

CONSTRUCTION LAW ALERT

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Recent Amendments to Tennessee Construction Laws

November 19, 2010

The Tennessee Legislature recently made several amendments to laws affecting owners, contractors and subcontractors involved on construction projects in Tennessee, including amendments to the Mechanics' and Materialmen's Lien Law, the Prompt Pay Act, and the Contractor Licensing Act. These amendments, all of which went into effect on July 1, 2010 (except for one that becomes effective on January 1, 2011), are summarized below.

No Lien on Residential Real Property by Unlicensed Contractors

Effective July 1, 2010, the Tennessee General Assembly added Section 66-11-150 to the Mechanics' and Materialmen's Lien Law, which provides that no lien shall be available on residential real property to any person or entity that performs residential construction, including home improvement, if that person or entity is not licensed as required under the Contractor's Licensing Act of 1994, Tenn. Code Ann. §§ 62-6-101, *et seq.*

New Penalty for Failure to Escrow Retainage

Tennessee's Prompt Pay Act requires that all retainage withheld on contracts where the amount of the prime contract is \$500,000 or more, be deposited in a separate, interest bearing, escrow account with a third party. Compliance with this requirement is mandatory and may not be waived by contract. Violation of this requirement was already a Class A misdemeanor, subject to a fine of \$3,000 per day. The Tennessee General Assembly now has added a new provision to Section 66-34-104 that makes "the party withholding the retained funds" responsible for paying "the owner of the retained funds" an additional \$300 per day for each day that such funds are not deposited into an escrow account.

New Licensing Requirement for Masonry Contractors

Tennessee law previously required only prime contractors and electrical, mechanical and plumbing contractors and subcontractors on contracts of \$25,000 or more to be licensed. Effective January 1, 2011, masonry contractors performing work on projects where the total cost of the masonry work exceeds \$100,000, materials and labor, also must be licensed. Further, although Tennessee practices reciprocity with certain states as to contractor licensing requirements, an amendment to Section 62-6-111 will eliminate reciprocity with regard to masonry contractors that meet the \$100,000 threshold mentioned above.

New Provision Regarding Required Disclosure for Masonry Contractors

Effective July 1, 2010, Tennessee's bidding laws now require that the name, license number, expiration date and license classification for proposed masonry contractors appear on the outside of all bid envelopes where the masonry portion of the project being bid exceeds \$100,000. This requirement previously applied only to bidders on prime, electrical, plumbing, HVAC and vertical closed loop geothermal heating and cooling contracts of \$25,000 or more.

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