

**2021 Alabama Agent Seminar**  
**Legislative and Case Law Update**

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## **I. Legislation.**

### **A. 2020 Legislation**

#### [Act No. 2020-73](#) – Relating to the Alabama Business and Nonprofit Entities Code

The act considerably revises the Alabama Business and Nonprofit Entities Code to (1) allow business corporations to elect to become benefit corporations; (2) to allow electronic filing of all entity filings; (3) to update definitions to include terms applicable to the allowance of electronic and digital transactions and transmissions of filings, notices, and data; (4) to establish certain basic standards for all filing instruments; (5) to provide a mechanism to allow the Secretary of State to reject certain filing instruments which are not accompanied by full payment; (6) to clarify the requirements of certificates of existence for entities; (7) to remove certain outdated definitions and matters; and (8) to clarify that volunteer partners, managers, members governing persons, and other members of a governing authority are considered officers of a qualifying nonprofit entity, thereby recognizing that there are nonprofit partnerships, nonprofit limited partnerships, and nonprofit limited liability companies. Effective January 1, 2021.

#### [Act No. 2020-91](#) – Constitutional Amendment relating to the Judge of Probate of Bibb County

Proposes an amendment to the Constitution of Alabama of 1901, to allow the Judge of Probate of Bibb County to exercise equity jurisdiction concurrent with that of the circuit court in cases originally filed in the Probate Court of Bibb County if the judge of probate is a member of the Alabama State Bar.

#### [Act No. 2020-96](#) – Constitutional Amendment relating to the Judge of Probate of Walker County

Proposes an amendment to the Constitution of Alabama of 1901, to allow the Judge of Probate of Walker County to exercise equity jurisdiction concurrent with that of the circuit court in cases originally filed in the Probate Court of Walker County if the judge of probate is a member of the Alabama State Bar.

#### [Act No. 2020-173](#) – Constitutional Amendment relating to the Judge of Probate of Marengo County

Proposes an amendment to the Constitution of Alabama of 1901, to allow the Judge of Probate of Marengo County to exercise equity jurisdiction concurrent with that of the circuit court in cases originally filed in the Probate Court of Marengo County if the judge of probate is a member of the Alabama State Bar.

#### [Act No. 2020-190](#) – Relating to St. Clair County recording fees

Provides for an additional fee on matters filed or recorded in the probate office; to provide for the distribution of the fee; and to provide for the creation of the St. Clair County Mental Health Advisory Board and provide for its duties and authority. Effective August 1, 2020.

## **B. 2021 Legislation**

### [Act No. 2021-114](#) – To amend and add sections relating to military land use planning

To amend Sections 11-106-3 and 11-106-4, Code of Alabama 1975, and to add Section 11-106-6 to the Code of 1 Alabama 1975, relating to military land use planning; to further define terms; to require certain reviews to be conducted for any tall structure or wind energy facility regardless of distance from a military installation; to require adequate notice to the military installation of applications to construct tall structures and wind energy facilities to ensure the military installation is able to resolve adverse impacts prior to a local government approving a tall structure or wind energy facility.

### [Act No. 2021 119](#) – Constitutional Amendment relating to the Judge of Probate of Montgomery County

Proposes an amendment to the Constitution of Alabama of 1901, to provide that the Judge of Probate of Montgomery County would be required to be an attorney licensed in this state and to authorize the Judge of Probate to exercise equity jurisdiction concurrent with that that of the circuit court in cases originally filed in the Probate Court of Montgomery County if the judge of probate is an attorney licensed to practice law in the State of Alabama.

### [Act No. 2021-159](#) - Constitutional Amendment relating to the Judge of Probate of Walker County

Proposes and amendment to the Constitution of Alabama of 1901, to provide that the judge of probate would be required to be an attorney licensed in this state.

### [Act No. 2021-175](#) – To amend sections relating to the sale of land for taxes

To authorize the sale of land for taxes to occur on the premises of or within the courthouse or courthouse annex of the county in which the land is located; to further provide for the recording of the sales; and also provide retroactive effect.

### [Act No. 2021-238](#) – To create the Alabama Qualified Dispositions in Trust Act to govern certain transfers of trust property

The act creates the Alabama Qualified Dispositions in Trust Act.

### [Act No. 2021-297](#) – Relating to municipalities; to limit the police jurisdiction to territory of the police jurisdiction of a municipality

To amend Section 11-40-10, Code of Alabama 1975, to limit the police jurisdiction of a municipality to the territory of the police jurisdiction of the municipality on the effective date of this act; to provide for the reduction or elimination by a municipality of its police jurisdiction; to limit municipal authority for the enforcement of certain ordinances in the police jurisdiction; to further provide for and limit the authority of a municipality to enforce building codes within its police jurisdiction; to amend Section 11-52-30, Code of Alabama 1975, to reduce the planning

jurisdiction of a municipality; to clarify that a municipality may only regulate subdivisions within its planning jurisdiction; and to provide for certain exemptions from subdivision regulation by a municipality in its planning jurisdiction; to amend Section 20 11-51-91, Code of Alabama 1975, to further provide for the reporting and auditing of revenue collected within the municipal police jurisdiction; and to make non-substantive technical revisions to update the existing code language to current style.

[Act No. 2021-319](#) – Relating to attestations by notaries public

Relating to attestations by notaries public; to add Section 36-20-73.1 to the Code of Alabama 1975, to authorize the use of remote notarization for acknowledgements; to ratify certain actions taken pursuant to the Emergency Management Act of 1955; to provide penalties for violations; and to provide for exemptions.

[Act No. 2021-345](#) – Relating to tax delinquent properties and Land Bank Authorities

Relating to tax delinquent properties; to amend Sections 24-9-6, 24-9-7, 24-9-8, and 24-9-10, Code of Alabama 1975; to provide that a tax delinquent property may be transferred by the Land Commissioner of the Alabama Department of Revenue to the Alabama Land Bank Authority if the property has been bid in for the state for at least three years and the state's interest in property acquired for delinquent taxes has been held for at least three years; to remove the distribution requirements for proceeds derived from the sale of property under the land bank program; to allow municipalities or counties having over 100 delinquent properties within a municipality to form a local land bank authority; and to grant additional powers to local land bank authorities.

[Act No. 2021-384](#) – Relating to the Alabama Uniform Trust Code

Relating to the Alabama Uniform Trust Code; to amend Section 19-3B-1005, Code of Alabama 1975, to further provide for reports of the existence of a potential claim for breach of trust; and to add Section 19-3B-1306 to the Code of Alabama 1975, to provide a procedure for the release of a trustee from its duties to a trust.

## **II. Decisions**

### **A. Supreme Court of Alabama**

#### **Commercial Landlord Tenant**

LNM1, LLC v. TP Properties, LLC, 296 So. 3d 792 (November 1, 2019)

Commercial tenant operating a gasoline station and convenience breached a material term of the lease agreement by not purchasing and maintaining liquor liability coverage and environmental coverage, as required under the lease agreement, and the tenant's failure to comply with the lease provision entitled the landlord to terminate the lease.

#### **Inverse Condemnation**

City of Daphne v. Fannon, 303 So. 3d 114 (December 6, 2019)

Owners of property damaged from trees which fell due to erosion during a significant rain event, that was allegedly linked to the city's installation, approximately nine years prior, of a 48-inch-diameter pipe on city-owned right-of-way adjacent to their property, brought action against city based on claim of inverse condemnation. City filed counterclaims based on allegations of negligence and trespass, which were claims related to landowners' installation, following the storm, of a 30-inch-diameter pipe on the right-of-way. Under Ala. Const. §, an inverse condemnation plaintiff must show the damage or devaluation of the property was foreseeable at the time of the alleged taking. Here it was not foreseeable or ascertainable at the time of the installation of the city's pipe that nine years later trees would fall and damage owner's property.

#### **Power of Attorney**

Dale Forbes, administrator ad litem for the Estate of Gay Nell Mize, deceased v. Platinum Mortgage, Inc., and PennyMac Loan Services, LLC, 301 So. 3d 819 (February 14, 2020)

Conservator for mortgagor brought action against mortgagee and its assignee, alleging mortgagor's power of attorney given to her husband, who executed a loan agreement and a mortgage on couple's residence based on authority of the power of attorney, was invalid and that the resulting mortgage was therefore invalid. Jefferson County Circuit Court granted defendants' summary judgment motions and estate appealed. Court in affirming trial court, held Platinum and PennyMac properly relied on the power of attorney, because they had no actual knowledge that it was anything other than a valid instrument authorizing agent to execute the loan agreement and the mortgage on behalf of principal.

## **Tax Sale Procedures**

Stiff v. Equivest Financial, LLC, \_\_\_ So 3d \_\_\_ WL 3478076 (June 26, 2020)

Tax deed holder brought action to eject property owners, who had inherited the property but were unable to pay the delinquent taxes, and to quiet title to the property. Property owners filed counterclaims for judicial redemption and for a judgment declaring the tax sale was void. Ala. Code § 40-10-15 (1975) requires tax sales shall be made in front of the door of the courthouse. During a two-day bench trial, it was discovered that the tax sale was held in a probate courtroom at the Bessemer courthouse. Because the sale was not made in substantial compliance with tax sale statute, the sale is invalid.

## **As Is Clause/Caveat Emptor**

Kidd v. Benson, \_\_\_ So. 3d \_\_\_ WL 5268496 (September 4, 2020)

Purchasers of real property in Baldwin County sued sellers after the collapse of a bluff along the Fish River that resulted in damage to a boat house on the subject property. Sellers had installed retaining walls and rip-rap to stabilize the bluff. The purchasers noticed the work and asked the sellers if it was preventative or due to a problem. The sellers responded that the work was preventative. The purchasers and sellers signed a real estate contract, which included a provision stating that the purchasers accepted the property in its “as is, where is, condition.” After closing, the purchasers began renovating the boat house and the bluff area collapsed, taking out portions of the boathouse and retaining wall. The purchasers sued sellers for negligence, wantonness and fraud, stating that the sellers had a duty to disclose the issues with the bluff as a material defect that posed a direct threat to health or safety. The Court upheld the trial court’s summary judgment in favor of the sellers and purchasers could invoke the health-or-safety exception to the doctrine of caveat emptor in an attempt to impose upon the sellers a duty to disclose.

## **B. Alabama Court of Civil Appeals**

### **Tax Sale; Redemption by Mortgagee**

U.S. Bank Trust, N.A. v. Trimble, 296 So. 3d 867 (November 1, 2019)

The trial court erred in determining the mortgagee redemption action was time-barred and entering a judgment in favor of the mortgagor as to the claims of the mortgagee. The mortgagee’s action to recover the real property from a tax sale purchaser under Ala. Code § 40-10-83 was timely when brought five years after the tax sale.

### **Tax Sale/Mense Profits; Ejectment**

Prescott v. Milne, 308 So. 3d 906 (December 13, 2019)

Taxpayer’s successor was entitled to recover mense profits from redemptioner for possession of house where tax deed had been issued to redemptionee, from the time of redemptionee’s receipt of tax deed through time the subject property was redeemed. Ala. Code § 40-10-73 (1975) applies only to the holder of a tax certificate who seeks possession of property sold for taxes and does not apply to the holder of a tax deed, redemptionee holding tax deed was not required to demand possession six months prior to filing ejectment action.

## **Condemnation; Right of Way**

Forty Three Investments, LLC v. The Water Works Board of the City of Birmingham, \_\_\_ So. 3d \_\_\_ WL 20091815 (May 1, 2020)

Lands located in an unincorporated area, was not reasonably adjacent or contiguous to a public road, and landowner applied for a private condemnation of adjacent land owned by water works board and located within city limits. Jefferson County Probate court denied landowner's application. Under Ala. Code § 18-3-1 a landowner, provided written approval is obtained from the municipal government and the planning board of such municipality, to acquire a right-of-way to nearest and most convenient public road if the land is not adjacent or contiguous to any public road, approval must be granted by the government and the planning board of the municipality in which the property that stands to be condemned is located.

## **Real Property**

Brackett v. Central Bank, \_\_\_ So. 3d \_\_\_ WL 7294527 (December 11, 2020)

Because Alabama is a title theory state, legal title to mortgaged property passes to the mortgagee, subject to the mortgagor's equitable right of redemption. Despite language in the warranty deed executed by the mortgagor in favor of the transferees under which the mortgagor warranted the real property was held in fee simple, it was not. Transferees could not invoke statutory adverse possession because their possession prior to the 2010 foreclosure was not adverse to the mortgagee.

## **Easements**

Henson v. Thomas, \_\_\_ So. 3d \_\_\_ WL 7294536 (December 11, 2020)

Along with other holdings, a perpetual easement for ingress and egress over and across an existing roadway given without condition or reference to a specific purpose, is not extinguished because the benefitted estate later gained alternative access to the parcel.