

Construction Laws and Customs: Tennessee

by Timothy M. Gibbons and Logan C. Threadgill, Chambliss, Bahner & Stophel P.C., with Practical Law Real Estate

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A Q&A guide to construction projects in Tennessee. This Q&A addresses state law and custom relating to public and private construction projects, including prompt payment laws, retainage, project delivery systems, contract forms and commonly negotiated terms, warranties, and licensing requirements for construction professionals. It also addresses payment and performance bonds, including any applicable “Little Miller Act” statutes, construction statutes of limitation and repose, pleading requirements, and the enforceability of specific clauses such as liquidated damages, limitations of liability, and no-damages-for-delay. Answers to questions can be compared across a number of jurisdictions (see Construction Laws and Customs: State Q&A Tool).

Prompt Payment Acts and Retainage

1. Does your state have any statutes governing the timing of payments to contractors or subcontractors on publicly owned or financed construction projects? If so, what do those statutes require regarding:

- Payments by owners to prime contractors?
- Payments by prime contractors to subcontractors?
- Penalties for failure to comply with requirements of the statute?
- A contractor's right to stop work for failure to receive payment?

Tennessee has two different prompt pay acts:

- The Prompt Pay Act of 1985 (T.C.A. §§ 12-4-701 to 12-4-707) is a general public purchasing statute that applies to contracts by public owners for the purchase of property or services and is rarely cited in construction cases.
- The Prompt Pay Act of 1991 (PPA) (T.C.A. §§ 66-34-101 to 66-34-704) applies to all public and private construction projects in Tennessee that:

- are non-residential properties or properties designed for residential use with more than four single-family units (T.C.A. § 66-34-702); and
- cost at least \$500,000, for the PPA's provisions regarding retainage (T.C.A. § 66-34-104(h); see Question 5).

The PPA, which is more commonly used, sets up a tiered regime requiring payments in the following order:

- From owners to prime contractors.
- From prime contractors to subcontractors.
- To lower tier subcontractors and suppliers.

(T.C.A. §§ 66-34-201 to 66-34-205.)

Payments by Owners

If a prime contractor has performed under the contract, owners must make payments in full:

- According to the payment schedule in the contract.
- Within 30 days after application for payment is timely submitted.

(T.C.A. § 66-34-202(a).)

An owner may reasonably deduct from the payment any withholding or retainage:

- As specified in the contract.
- That does not exceed 5% of the contract amount.

(T.C.A. § 66-34-203.)

An owner may refuse payment for a portion of work covered by the payment application if an architect, engineer, or other agent has certified that contractor did not complete performance. Owners may not refuse payment for an application for work performed according to the contract simply because an architect, engineer, or other agent failed to review and approve the application. (T.C.A. § 66-34-202(b).)

Tennessee courts have considered whether time limits in the PPA govern over other contractual payment provisions. For example, one court has ruled that the PPA trumps at least some contract provisions allowing owners to withhold payments. (*Beacon4, LLC v. I & L Invs., LLC*, 514 S.W.3d 153, 201 (Tenn. Ct. App. 2016); see Question 5: Final Release of Retainage.)

Payment by Prime Contractors

Like owners, prime contractors must pay subcontractors according to the contracted payment schedule and within 30 days after application for payment is timely submitted (T.C.A. § 66-34-302).

Payments also:

- Are subject to any condition precedent for payment clause in the contract.
- May be made less any withholding or retainage:
 - specified in the contract between the prime contractor and subcontractor; and
 - that does not exceed 5% of the contract amount.

(T.C.A. § 66-34-303.)

Prime contractors must also pay subcontractors any pro rata share of received interest for delinquent payments under T.C.A. § 66-34-601 (T.C.A. § 66-34-302; see Penalties for Failure to Comply).

Penalties for Failure to Comply

Any delinquent payment accrues interest from the date due until the date paid. The interest rate either:

- Is specified in the contract.
- Accrues at 1.5% per month if not specified.

(T.C.A. § 66-34-601.)

A party that fails to either make payment or provide a response with adequate legal reasons for the failure to pay within ten days of receiving a notice of nonpayment is subject to a civil suit for equitable relief, including injunctive relief, and any other remedy available at law or in equity. (T.C.A. § 66-34-602(a).) A court may award attorneys' fees if a party fails to make a payment in bad faith (T.C.A. § 66-34-602(d)).

Right to Stop Work

A prime contractor or subcontractor who has not received payment for work performed must send a notice as required under T.C.A. § 66-34-602(a). If the owner or prime contractor fails to pay within ten days of receiving the notice, the prime contractor or subcontractor may stop work until:

- Payment is received.
- The notified party provides a response stating adequate legal reasons for the nonpayment.

A party may not stop work if payment is made or an adequate response to the notice is provided within ten days. (T.C.A. § 66-34-602(b).)

Tennessee courts have recognized, even before the stop-work provision in the PPA, that the failure to pay an installment of a contract price in a building or construction contract is a substantial breach of the contract, giving contractors a right to:

- Consider the contract at an end.
- Stop work.
- Recover the value of work already performed.

(*Rhea v. Marko Construction Co.*, 652 S.W.2d 332, 333 (Tenn. 1983).)

For more information, see [Prompt Payment Acts \(Private Projects\): State Comparison Chart](#) and [Prompt Payment Acts \(Public Projects\): State Comparison Chart](#).

2. Does your state have any statutes governing the timing of payments to contractors or subcontractors on privately owned construction projects? If so, what do those statutes require regarding:

- Payments by owners to prime contractors?
- Payments by prime contractors to subcontractors?
- Penalties for failure to comply with the requirements of the statute?
- A contractor's right to stop work for failure to receive payment?

Tennessee's Prompt Pay Act of 1991 (PPA) (T.C.A. §§ 66-34-101 to 66-34-704) applies to all public and private construction projects in Tennessee that both:

- Are non-residential properties or properties designed for residential use with more than four single-family units (T.C.A. § 66-34-702).
- Cost at least \$500,000, for the PPA's provisions regarding retainage (T.C.A. § 66-34-104(h), see Question 5).

The PPA sets up a tiered regime requiring payments in the following order:

- From owners to prime contractors.
- From prime contractors to subcontractors.
- To lower tier subcontractors and suppliers.

Payments by Owners

See Question 1: Payments by Owners: The PPA.

Payment by Prime Contractors

See Question 1: Payment by Prime Contractors: The PPA.

Penalties for Failure to Comply

See Question 1: Penalties for Failure to Comply: The PPA.

Right to Stop Work

See Question 1: Right to Stop Work: The PPA.

For more information, see [Prompt Payment Acts \(Private Projects\): State Comparison Chart](#) and [Prompt Payment Acts \(Public Projects\): State Comparison Chart](#).

3. If your state does not have a prompt payment act, what is the custom and practice regarding:

- Timing of payments by owners to prime contractors?
- Timing of payment by prime contractors to subcontractors?
- Payment of interest on late payments?
- A contractor's right to stop work for failure to receive a payment?

Tennessee's Prompt Pay Act of 1991 (PPA) (T.C.A. §§ 66-34-101 to 66-34-704) does not apply to:

- Residential projects with four or fewer single-family units.
- Projects costing less than \$500,000, for the purposes of requiring retainage.

What constitutes a residential project varies, for example:

- Under Tennessee's lien law, the definition includes the element that the property owner intends to reside at the property as their principal place of residence (T.C.A. § 66-11-146(a)(1)).
- Some projects of a residential nature, like multi-family projects with more than four single-family units, are considered non-residential (T.C.A. § 66-34-702).

Payments by Owners

For projects not covered by the PPA, the parties' contract governs the payment terms for that project. In general, Tennessee courts will enforce contracts as written unless specific provisions are trumped by statute.

Contracts may vary widely in their required payment dates, from as short as seven days to longer than 60 days. Normal custom and practice in Tennessee is 30-45 days, though the recent trend is toward longer payment terms.

Payment by Prime Contractors

See Payments by Owners.

Penalties

Penalties for projects not covered by the PPA are governed by the parties' contract. Courts generally enforce contracts as written unless specific

provisions are trumped by statute. Many contracts include interest provisions for late payments. In most construction payment disputes, Tennessee's provisions for pre-judgment interest apply (T.C.A. § 47-14-123).

Right to Stop Work

Tennessee courts have held that the failure to pay an installment of a contract price in a building or construction contract not covered by the PPA is a substantial breach of the contract, giving contractors a right to stop work (*Rhea v. Marko Construction Co.*, 652 S.W.2d 332, 333 (Tenn. 1983); see Question 1: Right to Stop Work).

4. If your state does not regulate the timing of payments to subcontractors, are there any statutory or common law restrictions on the flow down of payments to subcontractors, such as prohibiting “pay-if-paid” or “pay-when-paid” clauses?

Tennessee's Prompt Pay Act of 1991 (T.C.A. §§ 66-34-101 to 66-34-704) addresses timing of payments to subcontractors in detail (see Question 1). Tennessee also has common law applicable to the timing of payments.

Tennessee courts will enforce “pay-if-paid” clauses if they exhibit a clear intent to shift the risk of nonpayment to the subcontractor. Without clear and unambiguous drafting creating an express condition precedent to payment, these clauses are interpreted to require payment within a reasonable time after the prime contractor has had the opportunity to be paid by the owner. (See *Koch v. Constr. Tech., Inc.*, 924 S.W.2d 68, 70-73 (Tenn. 1996).)

5. Does your state have a statute related to withholding retainage on a publicly owned or financed construction project? If so, does the statute:

- Regulate the amount of retainage that can be withheld from a contractor or subcontractor?
- Require a partial release of or reduction in retainage at any point during the project?
- Govern when and how final retainage must be released?
- Impose any penalties for failure to comply with the statute?

Tennessee's Prompt Pay Act of 1991 (PPA) (T.C.A. §§ 66-34-101 to 66-34-704) regulates retainage on all public and private construction projects in Tennessee that both:

- Are non-residential properties or properties designed as residences with more than four single-family units (T.C.A. § 66-34-702).
- Cost at least \$500,000 (T.C.A. § 66-34-104(h)).

Amount of Retainage

All public and private construction contracts governed by the PPA and entered on or after July 1, 2007, may provide for the withholding of retainage. The amount of the retainage cannot exceed 5% of the total contract amount. (T.C.A. §§ 66-34-103(a), 66-34-203, 66-34-303.) Retainage must be deposited in a separate, interest-bearing escrow account with a third party established when any retainage is withheld (T.C.A. § 66-34-104(a)).

Public owners are exempt from damages for violations of the PPA's:

- Retainage requirements under T.C.A. § 66-34-103(a) and (b) (T.C.A. § 66-34-103(e)(4)).
- Escrow requirements under T.C.A. § 66-34-104(a) (T.C.A. § 66-34-104(g)).

It is unclear whether a public entity must still comply with the PPA's retainage and escrow requirements if not subject to liability for the failure to do so.

For more information on retainage and escrow requirements under the PPA, see Question 6: Amount of Retainage.

An owner may also reasonably withhold a payment or portion of a payment that is not considered retainage in accordance with the parties' written contract terms (T.C.A. § 66-34-203).

Similarly, a prime contractor may reasonably withhold from a subcontractor a payment or portion of a payment that is not considered retainage in accordance with the parties' written contract terms (T.C.A. § 66-34-303).

Partial Release of Retainage

A separate Tennessee statute from the PPA permits a contractor on a public project only to withdraw all or a portion of the retainage by substituting a deposit of securities in compliance with certain statutory requirements (T.C.A. § 12-4-108).

The contractor must deliver:

- Any of the following specified securities with a market value of at least the amount of retainage to be withdrawn:
 - US treasury bonds, notes, or bills;
 - Tennessee general obligation bonds;
 - certificates of deposit or similar evidence of deposits irrevocably pledged from either a state or national bank or a state or federal savings and loan with its principal office in Tennessee; or
 - a letter of credit from a state or national bank with its principal office in Tennessee.
- The required securities to either:
 - the state treasurer for construction contracts; or
 - the appropriate official named in the contract.

(T.C.A. § 12-4-108(b), (c), and (d).)

Final Release of Retainage

The PPA requires an owner to release retainage within 90 days after the owner:

- Has received a use or occupancy permit for the improvement issued by the appropriate government agency.
- Has received a certificate of substantial completion from an architect or engineer supervising the improvement.
- Begins or could have begun to use the improvement.

(T.C.A. § 66-34-204.)

The 90-day period does not apply to any sum an owner reasonably withholds under the written terms of the contract that is not considered retainage (T.C.A. § 66-34-204(3)).

Additionally, any retainage due from a prime contractor to a remote contractor or from a remote contractor to a lower-tier remote contractor must be paid within ten days of receipt of the retainages (T.C.A. § 66-34-103(b)).

Penalties

While the PPA provides damages against owners and prime contractors who fail to follow the requirements

regarding retainage and escrow, public entities are exempt from damages for violations. Exempt public entities include:

- The state of Tennessee.
- Any Tennessee state department, board, or agency.
- The University of Tennessee.
- All Tennessee counties and municipalities, and any of their departments, boards, or agencies.
- All school and education boards.
- Any other state subdivision.

(T.C.A. §§ 66-34-103(e)(4) and 66-34-104(g).)

For more information on penalties for private contracts subject to the PPA, see Question 6: Penalties.

6. Does your state have a statute related to withholding retainage on a privately owned or financed construction project? If so, does the statute:

- Regulate the amount of retainage that can be withheld from a contractor or subcontractor?
- Require a partial release of or reduction in retainage at any point during the project?
- Govern when and how final retainage must be released?
- Impose any penalties for failure to comply with the statute?

Tennessee's Prompt Pay Act of 1991 (PPA) (T.C.A. §§ 66-34-101 to 66-34-704) regulates retainage on all public and private construction projects in Tennessee that both:

- Are non-residential properties or properties designed for residential use with more than four single-family units (T.C.A. § 66-34-702).
- Cost at least \$500,000 (T.C.A. § 66-34-104(h)).

Amount of Retainage

See Question 5: Amount of Retainage.

Partial Release of Retainage

Unlike public contracts, Tennessee does not have a statute regulating partial release of retainage for non-public contracts (see Question 5: Partial Release of Retainage). Any partial release of retainage would be governed by the PPA or the parties' contract or other agreement. For more information on retainage and escrow requirements under the PPA, see Final Release of Retainage.

Final Release of Retainage

The PPA requires an owner to release retainage within 90 days after the owner:

- Has received a use or occupancy permit for the improvement issued by the appropriate government agency.
- Has received a certificate of substantial completion from an architect or engineer supervising the improvement.
- Begins or could have begun to use the improvement.

(T.C.A. § 66-34-204.)

The PPA allows for the reasonable withholding of payments or portions of a payment under the terms of the parties' written agreement (T.C.A. §§ 66-34-203 and 66-34-303). However, Tennessee courts have considered whether the PPA trumps conflicting contract provisions allowing an owner to withhold contract amounts for certain items. For example, the Tennessee Court of Appeals:

- Held that an owner violated the PPA by withholding certain sums and not paying the retainage when the owner and architect appeared to do so in bad faith. The court found the architect's claims that the withholding was for necessary corrective work was meritless, and under those circumstances the PPA trumps the claim and requires retainage to be paid (T.C.A. § 66-34-204(3); *Beacon4, LLC v. I & L Invs., LLC*, 514 S.W.3d 153, 201 (Tenn. Ct. App. 2016), rev'd on other grounds).
- Found that a contractor's withholding of a line-item sum that was not labeled as retainage was not subject to the PPA's escrow requirements despite the subcontractor's argument that the line

item was retainage under another name. The court noted that:

- the contract expressly and plainly stated that invoices were not subject to retention; and
- that the court's role is not to "make a new contract for parties who have spoken for themselves," and that it does not "rewrite contracts to include protections that are not there."

(*Vic Davis Construction, Inc. v. Lauren Eng'rs & Constructors, Inc.*, 2019 WL 1300935 at *11 (Tenn. Ct. App. 2019).)

Given the tension between the language of the PPA and case law construing it, contracting parties that withhold payments not identified as retainage should do so cautiously, and only after taking all steps required in the parties' contract in connection with the withholding.

Penalties

Owners and prime contractors are subject to the following penalties for violations of the PPA:

- A criminal misdemeanor fine of \$3,000 for withholding a retainage amount of over 5%. Each day that the offender fails to comply represents a separate violation with each fine consecutively accruing.
- A fine of \$300 per day for failing to deposit retainage in a separate escrow account, for each day during which retainage has been withheld but not deposited in escrow.

(T.C.A. §§ 66-34-103(e) and 66-34-104.)

The Tennessee Supreme Court recently clarified that a party's failure to set up and fund the separate, interest-bearing escrow account for retainage subjects the party to liability for the \$300 per day penalty for one year. That holding relied in part on a separate Tennessee statute of limitations for "penalties." However, the Tennessee legislature has since amended the PPA language from "penalty" to "damage."

Failure to timely release retainage gives the contractor a right of action against the project owner if the contractor has provided notice of the PPA violations under the Act. (T.C.A. §§ 66-34-601 and 602).

7. If your state does not regulate retainage on privately owned construction projects, what is the custom and practice regarding:

- The amount of retainage withheld from each payment requisition? Does it differ for labor or material?
- Partial or early release of retainage upon achieving any project milestone or for early completion subcontractors?
- Requirements for the final release of retainage, including hold backs for incomplete work or disputed amounts?

The Tennessee Prompt Payment Act (PPA) does not apply to residential projects with four or fewer units or commercial projects costing less than \$500,000, so contracts for those projects could likely provide for retainage exceeding 5% (see Question 5). Other requirements for early release of retainage or other holdbacks would likely be enforceable under Tennessee law.

Amount of Retainage

Contracts on projects not covered by the PPA often limit retainage to 5% to mirror the PPA limit.

Partial Retainage

Contracts in Tennessee often provide for a set percentage of retainage for the first half of the project but provide for retainage to be “frozen” at that level for the duration of the project, so the retainage is gradually reduced to one-half its original percentage.

Final Retainage

Contracts in Tennessee often provide express conditions precedent to the release of retainage. These provisions are enforceable in Tennessee.

Project Delivery Systems and Contract Forms

8. What forms of project delivery systems are most commonly used in your state? Do they differ by the nature of the construction project?

The most commonly used project delivery systems in Tennessee are:

- Design/bid/build, which is more common in smaller projects.
- Design/build.
- Construction management (either at-risk or as pure manager).
- Engineer/procure/construct (EPC).
- Public private partnerships (P3), which are limited to mass transit systems (T.C.A. §§ 54-6-101 to 54-6-121).

Many construction projects in Tennessee also utilize multiple prime contractors, where the owner contracts with multiple prime contractors for various portions of the work. These prime contractors may be hired using differing project delivery systems. However, some Tennessee courts view the prime contractors in a multi-prime project as intended third-party beneficiaries of the other prime contracts (*Moore Const. Co. v. Clarksville Dep't of Elec.*, 707 S.W.2d 1, 10 (Tenn. Ct. App. 1985)).

For more information on project delivery systems, see [Practice Note, Selecting the Right Private Project Delivery System](#).

9. Does your state have any statutes specifically related to design-build or construction management? If so, do they apply to:

- Publicly owned or financed construction projects?
- Privately owned or financed construction projects?

Tennessee does not have a statute that expressly governs design-build or construction management. However, Tennessee law specifically allows design-build contracts on public transportation construction projects (T.C.A. § 54-1-119).

10. Are industry standard forms of documents customarily used in private construction projects? If so:

- Do they vary by delivery system or type of project?
- Which forms are most widely used?

Depending on the dollar value, nature, and complexity of the project, parties in Tennessee may use an industry standard form of agreement that is modified to reflect the specific terms of the transaction or a manuscript agreement drafted specifically for that transaction.

Examples of standard industry form agreements include:

- [American Institute of Architect \(AIA\)](#) forms, which are the most commonly used forms on private projects in Tennessee. However, they are usually edited, with the level of editing more extensive as the price and scope of work increases.
- [ConsensusDocs](#) forms.
- [Engineers Joint Contract Documents Committee \(EJCDC\)](#) forms.

Many governmental entities have developed forms for public projects, and some larger owners that frequently build facilities or additions to facilities have developed their own forms. Many contractors also have their own custom form contracts.

For more information on industry form agreements, see [Practice Note, Standard Construction Industry Documents: Overview](#).

11. What terms are customarily most heavily negotiated in construction contracts? Do they vary by delivery system or type of project?

The most commonly negotiated terms in Tennessee construction contracts are:

- Risk-shifting provisions, including indemnification.
- Damages, including:
 - types of damages available;
 - calculation of damages; and
 - caps or floors on damages.
- Insurance.
- Dispute resolution.
- Scope of work, including change orders.
- Scheduling.
- Warranties.
- Conduct of work during dispute.
- Force majeure.

Licensing

12. Does your state license construction professionals? If so:

- Which construction professionals are licensed (general contractors, specialty contractors, construction managers, design professionals)?
- Which departments oversee the licensing and regulation of these construction professionals?

Tennessee requires the following construction professionals to be licensed or registered:

- Architects (T.C.A. §§ 62-2-101, 62-2-501 to 62-2-508; see Architects).
- Engineers (T.C.A. §§ 62-2-101, 62-2-401 to 62-2-406; see Engineers).
- Landscape architects (T.C.A. §§ 62-2-101, 62-2-801 to 62-2-807; see Landscape Architects).
- Land surveyors (T.C.A. §§ 62-18-1010 to 62-18-128; see Land Surveyors).
- Contractors (T.C.A. § 62-6-103; see Contractors).

Although beyond the scope of this document, interior designers also must be licensed to practice in Tennessee (T.C.A. §§ 62-2-101, 62-2-901 to 62-2-906).

Architects

An individual must be licensed to practice architecture in Tennessee (T.C.A. § 62-2-101). Tennessee law does not specifically define the practice of architecture, but under Tennessee law, a person is construed to practice (or offer to practice) architectural services if they either:

- Represent themselves to be an architect, with or without qualifying adjective, by verbal claim, sign, advertisement, letterhead, card, or in any other way.
- Imply that they are an architect through the use of some other title.

(T.C.A. § 62-2-105(c).)

The [Tennessee Board of Examiners for Architects and Engineers](#) (BEAE) oversees licensing for design professionals, including architects (T.C.A. § 62-2-106). The BEAE consists of eight members appointed by the governor (T.C.A. § 62-2-201).

Engineers

An individual must be licensed to practice engineering in Tennessee (T.C.A. § 62-2-101).

Tennessee law does not specifically define the practice of engineering, but under Tennessee law, a person is construed to practice (or offer to practice) engineering services if they either:

- Represent themselves to be an engineer, with or without qualifying adjective, by verbal claim, sign, advertisement, letterhead, card, or in any other way.
- Imply that they are an engineer through the use of some other title.

(T.C.A. § 62-2-105(c).)

The BEAE oversees licensing for design professionals, including engineers (T.C.A. § 62-2-106).

Landscape Architects

An individual must be licensed to practice landscape architecture in Tennessee (T.C.A. § 62-2-101).

Tennessee law does not specifically define the practice of landscape architecture, but under Tennessee law, a person is construed to practice (or offer to practice) landscape architectural services if they either:

- Represent themselves to be a landscape architect, with or without qualifying adjective, by verbal claim, sign, advertisement, letterhead, card, or in any other way.
- Imply that they are a landscape architect through the use of some other title.

(T.C.A. § 62-2-105(c).)

The BEAE oversees licensing for design professionals, including landscape architects (T.C.A. § 62-2-106).

Land Surveyors

An individual must be registered to practice land surveying in Tennessee (T.C.A. § 62-18-101).

The practice of land surveying means any service of work, the adequate performance of which involves applying special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth,

within underground workings, and on the beds of bodies of water for:

- The purpose of determining areas and volumes.
- Monumenting property boundaries.
- Platting and laying out lands and subdivisions of land, including the topography, drainage, alignment, and grades of streets.
- Preparing and perpetuating of maps, records, plats, field notes, records, and property descriptions that represent land surveys.

(T.C.A. § 62-18-102(3).)

The [Tennessee Board of Examiners for Land Surveyors](#) oversees registration for land surveyors.

The board consists of four members appointed by the governor. (T.C.A. §§ 62-18-103 and 62-18-104.)

Contractors

Contractors must be licensed to practice in Tennessee. A contractor includes:

- Prime contractors.
- Electrical contractors and subcontractors.
- Mechanical contractors and subcontractors.
- Plumbing contractors and subcontractors.
- Masonry contractors for projects where the masonry work exceeds \$100,000 for materials and labor.
- Roofing subcontractors where the total cost of the roofing work is \$25,000 or more.
- Construction managers for projects exceeding \$25,000.

(T.C.A. §§ 62-6-102(4)(A) and 62-6-103.)

Tennessee also requires licensure for home improvement contractors (T.C.A. §§ 62-6-501(4)(A) and 62-6-502).

The [Tennessee Board for Licensing Contractors](#) regulates and enforces the state licensing requirements for contractors.

13. What are the licensing requirements for each licensed construction professional in Question 12? Are there any continuing education requirements for those licensed construction professionals?

Architects

Licensing Requirements

An applicant for registration as an architect in Tennessee must:

- Submit an application and pay the required fee.
- Be able to speak and write in English.
- Be of good character and repute.
- Take and pass an examination acceptable to the [Tennessee Board of Examiners for Architects and Engineers \(BEAE\)](#).
- Provide evidence of either:
 - graduation from an accredited school of architecture and three years of practical experience in architectural work, with up to one year of education and experience being concurrent;
 - graduation from a nonaccredited architectural curriculum of at least four years in a BEAE-approved curriculum, with at least five years of practical experience in architectural practical training satisfactory to the BEAE, and up to one year of concurrent education and architectural work; or
 - graduation from an architecture-related curriculum of at least four years in a BEAE-approved curriculum and seven years of practical experience in architectural practical training satisfactory to the BEAE, with no more than one year of concurrent education and architectural work.

(T.C.A. §§ 62-2-106 and 62-2-501 to 62-2-507; Tenn. Comp. R. & Regs. 0120-01-.07, 0120-01-.11, and 0120-01-.15.)

Licenses expire after two years and are invalid unless renewed (T.C.A. § 62-2-307; Tenn. Comp. R. & Regs. 0120-01-.25). The fee to renew is \$140 (Tenn. Comp. R. & Regs. 0120-01-.07).

Continuing Education Requirements

To maintain a license, an architect must complete:

- For their first renewal, 12 professional development hours (PDHs) within the two years after initial registration and immediately before application for renewal.
- For every other renewal, 24 PDHs in the two years immediately before application for renewal.
- As an alternative, 12 PDHs per calendar year.

All PDHs must be in health, safety, and welfare subjects acquired in structured educational activities. (Tenn. Comp. R. & Regs. 0120-05-.02(4) and 0120-05-.04(1).)

Engineers

Licensing Requirements

An applicant for registration as an engineer in Tennessee must:

- Submit an application and pay the required fee.
- Be able to speak and write in English.
- Be of good character and repute.
- Provide references.
- Provide evidence of either:
 - graduation from an BEAE-approved engineering curriculum of four years or more, passing examinations on the fundamentals of engineering and the principles and practice of engineering, and a specific record of four or more years of progressive experience on engineering projects;
 - graduation from an BEAE-approved engineering curriculum of four years or more, a specific record of 12 years or more of progressive experience on engineering projects, and passing an examination on the principles and practice of engineering;
 - graduation from a BEAE-approved four-year curriculum leading to a baccalaureate degree, completion of BEAE-approved post-graduate coursework in engineering leading to a master's degree or higher in engineering, passing examinations on the fundamentals of engineering and the principles and practice of engineering, and a specific record of eight or more years of progressive experience on engineering projects; or
 - graduation from an ABET ETAC accredited engineering technology curriculum of four years or more, a post-graduate degree in engineering from an institution with an ABET ETAC accredited undergraduate engineering program, a specific record of eight or more years of experience on engineering projects, and passing examinations on the fundamentals of engineering and the principles and practice of engineering.

(T.C.A. §§ 62-2-301 and 62-2-401 to 62-2-405; Tenn. Comp. R. & Regs. 0120-01-.05, 0120-01-.10, and 0120-01-.14.)

Licenses expire after two years and are invalid unless renewed (T.C.A. § 62-2-307; Tenn. Comp. R. & Regs. 0120-01-.25). The fee to renew is \$140 (Tenn. Comp. R. & Regs. 0120-01-.05).

Continuing Education Requirements

To maintain a license, an engineer must complete:

- For their first renewal, 12 PDHs within the two years after initial registration and immediately before application for renewal. At least seven of the PDHs must address health, safety, and welfare issues and technical competency.
- For every other renewal, 24 PDHs in the two years immediately before application for renewal. At least 13 of the PDHs must address health, safety, and welfare issues and technical competency.
- As an alternative, 12 PDHs per calendar year. At least seven of the PDHs must address health, safety, and welfare issues and technical competency.

(Tenn. Comp. R. & Regs. 0120-05-.02(4) and 0120-05-.04(2).)

Landscape Architects

Licensing Requirements

An applicant for registration as an engineer in Tennessee must:

- Submit an application and pay the required fee.
- Be able to speak and write in English.
- Be of good character and repute.
- Take and pass the Council of Landscape Architectural Registration Boards landscape architecture registration examination.
- Have graduated from an accredited school of landscape architecture and completed three years of practical experience in landscape architectural work, where no more than one year of education and experience is concurrent.

(T.C.A. §§ 62-2-301 and 62-2-801 to 62-2-806; Tenn. Comp. R. & Regs. 0120-01-.08 and 0120-01-.12.)

Licenses expire after two years and are invalid unless renewed (T.C.A. § 62-2-307; Tenn. Comp. R. & Regs. 0120-01-.25). The fee to renew is \$140 (Tenn. Comp. R. & Regs. 0120-01-.08).

Continuing Education Requirements

To maintain a license, a landscape architect must complete:

- For their first renewal, 12 PDHs within the two years after initial registration and immediately before application for renewal. At least seven of the PDHs must address health, safety, and welfare issues and technical competency.
- For every other renewal, 24 PDHs in the two years immediately before application for renewal. At least 13 of the PDHs must address health, safety, and welfare issues and technical competency.
- As an alternative, 12 PDHs per calendar year. At least seven of the PDHs must address health, safety, and welfare issues and technical competency.

(Tenn. Comp. R. & Regs. 0120-05-.02(4) and 0120-05-.04(3).)

Land Surveyors

Licensing Requirements

An applicant for registration as a land surveyor in Tennessee must:

- Speak and write the English language.
- Be of good character and repute.
- Submit:
 - an application to the Tennessee Board of Examiners for Land Surveyors; and
 - five character references to the board, three of whom are professional land surveyor or individuals approved by the board with personal knowledge of the applicant's land surveying experience.
- Pass:
 - the Principles and Practice of Land Surveying examination; and
 - the Tennessee State Jurisdictional examination.
- Have professional land surveyor in training (PLSIT) certification.
- Satisfy one of the following requirements:
 - have a baccalaureate degree from a surveying or surveying technology curriculum of four or

more years, approved by the board and obtain a record satisfactory to the board of at least two years of progressive practical experience under a practicing professional land surveyor;

- have a baccalaureate degree from a science, engineering, or technology curriculum of four or more years related to the practice of land surveying, approved by the board, with at least 24 semester hours of board-approved coursework in the surveying sciences, and obtain a record satisfactory to the board of at least two years of progressive practical experience under a practicing professional land surveyor;
- have a baccalaureate degree from a non-surveying related curriculum of four or more years, approved by the board, with at least 36 semester hours of board-approved coursework in the surveying sciences, and obtain a record satisfactory to the board of at least two years of progressive practical experience under a practicing professional land surveyor;
- have an associate degree in surveying technology or a related science, engineering, or technical field, approved by the board, with at least 30 semester hours of board-approved coursework in the surveying sciences, and obtain a record satisfactory to the board of at least six years of progressive practical experience under a practicing professional land surveyor; or
- have a high school education diploma or a general equivalency diploma with at least 18 hours of board-approved coursework in the surveying sciences and obtain a record satisfactory to the board of at least ten years of progressive practical experience under a practicing professional land surveyor.

(T.C.A. § 62-18-109(a)(5), (b)(2).)

Certificates of registration expire on December 31 of each odd-numbered year and are invalid unless renewed (T.C.A. § 62-18-113). The fee to renew is \$280 (Tenn. Comp. R. & Regs. 0820-01-.05).

Continuing Education Requirements

To maintain registration, a land surveyor must complete 30 PDHs per biennial renewal period, including at least two PDHs from successfully completing a course or activity focused on surveying ethics and standards of practice. (Tenn. Comp. R. & Regs. 0820-05-.03.)

General Contractors

Licensing Requirements

An applicant for a contractor's license in Tennessee must:

- Submit:
 - an [application](#);
 - a letter of reference from a past client, employer, or codes administration official;
 - an affidavit stating that the applicant is not currently performing and has not offered to engage in any construction work outside of certain monetary limits;
 - an application fee; and
 - proof of the applicant's current workers' compensation coverage and general liability insurance.
- Take and pass a written examination.
- Provide a financial statement for auditing if the applicant requests licensure with certain monetary limitations.

(T.C.A. § 62-6-111.)

There are nine major construction classifications in which a contractor may apply for a license:

- Commercial building construction.
- Industrial construction.
- Heavy construction.
- Highway, railroad, and airport construction.
- Municipal and utility construction.
- Electrical construction.
- Environmental and special construction.
- Residential construction.

These major classifications are further divided into extensive specialty classifications. (T.C.A. § 62-6-112(a); Tenn. Comp. R. & Regs. 0680-01-.16 App'x A.)

Licenses expire on the last day of the 24th month after issuance. To renew, 30 days before the license expires a licensee must:

- File:

- an application;
 - a report of any personal or corporate bankruptcies or other information the board requires; and
 - proof of current workers' compensation coverage.
- Submit:
 - if the renewal application is for a monetary limitation greater than \$1.5 million, a compilation prepared by a licensed public accountant or a certified public accountant; or
 - if the renewal applicant requests a monetary limitation of \$1.5 million or less, a notarized statement that the information contained in the financial statement is true and correct.
 - Pay the required fee.

(T.C.A. § 62-6-116; Tenn. Comp. R. & Regs. 0680-01-.10.)

The board may, with cause, require an applicant to provide a financial statement that is reviewed or audited and attested to by a licensed public accountant or certified public accountant if the board has reason to believe it is in the best interest of the public safety and welfare (T.C.A. § 62-6-116(d)).

Continuing Education Requirements

Tennessee law does not require continuing education for contractor license renewal.

14. What is the best way to confirm that a construction professional is duly licensed? Are there any consequences if a construction professional is not properly licensed?

License Confirmation

The Tennessee Department of Commerce and Insurance provides a search engine on its [website](#) to verify any licenses granted in Tennessee. Searchers should keep in mind that the search is limited to a specific type of license. Recent changes to the website make it less helpful, and in some instances the website has failed to list parties that are actually licensed.

Consequences of Violation

Any person, firm, or corporation not being duly authorized who engages in business as one of the following licensed professionals may be subject to

criminal prosecution, civil penalties, administrative penalties, or all three:

- Architects (Tenn. Comp. R. & Regs. 0120-02-.09).
- Engineers (Tenn. Comp. R. & Regs. 0120-02-.09).
- Landscape architects (Tenn. Comp. R. & Regs. 0120-02-.09).
- Land surveyors (T.C.A. §§ 62-18-116 and 62-18-120).
- Interior designers (Tenn. Comp. R. & Regs. 0120-04-.11).
- Contractors (T.C.A. § 62-6-120; Tenn. Comp. R. & Regs. 0680-01-.19).

Warranties

15. Does your state recognize any implied warranties related to construction projects, whether established by statute or case law?

Tennessee recognizes the following common law implied warranties:

- Suitability of plans and specifications by an owner supplying them to a contractor. However, a contractor may not avoid liability for a defect arising due at least in part to the contractor's faulty work even if the contractor followed the owner's plans and specifications. (*Brown Bros. v. Metro. Gov't of Nashville & Davidson Cnty.*, 877 S.W.2d 745, 747 (Tenn. Ct. App. 1993).)
- Good workmanship and materials in residential construction contracts where the parties do not contract to a particular standard for the construction work. The builder and seller of new construction warrant that the structure is:
 - free from major structural defects; and
 - constructed in a manner that meets the standard of workmanlike quality at the time and place of construction.

(*Dixon v. Mountain City Const. Co.*, 632 S.W.2d 538, 541-42 (Tenn. 1982); *Johnson v. Dattilo*, 2011 WL 2739643, at *5 (Tenn. Ct. App. July 14, 2011).)

The Tennessee Uniform Commercial Code (Tennessee UCC) (T.C.A. §§ 47-1-101 to 47-9-809) provides that all goods, unless otherwise specified in the sales contract, are covered by the implied warranties of:

- Merchantability (T.C.A. § 47-2-314(1)).
- Fitness for a particular purpose (T.C.A. § 47-2-315).
- Course of dealing or usage of trade (T.C.A. § 47-2-314(3)).

In a construction setting, Tennessee courts:

- Follow the “predominant factor” test to determine whether to apply the UCC (*Audio Visual Artistry v. Tanzer*, 403 S.W.3d 789, 801-02 (Tenn. Ct. App. 2012)).
- Do not follow the “divisible rule” that segregates the portions of a hybrid contract and applies the UCC to the portion relating to the sale of goods, and common law to the portion relating to services (*Hudson v. Town & Country True Value Hardware, Inc.*, 666 S.W.2d 51, 53 (Tenn. 1984)).

16. What types of warranties are customarily included in construction contracts? What are the customary warranty periods?

Many Tennessee construction contracts warrant that the work will be performed “in a good and workmanlike manner” or similar, often ill-defined terms. Many residential contracts also include a separate warranty with a third party. In addition, while not a warranty *per se*, some residential contracts make the work subject to third-party standards, such as the Residential Construction Performance Guidelines promulgated by the National Association of Home Builders. Finally, most construction contracts provide for “pass through” of warranties from manufacturers to the owner.

Most construction contracts provide a one-year warranty. However, the one-year “correction period” contained in American Institute of Architects (AIA) contracts is widely interpreted as not setting the duration of warranties under those contracts. The AIA General Conditions includes the following language:

”Establishment of the one-year period for correction of Work...relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced

to establish the Contractor’s liability with respect to the Contractor’s obligations other than specifically to correct the Work.”

(AIA Document A201-2017, § 12.2.5.)

17. Does your state have any statutes governing warranties for new residential construction? If so:

- What building structures and systems are warranted?
- When is each warranty in effect?
- Are there any restrictions on filing claims under the warranty?

Tennessee does not have any statutes governing warranties specifically for new construction. However, Tennessee case law provides an implied warranty of good workmanship and materials for new residential structures (see Question 15).

For more information on residential construction warranties, see Quick Compare Chart, Statutory Residential Construction Warranties – Select States.

Payment and Performance Bonds

18. Does your state have a “Little Miller Act” requiring contractors to provide security in connection with performing public improvement contracts? If so:

- What are the minimum requirements to trigger the law?
- What types of security can be posted?
- Where is the security posted?

Tennessee has a Little Miller Act, which is codified in T.C.A. §§ 12-4-201 to 12-4-208.

Minimum Requirements

All contractors performing public works contracts must execute a bond with the additional obligation to pay all taxes, licenses, assessments, contributions, penalties, and interest on it. The only exception is for contracts of less than \$10,000 where the contractor

can show that it has already made the required payments. (T.C.A. § 12-4-207.) If the contract price is over \$100,000, the contractor must execute a payment bond of at least 25% of the contract price (T.C.A. § 12-4-201).

Most governmental authorities and entities in Tennessee require contractors on construction projects to provide payment and performance bonds, each in the full amount of the contract price. In addition, some Tennessee departments have separate requirements for bonds and claims on bonds. For example, T.C.A. § 54-5-119 lists the Tennessee Department of Transportation's bond requirements.

The deadlines and requirements for bonds may vary from the minimum requirements. Finally, claimants must follow the provisions of the bonds themselves, which often vary from the minimum requirements.

Security

The required bond:

- Must be written by a surety or insurance company that is:
 - listed on the US Department of the Treasury financial management service list of approved bonding companies; and
 - licensed and authorized to do business as a surety or insurer in Tennessee.
- May not be written for more than the amount approved for sureties or insurance companies by the US Department of the Treasury financial management service list.

(T.C.A. § 12-4-201(a).)

A contractor may post the following instead of a bond:

- US Treasury bonds, treasury notes, or treasury bills.
- General obligation bonds of the state of Tennessee.
- Certificates of deposit or evidence of other deposits irrevocably pledged from certain financial institutions.
- A letter of credit from a state or national bank or state or federal savings and loan association that either:

- has its principal office in Tennessee; or
- maintains one or more branches in Tennessee that are authorized to accept federally insured deposits.

- Cash.

(T.C.A. § 12-4-201(c).)

19. What is the mechanism for making a claim or filing a lawsuit against the security? Specifically:

- Are there any statutory notices for making claims against the security?
- What is the statute of limitations for making a claim against the security? For filing a lawsuit?
- Are there any other requirements associated with collection of funds against the security?

Statutory Notices

Tennessee law requires a claimant to give written notice of their claim:

- Both:
 - after they furnished the labor or materials to the public works project; and
 - within 90 days after completion of the public works project.
- By either:
 - return receipt certified mail; or
 - personal delivery.
- To either:
 - the contractor who executed the bond; or
 - the public official in charge of letting the contract.

(T.C.A. § 12-4-205.)

The claimant may also give notice to:

- The mayor of a municipality, for public works undertaken by a municipality or any of its commissions.
- The county mayor, for public works undertaken by a county or any of its commissions.

- The governor, for public works undertaken by the state or any of its commissions.

(T.C.A. § 12-4-205.)

The notice must set out:

- The nature of the claim.
- An itemized account of the material furnished or labor performed.
- The balance due.
- A description of the property improved.

(T.C.A. § 12-4-205.)

Statute of Limitations

After giving notice, the claimant must file suit to enforce the claim within 6 months after the completion of the public work or the furnishing of labor and materials (T.C.A. § 12-4-206).

Additional Requirements

There are no additional minimum statutory requirements. However, the actual statutory requirements may vary depending on which Tennessee governmental entity is involved, and the specific bond provisions may vary. Tennessee also recognizes the distinction between statutory bonds and common law bonds.

20. Do private owners generally require payment or performance bonds or other types of security? Does the security vary by project type or dollar value of the construction? What types of security can be posted?

There is variation in the use of payment and performance bonds on private construction in Tennessee. The most often given reason for not requiring bonds is the added cost, especially when the owner has long-term experience with a reputable contractor on multiple projects.

Tennessee's lien law provides that, if an owner files a payment bond in the full amount of the contract price prior to work beginning, then all liens of any "remote contractors" (those who do not

contract directly with the owner) are "disallowed" (T.C.A. § 66-11-124(c)).

Litigation Concerns

21. What are the applicable statutes of limitation for filing a lawsuit or commencing arbitration in connection with a construction project for:

- Breach of contract?
- Breach of warranty?
- Negligence resulting in bodily injury or property damage?
- Professional malpractice by a design professional?
- Latent defects in design or construction?

The following statutes of limitations apply to claims in Tennessee:

- **Breach of contract.** The statute of limitations is six years (T.C.A. § 28-3-109(3)).
- **Breach of warranty.** The statute of limitations depends on the "gravamen of the action," rather than its designation for tort or contract (*Whaley v. Perkins*, 197 S.W.3d 665, 670 (Tenn. 2006)). For example, a claim based on:
 - damages to property is likely governed by the three-year statute of limitations rather than the statute of limitations for breach of contract (*Kirby Farms Homeowners Ass'n v. Citicorp, Citibank, N.A.*, 773 S.W.2d 249, 251 (Tenn. Ct. App. 1989)); or
 - damage to property relating to design or construction defects of improvements to real property is governed by a four-year statute of limitations, which Tennessee courts have determined to be a statute of repose (T.C.A. § 28-3-202; *Etheridge ex rel. Etheridge v. YMCA of Jackson*, 391 S.W.3d 541, 547 (Tenn. Ct. App. 2012)).
- **Consumer protection.** The statute of limitations for claims arising under the Tennessee Consumer Protection Act, including misrepresentation or certain violations of Tennessee's contractor licensing law, is:

- one year after discovery of the unfair act; and
- no later than five years after the date of the transaction.

(T.C.A. § 47-18-110.)

- **Negligence resulting in bodily injury.** The statute of limitations is one year (T.C.A. § 28-3-104(a)(1) (A)). However, negligence claims resulting from design- or construction-related deficiencies to improvements to real property may be subject to the statute of repose under T.C.A. § 28-3-202 (see Question 23).
- **Negligence resulting in property damage.** The statute of limitations is three years (T.C.A. § 28-3-105). However, negligence claims resulting from design- or construction-related deficiencies to improvements to real property may be subject to the statute of repose under T.C.A. § 28-3-202 (see Question 23).
- **Professional malpractice by design professionals.** This would also likely be governed by the bodily injury and property damage statutes of limitation.
- **Latent defects in design or construction.** This gives rise to a cause of action for negligence against a builder if the defects were latent and not known or reasonably discoverable. Under Tennessee's statute of repose (see Question 23), a claimant must bring a claim for damages based on latent defects in design or construction within four years after substantial completion of the work causing the alleged defect unless:
 - the deficiency occurs during the fourth year after substantial completion, in which case the claimant must initiate the claim within one year of the date of injury and in all cases within five years of substantial completion of the work (T.C.A. § 28-3-203); or
 - the person responsible for performing the work fraudulently concealed the defect, in which case the likely limitations period would be three years from the date the plaintiff knew or reasonably should have known the cause of action existed (T.C.A. § 28-3-205(b); see *Johnson v. Craycraft*, 914 S.W.2d 506, 511 (Tenn. Ct. App. 1995)).

22. Are there any special requirements for filing a construction-related lawsuit? For example:

- Is an affidavit of merit required for filing a professional malpractice claim against a design professional?
- Must a party required to be licensed allege or attach proof of licensure?
- Are there any special requirements for lawsuits alleging damages resulting from latent design or construction defects?

Affidavit of Merit

Tennessee does not require a certificate or affidavit of merit when filing claims against design or construction professionals. However, some contract forms attempt to add an affidavit of merit requirement for these claims by contract.

Proof of Licensure

Construction professionals bringing suit in Tennessee should allege they are properly licensed. An unlicensed contractor may only recover documented expenses that can be shown by clear and convincing evidence (T.C.A. § 62-6-103(b)).

Special Requirements

Tennessee has no special requirements for lawsuits alleging latent design or construction defects. However, there are special timing and notice requirements for claims for latent construction defects (see Question 23: Notice or Conditions Precedent).

23. Does your state have a statute of repose? If so:

- What is the applicable period of limitations?
- What types of claims fall under the statute?
- Are there any special notice requirements or conditions precedent to filing a lawsuit?

Period of Repose

Tennessee has a statute of repose of four years after substantial completion of the improvement unless either:

- The injury occurred during the fourth year after substantial completion, in which case the claimant must bring the action:
 - within one year after the date the injury occurred; and
 - in any case within five years after substantial completion of the improvement.

(T.C.A. § 28-3-203.)

- The person performing or furnishing the design or construction fraudulently concealed the defect (T.C.A. § 28-3-205(b)).

(T.C.A. § 28-3-202.)

Types of Claims Allowed

The statute of repose applies to proceedings based on deficiency in the design, planning, supervision, observation of construction, or construction of an improvement to real property, including actions:

- To recover damages for the deficiency.
- For injury to property, real or personal, arising from the deficiency.
- For injury to a person or wrongful death arising from the deficiency.

(T.C.A. § 28-3-202.)

The statute of repose is not available as a defense to a person:

- In actual possession or control, as an owner, tenant, or otherwise, of an improvement when a deficiency in the improvement is the proximate cause of the injury or death on which the action is based.
- Who fraudulently concealed the cause of action.

(T.C.A. § 28-3-205.)

Notice or Conditions Precedent

In actions brought against a prime contractor, remote contractor, or design professional related to an alleged construction defect on non-residential property, a claimant must serve a written notice of claim on the contractor or professional:

- Within 15 days after discovery of the alleged defect, or by the time required in the contract.
- Before filing the action.

(T.C.A. § 66-36-103(a).)

Within ten business days after service of the notice of claim, the prime contractor, remote contractor, or design professional:

- May inspect the structure to assess each alleged construction defect. The claimant must provide the contractor or professional or its agents reasonable access to the improvement during normal working hours to:
 - inspect the improvement;
 - determine the nature and cause of each alleged defect; and
 - determine the nature and extent of any corrections, repairs, or replacements necessary to fix the defect.

- Must forward a copy of the notice of claim to each prime contractor, remote contractor, or design professional who it reasonably believes is responsible for each defect and note the specific defect for which it believes that contractor or professional is responsible. Each of these contractors or professionals must then serve a written response within ten business days noting:
 - the scope of any inspection of the improvement;
 - the inspection's findings and results;
 - a statement of whether the contractor or professional is willing to make the corrections or repairs or if it disputes the claim;
 - a description of any corrections or repairs the contractor or professional is willing to make; and
 - a timetable for the completion of the corrections or repairs.

(T.C.A. § 66-36-103(b) to (d).)

Within 30 days after service of the notice of claim, the prime contractor, remote contractor, or design professional must serve a written response to the claimant that includes one of the following:

- A written offer to fix the alleged construction defect at no cost, including:
 - a report of the scope of the inspection and its findings and results;

- a detailed description of the corrections or repairs needed to fix the defect; and
- a timetable for completion of the repairs.
- A written offer to compromise and settle the claim with monetary payment due within 30 days of acceptance of the offer.
- A written statement that the contractor or professional disputes the claim and will not remedy the defect or compromise and settle the claim.

(T.C.A. § 66-36-103(e).)

Offers to remedy or settle by payment must include a statement that the offer will be deemed accepted unless objected to in writing within 15 days after service of the written response. The word “rejected” must be printed on any rejection. (T.C.A. § 66-36-103(f), (h).)

The claimant can file an action if:

- The contractor or design professional does not timely respond to the notice of claim.
- The contractor or design professional does not perform the corrections or repairs or make the payment as agreed in an accepted settlement.

(T.C.A. § 66-36-103(g), (i).)

The written notice of claim tolls the applicable statute of limitations until the later of:

- 180 days after the prime contractor, remote contractor, or design professional receives the notice.
- 90 days after the end of the correction or repair period stated in the offer, if the claimant accepts the offer. The parties may stipulate to an extension of the repair period, which also extends the tolling period.

(T.C.A. § 66-36-103(l).)

24. Are the following contractual provisions enforceable in your state:

- Liquidated damages?
- Limitations on liability?
- No-damages-for-delay clause?
- Choice of law or forum?

Liquidated Damages

Liquidated damages provisions in construction contracts are generally enforceable in Tennessee if, at the time of contracting:

- Actual damages were indeterminable or difficult to measure.
- Whether the liquidated sum was a reasonable estimate of potential damages.

(*Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 98 (Tenn. 1999).)

Courts treat a stipulated damage amount that is unreasonable regarding the potential or estimated damages as a penalty and unenforceable as against public policy (*Guiliano*, 995 S.W.2d at 98).

Courts will not award liquidated damages to a party that contributed to or mutually caused the delay or breach (*Airline Const. Inc. v. Barr*, 807 S.W.2d 247, 262 (Tenn. Ct. App. 1990)).

Limitations of Liability

Limitation of liability provisions are generally enforceable unless they violate public policy. A limitation or liability provision that limits the liability of a person furnishing labor, materials, or services in an agreement for the design, planning, supervision, observation of construction, repair, or construction of an improvement to real property to a reasonable monetary amount is not against Tennessee public policy (T.C.A. § 66-34-704). Examples of limitations that would violate public policy include:

- A provision in a construction contract that purports to indemnify or hold harmless a party for liability caused by or resulting from its own, its agents' or employees', or an indemnitee's sole negligence (T.C.A. § 62-6-123).
- Limitation provisions where a party attempts to relieve itself from liability for intentional, fraudulent, or grossly negligent conduct (*Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885, 893 (Tenn. 2002)).

Some Tennessee courts have indicated that limitations of liability by licensed professionals may violate public policy (*Houghland v. Security Alarms & Services, Inc.*, 755 S.W.2d 769, 773 (Tenn. 1988)).

T.C.A. § 66-34-704 creates a tension with prior case precedents. Tennessee courts have not yet resolved

this tension, so practitioners should approach limitations of liability with caution, especially because this statute expressly requires that the limitations be reasonable (T.C.A. § 66-34-704).

For more information, see [Construction Anti-Indemnity Statutes: State Comparison Chart](#).

No-Damages-for-Delay Clause

Tennessee courts enforce no-damages-for-delay clauses unless the contractor can demonstrate that the delay:

- Was of a type not contemplated by the parties.
- Amounted to an abandonment of the contract.
- Was caused by either:
 - bad faith; or
 - active interference.

(*Brown Bros. v. Metro. Gov't of Nashville & Davidson Cnty.*, 877 S.W.2d 745, 749 (Tenn. Ct. App. 1993).)

Choice of Law or Forum

A provision in a contract, subcontract, or purchase order for the improvement of real property in Tennessee is void if it:

- Makes the contract, subcontract, or purchase order subject to the substantive laws of another state.
- Mandates that the exclusive forum for any litigation, arbitration, or other dispute resolution process is in another state.

(T.C.A. § 66-11-208(a).)

If the real property is located partially in Tennessee and partially in another state or states, venue for the dispute can be in any state where part of the property is located (T.C.A. § 66-11-208(b)).

For more information, see [Choice of Law and Forum Selection in Construction Contracts: State Comparison Chart](#).

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