owner or purchaser of improved real property shall simultaneously serve a copy of the notice of completion upon the prime contractor and any person from whom the owner or his designee, if any, has received a notice of furnishing by the date of recording of the notice of completion and upon any person with whom the owner is in direct privity of contract.

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

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

(2) If the owner or owners have contracted with one person, firm or organization for the entire job or improvement, the name of such person, firm or organization;

(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 therein and encumbrance thereon or a settlement of the claims of parties entitled to the benefits of this Act will take place not earlier than ten days from the date of the filing of the notice of completion;

(6) The name and address of the person, firm, or organization to which parties entitled to the benefits of this Act may send notices of furnishing; and

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

(c) The register of deeds shall make a permanent record of all notices of completion filed in the office of the register and such 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) Any person claiming a construction lien for work or labor performed upon or material furnished in furtherance of any improvement upon the property described in the notice of completion who has not previously filed an affidavit for construction lien pursuant to this Act shall do so not more than ten days from the date of the filing of the notice of completion in the register's office, and if the same is not filed within that time, the construction lien rights of the claimant shall expire.

(e) Any notice of completion registered as herein provided before completion of the improvement is void and of no effect whatsoever.

(f) The Notice of Completion may be in substantially the following form:

Notice of Completion

Legal name of owner or owners of the real property:

If the owner or owners have contracted with one person, firm or organization for the entire job, improvement, or demolition, the name of such person, firm or organization:



Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named person, with whom I am personally acquainted and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and official seal at \_\_\_\_\_, this the  
day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

\_\_\_\_\_

ARTICLE III  
RECORDING

§ 301. Notice of Commencement; Recording.

(a)(1) Prior to the performance of any work or labor or the furnishing of any materials for an improvement on real property which may give rise to a construction lien under this Act, the owner who contracts for the work, labor, or materials shall file in the office of the county recorder for each county in which the real property to be improved is located a notice of commencement in substantially the form specified in division (b) of this section.

(2) Only one original notice of commencement is required to be filed for a single improvement. If more than one notice of commencement is filed for a single improvement, all notices filed after the original notice shall be deemed to be amendments to the original notice. Without limit as to time, if an owner contracts with additional prime contractors not identified in the original notice of commencement or in an amended notice of commencement filed with respect to a particular improvement, the owner shall amend the original notice of commencement or the most recent amended notice of commencement, as the case may be, to provide the name and address of each additional prime contractor. Any amendment to an original notice of commencement or previously filed amended notice of commencement shall be deemed to have been filed on the date of the filing of the original notice of commencement unless otherwise expressly provided by this Act.

(3) "Amended notice of commencement" means an amendment of an original notice of commencement or an amendment of a previously filed amended notice of commencement which complies with Section 303 of this Act.

(4) "Notice of commencement" means an original notice of commencement and any amended original notice of commencement filed for record relating to the original notice of commencement or a prior amended notice of commencement, as the context may require.

(5) An original notice of commencement is effective from the date of filing for record.

(b) The notice of commencement required under division (a) of this section shall contain, in affidavit form, all of the following information:

(1) A statement of the real property being improved or intended to be improved, with a description of the real property sufficient to identify it.

(2) A brief description of the improvement being performed or to be performed on the real property containing sufficient specificity to permit lien claimants to identify the improvement.

(3) The legal name, address, and capacity of each person contracting for the improvement.

(4) The legal name and address of each owner of record of the real property.

(5) The name and address of the owner's designee, if any, who need not be a resident of Tennessee, need not be a natural person, and may include a prime contractor, lending institution, or title company.

(6) The name and address of all prime contractors.

(7) The date on which the owner first executed a contract with a prime contractor for the improvement.

(8) The name and address of all lending institutions who provide financing for the improvement, if any.

(9) The name and address of all sureties on any bond which guarantees payment of the prime contractor's

obligations under the contract for the improvement, if any.

(10) The following statement:

"To Lien Claimants and Subsequent Purchasers:

Take notice that work or labor is about to begin on, or materials are about to be furnished for, an improvement to the real property described in this instrument. A person having a construction lien may preserve the lien by providing a notice of furnishing to the above-named designee (or, if no designee has been named, to the above-named owner(s)) and to the above-named prime contractor, if any, pursuant to Section 205 of the Tennessee Construction Lien Act, and by timely recording an affidavit for construction lien pursuant to Section 304 of the Tennessee Construction Lien Act."

(11) The name and address of the person preparing the notice of commencement.

(12) An affidavit of the owner that verifies the notice of commencement.

(c) If the notice of commencement furnished by an owner contains incorrect information, the owner is liable to a claimant for any loss of lien rights and for any actual expenses incurred by the claimant in establishing and maintaining construction lien rights, including attorneys' fees, if the loss and the expenses incurred are a direct result of the claimant's reliance on the incorrect information; provided, however, that any such actual expenses incurred by the claimant shall not be added to the amount of the claimant's construction lien.

(d) The owner shall post and maintain posted a copy of the notice of commencement in a conspicuous place on the real property described in the notice during the course of the actual physical improvement to the real property. If the owner fails to post or maintain a copy of the notice of commencement as required by this section, the owner is liable to any remote contractor who becomes a lien claimant for all actual expenses incurred by the lien claimant in obtaining the information contained in the notice of commencement.

(e) Every owner, prime contractor, or remote contractor who enters into a direct contract with another person who will perform any work or labor or who will furnish any materials for an improvement on real property shall serve a copy of the notice of commencement to the other party to the contract. Every owner shall serve a copy of the notice of the commencement within ten days of the date the notice of commencement is recorded. Every prime contractor or remote contractor required to serve a copy of the notice of commencement shall do so within ten days of the date on which the contract is formed or ten days after receiving a copy of the notice of commencement, whichever is later. Any owner, prime contractor, or remote contractor who fails to serve the copy of the notice of commencement as required by this section is liable to the person upon whom the notice of commencement should have been served for all actual expenses incurred by the person upon whom the notice should have been served in obtaining the information provided by the notice of commencement.

(f) If the owner fails to record the notice of commencement in accordance with this section, the time within which a remote contractor may serve a notice of furnishing as required by Section 205 of this Act is extended until ten days after the notice of commencement has been recorded and served. A remote contractor need not serve a notice of furnishing to preserve lien rights for the period before the notice of commencement is recorded and served.

(g) The Notice of Commencement may be in substantially the following form:

Notice of Commencement

1. The legal name and address of each owner of record of the real property:

Legal Name:

Street Address:

City:  
State:                      Zip Code:

2. The legal name, address, and capacity of each person contracting for the improvement:

Legal Name:  
Street Address:  
City:  
State:                      Zip Code:

3. The name and address of the owner's designee, if any, who need not be a resident of Tennessee, need not be a natural person, and may include a prime contractor, lending institution, or title company:

Name:  
Street Address:  
City:  
State:                      Zip Code:

4. A description of the real property being improved or intended to be improved:

5. A description of the improvement being performed or to be performed on the real property:

6. The name and address of all prime contractors:

Name:  
Street Address:  
City:  
State:                      Zip Code:

7. The date on which the owner first executed a contract with a prime contractor for the improvement:

8. The name and address of all lending institutions who provide financing for the improvement, if any:

Name:  
Street Address:  
City:  
State:                      Zip Code:

9. The name and address of all sureties on any bond which guarantees payment of the prime contractor's obligations under the contract for the improvement, if any.

Name:  
Street Address:  
City:  
State:                      Zip Code:

10. To Lien Claimants and Subsequent Purchasers:

Take notice that work or labor is about to begin on, or materials are about to be furnished for, an improvement to the real property described in this instrument. A person having a construction lien may preserve the lien by providing a notice of furnishing to the above-named designee (or, if no designee has been named, to the above-named owner(s)) and to the above-named prime contractor, if any, pursuant to Section 205 of the Tennessee Construction Lien Act, and by timely recording an affidavit for construction lien pursuant to Section 304 of the Tennessee Construction Lien Act.

11. The name and address of the person preparing the notice of commencement:

Name:  
Street Address:  
City:  
State:                      Zip Code:

12. Following is the affidavit of the owner that verifies this notice of commencement.

If the owner is a natural person:

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named person, with whom I am personally acquainted and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and official seal at \_\_\_\_\_, this the  
day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
  
\_\_\_\_\_

If the owner is a legal entity:

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_, a Notary Public of the State and County

aforesaid, personally appeared \_\_\_\_\_, with whom I  
am personally acquainted, and who, upon oath, acknowledged \_\_\_\_\_ self to be  
of the \_\_\_\_\_, the within named person, a legal entity, and that  
he as such \_\_\_\_\_, being authorized so to do, executed the  
foregoing instrument for the purposes therein contained, by signing the name of the legal entity by  
self as \_\_\_\_\_.

Witness my hand and seal, at office in \_\_\_\_\_, this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
\_\_\_\_\_

§ 302. Termination of Notice of Commencement.

(a) If no work or labor has been performed and no materials have been supplied that would give rise to an ability of a person to claim a construction lien under this Act, a contracting owner may terminate a notice of commencement as to all of the real estate subject to the notice of commencement by recording, in affidavit form, a notice of termination containing a reference to the recorded notice of commencement by its location in the record and a statement of its date of recording; a statement that no work or labor has been performed and no materials have been supplied that would give rise to an ability of a lien claimant to claim a construction lien under the Act; and a statement that the notice of commencement is terminated as of the time the termination of notice of commencement is filed.

(b) A purchaser, judgment creditor, or other person having any lien against the real estate may rely on an affidavit complying with subsection (a) without a duty to inquire as to its accuracy, and is not prejudiced by its inaccuracy.

(c) The owner or his designee, if any, must serve a written notice of the recording of a notice of termination on any person with whom the owner is in direct privity of contract or from whom the owner or his designee, if any, receives a notice of furnishing. The written notice of the recording of a notice of termination must be served at least ten days before the effective date of the notice of termination or within three business days after the owner or his designee, if any, receives a notice of furnishing, whichever is later.

§ 303. Amendment of Notice of Commencement.

(a) The person who recorded a notice of commencement may amend the notice of commencement or a previously filed amended notice of commencement by filing an amended notice of commencement. The amended notice of commencement shall (1) identify by its filing number the original notice of commencement and any amended notice of commencement to which the amendment relates, (2) meet the requirements of Section 301(b), (3) indicate the respects in which the notice of commencement and any amended notice of commencement to which the amendment relates is being amended, and (4) be filed in the office in which the original notice of commencement was filed.

(b) The filing of an amended notice of commencement does not extend the period within which lien claimants must file a notice of furnishing or an affidavit for construction lien.

(c) A notice of commencement that is amended to enlarge the scope of the real estate to which the construction lien applies or to enlarge the scope of the improvement from which a construction lien may arise is effective as to the additional real estate or the additional portions of the improvement only from the date of the filing of the amendment. With respect to additional real estate and the additional portions of the improvement, the amendment shall be treated as an original notice of commencement for all purposes under this Act, including for the calculation of the time period in which lien claimants must file a notice of furnishing or an affidavit for construction lien.

§ 304. Contents and Recording of Affidavit for Construction Lien; Times for Filing.

(a) A claimant who wishes to avail himself of this Act shall make and file an affidavit for construction lien in the office of the county recorder for each county in which the improved property is located.

(b) The affidavit for construction lien required under division (a) of this section shall contain, in affidavit form, all of the following information:

- (1) the amount due over and above all legal setoffs;
- (2) a description of the real property to be charged with the construction lien;
- (3) the name and address of the person for whom work or labor was performed or to whom material was furnished;
- (4) the name of the owner or his designee as stated on the notice of commencement pertaining to the improvement or, if no notice of commencement is recorded, as indicated in the record of the county recorder for each county in which the improved property is located;
- (5) the name and address of the lien claimant;
- (6) the first and last dates that the lien claimant performed any labor or work or furnished any material to the improvement giving rise to his construction lien; and
- (7) an affidavit of the lien claimant that verifies the information contained in the affidavit for construction lien.

The affidavit for construction lien shall be verified before any person authorized to administer oaths, including the owner, the owner's agent, or any other interested party.

(c) The affidavit for construction lien may be in substantially the following form:

"AFFIDAVIT FOR CONSTRUCTION LIEN

State of Tennessee,

County of \_\_\_\_\_, ss: \_\_\_\_\_

\_\_\_\_\_, whose address is \_\_\_\_\_, 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, whose address is \_\_\_\_\_. The first of the work or labor was performed or the first of the material was furnished on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (year). The last of the work or labor was performed or the last of the material was furnished on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (year), and there is justly and truly due \_\_\_\_\_, the 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 \_\_\_\_\_, the lien claimant, claims a construction lien on the real property, of which \_\_\_\_\_ is or was the owner, which is described as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Sworn to before me and subscribed in my presence this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (year).

\_\_\_\_\_  
\_\_\_\_\_  
....."

(d) For purposes of this section, the description of the real property is sufficient if it meets the standard set forth in Section 301(b)(1) of this Act.

(e) The affidavit for construction lien shall be filed within the earlier of one of the following periods:

(1) ninety days from the date on which the last work or labor was performed or the last material was furnished by the person claiming the construction lien;

(2) ten days from the filing of a notice of completion pursuant to § 212.

(f) Any person filing an affidavit for construction lien pursuant to this Section shall on the same day serve a copy of the affidavit for construction lien on the owner's designee (or, if no designee has been named, on the owner) and on all prime contractors.

(g) For purposes of this section, the name of the owner, the owner's designee, the prime contractor(s), or any other person, their addresses, and the property description stated in the notice of commencement, or if no notice of commencement on a building permit authorizing such improvement shall be conclusively presumed to be correct and, in the case of the property description, sufficient to identify the real property. If one or more designees are specified on the notice of commencement, or building permit if no notice of commencement, service on the listed designee or designees shall be deemed to be service on all owners, including those who have not separately listed a designee. If one or more owners are specified on the notice of commencement, or building permit if no notice of commencement, service on the listed owners shall be deemed to be service on all owners, including those not listed.

§ 305. Amendment of Affidavit for Construction Lien.

(a) During the period allowed for recording an original affidavit for construction lien, the person who recorded an original affidavit for construction lien may amend an original affidavit for construction lien or a previously filed amended affidavit for construction lien by filing an amended affidavit for construction lien. The amended affidavit for construction lien shall (1) identify by its filing number the original affidavit for construction lien and any amended affidavit for construction lien to which it relates, (2) meet the requirements of Section 304(b) and Section 304(c), (3) indicate the respects in which the affidavit for construction lien and any amended affidavit for construction lien to which the amendment relates is being amended, and (4) be filed in the office in which the original affidavit for construction lien was filed. The filing lien claimant shall cause the amended affidavit for construction lien to be served in compliance with Section 304(f).

(b) For the purpose of determining the period a construction lien arising under this Act continues into force pursuant to Section 206(c), an amendment of affidavit for construction lien that complies with Section 305(a) and which is filed during the period allowed for recording an original affidavit for construction lien shall be considered to have been filed on the date of filing of the original affidavit for construction lien.

§ 306. Recording of Discharge of Construction Lien.

(a) A construction lien provided by this Act may be discharged of record by:

(1) recording a signed statement of the lien claimant of record stating that the construction lien is released;  
or

(2) recording the original or a certified copy of a final judgment or decree of a court of competent jurisdiction so providing.

(b) The construction lien claimant of record may reduce the amount of the lien claimed in the affidavit for construction lien by recording an amendment to the affidavit for construction lien in accordance with Section 305 of this Act, and such an amendment will be considered a partial release for the purpose of this section.

(c) A statement under subsection (a)(1) or a judgment under subsection (a)(2) must refer by location in the record to the affidavit of construction lien to which it applies.

§ 307. Effect of Errors or Omissions.

Any document required or permitted to be filed by this Act that substantially satisfies the applicable requirements of this Act is effective even if it has minor errors or omissions..

## ARTICLE IV

### ENFORCEMENT OF CONSTRUCTION LIEN

#### § 401. Enforcement.

Liens under this Act shall be enforced in the following manner:

(a)(1) Where a bond or cash deposit has not been provided pursuant to § 402(c), the lien shall be enforced by writ of attachment upon an action 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 property. Any such action shall be served upon the owner or owner's designee, if any, the prime contractor, and may, within the discretion of the plaintiff, be served upon the remote contractor with whom the plaintiff is in contractual privity, but the owner, owner's designee, if any, or prime contractor shall have the right to make any remote contractor of any degree a defendant by cross-action or cross-bill as is otherwise provided by law.

(2) The clerk of the court in which the suit is brought may issue the attachment writ, without first obtaining fiat of a judge or chancellor.

(3) The clerk of the court to whom application is made, shall, before granting the attachment, require the plaintiff, the plaintiff's agent or attorney, to execute a bond with sufficient security, payable to the defendant(s) in the amount of \$1,000.00, 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(s) all costs that may be adjudged against the defendant(s), and, also, all such damages as the defendant(s) may sustain by the wrongful suing out of the attachment.

(b)(1) Where a bond or cash deposit has been posted pursuant to § 402(c), the lien shall be enforced upon an action 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 property. Any such action shall be served upon the owner or the owner's designee, if any, the prime contractor, and may, within the discretion of the plaintiff be served upon the remote contractor with whom the plaintiff is in contractual privity and the surety on such bond, but the owner, owner's designee, if any, or prime contractor shall have the right to make any remote contractor of any degree or the surety on such bond a defendant by cross-action or cross-bill as is otherwise provided by law.

(2) Where a lien is enforced pursuant to this subsection, or where after suit is commenced a bond or cash deposit is provided pursuant to § 402(c), the plaintiff shall, in case of failure to prosecute such suit with effect, pay the defendant(s) all costs that may be adjudged against the defendant(s), and, also, all such damages as the defendant(s) may sustain by the wrongful assertion of the lien.

(3) Where a lien is enforced pursuant to this subsection, or where after suit is commenced a bond or cash deposit is provided pursuant to § 402(c), the defendant shall retain all defenses to the validity of the underlying lien.

(c) Where there are several persons entitled to a construction lien given by this Act, all, or any number of them, may be joined in one action; or upon the filing by one or more of the lien claimants of an action for the benefit of all lien claimants, any other lien claimant may be joined in the action by petition, under oath; provided that a joined lien claimant shall fulfill and shall be bound by all requirements of this Act as if the lien claimant had originally filed the action.

(d) Upon the filing of any suit to enforce a construction lien, the plaintiff shall file for record in the register's office of the county an abstract of suit containing the names of the parties to such suit, a description of the real estate affected, its ownership, and a brief statement of the nature and amount of the lien sought to be fixed. The abstract of suit may be in substantially the following form:

ABSTRACT OF SUIT

Notice is hereby given of a suit filed in the \_\_\_\_\_ Court for \_\_\_\_\_ County, Tennessee, bearing Case No. \_\_\_\_\_, where \_\_\_\_\_ is the plaintiff, and \_\_\_\_\_ and \_\_\_\_\_ are the defendants.

The lawsuit is a complaint on behalf of plaintiff seeking to enforce a construction lien under the Tennessee Construction Lien Act arising out of [describe the transaction(s)].

The property concerned is described as follows:  
[Legal description of property]

Plaintiff is asserting a lien lis pendens upon the property in the amount of [state the amount claimed].

\_\_\_\_\_

Name:  
Street Address:  
City:  
State:                      Zip Code:

For a natural person:

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named person, with whom I am personally acquainted and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and official seal at \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
\_\_\_\_\_

If the person is a legal entity:

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted, and who, upon oath, acknowledged \_\_\_\_\_ self to be \_\_\_\_\_ of the \_\_\_\_\_, the within named person, a legal entity, and that he as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the legal entity by

self as

Witness my hand and seal, at office in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
\_\_\_\_\_

(e) Except as provided in §§ 402(a) and (b), suit to enforce a lien under this Act shall be filed, and application for a writ of attachment under subsection (a) shall be made, within ninety (90) days after an affidavit for construction lien is filed and served pursuant to § 304.

§ 402. Notice to Construction Lienholder to Commence Suit; Procedure: Effects: Security as Substitute for Construction Lien.

(a)(1) An owner, mortgagee, or any other person with an interest in real property upon which a construction lien has been taken, or any prime contractor or remote contractor who has provided a bond or cash deposit in the amount of the construction lien claimed in the filed affidavit for construction lien may notify the construction lienholder to commence suit on the lien, by written notice served upon the construction lienholder at one of the following addresses:

(A) At the address of the construction lienholder as shown in the affidavit for construction lien;

(B) Through the construction lienholder's agent indicated on the affidavit for construction lien; or

(C) At any later address of the construction lienholder that has been delivered in writing by the construction lienholder or the construction lienholder's agent to that owner, mortgagee, or other person with an interest in the real property.

(b) If the construction lienholder fails to commence suit upon the lien within thirty days after completion of service upon him of the notice to commence suit, or if the action is commenced but dismissed with prejudice before adjudication, the construction lien is void and the property wholly discharged from the lien. When a construction lien is void by reason of failure to commence suit within thirty days after service of the notice to commence suit, the claim upon which the construction lien was founded is not prejudiced by the failure, except for the loss of the construction lien as security for the claim.

(c)(1) Before or after suit has been commenced upon a construction lien, and whether or not a notice to commence suit has been served, a bond or a cash deposit may be provided in the amount of the claim secured by the construction lien, conditioned upon payment of any judgment and costs. A bond shall be drawn in favor of the construction lienholder and shall be executed by sufficient surety or sureties having a rating of \_\_\_\_\_ or higher by \_\_\_\_\_, or its equivalent.

(2) As of the date the bond or the cash deposit is provided, the construction lien is void and the real property is wholly discharged from the construction lien. If an action on the construction lien has been or is commenced and a bond or cash deposit has been or is provided in accordance with this section, the real property is freed from the construction lien, and the action on the construction lien shall proceed as an action on the bond or cash deposit and the sureties on the bond may be brought into the action as additional parties.

A bond is discharged and the sureties released, or a cash deposit is released, upon failure of the construction lienholder to commence suit within the time allowed pursuant to division (b) of this section, or if a suit on the security is dismissed with prejudice to the plaintiff or judgment is entered against the plaintiff, or if judgment is entered in favor of the plaintiff upon payment of the judgment with costs. The court may direct that costs and a judgment in favor of the plaintiff in a suit be paid from a cash deposit.

(d)(1) In an action to foreclose a construction lien, all lien claimants having recorded construction liens may join as plaintiffs and those who do not join as plaintiffs may be joined as defendants. A person who records a construction lien or acquires an interest in real estate after the commencement of the foreclosure proceeding may be made a defendant before judgment.

(2) The court shall determine the amount due or owing to each lien claimant and direct foreclosure of the construction liens against the real estate. Foreclosure may be by any method available for foreclosure of security interests in real estate, or otherwise, as ordered by the court.

§ 403. Notice of Intention to Claim a Construction Lien.

Parties entitled to construction liens under this Act, whose claims are not yet due and payable, may give notice of their intention to claim a construction lien and may become parties to any suit to enforce a construction lien, whether a construction lien or otherwise, or to institute such suit or proceedings themselves. Their claims shall be allowed, subject to a reduction of interest, if such claims are not due at the time of the rendition of the judgment, but no process shall issue or proceedings be had to enforce a judgment for such claim until the same matures.

§ 404. Loan Proceeds Misapplication.

(a) Any owner who procures a loan secured by mortgage or other encumbrance on certain real property, representing that the proceeds thereof are to be used for the purpose of improving such real property, and who, with intent to defraud, shall use such proceeds or any part thereof for any other purpose than to pay for work or labor performed on, or materials furnished for, this specific improvement, while, any amount for which the owner may be or become liable for such work, labor, or materials remains unpaid, or while any amount of which the owner has received notice of non-payment prescribed by this part remains unpaid, commits a Class E felony.

(b) An owner who, with intent to defraud, uses the proceeds of any loan made to that person on account of improving certain real property for any other purpose than to pay for work or labor performed on, or materials furnished by that person's order for, this specific improvement, while any amount for which such person may be or become liable for such work, labor, or materials remains unpaid shall be liable to the person making the loan for the amount of the loan proceeds misapplied and for any actual expenses incurred by the person making the loan, including attorneys' fees, if the expenses incurred are a direct result of the misapplication of the loan proceeds.

(c) For the purpose of this section, the use of the loan proceeds for any purpose other than either payment pursuant to written agreement between the parties or in accordance with the allocation of loan proceeds 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.

§ 405. Contract Payments Misapplication.

(a) Any prime contractor or remote contractor who, with intent to defraud, uses the proceeds of any payment made to that person on account of improving certain real property for any other purpose than to pay for work or labor performed on, or the materials furnished by that person's order for, this specific improvement, while any amount for which such person may be or become liable for such work, labor, or materials remains unpaid, commits a Class E felony. Notwithstanding, 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 upon the allocation of costs and profits in accordance with generally accepted accounting principles for construction projects.

(b) Any prime contractor or remote contractor who, with intent to defraud, uses the proceeds of any payment made to that person on account of improving certain real property for any other purpose than to pay for work or labor performed on, or materials furnished by that person's order for, this specific improvement, while any amount for which such person may be or become liable for such work, labor, or materials remains unpaid shall be liable to the person making the payment for the amount of the payment misapplied and for any actual expenses incurred by the person making the payment, including attorneys' fees, if the expenses incurred are a direct result of the misapplication of the payment.

(c) For the purpose of this section, the use of the contract payments 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.

§ 406. Amount Exaggeration.

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

§ 407. Intent to Defraud—Prima Facie Evidence.

The use of loan proceeds mentioned in Section 404 of this Act or contract payments mentioned in Section 405 of this Act for any purpose other than the payment of such unpaid amount shall be prima facie evidence of intent to defraud.

§ 408. Sale of Part of Premises.

If any part of the property subject to a recorded construction lien can be separated from the residue and sold without damage to the whole, and if the value thereof is sufficient to satisfy all the claims proved in the case, including court costs, the court may order a sale of that part, if it is in the best interest of all parties concerned.

§ 409. Damages for Neglect or Refusal to Release a Construction Lien.

- (a) If a lienholder fails to cause the construction lien to be released within thirty days after the day on which the amount of the construction lien has been satisfied or adjudged against him in an action thereon, the construction lienholder is liable to the owner for all damages arising therefrom, not exceeding the amount of the construction lien, and costs including reasonable attorneys' fees.
- (b) The release shall be recorded in the book required by the Tennessee Code. The fee for recording shall be the fee required for the satisfaction of a mortgage provided by the Tennessee Code.
- (c) For the purpose of this section, a construction lien shall be deemed released on the day on which the release of the lien is filed for recording in the proper office.

§ 410. Subordinated Obligations.

A construction lien claimant may agree in writing to subordinate all or part of his claim to the claim of another person whom otherwise would have equal or lower priority. In order to be binding on persons other than those parties to the subordination agreement, the subordination agreement must be recorded in the county in which the real property giving rise to the construction lien is located.

#### § 411. Indemnification Upon Discharge of Lien

(a) Upon the filing of a construction lien by a remote contractor, the owner of the real estate on which the improvement is made may make written demand upon the prime contractor to post a bond or cash deposit pursuant to § 402(c). If after ten (10) days of such written notice the prime contractor does not post a bond or cash deposit pursuant to § 402(c), the owner may in its discretion post a bond or cash deposit pursuant to § 402 or pay the lien claimant the amount required to discharge the construction lien and file an action for indemnity against the prime contractor for all amounts the owner incurred to discharge the construction lien, less any credits to which the prime contractor is entitled for the work of such lien claimant, plus in the court's discretion prejudgment interest and reasonable attorneys' fees. In any such action by the owner, the prime contractor shall not have the right to contest the amount due the owner on the grounds that the lien claimant was not entitled to the amount claimed.

(b) Upon the filing of a construction lien by a remote contractor not in privity with the prime contractor, the prime contractor or a remote contractor may make written demand upon the remote contractor with whom it is in privity of contract, and who is in the contractual chain with the lien claimant, to post a bond or cash deposit pursuant to § 402(c). If after ten (10) days of such written notice the remote contractor upon whom demand is made does not post a bond or cash deposit pursuant to § 402(c), the prime contractor or remote contractor making demand may in its discretion post a bond or cash deposit pursuant to § 402 or pay the lien claimant the amount required to discharge the construction lien and file an action for indemnity against the remote contractor upon whom demand is made for all amounts the prime contractor or remote contractor incurred to discharge the construction lien, less any credits to which the remote contractor is entitled for the work of such lien claimant, plus in the court's discretion prejudgment interest and reasonable attorney's fees. In any such action by a prime contractor or remote contractor, the remote contractor upon whom demand is made shall not have the right to contest the amount due the prime contractor or remote contractor on the grounds that the lien claimant was not entitled to the amount claimed.

ARTICLE V  
EFFECTIVE DATE, TRANSITION, AND REPEALS

§ 501. Effective Date.

This Tennessee Construction Lien Act takes effect on \_\_\_\_\_. This Act applies only to transactions entered into and events occurring on or after that date.

§ 502. Provisions for Transition.

(a) The rights, duties, and interests flowing from the performing of any work or labor or the furnishing of any material before the effective date specified in Section 501 of this Act remain valid on and after that date and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this Tennessee Construction Lien Act as though the amendment or repeal had not occurred.

(b) This Tennessee Construction Lien Act does not affect an action, case, or proceeding commenced before this Act takes effect.

§ 503. Repeals.

The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)

ARTICLE VI  
MODEL FORMS

§ 601. Model Forms for Tennessee Construction Lien Act.

- (a) The following model, “safe harbor” forms are adopted as complying with the applicable requirements of the Tennessee Construction Lien Act so long as the required information is provided and any required formalities are observed.
  
- (b) The adoption of the model, “safe harbor” forms shall not be construed to limit the format, content, or wording of alternative versions of these forms used by any person so long as such alternative versions meet the applicable statutory requirements.