

**Tennessee Law Course
Property Law**

I. Concurrent Ownership in Tennessee

Tennessee law recognizes three (3) forms of concurrent ownership: tenancy by the entirety; joint tenancy with right of survivorship; and tenancy in common. As discussed below, although common law joint tenancy has been abolished in Tennessee, a joint tenancy may still be created as a matter of contract.

A. Tenancy by Entirety

1. While the tenancy in common and joint tenancy with right of survivorship are available in most jurisdictions, tenancy by entirety is recognized in about half of the states. See Joseph William Singer, *Property* (Aspen Student Treatise Series, 5th Edition), page 360.

2. Ownership as Tenancy by Entirety is only available to married couples. Under Tennessee law, a married couple can own property (both real and personal property) as tenants by the entirety. See *Bryant v. Bryant*, 522 S.W.3d 392, 400 (Tenn. 2017) (citing *Griffin v. Prince*, 632 S.W.2d 532, 534-35 (Tenn. 1982); Tenn. Code Ann. §§ 36-3-505, 31-1-108).

3. A conveyance (in which the 5 unities exist – interest, title, time, possession, and person) to a married couple results in tenancy by the entireties, unless the instrument expressly states that the married couple take ownership by a different form. See *Bryant v. Bryant*, 522 S.W.3d 392, 400 (Tenn. 2017)

4. Characteristics of the Tenancy by Entirety

a) Tenancy by the entirety is based on the concept that those who are married are not separate persons; rather, they "are but one person." *Tindell v. Tindell*, 37 S.W. 1105, 1106 (Tenn. Ct. App. 1896) (quoting *Den v. Hardenbergh*, 10 N.J.L. 42, 45 (1828)); see *Taul v. Campbell*, 15 Tenn. (7 Yer.) 319, 333, 15 Tenn. 318 (1835) (noting that a husband and wife "take but one estate, as a corporation would take, being by the common law deemed but one person").

b) Co-tenants in a tenancy by the entirety do not hold their interest by moieties (by parts), they hold by the entirety: "Each is not seised of an undivided moiety, but both are . . . seised of the whole. They are seised, not *per my et per tout* [by the half and by the whole], but solely and simply *per tout* [by the whole]." *Tindell*, 37 S.W. at 1106 (quoting *Den*, 10 N.J.L. at 45).

c) Accordingly, "When property is held in a tenancy by the entirety, upon the death of one spouse, the survivor continues to own the whole in fee simple," *Bryant* at 400, and the laws of descent and distribution do not apply. *Grahl v. Davis*, 971 S.W.2d 373, 378 (Tenn. 1998) (citing *Sloan v. Jones*, 192 Tenn. 400, 241 S.W.2d 506, 509 (Tenn. 1951)).

d) Because spouses in a tenancy by the entirety are treated as one person, when the property is real estate, a spouse in such a tenancy cannot sever it

unilaterally by transferring a portion of the property without the assent of the other spouse – doing so would destroy the other spouse’s ownership interest in the whole. See *Bryant* 522 S.W.3d 392, 401 (citing *Tindell*, 37 S.W. at 1106). *But see* *In re Estate of Fletcher* 538 S.W.3d 444 (Tenn. 2017), which held that when funds are withdrawn from a bank account held by a married couple as tenants by the entirety, such funds cease to be entireties property.

e) This means that a deed of trust/mortgage signed by one spouse only does not create an encumbrance on the real property except as to the signer’s right of survivorship. A judgment lien does not become a lien on the real property (even when recorded as required under Tennessee law). Under Tennessee law, however, a creditor of one spouse may get a lien on the survivorship interest of such debtor -spouse. See *In re Walls*, 45 Bankr. 145 (Bankr. E.D. Tenn. 1984).

B. Joint Tenancy with Right of Survivorship

1. To create a joint tenancy with right of survivorship in Tennessee, the conveyance must include clear language that a joint tenancy with right of survivorship is intended – i.e., the conveyance should expressly state that the parties own as “joint tenants with right of survivorship.”

a) The survivorship interest which typically would arise in a joint tenancy under common law is not recognized in Tennessee. See T.C.A. 66-1-107.

b) The presence of the four (4) unities is immaterial to the question of whether a joint tenancy with right of survivorship has been created under Tennessee law.

2. The common law doctrine of severance still applies to joint tenancy with right of survivorship created by express grant.

a) In other words, in Tennessee, a party to a joint tenancy with right of survivorship (even one created expressly in the instrument) may sever the joint tenancy and eliminate the right of survivorship by unilateral action and thereby convert a joint tenancy with right of survivorship to a tenancy in common. See *Bryant v. Bryant*, 522 S.W.3d 392 (Tenn. 2017).

C. Tenancy in Common

1. Tennessee recognizes that property can be held by co-owners as tenants in common. Tenants in common are jointly seized of the whole estate, and each have an equal right of entry and possession, and each share the benefits and burdens of ownership

2. Each co-tenant in a tenancy in common may own a different undivided interest in the property (ie., tenants in common do not have to have equal share of ownership), which undivided interest is generally transferable, inheritable and devisable by such co-tenant

3. In Tennessee, “even a tenancy in common may have a right of survivorship attached to it if the grantor expresses an intention that it shall be so.” *Runions v.*

Runions, 207 S.W.2d 1016,1017 (quoting *Mitchell v. Frederick*, 166 Md. 42, 170 A. 733 (Md. 1934). See also *Rhoden v. Rhoden*, 2011 Tenn. App. LEXIS 532. *7.

4. Tennessee courts have provided little discussion about the nature and characteristics of a tenancy in common with right of survivorship, in particular there has been no discussion as to whether or not such right of survivorship attached to a tenancy in common is destructible by transfer. Courts in other jurisdictions have found that a tenancy in common with right of survivorship is the equivalent to “joint tenancy for life, with a contingent remainder in fee in the survivor,” and therefore the survivorship interest would not be destroyed by a transfer. See *Durant v. Hamrick*, 409 So.2d 731, 736-737 (Ala.) (citing caselaw from other jurisdictions as well).

II. Deeds/Conveyances in Tennessee and the Transfer Tax

A. Tennessee recognizes three (3) forms of deeds: (i) general warranty deed; (ii) special warranty deed; and (iii) quitclaim deed.

1. The general warranty deed is most common in residential transactions.

a) T.C.A. § 66-5-103(A) provides little guidance as to the specific warranties included, stating only as follows: “For a deed in fee with general warranty: “I hereby convey to A. B. the following tract of land (describing it), and I warrant the title against all persons whomsoever;” Tenn. Code Ann. § 66-5-103

b) In practice, however, most general warranty deeds in Tennessee include the typical warranties:

c) covenant of seisin,

d) power and authority to convey,

e) warranty against encumbrances,

f) covenant of general warranty, and covenant of quiet enjoyment.

2. The special warranty deed is most common in commercial transactions.

a) The statutory language creates room for disagreement among lawyers as to what warranties are common in the special warranty deed in Tennessee: “Covenants of seisin, possession, and special warranty: “I covenant that I am seized and possessed of this land, and have a right to convey it, and I warrant the title against all persons claiming under me;” Tenn. Code Ann. § 66-5-103.

b) Hornbook law would provide that the only warranty in a special or limited warranty deed is the warranty to defend “title against all persons claiming under me.” The above statute however includes the covenant of seisin, possession and right to convey, so sometimes these warranties are found in special warranty deeds in Tennessee. The more common trend in practice is probably not to include the covenant of seisin, possession and right to convey in a special warranty deed (only in the general warranty deed) but there are certainly some special warranty deeds which contain such warranties.

3. The quitclaim deed is not uncommon in Tennessee. The quitclaim deed passes only the interest of the Grantor, if any, and is in the nature of a release; it is frequently used in related party transactions where no consideration is being provided (so as to avoid the transfer tax discussed below) and it is used in some commercial transactions where no warranties are being provided and the buyer is relying solely on title insurance policy. In a quitclaim deed there are no warranties and the statutory language is as follows:

"I hereby quitclaim to A. B. all my interest in the following land" (describing it);"
Tenn. Code Ann. § 66-5-103

B. Transfer Tax

1. T.C.A. §67-4-409(a) imposes a "transfer tax" on the recording of deeds and "other instruments evidencing transfer of any interest in real estate."

2. The transfer tax is a privilege tax in the amount of \$0.37 per one hundred dollars (\$100) of the "consideration for the transfer, or the value of the property, whichever is greater."

3. "Value of the property," as used in this section, means the amount that the property transferred would command at a fair and voluntary sale, and no other value.

4. All deeds must include an affidavit of consideration (to be recordable) which will be used to determine the amount of transfer tax owed upon recording the deed or other instrument evidencing a transfer of an interest in real estate. T.C.A. §67-4-409(b)

5. There are some transfers which are exempt from payment of the transfer tax, including, when a quitclaim deed is used and "no consideration" is given for the property being transferred.

III. Deeds of Trust, Indebtedness Tax, Foreclosures and the Equity of Redemption

A. Deeds of Trust

1. Tennessee law recognizes both deeds of trust and mortgages. See T.C.A. 66-5-103. However, deeds of trust are commonly used.

2. A deed of trust involves a conveyance of the property to a Trustee to hold in trust for the benefit of the lender/beneficiary and as security for a loan to the owner of the property. The deed of trust will include a power of sale which allows (following a default) the Trustee to sell the property in a non-judicial foreclosure proceeding to pay off the debt.

3. There are a number of specific Tennessee requirements for the registration of a deed of trust (and other recordable instruments). An important registration requirement is the requirement that the following language be inserted (usually it is on the first page of the deed of trust):

“The Maximum principal indebtedness for Tennessee recording tax Purposes is \$_____.” See T.C.A. §67-4-409(b)(5)(c)(i).

4. If such language is not inserted on an instrument evidencing indebtedness, the Register of Deeds should not (and probably won't) record the document.

B. Indebtedness Tax

1. The maximum principal indebtedness language is required on the deed of trust (and uniform commercial code financing statements among other documents) because Tennessee imposes a tax on the recording of deeds of trust, financing statements, and other instruments evidencing an indebtedness.

a) The tax to be paid is equal to **“eleven and one half cents (11.5 cent(s)) on each one hundred dollars on such instrument (\$100) of the indebtedness so evidenced”** [*emphasis added*] beyond the first two thousand dollars (\$2,000) of the indebtedness.

b) For example indebtedness tax on the recording of a Deed of Trust which secures a loan of \$1,000,000 is (\$1,000,000 minus \$2,000) divided by 100 multiplied by .115, which equals \$1,147.70

c) When dealing with a transaction in which collateral for the debt is located both in and outside of the State of Tennessee, the statute contains a method to apportion the tax to be paid based on the value of collateral in the State of Tennessee to the value of all collateral both inside and outside the state of Tennessee. T.C.A. §67-4-409(b) defines what constitutes Tennessee collateral and provides the formula for determining the “Maximum Principal Indebtedness for Tennessee recording tax purposes” for multistate transactions, which is basically the amount of the debt multiplied by a fraction with the numerator being the amount of Tennessee collateral, and the denominator being the total value of all collateral.

d) While the nonpayment or underpayment of tax on an indebtedness, does not “affect or impair the effectiveness, validity, priority, or enforceability of the security interest or lien created or evidenced by the instrument” T.C.A. §67-4-409(b)(10)(A)

e) “Such nonpayment, underpayment, or failure to pay, until cured, shall result in the imposition of a tax lien, in the amount of any tax and penalties unpaid and owing under this subsection (b), in favor of the department of revenue ...” and “The holder of an indebtedness evidenced or secured by an instrument ... may not maintain an action on such indebtedness, other than an action limited to the enforcement of the holder's security interest or lien, against the debtor until such nonpayment is cured.” Tenn. Code Ann. § 67-4-409(b)(10)(B) and T.C.A. §67-4-409(b)(13)

- f) If the holder of the indebtedness fails to pay or underpays the tax imposed, the holder of the indebtedness shall be liable for a penalty, in addition to the tax, in the amount of \$250 or double the unpaid tax due, whichever is greater.
2. It is important to keep in mind that the indebtedness tax is also payable on the amount of any increase in indebtedness beyond the amount stated subsequent to the filing or recordation of the instrument. T.C.A. §67-4-409(b)(8). A subsequent filing is required to pay the tax on the increase in the indebtedness.

C. Foreclosures

1. It is useful to know a little bit about foreclosures in Tennessee. Foreclosures of a Deed of Trust in Tennessee are almost always conducted non-judicially by the Trustee named in the Deed of Trust (or an appointed substitute trustee) in accordance with T.C.A. §35-5-101 *et. seq.*
2. The non-judicial foreclosure process in Tennessee is a quick one. A foreclosure sale requires the “advertisement of the sale shall be made at least three (3) different times in some newspaper published in the county where the sale is to be made...” with “the first publication shall be at least twenty (20) days previous to the sale.”
3. The publication/notice must satisfy specific requirements set forth in the statute (including, without limitation, naming all interested parties, providing a specific property description, and naming the time and place of the sale). The notice must be sent to the debtor and co-debtor. See T.C.A. 35-5-104
4. Tennessee does not have a one-action rule. The creditor following a foreclosure sale may seek to collect any deficiency from the responsible parties. Absent a showing of fraud, collusion, misconduct, or irregularity in the sale process, the deficiency judgment shall be for the total amount of indebtedness prior to the sale plus the costs of the foreclosure and sale, less the fair market value of the property at the time of the sale. The creditor shall be entitled to a rebuttable prima facie presumption that the sale price of the property at the foreclosure is equal to the fair market value of the property at the time of the sale. T.C.A. §35-5-118(b)
5. To overcome the presumption, the debtor must prove that the property sold for an amount materially less than the fair market value of the property at the time of the sale. If debtor overcomes the presumption, the deficiency shall be the total amount of indebtedness prior to the sale plus the cost of the foreclosure and sale, less the fair market value of property at time of sale as determined by court. See T.C.A. §35-5-118(c).
6. The Trustee can execute a trustee deed to the purchaser at the foreclosure sale to transfer the property.

D. Statutory Right of Redemption (T.C.A. 66-8-101 – 66-8-106)

1. In Tennessee, real estate sold for debt shall be redeemable at any time within 2 years after such sale by paying to the purchaser ... the amount bid or paid by the purchaser, with interest thereon at the prime rate of interest, together with all other lawful charges.

2. The right of redemption does not extend to any sale under and by virtue of a power contained in any deed of trust, mortgage, or other instrument, whereby the right is waived or surrendered by such mortgage or conveyance. Tenn. Code Ann. § 66-8-103. In practice the statutory right of redemption is always waived.

3. The right of redemption can be expressly waived by the deed or mortgage; and a waiver of the “equity of redemption” or waiver using words of similar import, shall be sufficient to waive the right of redemption afforded by this statute in all deeds of trusts and mortgages. Although the language “equity of redemption” has been historically used to refer to the statutory right of redemption, a technical distinction should be understood. The true equity of redemption is the right of the Borrower/Mortgagor to pay off the secured debt up to the point of foreclosure, and thus redeem the property. The statutory right of redemption begins at foreclosure and runs for two years. The true equity of redemption may not be waived and may only be cut off by foreclosure. See Swift v. Kirby, 737 S. W. 2d 271 (Tenn. 1987).

IV. Tennessee's Mechanics' and Materialmen's Lien (T.C.A. § 66-11-101 et seq.)

A. Persons Entitled to Lien (Tenn. Code Ann. § 66-11-102)

1. There shall be a lien on any lot or tract of real property upon which an improvement has been made by a prime contractor or any remote contractor; provided, that the lienor has complied with the lien statutes. If the lienor has not fully complied with the lien statutes, no lien is established. Tenn. Code Ann. § 66-11-102(a).

2. Any contractor, subcontractor, materialman, or laborer who performs work or furnishes materials for construction of improvements on real property is entitled to a lien. However, the requirements (discussed below) differ depending on classification of lienor (prime contractor vs. remote contractor).

a) A prime contractor is in direct contractual privity with the owner.

b) A remote contractor is under contract with a party other than the owner.

B. Lien Amount

1. The lien secures the contract price. Tenn. Code Ann. § 66-11-102(a).

a) Lien amount does not include any interest, service charges, late fees, attorney fees, or other amounts to which the lienor may be entitled by contract or law that do not result in an improvement to the real property or are otherwise not permitted by this chapter. Tenn. Code Ann. § 66-11-102(e).

C. Attachment of Lien (Tenn. Code Ann. § 66-11-104)

1. Lien attaches and take effect from the time of the visible commencement of operations, excluding demolition, surveying, excavating, clearing, filling or grading,

placement of sewer or drainage lines, or other utility lines or work preparatory, erection of temporary security fencing and the delivery of materials therefor.

2. If there is a cessation of all operations at the site of the improvement for more than ninety (90) days and a subsequent visible resumption of operations, any lien for labor performed or for materials furnished after the visible resumption of operations shall attach and take effect only from the visible resumption of operations.

D. Duration of Lien

1. For prime contractors, the lien remains effective until one year after the work is completed or materials furnished, or until the final decision of any suit properly brought within that time for enforcement. Tenn. Code Ann. § 66-11-104.

a) Must file action to enforce lien within one year.

2. For remote contractors, the lien is effective for ninety (90) days from the date of service of notice in favor of the remote contractor, and until the final termination of any suit for its enforcement properly brought within that period. Tenn. Code Ann. § 66-11-115.

a) Must file action to enforce lien within 90 days.

E. Property Subject to Lien

1. Lien encumbers the improvement as well as the land upon which it is erected. Tenn. Code Ann. § 66-11-102; V. L. Nicholson Co. v. Transcon Inv. & Fin. Ltd., Inc., 595 S.W.2d 474, 484 (Tenn. 1980).

2. Only a prime contractor may assert a lien against residential property. Tenn. Code Ann. § 66-11-146.

a) When the owner of residential real property and the general contractor are one and the same person, or a person controls entities owning the property and a general contracting business, a lien or right of lien upon the property shall exist only in favor of the lienors in contractual privity with the owner or general contractor.

b) "Residential real property" (for purpose of a), above) means improvements to or on a parcel of property upon which a building is constructed or is to be constructed consisting of one (1) dwelling unit intended as the principal place of residence of a person or family; and

c) "General contractor" (for purpose of a), above) means the person responsible for the supervision or performance of substantially all of the work, labor, and the furnishing of materials in furtherance of the improvement to the property.

3. Public property and lands are not subject to mechanics' and materialmen's liens. Heglar v. McAdoo Contractors, Inc., 487 S.W.2d 312, 314 (Tenn. Ct. App. 1972)

F. Notice Requirements

1. Lien statute requires that a remote contractor provide two types of notices in a particular time frame in order to obtain a mechanics' lien: (1) Notice of Nonpayment; and (2) Notice of Lien.

2. Tenn. Code Ann. § 66-11-145 requires that a remote contractor provide a Notice of Nonpayment to the owner and prime contractor as a condition precedent to obtaining a lien. A Notice of Nonpayment stating that the subject account is unpaid must be delivered to the owner and prime contractor *within 90 days of the last day of each month* within which the remote contractor performed the work, not the date the bill goes out.

3. The Notice of Nonpayment must be specific. The Notice should include: (1) name of remote contractor and address; (2) description of work, services and/or materials provided; (3) amount owed date of notice; (4) statement of last date work performed and/or services or materials provided; and (5) description identifying the real property for which lien is claimed.

4. Tenn. Code Ann. § 66-11-115 provides that a remote contractor must provide a Notice of Lien, in writing, to the owner and prime contractor within 90 days after completion of the subject project. The Notice of Lien must contain the same information as the Notice of Nonpayment discussed above. Unlike a prime contractor, a remote contractor's lien lasts only 90 days from the date of service of notice. A remote contractor must file an action to enforce the lien within said 90-day period or the remote contractor loses its lien rights.

G. Priority

1. Lien has priority over a mortgage if the mortgagee (1) gives written notice of the mortgagor/lienholder contract by certified or registered mail before the work begins/materials furnished and (2) no written objection is tendered within 10 days after receipt of such notice. T.C.A. § 66-11-108.

a) A lien will obtain priority even over a mortgage existing prior to visible commencement of operations if lienor complies with notice requirements.

b) If notice not properly served, no priority.

2. The same rules set forth above (stated in T.C.A. § 66-11-108) operate upon all other liens. The mechanics' and materialmen's lien also obtains priority over a judgment lien if the former is fixed on the real property in good faith and without collusion. T.C.A. § 66-11-109.

H. Enforcement of Lien

1. Must file lawsuit to enforce lien. Lien serves as a placeholder.
 - a) For prime contractors, must file action to enforce lien within one year of asserting lien.
 - b) For remote contractors, must file action to enforce lien within 90 days of asserting lien.

V. Residential Property Disclosures

A. A seller of residential real estate must provide a purchaser with a disclosure statement in substantially the form provided by Tennessee statute, which disclosure statement shall identify known defects, unless the parties agree that a disclaimer statement will be provided instead. A disclaimer statement states that the purchaser will be receiving the property “as-is” with all defects that may exist, if any, except as otherwise stated in the real estate contract.

B. The owner shall not be liable for any error, inaccuracy or omission of any information in the disclosure statement if:

1. The error, inaccuracy or omission was not within the actual knowledge of the owner..., or the owner reasonably believed the information to be correct; and
2. The owner was not grossly negligent in obtaining the information from a third party and transmitting it. Tenn. Code Ann. § 66-5-204

C. The purchaser's remedies for an owner's misrepresentation on a residential property disclosure statement shall be either:

1. “An action for actual damages suffered as a result of defects existing in the property as of the date of execution of the real estate purchase contract ...;
2. termination of the contract prior to closing, subject to § 66-5-204; or
3. ... Such other remedies at law or equity otherwise available against an owner in the event of an owner's intentional or willful misrepresentation of the condition of the subject property.” Tenn. Code Ann. § 66-5-208

VI. Tennessee’s Uniform Residential Landlord and Tenant Act (T.C.A. § 66-28-101 et seq.)

A. Application: URLTA only applies to counties having a population of more than 75,000 according to 2010 federal census or any subsequent census. Governs residential lease agreements. T.C.A. § 66-28-102.

Only applies to the following counties: Anderson, Blount, Bradley, Davidson, Hamilton, Knox, Madison, Maury, Montgomery, Rutherford, Sevier, Shelby, Sullivan, Sumner, Washington, Williamson, and Wilson.

B. Rental Agreements (T.C.A. § 66-28-201 et seq.)

1. Terms, generally: Landlord and tenant may include in a rental agreement, terms and conditions not prohibited by URLTA or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of parties.
2. Landlord must tell tenants in writing that Landlord will not provide insurance for their personal property.
3. A rental agreement cannot provide that the tenant agrees to waive or forego rights or remedies under URLTA.

a) No rental agreement may provide that a tenant:

- (1) Authorize any person to confess judgment on a claim arising out of the rental agreement; or
- (2) Agrees to limitation of liability of the landlord to tenant and/or indemnify landlord for liability to tenant.

T.C.A. § 66-28-203(a).

- b) If such prohibited provision is included in the agreement, such provision is unenforceable, Landlord may be liable for actual damages. T.C.A. § 66-28-203(b).

4. Rent: Rent is payable without demand at the time and place agreed to by the parties.

- a) Cannot charge a late fee until the tenant is more than five days late in paying rent. Late fee cannot be more than 10% of the rent.
- b) If no lease agreement, tenant shall pay reasonable value for use and occupancy of dwelling unit.
- c) Notice is specifically waived upon the nonpayment of rent by the tenant only if such a waiver is provided for in a written rental agreement.
- d) If the landlord does not sign a written rental agreement, acceptance of rent without reservation by the landlord binds the parties on a month to month tenancy.

5. Security Deposit

- a) Must advise tenant in writing re: where bank security deposit is held.
- b) Must return security deposit unless written list provided to tenant itemizing damages that will be charged against the deposit.
- c) Tenant may request to mutually inspect premises re: damages. Tenant must provide written objection to the items he/she objects to on the list.
- d) Tenant has no right to inspection if tenant

- (1) vacated the premises without notice;
- (2) abandoned the premises;
- (3) been judicially removed from the premises;
- (4) not contacted the landlord after notice of right to mutual inspection;
- (5) failed to appear at arranged time; or
- (6) if no mutual inspection requested.

e) Landlord is not entitled to retain any portion of security deposit if the security deposit was not deposited in an account and a listing of damages is not provided as required by relevant provisions. T.C.A. § 66-28-301(c).

C. Landlord Obligations (T.C.A. § 66-28-301 et seq.)

1. The landlord shall:

- a) Comply with requirements of applicable building and housing codes materially affecting health and safety;
- b) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
- c) Keep all common areas of the premises in a clean and safe condition; and
- d) In multi-unit complexes of four (4) or more units, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste from common points of collection subject to § 66-28-401(3).

T.C.A. 66-28-304(a).

2. The landlord and tenant may agree in writing that the tenant perform specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

3. Landlord may enter the property at reasonable times to inspect premises, or to make repairs, or to show it to future tenants or purchasers. But must give the tenant notice before coming, unless it is an emergency.

D. Tenant Obligations (T.C.A. § 66-28-401 et seq.)

1. The tenant shall:

- a) Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- b) Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises when the tenant took possession;

- c) Dispose from the tenant's dwelling unit all ashes, rubbish, garbage, and other waste to the designated collection areas and into receptacles;
 - d) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so; and shall not engage in any illegal conduct on the premises; and
 - e) Act and require other persons on the premises, with the tenant's or other occupants' consent, to act in a manner that will not disturb the neighbors' peaceful enjoyment of the premises.
2. If the tenant creates a condition that materially affects health and safety and does not correct it after 14 days' notice from landlord, landlord may enter the property and repair the problem. Landlord may enter to repair a problem without notice, in the case of an emergency.
 3. If the tenant is gone for 30 days without paying rent and without notifying the landlord, the landlord may consider the property abandoned. T.C.A. § 66-28-405(a).

E. Failure to Supply Essential Services (T.C.A. § 66-28-502)

1. If the landlord deliberately or negligently fails to supply essential services, the tenant shall give written notice to the landlord specifying the breach and may do one (1) of the following:
 - a) Procure essential services during the period of the landlord's noncompliance and deduct their actual and reasonable costs from the rent;
 - b) Recover damages based upon the diminution in the fair rental value of the dwelling unit, provided tenant continues to occupy premises; or
 - c) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.
2. In addition to the remedy provided in subdivision (C) above, the tenant may recover the actual and reasonable value of the substitute housing and in any case based on the foregoing (A)-(C) and reasonable attorney's fees.
3. "Essential services" are defined as utility services, including gas, heat, electricity and any other obligations imposed upon the landlord which materially affect the health and safety of the tenant.
4. Tenant must give written notice to the landlord and shown that the condition was not caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent before pursuing the foregoing remedies.
5. If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting essential services as provided in the rental agreement to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover actual damages

sustained by the tenant, and punitive damages when appropriate, plus a reasonable attorney's fee. If the rental agreement is terminated under this section, the landlord shall return all prepaid rent and security deposits. T.C.A. § 66-28-504.

F. Enforcement, Termination and Remedies (T.C.A. § 66-28-501 et seq.)

1. Except as otherwise provided in URLTA, a tenant may recover damages, obtain injunctive relief and recover reasonable attorney's fees for any noncompliance by the landlord with the rental agreement or any section of this chapter upon giving fourteen (14) days' written notice. T.C.A. § 66-28-501(a).

2. If the landlord accepts rent without reservation and with knowledge of a tenant default, the landlord by such acceptance condones the default and thereby waives such landlord's right and is estopped from terminating the rental agreement as to that breach. T.C.A. § 66-28-508.

3. A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this chapter. T.C.A. § 66-28-511.

4. A landlord may terminate a rental agreement within three (3) days from the date written notice is received by the tenant if the tenant or any other person on the premises with the tenant's consent:

a) Willfully or intentionally commits a violent act;

b) Behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises; or

c) Creates a hazardous or unsanitary condition on the property that affects the health, safety or welfare or the life or property of other tenants or persons on the premises.

d) The notice required by this section shall specifically detail the violation which has been committed and shall be effective only from the date of receipt of the notice by the tenant.

e) Upon receipt of such written notice, the tenant shall be entitled to immediate access to any court of competent jurisdiction for the purpose of obtaining a temporary or permanent injunction against such termination by the landlord.

f) Nothing in this section shall be construed to allow a landlord to recover or take possession of the dwelling unit by action or otherwise including willful diminution of services to the tenant by interrupting or causing interruption of electric, gas or other essential service to the tenant except in the case of abandonment or surrender.

g) If the landlord's action in terminating the lease under this provision is willful and not in good faith, the tenant may in addition recover actual damages sustained by the tenant plus reasonable attorney's fees.

h) The failure to bring an action for or to obtain an injunction may not be used as evidence in any action to recover possession of the dwelling unit.

i) If domestic abuse, as defined in T.C.A. § 36-3-601, is the underlying offense for which a tenancy is terminated, only the perpetrator may be evicted. The landlord shall not evict the victims, minor children under eighteen (18) years of age, or innocent occupants, any of whom occupy the subject premises under a lease agreement, based solely on the domestic abuse. Even if evicted or removed from the lease, the perpetrator shall remain financially liable for all amounts due under all terms and conditions of the present lease agreement.

T.C.A. § 66-28-517.

5. Termination of periodic tenancy -- Holdover remedies (T.C.A. § 66-28-512).

a) If no written lease agreement stating otherwise, the landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten (10) days prior to the termination date specified in the notice.

b) If no written lease agreement stating otherwise, the landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days prior to the periodic rental date specified in the notice.

c) If a tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession, back rent and reasonable attorney's fees as well as any other damages provided for in the lease. If the tenant's holdover is willful and not in good faith, the landlord, in addition, may also recover actual damages sustained by the landlord, plus reasonable attorney's fees.

G. Removal of Tenant

1. Landlord not entitled to self-help when evicting a tenant. Landlord is required to file an Forcible Entry and Detainer (FED) action to regain possession of leased premises.

2. FED actions are typically filed in General Sessions Court. FED actions are not subject to the \$25,000 jurisdictional limit.

3. A judgment for possession of the property is final after 10 days. A landlord must obtain a writ of possession after the judgment becomes final in order to remove tenant's personal property from the leased premises.