

## **Tennessee Board for Licensing Contractors Laws of Interest to Consumers**

These portions of the “**Contractors License Laws**” have been compiled as a list to help inform a consumer of the statutes which may be beneficial when considering taking legal action; however, you would actually need to consult with an attorney to provide an accurate interpretation and case law (*our Board does not handle individual civil cases*). This is only an abbreviated list and you may review the full contents, as well as updates of the law at: <http://www.michie.com/tennessee/> or, you may utilize the link from our website at: <http://www.tn.gov/commerce/boards/contractors/law.shtml>

In addition, you may be interested in the “**Rules and Regulations**” promulgated to these laws by the Board and these are available from the Secretary of State’s publications at: <http://www.state.tn.us/sos/rules/0680/0680.htm> The following excerpts focus on the contractor’s statutes and you may want to look into other areas and departments for their laws.

For your information, whenever a consumer reports a complaint, it is processed by the Legal Section before it is presented to the Board for Licensing Contractors to consider disciplinary action. Before doing so, our Legal Section must have evidence of proven violations of the license law, under Title 62, part 6; this is the only jurisdiction of the Board. Without documentation as part of the complaint, our legal section cannot prosecute for violations in a formal hearing with the Board and an Administrative Law Judge. The “Uniform Administrative Procedures Act” must be followed to ensure fair and due process. Therefore, it is imperative (*and appreciative*) for the consumer to provide as much evidence as possible, as well as effectively communicate all your concerns. More information relative to the complaint reporting process is available on our “Consumer Resources” link of the website and also describes the mediation available with the Division of Consumer Affairs

### **Contractors License Law** (*projects over \$25,000*)

#### **T.C.A §62-6-102(3)(A)(i)**

“Contractor means any person or entity who undertakes, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, development, improvement, or any other construction undertaking for which the total cost of the same is \$25,000 or more.”

- *This law primarily defines the requirement of a license. In this excerpt, a contractor without a license, who is performing work as defined would be considered in violation of the law for unlicensed activity. Licenses are granted to the entity providing the financial statement and the law and rule requires the contractor to “contract” in the name as licensed. If a contractor owns more than one business, they are required to get a license for each business subsidiary or only contract in the legal entity.*
- *Contracts cannot be split into phases to circumvent the law; therefore, a contractor cannot charge \$24,999 to perform the framing; then charge \$24,999 to flooring, etc. Other laws are provided in later parts of this summary, where a home improvement*

license is required for remodeling when the cost is \$3,000 to \$24,999, and only applies to nine(9) counties. An electrician and plumber are required to be licensed in most counties, regardless of the cost. In counties without codes inspections, an electrician would need the State's "Limited Licensed Electrician (LLE)"; and a plumber would need the State's "Limited Licensed Plumbing (LLP)" license. There is not a state HVAC license for projects less than \$25,000, unless in a county where they've adopted the home improvement law. More information is available regarding the new statewide code inspections by the Division of Fire Prevention (Fire Marshal) at: <http://www.tn.gov/commerce/sfm/homebuilding/index.shtml>

This law may identify a violation if the total project was in excess of \$25,000 for the following:

1. *Unlicensed Contractor – not licensed or properly licensed*
  - *Properly Licensed - considered as not having one of the following:*
    - *License Classification (BC-A or BC needed to build house)*
    - *Monetary Limit (cannot contract more than 10% over limit)*
    - *Contracted in a Name other than as licensed*

You may check the license information at the "License Search" and click onto the "Details" for the classification and monetary limit, from our website or the direct link for all licenses at: <http://verify.tn.gov/> The system is very sensitive and you may want to review the search tips on our website at: <http://www.tn.gov/commerce/boards/contractors/documents/LicenseRosterSearchTips.pdf>

### **T.C.A §62-6-102 (5) - Prime vs Subcontractor**

"Prime contractor" is one who contracts directly with the owner; subcontractor contracts with the licensed contractor.

- *This alleviates the issue of defining someone as a "subcontractor" when working for the homeowner. A subcontractor is someone who contracts directly with the prime (general) contractor who holds a license; most "subcontractors" are exempt from the license law, unless they perform electrical, mechanical, HVAC or plumbing; or in the case where masonry is over \$100,000.*

### **T.C.A. §62-6-103(5)(b) Recovery of Expenses by Unlicensed Contractor**

An unlicensed contractor may not be entitled to the contract price; may be permitted in a court to recover only actual documented expenses, upon showing clear and convincing proof.

- *This law is often used whenever the consumer learns the contractor is not licensed. If they are required to be licensed by law, they would only be limited to actual documented expenses and not the full contract price charged. Case law also includes where if a contractor lets his license expire and does not renew, could also be submit to the same. This is often referred to as QUANTUM MERUI, "as much as deserves" when a person employs another to perform work implies a promise from the employer to the workman for services; being unlicensed limits to only documented expenses.*

**T.C.A. §62-6-118. Revocation or suspension of license — Reissuance — Civil penalty. —(a) (1)** Whenever any person, firm or corporation claims to have been damaged or injured by the gross negligence, incompetency, fraud, dishonest dealing and/or misconduct in the practice of contracting on the part of any person, firm or corporation licensed hereunder, files suit upon such claim in any of the courts of record

in this state, and recovers judgment thereon, such court may, as a part of its decree or judgment in such case, revoke the certificate of license under which such contractor is operating at the time of the aforementioned wrongdoing.

**(e)** Notwithstanding the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, relative to the amount of civil penalties that may be imposed, the board may impose a civil penalty not to exceed five thousand dollars (\$5,000) per offense against any person or firm who violates the terms and conditions of an existing license to engage in contracting or against any person or firm who engages in unlicensed contracting.

**(f)** The board shall, in all cases before hearing any charges against a contractor, furnish a written copy of the charges against the accused, including notice of the time and place where the charges will be heard, and give reasonable opportunity for the accused to be present and offer any evidence the accused may wish. The accused shall have the waivable right to an attorney if so desired.

**(h)** The board may refuse to issue or renew a license to any person, firm or corporation for lack of financial stability, lack of expertise, submission of false evidence with regard to application of license or renewal, conviction of a felony, and any other conduct which constitutes improper, fraudulent or dishonest dealing, or violation of the statute.

- *This law in “(a)(1)” shows if a consumer files suit in court, as part of the decree or judgment, it may also include revocation of their license; the court has more authority than the Board. (Anytime a consumer files a suit against a contractor, our office would appreciate being notified of any judgment, as this helps to protect future consumers.)*
- *The Board may in a hearing of charges (formal hearing), assess civil penalties, revoke or suspend a license for: gross negligence, incompetency, fraud, dishonest dealing and/or misconduct. Until the respondent has been given this hearing, the Board cannot hold the license renewal. Therefore, we cannot prevent a licensed contractor from working during this process, as we would be in violation and denying the right to due process. This can often be a frustration to everyone due to the lengthy time it takes to conduct a hearing, which is similar to court and overseen by an administrative law judge.*
- *On unlicensed contracting, the Board may deny a license according to “(h)”, however, § 62-6-120 limits holding a license for issuance for six (6) months for unlicensed violation.*
- *The Board cannot provide restitution, award monetary judgments, or make the contractor repair the problem. They may only take discipline against the contractor and this is a lengthy process. Details of an open legal case cannot be released to the public until the case is closed. When a consumer files a complaint which has law violations, the complaint is processed through the legal section and becomes a legal product which remains confidential until the case is closed. If the legal section needs further documentation, they may subpoena or request the consumer to provide testimony.*
- *Our Board does offer consumer mediation through another process called CHAMP (Contractors/Homeowners Accountability Mediation Program) with the Division of Consumer Affairs. Contractors who fail to respond to a complaint are listed on a “Problem Contractor List”. These are for typically workmanship issues where it is not considered a law violation, and offers a means to communicate. It is only voluntarily, so all parties have to agree to the mediation and require compromises by everyone.*

**T.C.A. §62-6-119 Bid documents — Required disclosures by bidders. —**

**(b)** Any person or entity involved in the preparation of the invitation to bid or comparable bid documents shall direct that the name, license number, expiration date thereof, and license classification of the contractors applying to bid for the prime contract

and for the electrical, plumbing, heating, ventilation, and air conditioning contracts, appear on the outside of the envelope containing the bid except when the bid is in an amount less than twenty-five thousand dollars (\$25,000); TDEC geothermal license; and masonry (when in excess of \$100,000). Many violations occur when submitting bids.

- *This law is typically a violation on “commercial” projects. It requires contractors to list their license information, such as name, license number, expiration date and classification, on the outside of the bid envelope. Failure to do so is a violation, and the bid should be rejected*

### **T.C.A. §62-6-120 Penalties**

**(2)** Any person, firm or corporation who engages or offers to engage in contracting without a license as required by § 62-6-103 is ineligible to receive such license until six (6) months after a determination by the board that a violation has occurred. Additionally, no such person, firm or corporation shall be awarded any contract for the project upon which it engaged in contracting without a license or permitted to participate in any rebidding of such project. **(b)** Any person, firm or corporation who accepts a bid in excess of twenty-five thousand dollars (\$25,000) from a contractor who is not licensed, with appropriate classifications and sufficient monetary limitations, or in the case of a limited licensed electrician where the amount is less than twenty-five thousand dollars (\$25,000), in accordance with the provisions of this chapter, commits a Class A misdemeanor.

- *Any contractor, who contracts without being properly licensed, commits a Class A misdemeanor. In addition, the contractor cannot be awarded the project, participate in any rebidding of the project, and ineligible to receive a license for six (6) months after the violation. This law is often used whenever a contractor found to be working unlicensed, agrees to comply with the license law and fulfills the requirements. This law prevents the Board from holding the license indefinitely. Therefore, before the Board could refuse a license, they would have to rely and prove § 62-6-118.*

## **Liens**

### **62-6-128. Availability of liens. —**

Notwithstanding any provision of title 66 chapter 11, or any other provision of the law to the contrary, the provisions of title 66 chapter 11, shall not be available on single family residential construction to any person, firm or corporation who performs residential construction, and who is required to be licensed as a contractor pursuant to the provisions of this chapter, and fails to have a valid license when acting as a contractor.

- *You would need to contact an attorney to address these issues. See also § 66-11-146(b)(1)(A); and 66-11-150, as it pertains to 62-6-501(4) in the Home Improvement law, as follows:*

### **66-11-150. Prohibited liens. —**

Notwithstanding any law in this chapter or any other law to the contrary, no lien, otherwise authorized pursuant to this chapter, shall be available on residential real property, as that term is defined by § [66-11-146](#)(b)(1)(A), to any person, firm or corporation that performs residential construction, including home improvement as defined by § [62-6-501](#)(4), if: **(1)** The person, firm or corporation is not licensed pursuant

to title 62, chapter 6; and (2) The jurisdiction in which the work is performed requires such person, firm or corporation to be licensed in accordance with such chapter.

### **Contractor Required to obtain Permit**

#### **62-6-137. Registration with the department of codes administration or other appropriate department - Posting of permit bonds.**

(a) It shall be the duty of every person who makes contracts for the construction, erection, alteration, repair, removal or demolition of any building or structure or part thereof; or repair or replacement of any damage to a building or structure caused by insects or natural disasters; or to erect or construct any sign, billboard or similar structure, or to construct any public or private swimming pool; or to do or perform any work for which a permit is required, and every such person, making such contracts or subletting such contracts, or any part thereof, to register with the department of codes administration or other appropriate departments and to post a permit bond in the amount set forth in this section.

### **Consumer Protection Act – Violations**

The following are a few of the “Consumer Protection Act” violations in the contractor’s licensing law. Damages and judgments must be filed against the contractor in a court of law and you would need to obtain an attorney to take civil action.

#### **T.C.A. §62-6-133 Acts Prohibited by Residential Contractor**

(a) For each violation of §62-6-133 by a residential contractor, the board is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) after notice and an opportunity for a hearing. Such penalty shall be in addition to any other penalty authorized pursuant to this part. A residential contractor cannot have a controlling interest in the lender providing a mortgage loan for home improvement or act as a co-signer. Doing so shall be construed as an unfair or deceptive act or practice, which is a violation of the Tennessee Consumer Protection Act, title 47, chapter 18, and part 1.

(b) In addition to the civil penalty authorized pursuant to subsection (a), a violation of §62-6-133 shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1, and as such the private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.

#### **T.C.A. 62-6-136. Unlawful representation as a licensed contractor or acting as a contractor — Penalties — Liability. —(a)**

It is unlawful for any person, firm or corporation to represent itself as a licensed contractor, or to act in the capacity of a “contractor” as defined in §§ 62-6-102(3)(A), 62-6-102(5) or 62-37-103(5), and related rules and regulations of the state of Tennessee, or any similar statutes, rules and regulations of another state, while not licensed, unless such person, firm or corporation has been duly licensed under §62-6-103 or § 62-6-501 (*home improvement; formerly 62-37-104*).

(b) In addition to the penalties set out in §§62-6-120, 62-37-114 (*now under 62-6-517 – 519 home improvement*), a violation of this section shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1, and as such the private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.

(c) An individual who violates this section and would, but for the provisions of this section, have limited liability as owner of an entity having limited liability protection, including, but not limited to, a corporation, is personally liable for such individual's own representations, acts or omissions to the same extent as if that individual rendered such representations, acts or omissions as an individual.

**T.C.A. § 62-6-133 Acts Prohibited by Residential Contractor**

A residential contractor cannot have a controlling interest in the lender providing a mortgage loan for home improvement or act as a co-signer. Doing so shall be construed as an unfair or deceptive act or practice, which is a violation of the Tennessee Consumer Protection Act, title 47, chapter 18, and part 1.

**T.C.A. § 62-6-201. Citations for violations. — (a) (1)** The director of the board, acting on behalf of the board, is authorized to issue citations against persons acting in the capacity of or engaging in the business of a contractor without a license in violation of § 62-6-103.

(c) The sanctions authorized pursuant to this part shall be in addition to any other remedies, civil and criminal, available to any person harmed by a violation of this chapter.

- *The Director may issue citations for unlicensed activity, which is also an order to cease and desist, in the amount of \$50.00 to \$1,000.00; home improvement is up to \$250. After a citation is issued for unlicensed activity, upon payment, the case is typically closed.*
- *If the contractor refuses to pay, appeals the director's citation or does not respond, the unpaid citation is opened as a complaint case for the Board to take action. The Board may authorize a consent order (plea bargain) or a formal hearing pursuant to § 62-6-118. The Board at the formal hearing may impose higher penalties; up to \$5,000 per violation, for each day the contractor worked in violation. In addition, if they are found guilty of the charges, they may also be responsible for the hearing costs (travel, fees for administrative law judge, fees for investigation, legal and attorney fees; usually in excess of \$3,000.) These civil penalties may be turned over to a collection agency or local district attorney.*

**T.C.A. § 62-6-205. Contested case hearing. —**

After all administrative appeals have been exhausted, the director may apply to the appropriate court for a judgment in an amount of the civil penalty, plus applicable court costs, and for an order to cease activities in violation of § 62-6-103. The motion for the order, which shall include a certified copy of the final order of the hearing officer or administrative judge, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

**Home Improvement** (projects less than \$25,000 in certain counties)

**T.C.A. §62-6-501 to 521** (formerly §62-37-101 to §62-37-139) governs the Home Improvement license requirements for residential remodeling projects which range from \$3,000 to less than \$25,000. This law has been adopted by only nine (9) counties: Bradley, Davidson, Hamilton, Haywood, Knox, Marion, Robertson, Rutherford and Shelby. You may want to encourage your county to adopt this law as a means to further protect your community by requiring all contractors to be licensed, bonded and insured. Please see information on our website which outlines how a county may adopt this requirement.

*This statute outlines specific duties of the home improvement contractor, such as, required contract language*

**T.C.A. 62-6-501. (5) Definition of Home Improvement:**

(A) "Home improvement" means the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to any land or building, or that portion thereof which is used or designed to be used as a residence or dwelling unit for one (1), two (2), three (3), or four (4) dwelling units, and includes the construction, replacement, or improvement of driveways, swimming pools, porches, garages, landscaping, fences, fall-out shelters, roofing, painting and other improvements to structures or upon land which is adjacent to a dwelling house for one (1), two (2), three (3), or four (4) dwelling units. Without regard to the extent of affixation, "home improvement" includes the installation of central heating or air-conditioning systems, storm windows or awnings;

*This law may identify a violation if the total project was in excess of \$3,000 for the following:*

1. *Unlicensed Home Improvement Contractor*
  - *Does not have a Home Improvement or Contractor's license to operate and required to be licensed in the county*
  - *Advertised as licensed*
  - *Misrepresentation – Represented to the consumer as being a licensed contractor*
  
2. *Licensed Home Improvement Contractor*
  - *Contract - Did not provide a written contract; not in format required by law in 62-6-508;*
  - *Advertised as licensed and did not include license ID number in ad*
  - *Required more than 1/3 down payment before starting work*
  - *\*Abandonment – Did not complete work*
  - *Providing the financing/loan*
  - *Contracting in a name other than as licensed*
  - *Did not obtain local permits and inspections*

\*Abandonment – See new law from Public Chapter 1055 where the local District Attorney's office may prosecute for felony theft, at:  
<http://state.tn.us/sos/acts/106/pub/pc1055.pdf>

**T.C.A. § 62-6-502.**

(a) No person may engage in or transact any home improvement business, or represent such person to the public as doing home improvement business, or offer to transact any home improvement business in this state, except in compliance with the applicable provisions of this part. No such person, whether subject to licensing by any law or otherwise, may engage in this state in any trade practice or other act which is prohibited by any provisions of this part; and every person who willfully participates in a prohibited act or violation with knowledge of the same is subject to the criminal penalty therefore. The provisions of this part may not be waived by agreement.

**T.C.A. § 62-6-508.**

(a) Every home improvement contract shall:

(1) Be in legible writing and contain the complete agreement between the owner and the home improvement contractor;

(2) State the full names and addresses of all parties, the license number of the home improvement contractor, the date work to be done and the goods to be used;

(3) Be completed in full without any blank spaces to be filled in after the contract is signed by the owner and clearly describe any other documents which are to be incorporated, and shall contain the following notice directly above the space provided for the signature of the owner:

“NOTICE TO OWNER: Do not sign this contract if blank. You are entitled to a copy of the contract at the time you sign”;

(4) Contain the approximate dates when the work will begin and be substantially completed;

(5) Contain the agreed upon consideration for the work;

(6) Contain a notice that all home improvement contractors must be licensed by the board and that any inquiries about a contractor should be transmitted to the board's office;

(7) Contain all other matters upon which the parties lawfully agree; and

(8) Not contain any power of attorney to confess judgment.

(b) No sales person, agent or employee of the home improvement contractor shall be authorized to make any changes in the agreement on behalf of the owner.

(c) Contracts which fail to comply with the requirements of this section shall not be invalid solely because of noncompliance.

**T.C.A. § 62-6-509.**

(a) The board may refuse to issue or renew, or suspend or revoke a license hereunder if it finds that the applicant or licensee:

(1) Has made a material omission or misrepresentation of fact on an application for a license;

(2) Has failed to furnish information to the board concerning an application for a license as required by this part;

(3) Lacks competence to engage in the home improvement business, as evidenced by work performed in a poor and unworkmanlike manner, or when the work involved is inadequate or incomplete;

**62-6-510. The following acts are prohibited:**

(1) Abandonment or willful failure to perform, without justification, any home improvement contract or project engaged in or undertaken by a contractor; or willful

deviation from or disregard of plans or specifications in any material respect without the consent of the owners;

(2) Making any substantial misrepresentation in the procurement of a home improvement contract, or making any false promise of character likely to influence, persuade or induce;

(3) Any fraud in the execution of, or in the material alteration of, any contract, mortgage, promissory note or other document incident to a home improvement transaction;

(4) Preparing or accepting any mortgage, promissory note, or other evidence of indebtedness upon the obligations of a home improvement transaction with knowledge that it recites a greater monetary obligation than the agreed consideration for the home improvement work;

(5) Willful or deliberate disregard and violation of the building, sanitary and health laws of this state or of any political subdivision thereof, or of the safety, labor, or workers' compensation insurance laws of this state.

(6) Misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;

(7) Failure to notify the board of any change of control in ownership, management or business name or location;

(8) Conducting a home improvement business in any name other than the one in which the contractor is licensed;

(9) Advertising in any manner that a licensee is licensed pursuant to this part unless the advertisement includes an accurate reference to the appropriate current license number consisting of and limited to a form as prescribed by the board;

(10) Failure to comply with any order, demand or requirement lawfully made by the board pursuant to and within the authority of this part;

(11) The demand for or the receipt of any payments prior to the signing of a home improvement contract;

(12) Receipt at or before the time of execution of a contract of a deposit of more than one third (1/3) of the contract price, unless:

(A) The home improvement contract allows for the home improvement contractor to furnish a performance and payment bond, lien and completion bond, or bond equivalent covering full performance and completion of the home improvement contract and the bond is furnished by the home improvement contractor; provided, that the amount of the bond or bond equivalent is not less than one percent (1%) of the net sales of the home improvement contractor's home improvement business with respect to the home improvement labor to be determined on an annual basis at January 1 of each year; or  
(B) After being fully advised by contractor in writing of the right to withhold final payment up to one hundred percent (100%) of payment before completion of the project, the owner elects to make final payment to the home improvement contractor for the project before completion for such owner's convenience or the parties agree on a schedule of payments to be made before, during and after completion of the project;

(13) Failure to obtain the necessary permits as required by any local jurisdiction; (14) Making false or deceptive representations in any advertisement or solicitation for services or products that such services or products have sponsorship, approval, affiliation or connection with a bank, savings and loan association, savings bank or subsidiary or affiliate thereof;

(15) Using the name or logo of any bank, savings and loan association, savings bank or subsidiary or affiliate thereof, without the express written consent of the person whose name is used; and

(16) (A)(i) Having a controlling ownership interest in the lender providing a mortgage loan for home improvement for the work being performed by the home improvement

contractor; (ii) Accepting anything of value for the referral of a borrower to the lender; or (iii) Being a cosigner or acting as a guarantor for a mortgage loan for home improvement. (B) As used in this subdivision (16), "mortgage loan for home improvement" shall have the same meaning as defined in § 45-13-123(c).

**T.C.A. § 62-6-511.** Any person who accepts or receives a completion certificate or other evidence that performance of a home improvement contract is complete or satisfactorily concluded, with knowledge that such document is false and that the performance is not completed, or who utters, offers or uses such document in connection with the making or accepting of any assignment or negotiation of the right to receive any payment from the owner, under or in connection with a home improvement contract, or for the purpose of obtaining or granting any credit or loan on the security of the right to receive any payment, as aforementioned, knowing or having good reason to know such document to be false, commits a Class A misdemeanor.

### **Unlicensed Activity**

**T.C.A. § 62-6-512.** Any person who owns, operates, conducts a home improvement business or procures a home improvement contract without a license pursuant to this part, or who violates any of the provisions of this part, or having had such license suspended or revoked continues to engage in such business, commits a Class A misdemeanor. Each violation is deemed a separate offense.

### **T.C.A. § 62-6-518.**

(a) The board is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) per violation for a violation of § 62-6-510(3), (4) or (14) after notice and an opportunity for a hearing. Such penalty shall be in addition to any other penalty authorized pursuant to this part. (b) In addition to the civil penalty authorized pursuant to subsection (a), a violation of § 62-6-510(3), (4) or (14) shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, and as such the private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation(section 110); advertising requirements (Rule 0765-1-.04); proof of financial responsibility in the amount of \$10,000, such as a bond (Rule 0765-2-01); and proof of workers' compensation insurance coverage (section 108).

### **Rules and Regulations**

#### **0680-01-.22 EXEMPTION.**

Any person, business or church that owns property and constructs single residences or buildings for their individual use shall not need a contractor's license. Individual use shall mean use by persons other than the general public.

- *This rule goes with T.C.A. § 62-6-103 (3), allowing a homeowner to build one house every two years, for themselves and not for sale, lease or rent. Further, a business or church may build structures as long as they are not open to the public, such as a storage building. This does not apply when hiring someone to perform the work; anyone hired would be considered a prime contractor when offering to engage directly with the owner and required to be licensed.*

### **Rule 0680-1-.19 Civil Penalties**

The Board may assess civil penalties from \$50.00 to \$5,000 per violation of statutes, rules, or orders. T.C.A. § 62-6-134, violation of the Consumer Protection Act, authorizes a civil penalty up to \$25,000.

### **Rule 0680-01-.21 CITATION PENALTIES.**

(1) The Executive Director of the Board for Licensing Contractors may issue citations against persons acting in the capacity of or engaging in the business of a contractor without a license in violation of T.C.A. § 62-6-103.

*This rule goes with T.C.A. § 62-6-201.*

### **0680-01-.25 CONTRACTING IN CORRECT NAME.**

Upon receiving certificate of licensure from this Board, the licensee has an affirmative responsibility to enter into contracts and operate its related contracting business under the name in which it is licensed in order to notify and prevent confusion on the part of the public at large of an entity's licensure status. Contracting in a name different than that in which an entity is licensed by this Board is considered a violation of this chapter, and will be subject to discipline accordingly.

### **Implied Warranty**

This law is not part of the Contractor's licensing law; however, may apply when a written one year warranty is not provided. (You would need to check with an attorney for case law.) The Tennessee Supreme Court ruled in the case of Dixon vs Mountain City, that all new homes are covered an "implied warranty of good workmanship and materials"..

### **47-2-314. Implied warranty — Merchantability — Usage of trade. —**

(1) Unless excluded or modified (§ 47-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

- (a) pass without objection in the trade under the contract description; and
- (b) in the case of fungible goods, are of fair average quality within the description; and
- (c) are fit for the ordinary purposes for which such goods are used; and
- (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
- (e) are adequately contained, packaged, and labeled as the agreement may require; and
- (f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (§ 47-2-316) other implied warranties may arise from course of dealing or usage of trade.

## **Bonds and Insurance**

**Insurance** - Effective July 1, 2007, contractors and home improvement contractor licensees are required to obtain proof of general liability insurance. The workers' compensation insurance is required by contractors with one or more employees. The owner of the licensed entity, not the employees (unless family members), may apply for an exemption by registering with the Secretary of State's office as a "Construction Services Provider". The Department of Labor and Workforce has a verification site to check on workers' compensation at:

<http://www.state.tn.us/labor-wfd/wcomp.html>

You may check the Workers' Compensation Exemption Registry at:

<http://tnbear.tn.gov/wc/>

**Bond** – A \$10,000 financial responsibility in the form of a surety, property or cash bond is required for **home improvement** licensees and is on file in our office. These are in place for the consumer wronged by a licensee and awarded a judgment. You may request a copy of the bond by submitting a request in writing. In addition, many local government permitting offices require bonding for each individual project and you may check with their office to see if a bond is required.

**Guaranty Agreement** – Contractor's are not required to obtain a bond to obtain a license, however, they are required to submit a financial statement to prove financial solvency. In some cases, the Board requires contractors to provide a "Guaranty Agreement" to personally indemnify their licensed financial statement. While the financial statement is confidential, a copy of the Guaranty Agreement may be obtained from our office.

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*For more information, review our website's consumer and valuable resources links at:*  
<http://www.tn.gov/commerce/boards/contractors/index.shtml>

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