

CONSTRUCTION RETAINAGE - TN STATUTE

The statutes references in Tennessee are as follows:

TCA 66-34-103 provides for the withholding of retainage of 5% and that it must be paid out within 90 days of completion or substantial completion. This statute also provides that it is a Class A Misdemeanor subject to a fine of \$3000 not to pay retainage as provided for in the statute.

TCA 66-34-602 provides for attorneys' fees if the owner acts in bad faith in now paying general contractor.

The big penalty one with \$300/day is:

TCA 66-34-104 (Cited it below) is only applicable to projects of over \$500,000 with retainage withheld.

- (a) Whenever, in any contract for the improvement of real property, a certain amount or percentage of the contract price is retained, that retained amount must be deposited in a separate, interest-bearing, escrow account with a third party which must be established upon the withholding of any retainage.
- (b) As of the time of the withholding of the retained funds, the funds become the sole and separate property of the prime contractor or remote contractor to whom they are owed, subject to the rights of the person withholding the retainage in the event the prime contractor or remote contractor otherwise entitled to the funds defaults on or does not complete its contract.
- (c) If the party withholding the retained funds fails to deposit the funds into an escrow account as provided in this section, then the party shall pay the owner of the retained funds an additional three hundred dollars (\$300) per day as damages, not as a penalty, for each and every day that the retained funds are not deposited into an escrow account. Damages accrue from the date retained funds were first withheld and continue to accrue until placed into a separate, interest-bearing escrow account or otherwise paid.
- (d) The party with the responsibility for depositing the retained amount in a separate, interest-bearing escrow account with a third party has the affirmative duty to provide written notice that the party has complied with this section to any prime contractor upon withholding the amount of retained funds from each and every application for payment, including:
 - (1) Identification of the name of the financial institution with which the escrow account has been established;
 - (2) Account number; and

(3) Amount of retained funds that are deposited in the escrow account with the third party.

- (e)** Upon satisfactory completion of the contract, to be evidenced by a written release by the owner, prime contractor, or remote contractor owing the retainage, all funds accumulated in the escrow account together with all interest on the account must be paid immediately to the prime contractor or remote contractor to whom the funds and interest are owed.
- (f)** If the owner, prime contractor, or remote contractor, as applicable, fails or refuses to execute the release provided for in subsection (e), then the prime contractor or remote contractor, as applicable, may seek equitable relief, including injunctive relief, as provided in § 66-34-602, against the owner, prime contractor, or remote contractor. Relief may not be sought against the person holding the retainage as an escrow agent, and that person bears no liability for the nonpayment of the retainage; however, a court may issue an order to the person holding retainage to pay any sums held in trust pursuant to § 66-34-205. The person paying the sums pursuant to a court order bears no liability to the owner, prime contractor, or remote contractor for the payment. All other claims, demands, disputes, controversies, and differences that may arise between the owner, prime contractor, or prime contractors, and remote contractors may be, upon written agreement of all parties concerned, settled by arbitration conducted pursuant to the Uniform Arbitration Act, compiled in title 29, chapter 5, part 3, or the Federal Arbitration Act (9 U.S.C. § 1 et seq.), as may be applicable.
- (g)** Subsections (c), (d), and (j) do not apply to the state and any department, board, or agency thereof, including the University of Tennessee; counties and municipalities, and all departments, boards, or agencies thereof, including all school and education boards; and any other subdivision of the state.
- (h)** This section applies to all prime contracts and all subcontracts thereunder for the improvement of real property when the contract amount of the prime contract is five hundred thousand dollars (\$500,000) or greater, notwithstanding the amount of the subcontracts.
- (i)** Compliance with this section is mandatory, and shall not be waived by contract.
- (j)** Failure to deposit the retained funds into an escrow account as provided in this section, within seven (7) days of receipt of written notice regarding the failure, is a Class A misdemeanor.