# LESSONS LEARNED: PRACTICAL TIPS FROM AN AGENT'S PERSPECTIVE

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# LESSONS LEARNED: PRACTICAL TIPS FROM AN AGENT'S PERSPECTIVE

## I. Lessons Learned From Recent Claims.

A. Execution Issues.

1. Execution by Spouse.

a. No conveyance of homestead property by a married person shall be valid without the signature of the spouse. § 35-4-29, Ala. Code (1975).

b. If the property being conveyed is not the homestead of either spouse, the document should contain language similar to the following: "The property herein conveyed does not constitute the homestead of grantor or his/her spouse."

2. Notary Acknowledgment - Must use proper form.

a. Individual Acknowledgment. §35-4-29, Ala. Code (1975).

STATE OF ALABAMA
COUNTY OF _____

I, _____, Notary Public for the State of Alabama at Large do hereby certify that _____, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____ day of _____, 2013.

_____
NOTARY PUBLIC
My commission expires:_____

b. Corporate Acknowledgment. §35-4-29, Ala. Code (1975).

STATE OF ALABAMA
COUNTY OF _____

I, _____, Notary Public for the State of Alabama at Large do hereby certify that _____, whose name as _____ (office) of the _____ _____ (Company), a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he/she as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the _____ day of _____, 2013.

_____
NOTARY PUBLIC
My commission expires:_____

c. Representative Acknowledgment. §35-4-29, Ala. Code (1975).

STATE OF ALABAMA
COUNTY OF _____

I, _____, Notary Public for the State of Alabama at Large do hereby certify that XXXX, whose name as President of ABC Corp., Inc. is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of said conveyance he/she, in his/her representative capacity as President of ABC Corp., Inc., and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____ day of _____, 2013.

_____
NOTARY PUBLIC
My commission expires:_____

d. Power of Attorney Acknowledgment. § 35-4-28, Ala. Code (1975).

STATE OF ALABAMA
COUNTY OF _____

I, _____, Notary Public for the State of Alabama at Large do hereby certify that Jane Doe whose name as Attorney-in-Fact for John Doe, is signed to the foregoing deed, and who is known to me, acknowledged before me on this day that being informed of the contents of said deed she, in her representative capacity as such Attorney-in-Fact, and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____ day of _____, 2013.

_____
NOTARY PUBLIC
My commission expires:_____

3. Claims Experience with Execution Issues.

B. Trust Account Issues.

1. Resources for Properly Maintaining Your Trust Account.

a. Trust Accounting Handbook. Issued by the Alabama State Bar. See Exhibit A.
b. ALTA Best Practices.
i. Procedures should be formalized in writing.
ii. Segregation of duties.
iii. Background and credit checks.

2. Practical Advice for Trust Accounting.

3. Claims Experience with Trust Account issues.

C. Tax Sale Issues.

1. Statutory Scheme.

a. Statutory Redemption.

i. Time Limitation. § 40-10-120, Ala. Code (1975). See Exhibit B.

(A). Real estate sold for taxes and purchased by the State may be redeemed at any time before the title passes out of the State.
(B). Real estate sold for taxes to a purchaser be redeemed without taking legal actions within three (3) years from the date of sale.

ii. Who may redeem. § 40-10-120, Ala. Code (1975).

Owner, his/her heirs, or personal representative, any mortgagee or purchaser of such lands or any person having an interest in the land, any judgment creditor.

iii. Procedure for Redemption. § 40-10-122, Ala. Code (1975). See Exhibit C. Redeemer must deposit with the Probate judge the following:

(A). Amount for which the land was sold plus interest at 12% per annum from the date of the sale;
(B). All taxes which have been paid by the purchaser, plus interest at 12% per annum;
(C). Any taxes assessed by unpaid by purchaser;
(D). Any costs and fees.

b. Judicial Redemption.

i. Time Limitation.

(A). Owner in Possession. No time limit for recovery. § 40-10-83, Ala. Code (1975). See

Exhibit D.

(B). Owner Not in Possession. The Owner's right to redeem may be barred if the tax purchaser can show that he continuously adversely possessed the property for three (3) years after he became entitled to the tax deed.[1] § 40-10-82, Ala. Code (1975).[2] See Exhibit E.

(C). Rule of Repose. If the Owner files an action to redeem more than twenty (20) years after the tax sale, his right to redeem may be barred under the Rule of Repose. Edmonson v. Colwell, 504 So.2d 235 (Ala. 1987).

ii. Who may redeem.

Owner, his/her heirs, or personal representative, any mortgagee or purchaser of such lands or any person having an interest in the land, any judgment creditor.

iii. Procedure for redemption.

(A). Owner in Possession. Owner may bring a bill to quiet title and redeem. The Owner's possession may be actual, constructive, or even "scrambling".

(B). Tax Sale purchaser in possession. Ejectment is proper.

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[1]After three (3) years from the date of the tax sale, the tax purchaser becomes entitled to demand a deed to the property from the probate judgment. § 40-10-29, Ala. Code (1975).

[2]Section 40-10-82 is often referred to as the "Short Statute of Limitations." Time does not begin to run until the purchaser is in adverse possession of the land and is entitled to demand a tax deed to the land. The tax purchaser is required to bring an ejectment action within the limitation period and prove continuous adverse possession.

2. Recent Case Law.

   a. **First United Security Bank v. McCollum, [Ms. 2110828, Nov. 30, 2012] ___ So.3d ___ (Ala.Civ.App.2012).** Mortgagee filed declaratory judgment action against county alleging that it was entitled to excess funds from tax sale. The Court of Civil Appeals held (1) excess funds are payable only to person in whose name the taxes are assessed at the time of the tax sale; and (2) in order for mortgagee to become the owner of the real property, and therefore entitled to any excess funds, the mortgagee must have foreclosed prior to the tax sale. See Exhibit F.

   b. **First Union Nat'l Bank of Florida v. Lee County Commission, 75 So.3d 105 (Ala. 2011).** Mortgagee, who redeemed property at tax sale, sought declaratory judgment action against county commissions and defaulted mortgagor seeking excess funds received by the county at the tax sale. The Supreme Court held (1) the redeeming mortgagee was not considered an owner for the purposes of receiving the excess funds; and (2) mortgagee could not claim excess funds without written agreement that mortgagee is acting as mortgagor's legal representative. See Exhibit G.

3. Overbids.

4. Pending Legislation. 2013 Alabama House Bill No. 309. To amend the rate of interest to be paid to the same rate as interest on money judgments. See Exhibit H.

5. Claims Experience with Tax Sales.

## II. Complications in Bankruptcy

1. Resolving Title Issues During Pending Bankruptcy Proceedings.

    a. Undertaking Curative Work.
    b. Working with debtors.
    c. Working with Trustees.

2. Claims Experience with Bankruptcy Issues.

## III. An Agent's Prospective of the Consumer Financial Protection Bureau ("CFPB")

A. Brief Overview.

The Consumer Financial Protection Bureau ("CFPB") was created by the Dodd-Frank Act in 2010. The stated purposes are to protect consumers, promote transparency in transactions, deter unlawful acts, and supervise and enforce the prohibition against unfair, deceptive, abusive acts and practices.

The core functions of the CFPB include supervision and enforcement of Federal consumer financial protection laws; restricting unfair, deceptive or abusive practices; taking consumer complaints; promoting financial education; and enforcing laws prohibiting discrimination and other unfair treatment in consumer finance.

B. CFPB Bulletin 2012-03. See Exhibit I.

1. Terminology.

    a. **Lenders** are included in the following:
        i. Financial Institutions
        ii. Supervised Banks and Nonbanks
        iii. Creditors
        iv. Covered Persons

v. Outsourcing entities

b. **Borrowers** are included in the following:
   i. Consumers
   ii. Customers
   iii. Debtors/obligors

c. **Title (Closing) Agents/Attorneys** are included in the following:
   i. Third Parties
   ii. Service Providers
   iii. Outsourced entities (from lenders)
   iv. Outsourcing entities (to independent notaries)

2. Expectations.

   The CFPB expects supervised banks and nonbanks (lenders) to have effective risk management procedures and processes when dealing with their "service providers" (including title/closing agents).

3. Obligations of Lenders:

   a. Conduct due diligence to verify that the service provider understands and can comply with the law;
   b. Request and review the service provider's written policies, procedures, internal controls, and written training materials to ensure proper training and oversight of employees;
   c. Convey via contract (loan closing instructions) that the lender expects compliance with the law;
   d. Establish internal controls to monitor whether the service provider is complying with the law; and
   e. Take prompt action to remedy any problems.

4. Consequences for Title/Closing Agents:

   a. The emergence of "Vetting Companies." Companies who claim to be working on behalf of the lender. It is not clear whether the financial institutions even have the authority to outsource its oversight of third party providers.
   b. Added scrutiny.

D. Increased Burden on Closing/Title Agents.

1. Compliance with Federal regulations.

    a. Knowledge and understanding of Federal laws.
    b. Staff training.

2. Ability to provide financial institution with the information necessary to complete the required due diligence:

    a. Audited financial statements, annual reports or other financial information;
    b. Proof of experience, qualifications, and ability
    c. Written policies/procedures for regulatory compliance and risk-management;
    d. Written protocols for protecting customer information;
    e. Written educational and training materials;
    f. Business reputation, including any complaints;
    g. Proof of employee training on applicable Federal laws such as:
        i. Unfair, Deceptive, and Abusive Acts and Practices ("UDAAP").
        ii. Gramm-Leach-Bliley ("GLB").
        iii. Real Estate Settlement Procedures Act ("RESPA").
        iv. U.S. False Claims Act
        v. Truth-in-Lending Act ("TILA")
    h. Explanation of span and scope of business operations;
    i. Strategies, goals, service philosophies, efficiency and employment policies;
    j. Use of other parties or subcontractors;
    k. insurance;
    l. advertising and marketing materials.

**Exhibit A**

# TRUST ACCOUNTING FOR ALABAMA ATTORNEYS

a manual prepared by the

**Practice Management Assistance Program**

a member service

of the

Alabama State Bar

# Preface

This work is a general overview designed to answer commonly asked questions. It is not exhaustive and it does not attempt to cover every situation or every rule related to attorneys' trust accounts in Alabama. Originally prepared in 1997, it is based on *Trust Accounting for Attorneys in Georgia* which was written by Terri Olson during her term as Director of the Law Practice Management Program of the State Bar of Georgia. We are grateful for her help and for the State Bar of Georgia's permission to create our own handbook based on the design of theirs.

Rule 1.15 of the Alabama Rules of Professional Conduct, pertaining to safekeeping client property, and selected ethics opinions are included to provide further guidance. If, after reading this material, you still have questions about the propriety of certain actions, please contact the Office of the General Counsel at (334) 269-1515 or (800) 354-6154 for a free, confidential, informal opinion.

If you have questions regarding the mechanics of trust account setup or bookkeeping, please contact the Practice Management Assistance Program at (334) 269-1515 or (800) 354-6154.

If you have any questions regarding the Alabama Law Foundation, please contact Tracy Daniel at (334) 269-1515 or 800-354-6154. Questions regarding the Alabama Civil Justice Foundation should be directed to Sue McInnish at (334) 263-3003.

Laura A. Calloway, Director
Practice Management Assistance Program

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# ABOUT TRUST ACCOUNTS

**What is a trust account and what types of funds are placed in one?**

A trust account is a separate bank account set up to hold ***any*** money you receive on behalf of a client or a third party in a legal matter. Examples of funds to be placed in a trust account include earnest money deposits or down payments for loan closings, settlement proceeds or damage awards that have not yet been divided between yourself and your client and distributed in personal injury or other tort cases, and advance payments for fees (sometimes called "retainers") that you have not yet earned. Attorneys in Alabama sometimes use both the terms "attorney's trust account" and "attorney's escrow account" interchangeably, but "trust" account is preferred because "escrow" has a specific meaning related to real estate practice and its use may cause the account to be confused with the accounts that can legally be set up by real estate agents and other professionals.

**Why do I have to have a trust account if I seldom hold client funds?**

Rule 1.15(a) of the Alabama Rules of Professional Conduct (ARPC) requires that a lawyer ***must*** hold property of clients or third persons that is in a lawyer's possession in connection with a legal matter ***completely separate from the lawyer's own property***. All lawyers, except those not engaged in active practice pursuant to §34-3-17 and §34-3-18, *Code of Alabama, 1975*, as amended, must maintain a separate account to hold the funds of clients pursuant to Rule 1.15(f). Under Rule 1.15(f) the only lawyers admitted to practice in Alabama who do not have to maintain a trust account are those who (a) do not have an office within the state; (b) do not ever hold funds of clients or third parties; are not engaged in the active practice of law; are judges, attorneys-general, public defenders, U.S. attorneys, district attorneys, on duty with the armed services or are employed by a local, state or federal government entity and are not otherwise engaged in the practice of law; or are corporate or in-house counsel or are law professors and are not otherwise engaged in the active practice of law.

**Does the account have to be an IOLTA account?**

Yes. With the changes to Rule 1.15 of the Alabama Rules of Professional Conduct, which the Alabama Supreme Court adopted on September 27, 2007 to be effective on January 1, 2008, all Alabama lawyers are required to hold client or third party funds ***that are either nominal or are to be held for only a short period of time*** in one or more IOLTA accounts. This means that IOLTA is now mandatory in Alabama. Your IOLTA account should be used only for amounts that are nominal or sums that are expected to be held for a short period of time. Funds that are not nominal or are expected to be held for long periods of time will be discussed below.

**What is an IOLTA account, and where do I get one?**

"IOLTA" means Interest on Lawyers' Trust Accounts. An IOLTA account is a pooled interest- or dividend-bearing account set up specifically to hold all trust funds you receive that are ***nominal in amount*** or that are expected to be held for ***only a short time***. The interest that accrues on this account is remitted automatically by your financial institution to the Alabama Law Foundation (ALF) or the Alabama Civil Justice Foundation (ACJF) to be awarded by them in the form of grants. You may select which foundation receives the interest from your account.

The account must be maintained in an "eligible institution." This is defined by Rule 1.15 as a bank or savings and loan association whose deposits are insured by an agency of the federal government, or any open-end investment company which is registered with the Securities and Exchange Commission. The institution you select must be authorized by federal or state law to do business in Alabama.

The IOLTA program has been in effect in Alabama since 1987, when voluntary use of such accounts first became available, and most financial institutions are familiar with it and will be happy to assist you in establishing such an account. Under the rule changes, financial institutions which meet the requirements to offer IOLTA account will now be certified yearly. If your bank does not offer IOLTA accounts, call Tracy Daniel at the Alabama Law Foundation for the name of a bank in your area which does.

**How will anyone know if I don't comply?**

Rule 1.15 (f) requires that "Every lawyer admitted to practice in this State shall annually certify to the Secretary of the Alabama State Bar that all IOLTA eligible funds are held in an IOLTA Account, or that the lawyer is exempt..." for the reasons stated in the rule.

In April of each year you will receive a postcard requesting you to verify that the email address you have registered with the bar is correct. Then, on May 1st you will receive an email instructing you to log in to the bar's website and either certify your IOLTA trust account number or that you are exempt from maintaining a trust account. You will have until June 30th to complete this process. Lawyers who do not do so will receive a letter from the Office of General Counsel giving them an additional 14 days within which to complete the certification process, after which any non-compliant lawyers will be referred for discipline.

**What are the requirements for an IOLTA account?**

Under the most recent revision of Rule 1.15 of the Alabama Rules of Professional Conduct, IOLTA accounts must meet the following requirements.

Financial institutions must pay on IOLTA accounts the highest interest rate or dividend the financial institution offers to its non-IOLTA customers when the IOLTA

account meets or exceeds the same minimum balance or other eligibility requirements. Interest or dividends for IOLTA accounts must be calculated in the same way as for non-IOLTA accounts. The rule has some methods for determining how the various accounts an institution offers should be compared to IOLTA accounts and whether the highest rate of interest is being paid to IOLTA accounts, but you don't have to worry about these calculations. Under the rule, financial institutions which offer IOLTA accounts must file a report, showing the interest or dividend rate paid on both IOLTA and other accounts offered, with the Alabama Law Foundation and Alabama Civil Justice Foundation. The foundations will then certify the participating financial institutions' compliance with the rule on an annual basis.

Only "allowable reasonable fees" may be deducted from the interest earned by IOLTA accounts. Reasonable fees are defined by Rule 1.15 as: (1) per check charges; (2) per deposit charges; (3) a fee in lieu of minimum balance; (4) Federal Deposit insurance fees; (5) sweep fees; and (6) a reasonable IOLTA account administrative fee. No other fees may be deducted from the interest. Any other fees which the depository institution charges are the responsibility of the lawyer or law firm maintaining the account.

The depository institution must agree that it will remit interest, less reasonable fees charged against the interest accrued by the account, at least quarterly to ALF or ACJF. It must also transmit with each remittance a statement reflecting the period of time covered by the remittance, the name in which the account is maintained, the account number, the interest rate, the gross amount of interest or dividend earned during the period, the amount and description of any service charges or fees assessed, the average account balance for the remittance period, and the net amount of interest remitted, with a copy to the lawyer.

**What do ALF and ACJF do with the interest earned?**

All interest transmitted to and received by ALF must be distributed by it for one or more of the following purposes: (1) to provide legal aid to the poor; (2) to provide law student loans; (3) to provide for the administration of justice; (4) to provide law-related educational programs to the public; (5) to help maintain public law libraries; (6) for such other programs for the benefit of the public as are specifically approved by the Supreme Court of the State of Alabama from time to time. ALF was created by the Alabama State Bar, and is administered by the Alabama Law Foundation.

All interest transmitted to and received by ACJF must be distributed by it for one or more of the following purposes: (1) to provide financial assistance to organizations or groups providing aid or assistance to: (a) underprivileged children; (b) traumatically injured children or adults; (c) the needy; (d) handicapped children or adults; (e) drug and alcohol rehabilitation programs; and (2) for such other programs for the benefit of the public as are specifically approved by the Supreme Court of the State of Alabama from time to time. ACJF was created and is administered by the Alabama Association for Justice.

**Who defines "nominal" and "short term?"**

You do, based on the criteria which became part of Rule 1.15(g) as revised. In situations where you will be holding a substantial sum of money for a period of several months or more, depending on prevailing interest rates, it might be in the client's best interest for you to open a separate interest-bearing account for that client alone.

The standard is now whether the interest which could be earned for the client will exceed the costs incurred to secure that income. To determine this, you must consider: (1) the amount of interest or dividends likely to be earned; (2) the estimated cost of establishing and administering a non-IOLTA account for the individual client, including the cost of your services and the cost of preparing any tax reports required; (3) the ability of the financial institutions, lawyers or law firms involved to calculate and pay interest to individual clients or third parties; and (4) any other circumstances which would affect the ability of the client or third person's funds to earn income in excess of the costs required to earn it. You must review your IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third party.

**What if I decide the client would benefit from a separate trust account?**

In that case, you would generally set up an interest bearing account for the benefit of that client alone, using the client's tax identification number and remitting the interest to the client. When opening an individual trust account for a client, if you do place money in anything other than a deposit account, be sure that the money is ***safe*** (don't place trust funds in high risk investments, no matter what your client suggests or agrees to) and ***accessible*** (don't place trust funds in an account or other investment where they are non-liquid or penalties for early withdrawal are charged).

**What if I make a mistake regarding whether to open a separate account?**

Don't worry. Rule 1.15 states that this determination "... shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good-faith exercise of such judgment."

**What if I just don't want to maintain an IOLTA account?**

Under the amended rule you now have no choice. Alabama is the 35th state in which IOLTA accounts are mandatory.

**Can I ever place my own funds in my trust account?**

Yes, but the rule lists only two instances in which this is permissible. One involves funds to pay bank service charges or "to obtain a waiver thereof." There used to be a tacit understanding that a lawyer could place a minimum amount in the account

to keep it from going to a zero balance if all client funds were withdrawn and to avoid service charges, even though the rule did not explicitly say so. With the 2007 amendment to Rule 1.15 this is now official.

The other involves unearned attorneys fees that are being held until earned. A lawyer must place in the trust account funds which represent unearned fees. This includes retainers or flat fees which have not yet been earned in full, and amounts in which both the lawyer and a client or third party claim an interest, when the interests have not yet been determined or the funds been divided. Examples of such sums would be fees paid in advance by the client and funds payable to the client in settlement of a case or satisfaction of a judgment, from which the attorney will also receive payment for his or her services. Such sums must be kept separate from the lawyer's own funds until there is an accounting and a severance of the lawyer and the client's interests. If a dispute arises concerning the respective interests, the amount in dispute must be kept separate until the dispute is resolved.

**What about property that isn't money?**

Under Rule 1.15 of the Alabama Rules of Professional Conduct, you are obligated to safeguard ***all property*** in your possession belonging to your clients or third parties, not just money. Non-monetary property of a client must be identified as belonging to the client and appropriately protected. The Rule does not specify methods of safekeeping property other than money, but the method used must be reasonable in light of the type of property held and it's value to the client or third party. The intrinsic value of an item may be small, but it's value in the context of the case may be substantial. If you do not have a safe or locking fire-proof file cabinet in your office, you may wish to rent a safe deposit box for such items. If you set up a safe deposit box to hold client property, make sure that it is properly labeled so that the bank will realize that what is held is not your personal property or that of your firm. As with money, you should not store items belonging to clients or third parties with items of your own. If you are a sole practitioner, make sure that, in the event something should happen to you, another lawyer acting on your behalf can obtain access to the box without undue delay.

**What are my record-keeping requirements?**

You are required to keep good, accurate records of ***all property*** you receive on behalf of clients or third parties. This means your trust accounts must ***always*** be in balance, and you must have a good method of keeping up with other property which you receive from, and return to, clients or third parties. You should obtain a receipt from a client or third party every time you return physical property of any type. You are required to keep trust account and other property records for a minimum of six (6) years after termination of the representation, and you must produce them if requested to do so by the Office of General Counsel. Failure to do so constitutes grounds for an investigation of yourself and your trust accounting practices, independent of any other grounds for the same that may exist.

# SETTING UP A TRUST ACCOUNT

**How do I set up a trust account?**

You will need to go to an institution that offers IOLTA accounts. Most commercial banks in Alabama now offer these accounts, although some savings & loan associations do not. Credit unions are not eligible to offer IOLTA accounts due to the way in which their deposits are insured. A list of all Alabama financial institutions which offer IOLTA accounts appears at the end of this text. It's usually a good idea to go to a main office and not to a small branch to set up your account, although you can still do your everyday banking at the branch. In the larger banking centers you are more likely to find an account representative who is familiar with attorney's trust accounts. Make sure you understand the bank's policy for dealing with service charges which do not fall within the "allowable reasonable fees" defined by Rule 1.15 of the Alabama Rules of Professional Conduct. Call several banks and ask about service charges on their IOLTA accounts before you select one and go in to open the account.

If you are setting up an IOLTA account, you may need to provide the bank with the correct tax identification number. You can obtain the correct tax identification number for the Alabama Law Foundation or the Alabama Civil Justice Foundation from the respective foundation, or request the bank to do so. Most banks which offer IOLTA accounts have the necessary account agreement forms which contain all of the required provisions and information. If your bank does not have one of these forms, you can get one by calling ALF or ACJF or by going to their respective websites at www.alfinc.org org or www.acjf.org. Contact information for each foundation is listed in the Preface to this handbook, on page iii.

If you are setting up a non-IOLTA account for a particular client, you will need to use the client's tax identification number. Do not use your firm's tax identification number. This will result in the interest being reported as having been paid to and earned by you or your firm, and you will be taxed accordingly.

Under Rule 1.15 you must include the words "Attorney Trust Account," "Attorney Escrow Account" or "Attorney Fiduciary Account" somewhere in the title of the account **and** on all checks and deposit slips for the account. We prefer "Trust Account" and suggest something along the lines of:

**Black, White & Green, P.C.**
**Attorneys at Law**
**Attorneys' IOLTA Trust Account**

You are not required to include the word "IOLTA" in the account name, but now that IOLTA is mandatory, it's a good idea.

If the account is an individual client trust account, use something like:

**Black, White & Green, P.C.**
**Attorney Trust Account for John Q. Client**

You should check your first statement to make sure that the IOLTA account has been set up properly and that the correct tax identification number is on the account, especially if you have several accounts with the same bank. (Be sure to make a note of the tax identification number because you may need to give it to the bank's customer service representative or enter it in an automated system before seeking information about the account over the phone or online.)

The words "Business Account," "Professional Account," "General Account," "Payroll Account," "Regular Account" or other appropriately descriptive words must also be used in the titles for all such accounts you or your firm open, and all the documents associated with them.

**Should I have all my bank accounts (office and trust) at the same bank?**

There are several factors to consider. If you are a real estate attorney and do a lot of closings on behalf of a bank or bank-associated mortgage company, they may want you to place your account with them for convenience. (This can result in your having more than one IOLTA account - which is OK.) You may also have a banking relationship of long standing with a particular bank and wish to keep your account there. There are, however, some practical reasons to have your accounts distributed among several banks.

The most important reason is the possibility of error. With multiple accounts at one bank, you or your staff may mix up deposit slips or mistake the checkbook for one account with that of the other. Likewise, the bank may occasionally confuse the accounts. Many banks have a policy of automatically transferring funds from any account with your name on it to cover shortages in another. If you accidentally overdraw your office account, the bank may attempt to "help" you by transferring funds from your trust account to cover the overdraft. This should not be a problem if you have labeled the accounts properly, but no matter how careful you or your financial institution are, mistakes can happen.

**Does FDIC insurance cover all funds in my trust account?**

Not anymore.

This is an issue that most lawyers never even thought about until the financial crash of 2008, when banks began to fail and be taken over by the FDIC. Because attorney trust accounts were subject to the then $100,000 FDIC insurance limit, if an attorney held funds in excess of $100,000 on behalf of a single client or third-party in an insured institution which failed, it was possible that the excess amount might be an

uninsured loss. While the question was never addressed, it is at least arguable that an attorney could be liable for uninsured losses from a trust account in the event of a bank failure since he or she is absolutely responsible to protect trust funds.

Under the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, FDIC insurance provided unlimited coverage on "noninterest-bearing transaction accounts **through December 31, 2012**. The Insurance Provision of the act included IOLTA accounts within the definition of noninterest-bearing transaction accounts, provided that they met certain requirements – which Alabama IOLTA accounts did. However, the legislation passed in January of 2013 to avoid the "fiscal cliff" did not extend this coverage past December 31, 2012. Consequently, individual clients or third parties are now only insured up to the $250,000 per depositor FDIC insurance limit. (In order to claim this pass-through coverage you must have accurate records regarding how much you hold in trust on behalf of each client or third-party.)

Thus, if you hold more than $250,000 on behalf of an individual client in a trust account **in a bank that fails**, the excess will not be covered and you may, arguably, be responsible for any loss. And since any funds the client has deposited in that bank will be counted against his or her insurance limit, it's always a good idea to confer with the client before making large trust deposits. This is a highly unlikely situation, but one you should at least be aware of.

**Who should sign on my trust account?**

You can designate anyone to sign your trust checks. It does not have to be you, and it does not have to be a lawyer. Nevertheless, because of the responsibility you bear to safeguard your client and third party funds (and the severe discipline you will face if those funds are improperly removed from the account), it is usually best to have only your own signature if you are a solo practitioner, or that of the firm managing partner.

Regardless of who signs the checks, always take the precaution of having all trust account statements delivered to your desk ***unopened*** each month. Examine each check for alterations before balancing the account. An employee who has the authority to sign checks should ***never*** be entrusted with the responsibility of also balancing the account. With current office technology, such as color printers and copy machines, the opportunities for unnoticed alteration of checks and bank statements is tremendous. Don't create opportunities for temptation, and don't take any chances!

# RECEIVING AND DISBURSING FROM THE ACCOUNT

**What are my obligations when I receive funds or other property for a client or third party?**

When a lawyer receives funds or other property in which a client or third party has an interest, he or she must ***promptly notify*** the interested party. Except as the Alabama Rules of Professional Conduct or other rule or law allows, or as an agreement between the lawyer and the interested party provides, the lawyer must ***promptly deliver*** to the client or third party any funds or property the other is entitled to. If the other party requests it, the lawyer must also ***promptly render a full accounting*** of the money or property. As a practical matter, you should never make a disbursement from your trust account without rendering a statement showing the total amount received, a breakdown of each amount disbursed, including to whom and for what, with the dates of all receipts and disbursements, and any balance which remains in trust.

**What if I receive funds on behalf of a client and I lose the money or my office is burglarized before I can deposit it?**

You are responsible for the funds from the moment you receive them until you remit them to the person to whom they are due. If you lose them, you will have to repay the loss. You should establish office procedures to ensure that cash and checks are safeguarded while in your office, and that funds are deposited promptly.

**How do I handle advance payments or retainers?**

You can, and should, move the money out of your trust account as soon as you have earned it. Your client should be aware, from the signed fee agreement between the two of you, that advance payments will be withdrawn and transferred as work is performed. If the client knows this, you don't need to notify the client and wait for permission each time you wish to make a withdrawal. You should, however, send the client a statement on a regular basis. The statement should indicate how much work has been done, how much money has been transferred out of the trust account, and how much remains. As additional funds are needed, the client will be prepared. Also, you will not have to worry about the client complaining at the end of the matter that he or she didn't realize the case was going to take so much work or cost so much.

**Can I make a trust disbursement as soon as I deposit funds in my account?**

You should investigate your bank's rules on availability of funds. Generally, funds will not be immediately available for withdrawal. You must wait for the funds to clear the bank. The length of time it takes for a deposit to clear depends on many things, such as what kind of deposit it is (personal check, cashier's check, cash) and which bank it was drawn on (local or out of town).

Attorneys sometimes feel that it doesn't matter whether a particular deposit has been collected by their bank, as long as there are sufficient funds in the trust account to cover the check being written. You must realize, however, that when you write a check against uncollected funds of one client you are, essentially, "borrowing" from the collected funds of other clients in order to pay that check. You will also be at risk if the uncollected item is returned for insufficient funds or payment is stopped.

Rule 1.15(d) of the Alabama Rules of Professional Conduct states that a lawyer shall not make disbursements of a client's funds from an account containing the funds of other clients ***unless the funds are collected***. The exception is that, if you have a ***reasonable and prudent belief*** that a deposit will be collected promptly, you may disburse uncollected funds ***at your own risk***. If collection does not occur ***you must replace the funds yourself*** within five (5) days of notice of non-collection. This means that you will bear the risk of any returned checks if you do not wait to be sure they have cleared before you disburse. When dealing with all but the smallest sums, it's better to be safe than sorry.

This rule poses particular problems for real estate closing attorneys. The sums involved in land transactions are often substantial and, in many cases, you don't know how much the purchaser needs to bring until a short time before the closing. It is always wise to require certified funds for closings. The only buyers who will object to this are the ones who know their checks may bounce. If you don't know exactly how much to tell the buyers to bring, instruct them to bring a cashier's check for a round amount near, but slightly less than, the sum you think they will need. That way you will only have to take a personal check for a small sum for the difference, or you can write them a refund check if you have overestimated the amount they will need.

**What if I issue a check from my trust account but it's never cashed?**

This is an annoying situation that most attorneys have to deal with at one time or another. It usually involves less than ten dollars, and may sometimes represent only a dollar or two. Unfortunately, the funds do not belong to you or your firm, so these amounts, even though nominal, may not be automatically transferred to your office account. Generally, if you have made a diligent effort to locate the payee and cannot do so, the funds may be returned to the client if paid out to a third party on the client's behalf. If the party not cashing the check is your client and you cannot locate him or her, you must continue to hold the funds, or dispose of them in accordance with the Alabama Uniform Disposition of Unclaimed Property Act, §35-12-20, et seq., *Code of Alabama, 1975*, as amended. See Formal Opinion RO-88-92.

# MAINTAINING TRUST ACCOUNT RECORDS

**What kind of records do I need to keep for my account, and for how long must I maintain them?**

Common sense and good business practice require that you should always know your overall trust account balance and the balance held on behalf of each client or third party. This will require you to keep at least two sets of records:

> **General Trust Account Ledger** - A ledger that shows all transactions for your trust account, regardless of the client on whose behalf they were made, and that gives a running balance for the account; and
>
> **Individual Client Trust Account Ledger** - A ledger that shows all transactions on behalf of a particular client, with the individual client's running balance.

You need both because without the general ledger you don't know the total in your account and without the client ledger you don't know how much you hold for any particular client. Each time you make an entry to the general trust account ledger, you must also make a corresponding entry to the appropriate individual client trust account ledger. You should also maintain a client trust account ledger for any funds of your own, such as service charges or funds deposited to maintain a required minimum balance, which you place in the account. (See the section ABOUT TRUST ACCOUNTS for information on when you may permissibly deposit your own funds into your trust account.)

Each time you make an entry in these ledgers, it should contain the source of the funds or the entity to which funds were disbursed, the date of the transaction, the amount of the transaction, the client or matter name or number for which the funds were received or disbursed, a description of the purpose of the transaction and, if a disbursement, your check number. If you have a computerized trust accounting system you will only need to make each entry once. Some manual "one write" systems are also designed to require only one entry.

When you make a deposit, you should fully complete the deposit slip. If you receive cash you should fill out a separate cash receipt, give a copy to the client, and retain a copy for yourself. All cash deposits should be carefully labeled as to client or matter and deposited immediately. Remember, any time you receive over ten thousand dollars in cash, whether as a fee or in trust, you must file a report with the IRS. The reporting form (8300) is found at the end of this manual and is also available on the IRS website at www.irs.gov.

Rule 1.15(a) of the Alabama Rules of Professional Conduct requires that lawyers maintain complete records of all trust funds *and other property* kept on behalf of clients or third parties for a minimum of six years after termination of the representation. See

Formal Opinion 2011-02 for more information on records retention requirements of attorneys.

**Can I use a computer to do my trust accounting?**

Yes, and we hope you will. For most attorneys this will make trust accounting easier and reduce the possibility of errors. If you have only a few trust transactions per month, automation may not seem to be worth the time, trouble and expense. Nonetheless, it's better to set up an automated trust accounting system and master using it when you are not busy than to wait until the volume of trust transactions makes it desirable. By then your account will be in a mess, and you won't have time to sort it out or to investigate, implement and learn to use a computerized system when you need it the most.

In choosing a program, you should determine whether it will let you track all the information you need, and in the way you need it. For example, a program that will not let you enter information describing the transaction or include your case number may not be adequate. Many general purpose accounting programs are not set up to handle trust accounts. For that reason we recommend the use of programs specifically designed for attorney trust accounting. Many time and billing programs also include a trust accounting component.

The Alabama State Bar offers a member benefit discount for EasyTrust, a software program designed for legal trust accounting, as well as manuals with instructions on using various checkbook and general accounting programs for trust accounting. See the Member Benefits information on the bar's website (www.alabar.org) for more information.

**How should I handle trust account maintenance and review?**

Once you have your account properly set up, don't sabotage your efforts by letting account maintenance slide. Each month, as soon as the statement arrives, you should reconcile the account. If you have a bookkeeper or other employee who reconciles the statement, you should still receive the ***unopened*** statement and review it thoroughly, looking carefully at each check, to eliminate the possibility, or even the temptation, of employee theft. Never allow an employee with check-writing authority to also balance the account. List all outstanding checks, and determine why each remains un-cashed. You are personally responsible for your trust funds, so this should be a high priority in you office - equal in importance to docket control. One error that you don't catch immediately can lead to other errors that will eventually lead to client dissatisfaction and, possibly, a grievance filed with the disciplinary authorities. Mishandling any of your legal responsibilities can lead to some form of discipline, but mishandling your trust account will almost certainly lead to suspension or disbarment.

**What if I bounce a trust check?**

If a check written on your trust account is returned to the payee due to insufficient funds, or if a check honored by your bank creates an overdraft which is not paid in full within three (3) business days, your bank is required by Rule 1.15(e) to send a report to the Alabama State Bar notifying the Office of the General Counsel of the same. As a practical matter, the bank will notify the Office of General Counsel regardless of whether the items is made good within three business days.

Receipt by the Bar of such a notice is grounds for an investigation of you and your trust accounting practices. This requirement, which was added in 1997, should give Alabama lawyers added incentive, and justification, for refusing to disburse funds from their trust accounts until they are sure the client's funds are collected.

Under the terms of Rule 1.15(e) of the Alabama Rules of Professional Conduct, it is your responsibility to enter into an agreement with your bank pursuant to which the bank will make the necessary reports of checks presented against insufficient funds. A form to amend your deposit contract to meet this obligation is found at the end of this manual, and your bank should have a supply of these forms, too. ***If you already have one or more trust accounts open and have not yet done so, you should sign one of these forms for each account and ask your bank to file it with your existing account contract.***

IN THE SUPREME COURT OF ALABAMA
September 27, 2007

ORDER

WHEREAS, the Alabama State Bar has submitted to this Court a proposed amendment to Rule 1.15 of the Alabama Rules of Professional Conduct; and

WHEREAS, this Court has considered that proposed amendment to Rule 1.15 of the Alabama Rules of Professional Conduct;

IT IS THEREFORE ORDERED that Rule 1.15 of the Alabama Rules of Professional Conduct be amended to read in accordance with the Appendix attached to this order;

IT IS FURTHER ORDERED that this amendment shall be effective January 1, 2008; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow this rule:

> "Note from the reporter of decisions: The order amending Rule 1.15 of the Alabama Rules of Professional Conduct, effective January 1, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 2d."

Cobb, C.J., and See, Lyons, Woodall, Stuart, Smith, Bolin, Parker, and Murdock, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 27th day of September 2007

Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

## APPENDIX

### Rule 1.15 SAFEKEEPING PROPERTY

Definitions. As used in this rule, the terms below shall have the following meaning:

"IOLTA account" means a pooled interest- or dividend-bearing trust account benefiting the Alabama Law Foundation or the Alabama Civil Justice Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons;

"Eligible institution" means any bank or savings and loan association authorized by federal or state laws to do business in Alabama, whose deposits are insured by an agency of the federal government, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Alabama. Eligible institutions must meet the requirements set out in section (g).

"Interest- or dividend-bearing trust account" means a federally insured checking account or a business checking account with an automated investment feature, such as an overnight sweep and investment in a government money-market fund or daily (overnight) financial-institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities. A daily financial-institution repurchase agreement may be established only with an eligible institution that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must hold itself out as a money-market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, have total assets of at least $250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay except as permitted by law.

"Allowable reasonable fees" means: (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) Federal deposit insurance fees, (5) sweep fees, and (6) a reasonable IOLTA account administrative fee.

"U.S. Government Securities" means U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(a) A lawyer shall hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. No funds of a lawyer shall be deposited in such a trust account, except (1) unearned attorney fees that are being held until earned, and (2) funds sufficient to pay bank service charges on that account or to obtain a waiver thereof. Interest or dividends, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(g), and the lawyer shall have no right or claim to the interest. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for six (6) years after termination of the representation.

A lawyer shall designate all such trust accounts, whether general or specific, as well as deposit slips and all checks drawn thereon, as either an "Attorney Trust Account," an "Attorney Escrow Account," or an "Attorney Fiduciary Account." A lawyer shall designate all business accounts, as well as other deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," or a "Regular Account." However, nothing in this rule shall prohibit a lawyer from using any additional description or

designation for a specific business or trust account, including, for example, fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, or agent or in any other fiduciary capacity.

(b) Upon receiving funds or other property in which a client or third person has an interest from a source other than the client or the third person, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding that property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and a severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall not make disbursements of a client's funds from separate accounts containing the funds of more than one client unless the client's funds are collected funds; provided, however, that if a lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank representing the client's funds will be collected promptly, then the lawyer may, at the lawyer's own risk, disburse the client's uncollected funds. If collection does not occur, then the lawyer shall, as soon as practical, but in no event more than five (5) working days after notice of noncollection, replace the funds in the separate account.

(e) A lawyer shall request that the financial institution where the lawyer maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar in every instance where a properly

payable item or order to pay is presented against a lawyer's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment order is returned because there are insufficient funds in the account to pay the item or order or, (2) if the request is honored by the financial institution and the overdraft created thereby is not paid within three (3) business days of the date the financial institution sends notification of the overdraft to the lawyer. The report of the financial institution shall contain the same information, or a copy of that information, forwarded to the lawyer who presented the item or order.

A lawyer shall enter into an agreement with the financial institution that holds the lawyer's trust account pursuant to which the financial institution agrees to file the report required by this rule. Every lawyer shall have the duty to assure that his or her trust accounts maintained with a financial institution in Alabama are pursuant to such an agreement. This duty belongs to the lawyer and not to the financial institution. The filing of a report with the Office of General Counsel pursuant to this paragraph shall constitute a proper basis for an investigation by the Office of General Counsel of the lawyer who is the subject of the report, pursuant to the Alabama Rules of Disciplinary Procedure. Nothing in this rule shall preclude a financial institution from charging a lawyer or a law firm a fee for producing the report and maintaining the records required by this Rule. Every lawyer and law firm maintaining a trust account in Alabama shall hereby be conclusively deemed to have consented to the reporting and production requirements mandated by this rule and shall hold harmless the financial institution for its compliance with the aforesaid reporting and production requirements. Neither the agreement with the financial institution nor the reporting or production of records by a financial institution made pursuant to this rule shall be deemed to create in the financial institution a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of a lawyer's overdrawing a trust account.

A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or Rules of Disciplinary Procedure for the production of documents and evidence.

(f) A lawyer, except a lawyer not engaged in active practice pursuant to Alabama Code 1975, §§ 34-3-17 and -18, shall maintain a separate account to hold funds of a client or third person. Every lawyer admitted to practice in this State shall annually certify to the Secretary of the Alabama State Bar that all IOLTA eligible funds are held in an IOLTA Account, or that the lawyer is exempt because the lawyer: does not have an office within the State of Alabama; does not hold funds for clients or third persons; is not engaged in the active practice of law; is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law; or is a corporate or other in-house counsel or teacher of law and is not otherwise engaged in the private practice of law. Certification may be made by a firm on behalf of all lawyers in a firm.

(g) Lawyers shall hold in IOLTA accounts all funds of clients or third persons that are nominal in amount or that the lawyer expects to be held for a short period and from which no income could be earned for the client or third person in excess of the costs incurred to secure such income. In no event shall a lawyer receive the interest on an IOLTA account.

In determining whether to deposit funds into an IOLTA account, a lawyer shall consider the following factors: the amount of interest or dividends likely to be earned during the period the funds are expected to be deposited; the estimated cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of

the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person; the ability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that affect the ability of the client or third-person funds to earn income in excess of the costs incurred to secure such funds. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

The determination whether the funds of a client or third person can earn income in excess of costs as provided in (g) above shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good-faith exercise of such judgment.

Offering IOLTA accounts is voluntary for financial institutions. Lawyers may place trust accounts only in eligible institutions that meet the requirements of this rule, including:

Interest Rates: Eligible institutions shall pay on IOLTA accounts the highest interest rate or dividend the financial institution offers to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance and other eligibility requirements, if any.

A financial institution shall pay on IOLTA accounts the highest interest rate or dividend generally available among the following product types or any comparable product type (if the product type is available from the financial institution to its non-IOLTA customers) by either using the identified product type as an IOLTA account or paying the equivalent interest rate or dividend on the existing IOLTA account in lieu of actually establishing the highest interest rate or dividend product:

1. An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest.

2. A business checking account with an automated investment feature, such as an overnight sweep and investment in repurchase agreements or money-market funds as described in the definitions.

3. A government (such as for municipal deposits) interest-bearing checking account.

4. A checking account paying preferred interest rates, such as money-market or indexed rates.

5. Any other suitable interest- or dividend-bearing deposit account offered by the institution to its non-IOLTA customers.

As an alternative, the financial institution may pay:

6. An amount on funds, net of allowable reasonable fees, which would otherwise qualify for investment options described in (1) through (4) above equal to 55% of the Federal Funds Target Rate as of the first business day of the quarter or other IOLTA remitting period.

The following considerations will apply to determinations of comparability:

1. Accounts that have limited check-writing capability required by law or government regulation may not be considered as comparable to IOLTA in Alabama. Such accounts, however, are distinguished from checking accounts that pay money-market interest rates on account balances without the check-writing limitations. Such accounts are included in the option 4 class identified above. Additionally, rates that are not generally available to other account holders, such as special promotional rates used to attract new customers, are not considered for comparability in Alabama.

2. For the purpose of determining compliance with the above provisions, all participating financial institutions shall report in a form and manner prescribed by the Alabama Law Foundation and Alabama Civil Justice Foundation the highest interest or dividend rate for each of the accounts they offer within the above-listed account types. The foundations will certify participating financial institutions' compliance with this rule on an annual basis.

3. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the eligible institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that those factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and provided further that those factors do not include that the account is an IOLTA account.

Pursuant to a written agreement between the lawyer and the eligible institution, interest on the IOLTA account shall be remitted at least quarterly to the Alabama Law Foundation or the Alabama Civil Justice Foundation, as the lawyer shall designate.

Interest or dividends shall be calculated in accordance with the institution's standard practice for non-IOLTA account customers, less reasonable fees, if any, in connection with the deposited funds.

Allowable reasonable fees, as defined in this rule, are the only service charges or fees permitted to be deducted from interest or dividend earned on IOLTA accounts. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at such rates and under such circumstances as is the eligible institution's customary practice for its non-IOLTA customers. All other fees and charges shall not be assessed against the interest or dividends earned on the IOLTA account, but rather shall be the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.

Fees or charges in excess of the interest or dividend earned on the account for any month or quarter shall not be taken from interest or dividend earned on other IOLTA accounts or from the principal of the account.

Financial institutions may elect to pay higher rates than required by this rule or to waive any or all fees on IOLTA accounts.

A statement should be transmitted to the Alabama Law Foundation or the Alabama Civil Justice Foundation with each remittance showing the period for which the remittance is made, the name of the lawyer or law firm from whose IOLTA account the remittance is being sent, the IOLTA account number, the rate of interest applied, the gross interest or dividend earned during the period, the amount and description of any service charges or fees assessed during the remittance period, if any, the average account balance for the remittance period, and the net amount of interest or dividend remitted for the period. A copy of the statement shall also be sent to the lawyer.

(h) All interest or dividends transmitted to and received by the Alabama Law Foundation pursuant to Rule 1.15(g) shall be distributed by it for one or more of the following purposes:

(1) to provide legal aid to the poor;

(2) to provide law-student loans;

(3) to provide for the administration of justice;

(4) to provide law-related educational programs to the public;

(5) to help maintain public law libraries; and

(6) for such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

(i) All interest or dividends transmitted to and received by the Alabama Civil Justice Foundation pursuant to Rule 1.15(g) shall be distributed by it for one or more of the following purposes:

(1) to provide financial assistance to organizations or groups providing aid or assistance to:

(A) underprivileged children;

(B) traumatically injured children or adults;

(C) the needy;

(D) handicapped children or adults; or

(E) drug and alcohol rehabilitation programs;

(2) to be used in such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

(j) A lawyer shall not fail to produce, at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board, any of the records required to be maintained by these Rules. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or the Rules of Disciplinary Procedure for the production of documents and evidence.

# SELECTED ETHICS OPINIONS

## ETHICS OPINION

### RO 2008-03

**Lawyers' Trust Account Obligations With Regard to Retainers and Set Fees**

**QUESTION:**

Should a flat fee that is received prior to the conclusion of representation be deposited into an attorney's IOLTA account or is it earned at the time of receipt?

**ANSWER:**

In Alabama, a flat fee that is received prior to the conclusion of the representation or prior to the performance of services must be deposited in the attorney's IOLTA account until the fee is actually earned.

**DISCUSSION:**

In RO 1992-17, the Disciplinary Commission previously stated that:

> [T]he client has the absolute right to terminate the services of his or her lawyer, with or without cause, and to retain another lawyer of their choice. This right would be substantially limited if the client was required to pay the full amount of the agreed on fee without the services being performed. In Gaines, Gaines and Gaines v. Hare, Wynn, 554 So.2d 445 (Ala. Civ. App. 1989), the Alabama Court of Civil Appeals stated:
>
> "The rule in Alabama is that an attorney discharged without cause or otherwise prevented from full performance, is entitled to be reasonably compensated only for services rendered before such discharge. Mall v. Gunter, 157 Ala. 375, 47 So.2d 144 (1908)."

Likewise, in RO 1993-21, the Disciplinary Commission held that an attorney "may not characterize a fee as non-refundable or use other language in a fee agreement that suggests that any fee paid before services are rendered is not subject to refund or adjustment."

As in RO 1993-21, the Commission noted that "non-refundable fee language is objectionable because it may chill a client from exercising his or her right to discharge his or her lawyer and, thus, force the client to proceed with a lawyer that the client no longer has confidence in." As such, the overriding principle of RO 1992-17 and RO 1993-21 is that a non-refundable fee would impinge on the right of the client to change lawyers at any time. Allowing an attorney to keep a fee, regardless of whether any service has been performed for the client, would certainly restrict the ability of a client to terminate the attorney and seek new counsel. In reaching this conclusion, the Commission also made clear that the rule applied to all arrangements where fees are paid in advance of legal services being rendered. As such, all retainers and fees are refundable to the extent that they have not yet been earned. To conclude that a flat fee is earned at the time of receipt, where the contemplated services have yet to be performed or completed, would be in direct contradiction of this long standing principle.

The only exception to the rule that all fees are refundable would be a true availability-only retainer. An availability-only retainer is a payment that is made by a client solely to secure an attorney's future availability and would necessarily restrict the ability of the attorney to represent other clients. A true availability-only retainer is earned at the time of receipt, must be in writing, and must be approved by the client in advance of the payment. To be clear, an attorney may not characterize a flat fee or other type fee that is being paid for future services as an availability-only retainer fee. Any attempt by an attorney to circumvent the rule that all retainers and fees are refundable by mischaracterizing a fee as an availability-only retainer would be an ethics violation.

Because a flat fee paid in advance of services is subject to being refunded, Rule 1.15(a), Ala. R. Prof. C., requires that the flat fee be deposited into an

attorney's IOLTA account. Rule 1.15, Ala. R. Prof. C., provides in pertinent part, as follows:

**RULE 1.15 SAFEKEEPING PROPERTY**

> (a) A lawyer shall hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. No personal funds of a lawyer shall ever be deposited in such a trust account, except **(1) unearned attorney fees that are being held until earned,** and (2) funds sufficient to cover maintenance fees, such as service charges, on the account. Interest, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(g), and the lawyer shall have no right or claim to the interest. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for six (6) years after termination of the representation.

(emphasis added) Because flat fees are not earned at the time of receipt, they are unearned attorney fees that must be held in the attorney's IOLTA account until earned in accordance with Rule 1.15.

However, the entire flat fee is not required to be held in trust until the conclusion of the representation. Rather, an attorney may withdraw portions of the fee from the trust account as the fee is earned. Exactly when and what amount of the fee is earned during the representation is a question of reasonableness. It is generally recognized that the first yardstick used in assessing the reasonableness of an attorney fee is the

time consumed. Peebles v. Miley, 439 So.2d 137 (Ala. 1983). For example, an attorney may withdraw portions of the flat fee that have been earned based on the time the attorney has spent on the matter and his normal hourly rate. In doing so, the attorney should notify the client when portions of the fee are withdrawn from the trust account by sending a statement or invoice to the client stating the date and the amount of the withdrawal.

An attorney may also enter into a written agreement with the client setting forth milestones in the representation that entitle the attorney to receive a specified portion of the fee. The fee agreement may explicitly state that an attorney is entitled to specific portions of the fee after certain stages in the representation have been completed. For example, assume an attorney is representing a client in a criminal matter for a flat fee of $5,000.00. The fee agreement may provide that the attorney is entitled to $2,500.00 of the fee after arraignment or after the preliminary hearing has been held. Any such agreement between the attorney and the client should be set out, preferably in writing, at the outset of the representation.

JWM/s

12-5-08

ETHICS OPINION
1990-08

Unclaimed client trust funds--lawyer's obligation to ascertain true owner, escheatment of unclaimed funds which appear to be lawyer's fees to lawyer

SUMMARY OF THE QUESTION:

I practiced law from 1971 through 1985 and maintained a trust account at a local bank. I assumed a judicial office in 1985 and had a balance remaining in my trust account of $1,200.00. I continued to receive statements on that account. The account is now dormant. I have some 1,500 files accumulated which are now boxed and stored in my home. My old office has been leased to another attorney who had access to these files and handled inquiries from former clients. That arrangement ceased in October of 1987 and during the period from 1985 to 1987 no inquiries were received relating to any trust funds by that lawyer or by me. The amount accumulated in my account is somewhat confusing because I normally operated a zero balance accounting method disbursing funds from the account upon receipt. I have had several secretaries to work for me over the years and each kept books differently but I cannot reconstruct the various events of many years of practice. I cannot find where the balance came from other than the fact that these are probably attorney's fees and expenses paid into the account but not disbursed to me. I feel that I have made a good faith effort to locate the claimants to these funds including advertising in a local newspaper for three consecutive weeks. No claims or inquiries have been received and I would now like to close out this account and transfer these funds into my personal account. Please advise as to whether I may do so.

ADDITIONAL INFORMATION: Attached to the request is a letter from the attorney that leased the former law office stating that there had been no inquiries as to funds held in the escrow account and also attached is a copy of the trust bank account showing a balance of $1,224.10 as of December 30, 1989, and a copy of a legal notice published in the local newspaper for three consecutive weeks in November of 1988.

ANSWER:

In addressing a similar situation the Disciplinary Commission opined that where funds cannot be attributed to a particular client, and where a reasonable and good faith effort has been made to determine the ownership of the funds, and where the funds have been held as long as necessary to assure that no unidentified client could make a successful claim against the account, an attorney might distribute those funds to the attorney's estate. (The Alabama Lawyer, January 1989, p. 49). The Commission quoted with favor ethics opinions from several different states holding that after reasonable and good faith attempts to ascertain ownership of the funds and after holding the funds long enough to make sure that no unidentified client could make a claim against the

funds within any applicable statute of limitations, the funds could be distributed to the attorney's personal account or, in the case considered by the Commission, to his estate.

Accordingly, having made a good faith effort and having exercised reasonable care to notify the former clients of the existence of the funds and having established a mechanism for the retrieval of the funds and having allowed sufficient time to expire, the Commission is of the opinion that you may now place these funds in your personal account.

AWJ/vf

3/12/90

ETHICS OPINION
1988-92

Unclaimed client trust funds - escheat to state

QUESTION:

A solo practitioner with an active trust account died. Attorney A was appointed executor and undertook to wind up the practice and to distribute the funds from the trust account. The solo practitioner maintained an accounts ledger of the trust account but the balances did not reconcile with the bank account. After several years A was able to determine the clients who owned the various accounts and appropriate disbursements were made. He was unable, however, to determine the owners of some of the funds or the whereabouts of certain clients. What distribution should A make in order to close the account?

ANSWER:

There are two categories of funds in the account. The first category involved those funds that cannot be attributed to a particular client. After a reasonable and good faith effort is made to determine the ownership of the funds, and after holding the funds as long as necessary to assure that no unidentified client could make a successful claim against the account, A may distribute the funds to the solo practitioner's estate. The second category of funds in the account are those that can be attributed to a client but the location of that client is unknown. After making a good faith and reasonable effort to locate the client, A must hold the funds until they are presumed abandoned under state law, at which time he should turn them over to the state.

DISCUSSION:

Attorney A should first make every reasonable effort to ascertain the identity and location of the clients entitled to the funds. This would include publication of a notice in a newspaper of general circulation, not only in the area where the decedent practiced but also in the last known area where the client or clients reside or do business.

Regarding the funds that cannot be attributed to a client or clients, several state ethics committees have held that after reasonable and good faith attempts to ascertain the ownership and after holding the funds long enough to insure that no unidentified client could make a claim against the funds within any applicable statute of limitations, they may be distributed to the attorney's personal account or his estate.

Unidentified funds in a trust account could properly be funds deposited to pay service charges [DR 9-102(A)(1)] or to avoid any possibility of a shortage in the account or fees earned but not withdrawn [DR 9-102(A)(2)].

The Michigan Bar Committee on Professional and Judicial Ethics held that funds that could not be associated with any particular client or file, or were presumed to belong to attorneys formerly with the firm or to be interest earned on an account, after notifying former clients of the existence of the funds and providing them an opportunity to substantiate any claim, could be retained by the attorneys involved [Opinion CI-947 (1983) and CI-752 (1982)].

Similarly, in Virginia, it was held that such unidentifiable funds must be placed in an interest bearing account a sufficient length of time to determine that no successful claim by an unidentified client could be made. If no owners or claims are found, the lawyer may then transfer the funds to his own account [Virginia Opinion 548 (3/1/84)].

In another Virginia Opinion, it was held that unidentifiable funds in a trust account could be distributed to a deceased lawyer's estate or distributed according to law to meet the deceased lawyer's non-trust obligations, provided a good faith effort to determine ownership is made and the funds are retained a sufficient length of time to assure that a successful claim could not be made.

The Alabama Disciplinary Commission addressed a similar question in RO-82-649. In that case there were several thousand dollars in a deceased attorney's trust account that could not be "traced to its rightful owner." The Commission held that:

"Some type of legal proceeding should be instituted whereby notice by publication could be given to potential claimants. Although other proceedings may be available we suggest that the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, Section 35-12-20, Code of Alabama, 1975."

In this case the Commission assumed that the funds were client funds and were "not earned attorney's fees which [the attorney] deposited in a trust account pursuant to the provisions of DR 9-102(A) and failed to withdraw therefrom." The opinion then cites an earlier opinion where the client was known but could not be located.

In the case at hand, we make no such assumptions and hold that where it cannot be determined that the funds are client funds by reasonable, diligent, and good faith efforts, including public notice in a newspaper of general circulation and after holding the funds long enough to assure that no successful claim will be filed by an unknown client, the funds may be distributed to the deceased attorney's estate.

The second category of funds in the trust account are those that can be attributed to a client but the whereabouts of the client are unknown. In this situation

Attorney A does not have the option of distributing the funds to the deceased attorney's estate because the money clearly does not belong to the deceased attorney. In situations such as this numerous opinions of state bar ethics committees, including the Disciplinary Commission of the Alabama State Bar, have held that the funds must be retained until presumed abandoned under state law at which time the funds must be turned over to the state [Mississippi State Bar Ethics Committee Opinion 104 (6/6/85); State Bar of New Mexico Advisory Opinions Committee, Opinion 1983-3. (7/25/83); North Carolina State Bar Association Ethics Committee Opinion 372 (7/25/85); Michigan Committee on Professional and Judicial Ethics of the State Bar of Michigan, Opinion CI-1144 (4/9/86); Committee on Professional Responsibility of the Vermont Bar Association, Opinion 87-9 (8/87)].

The Office of General Counsel and the Disciplinary Commission have, in a number of opinions, held that where funds in a trust account may be attributed to a client but the location of the client is not known, that some type of legal proceedings should be instituted whereby notice by publication could be given to the owner of the deposited funds. The opinions also hold that although other proceedings may be available the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, §35-12-20, Code of Alabama, 1975, [RO-82-649, RO-83-14, RO-84-26, RO-84-48, RO-83-146, and RO-84-106]. In situations where the client is known but cannot be found the money clearly does not belong to the attorney. Consequently, the lawyer has no alternative but to retain the funds on the client's behalf at least until such time as the funds may be considered legally abandoned.

Consequently, in the case at hand, we hold that lawyer A must make every reasonable effort to locate the client, including public notices in a newspaper of general circulation in the area where the deceased lawyer practiced as well as in the area where the client maintained his last known address or business. If these efforts are unsuccessful then Attorney A must hold the funds until such time as they may be considered abandoned under the Alabama Uniform Disposition of Unclaimed Property Act, Chapter 12, Article II of Title 35, Code of Alabama, 1975.

RWN/vf

10/21/88

ALABAMA LAW FOUNDATION, INC.

*Making a difference.*

# NOTICE TO FINANCIAL INSTITUTION TO ESTABLISH AN IOLTA ACCOUNT

## ATTORNEY INFORMATION

INSTRUCTIONS TO ATTORNEYS: (1) COMPLETE THIS FORM, (2) TAKE THIS FORM TO A FINANCIAL INSTITUTION ELIGIBLE TO OFFER IOLTA ACCOUNTS, (3) SEND A COPY OF THE COMPLETED FORM TO THE ALABAMA LAW FOUNDATION ALONG WITH A LIST OF ALL LAWYERS IN LAW FIRM.

FIRM NAME: _____

ATTORNEY NAME: _____

MAILING ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____ TELEPHONE: _____

FINANCIAL INSTITUTION NAME: _____

ACCOUNT NUMBER: _____

The undersigned hereby enrolls in the Alabama Law Foundation's Interest on Lawyers Trust Account (IOLTA) program established by the Supreme Court of Alabama. Under this program, please open (if new), or change the status of my/our law firm's existing trust account to an interest-bearing account of a type authorized by Rule 1.15 of the Alabama Rules of Professional Conduct.

The IOLTA account must remain in my/our law firm's name. However, the IOLTA account must bear the Alabama Law Foundation's Taxpayer Identification Number, which will be paid interest or dividends from the account. No IRS Form 1099 is required to be filed for IOLTA accounts. IOLTA accounts are NOT subject to back-up withholding.

AUTHORIZED SIGNATORIES: _____ DATE: _____

_____ _____

_____ _____

_____ _____

## FINANCIAL INSTITUTION INFORMATION

Interest in accordance with your standard account disclosure must be remitted monthly or quarterly to:

ALABAMA LAW FOUNDATION, INC
POST OFFICE BOX 671
MONTGOMERY, AL 36101
TAXPAYER I.D. NO. 63-0951482

For more information about the IOLTA program and the charitable programs it supports, or for assistance in setting up this account, remitting interest or dividends to the Alabama Law Foundation, or handling remittance errors, please visit the Foundation's website at www.alfinc.org or call (334) 269-1515 and ask for the IOLTA Operations Department. Remittances made via ACH and Electronic Transfer are encouraged.

## COPIES FILED WITH THE BANK, THE ATTORNEY & THE FOUNDATION

# SUPPLEMENT TO DEPOSIT AGREEMENT(S)
# RE: REPORTING OF INSTANCES OF INSUFFICIENT FUNDS OF LAWYERS

**DATE:** _____

**Name and Address of Financial Institution** (herein the "**Bank**"):

_____

_____

_____

**Name and Address of Attorney or Law Firm Depositor** (herein the "**Depositor**"):

_____

_____

_____

**Depositor's Trust Account(s) at Bank to Which this Supplement Applies** (individually an "**Account**" and collectively the "**Accounts**"):

| Name of Account | Account No. | Name of Account | Account No. |
|---|---|---|---|
| | | | |
| Name of Account | Account No. | Name of Account | Account No. |
| | | | |

As authorized by Supreme Court of Alabama order dated May 13, 1997, and for the purpose of Depositor complying with the Alabama Rules of Professional Conduct for lawyers, Depositor and Bank agree that all deposit agreements between Bank and Depositor (however named) relating to the Accounts (herein the "**Deposit Agreements**") are amended to include the following additional provisions:

1. Depositor has informed Bank that Rule 1.15 of the Alabama Rules of Professional Conduct for lawyers ("**Rule 1.15**") requires that Depositor shall request that the financial institution where Depositor maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar (an "**ISF Report**") in every instance where a properly payable item or order to pay is presented against Depositor's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment order is returned because there are insufficient funds in the account to pay the item or order or, (2) if the request is honored by the financial institution, any overdraft created thereby is not paid within three (3) business days of the date the financial institution sends notification of the overdraft to the Depositor (a "**Reportable ISF Event**"). The ISF Report of the financial institution shall contain the same information, or a copy of that information, forwarded to the Depositor who presented the item or order.

2. At Depositor's request, and as an accommodation to Depositor, Bank agrees to file an ISF Report with the Office of General Counsel of the Alabama State Bar upon the occurrence of any Reportable ISF Event relating to any of the Accounts. Bank shall send any ISF Report to: **Office of General Counsel of the Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101.** Depositor agrees to pay Bank fees, as established from time to time by Bank, for processing and filing of any ISF Report without further notice or demand.

3. Depositor consents to the reporting and production requirements mandated by Rule 1.15 and agrees to hold Bank harmless for its compliance with these reporting and production requirements. **Depositor represents to Bank that Rule 1.15 provides that the duty for complying with Rule 1.15 belongs to the Depositor and not to Bank. Bank has agreed to file any ISF Report as an accommodation to Depositor; however, Bank shall have no liability to Depositor of any nature whatsoever in the event that Bank shall fail to file an ISF Report as set forth herein. Depositor agrees that, in any instance where the filing of an ISF Report may be appropriate, it shall be Depositor's responsibility and duty to verify that Bank has filed the ISF Report.** Neither this Supplemental Agreement nor the reporting or production of records by Bank made pursuant to Rule 1.15 shall be deemed to create in Bank a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of Depositor's overdrawing any of the Accounts. There are no third party beneficiaries to this Agreement.

4. Except as modified herein, all other terms and conditions of the Deposit Agreements shall remain in full force and effect.

**DEPOSITOR:**

_____
Name of Lawyer / Law Firm

By: _____
Its:

Rev. 07/02/97

**BANK:**

_____
Name of Financial Institution

By: _____
Its:

# SAMPLE TRUST ACCOUNT LEDGERS

Please Note: These ledger pages are not intended to represent the only ethically correct way to keep trust accounting records. The purpose of this example is to show the different types of information which should be kept, and one way of setting up the ledgers.

**Sample Page** **IOLTA Trust Account General Ledger**
**Black, White & Green, P.C.**

All check numbers in sequence.

Full description of all transactions included.

| Date | Check No. | Client | File No. | Payee | Description | Payment | Deposit | Balance |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | 13,251.14 |
| 01/05/03 | 820 | Village Appliances | 02-0250 | AAA Court Reporters | Deposition Transcript | 125.00 | | 13,126.14 |
| 01/05/03 | 821 | Jed Bartlett | 02-1599 | Capitol Medical Center | Copy Medical Records | 30.00 | | 13,096.14 |
| 01/05/03 | 822 | Nora Jones | 02-1598 | Clerk of Court | Filing Fee | 95.00 | | 13,001.14 |
| 01/06/03 | Dep. 03-01 Receipt #1234 | Jayne Thomas | 01-0023 | | Settlement Check | | 38,000.00 | 51,001.14 |
| 01/06/03 | 823 | Moviestore | 02-1423 | Excelsior Legal | Corporate Kit | 235.00 | | 50,766.14 |
| 01/09/03 | 824 | Jayne Thomas | 01-0023 | Dr. Eileen Rogers | Rehab. Final | 1,340.89 | | 49425.25 |
| 01/09/03 | 825 | Jayne Thomas | 01-0023 | BW&G | Fees | 11,400.00 | | 38,025.25 |
| 01/09/03 | 826 | Jayne Thomas | 01-0023 | Jayne Thomas | Net Settlement | 25,259.11 | | 12,766.14 |
| 01/09/03 | 827 | VOID | | | | | | 12,766.14 |
| 01/11/03 | Dep. 03-02 Receipt #1235 | Ross Geller | 03-0001 | | Advance Fees & Costs | | 1,000.00 | 13,766.14 |
| 01/12/03 | 828 | Nora Jones | 02-1598 | Thomas Magnum | Investigative Report | 475.00 | | 13,291.14 |

Note that check is given time to clear before disbursement.

All receipts tied to receipt book number.

**Sample Page:** **Client Trust Ledger Card**
**Black, White & Green, P.C.**

Name: Nora Jones Matter: Divorce File No. 02-1598
Address: 123 Main Street Attorney: RLG
Anywhere, AL 36000

| Date | Check No. | Payee | Description | Payment | Deposit | Balance |
|---|---|---|---|---|---|---|
| | | | Balance Forward | | | 0.00 |
| 12/31/02 | Dep. 02-57 Receipt #1233 | | Fee & Cost Deposit | | 1,500.00 | 1,500.00 |
| 01/05/03 | 822 | Clerk of Court | Filing Fee | 95.00 | | 1,405.00 |
| 01/12/03 | 828 | Thomas Magnum | Investigative Report | 475.00 | | 930.00 |
| 01/15/03 | 834 | BW&G, P.C. | Fees | 600.00 | | 330.00 |
| 02/28/03 | Dep. 03-12 | | Additional Fee & Cost Deposit | | 500.00 | 830.00 |
| 03/17/03 | 859 | BW&G, P.C. | Copy costs | 47.95 | | 782.05 |
| 03/31/03 | 873 | BW&G, P.C. | Fees | 700.00 | | 82.05 |
| 03/31/03 | 874 | Nora Jones | Refund | 82.05 | | 0.00 |

Note: Ending balance for closed matters must always come to zero.
The sum of the ending balances for all open matters must always equal the ending balance in the Trust Account General Ledger.

IRS Form **8300** (Rev. July 2012)
OMB No. 1545-0892
Department of the Treasury
Internal Revenue Service

# Report of Cash Payments Over $10,000 Received in a Trade or Business

▶ See instructions for definition of cash.
▶ Use this form for transactions occurring after July 8, 2012. Do not use prior versions after this date.
For Privacy Act and Paperwork Reduction Act Notice, see the last page.

FinCEN Form **8300** (Rev. July 2012)
OMB No. 1506-0018
Department of the Treasury
Financial Crimes Enforcement Network

1 Check appropriate box(es) if: a ☐ Amends prior report; b ☐ Suspicious transaction.

## Part I Identity of Individual From Whom the Cash Was Received

2 If more than one individual is involved, check here and see instructions . . . . . ▶ ☐

| 3 Last name | 4 First name | 5 M.I. | 6 Taxpayer identification number |
|---|---|---|---|
| | | | |

| 7 Address (number, street, and apt. or suite no.) | 8 Date of birth . . . ▶ (see instructions) M M D D Y Y Y Y |
|---|---|
| | |

| 9 City | 10 State | 11 ZIP code | 12 Country (if not U.S.) | 13 Occupation, profession, or business |
|---|---|---|---|---|
| | | | | |

| 14 Identifying document (ID) | a Describe ID ▶ c Number ▶ | b Issued by ▶ |
|---|---|---|
| | | |

## Part II Person on Whose Behalf This Transaction Was Conducted

15 If this transaction was conducted on behalf of more than one person, check here and see instructions . . . . . ▶ ☐

| 16 Individual's last name or organization's name | 17 First name | 18 M.I. | 19 Taxpayer identification number |
|---|---|---|---|
| | | | |

| 20 Doing business as (DBA) name (see instructions) | Employer identification number |
|---|---|
| | |

| 21 Address (number, street, and apt. or suite no.) | 22 Occupation, profession, or business |
|---|---|
| | |

| 23 City | 24 State | 25 ZIP code | 26 Country (if not U.S.) |
|---|---|---|---|
| | | | |

| 27 Alien identification (ID) | a Describe ID ▶ c Number ▶ | b Issued by ▶ |
|---|---|---|
| | | |

## Part III Description of Transaction and Method of Payment

| 28 Date cash received M M D D Y Y Y Y | 29 Total cash received $ .00 | 30 If cash was received in more than one payment, check here . . . ▶ ☐ | 31 Total price if different from item 29 $ .00 |
|---|---|---|---|
| | | | |

32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):

| | | | |
|---|---|---|---|
| a | U.S. currency | $ .00 | (Amount in $100 bills or higher $ .00 ) |
| b | Foreign currency | $ .00 | (Country ▶ ) |
| c | Cashier's check(s) | $ .00 | Issuer's name(s) and serial number(s) of the monetary instrument(s) ▶ |
| d | Money order(s) | $ .00 | |
| e | Bank draft(s) | $ .00 | |
| f | Traveler's check(s) | $ .00 | |

33 Type of transaction

| | | | |
|---|---|---|---|
| a | ☐ Personal property purchased | f | ☐ Debt obligations paid |
| b | ☐ Real property purchased | g | ☐ Exchange of cash |
| c | ☐ Personal services provided | h | ☐ Escrow or trust funds |
| d | ☐ Business services provided | i | ☐ Bail received by court clerks |
| e | ☐ Intangible property purchased | j | ☐ Other (specify in item 34) ▶ |

34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ▶

## Part IV Business That Received Cash

| 35 Name of business that received cash | 36 Employer identification number |
|---|---|
| | |

| 37 Address (number, street, and apt. or suite no.) | Social security number |
|---|---|
| | |

| 38 City | 39 State | 40 ZIP code | 41 Nature of your business |
|---|---|---|---|
| | | | |

42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.

Signature ▶ _____ Authorized official Title ▶ _____

| 43 Date of signature M M D D Y Y Y Y | 44 Type or print name of contact person | 45 Contact telephone number |
|---|---|---|
| | | |

## Multiple Parties

*(Complete applicable parts below if box 2 or 15 on page 1 is checked)*

### Part I Continued—Complete if box 2 on page 1 is checked

| | | | | | |
|---|---|---|---|---|---|
| 3 | Last name | 4 First name | 5 M.I. | 6 Taxpayer identification number | |
| 7 | Address (number, street, and apt. or suite no.) | | 8 Date of birth . . . ▶ (see instructions) | M M D D Y Y Y Y | |
| 9 | City | 10 State | 11 ZIP code | 12 Country (if not U.S.) | 13 Occupation, profession, or business |
| 14 | Identifying document (ID) | a Describe ID ▶ c Number ▶ | | b Issued by ▶ | |

| | | | | | |
|---|---|---|---|---|---|
| 3 | Last name | 4 First name | 5 M.I. | 6 Taxpayer identification number | |
| 7 | Address (number, street, and apt. or suite no.) | | 8 Date of birth . . . ▶ (see instructions) | M M D D Y Y Y Y | |
| 9 | City | 10 State | 11 ZIP code | 12 Country (if not U.S.) | 13 Occupation, profession, or business |
| 14 | Identifying document (ID) | a Describe ID ▶ c Number ▶ | | b Issued by ▶ | |

### Part II Continued—Complete if box 15 on page 1 is checked

| | | | | | |
|---|---|---|---|---|---|
| 16 | Individual's last name or organization's name | 17 First name | 18 M.I. | 19 Taxpayer identification number | |
| 20 | Doing business as (DBA) name (see instructions) | | | Employer identification number | |
| 21 | Address (number, street, and apt. or suite no.) | | | 22 Occupation, profession, or business | |
| 23 | City | 24 State | 25 ZIP code | 26 Country (if not U.S.) | |
| 27 | Alien identification (ID) | a Describe ID ▶ c Number ▶ | | b Issued by ▶ | |

| | | | | | |
|---|---|---|---|---|---|
| 16 | Individual's last name or organization's name | 17 First name | 18 M.I. | 19 Taxpayer identification number | |
| 20 | Doing business as (DBA) name (see instructions) | | | Employer identification number | |
| 21 | Address (number, street, and apt. or suite no.) | | | 22 Occupation, profession, or business | |
| 23 | City | 24 State | 25 ZIP code | 26 Country (if not U.S.) | |
| 27 | Alien identification (ID) | a Describe ID ▶ c Number ▶ | | b Issued by ▶ | |

**Comments** – Please use the lines provided below to comment on or clarify any information you entered on any line in Parts I, II, III, and IV

Section references are to the Internal Revenue Code unless otherwise noted.

**Future Developments.** For the latest information about developments related to Form 8300 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/form8300*.

## Important Reminders

- Section 6050I (26 United States Code (U.S.C.) 6050I) and 31 U.S.C. 5331 require that certain information be reported to the IRS and the Financial Crimes Enforcement Network (FinCEN). This information must be reported on IRS/FinCEN Form 8300.
- Item 33, box i, is to be checked only by clerks of the court; box d is to be checked by bail bondsmen. See *Item 33* under *Part III*, later.
- The meaning of the word "currency" for purposes of 31 U.S.C. 5331 is the same as for the word "cash" (See *Cash* under *Definitions*, later).

# General Instructions

**Who must file.** Each person engaged in a trade or business who, in the course of that trade or business, receives more than $10,000 in cash in one transaction or in two or more related transactions, must file Form 8300. Any transactions conducted between a payer (or its agent) and the recipient in a 24-hour period are related transactions. Transactions are considered related even if they occur over a period of more than 24 hours if the recipient knows, or has reason to know, that each transaction is one of a series of connected transactions.

Keep a copy of each Form 8300 for 5 years from the date you file it.

Clerks of federal or state courts must file Form 8300 if more than $10,000 in cash is received as bail for an individual(s) charged with certain criminal offenses. For these purposes, a clerk includes the clerk's office or any other office, department, division, branch, or unit of the court that is authorized to receive bail. If a person receives bail on behalf of a clerk, the clerk is treated as receiving the bail. See *Item 33* under *Part III*, later.

If multiple payments are made in cash to satisfy bail and the initial payment does not exceed $10,000, the initial payment and subsequent payments must be aggregated and the information return must be filed by the 15th day after receipt of the payment that causes the aggregate amount to exceed $10,000 in cash. In such cases, the reporting requirement can be satisfied either by sending a single written statement with an aggregate amount listed or by furnishing a copy of each Form 8300 relating to that payer. Payments made to satisfy separate bail requirements are not required to be aggregated. See Treasury Regulations section 1.6050I-2.

Casinos must file Form 8300 for nongaming activities (restaurants, shops, etc.).

**Voluntary use of Form 8300.** Form 8300 may be filed voluntarily for any suspicious transaction (see *Definitions*, later) for use by FinCEN and the IRS, even if the total amount does not exceed $10,000.

**Exceptions.** Cash is not required to be reported if it is received:

- By a financial institution required to file Form 104, Currency Transaction Report;
- By a casino required to file (or exempt from filing) Form 103, Currency Transaction Report by Casinos, if the cash is received as part of its gaming business;
- By an agent who receives the cash from a principal, if the agent uses all of the cash within 15 days in a second transaction that is reportable on Form 8300 or on Form 104, and discloses all the information necessary to complete Part II of Form 8300 or Form 104 to the recipient of the cash in the second transaction;
- In a transaction occurring entirely outside the United States. See Publication 1544, Reporting Cash Payments of Over $10,000 (Received in a Trade or Business), regarding transactions occurring in Puerto Rico and territories and possessions of the United States; or
- In a transaction that is not in the course of a person's trade or business.

**When to file.** File Form 8300 by the 15th day after the date the cash was received. If that date falls on a Saturday, Sunday, or legal holiday, file the form on the next business day.

**Where to file.** File the form with the Internal Revenue Service, Detroit Computing Center, P.O. Box 32621, Detroit, MI 48232.

**Statement to be provided.** You must give a written or electronic statement to each person named on a required Form 8300 on or before January 31 of the year following the calendar year in which the cash is received. The statement must show the name, telephone number, and address of the information contact for the business, the aggregate amount of reportable cash received, and that the information was furnished to the IRS. Keep a copy of the statement for your records.

**Multiple payments.** If you receive more than one cash payment for a single transaction or for related transactions, you must report the multiple payments any time you receive a total amount that exceeds $10,000 within any 12-month period. Submit the report within 15 days of the date you receive the payment that causes the total amount to exceed $10,000. If more than one report is required within 15 days, you may file a combined report. File the combined report no later than the date the earliest report, if filed separately, would have to be filed.

**Taxpayer identification number (TIN).** You must furnish the correct TIN of the person or persons from whom you receive the cash and, if applicable, the person or persons on whose behalf the transaction is being conducted. You may be subject to penalties for an incorrect or missing TIN.

The TIN for an individual (including a sole proprietorship) is the individual's social security number (SSN). For certain resident aliens who are not eligible to get an SSN and nonresident aliens who are required to file tax returns, it is an IRS Individual Taxpayer Identification Number (ITIN). For other persons, including corporations, partnerships, and estates, it is the employer identification number (EIN).

If you have requested but are not able to get a TIN for one or more of the parties to a transaction within 15 days following the transaction, file the report and attach a statement explaining why the TIN is not included.

**Exception:** *You are not required to provide the TIN of a person who is a nonresident alien individual or a foreign organization if that person or foreign organization:*

- *Does not have income effectively connected with the conduct of a U.S. trade or business;*
- *Does not have an office or place of business, or a fiscal or paying agent in the United States;*
- *Does not furnish a withholding certificate described in §1.1441-1(e)(2) or (3) or §1.1441-5(c)(2)(iv) or (3)(iii) to the extent required under §1.1441-1(e)(4)(vii); or*
- *Does not have to furnish a TIN on any return, statement, or other document as required by the income tax regulations under section 897 or 1445.*

**Penalties.** You may be subject to penalties if you fail to file a correct and complete Form 8300 on time and you cannot show that the failure was due to reasonable cause. You may also be subject to penalties if you fail to furnish timely a correct and complete statement to each person named in a required

report. A minimum penalty of $25,000 may be imposed if the failure is due to an intentional or willful disregard of the cash reporting requirements.

Penalties may also be imposed for causing, or attempting to cause, a trade or business to fail to file a required report; for causing, or attempting to cause, a trade or business to file a required report containing a material omission or misstatement of fact; or for structuring, or attempting to structure, transactions to avoid the reporting requirements. These violations may also be subject to criminal prosecution which, upon conviction, may result in imprisonment of up to 5 years or fines of up to $250,000 for individuals and $500,000 for corporations or both.

## Definitions

**Cash.** The term "cash" means the following.

- U.S. and foreign coin and currency received in any transaction; or
- A cashier's check, money order, bank draft, or traveler's check having a face amount of $10,000 or less that is received in a designated reporting transaction (defined below), or that is received in any transaction in which the recipient knows that the instrument is being used in an attempt to avoid the reporting of the transaction under either section 6050I or 31 U.S.C. 5331.

**Note.** Cash does not include a check drawn on the payer's own account, such as a personal check, regardless of the amount.

**Designated reporting transaction.** A retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of a consumer durable, a collectible, or a travel or entertainment activity.

*Retail sale.* Any sale (whether or not the sale is for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

*Consumer durable.* An item of tangible personal property of a type that, under ordinary usage, can reasonably be expected to remain useful for at least 1 year, and that has a sales price of more than $10,000.

*Collectible.* Any work of art, rug, antique, metal, gem, stamp, coin, etc.

*Travel or entertainment activity.* An item of travel or entertainment that pertains to a single trip or event if the combined sales price of the item and all other items relating to the same trip or event that are sold in the same transaction (or related transactions) exceeds $10,000.

*Exceptions.* A cashier's check, money order, bank draft, or traveler's check is not considered received in a designated reporting transaction if it constitutes the proceeds of a bank loan or if it is received as a payment on certain promissory notes, installment sales contracts, or down payment plans. See Publication 1544 for more information.

**Person.** An individual, corporation, partnership, trust, estate, association, or company.

**Recipient.** The person receiving the cash. Each branch or other unit of a person's trade or business is considered a separate recipient unless the branch receiving the cash (or a central office linking the branches), knows or has reason to know the identity of payers making cash payments to other branches.

**Transaction.** Includes the purchase of property or services, the payment of debt, the exchange of cash for a negotiable instrument, and the receipt of cash to be held in escrow or trust. A single transaction may not be broken into multiple transactions to avoid reporting.

**Suspicious transaction.** A suspicious transaction is a transaction in which it appears that a person is attempting to cause Form 8300 not to be filed, or to file a false or incomplete form.

# Specific Instructions

You must complete all parts. However, you may skip Part II if the individual named in Part I is conducting the transaction on his or her behalf only. For voluntary reporting of suspicious transactions, see *Item 1* next.

**Item 1.** If you are amending a report, check box 1a. Complete the form in its entirety (Parts I-IV) and include the amended information. Do not attach a copy of the original report.

To voluntarily report a suspicious transaction (see *Suspicious transaction* above), check box 1b. You may also telephone your local IRS Criminal Investigation Division or call the FinCEN Financial Institution Hotline at 1-866-556-3974.

## Part I

**Item 2.** If two or more individuals conducted the transaction you are reporting, check the box and complete Part I for any one of the individuals. Provide the same information for the other individual(s) on the back of the form. If more than three individuals are involved, provide the same information on additional sheets of paper and attach them to this form.

**Item 6.** Enter the taxpayer identification number (TIN) of the individual named. See *Taxpayer identification number (TIN),* earlier, for more information.

**Item 8.** Enter eight numerals for the date of birth of the individual named. For example, if the individual's birth date is July 6, 1960, enter 07 06 1960.

**Item 13.** Fully describe the nature of the occupation, profession, or business (for example, "plumber," "attorney," or "automobile dealer"). Do not use general or nondescriptive terms such as "businessman" or "self-employed."

**Item 14.** You must verify the name and address of the named individual(s). Verification must be made by examination of a document normally accepted as a means of identification when cashing checks (for example, a driver's license, passport, alien registration card, or other official document). In item 14a, enter the type of document examined. In item 14b, identify the issuer of the document. In item 14c, enter the document's number. For example, if the individual has a Utah driver's license, enter "driver's license" in item 14a, "Utah" in item 14b, and the number appearing on the license in item 14c.

**Note.** You must complete all three items (a, b, and c) in this line to make sure that Form 8300 will be processed correctly.

## Part II

**Item 15.** If the transaction is being conducted on behalf of more than one person (including husband and wife or parent and child), check the box and complete Part II for any one of the persons. Provide the same information for the other person(s) on the back of the form. If more than three persons are involved, provide the same information on additional sheets of paper and attach them to this form.

**Items 16 through 19.** If the person on whose behalf the transaction is being conducted is an individual, complete items 16, 17, and 18. Enter his or her TIN in item 19. If the individual is a sole proprietor and has an employer identification number (EIN), you must enter both the SSN and EIN in item 19. If the person is an organization, put its name as shown on required tax filings in item 16 and its EIN in item 19.

**Item 20.** If a sole proprietor or organization named in items 16 through 18 is doing business under a name other than that entered in item 16 (for example, a "trade" or "doing business as (DBA)" name), enter it here.

**Item 27.** If the person is not required to furnish a TIN, complete this item. See *Taxpayer identification number (TIN),* earlier. Enter a description of the type of official document issued to that person in item 27a (for example, a "passport"), the country that issued the document in item 27b, and the document's number in item 27c.

**Note.** You must complete all three items (a, b, and c) in this line to make sure that Form 8300 will be processed correctly.

## Part III

**Item 28.** Enter the date you received the cash. If you received the cash in more than one payment, enter the date you received the payment that caused the combined amount to exceed $10,000. See *Multiple payments,* earlier, for more information.

**Item 30.** Check this box if the amount shown in item 29 was received in more than one payment (for example, as installment payments or payments on related transactions).

**Item 31.** Enter the total price of the property, services, amount of cash exchanged, etc. (for example, the total cost of a vehicle purchased, cost of catering service, exchange of currency) if different from the amount shown in item 29.

**Item 32.** Enter the dollar amount of each form of cash received. Show foreign currency amounts in U.S. dollar equivalent at a fair market rate of exchange available to the public. The sum of the amounts must equal item 29. For cashier's check, money order, bank draft, or traveler's check, provide the name of the issuer and the serial number of each instrument. Names of all issuers and all serial numbers involved must be provided. If necessary, provide this information on additional sheets of paper and attach them to this form.

**Item 33.** Check the appropriate box(es) that describe the transaction. If the transaction is not specified in boxes a–i, check box j and briefly describe the transaction (for example, "car lease," "boat lease," "house lease," or "aircraft rental"). If the transaction relates to the receipt of bail by a court clerk, check box i, "Bail received by court clerks." This box is only for use by court clerks. If the transaction relates to cash received by a bail bondsman, check box d, "Business services provided."

## Part IV

**Item 36.** If you are a sole proprietorship, you must enter your SSN. If your business also has an EIN, you must provide the EIN as well. All other business entities must enter an EIN.

**Item 41.** Fully describe the nature of your business, for example, "attorney" or "jewelry dealer." Do not use general or nondescriptive terms such as "business" or "store."

**Item 42.** This form must be signed by an individual who has been authorized to do so for the business that received the cash.

### Comments

Use this section to comment on or clarify anything you may have entered on any line in Parts I, II, III, and IV. For example, if you checked box b (Suspicious transaction) in line 1 above Part I, you may want to explain why you think that the cash transaction you are reporting on Form 8300 may be suspicious.

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**Privacy Act and Paperwork Reduction Act Notice.** Except as otherwise noted, the information solicited on this form is required by the IRS and FinCEN in order to carry out the laws and regulations of the United States. Trades or businesses and clerks of federal and state criminal courts are required to provide the information to the IRS and FinCEN under section 6050I and 31 U.S.C. 5331, respectively. Section 6109 and 31 U.S.C. 5331 require that you provide your identification number. The principal purpose for collecting the information on this form is to maintain reports or records which have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, by directing the federal government's attention to unusual or questionable transactions.

You are not required to provide information as to whether the reported transaction is deemed suspicious. Failure to provide all other requested information, or providing fraudulent information, may result in criminal prosecution and other penalties under 26 U.S.C. and 31 U.S.C.

Generally, tax returns and return information are confidential, as stated in section 6103. However, section 6103 allows or requires the IRS to disclose or give the information requested on this form to others as described in the Internal Revenue Code. For example, we may disclose your tax information to the Department of Justice, to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions, to carry out their tax laws. We may disclose this information to other persons as necessary to obtain information which we cannot get in any other way. We may disclose this information to federal, state, and local child support agencies; and to other federal agencies for the purposes of determining entitlement for benefits or the eligibility for and the repayment of loans. We may also provide the records to appropriate state, local, and foreign criminal law enforcement and regulatory personnel in the performance of their official duties. We may also disclose this information to other countries under a tax treaty, or to federal and state agencies to enforce federal nontax criminal laws and to combat terrorism. In addition, FinCEN may provide the information to those officials if they are conducting intelligence or counter-intelligence activities to protect against international terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any law under 26 U.S.C. or 31 U.S.C.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 21 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. Email us at taxforms@irs.gov. Enter "Form 8300" on the subject line. Or you can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send Form 8300 to this address. Instead, see *Where to file,* earlier.

# Exhibit B

C

Code of Alabama Currentness
Title 40. Revenue and Taxation. (Refs & Annos)
Chapter 10. Sale of Land. (Refs & Annos)
Article 5. . Redemption of Land Sold for Taxes.
**→→ § 40-10-120. When and by whom land may be redeemed.**

(a) Real estate which hereafter may be sold for taxes and purchased by the state may be redeemed at any time before the title passes out of the state or, if purchased by any other purchaser, may be redeemed at any time within three years from the date of the sale by the owner, his or her heirs, or personal representatives, or by any mortgagee or purchaser of such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor or other creditor having a lien thereon, or on any part thereof; and an infant or insane person entitled to redeem at any time before the expiration of three years from the sale may redeem at any time within one year after the removal of the disability; and such redemption may be of any part of the lands so sold, which includes the whole of the interest of the redemptioner. If the mortgage or other instrument creating a lien under which a party seeks to redeem is duly recorded at the time of the tax sale, the party shall, in addition to the time herein specified, have the right to redeem the real estate sold, or any portion thereof covered by his or her mortgage or lien, at any time within one year from the date of written notice from the purchaser of his or her purchase of the lands at tax sale served upon such party, and notice served upon either the original mortgagees or lienholders or their transferee of record, or their heirs, personal representatives, or assigns shall be sufficient notice.

(b) If any real property has been sold for taxes and is subject to redemption from the sale as set forth in subsection (a) and has also been sold in one or more subsequent sales for taxes, then any party entitled to redeem such sale for taxes may redeem such sale if the redemptioner simultaneously redeems his or her sale and all subsequent sales. In the event of a redemption of successive sales, the redemption amount shall be ascertained by applying the provisions of Sections 40-10-121 and 40-10-122. Redemption amounts computed pursuant to Section 40-10-121 shall be paid as stated therein. Redemption amounts computed pursuant to Section 40-10-122 shall be paid as stated therein if the purchaser had the right to redeem pursuant to subsection (a) or was the owner of the then current tax certificate or tax title. Otherwise, those funds shall be disposed of as set forth in Section 40-10-28 and paid to such purchaser or his or her assignee only as set forth in Section 40-10-28, with the time limits for such application computed utilizing the sale date when the purchaser's interest was sold for taxes.

CREDIT(S)

(Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 303; Act 2009-508, p. 937, § 1.)

HISTORY

Amendment notes:

**The 2009 amendment,** effective September 1, 2009, inserted the subsection (a) designator, inserted "or her" in three places, substituted "the" for "his" preceding "disability", substituted "the tax sale, the" for "said tax sale, said", substituted "redeem the" for "redeem said", and substituted "the lands at" for "said lands at"; and added subsection (b).

LIBRARY REFERENCES

American Digest System:

Taxation 3003, 3011.

Corpus Juris Secundum:

C.J.S. Taxation §§ 1247 to 1264.

CASENOTES



1. Purpose

This section was intended to relieve mortgagees, whose mortgages are of record in the courthouse where the tax sales are made, of the necessity of keeping check on the tax records. Farmer v. Hill, 243 Ala. 543, 11 So.2d 160 (Ala.1942).

The provision that a mortgagee might redeem realty, sold for taxes, at any time within one year from date of written notice from purchaser of his purchase of the realty at tax sale, was intended specially to protect nonresident mortgagees. Alabama Mineral Land Co. v. McFry, 236 Ala. 632, 184 So. 192 (Ala.1938). Taxation 3011

2. Construction and application

Under Alabama law, after a parcel of property has been sold because of its owner's failure to pay ad valorem taxes assessed against that property, the owner has two methods of redeeming the property from that sale: statutory redemption, also known as administrative redemption, which requires the payment of specified sums of money to the probate judge of the county in which the parcel is located, and judicial redemption, which involves the filing of an original civil action against a tax-sale purchaser, or the filing of a counterclaim in an ejectment action brought by that purchaser, and the payment of specified sums into the court in which that action or counterclaim is pending. Mitchell v. Curry, 70 So.3d 353 (Ala.Civ.App.2010), overruled on rehearing. Taxation 3000; Taxation 3047

As to meaning of "from the date of the sale," see Daugherty v. Rester, 645 So.2d 1361 (Ala.1994), rehearing denied.

Reference in former section to "two years from the date of the sale" (now three years) has been interpreted as two years from the date of issuance of the tax deed, the "final, consummating act of sale." Van Meter v. Grice, 380 So.2d 274 (Ala.1980).

Redemption statutes are to be construed most favorably to the redemptioner. Reuter v. Mobile Bldg. and Const. Trades Council, 274 Ala. 614, 150 So.2d 699 (Ala.1963). Taxation 3002

3. Persons entitled to redeem

This section designates the persons entitled to redeem. These include the "owner," "mortgagee or purchaser of such lands" and other persons having an interest therein. Alabama Mineral Land Co. v. McFry, 236 Ala. 632, 184 So. 192 (1938); Walker v. Bailey, 33 Ala.App. 284, 33 So.2d 891 (1947).

Where a corporation has been dissolved and there has been no distribution of corporate assets, title to realty becomes vested in the shareholders as tenants in common; this interest would, of course, be sufficient to allow a redemption from a tax sale, provided all other statutory requisites are met. Reuter v. Mobile Bldg. and Const. Trades Council, 274 Ala. 614, 150 So.2d 699 (Ala.1963). Taxation 3004

A redemption by a shareholder must be for the benefit of the shareholders as a whole or for the corporation, as the case may be. Reuter v. Mobile Bldg. and Const. Trades Council, 274 Ala. 614, 150 So.2d 699 (Ala.1963).

Shareholder of a corporation, whether extant or defunct, would have a sufficient equitable interest in the real property of a corporation which would enable him to redeem under this section. Reuter v. Mobile Bldg. and Const. Trades Council, 274 Ala. 614, 150 So.2d 699 (Ala.1963).

In Alabama Mineral Land Co. v. McFry, 236 Ala. 632, 184 So. 192 (1938), the court observed that a person may redeem under this section if he comes into the status of one thus authorized before the right to redeem expires, which status includes any person having an interest in the land, and it said that the assignee of a valid mortgage, who becomes such before the right to redeem has expired, may exercise that right at any time before the title passes out of the tax sale purchaser. Kilgore v. Gamble, 253 Ala. 334, 44 So.2d 767 (Ala.1950).

Where land, subject to municipal special assessment liens, was acquired by state for taxes, under this section, the municipality could have redeemed the land at any time before title passed out of the state. Downing v. City of Russellville, 241 Ala. 494, 3 So.2d 34 (Ala.1941). Taxation 3004

This section names "purchaser of such lands" as one of the classes entitled to redeem. The two (now three) year limitation applies to him the same as to the owner. The broad terms defining persons entitled to redeem would include any purchaser, by foreclosure sale or otherwise, by which the title of the owner passes, while the title is in him, pending the two (now three) year period of redemption. There is a manifest distinction between the "transferee [of a mortgage] of record" mentioned in this section, and a purchaser at foreclosure sale. Alabama Mineral Land Co. v. McFry, 236 Ala. 632, 184 So. 192 (Ala.1938).

Foreign judgment creditor is not such "judgment creditor" as may redeem debtor's lands sold for taxes within state. Chattanooga Metal Co. v. Proctor, 226 Ala. 492, 147 So. 666 (Ala.1933). Taxation 3004

4. Mortgages

Mortgagee's complaint under this section was defective where the complaint nowhere averred that mortgage was of record at time of tax sale, since record of mortgage is one of the essential elements of the right of redemption. Farmer v. Hill, 240 Ala. 416, 199 So. 820 (Ala.1941).

This section contemplates a mortgage effectual as such, not just a scrap of paper on which such a form of instrument appears. The mortgagor must have such interest as will pass by the instrument in order that the relation may be created. Hester v. First Nat. Bank, 237 Ala. 307, 186 So. 717 (Ala.1939).

If the mortgagor has effectually sold and conveyed that interest and has none left in him when the mortgage is made,

the mortgagee obtains no interest in the land which will entitle him to redeem from a valid tax sale. But if the tax sale was invalid, all that the purchaser has is a right to be reimbursed by one who has a right to redeem for such amounts as the law allows under §§ 40-10-76 and 40-10-77. Hester v. First Nat. Bank, 237 Ala. 307, 186 So. 717 (Ala.1939).

5. Notice

Where no notice is given by the state, under this section, to either the original mortgagee or lienholder or their transferee of record, it follows that a subsequent resale by the state of land purchased by it at a tax sale to a person having no prior interest in such land does not cut off the right to redemption then existing in a transferee of record of a mortgage recorded on such land at the time of the tax sale. Kilgore v. Gamble, 253 Ala. 334, 44 So.2d 767 (Ala.1950).

Where a transferee of record of a mortgage on land, which mortgage is recorded prior to the purchase of the land by the state at a tax sale, attempts to redeem such land, such act on the part of the transferee of record shows that he has actual knowledge of the tax sale and of the matters which the written notice provided for in this section would disclose, and thus no other written notice is necessary to be given him or a subsequent transferee of the mortgage. Kilgore v. Gamble, 253 Ala. 334, 44 So.2d 767 (Ala.1950).

If the written notice provided by this section is not given at all, the right to redeem by a mortgagee or his transferee of record will be cut off only by adverse possession. Kilgore v. Gamble, 253 Ala. 334, 44 So.2d 767 (Ala.1950).

If the holder of record of a mortgage has, at the time of the impending sale of the land by the tax sale purchaser, knowledge of the facts prescribed in this section, or such notice is given him, the rights of any subsequent holder are cut off by the failure of the former to act within the one-year period, and the failure of a holder of record to pursue his effort to redeem, allowing four years to pass without taking some further action to enforce what he had started, serves to cut off all such rights which he had and a subsequent transferee is in no better position. Kilgore v. Gamble, 253 Ala. 334, 44 So.2d 767 (Ala.1950).

Mortgagee, on proof that there was no written notice of purchase by city at sale to enforce the lien of municipal improvement assessments, would be entitled to redeem from one who purchased realty from city. Griffin Lumber Co. v. Neill, 240 Ala. 573, 200 So. 415, 134 A.L.R. 286 (Ala.1941).

Since this section designates no official to give notice on behalf of the state, it may be inferred that the Legislature did not intend to cut off redemption by mortgagees of the class named. All persons buying from the state are charged with notice by the record of the mortgage. Farmer v. Hill, 240 Ala. 416, 199 So. 820 (Ala.1941).

Specified notice of tax sales must be given to the mortgagee or his right of redemption is not cut off by the three-year limitation. Farmer v. Hill, 240 Ala. 416, 199 So. 820 (Ala.1941).

If right to redeem from tax sale expires without notice to purchaser of error in description of land in recorded mortgage, it cannot be said that mortgagee, so far as the purchaser is concerned, was entitled to benefits of provision requiring notice to mortgagee to redeem. Hester v. First Nat. Bank, 237 Ala. 307, 186 So. 717 (Ala.1939). Taxation 3016

Mere failure of grantees of purchaser of land at tax sale to give mortgagee notice to redeem and knowledge that mortgage through error failed to include land involved were immaterial where grantees did not take title to land until after expiration of period for redemption and there was no showing that purchaser at tax sale had knowledge of error in mortgage. Hester v. First Nat. Bank, 237 Ala. 307, 186 So. 717 (Ala.1939). Taxation 3082

The provision of this section that mortgagee may redeem realty, sold for taxes, at any time within one year from date

of written notice "from the purchaser of his purchase of said lands" at tax sale, was intended to relieve mortgagee or his assignee of record, holding an outstanding mortgage, from keeping a lookout for tax sales foreclosing the paramount lien of the state and county by proceedings against the mortgagor. Alabama Mineral Land Co. v. McFry, 236 Ala. 632, 184 So. 192 (Ala.1938). Taxation 3011

Under this section providing that a mortgagee may redeem realty, sold for taxes, at any time within one year from date of written notice from purchaser of his purchase of the lands at tax sale, such notice may be given immediately after tax sale, in which event the one-year provision would run concurrently with the two (now three) year period from which the one-year period is an exception. Alabama Mineral Land Co. v. McFry, 236 Ala. 632, 184 So. 192 (Ala.1938). Taxation 3011; Taxation 3018

Requirement regarding notice is fully complied with by delivery of proper notice through the mails. Alabama Mineral Land Co. v. McFry, 236 Ala. 632, 184 So. 192 (Ala.1938).

Where mortgaged realty was sold at tax sale, and no written notice of purchase was given by purchaser at tax sale or his vendee to corporate mortgagee, nine months after sale mortgagee foreclosed and purchased at foreclosure sale, whereupon mortgagee's employee wrote to judge of probate inquiring as to tax sale, and judge answered, giving date of sale and amount required to redeem, judge executed deed to purchaser at tax sale two years after sale and two years thereafter mortgagee offered to redeem, mortgagee was not entitled to protection of provision allowing mortgagee one year in which to redeem after receiving written notice "from purchaser" at tax sale. Alabama Mineral Land Co. v. McFry, 236 Ala. 632, 184 So. 192 (Ala.1938). Taxation 3015

6. Limitations

Redemption from a tax sale by a tenant in common inures to the benefit of all cotenants, even though the period of redemption has expired as to the latter. Scott v. Brown, 106 Ala. 604, 17 So. 731 (1895); Bracely v. Noble, 201 Ala. 74, 77 So. 368 (1917).

The three-year limitations period of this section, limiting the use of section's method of redemption of parties who exercise the right to redeem within "three years from the date of the sale," also limits who may use the method of computation set out in § 40-10-122. Patterson v. Porter, 555 So.2d 750 (Ala.1989). Taxation 3030

The one-year provision in this section is not a statute of limitations that forecloses a mortgagee's right to redeem within the three-year redemptive period; it is an exception to the three-year period that allows a mortgagee to redeem within one year of receiving notice of the tax sale, and in some instances, even after the three-year period has run. Jim Walter Homes, Inc. v. Blake, 544 So.2d 161 (Ala.1989). Taxation 3011

The statute of limitations applicable to otherwise authorized suits for redemption, this section, does not apply to claims for redemption under § 40-10-83. Karagan v. Bryant for Greger, 516 So.2d 599 (Ala.1987).

Regardless of validity of sale, continuous adverse possession of the land by the purchaser at a tax sale for three years after he becomes entitled to demand a tax deed, or in fact is lawfully issued one, bars an action to recover the land by the former owner. Van Meter v. Grice, 380 So.2d 274 (Ala.1980). Taxation 3162(4)

The extended time provided in this section applies when the state is a purchaser and sells the land to a stranger to the title. Hinkle v. Posey, 258 Ala. 314, 63 So.2d 809 (Ala.1953).

The right of a mortgagee or his transferee of record to redeem continues along with the right of others mentioned in this section as long as the state holds title under the tax purchase, and the notice provided in this section, according to

its terms, would extend the period for one year after the notice and, therefore, it may continue after the state has sold the land. Kilgore v. Gamble, 253 Ala. 334, 44 So.2d 767 (Ala.1950).

The limitation in this section applies to proceedings for the sale of lands for ad valorem taxes by the state and county, but this limitation and extension of time does not apply to proceedings in sales for local improvements made by municipal corporations, which are proceedings in rem, wherein the liability is against the property affected and there is no personal liability against the owner or former owner or anyone else. Hill v. Di Beneditto, 253 Ala. 229, 43 So.2d 819 (Ala.1950).

7. Practice and procedure

In an action to enforce the right of redemption in specified property under this section, plaintiff must aver and prove the facts essential to his relief. Farmer v. Hill, 243 Ala. 543, 11 So.2d 160 (Ala.1942).

Possession by plaintiff is not essential to relief under this section. Farmer v. Hill, 240 Ala. 416, 199 So. 820 (Ala.1941).

In life tenant's action to recover surplus bid received by tax collector at tax sale, property having been subsequently redeemed by remainderman, admitting evidence of tax sale and surrounding circumstances held not error. Barclay v. Matthews, 227 Ala. 356, 149 So. 826 (Ala.1933). Taxation ⚷2830

The question whether life tenant ratified redemption by remainderman held for jury under evidence. Barclay v. Matthews, 227 Ala. 356, 149 So. 826 (Ala.1933).

8. Particular circumstances

Sale of property at public improvements and assessments sale was not required to comply with statutory requirements for sale of property for failure to pay ad valorem taxes, and thus, sale to purchaser was not void for failure to hold sale on courthouse steps. Special Assets, LLC v. U.S. Bank, N.A., 902 So.2d 711 (Ala.Civ.App.2004). Municipal Corporations ⚷575

Trial court did not err in allowing defendants to redeem the property 12 years after the tax sale. No tax deed was ever issued to the plaintiffs, or to their predecessors, and the record contained no evidence that the plaintiffs or their predecessors exercised continuous adverse possession for the requisite time period. Geier v. Smallwood, 647 So.2d 754 (Ala.Civ.App.1994).

Where trial court judgment granted corporation possession of property on which corporation held a mortgage, where property had been sold to a tax sale purchaser, and where trial court granted tax sale purchaser's motion for new trial, trial court erred in granting tax sale purchaser's motion for a new trial since the record reflected that the corporation filed its complaints within a three-year period after delivery of the tax deed; the one-year provision in this section was not a statute of limitations that foreclosed mortgagee's right to redeem within the three-year redemptive period. Jim Walter Homes, Inc. v. Blake, 544 So.2d 161 (Ala.1989).

Even though plaintiff apparently "believed" that he owned the 80-acre tract, he had actual knowledge of defendant's right of redemption prior to making any improvements on the property, and defendant could assert this right and divest plaintiff of any interest in the property; the law is well settled that one who has actual knowledge of an adverse claim to real property is not entitled to compensation for improvements made to the property after he acquired such knowledge. McCloud v. AmSouth Bank, 540 So.2d 75 (Ala.Civ.App.1989).

Rights of purchaser of landlord's property from state, which acquired it at unauthorized tax sale, held not to authorize tenant to deny landlord's title under rule applicable when landlord's title has expired or become extinguished since beginning of tenancy. Lewis v. Burch, 215 Ala.20, 108 So. 854 (Ala.1926). Landlord And Tenant 67

**Cited** in Bains Bros. Inv. Co. v. Purdie, 180 Ala. 333, 60 So. 920 (1912); Morris v. Mouchette, 240 Ala. 349, 199 So. 516 (1940); Heath v. Scarborough, 246 Ala. 509, 21 So.2d 438 (1945); Standard Contractors Supply Co. v. Scotch, 247 Ala. 517, 25 So.2d 257 (1946); Wetzel v. Hobbs, 247 Ala. 659, 25 So.2d 850 (1946); Moore v. McLean, 248 Ala. 9, 26 So.2d 96 (1946); Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (1949); Heard v. Gunn, 262 Ala. 283, 78 So.2d 313 (1955); Bonner v. Johnson, 276 Ala. 137, 159 So.2d 840 (1964); Almon v. Sixty St. Francis St., Inc., 368 So.2d 24 (Ala.1979); O'Connor v. Rabren, 373 So.2d 302 (Ala.1979); Nolte v. Wynn, 392 So.2d 802 (Ala.1980); Thomas v. Benefield, 494 So.2d 452 (Ala.Civ.App.1986); Thomas v. Benefield, 494 So.2d 452 (Ala.Civ.App.1986).

Ala. Code 1975 § **40-10-120**, AL ST § **40-10-120**

Current through Act 2013-25 of the 2013 Regular Session.



END OF DOCUMENT

# Exhibit C

Code of Alabama Currentness
Title 40. Revenue and Taxation. (Refs & Annos)
Chapter 10. Sale of Land. (Refs & Annos)
Article 5. . Redemption of Land Sold for Taxes.

**→→ § 40-10-122. Manner of redemption when land sold to party other than state.**

(a) In order to obtain the redemption of land from tax sales where the same has been sold to one other than the state, the party desiring to make such redemption shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest payable at the rate of 12 percent per annum from date of sale, and, on the portion of any excess bid that is less than or equal to 15 percent of the market value as established by the assessing official, together with the amount of all taxes which have been paid by the purchaser, which fact shall be ascertained by consulting the records in the office of the tax collector, or other tax collecting official, with interest on the payment at 12 percent per annum. If any taxes on said land have been assessed to the purchaser and have not been paid, and if the taxes are due which may be ascertained by consulting the tax collector or other tax collecting official of the county, the probate judge shall also require the party desiring to redeem the land to pay the tax collector or other tax collecting official the taxes due on the lands which have not been paid by the purchaser before he or she is entitled to redeem the same. In all redemptions of land from tax sales, the party securing the redemption shall pay all costs and fees as herein provided for due to officers and a fee of $.50 to the judge of probate for his or her services in the matter of redemption. This application and payment may be executed by an on-line transaction via the Internet or other on-line provision.

(b) With respect to property located within an urban renewal or urban redevelopment project area designated pursuant to Chapters 2 or 3 of Title 24, the proposed redemptioner must pay to the purchaser or his or her transferee, in addition to any other requirements set forth in this section, the amounts set forth below:

(1) All insurance premiums paid or owed by the purchaser for casualty loss coverage on insurable structures with interest on said payments at 12 percent per annum.

(2) The value of all permanent improvements made on the property determined in accordance with this section with interest on said value at 12 percent per annum.

(c) With respect to property which contains a residential structure at the time of the sale regardless of its location, the proposed redemptioner must pay to the purchaser or his or her transferee, in addition to any other requirements set forth in this section, the amounts set forth below:

(1) All insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure with interest on the payments at 12 percent per annum.

(2) The value of all preservation improvements made on the property determined in accordance with this section with interest on the value at 12 percent per annum.

(d) As used herein, "permanent improvements" shall include, but not be limited to, all repairs, improvements, and equipment attached to the property as fixtures. As used herein, "preservation improvements" shall mean improve-

ments made to preserve the property by properly keeping it in repair for its proper and reasonable use, having due regard for the kind and character of the property at the time of sale. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value of all permanent or preservation improvements as applicable made on the property since the tax sale. In response to written demand made pursuant to this subsection, within 10 days from the receipt of such demand, the purchaser shall furnish the proposed redemptioner with the amount claimed as the value of such permanent or preservation improvements as applicable; and within 10 days after receipt of such response, the proposed redemptioner either shall accept the value so stated by the purchaser or, disagreeing therewith, shall appoint a referee to ascertain the value of such permanent or preservation improvements as applicable. The proposed redemptioner shall in writing (i) notify the purchaser of his or her disagreement as to the value; and (ii) inform the purchaser of the name of the referee appointed by him or her. Within 10 days after the receipt of such notice, the purchaser shall appoint a referee to ascertain the value of the permanent or preservation improvements as applicable and advise the proposed redemptioner of the name of the appointee. Within 10 days after the purchaser has appointed his or her referee, the two referees shall meet and confer upon the award to be made by them. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of such body shall be made within 10 days after the appointment of the umpire and shall be final between the parties.

(e) If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection (d), he or she must pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection (d), the purchaser shall forfeit his or her claim to compensation for such improvements. The failure of the referees or either of them to act or to appoint an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises and in the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of such permanent or preservation improvements as applicable and enforce the redemption accordingly.

CREDIT(S)

(Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 305; Acts 1988, 1st Ex. Sess., No. 88-824, p. 265, § 15; Act 2002-426, p. 1094, § 1; Act 2009-508, p. 937, § 1.)

HISTORY

Amendment notes:

**The 2002 amendment** designated subsection (a), and added subsections (b) through (e); in subsection (a) substituted "payable" for "thereon", substituted "and, on the portion of any excess bid that is less than or equal to 15 percent of the market value as established by the county board of equalization," for "only on the tax amount due on the date of sale, and any repairs made to protect the property, authorized under Section 40-10-83", inserted "or she", inserted "or her" and added the last sentence. For effective date, see the Code Commissioner's Notes.

**The 2009 amendment,** effective September 1, 2009, in subsection (a) substituted "assessing official" for "county board of equalization", and substituted "the" for "said" in four places.

Code Commissioner's Notes

Act 2002-426, which amended this section provides in Sections 3 and 4: "Notwithstanding any provisions of law to the contrary, the provisions of this act shall not apply to any transaction that began prior to the effective date of this act.

"This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law, and shall apply prospectively only to tax sales after the effective date of this act and shall in no way affect tax sales made prior to the effective date of the act." The act was approved by the Governor

on April 18, 2002 and became effective on July 1, 2002.

LIBRARY REFERENCES

American Digest System:

Taxation 3044, 3045.

Corpus Juris Secundum:

C.J.S. Taxation §§ 1242 to 1243, 1336 to 1343.

CASENOTES

Generally 1
Limitations 2
Procedure 3

1. Generally

Redemptioner was not required to make payments to tax sale buyer in order to redeem under statute which required redemptioners to reimburse buyers for insurance premiums paid on property and for permanent or preservation improvements; buyer did not pay insurance premiums on the property, and record inferred that buyer either made no improvements or that any alleged improvements had no value. Espinoza v. Rudolph, 46 So.3d 403 (Ala.2010). Taxation 3030

This section deals with the matter of redemption where the property has been sold to another than the state, and the probate judge must require the deposit of the amount specifically required therein, including the amount of all taxes, both state, county and city, assessed to the purchaser and not paid, but due. The language of this section, however, does not require or empower the judge of probate to decline to accept the amount provided therein until the deposit of a fund sufficient to redeem the property from sale for payment of taxes due the city has been made. City of Opp v. Brogden, 236 Ala.180, 181 So. 752 (Ala.1938).

2. Limitations

The three-year limitations period of § 40-10-120, limiting the use of section's method of redemption to parties who exercise the right to redeem within "three years from the date of the sale," also limits who may use the method of computation set out in this section. Patterson v. Porter, 555 So.2d 750 (Ala.1989). Taxation 3030

In order to redeem, the requirements of this section must be observed within three years from the date of the sale and when this section is not complied with the only right to redeem is by virtue of § 40-10-83. Heard v. Gunn, 262 Ala. 283, 78 So.2d 313 (Ala.1955).

3. Procedure

Vendor may incur additional costs of redemption to foreclose on vendor's lien as result of tax sale of property where purchaser negligently fails to notify vendor about tax notices. Thomas v. Jim Walter Homes, Inc., 918 F.Supp. 1498 (M.D.Ala.1996).

Purchaser of real property at tax sale failed to prove that he responded to redemptioner's demand for improvement figures within 10 days from receipt of demand, as required by statute conditioning redemption of land located within urban renewal or urban redevelopment project area on redemptioner paying value of all permanent improvements made on the property, and, thus, purchaser did not have right to recover payment for improvements. Ross v. Deutsche Bank Nat. Trust Co., 56 So.3d 679 (Ala.Civ.App.2010). Taxation 3030

Where corporation failed to comply with this section, by which the probate judge must require the deposit of a specific amount, including the amount of all taxes assessed to the purchaser and the amount of money for which the lands were sold, the corporation was entitled to redeem land from tax purchaser since trial court explicitly made corporation's right of redemption contingent on compliance with this section. Jim Walter Homes, Inc. v. Blake, 544 So.2d 161 (Ala.1989). Taxation 3034

The state and county are entitled to payment of lawful taxes, penalties, interest and charges due them before any portion of sum deposited for redemption of property from tax sale is paid to municipal corporation for satisfaction of city taxes. City of Opp v. Brogden, 236 Ala.180, 181 So. 752 (Ala.1938). Taxation 3052

**Cited** in Hinkle v. Posey, 258 Ala. 314, 63 So.2d 809 (1953).

Ala. Code 1975 § **40-10-122**, AL ST § **40-10-122**

Current through Act 2013-25 of the 2013 Regular Session.



END OF DOCUMENT

# Exhibit D

Code of Alabama Currentness
Title 40. Revenue and Taxation. (Refs & Annos)
Chapter 10. Sale of Land. (Refs & Annos)
Article 3. . Rights and Remedies of Purchasers at Tax Sales.

**➡➡ § 40-10-83. Effect of payment by original owner or assignee.**

When the action is against the person for whom the taxes were assessed or the owner of the land at the time of the sale, his or her heir, devisee, vendee or mortgagee, the court shall, on motion of the defendant made at any time before the trial of the action, ascertain (i) the amount paid by the purchaser at the sale and of the taxes subsequently paid by the purchaser, together with 12 percent per annum thereon, subject to the limitations set forth in Section 40-10-122(a); (ii) with respect to property located within an urban renewal or urban redevelopment project area designated pursuant to Chapters 2 or 3 of Title 24, all insurance premiums paid or owed by the purchaser for casualty loss coverage on insurable structures and the value of all permanent improvements made by the purchaser determined in accordance with Section 40-10-122, together with 12 percent per annum thereon; (iii) with respect to any property which contains a residential structure at the time of the sale regardless of its location, all insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure and the value of all preservation improvements made by the purchaser determined in accordance with Section 40-10-122, together with 12 percent per annum thereon, subject to the limitations set forth in Section 40-10-122(a); and (iv) a reasonable attorney's fee for the plaintiff's attorney for bringing the action. The court shall also determine the right, if any, of the defendant to recover any excess pursuant to Section 40-10-28 and shall apply a credit and direct the payment of the same as set forth in subsection (b) of Section 40-10-78. Upon such determination the court shall enter judgment for the amount so ascertained in favor of the plaintiff against the defendant, and the judgment shall be a lien on the land sued for. Upon the payment into court of the amount of the judgment and costs, the court shall enter judgment for the defendant for the land, and all title and interest in the land shall by such judgment be divested out of the owner of the tax deed.

CREDIT(S)

(Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 296; Acts 1988, 1st Ex. Sess., No. 88-824, p. 265, § 13; Act 2002-426, p. 1094, § 1; Act 2009-508, p. 937, § 1.)

HISTORY

Amendment notes:

**The 2002 amendment** substituted "for whom" for "against whom", designated item (i), added items (ii) and (iii), designated item (iv) and substituted ". Upon such determination the court" for ", and". For effective date, see the Code Commissioner's Notes.

**The 2009 amendment,** effective September 1, 2009, inserted ", subject to the limitations set forth in Section 40-10-122(a)" in two places, and inserted the second sentence.

Code Commissioner's Notes

Act 2002-426, which amended this section provides in Sections 3 and 4: "Notwithstanding any provisions of law to the contrary, the provisions of this act shall not apply to any transaction that began prior to the effective date of this act.

"This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law, and shall apply prospectively only to tax sales after the effective date of this act and shall in no way affect tax sales made prior to the effective date of the act." The act was approved by the Governor on April 18, 2002 and became effective on July 1, 2002.

LIBRARY REFERENCES

American Digest System:

Taxation 3199, 3200.

Corpus Juris Secundum:

C.J.S. Taxation §§ 1554 to 1555, 1558, 1561 to 1563, 1565 to 1578.

RESEARCH REFERENCES

Treatises and Practice Aids

Tilley's Alabama Equity § 13:2, Nature of the Quiet-Title Remedy.

CASENOTES



1. Generally

In order to entitle a plaintiff to the relief sought in this peculiar statutory proceeding, there are certain primary requi-

sites: first, possession of the land by the plaintiff within the meaning of the section; second, membership by the plaintiff in a class of those allowed under the section to redeem; third, a claim to the land by the defendant under a tax title or proceeding; fourth, no action pending to enforce or test defendant claim. If these primary requisites are present, then the case can proceed to a determination of the amount necessary to redeem, the payment thereof to the holder of the tax claim or title and a judgment quieting the title of plaintiff. Moorer v. Chastang, 247 Ala. 676, 26 So.2d 75 (1946); Belcher v. McGinty, 251 Ala. 342, 37 So.2d 430 (1948); Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (1949); Alabama Pecan Dev. Co. v. Case, 266 Ala. 471, 97 So.2d 537 (1957); Stallworth v. First Nat'l Bank, 432 So.2d 1222 (Ala.1983).

Section is nothing more than a provision prescribing a certain method of redemption from a tax sale, effective when an action is pending in court such as contemplated by it. Green v. Stephens, 198 Ala. 325, 73 So. 532 (1916); Burdett v. Rossiter, 220 Ala. 631, 127 So. 202 (1930); Bell v. Propst, 220 Ala. 641, 127 So. 212 (1930); Chesnutt v. Morris, 223 Ala. 46, 135 So. 344 (1931); Morris v. Card, 223 Ala. 254, 135 So. 340 (1931); Watson v. Baker, 228 Ala. 652, 154 So. 788 (1934); Gordon v. McLemore, 237 Ala. 270, 186 So. 470 (1939); Bobo v. Edwards Realty Co., 250 Ala. 344, 34 So.2d 165 (1947).

Section confers an additional and distinct right of redemption, where valid tax titles have been made, and original owner remains in possession. Burdett v. Rossiter, 220 Ala. 631, 127 So. 202 (1930); Morris v. Card, 223 Ala. 254, 135 So. 340 (1931); Bobo v. Edwards Realty Co., 250 Ala. 344, 34 So.2d 165 (1947).

2. Purpose

Purpose of this section is to preserve right of redemption without limit of time, if the owner of the land seeking to redeem has retained possession. O'Connor v. Rabren, 373 So.2d 302 (Ala.1979); Stallworth v. First Nat'l Bank, 432 So.2d 1222 (Ala.1983); Edmonson v. Colwell, 504 So.2d 235 (Ala.1987); Hand v. Stanard, 392 So.2d 1157 (Ala.1980).

The purpose of this section was to save to an owner of land sold for its taxes the right to redeem it without limit of time provided he has such possession of it as may be sufficient for that purpose. Tensaw Land & Timber Co. v. Rivers, 244 Ala. 657, 15 So.2d 411 (1943); Belcher v. McGinty, 251 Ala. 342, 37 So.2d 430 (1948); Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (1949); Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (1962).

The purpose of this section relating to redemption of land sold for taxes was to save to taxpayer the right to redeem such land without limit of time provided he has the required possession of the land, and he need not wait until the purchaser at tax sale sues to recover the land but while so in possession he can go into court and enforce his right to redeem. Tensaw Land & Timber Co. v. Rivers, 244 Ala. 657, 15 So.2d 411 (1943); Moorer v. Chastang, 247 Ala. 676, 26 So.2d 75 (1946); Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (1949).

This section has as its purpose the preservation of the right of redemption in the owner, within a time limit, if the owner has retained possession. The character of possession does not have to be actual and peaceable; it may be constructive or scrambling. Where there is no real occupancy of the land, constructive possession follows the title of the original owner and can be cut off only by the adverse possession of the tax purchaser. Giardina v. Williams, 512 So.2d 1312 (Ala.1987), But see, Gulf Land Co. v. Buzzelli, 501 So.2d 1211 (Ala.1987). Taxation 3001

The purpose of this section is to preserve the right of redemption without a time limit, if the owner of the land seeking to redeem has retained possession. This possession may be constructive or scrambling, and, where there is no real occupancy of the land, constructive possession follows the title of the original owner and can only be cut off by the adverse possession of the tax purchaser. Gulf Land Co., Inc. v. Buzzelli, 501 So.2d 1211 (Ala.1987). But see, Giardina v. Williams, 512 So.2d 1312 (Ala.1987). Taxation 3011

It is not necessary for the owner whose land has been sold, and who remains in possession to wait to be sued by the purchaser, in order to have the benefit of redemption under this section. But its whole purpose is to enable such a person to have that method of redemption not affected by the three-year statute of limitations under § 40-10-120. It was never intended nor do its terms import that by it a purchaser is vested with the right to collect the amount he has expended for the taxes, though the sale is invalid. That remedy is provided by §§ 40-10-76 and 40-10-77. Gordon v. McLemore, 237 Ala. 270, 186 So. 470 (Ala.1939).

3. Construction

This section must be strictly construed.National Fireproofing Corp. v. Hagler, 226 Ala. 104, 145 So. 421 (1932); Gordon v. McLemore, 237 Ala. 270, 186 So. 470 (1939).

This section is a restrictive statute that has been expanded by case law. State Dept. of Revenue v. Price-Williams, 594 So.2d 48 (Ala.1992).

Legislation authorizing an owner to redeem where the state is the purchaser should be liberally construed in favor of the right to redeem. State Dept. of Revenue v. Price-Williams, 594 So.2d 48 (Ala.1992). Taxation 3002

Although this section itself speaks only in terms of the original owner raising redemption as a defensive matter in an action brought by the tax purchaser, an owner in possession need not wait to be sued, but may bring an original bill to quiet title. Karagan v. Bryant for Greger, 516 So.2d 599 (Ala.1987).

4. Applicability

Under this section it is immaterial that the purchaser holds a valid tax title, or that the period for other methods of redemption has expired. Green v. Stephens, 198 Ala. 325, 73 So. 532 (1916); Alabama Pecan Dev. Co. v. Case, 266 Ala. 471, 97 So.2d 537 (1957).

Right of redemption is not subject to the three-year limitation provided by § 40-10-120. Burdett v. Rossiter, 220 Ala. 631, 127 So. 202 (1930); Morris v. Card, 223 Ala. 254, 135 So. 340 (1931).

The statute of limitations applicable to otherwise authorized suits for redemption, § 40-10-120, does not apply to claims for redemption under this section. Karagan v. Bryant for Greger, 516 So.2d 599 (Ala.1987).

In order for short period of § 40-10-82 to bar redemption under this section, the tax purchaser must prove continuous adverse possession for three years after he is entitled to demand a tax deed. Gulf Land Co., Inc. v. Buzzelli, 501 So.2d 1211 (Ala.1987). See also, Stallworth v. First Nat. Bank of Mobile, 432 So.2d 1222 (Ala.1983). Taxation 722(2)

The Legislature in enacting this section, and in the passage of antecedent statutes of the same import, did not have any intention of excluding the doctrine of repose or prescription from application to proceedings under this redemption statute, nor to disturb its application to belated proceedings to redeem by authority of this law. The rule has been applied so many times and has been the law of this state for so many years, the supreme court is unwilling to say that the Legislature intended to except its application to such proceedings and to others of like kind without a more definite expression to that effect. Schwab v. Nonidez, 276 Ala. 308, 161 So.2d 592 (Ala.1964).

The right of taxpayer's successor to redeem land sold for taxes was governed by redemption statute in effect when the sale was made. Tensaw Land & Timber Co. v. Rivers, 244 Ala. 657, 15 So.2d 411 (Ala.1943). Taxation 3002

5. Possession--Generally

Possession may be constructive or scrambling and, where there is no real occupancy of the land, constructive possession follows the title of the original owner and can only be cut off by the adverse possession of the tax purchaser. Hand v. Stanard, 392 So.2d 1157 (Ala.1980); Stallworth v. First Nat'l Bank, 432 So.2d 1222 (Ala.1983).

Where owner of land has such possession as would necessitate some kind of action by purchaser at tax sale to recover possession, owner need not wait to be sued under this section. Burdett v. Rossiter, 220 Ala. 631, 127 So. 202 (1930); Bell v. Propst, 220 Ala. 641, 127 So. 212 (1930); Morris v. Card, 223 Ala. 254, 135 So. 340 (1931); Bobo v. Edwards Realty Co., 250 Ala. 344, 34 So.2d 165 (1947); Alabama Pecan Dev. Co. v. Case, 266 Ala. 471, 97 So.2d 537 (1957).

The owner, taxpayer or other statutory designee must have remained in some sort of actual or constructive possession of the land since the tax sale. Bobo v. Edwards Realty Co., 250 Ala. 344, 34 So.2d 165 (1947); Ellis v. Stickney, 253 Ala. 86, 42 So.2d 779 (1949); Heard v. Gunn, 262 Ala. 283, 78 So.2d 313 (1955); Alabama Pecan Dev. Co. v. Case, 266 Ala. 471, 97 So.2d 537 (1957).

The character of possession need not be actual and peaceable, but may be constructive or scrambling. O'Connor v. Rabren, 373 So.2d 302 (Ala.1979).

Owner in possession may precipitate the litigable questions for decision by a complaint to quiet title. See Morris v. Card, 223 Ala. 254, 135 So. 340 (Ala.1931).

6. ---- Adverse possession

Tax purchasers were not entitled to tack the period for which they paid taxes for the state's possession onto the period for which they paid taxes for their possession to defeat redemptioner's right to redeem based on adverse possession, as the state did not pay taxes on the property while it was in possession, and thus the purchasers did not pay taxes "during" 10 years of possession. McGuire v. Rogers, 794 So.2d 1131 (Ala.Civ.App.2000), rehearing denied , certiorari denied. Taxation 3011

Purchasers of tax deed had not maintained adverse possession of the tax-sale property for three years before original owner began proceedings to redeem the property, and thus mortgagee was entitled to redeem the property even if he had not been in possession of the property. McGuire v. Rogers, 794 So.2d 1131 (Ala.Civ.App.2000), rehearing denied , certiorari denied. Taxation 3011

Payment of taxes was insufficient to prove adverse possession of property where this was the only act of ownership. Craig v. Willcox, 655 So.2d 1002 (Ala.Civ.App.1994), rehearing denied.

Landowner whose property was purchased by the state was entitled to redeem his property by the payment to subsequent purchaser of the full amount said purchaser had paid the state, plus statutory interest, where purchaser had not exercised adverse possession of the property after receipt of the tax deed. Bendor v. Murry, 611 So.2d 1100 (Ala.Civ.App.1992).

7. ---- Constructive possession

In a proceeding to redeem land sold at a tax sale, constructive possession thereof by the plaintiff is sufficient possession by him, within the meaning of this section, to require some nature of action by the tax sale purchaser to recover the land from the plaintiff. National Fireproofing Corp. v. Hagler, 226 Ala. 104, 145 So. 421 (1932); Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (1949); Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (1962).

Constructive possession permissible to preserve in the original owner the right of redemption is of a different or lower quality than the elements of the adverse possession required of the tax sale purchaser. Rabren v. Osmon, 613 So.2d 390 (Ala.1993). Taxation 3007

The character of possession need not be actual and peaceable, but may be constructive and scrambling and, where there is no real occupancy of the land, constructive possession follows the title of the original owner and can only be cut off by the adverse possession of the tax purchaser. Stallworth v. First Nat. Bank of Mobile, 432 So.2d 1222 (Ala.1983).

Where there is no real occupancy of the land, constructive possession follows the title of the original owner and will not be cut off by any possession by the tax purchaser short of adverse possession. O'Connor v. Rabren, 373 So.2d 302 (Ala.1979).

Where the lands are described as wild, open timberlands, and there has never been any real occupancy of the land, possession is regarded as constructive and follows the title of the original owner. Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (Ala.1962).

Constructive possession is sufficient, provided, of course, the tax purchaser has not been in actual, adverse possession for the requisite period. Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (Ala.1962).

Where there had never been any real occupancy of the land, no one having been in actual possession thereof, the possession is regarded as constructive and follows the title of the original owner. Bobo v. Edwards Realty Co., 250 Ala. 344, 34 So.2d 165 (Ala.1947).

8. ---- Scrambling possession

If the taxpayer is in possession and the purchaser at the tax sale is scrambling with him as to its retention, such situation does not deprive him of his right to the benefits of this section and § 40-10-120 though it would deprive him of relief under § 6-6-540. Standard Contractors Supply Co. v. Scotch, 247 Ala. 517, 25 So.2d 257 (1946); Bobo v. Edwards Realty Co., 250 Ala. 344, 34 So.2d 165 (1947).

A complaint is properly filed for redemption by a taxpayer who has remained in possession, though a scrambling possession, if the time fixed for redemption under § 40-10-120 has expired. Standard Contractors Supply Co. v. Scotch, 247 Ala. 517, 25 So.2d 257 (1946); Heard v. Gunn, 262 Ala. 283, 78 So.2d 313 (1955).

Scrambling possession is sufficient to permit redemption under this section. Cobb v. Brown, 380 So.2d 286 (Ala.1980). Taxation 3001

The plaintiff must have such possession as will require some nature of action by the purchaser at tax sale to recover it from him, but it need not be such peaceable possession as will quiet title; it may be scrambling possession. Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (Ala.1962). Taxation 3004

Possession by the plaintiff need not be such peaceable possession as will justify a statutory complaint to quiet title. A scrambling possession is sufficient. Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (Ala.1949).

9. ---- Illustrative cases, possession

Owner and its predecessor remained in possession of land, as required for owner to indefinitely retain right to redeem property on which there was tax deed, where owner's representatives regularly visited and inspected property, and

there was no evidence of possession by purchaser of tax deed. Tabor v. Certain Lands, 736 So.2d 622 (Ala.Civ.App.1999). Taxation 3011

Where the allegations of a complaint show in substance that plaintiffs are in peaceable possession of the lands, claiming to own them in their own right and that defendant claims some interest or title by virtue of a tax sale and that no action is pending to enforce or test the validity of the defendant's claim of title, the complaint is, by virtue of this section, essentially a proceeding for redemption from a tax sale, with the idea that the holder of the tax title shall be reimbursed for his lawful charges, and the tax title then removed as a cloud on the title of the one or those entitled to redeem. Moorer v. Chastang, 247 Ala. 676, 26 So.2d 75 (Ala.1946).

Vendee of original owner peaceably acquiring actual possession of vacant property and building fence held entitled to redeem from tax sale, notwithstanding possession may not have been maintained continually from tax sale. Chesnutt v. Morris, 223 Ala. 46, 135 So. 344 (Ala.1931). Taxation 3009

Where vendee of original owner was in actual possession when he received his deed and when he filed complaint to redeem against owner of tax title, this section providing particular right of redemption applied. Morris v. Card, 223 Ala. 254, 135 So. 340 (Ala.1931). Taxation 3047

Where former landowners had leased coal mining rights to lessee, who had taken actual possession, and then filed their statutory complaint to quiet title against purchaser at tax sale, who filed counterclaim also seeking to quiet title, landowners had such possession as would enable them to exercise right of redemption within this section. Bell v. Propst, 220 Ala. 641, 127 So. 212 (Ala.1930).

Where holder of tax deed filed his statutory complaint to quiet title, alleging possession and ownership, which was met by counterclaim setting up claim through sheriff's deed on execution sale and denying plaintiff's possession and also validity of tax title, and defendant then filed motion requesting court to ascertain amount necessary for redemption under this section, proceeding upon motion, as in cases of ejectment under this section was improper; possession as well as validity of tax title being in issue. Burdett v. Rossiter, 220 Ala. 631, 127 So. 202 (Ala.1930).

Taxpayer was in possession of tax sale property when tax sale purchasers began their acts of possession and, therefore, taxpayer was entitled to redeem property, in view of taxpayer's district manager's testimony that taxpayer kept grass mowed, maintained electrical power, posted sign with taxpayer's name and telephone number, and kept locks on fence until tax sale purchaser took possession. Ervin v. Amerigas Propane, Inc., 674 So.2d 543 (Ala.Civ.App.1995), rehearing denied , certiorari denied. Taxation 3007

10. Redemption

It is incumbent on the owner to show what title he holds to the property he seeks to redeem. Moorer v. Chastang, 247 Ala. 676, 26 So.2d 75 (1946); Alabama Pecan Dev. Co. v. Case, 266 Ala. 471, 97 So.2d 537 (1957).

A purchaser at a void tax sale, not having been in such possession as to invoke the provisions of § 40-10-82, acquired only a right to be reimbursed by one who had a right under this section to redeem from the sale, for such amount as the law allows. Harrell v. Vieg, 246 Ala. 669, 22 So.2d 94 (1945); Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (1949).

While it is necessary to allege and prove peaceable possession to get relief under § 6-6-540, in order to have relief as for a redemption by a taxpayer remaining in possession under this section after the expiration of the time to redeem under § 40-10-120, peaceable possession is not necessary, but it only requires such possession that some nature of action must be brought to oust him provided it was not obtained tortiously. Standard Contractors Supply Co. v. Scotch, 247 Ala. 517, 25 So.2d 257 (1946); Bobo v. Edwards Realty Co., 250 Ala. 344, 34 So.2d 165 (1947).

Redemption statutes did not apply to determine the amount assignee of installment contract for manufactured home owed to tax-sale purchaser of land home was located on to recover possession of the home; the redemption statutes applied to the redemption of land, or real property, which the manufactured home was not. Green Tree-AL LLC v. Dominion Resources, L.L.C., 2011 WL 3963010 (Ala.Civ.App.2011). Taxation 3001

Under Alabama law, after a parcel of property has been sold because of its owner's failure to pay ad valorem taxes assessed against that property, the owner has two methods of redeeming the property from that sale: statutory redemption, also known as administrative redemption, which requires the payment of specified sums of money to the probate judge of the county in which the parcel is located, and judicial redemption, which involves the filing of an original civil action against a tax-sale purchaser, or the filing of a counterclaim in an ejectment action brought by that purchaser, and the payment of specified sums into the court in which that action or counterclaim is pending. Mitchell v. Curry, 70 So.3d 353 (Ala.Civ.App.2010), overruled on rehearing. Taxation 3000; Taxation 3047

Property owner has a right of redemption without a time limit in tax sale situation if the owner has retained possession, which may be constructive or scrambling, and, where there is no real occupancy of the land, constructive possession follows the title of the original owner and can only be cut off by the adverse possession of the tax purchaser. McGuire v. Rogers, 794 So.2d 1131 (Ala.Civ.App.2000), rehearing denied , certiorari denied. Taxation 3011

Original owner may not assert right to redeem by wrongful reentry to regain possession, under this section. O'Connor v. Rabren, 373 So.2d 302 (Ala.1979).

Complaint to quiet title is a proper method to cancel a tax deed and effect a redemption. Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (Ala.1962). Taxation 3141

One who redeems must pay full amount paid by purchaser at tax sale. Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (Ala.1949).

A redemption under this section may be effected by a complaint filed as a statutory complaint to quiet title. Bobo v. Edwards Realty Co., 250 Ala. 344, 34 So.2d 165 (Ala.1947).

While this redemption statute does not necessarily exclude an owner who has relinquished possession and afterwards regained it, the remedy under this section could not apply to situations where the possession had been wrongfully or tortiously reasserted or where the taxpayer had lost the right by the intervening adverse occupancy of the tax title claimant for the prescriptive period of § 40-10-82. Bobo v. Edwards Realty Co., 250 Ala. 344, 34 So.2d 165 (Ala.1947).

The right to redeem under this section assumes that the title passed out of plaintiff by the tax sale, and he is trying to reestablish it, dependent upon his possession, not necessarily peaceable possession. His right is not affected by his failure to pay the taxes while the title was in the state under the tax sale. If he can redeem at all, it is on the condition that such taxes be paid. Standard Contractors Supply Co. v. Scotch, 247 Ala. 517, 25 So.2d 257 (Ala.1946). Taxation 3047

Plaintiff must be in possession of the land to support statutory right of redemption from tax sale, and question is whether right to redeem has been cut off by possession of tax purchaser. Brunson v. Bailey, 245 Ala. 102, 16 So.2d 9 (Ala.1943). Taxation 3034

Complaint to clear title held available to enforce right of owner of premises to redeem from tax sale and cancel tax deed. See Watson v. Baker, 228 Ala. 652, 154 So. 788 (Ala.1934). Taxation 3047

11. Actions

Under this section the owner, his heir, devisee, vendee or mortgagee of land in possession, where it is sold for taxes, is not required to wait for purchaser to file ejectment action, but may file complaint to quiet title. Georgia Loan & Trust Co. v. Washington Realty Co., 205 Ala. 288, 87 So. 794 (1921); Alabama Pecan Dev. Co. v. Case, 266 Ala. 471, 97 So.2d 537 (1957).

Filing of complaint to quiet title is not an admission that tax deed is valid. Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (Ala.1962).

Ejectment is proper if the tax purchaser is in possession. Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (Ala.1962).

Under the provisions of this section, it is immaterial that the action is brought by the landowner or his title successor. Alabama Pecan Development Co. v. Case, 266 Ala. 471, 97 So.2d 537 (Ala.1957).

This section prescribes a remedy for a right which may or may not have been forfeited by lapse of time. Moore v. McLean, 248 Ala. 9, 26 So.2d 96 (Ala.1946).

Landlord had such "possession" as to support a proceeding to redeem from tax sale under this section although tax purchaser was his tenant. Brunson v. Bailey, 245 Ala. 102, 16 So.2d 9 (Ala.1943). Taxation 3047

One in possession who was vendee of owner of land at time of tax sale could bring an action against purchaser to quiet title. National Fireproofing Corporation v. Hagler, 226 Ala. 104, 145 So. 421 (Ala.1932). Taxation 3154

12. Attorney fees

Provision for attorney fees is only embraced in this section, and as to that, it is said that the section should be strictly construed. National Fireproofing Corp. v. Hagler, 226 Ala. 104, 145 So. 421 (1932); Gordon v. McLemore, 237 Ala. 270, 186 So. 470 (1939).

This section does not justify charge against one cotenant's one third interest in land of more than one third of amount of taxes and costs paid by other cotenant, nor allowance of 15 percent (now six percent) interest on proper charge or attorney fee in any sum. Gordon v. McLemore, 237 Ala. 270, 186 So. 470 (Ala.1939). Tenancy In Common 30

Where landowner brought an action to quiet title against purchaser at tax sale, purchaser prevailing on counterclaim held not entitled to attorney fee. National Fireproofing Corporation v. Hagler, 226 Ala. 104, 145 So. 421 (Ala.1932). Taxation 3184

Purchaser at state auditor's private sale held not entitled to reasonable attorney fee for services rendered by attorney in resisting action to clear title by redeeming owner, this section not being applicable. Threadgill v. Home Loan Co., 219 Ala. 411, 122 So. 401 (Ala.1929).

13. Practice and procedure

Original owners of property satisfied the requirements of statute regarding redemption by stating their request for a calculation of the amount owed tax sale purchaser to redeem property under the statute in their complaint against purchaser rather than in a separate motion. McLeod v. White, 45 So.3d 360 (Ala.Civ.App.2010). Taxation 3026;

Taxation 3030

Question of whether former owner of land sold for taxes in possession at time he filed suit immaterial, under the rule that the owner's right of action is not extinguished until the tax purchaser has retained adverse possession for three years, or the owner's claim of redemption was barred by the rule of repose. Karagan v. Bryant for Greger, 516 So.2d 599 (Ala.1987).

Where case was remanded to decide issue of redemption, a motion filed before the trial court conducted any proceedings on remand sufficiently complied with this section. Cobb v. Brown, 380 So.2d 286 (Ala.1980).

The record owner need not wait to be sued under this section. Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (Ala.1962).

The owner may file his complaint to require the purchaser to bring out his tax title. When this is done, then under the provisions of this section, a motion to raise the issue of redemption may be filed and a redemption had upon the necessary elements of this section being met. Alabama Pecan Development Co. v. Case, 266 Ala. 471, 97 So.2d 537 (Ala.1957).

When holder of tax title commences an action against landowner for possession under this section, landowner, for purposes of motion in ejectment action, is treated as admitting validity of tax title, no proof being required thereof. Burdett v. Rossiter, 220 Ala. 631, 127 So. 202 (Ala.1930).

In ejectment where the defendant owner seeks to redeem and recover the land pursuant to this section, such owner has the burden of proving that the tax proceeding was taken against him or his predecessors. Green v. Stephens, 198 Ala. 325, 73 So. 532 (Ala.1916). Taxation 3174

Although the amount for redemption from tax sale under this section, should be ascertained by the judge, no harmful error intervenes because the jury assessed the damages, their verdict being entered upon the trial docket where the court entered upon the trial docket where the court entered the judgment for the same amount but made no mention of the verdict. Green v. Stephens, 198 Ala. 325, 73 So. 532 (Ala.1916). Taxation 3177

In an action of ejectment, where the owner offered to redeem under this section, the court should ascertain whether the tax proceeding was taken against the owner or his predecessors, unless the plaintiff disclaims any interest in the land under the tax title. Green v. Stephens, 198 Ala. 325, 73 So. 532 (Ala.1916). Taxation 3146

Where the plaintiff in ejectment claims under tax title and commences an action against the tenants in possession the landlord may intervene and tender the amount required under this section and recover the land. Green v. Stephens, 198 Ala. 325, 73 So. 532 (Ala.1916). Taxation 3146

14. Particular circumstances

Permitting owner of property sold at tax sale to redeem the property within three years after judgment specifying the redemption amount was not a "reasonable time" for judicial redemption, owner failed to pay ad valorem taxes that triggered the sale, owner allowed three-year period for administrative redemption expire without taking action to redeem the property, and owner occupied the property for six years and only asserted counterclaim for judicial redemption in response to tax deed assignee's filing of ejectment action. First Properties, L.L.C. v. Bennett, 959 So.2d 653 (Ala.Civ.App.2006). Taxation 3011

Trial court had jurisdiction to permit owner of property sold at tax sale to redeem the property more than 30 days after the entry of its preliminary money judgment for the redemption amount, given that judicial redemption was equitable,

rather than legal, and judge could retain jurisdiction to act on the judgment and divest the assignee of purchaser of its rights in the property. First Properties, L.L.C. v. Bennett, 959 So.2d 653 (Ala.Civ.App.2006). Taxation 3011

Trial court did not err in allowing defendants to redeem the property 12 years after the tax sale. No tax deed was ever issued to the plaintiffs, or to their predecessors, and the record contained no evidence that the plaintiffs or their predecessors exercised continuous adverse possession for the requisite time period. Geier v. Smallwood, 647 So.2d 754 (Ala.Civ.App.1994).

Tax purchaser's evidence of adverse possession for the statutory three-year period following the State's issuance of tax deed was not so conclusive and of such weight as to mandate a judgment in favor of the purchaser and to overturn the decision to allow owner, at time of tax sale, the right to redeem property. Rabren v. Osmon, 613 So.2d 390 (Ala.1993). Taxation 3075

An owner of property in actual possession may bring a complaint to quiet title and redeem from a purchaser at a tax sale, even though the statutory period of three years has elapsed. Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (Ala.1962). Taxation 3007

Where tenant acquired tax title during tenancy, the landlord, as an incident to statutory complaint to quiet title, could reimburse tenant and claim benefits of the purchase or follow statutory method of redemption. Brunson v. Bailey, 245 Ala. 102, 16 So.2d 9 (Ala.1943). Landlord And Tenant 67; Taxation 3034

Purchase of land at tax sale by one tenant in common thereof inures to benefit of other cotenants on due assertion of such right, even when purchaser acquires perfect tax title, but in absence of effort to comply with tax sale law, such purchase will be treated merely as payment of taxes for which purchaser has claim on cotenant's share in accounting between them. Gordon v. McLemore, 237 Ala. 270, 186 So. 470 (Ala.1939). Tenancy In Common 20(1); Tenancy In Common 30

**Cited** in Petcher v. Nelson, 247 Ala. 301, 24 So.2d 129 (1945); Dean v. Griffith, 257 Ala. 67, 57 So.2d 545 (1952); Hinkle v. Posey, 258 Ala. 314, 63 So.2d 809 (1953); Family Land & Inv. Co. v. Williams, 273 Ala. 273, 138 So.2d 696 (1961); Williams v. Mobile Oil Exploration & Producing S.E., Inc., 457 So.2d 962 (Ala.1984).

Ala. Code 1975 § **40-10-83**, AL ST § **40-10-83**

Current through Act 2013-25 of the 2013 Regular Session.



END OF DOCUMENT

# Exhibit E

C

Code of Alabama Currentness
Title 40. Revenue and Taxation. (Refs & Annos)
Chapter 10. Sale of Land. (Refs & Annos)
Article 3. . Rights and Remedies of Purchasers at Tax Sales.
**→→ § 40-10-82. Limitation of actions.**

No action for the recovery of real estate sold for the payment of taxes shall lie unless the same is brought within three years from the date when the purchaser became entitled to demand a deed therefor; but if the owner of such real estate was, at the time of such sale, under the age of 19 years or insane, he or she, his or her heirs, or legal representatives shall be allowed one year after such disability is removed to bring an action for the recovery thereof; but this section shall not apply to any action brought by the state, to cases in which the owner of the real estate sold had paid the taxes, for the payment of which such real estate was sold prior to such sale, or to cases in which the real estate sold was not, at the time of the assessment or of the sale, subject to taxation. There shall be no time limit for recovery of real estate by an owner of land who has retained possession. If the owner of land seeking to redeem has retained possession, character of possession need not be actual and peaceful, but may be constructive and scrambling and, where there is no real occupancy of land, constructive possession follows title of the original owner and may only be cut off by adverse possession of the tax purchaser for three years after the purchaser is entitled to possession.

CREDIT(S)

(Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 295; Act 2009-508, p. 937, § 1.)

HISTORY

Amendment notes:

**The 2009 amendment,** effective September 1, 2009, substituted "he or she, his or her heirs," for "he, his heirs", deleted "nor" following "state,", substituted "or to" for "nor shall they apply to", and added the final two sentences.

LIBRARY REFERENCES

American Digest System:

Taxation 3159.

Corpus Juris Secundum:

C.J.S. Taxation §§ 1506 to 1526.

CASENOTES

Generally 1

1. Generally

This section establishes a short statute of limitations for tax deed cases. Gulf Land Co., Inc. v. Buzzelli, 501 So.2d 1211 (Ala.1987).

A "short statute of limitations" is contained in this section. Williams v. Mobil Oil Exploration and Producing Southeast, Inc., 457 So.2d 962 (Ala.1984).

The sale for payment of taxes referred to in this section is the sale by the tax collector and not a subsequent sale by the land commissioner. Moorer v. Macon, 273 Ala. 66, 134 So.2d 181 (Ala.1960). Taxation 3160

Under the authority of Title 50 U.S.C.A. Appendix, § 525, Soldiers' and Sailors' Civil Relief Act of 1940, the statute of limitations embraced in this section is tolled as long as the owner of property sold for taxes is in the military service. MacQueen v. McGee, 260 Ala. 315, 70 So.2d 260 (Ala.1954).

2. Construction

This section has been construed as a "short" statute of limitations, and does not begin to run until the purchaser of the property at a tax sale has become entitled to demand a deed to the land; and the tax purchaser is entitled to "quiet title" relief only after being in exclusive, adverse possession for the statutory three-year period. Additionally, this limitations period has been held to bar an action by the tax purchaser to recover property sold for the payment of taxes, unless the tax purchaser brought the action within three years from the date he was entitled to demand a tax deed. Also, if the taxpayer/landowner has remained in possession of the property for three years after the date when the tax purchaser became entitled to demand a tax deed, this statute would vest title in the taxpayer/landowner and protect him from any action brought by the tax purchaser to recover the property. Reese v. Robinson, 523 So.2d 398 (Ala.1988).

It is generally held by the courts that the disability of one tenant in common will prevent the operation of the statute of limitation as to him, but that those not under disability will be barred; each shall recover or be barred as to his aliquot interest in the land, as he may be within or without the saving of the statute. This is in accord with justice and the remedial provisions of the statute of limitation. Chastang v. Washington Lumber & Turpentine Co., 267 Ala. 390, 102 So.2d 899 (Ala.1958).

3. Applicability

Section has application to cases where the land is purchased from the state as well as to instances where the purchase is made from the tax collector. Odom v. Averett, 248 Ala. 289, 27 So.2d 479 (1946); Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (1949); MacQueen v. McGee, 260 Ala. 315, 70 So.2d 260 (1954); Quinn v. Hannon, 262 Ala. 630, 80 So.2d 239 (1955); Hanna v. Ferrier, 265 Ala. 450, 91 So.2d 700 (1956); Moorer v. Macon, 273 Ala. 66, 134 So.2d 181 (1960); Family Land & Inv. Co. v. Williams, 273 Ala. 273, 138 So.2d 696 (1961); Bell v. Pritchard, 273 Ala. 289, 139 So.2d 596 (1962).

This section is not rendered inapplicable to an action to redeem from an alleged void tax sale because the tax sale was void. Odom v. Averett, 248 Ala. 289, 27 So.2d 479 (1946); Bobo v. Edwards Realty Co., 250 Ala. 344, 34 So.2d 165 (1947); Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (1949); Finerson v. Hubbard, 255 Ala. 551, 52 So.2d 506 (1951); MacQueen v. McGee, 260 Ala. 315, 70 So.2d 260 (1954); Family Land & Inv. Co. v. Williams, 273 Ala. 273, 138 So.2d 696 (1961).

Section has application when a party brings an action to quiet title as well as in ejectment actions. Odom v. Averett, 248 Ala. 289, 27 So.2d 479 (1946); Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (1949); MacQueen v. McGee, 260 Ala. 315, 70 So.2d 260 (1954); Quinn v. Hannon, 262 Ala. 630, 80 So.2d 239 (1955); Hanna v. Ferrier, 265 Ala. 450, 91 So.2d 700 (1956).

This section has no application where the owner of the lands, whose duty it was to pay the taxes, allows them to be sold for taxes, and afterwards redeems them. By his redemption he is merely restored and reinstated to his former position and rights. Scott v. Brown, 106 Ala. 604, 17 So. 731 (1895); Miller v. Cook, 252 Ala. 564, 42 So.2d 239 (1949).

Statute applying to redemption from tax sale is that of the date of assessment and sale consummation by tax deed. Boyd v. Holt, 62 Ala. 296 (1878); Bracely v. Noble, 201 Ala. 74, 77 So. 368 (1917); Morris v. Card, 223 Ala. 254, 135 So. 340 (1931).

For purpose of determining whether void tax deed provided purchasers with color of title, proper statute of limitations to apply, in determining effect on tax deed of taxpayer's failure to bring timely action for recovery of property, was the statute in force at time of trial, rather than statute in force at time of sale. Green v. Dixon, 727 So.2d 781 (Ala.1998), rehearing denied. Taxation 3039

This statute applies to cases where the land is purchased from the state, as well as to instances where the purchase is made from the tax collector. Gulf Land Co., Inc. v. Buzzelli, 501 So.2d 1211 (Ala.1987).

This statute does not begin to run until the purchaser is in adverse possession of the land and has become entitled to demand a deed to the land. Gulf Land Co., Inc. v. Buzzelli, 501 So.2d 1211 (Ala.1987).

This section applies to void tax sales as well as to valid sales. Bell v. Pritchard, 273 Ala. 289, 139 So.2d 596 (Ala.1962).

This section applies to proceedings to quiet title as well as in ejectment actions. Bell v. Pritchard, 273 Ala. 289, 139 So.2d 596 (Ala.1962).

Because a tax sale is void does not render this section inapplicable. Pierson v. Case, 272 Ala. 527, 133 So.2d 239 (Ala.1961).

This section has application to cases where the land is purchased from the state as well as in instances where the purchase is made from the tax collector. But the section does not begin to run until possession of the land is taken.

Merchants Nat. Bank of Mobile v. Lott, 255 Ala. 133, 50 So.2d 406 (Ala.1951).

Claimant cannot allow land to be sold for taxes assessed to him and then buy it either at the sale or from the state or redeem it and hold it for three years and claim title under this section against one not a party to the assessment or sale. Merchants Nat. Bank of Mobile v. Morris, 252 Ala. 566, 42 So.2d 240 (Ala.1949). Taxation 2965; Taxation 3007; Taxation 3162(1)

While this section is now available, though the tax sale is void, it does not begin to run until actual adverse possession is taken under it. Lathem v. Lee, 249 Ala. 532, 32 So.2d 211 (Ala.1947).

Section has no application to the redemption of real property sold for municipal taxes because reference to the other sections of this article will clearly demonstrate that the entire chapter, including this section, is applicable only to sales for the payment of state and county taxes. Timms v. Scott, 248 Ala. 286, 27 So.2d 487 (Ala.1946).

This section applies in a case where the purchaser had had three years' adverse possession under his deed, though the assessment was in the name of and against a person having no interest in the land, this not being one of the exceptions enumerated in the section. Williams v. Oates, 209 Ala. 683, 96 So. 880 (Ala.1923). Taxation 3162(4)

This section does not apply where an action is brought to impress a trust upon an agent who has with his own funds purchased tax certificates for his principal. Waller v. Jones, 107 Ala. 331, 18 So. 277 (Ala.1895).

4. Relation to other laws

Under Alabama law, after a parcel of property has been sold because of its owner's failure to pay ad valorem taxes assessed against that property, the owner has two methods of redeeming the property from that sale: statutory redemption, also known as administrative redemption, which requires the payment of specified sums of money to the probate judge of the county in which the parcel is located, and judicial redemption, which involves the filing of an original civil action against a tax-sale purchaser, or the filing of a counterclaim in an ejectment action brought by that purchaser, and the payment of specified sums into the court in which that action or counterclaim is pending. Mitchell v. Curry, 70 So.3d 353 (Ala.Civ.App.2010), overruled on rehearing. Taxation 3000; Taxation 3047

This section operates to bar redemption rights under § 40-10-83, and all other actions to recover land sold for taxes, if the tax sale purchaser is in continuous adverse possession for three years following the date he is entitled to a tax deed. A purchaser at a void tax sale may ripen possession into an indefeasible title. O'Connor v. Rabren, 373 So.2d 302 (Ala.1979).

5. Adverse possession

Although the tax deed was void, it gave color of title and possession held under it was adverse. Odom v. Averett, 248 Ala. 289, 27 So.2d 479 (1946); Pfaffman v. Case, 259 Ala. 411, 66 So.2d 890 (1953); Moorer v. Macon, 273 Ala. 66, 134 So.2d 181 (1960); Turnham v. Potter, 289 Ala. 685, 271 So.2d 246 (1972).

The three-year statute against recovery of land sold for taxes does not begin to run until purchaser is in adverse possession and has become entitled to demand deed to it from judge of probate. Lassiter v. Lee, 68 Ala. 287 (1880); Smith v. Cox, 115 Ala. 503, 22 So. 78 (1897); Long v. Boast, 153 Ala. 428, 44 So. 955 (1907); Doe ex dem. Standifer v. Styles, 185 Ala. 550, 64 So. 345 (1914); Howard v. Tollett, 202 Ala. 11, 79 So. 309 (1918); Loper v. E.W. Gates Lumber Co., 210 Ala. 512, 98 So. 722 (1923); Perry v. Marbury Lumber Co., 212 Ala. 542, 103 So. 580 (1925); Odom v. Averett, 248 Ala. 289, 27 So.2d 479 (1946); Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (1949); Ellis v. Stickney, 253 Ala. 86, 42 So.2d 779 (1949); Quinn v. Hannon, 262 Ala. 630, 80 So.2d 239 (1955); Bell v. Pritchard,

273 Ala. 289, 139 So.2d 596 (1962); Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (1962); Grice v. Taylor, 273 Ala. 591, 143 So.2d 447 (1962).

Under this section whether tax sale was void or valid, continuous adverse possession of land by purchaser for three years after he became entitled to demand tax deed from judge of probate would bar action for recovery by former owner except in instances mentioned in the section. Doe ex dem. Standifer v. Styles, 185 Ala. 550, 64 So. 345 (1914); Perry v. Marbury Lumber Co., 212 Ala. 542, 103 So. 580 (1925). See Doe ex dem. Evers v. Matthews, 192 Ala.181, 68 So. 182 (1915).

Tax purchaser's in rem action to quiet title to property accrued, and three-year redemption period, during which tax purchaser was required to adversely possess property, began to run, when tax purchaser became entitled to a deed, not when property was transferred to state for failure to pay taxes, and, thus, tax purchaser's action was premature, in that he had not adversely possessed property for three years after acquiring tax deed before bringing action. Southside Community Development Corp. ex rel. Galloway v. White, 10 So.3d 990 (Ala.2008). Limitation of Actions 60(10)

Three-year statute of limitation for redemption action does not begin to run until the purchaser is in adverse possession of the land and has become entitled to demand a deed to the land; for the limitations period to bar redemption, the tax purchaser must prove continuous adverse possession for three years after he is entitled to demand a tax deed. McGuire v. Rogers, 794 So.2d 1131 (Ala.Civ.App.2000), rehearing denied , certiorari denied. Limitation Of Actions 44(5); Taxation 3048

In order to cut off the right of redemption, purchaser at a tax sale must possess the property exclusively and adversely for a three-year period. Reese v. Robinson, 523 So.2d 398 (Ala.1988).

Several Alabama cases hold that this statute does not begin to run until the purchaser is in adverse possession of the land and has become entitled to demand a deed to the land. Williams v. Mobil Oil Exploration and Producing Southeast, Inc., 457 So.2d 962 (Ala.1984). Taxation 3048; Taxation 3162(4)

In order for the short statute period of this section to bar redemption under § 40-10-83, the tax purchaser must prove continuous adverse possession for three years after he is entitled to demand a tax deed. Stallworth v. First Nat. Bank of Mobile, 432 So.2d 1222 (Ala.1983). Taxation 3048

The invalidity of a tax sale is immaterial if adverse possession is proved for the three-year period. Hand v. Stanard, 392 So.2d 1157 (Ala.1980). Taxation 3162(4)

The short period begins to run when the purchaser is entitled to demand a tax deed and is in adverse possession of the land. Hand v. Stanard, 392 So.2d 1157 (Ala.1980). Taxation 3023

Regardless of the validity of the sale, continuous adverse possession of the land by the purchaser at a tax sale for three years after he becomes entitled to demand a tax deed, or in fact is lawfully issued one, bars an action to recover the land by the former owner. Van Meter v. Grice, 380 So.2d 274 (Ala.1980). Taxation 3162(4)

In determining whether a purchaser at a tax sale and his privies have had adverse possession for the required period, it is not necessary that they should have had actual possession of the property themselves, it being sufficient that they had possession through an agent or licensee. Pierson v. Case, 272 Ala. 527, 133 So.2d 239 (Ala.1961).

Where the original purchaser at a tax sale never went into possession, but where his vendee did and held the property for the required length of time, the said vendee can set up the statute of limitations provided in this section. Long v.

Boast, 153 Ala. 428, 44 So. 955 (Ala.1907).

6. Constructive possession

Constructive possession permissible to preserve in the original owner the right of redemption is of a different or lower quality than the elements of the adverse possession required of the tax sale purchaser. Rabren v. Osmon, 613 So.2d 390 (Ala.1993). Taxation 3007

7. Action of ejectment

An action of ejectment must be commenced before the expiration of the three years from the date the purchaser becomes entitled to demand a deed, for after that period the action is barred at the commencement of the action. Capehart v. Guffey, 130 Ala. 425, 30 So. 390 (1901); Long v. Boast, 153 Ala. 428, 44 So. 955 (1907).

Under this section a defendant in ejectment makes out a title by showing that he purchased under tax sale and held adverse possession for three years to the property prior to the bringing of the action; and where such defendant holds under a partition sale the title vests by a conveyance from the agent who purchased at the tax sale. Tidwell v. McCluskey, 191 Ala. 38, 67 So. 673 (Ala.1914).

Under the provision of this section, an action of ejectment is barred against one claiming under a tax sale, who during the years 1900-1906, turpentined and logged the land, although his predecessor had for many years taken no possession of the land, it being timberland. Bedsole v. Davis, 189 Ala. 325, 66 So. 491 (Ala.1914).

The tax title claimant, in possession may commence an action to quiet his title, after the expiration of the statutory period has barred the original owner, in which action the owner is precluded by the statutory bar as effectually as if he were plaintiff in an action of ejectment. Long v. Boast, 153 Ala. 428, 44 So. 955 (Ala.1907).

8. Limitations

This section is a short "statute of limitation" applicable on grounds of public policy to tax deed cases. Laney v. Proctor, 236 Ala. 318, 182 So. 37 (1938); Hames v. Irwin, 253 Ala. 458, 45 So.2d 281 (1949), aff'd , 256 Ala. 319, 54 So.2d 293 (1951).

Three-year statute of limitation for redemption action applies to cases where the land is purchased from the state, as well as to instances where the purchase is made from the tax collector. McGuire v. Rogers, 794 So.2d 1131 (Ala.Civ.App.2000), rehearing denied , certiorari denied. Taxation 3048

Statute of limitations never runs against a remainderman or reversioner during the existence of the life estate, nor can there be any adverse possession as to him. Monte v. Montalbano, 274 Ala. 6, 145 So.2d 197 (Ala.1962). Life Estates 8; Remainders 17(3); Reversions 8(2)

The so-called short statute of limitations applies alike to valid and void tax sales, even though the void sale was made before it had such application, where actual, open and notorious adverse possession for three years by the tax purchaser or his successor in title is proved. Grice v. Taylor, 273 Ala. 591, 143 So.2d 447 (Ala.1962). Taxation 3162(4)

9. Right of redemption

Section 40-10-83 has as its purpose the preservation of the right of redemption in the owner, within a time limit, if the

owner has retained possession. The character of possession does not have to be actual and peaceable; it may be constructive or scrambling. Where there is no real occupancy of the land, constructive possession follows the title of the original owner and can be cut off only by the adverse possession of the tax purchaser. Giardina v. Williams, 512 So.2d 1312 (Ala.1987). But see, Gulf Land Co. v. Buzzelli, 501 So.2d 1211 (Ala.1987). Taxation 3001

In order for the short period of this section to bar redemption under § 40-10-83, the tax purchaser must prove continuous adverse possession for three years after he is entitled to demand a tax deed. Gulf Land Co., Inc. v. Buzzelli, 501 So.2d 1211 (Ala.1987). But see, Giardina v. Williams, 512 So.2d 1312 (Ala.1987).

This section will bar all other actions for the recovery of real estate sold for taxes which are not brought within three years of the date when the purchaser could have demanded his deed, including actions for possession brought by the purchaser. O'Connor v. Rabren, 373 So.2d 302 (Ala.1979).

Three years of continuous adverse possession of the lands by the tax sale purchaser, measured from the date that he becomes entitled to demand a tax deed thereto, will bar an action by the former owner except in those instances mentioned in this section. Riley v. Depriest, 295 Ala. 68, 322 So.2d 713 (Ala.1975). Taxation 3162(4)

Whether a tax sale was void or valid, continuous adverse possession of the land by the purchaser at the tax sale for three years after he became entitled to demand a tax deed from the judge of probate will bar action for recovery by the former owner except in instances mentioned in the section. Turnham v. Potter, 289 Ala. 685, 271 So.2d 246 (Ala.1972).

10. Burden of proof

In the absence of actual possession by one claiming under tax title, or in case of possession short of the period prescribed by this section, no presumptions are indulged in favor of the regularity of proceedings for the sale of lands for the nonpayment of taxes, and one who asserts his right under such title, unless relieved therefrom by statute, has the burden of showing the validity and regularity of such proceeding. Galloway Coal Co. v. Warrior Black Creek Coal Co., 204 Ala. 107, 85 So. 440 (1920); Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (1962).

Proof of an unbroken claim of title in plaintiff, possession, actual or constructive, for 14 to 16 years, and the rental value of the property while detained by defendant, made out a clear prima facie case, casting on defendant the burden of proving its defense of the statute of limitations by evidence of actual adverse possession, after becoming entitled to a deed as purchaser at a tax sale, for three years before commencement of the action. Loper v. E.W. Gates Lumber Co., 210 Ala. 512, 98 So. 722 (1923); Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (1962).

Failure to prove actual open, adverse possession for the statutory period is fatal to one claiming under the tax deed. Tanner v. Case, 273 Ala. 432, 142 So.2d 688 (Ala.1962).

A party claiming the benefit of this section has the burden of proving that the land has been sold for the payment of taxes. Moorer v. Macon, 273 Ala. 66, 134 So.2d 181 (Ala.1960).

Where defendant who claimed title under a tax deed from the state made no proof of regularity and validity of the tax title under which he claimed, the burden was on him to show adverse possession for the statutory period in connection with his tax title in order to prevail. Thomas v. Rogers, 256 Ala. 53, 53 So.2d 736 (Ala.1951). Adverse Possession 112

11. Evidence--Admissibility

In a complaint under this section, by the purchaser of a tax title, a deed of the clerk or register executed pursuant to a sale for municipal taxes was admissible, proof thereof not being dispensed with by recitals in the deed. Gunter v. Townsend, 202 Ala. 160, 79 So. 644 (Ala.1918). Municipal Corporations 982

Where a defendant in ejectment claims title as a purchaser at a partition sale, and under title acquired at a tax sale, and has made improvements, the proceedings leading up to the tax sale, including the deed, are admissible in support of the plea of the three years' statute of limitations under this section. Tidwell v. McCluskey, 191 Ala. 38, 67 So. 673 (Ala.1914).

12. ---- Sufficiency, evidence

Payment of taxes was insufficient to prove adverse possession of property where this was the only act of ownership. Craig v. Willcox, 655 So.2d 1002 (Ala.Civ.App.1994), rehearing denied.

Evidence sustained finding of adverse possession. See Myers v. Moorer, 273 Ala.18, 134 So.2d 168 (Ala.1961).

Under the evidence presented, trial court was held to be justified in finding that the character of possession of property by counterclaimant and his predecessors in title since the acquisition of a tax deed from the probate judge was sufficient to invoke the provisions of this section which is sometimes referred to as the short statute of limitations. Chastang v. Washington Lumber & Turpentine Co., 267 Ala. 390, 102 So.2d 899 (Ala.1958).

13. Practice and procedure

Original owners of property satisfied the requirements of statute regarding redemption by stating their request for a calculation of the amount owed tax sale purchaser to redeem property under the statute in their complaint against purchaser rather than in a separate motion. McLeod v. White, 45 So.3d 360 (Ala.Civ.App.2010). Taxation 3026; Taxation 3030

Even if the tax deed is void, it gives color of title, and if the purchaser takes adverse possession of the land for the requisite period of time, then this section bars the action. Bell v. Pritchard, 273 Ala. 289, 139 So.2d 596 (Ala.1962). Adverse Possession 79(4)

Tax purchaser held not entitled to reasonable attorney's fee for prosecuting answer and counterclaim in resisting redemption. Morris v. Card, 223 Ala. 254, 135 So. 340 (Ala.1931). Taxation 3028

Interest on subsequently accruing taxes paid by tax purchaser will be repaid by person redeeming at rate required by statute obtaining at time of accrual and payment by tax purchaser and to time redemption is effectuated. Morris v. Card, 223 Ala. 254, 135 So. 340 (Ala.1931). Taxation 3032

Where the defendant, a vendee from purchaser at tax sale, together with such purchaser, was occupying land continuously under tax deeds for more than three years before an action in ejectment was commenced, and after purchaser at tax sale was entitled to demand tax deeds from probate judge, under this section, defendant was entitled to directed verdict. Hambaugh v. McGraw, 212 Ala. 550, 103 So. 646 (Ala.1925). Taxation 3177

This section does not preclude a property owner from showing payment of taxes, not shown by the record in the assessment book, where the record indicates that it is erroneous thereon. Roman v. Lentz, 177 Ala. 64, 58 So. 438 (Ala.1912). Taxation 2765

14. Particular circumstances

Order resolving property redemption issue between property owner and condominium association was not so exceptional so as to justify certification of partial judgment as final for appeal purposes, where resolution of redemption issue would not have necessarily resolved primary issue of property ownership. Point Clear Landing Ass'n, Inc. v. Point Clear Landing, Inc., 864 So.2d 369 (Ala.Civ.App.2003). Taxation 3050

Owner and its predecessor remained in possession of land, as required for owner to indefinitely retain right to redeem property on which there was tax deed, where owner's representatives regularly visited and inspected property, and there was no evidence of possession by purchaser of tax deed. Tabor v. Certain Lands, 736 So.2d 622 (Ala.Civ.App.1999). Taxation 3011

Purchaser at tax sale of mineral interest did not have to adversely possess the minerals, and original owner's action to recover was barred by short statute of limitations where purchaser did everything in his means to show possession, including notice to original owner of various actions, receipt of tax deed and leasing of interest. Nelson v. Teal, 293 Ala. 173, 301 So.2d 51 (Ala.1974).

Where appellant established title to the land by adverse possession, appellees are barred from redemption of the land by expiration of the three-year statute of limitations, since the appellant as the purchaser at the tax sale was in continuous adverse possession of the land for three years after he became entitled to demand a tax deed from the judge of probate. Turnham v. Potter, 289 Ala. 685, 271 So.2d 246 (Ala.1972).

Leasing of unoccupied wooded land was an act of adverse possession for all the world to observe, and from the time of this leasing, the evidence did not show an abandonment of possession, but rather, if anything, a mere interruption of actual occupation, considering the nature of the land and the use which its possession might permit. Family Land & Inv. Co. v. Williams, 273 Ala. 273, 138 So.2d 696 (Ala.1961).

Continued adverse possession of the surface by a grantee of the surface from a purchaser under a void state tax deed inures to the benefit of grantees of the minerals from such purchaser. Pierson v. Case, 272 Ala. 527, 133 So.2d 239 (Ala.1961).

Purchaser of property at tax sale established adverse possession required by this section where he turned funds over to his father for purchase of tax title and father duly purchased title for his son and performed acts of adverse possession for and in behalf of his son for the statutory period. Hanna v. Ferrier, 265 Ala. 450, 91 So.2d 700 (Ala.1956).

Purchasers at tax sale were not in actual adverse possession of the land as required under this section. At most, they had only a scrambling possession which is not sufficient to bring in operation the bar of the "short statute of limitation." Quinn v. Hannon, 262 Ala. 630, 80 So.2d 239 (Ala.1955).

In an action to quiet title to land and also to redeem it from a tax sale, in order for plaintiff's right of redemption under § 40-10-83 to have been cut off by virtue of the provisions of this section, it must appear that between the date on which defendant, as a tax sale purchaser, was entitled to demand a deed and the date on which the proceeding was instituted the defendant was in actual adverse possession of the land for a period of three years. Singley v. Dempsey, 252 Ala. 677, 42 So.2d 609 (Ala.1949).

Where defendant in ejectment action had remained in possession and paid the taxes on the property for more than three years from the time the purchaser would have been entitled to a deed under the tax sale, contending that he had acquired full title thereto under this section, such contention failed when defendant was not a purchaser at the tax sale but merely redeemed therefrom. Miller v. Cook, 252 Ala. 564, 42 So.2d 239 (Ala.1949).

A joint owner, holding a one-twenty-fifth interest in a 12 acre tract, purchased the certificate of purchase after the tract had been sold for taxes at an invalid sale. She at once took open and exclusive possession. The other joint owners had notice of her adverse holding for more than three years and therefore the limitation of this section applied. Lindsey v. Atkison, 250 Ala. 481, 35 So.2d 191 (Ala.1948).

The fact that trees were being worked for turpentine, which operation was plainly visible from the public road, was effective notice of occupancy of the land, and fact that operation of land for turpentine was seasonal did not break the continuity of possession. Moorer v. Malone, 248 Ala. 76, 26 So.2d 558 (Ala.1946).

Cessation of timber and turpentine operations on land for several months did not show an abandonment of possession, but rather, if anything, a mere interruption of actual occupation, considering the nature of the land and the use which its possession might then permit. Moorer v. Malone, 248 Ala. 76, 26 So.2d 558 (Ala.1946).

Where defendant in ejectment began, more than three years before action was brought to clear the land in question, digging stumps and cutting and burning brush, preparatory to building a home, and this was followed by drilling a well, erection of a garage and other building and improvement activities, there was ample evidence to show adverse possession for the three-year period. Moorer v. Malone, 248 Ala. 76, 26 So.2d 558 (Ala.1946).

Where owner of land sold for taxes remained in possession thereof and claimed title thereto exclusively and adversely to purchaser's rights until his death, over three years after purchaser became entitled to demand deed, claim was not barred by laches or limitations and vested at owner's death in his heirs so that their action to have sale declared fraudulent and sell land for division among them was not barred. Johnson v. Stephens, 240 Ala. 419, 199 So. 828 (Ala.1941). Descent And Distribution 69; Taxation 3162(4)

Where land was assessed and sold for taxes as the property of mortgagor, whose interest therein had been foreclosed and whose time for redemption had expired, and where a sheriff's deed duly recorded showed title not in him at time of assessment, this section was not applicable. Williams v. Oates, 212 Ala. 396, 102 So. 712 (Ala.1924).

**Cited** in Grayson v. Muckleroy, 220 Ala.182, 124 So. 217 (1929); Burdett v. Rossiter, 220 Ala. 631, 127 So. 202 (1930); Morris v. Card, 223 Ala. 254, 135 So. 340 (1931); Union Cent. Life Ins. Co. v. State ex rel. Whetstone, 226 Ala. 420, 147 So. 187 (1933); Sherrill v. Sandlin, 232 Ala. 389, 168 So. 426 (1936); Morris v. Mouchette, 240 Ala. 349, 199 So. 516 (1940); Daniels v. Hogg, 250 Ala. 661, 35 So.2d 684 (1948); Anderson v. Smith, 256 Ala. 608, 56 So.2d 674 (1952); Wylie v. Lewis, 263 Ala. 522, 83 So.2d 346 (1955); Alabama Pecan Dev. Co. v. Case, 266 Ala. 471, 97 So.2d 537 (1957); Clark v. Case, 267 Ala. 229, 100 So.2d 747 (1957); Cunningham v. Andress, 267 Ala. 407, 103 So.2d 722 (1958); McGhee v. Walker, 268 Ala. 521, 108 So.2d 433 (1958); Almon v. Champion Int'l Corp., 349 So.2d 15 (Ala.1977); Cowden v. Hughes, 353 So.2d 505 (Ala.1977); Trehern v. Wilkerson, 356 So.2d 1185 (Ala.1978); Snuggs v. Stabler, 598 So.2d 884 (Ala.1992); Bendor v. Murry, 611 So.2d 1100 (Ala. Civ.App.1992).

Ala. Code 1975 § 40-10-82, AL ST § 40-10-82

Current through Act 2013-25 of the 2013 Regular Session.



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--- So.3d ----, 2012 WL 5974322 (Ala.Civ.App.)
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Only the Westlaw citation is currently available.

NOT YET RELEASED FOR PUBLICATION.

Court of Civil Appeals of Alabama.
**FIRST UNITED SECURITY BANK** and Paty Holdings, LLC
v.
W. Hardy **McCOLLUM**, Judge of Probate of Tuscaloosa County, et al.

2110828.
Nov. 30, 2012.

**Background:** Mortgagee and its subsidiary brought declaratory-judgment action against county probate judge, county tax collector, and mortgagor, asserting that mortgagee and subsidiary were entitled to excess funds from tax sale. The Tuscaloosa Circuit Court, No. CV–10–901031, entered judgment in favor of defendants. Mortgagee and subsidiary appealed.

**Holdings:** The Court of Civil Appeals, Moore, J., held that:
(1) excess funds are not payable to a person or entity who purchases property subsequent to a tax sale but, instead, are payable only to the person in whose name the taxes are assessed at the time of the tax sale, and
(2) for purposes of rule that a mortgagee would become the owner of the real property and thus entitled to the excess funds resulting from tax sale of the property if the mortgagee foreclosed on property and purchased it at a foreclosure sale, the foreclosure sale must have occurred before the tax sale.

Affirmed.

West Headnotes

**[1] Taxation 371 ⚿2979**

371 Taxation
371III Property Taxes
371III(L) Sale of Land for Nonpayment of Tax
371k2977 Disposition of Proceeds
371k2979 k. Surplus. Most Cited Cases

Under statute governing disposition of excess funds arising from tax sale of real property, the excess funds are not payable to a person or entity who purchases property subsequent to a tax sale but, instead, are payable only to the person in whose name the taxes are assessed at the time of the tax sale or that person's agent or representative. Code 1975, § 40–10–28.

**[2] Taxation 371 ⚿2979**

371 Taxation
371III Property Taxes
371III(L) Sale of Land for Nonpayment of Tax
371k2977 Disposition of Proceeds
371k2979 k. Surplus. Most Cited Cases

For purposes of rule that a mortgagee would become the owner of the real property and thus entitled to the excess funds resulting from tax sale of the property if the mortgagee foreclosed on property and purchased it at a foreclosure sale, the foreclosure sale must have occurred before the tax sale. Code 1975, § 40–10–28.

**[3] Courts 106 ⚿89**

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In general. Most Cited Cases

Unlike court opinions, written opinions of the Attorney General are not controlling; they are merely advisory and, under the statute governing opinions of the Attorney General, such opinions operate only to protect the officer to whom it is directed from liability because of any official act performed by such officer as directed or advised in such opinions. Code 1975, § 36–15–19.

MOORE, Judge.
*1 First United Security Bank and Paty Holdings, LLC, appeal from a judgment of the Tuscaloosa Circuit Court ("the trial court") determining that Wayne

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Allen Russell, Jr., was entitled to the excess funds received by Tuscaloosa County from the sale of certain property owned by Russell ("the property") for unpaid taxes.

*Procedural History*

On December 30, 2010, **First United Security Bank** filed a verified complaint against W. Hardy **McCollum**, in his capacity as Tuscaloosa County Judge of Probate, and Peyton Cochrane, in his capacity as Tuscaloosa County Tax Collector, seeking, among other things, a judgment declaring that it was entitled to the excess funds Tuscaloosa County received at the sale of the property for unpaid taxes. The complaint was later amended to add Russell as a defendant and Paty Holdings, LLC, as a plaintiff.

The case was submitted to the trial court for a decision upon the parties' briefs and the following joint stipulation of facts:

"1.... **First United Security Bank** is a **banking** corporation doing business in Tuscaloosa County, Alabama.

"2.... Paty Holdings, LLC is a limited liability company formed in Tuscaloosa County, Alabama and is a wholly owned subsidiary of **First United Security Bank**.

"3. The Defendants, W. Hardy **McCollum** in his capacity as Tuscaloosa County Judge of Probate and Peyton Cochrane in his capacity as Tuscaloosa County Tax Collector, are public officials of Tuscaloosa County, Alabama and are over the age of nineteen years. The Defendant Wayne Allen Russell, Jr. is an individual over the age of nineteen years and is a resident of Tuscaloosa County, Alabama.

"4. On or about February 15, 2002, Wayne Allen Russell, Jr. ... executed a note and mortgage in favor of First United Security Bank.... Said mortgage was recorded in the Probate Records of Tuscaloosa County....

"5. On May 25, 2010, ... certain property subject to the bank's mortgage (Parcel # 63–25–09–30–0–001–008.020 and Parcel # 63–25–09–30–0–001–008.014) were sold at a tax sale due to unpaid 2009 property taxes.

"6.... Parcel # 63–25–09–30–0–001–008.020 sold to a third party, Alabama Widespread Investments, LLC, for the amount of $26,000.00 which included an excess bid in the amount of $ 17,833.45.

"7.... Parcel # 63–25–09–30–0–001–008.014 sold to a third party, Alabama Widespread Investments, LLC, for the amount of $ 16,000,00 which included an excess bid in the amount of $ 14,471.67.

"8.... First United Security Bank assigned its foreclosure bid rights to ... Paty Holdings, LLC.... Paty Holdings, LLC was the highest bidder at [a] foreclosure sale [on July 8, 2010,] with a bid in the amount of $2,381,790.00 and recorded a foreclosure deed in the Office of Probate, Tuscaloosa County, Alabama in Deed Book 2010, Page 11231. The bid amount equaled the amount of [Russell's] indebtedness to the bank.

"9.... First United Security Bank obtained the amounts to redeem the property taxes on both parcels good through December 30, 2010. The amount to redeem Parcel # 63–25–09–30–0–001–008.020, inclusive of the 2010 property taxes due, is $27,820.50 with interest accruing at the rate of $260.00 per month, and the amount to redeem Parcel # 63–25–09–30–0–001–008.014, inclusive of the 2010 property taxes due, is $17,120.50 with interest accruing at the rate of $160.00 per month. Both redemption amounts included the excess bids totaling $32,305.12.

*2 "10.... W. Hardy **McCollum** as Tuscaloosa County Judge of Probate and Peyton Cochrane as Tuscaloosa County Tax Collector informed [ **First United Security Bank** and Paty Holdings, LLC,] that [they] must pay the excess bids in order to redeem the property taxes but that [they] would not be entitled to a refund of the excess bids. Instead, [ **McCollum** and Cochrane] asserted that the excess bids to be paid by [ **First United Security Bank** and Paty Holdings, LLC,] will be made payable to Russell

"11. [ **First United Security Bank** and Paty Holdings, LLC,] contend that the excess bids should be refunded to them Russell conten[ds] that the excess bids should be refunded to him W. Hardy

> **McCollum** and Peyton Cochrane in their official capacities contend that the excess bids should be refunded to ... Russell ... and also assert that Mr. Russell can quit claim his interest in the properties at any time to Tuscaloosa County and be refunded the excess bids. [First United Security Bank and Paty Holdings, LLC,] dispute[ ] that this procedure is in accordance with Alabama law."

The parties subsequently stipulated that Black River Holdings, LLC, "the current owner" of the property, had proposed to redeem the property and had assigned any rights it had to the excess funds to First United Security Bank. The parties also stipulated that the excess tax-sale proceeds were to be held pending the trial court's determination of the case.

On May 25, 2012, the trial court entered a judgment, stating:

> "1. The primary issue in this case is ... between ... First United Security Bank and Paty Holdings, LLC, and ... Wayne Allen Russell, Jr. who qualifies as the 'owner' or the 'person legally representing such owner' under Ala.Code [1975,] Section 40–10–28. In *First Union National Bank of Florida v. Lee County Commission* [, 75 So.3d 105] (Ala..... 2011), the Alabama Supreme Court addressed this very issue when it concluded 'that when the Legislature directs in Section 40–10–28 that the excess funds from a tax sale shall be paid over to the owner or his agent, the term 'owner' means 'the person against whom taxes on the property are assessed.' Under the Stipulated Facts of the parties, that person would be ... Wayne Allen Russell, Jr.
>
> "2. [First United Security Bank and Paty Holdings, LLC,] argue that the result in this case should be different from that in *First Union National Bank*, because unlike the mortgagee in *First Union National Bank*, there had been a foreclosure by the mortgagee in this case. Thus, in this case [First United Security Bank and Paty Holdings, LLC,] contend that as the foreclosing mortgagee, ... First United Security Bank is the full owner of the subject property. This argument would be persuasive if the foreclosure had occurred prior to the tax sale, as it is clear from the opinion in *First Union National Bank* that the Supreme Court was referring to a foreclosure which occurred prior to the tax sale and not after the tax sale as occurred in this case.
>
> *3 "3. [First United Security Bank and Paty Holdings, LLC,] further argued that ... Russell's mortgage contract with ... First United Security Bank allows [it] to act as his attorney in fact when performing duties [Russell] has failed to perform; therefore, [First United Security Bank] was acting as [Russell's] legal representative when paying his taxes and is consequently entitled to the excess under Ala.Code [1975,] Section 40–10–28. The Supreme Court addressed this argument in *First Union National Bank* when it agreed with the County Commission's argument in *First Union National Bank* that anything less than a clear statement of authority such as a power of attorney from the owner to the mortgagee would be inadequate to establish an agency or trustee relationship for a County trying to determine who should receive the excess funds from a tax sale. In agreeing with this argument of the County Commission in ***First Union National Bank*** the Supreme Court stated the following:
>
> " 'We agree with the Commission that, in the absence of a written instrument naming **First** Union as Summers's legal representative, the trial court correctly held that **First** Union cannot claim the excess funds on that basis.'
>
> "Accordingly, the Court finds in favor of [ **McCollum**, Cochrane, and Russell] and against [ **First United Security Bank** and Paty Holdings, LLC]. It is therefore the Order of the Court that the relief requested by [ **First United Security Bank** and Paty Holdings, LLC,] is hereby Denied. It is the further Order of the Court that ... Russell ... is entitled to the refund of the excess funds from the tax sale at issue in this case. Costs are taxed to [First United Security Bank and Paty Holdings, LLC]."

On May 30, 2012, First United Security Bank and Paty Holdings, LLC (hereinafter referred to collectively as "the bank"), filed their notice of appeal.

*Discussion*

On appeal, the bank argues that it is the "owner" of the property as contemplated by § 40–10–28, Ala.Code 1975, and, thus, that it is entitled to the excess funds from the tax sale. Section 40–10–28 provides:

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> "The excess arising from the sale of any real estate remaining after paying the amount of the decree of sale, and costs and expenses subsequently accruing, shall be paid over to the owner, or his agent, or to the person legally representing such owner, or into the county treasury, and it may be paid therefrom to such owner, agent or representative in the same manner as to the excess arising from the sale of personal property sold for taxes is paid. If such excess is not called for within three years after such sale by the person entitled to receive the same, upon the order of the county commission stating the case or cases in which such excess was paid, together with a description of the lands sold, when sold and the amount of such excess, the county treasurer shall place such excess of money to the credit of the general fund of the county and make a record on his books of the same, and such money shall thereafter be treated as part of the general fund of the county. At any time within 10 years after such excess has been passed to the credit of the general fund of the county, the county commission may on proof made by any person that he is the rightful owner of such excess of money order the payment thereof to such owner, his heir or legal representative, but if not so ordered and paid within such time, the same shall become the property of the county."

*4 [1] In *First Union National Bank of Florida v. Lee County Commission*, 75 So.3d 105 (Ala.2011), our supreme court considered whether a mortgagee of property sold for taxes could be considered the "owner" under § 40–10–28. Our supreme court determined that the term "owner" referred to the person against whom taxes were assessed and not the mortgagee of the property. 75 So.3d at 114. In this case, the bank argues that it was no longer just the mortgagee but that, due to its purchase of the property at the foreclosure sale, it was the new owner of the property. The bank argues that inclusion in the statute of the language "person entitled to receive the [excess funds]" implies that the owner of the property may change between the time of the tax sale and the distribution of the excess funds. However, in *First Union National Bank* the supreme court reasoned:

> "Section 40–10–120(a), Ala.Code 1975, governs when land sold for unpaid taxes may be redeemed, and, more importantly, who may redeem it.
>
> " 'Real estate which hereafter may be sold for taxes and purchased by the state may be redeemed at any time before the title passes out of the state or, if purchased by any other purchaser, may be redeemed at any time within three years from the date of the sale *by the owner,* his or her heirs, or personal representatives, *or by any mortgagee or purchaser* of such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor or other creditor having a lien thereon, or on any part thereof....'
>
> "(Emphasis added.) The list of those who can redeem property sold for taxes in § 40–10–120 is broader than the list of those entitled to claim excess proceeds under § 40–10–28[, Ala.Code 1975]. The more expansive language in § 40–10–120 includes both 'the owner' and 'any mortgagee,' but the narrower language in § 40–10–28 includes only 'the owner, or his agent, or ... the person legally representing such owner.' The Commission argues that if the legislature separately named both owners and mortgagees in § 40–10–120, then it could not have intended for the term 'owner' in § 40–10–28 to include 'mortgagee.' We agree."

75 So.3d at 112. Similarly, for purposes of the present case, we note that "[t]he more expansive language in § 40–10–120 includes both 'the owner' and 'any [... *purchaser* ],' but the narrower language in § 40–10–28 includes only 'the owner, or his agent, or ... the person legally representing such owner.' " *Id.* (emphasis added). "[I]f the legislature separately named both owners and [purchasers] in § 40–10–120, then it could not have intended for the term 'owner' in § 40–10–28 to include '[purchaser].' " *Id.* Thus, applying the reasoning espoused by our supreme court in *First Union National Bank*, we conclude that the excess funds are not payable to a person or entity who purchases property subsequent to a tax sale but, instead, are payable only to the person in whose name the taxes are assessed at the time of the tax sale (or his agent or representative).

*5 [2] The bank also points out that the supreme court stated in *First Union National Bank* that, if a mortgagee foreclosed on property and purchased it at a foreclosure sale, it would become the owner of the property and, thus, entitled to the excess funds. We note, however, that to be consistent with the

above-quoted reasoning from *First Union National Bank*, that statement must be taken to mean that the foreclosure sale must have occurred before the tax sale. Furthermore, the supreme court stated in *First Union National Bank:*

> "A mortgagee could also require the mortgagor to execute a power of attorney as part of an agreement not to foreclose, or, if the mortgagee learns after the fact that property has been sold for taxes, it can require the owner to execute a power of attorney before it redeems the property. The mortgagee could then become entitled to the excess proceeds under § 40–10–28 as the person 'legally representing such owner.' "

75 So.3d at 116. Based on that language, it is clear that the supreme court did not intend that a subsequent foreclosure sale could alter the "owner" of property under § 40–10–28.[FN1]

[3] The bank also cites certain attorney general opinions that support its position; however,

> "[u]nlike court opinions,
>
> > " 'written opinions of the Attorney General are not controlling. They are merely advisory and, under the statute, such opinions operate only to protect the officer to whom it is directed from liability because of any official act performed by such officer as directed or advised in such opinions. [§ 36–15–19, Ala.Code 1975.]' "

*Alabama Dep't of Revenue v. National Peanut Festival Ass'n*, 11 So.3d 821, 833–34 (Ala.Civ.App.2008) (quoting *Broadfoot v. State*, 28 Ala.App. 260, 261, 182 So. 411, 412 (1938)).

The bank further argues that it should be entitled to the excess funds because, it says, returning those funds to the person who owned the property at the time of the tax sale would result in a windfall to that person. It further argues that, if a mortgagee who had foreclosed on property were unable to afford to redeem that property without the excess funds, the mortgagee would be forced to forfeit its rights to the property. As noted above, however, our supreme court noted in *First Union National Bank* that there are several contractual means by which a mortgagee can protect itself in such situations, such as requiring the mortgagor to execute a power of attorney in the mortgagee's favor to collect the excess funds. 75 So.3d at 116.

*Conclusion*

Based on the foregoing, we affirm the judgment of the trial court.

AFFIRMED.

THOMPSON, P.J., and PITTMAN, BRYAN, and THOMAS, JJ., concur.

> FN1. In any event, that case did not involve a foreclosure situation; thus, any statement regarding the effect of a foreclosure sale was nonbinding dicta. *See, e.g., Ex parte Patton*, 77 So.3d 591, 596 (Ala.2011).

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C

Supreme Court of Alabama.
**FIRST UNION NATIONAL BANK OF FLORIDA**
v.
**LEE COUNTY** COMMISSION and Phillip Summers.

1090804.
June 30, 2011.

**Background:** Mortgagee, who redeemed property at tax sale, brought declaratory judgment action against **county** commission and defaulted mortgagor seeking determination regarding the disposition of excess funds received by the **county** at the tax sale. The Circuit Court, **Lee County**, No. CV–09–900037,Jacob A. Walker III, J., entered summary judgment for defendants. Mortgagee appealed.

**Holdings:** The Supreme Court, Main, J., held that:
(1) mortgagee who redeemed property at tax sale was not considered the owner of property for purposes of receiving excess funds arising from the sale, and
(2) in the absence of a written instrument naming mortgagee as mortgagor's legal representative, mortgagee could not claim the excess funds arising from tax sale of the property on that basis.

Affirmed.

Bolin, J., dissented.

West Headnotes

[1] **Taxation 371** 2979

371 Taxation
371III Property Taxes
371III(L) Sale of Land for Nonpayment of Tax
371k2977 Disposition of Proceeds
371k2979 k. Surplus. Most Cited Cases

Mortgagee who redeemed property at tax sale was not considered the owner of the property for purposes of statute identifying who was entitled to receive excess funds arising from the sale; the term "owner" as used in the statute meant the person against whom taxes on the property were assessed. Code 1975, § 40–10–28.

[2] **Mortgages 266** 137

266 Mortgages
266III Construction and Operation
266III(C) Property Mortgaged, and Estates of Parties Therein
266k136 Estates and Interests of Parties
266k137 k. Under mortgages in general. Most Cited Cases

When real property is mortgaged, only legal title passes to the mortgagee, and the mortgagor retains his or her other status as owner and holder of equitable title; until there has been a foreclosure, the mortgagor continues to own the property.

[3] **Taxation 371** 2979

371 Taxation
371III Property Taxes
371III(L) Sale of Land for Nonpayment of Tax
371k2977 Disposition of Proceeds
371k2979 k. Surplus. Most Cited Cases

In the absence of a written instrument naming mortgagee as mortgagor's legal representative, mortgagee could not claim the excess funds arising from tax sale of the property on that basis. Code 1975, § 40–10–28.

***106** George W. Walker III, J. David Martin, and C. Nelson Gill of Copeland, Franco, Screws & Gill, P.A., Montgomery, for appellant.

C. Richard Hill, Jr., of Webb & Eley, P.C., Montgomery; and Stanley A. Martin, S. Allen Martin, Jr., and Christopher M. Bazzell of Law Office of Stanley A. Martin, Opelika, for appellee **Lee County** Commission.

75 So.3d 105
**(Cite as: 75 So.3d 105)**

MAIN, Justice.

**First Union National Bank of Florida ("First Union")**, the plaintiff in a declaratory-judgment action filed in the Lee Circuit Court, appeals from a judgment entered in favor of the **Lee County** Commission ("the Commission") and Phillip Summers, the defendants in that action. We affirm.

I. *Factual Background and Procedural History*

The parties stipulated to the following facts:

"1. The real property which is involved in this dispute is designated as parcel number 43–02–05–15–0–000–001.017 and is more specifically described as follows:

> "Part of Lot 8 Shady Grove Farms Subdivision, recorded in Plat Book 13, Page 141 in the Office of the Judge of Probate of Lee County, Alabama, being located in Section 15, Township 20 North, Range 28 East, Lee County, Alabama, described as follows: begin ***107** at the Northeast corner of said Lot 8 on the South right of way of Lee Country [sic] Road No. 272, thence run South 01 Degrees 23 minutes East 300 feet, thence run South 88 degrees 52 minutes West 146.6 feet, thence run North 01 degrees 2.7 minutes West 300 feet to the South right of way of said highway, thence along said right of way North 88 degrees 52 minutes East 146.6 feet to the Point of Beginning, containing 1.0 acre.

"(hereinafter, the 'Property').

"2. During March of 1994, Summers contracted with Jim Walter Homes, Inc. (hereinafter, 'JWH') for JWH to build Summers a house to be constructed by JWH on the Property.

"3. On March 22, 1994, Summers executed a Non–Negotiable Promissory Note in the amount of One Hundred Seventeen Thousand Five Hundred Forty and 00/100 Dollars ($117,540.00) for the purchase price of the house to be constructed by JWH on the Property.... In addition, Summers executed a Mortgage on March 22, 1994, securing payment of the debt evidenced by the Non–Negotiable Promissory Note.

"4. The Mortgage was recorded by JWH on April 25, 1994 in the office of the Probate Judge of Lee County, Alabama and can be found at Real Property Book 2092, Pages 122–123.

"5. As a condition of the Mortgage, Summers agreed to ... 'pay all taxes, assessments, and other liens taking priority over' the Mortgage.

"6. On June 10, 1994, JWH executed an Assignment of Mortgage purporting to 'grant, bargain, sell, assign, transfer and set over' unto Mid–State Homes, Inc. the Mortgage and Non–Negotiable Promissory Note described therein. This Assignment of Mortgage was recorded on October 4, 1994 in the office of the Probate Judge of Lee County, Alabama and can be found at Real Property Book 1891, Page 95.

"7. On April 12, 1995, Mid–State Homes, Inc. executed an Assignment of Mortgages purporting to 'grant, bargain, sell, assign, transfer and set over' unto Mid–State Trust IV the Mortgage and Non–Negotiable Promissory Note described therein. On the same day, and within the same document, Mid–State Trust IV purports to 'grant, bargain, sell, assign, transfer and set over' unto First Union National Bank of Florida the Mortgage and Non–Negotiable Promissory Note described therein. This Assignment of Mortgages was recorded on April 21, 1995 in the office of the Probate Judge of Lee County, Alabama and can be found at Real Property Book 1941, Pages 9–16.

"8. The 2004 ad valorem taxes for the Property were assessed to Summers by the Lee County Revenue Commissioner, Oline Price. The sum of the taxes assessed to Summers was $363.24.

"9. The 2004 ad valorem taxes were not paid. Therefore, the Lee County Revenue Commissioner gave notice that the Property would be sold at public auction. On May 4, 2005, the Property was sold at public auction to a third party, Plymouth Park Tax Services, LLC. Plymouth Park Tax Services, LLC paid $9,600.00 for the Property. The sum of the taxes assessed to Summers, interest, fees, and advertising costs was $447.00. Therefore, the **Lee County** Revenue Commissioner received an excess in the amount of $9,153.00. **Lee County** deposited the excess received from the sale into a non-interest

bearing fiduciary account.

"10. On August 31, 2007, U.S. Bank, N.A. as successor in interest to Wachovia Bank, NA, successor by merger to * **First Union National Bank**, formerly known as **First Union National Bank** of North Carolina and successor by merger to **First Union National Bank of Florida**, executed a Power of Attorney. The Power of Attorney states: 'US Bank desires to grant a power of attorney to Walter Mortgage Company and Jim Walter Homes, Inc., upon the terms and conditions set forth herein.' The terms and conditions of the Power of Attorney state that Walter Mortgage Company and/or JWH are appointed 'to execute, acknowledge, verify, swear to, deliver, record, and file, in the name, place, and stead of U.S. Bank ... all instruments, documents, and certificates which may from time to time be required in connection with [certain documents].' The Power of Attorney further states that U.S. Bank 'may terminate the Power of Attorney at any time by recording in the office where this Power of Attorney is recorded an instrument signed by U.S. Bank.' The Power of Attorney was recorded on October 17, 2007....

"11. On July 24, 2008, Bill English, Judge of Probate, issued a Tax Deed to Wachovia Custodian for Plymouth Park Tax Services pursuant to ALABAMA CODE § 40–10–29 (1975). The Tax Deed was recorded on August 1, 2008 in the office of the Probate Judge of Lee County, Alabama....

"12. On August 11, 2008, Summers informed a representative of Walter Mortgage Company that the Property had been sold for back taxes. Prior to August 11, 2008, neither First Union nor Walter Mortgage Company had received actual notice of the fact that the Property had been sold at a public auction.

"13. On August 22, 2008, Walter Mortgage Company—acting as attorney-in-fact for First Union pursuant to the Power of Attorney described herein—made a payment directly to Plymouth Park Tax Services, LLC in the amount of $17,380.69 with the intent of effectuating a redemption of the Property.

"14. At the time Walter Mortgage Company paid Plymouth Park Tax Services, LLC, Summers was financially unable to satisfy his tax delinquency.

"15. Upon the instructions of Walter Mortgage Company, and in return for the payment made by Walter Mortgage Company to Plymouth Park Tax Services, LLC, Plymouth Park Tax Services, LLC executed a Quit Claim Deed to the Property to Summers on September 17, 2008. This Quit Claim Deed was recorded on October 14, 2008 in the office of the Probate Judge of Lee County, Alabama....

"16. Following Walter Mortgage Company's payment to Plymouth Park Tax Services, LLC no person or entity applied for redemption of the Property at the Probate Office or deposited any money with the Judge of Probate in that regard.

"17. On or about July 28, 2009, a Verified Statement of Claim was presented to the Lee County Commission by Walter Mortgage Company on behalf of First Union. The Verified Statement of Claim claims that First Union is entitled to the $9,153.00 excess arising from the tax sale.

"18. When an application is made to Lee County for the excess proceeds arising from a tax sale, Lee County's policy is to (1) examine the Certificate of Land Sold for Taxes, (2) identify the person or entity assessed the taxes, (3) request identification to confirm that the person or entity applying for the excess was the person or entity who was assessed the taxes, and (4) if proper identification is presented, pay the excess proceeds to the applicant.

***109** "19. Pursuant to ALABAMA CODE § 6–5–20 (1975), Walter Mortgage Company's Verified Statement of Claim was disallowed by Lee County by operation of law.

"20. On June 16, 2009, Summers requested the excess proceeds and presented identification."

William J. Wade, in his capacity as trustee for Mid–State Trust IV, sued the Commission and Summers in January 2009, seeking a judgment declaring who was entitled to the excess redemption proceeds from the tax sale of Summers's property. Wade later filed a motion to substitute First Union as the real party in interest; [FN1] the trial court granted the motion. First Union then filed an amended complaint in July

2009, seeking, as did Wade, a judgment declaring who was entitled to the excess redemption proceeds from the tax sale of Summers's property. The parties agreed to submit the case to the trial court on stipulations, depositions, exhibits, and the parties' briefs. The Commission then moved for a summary judgment. Summers appeared at the hearing on the Commission's summary-judgment motion, and the Commission says Summers "informed the Court that his intention was to use any monies received as a result of this action to pay back the debt owed to First Union." Commission's brief, at 8. The trial court entered a judgment declaring that Summers was entitled to the excess funds from the tax sale. The trial court stated:

> FN1. Mid–State Trust IV assigned the mortgage to **First Union** before the tax sale occurred.

"The issue in this case is whether the Plaintiff **First Union National Bank** of **Florida**, as mortgagee, is entitled to receive excess funds held by **Lee County** pursuant to a tax sale. ALABAMA CODE § 40–10–28 (1975) governs the disposition of excess funds received by a **county** at a tax sale. Section 40–10–28 states that excess funds 'shall be paid over to the owner, or his agent, or to the person legally representing such owner, or into the **county** treasury.'

"After considering the legal arguments of the parties and the facts of this case, the Court hereby finds that the Plaintiff **First Union National Bank** of **Florida**, as mortgagee, is not 'the owner, or his agent, or ... the person legally representing such owner.' As a result, the Plaintiff **First Union National Bank** of **Florida** is not entitled to the excess funds under ALA. CODE § 40–10–28. The Court finds that 'the owner' under ALA. CODE § 40–10–28 is the person or entity against whom the taxes were assessed. In addition, the Court finds that the Plaintiff **First Union National Bank** of **Florida** has not proven it is the owner's agent or legal representative.

"Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that the Defendant **Lee County** Commission is not required to issue a check made payable to the Plaintiff **First Union National Bank** of **Florida**. Each party is to bear its own costs."

(Capitalization in original.)

II. *Standard of Review*

"Our standard of review of this case is governed by statute. Section 12–2–7(1), Ala.Code 1975, states:

> " '[I]n deciding appeals, no weight shall be given the decision of the trial judge upon the facts where the evidence is not taken orally before the judge, but in such cases the Supreme Court shall weigh the evidence and give judgment as it deems just.'

"In a case in which a trial court has not heard live testimony, this Court has held that 'a reviewing court will not apply the presumption of correctness to a trial ***110** court's findings of fact and that the reviewing court will review the evidence *de novo*.' *Eubanks v. Hale*, 752 So.2d 1113, 1122 (Ala.1999). Our statutory obligation in a case such as this is to 'weigh the evidence and give judgment as [we] deem[ ] just.' "

*Bentley Sys., Inc. v. Intergraph Corp.*, 922 So.2d 61, 70–71 (Ala.2005).

III. *Analysis*

[1] When a property owner fails to pay taxes owed on real property, the probate court of the county in which the property is located may order the sale of the property. § 40–10–1, Ala.Code 1975. If the purchaser of the property at the tax sale pays more than the taxes owed on the property plus applicable costs and expenses, § 40–10–28, Ala.Code 1975, specifies how the excess funds are to be distributed. Section 40–10–28 provides, in pertinent part:

> "The excess arising from the sale of any real estate remaining after paying the amount of the decree of sale, and costs and expenses subsequently accruing, shall be paid over to the owner, or his agent, or to the person legally representing such owner, or into the county treasury, and it may be paid therefrom to such owner, agent or representative in the same manner as ... the excess arising from the sale of personal property sold for taxes is paid. If such excess is not called for within three years after such sale by the person entitled to receive the same, upon the order of the county commission stating the case

> or cases in which such excess was paid, together with a description of the lands sold, when sold and the amount of such excess, the county treasurer shall place such excess of money to the credit of the general fund of the county and make a record on his books of the same, and such money shall thereafter be treated as part of the general fund of the county. At any time within 10 years after such excess has been passed to the credit of the general fund of the county, the county commission may on proof made by any person that he is the rightful owner of such excess of money order the payment thereof to such owner, his heir or legal representative, but if not so ordered and paid within such time, the same shall become the property of the county."

In this case, excess funds in the amount of $9,153 were paid to Lee County after Summers failed to pay the ad valorem taxes on the property for 2004. First Union sought the excess funds as the mortgagee and redeemer of the property. Because the trial court held that First Union was not the owner of the property and was not the owner's agent or the person legally representing him, the trial court held that First Union was not entitled to the excess proceeds.

First Union argues that the trial court's decision reaches what it says is an inequitable result in that a mortgagee who holds legal title to property and who has redeemed the property after a tax sale cannot recover the excess funds it paid to redeem the property. First Union contends that if effect is given to the plain meaning of § 40–10–28, it would be considered the owner of the property. It contends that, under Alabama law, a mortgagee is the legal "owner" of the real property that is the subject of the mortgage. Because Alabama is a title state, argues First Union, the plain and ordinary meaning of the term "owner" is the person holding legal title. *Barclay v. State*, 156 Ala. 163, 165, 47 So. 75, 76 (1908) ("The term 'owner' must be given, as employed in this act, its primary meaning, which is he who has the title, as distinguished from a mere possessory right, to the premises."). Although*111 the law in some states is to the effect that a mortgage is merely a lien on the mortgaged property, First Union says, Alabama is a title state in which the execution of a mortgage passes legal title to the mortgagee as security for the mortgagor's debt. In support of its argument, First Union cites *Trauner v. Lowrey*, 369 So.2d 531, 534 (Ala.1979) ("Alabama classifies itself as a 'title' state with regard to mortgages. Execution of a mortgage passes legal title to the mortgagee."); *Bank of Powell v. Peoples Bank*, 503 So.2d 845, 845–46 (Ala.1987) ("In Alabama, upon the execution of a mortgage, the mortgagee receives legal title.... The mortgagor retains an equity of redemption."); and *Baxter v. SouthTrust Bank of Dothan*, 584 So.2d 801, 804 (Ala.1991) (same). Therefore, First Union reasons, at the time of the tax sale, Summers merely held an equitable right of redemption that would ripen into legal title when the debt evidenced by the mortgage was satisfied. Because Summers did not hold legal title, First Union says, he was not the "owner" of the property and was not entitled to the excess funds. A mortgagor has the right to use and convey the property so long as the terms of the mortgage are satisfied and can hold himself out to third parties as the owner, but, First Union argues, the mortgagee is still the legal owner of the property. *First Nat'l Bank v. Federal Land Bank of New Orleans*, 225 Ala. 195, 196, 142 So. 546, 546 (1932) (" 'The mortgagor, remaining in possession of lands, either by virtue of stipulations entitling him so to do, or by grace of the mortgagee, is, as to all persons other than the mortgagee, the owner of the lands.' " (quoting *Federal Land Bank v. Wilson*, 224 Ala. 491, 493, 141 So. 539, 540 (1932))). Of course, First Union says, when a mortgagor fails to comply with the terms of the mortgage, the mortgagee is entitled to immediate possession and the mortgagor loses even equitable title. In this case, the mortgage specifically provides that Summers was responsible for paying the taxes on the property, and his failure to pay those taxes constituted a default. First Union concludes that the trial court's ruling in this case—that Summers, a defaulted mortgagor who has no rights in the property, is the only party entitled to the excess funds—is incorrect and that First Union is the owner entitled to the excess funds.

The Commission argues that the trial court properly granted its summary-judgment motion because, it argues, First Union, as the mortgagee, is not the owner of the property for purposes of § 40–10–28. The Commission considers Summers to be the owner of the property because the ad valorem taxes on the property were assessed to him, and First Union considers itself to be the owner of the property because it was the mortgagee on the date of the tax sale. The legislature does not define the term "owner" within Chapter 10 of Title 40, Ala.Code 1975, and the parties have not identified any caselaw on point defining "owner" for purposes of § 40–10–28.

There are, however, rules of statutory construction that guide this Court's interpretation of a statute. In *Archer v. Estate of Archer*, 45 So.3d 1259, 1263 (Ala.2010), this Court described its responsibilities when construing a statute:

> " ' "[I]t is this Court's responsibility in a case involving statutory construction to give effect to the legislature's intent in enacting a statute when that intent is manifested in the wording of the statute.... ' " ' "[I]f the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect." ' " ' ... In determining the intent of the legislature, we must examine the statute*112 as a whole and, if possible, give effect to each section."

" ' *Ex parte Exxon Mobil Corp.*, 926 So.2d 303, 309 (Ala.2005). Further,

> " ' "when determining legislative intent from the language used in a statute, a court may explain the language, but it may not detract from or add to the statute.... When the language is clear, there is no room for judicial construction...."

" ' *Water Works & Sewer Bd. of Selma v. Randolph*, 833 So.2d 604, 607 (Ala.2002).' "

(Quoting *Ex parte Birmingham Bd. of Educ.*, 45 So.3d 764, 767 (Ala.2009).) Similarly, in *Lambert v. Wilcox County Commission*, 623 So.2d 727, 729 (Ala.1993), the Court stated:

> " 'The fundamental rule of statutory construction is that this Court is to ascertain and effectuate the legislative intent as expressed in the statute.... In this ascertainment, we must look to the entire Act instead of isolated phrases or clauses ... and words are given their plain and usual meaning.... Moreover, just as statutes dealing with the same subject are *in pari materia* and should be construed together, ... parts of the same statute are *in pari materia* and each part is entitled to equal weight.' "

(Quoting *Darks Dairy, Inc. v. Alabama Dairy Comm'n*, 367 So.2d 1378, 1380–81 (Ala.1979).) When other sections in Title 40, Chapter 10, entitled "Sale of Land," are examined, the meaning of the term "owner" becomes clear. For example, in § 40–10–1, Ala.Code 1975, the statute governing when the probate court may order land sold, the term "owner" refers to the person or entity against whom taxes are assessed:

> "The probate court of each county may order the sale of lands therein for the payment of taxes assessed on the lands, or against the owners of the lands, when the tax collector shall report to the court that he or she or the holder of a tax lien ... was unable to collect the taxes assessed against the land, or any mineral, timber or water right or special right, or easement therein, or the owner thereof, without a sale of the land."

Section 40–10–120(a), Ala.Code 1975, governs when land sold for unpaid taxes may be redeemed, and, more importantly, who may redeem it.

> "Real estate which hereafter may be sold for taxes and purchased by the state may be redeemed at any time before the title passes out of the state or, if purchased by any other purchaser, may be redeemed at any time within three years from the date of the sale *by the owner,* his or her heirs, or personal representatives, *or by any mortgagee or purchaser* of such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor or other creditor having a lien thereon, or on any part thereof...."

(Emphasis added.) The list of those who can redeem property sold for taxes in § 40–10–120 is broader than the list of those entitled to claim excess proceeds under § 40–10–28. The more expansive language in § 40–10–120 includes both "the owner" and "any mortgagee," but the narrower language in § 40–10–28 includes only "the owner, or his agent, or ... the person legally representing such owner." The Commission argues that if the legislature separately named both owners and mortgagees in § 40–10–120, then it could not have intended for the term "owner" in § 40–10–28 to include "mortgagee." We agree.

*113 First Union attempts to refute the Commission's argument that provisions in Chapter 10 of Title 40 other than in § 40–10–28 support the interpretation that the term "owner" as used in § 40–10–28 does not include a mortgagee. The Commission, First Union says, contends that the word "owner" in § 40–10–28

could refer only to Summers, the party in possession of the property. First Union argues that it remains the legal title holder of the property and therefore the legal owner of the property, regardless of the fact that Summers retained possession and use of the property and was responsible for paying the taxes on the property.

[2] First Union's argument presumes that legal title is the equivalent of absolute ownership of property, but that presumption is incorrect. See *Alabama Home Mortgage Co. v. Harris*, 582 So.2d 1080, 1083–84 (Ala.1991) (recognizing that there is no "absolute owner" of property until there is a merger of equitable title and legal title). First Union's interpretation of the term "owner" in § 40–10–28 fails to consider the fact that when real property is mortgaged, only legal title passes to the mortgagee, and the mortgagor retains his or her other status as "owner and holder of equitable title." *Sims v. Riggins*, 201 Ala. 99, 103, 77 So. 393, 397 (1917) (the mortgagor is "the owner and holder of the equitable title"). Until there has been a foreclosure, the mortgagor continues to "own" the property. *Alabama Home Mortgage*, 582 So.2d at 1083–84.

First Union criticizes the Commission as citing cases arising out of the insurance context, pointing out that this Court long ago held that a mortgagor was the owner of property for purposes of an insurance policy. One of those cases is *Loventhal v. Home Insurance Co.*, 112 Ala. 108, 20 So. 419 (1896). First Union argues that *Loventhal* determined whether the insurer could void the insurance policy because of the mortgage on the property, holding only that it could not, and that the Court in *Loventhal* did not address the issue before it in this case. First Union contends that the fact that a mortgagor may be considered an owner for purposes of an insurance policy does not mean that the mortgagor is the legal owner of the property for purposes of § 40–10–28.

Contrary to First Union's contention, this Court's decision in *Loventhal*, in which this Court discussed the distinction between legal title and equitable title, is applicable to this case. In *Loventhal*, the issue was the meaning of ownership in the context of a contested fire-insurance policy. The Court held that the condition in the fire-insurance policy that the insured's interest in the property be sole and unconditional was not violated by the fact that there was a mortgage on the property. In so holding, the Court stated:

> "The term 'fee simple' has never been used to distinguish between legal and equitable estates. It is used to denote the quantity or duration of estates—whether the enjoyment is limited or unlimited in point of continuance or duration. It defines the largest estate in land known to the law. It is an estate of inheritance, unlimited in duration, descendible to all the heirs alike of the owner to the remotest generations. It may be of a legal or equitable nature. If of the latter, *the legal holder is a mere trustee for the equitable, who is the real owner*, and, restrained by no provision of the trust, in cases not within the statute of uses, may at any time be compelled to execute the legal estate in him."

112 Ala. at 115, 20 So. at 420 (emphasis added). According to *Loventhal*, equitable title is more than an interest in property; it is ownership of the property. See also ***114** *Alabama Home Mortgage*, 582 So.2d at 1080.

First Union calls this Court's attention to other jurisdictions that have held that the mortgagee is the owner of the property and is the proper party to collect excess funds following a tax sale. It cites *Alexander Investment Group, Inc. v. Jarvis*, 263 Ga. 489, 491, 435 S.E.2d 609, 612 (1993), which held that the mortgagee is superior to the mortgagor as to collecting the excess funds under Georgia's tax-sale statutes. Generally, First Union says, Georgia courts have reasoned that when a lienor/mortgagor causes property to be sold because of the lienor's/mortgagor's failure to pay taxes as required by the mortgage, that lienor/mortgagor has no standing to collect the excess funds, especially if the lienee/mortgagee has made a claim for the excess funds. First Union then argues that "[t]he exact same result should be reached in this case" because, it says, Summers should not have standing to collect the excess funds. First Union's brief, at 23. First Union also cites *McKelvey v. Creevey*, 72 Conn. 464, 466–67, 45 A. 4, 5 (1900) (mortgagee is owner of land, and as between mortgagor and mortgagee, the mortgagee is regarded as having legal title to the land). In conclusion, First Union argues, there is no authority to support the trial court's decision in this case that a mortgagor who has not paid taxes on the property and thereby defaulted defeats a mortgagee as to who is the owner of the land. First Union argues that the trial court should have

found that First Union was the owner for purposes of § 40–10–28 and was therefore the party entitled to the excess funds.

The Commission calls this Court's attention to the definition of "owner" in other statutes, such as § 35–11–232, Ala.Code 1975, a statute dealing with materialmen's liens ("Every person ... for whose use, benefit or enjoyment of any building or improvement shall be made is embraced within the words 'owner or proprietor,' as used in this division."), and § 35–9A–141(9), Ala.Code 1975, relating to landlords and tenants ("one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises. The term includes a mortgagee only when in possession...."). Furthermore, the term "owner" in the property-tax-assessment statutes, § 40–7–1 et seq., Ala.Code 1975, clearly refers to the person against whom taxes are assessed. In view of the various Alabama statutes in which the legislature has clearly expressed its intent that the term "owner" of property is not broad enough to include within its definition a mortgagee, we are not persuaded by authority from other jurisdictions in which the term "owner" is more broadly defined. We conclude that when the legislature directs in § 40–10–28 that the excess funds from a tax sale "shall be paid over to the owner, or his agent," the term "owner" means the person against whom taxes on the property are assessed.

[3] First Union next argues that, even if Summers is considered to be the owner of the property, First Union should at least be considered his legal representative so as to entitle it to the excess funds in that capacity. First Union says that in one of its briefs to the trial court the Commission argued that a mortgagee is a mere trustee for the mortgagor. That is generally not a correct statement under Alabama law, First United says, but, if that is true, it asserts, a trustee is a party's legal representative, citing *Sessions v. Espy*, 854 So.2d 515 (Ala.2002) (trustee in bankruptcy is a party's legal representative). First Union then says that it has shown that, as the mortgagee, it is the ***115** legal owner under Alabama law because it holds legal title to the property, but, it argues, even if the Commission is correct that the mortgagee is merely a trustee for the mortgagor, it would also be the proper party to receive the excess funds because it would be the party legally representing Summers.

The Commission contends that First Union did not present to the trial court its argument that the trial court should have at least found it to be the legal representative of the owner. That argument was not well developed in the briefs First Union filed in the trial court, but First Union did make a cursory argument that if it is considered to be only the trustee for the owner, then it should be considered the owner's legal representative and entitled to the excess funds in that capacity. The Commission relies upon an opinion issued by the Alabama Attorney General answering the following question: "Can anyone other than the true owner make a claim for excess funds arising from a tax sale?" Opinion to Patrick D. Pinkston, Elmore County Attorney, Op. Att'y Gen. No. 2009–058 (March 29, 2009). That opinion references a previous attorney general's opinion for the proposition that "any excess funds arising from the sale of real estate for unpaid property taxes is properly payable to the former owner, i.e., the person who initially failed to pay the taxes on the property." *Id.* (citing Opinion to Preston Hornsby, Macon County Probate Judge, Op. Att'y Gen. No. 83–0401 (July 23, 1983)). The Commission says that Op. Att'y Gen. No. 2009–058 also addresses the specific question of payment to a third party and explains when an agent or trustee for the owner can apply for the excess funds. It states:

> "Section 40–10–28 states that the excess can be paid to the owner, his agent, or to the person legally representing such owner. If the third party discussed above has a valid agreement with the prior owner rightfully to obtain the excess, Elmore County could rightfully pay this money over as the third party has become the person legally representing such owner."

The Commission states that if Summers had executed any written agreement to allow First Union to represent him, such as a power of attorney, the county could rely on that clear statement of authority from Summers to First Union and pay the excess funds to First Union. Anything less, the Commission says, would be inadequate to establish an agency or trustee relationship for a county trying to determine who should receive the excess funds from a tax sale without having to litigate or interplead funds every time the question arose. We agree with the Commission that, in the absence of a written instrument naming First Union as Summers's legal representative, the trial

court correctly held that First Union cannot claim the excess funds on that basis.

Finally, First Union argues that fairness dictates that it be the proper party to collect the excess funds. The Commission argued to the trial court, First Union says, that First Union should not be entitled to the excess funds because it would be burdensome for Lee County to determine the correct mortgagee. First Union refers to this position as a "feigned argument of hardship." First Union's brief, at 26. Mortgages are recorded in the probate court of the county in which the property is located, First Union states, and tax sales are ordered by the probate court of that same county. It clearly would not be burdensome, First Union insists, for the probate court to review the records relating to the property being sold and to give notice to the mortgagees, as well as to the delinquent taxpayer, of any excess received at the tax sale. First Union then argues that *116 the Commission has no desire to notify anyone of the excess funds because, it says, the county wants to keep the excess funds; moreover, it alleges, if the delinquent taxpayer is the only one notified of a tax sale and the only one who can claim the excess funds, then the Commission "has found a creative way to greatly increase its coffers." First Union's brief, at 27. The trial court's holding is wrong, First United says, because Summers, who defaulted on a $363.24 property-tax assessment, did not redeem the property. Instead, First Union says, it redeemed the property, paying the $9,153 excess to the third-party tax-sale purchaser, and, as a result of its redemption, Summers was able to keep his home. According to First Union, the trial court's decision not only allows Summers to keep his home, but also gives him an additional windfall of $9,153 for doing nothing except failing to pay his taxes. Such a result, says First Union, is inconsistent not only with the clear terms of § 40–10–28, but also with basic considerations of fairness and justice.

The Commission argues that public-policy considerations weigh in favor of defining the term "owner" so as not to include a mortgagee. Defining the term to include a mortgagee as well as the person against whom the taxes are assessed, the Commission says, "would create enormous uncertainty for Alabama counties regarding who is entitled to the excess proceeds arising from a tax sale." Commission's brief, at 37. The Commission argues that in order to avoid paying the excess funds to the wrong person, the county's revenue commissioner would have to pay for and/or conduct a title search on the property each time a person called for the excess funds arising from a tax sale. This would be a significant burden, the Commission says, and would not necessarily resolve the uncertainty. Without a specified person who is allowed to claim the excess funds, a county commission's only alternative would be to interplead the excess funds after every tax sale, which would create substantial attorney fees, filing fees, and costs for the county.

We agree with the Commission that a broad definition of the term "owner" would place an unnecessary burden on counties, especially in light of other remedies that are available to a mortgagee, such as First Union, to protect itself in the event property on which it holds a mortgage becomes subject to a sale for unpaid taxes. For example, many mortgagees place the responsibility for paying ad valorem taxes upon the mortgagor, but set up an escrow account whereby the mortgagee pays the ad valorem taxes, thus protecting itself by assuming the responsibility of paying the property taxes directly to the county on behalf of the owner. Other mortgagees require the mortgagor to pay the ad valorem taxes, but if the taxes are not paid, allege that the mortgagor has breached the contract, a breach that allows the mortgagee to foreclose upon the property, purchase it at the foreclosure sale, and thereby merge the equitable title with the legal title, thus becoming entitled to any excess funds. The fact that a mortgagee chooses not to own the property by way of foreclosure should not place a burden on the county or alter the plain meaning of § 40–10–28. A mortgagee could also require the mortgagor to execute a power of attorney as part of an agreement not to foreclose, or, if the mortgagee learns after the fact that property has been sold for taxes, it can require the owner to execute a power of attorney before it redeems the property. The mortgagee could then become entitled to the excess proceeds under § 40–10–28 as the person "legally representing such owner."

### IV. *Conclusion*

Because we hold that trial court correctly declared (1) that the term "owner" in *117 § 40–10–28 means the person or entity against whom the taxes were assessed, (2) that First Union cannot be considered Summers's legal representative for purposes of § 40–10–28, and (3) that Summers, and not First Union,

is entitled to the excess funds from the tax sale, we affirm the judgment in favor of the Commission and Summers.

AFFIRMED.

COBB, C.J., and STUART, PARKER, MURDOCK, SHAW, and WISE, JJ., concur.
BOLIN, J., dissents.

Ala.,2011.
First Union Nat. Bank of Florida v. Lee County Com'n
75 So.3d 105

END OF DOCUMENT

ALABAMA BILL TEXT

TITLE: Tax sales, interest on redemptions, rate charged on money judgments, Secs. 40-10-75, 40-10-76, 40-10-77, 40-10-83, 40-10-121, 40-10-122 am'd.

VERSION: Introduced
February 19, 2013
Hill, Weaver, McCutcheon

<- Image not available via Offline Print ->

SUMMARY: Under existing law, the rate of interest to be paid when a tax sale is defective or when a party redeems property from a tax sale is percent. This bill would provide that the rate of interest would be the same as the rate of interest on money judgments, as amended, which is currently 7.5 percent

TEXT:

HB309

148233-1

By Representatives Hill, McCutcheon and Weaver

RFD: Financial Services

First Read: 19-FEB-13

148233-1:n:02/11/2013:FC/mfc LRS2013-726

SYNOPSIS: Under existing law, the rate of interest to be paid when a tax sale is defective or when a party redeems property from a tax sale is 12 percent.

This bill would provide that the rate of interest would be the same as the rate of interest on money judgments, as amended, which is currently 7.5 percent.

A BILL

TO BE ENTITLED

AN ACT

To amend Sections 40-10-75, 40-10-76, 40-10-77, 40-10-83, 40-10-121, and 40-10-122, Code of Alabama 1975, to provide that the interest to be paid when a tax sale is defective or when a party redeems property from a tax sale would be at the rate allowed to be charged on money judgments.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-10-75, 40-10-76, 40-10-77, 40-10-83, 40-10-121, and **40-10-122, Code of Alabama 1975**, are amended to read as follows:

"§40-10-75.

"If, in any action brought for the possession of land sold for taxes, the title of the purchaser at the tax sale shall be defeated on account of any defect in the proceedings under which the sale is had, or on account of any defect in or insufficiency of the process by which the owner of the land was brought before the probate court, as is provided, or in the service of the process, or by reason of the failure of the judge of probate on account of any negligence or refusal on his or her part to produce when called upon, sufficient evidence of the proper issuance and service of the notice or process, or by reason of any other defect or insufficiency in any of the proceedings for the condemnation and sale of the property, or of the certificate or deed to the purchaser or any two or more of the causes, the officer or officers on account of whose omission or error the defect or insufficiency or defects or insufficiencies shall have arisen, together with the sureties on the official bond, shall be liable to the purchaser whose title shall be thus defeated and to his or her assignees for the full sum of the purchase money paid by him or her at the tax sale for the property, the cost of the action in which the title failed, which the purchaser shall have incurred in attempting to maintain title under the tax sale, together with the interest upon each of these amounts, at the rate ~~of 12 percent per annum~~ **allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**, subject to the limitations set forth in Section 40-10-122(a); provided that except as to the state, actions under this section shall be commenced within five years from the sale.

"§40-10-76.

"If, in any action brought by the purchaser, or other person claiming under the purchaser, to recover the possession of lands sold for taxes, a recovery is defeated on the ground that such sale was invalid for any reason other than that the taxes were not due, the court shall forthwith, on the motion of the plaintiff, ascertain the amount of taxes for which the lands were liable at the time of the sale and for the payment of which they were sold, with interest thereon from the date of sale, and the amount of such taxes on the lands, if any, as the plaintiff, or the person under whom ~~he~~ **the plaintiff** claims, has, since such sale, lawfully paid or assumed by the state after its purchase, with interest thereon from the date of such payment, the interest on both amounts to be computed at the rate ~~of 12 percent per annum~~ **allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**, subject to the limitations set forth in Section 40-10-122(a); and the court shall thereupon render judgment against the defendant in favor of the plaintiff for the amount ascertained and the costs of the action, which judgment shall constitute a lien on the lands sued for, and payment thereof may be enforced as in other cases.

"§40-10-77.

"If, in an action brought against such purchaser or other person claiming under the purchaser to recover possession of lands sold for taxes, the defendant claims and defends under the tax title and the defense fails on the ground that such sale was invalid for any reason other than that the taxes were not due, and the plaintiff recovers, the court shall forthwith, on the motion of the defendant, ascertain the amount of taxes for which the lands were liable at the time of the sale and for the payment of which they were sold, with interest thereon from the day of sale, and the amount of such taxes on the lands, if any, as the defendant or the person under whom he or she claims has, since such sale, lawfully paid or assumed, in case of the state, with interest thereon from the date of such payment, the interest on both amounts to be computed at the rate ~~of 12 percent per annum~~ **allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**, subject to the limitations set forth in Section 40-10-122(a); and the court shall thereupon render judgment against the plaintiff in favor of the defendant for the amount ascertained and the cost of the action, which judgment shall constitute a lien on the land sued for, the payment of which may be enforced as in other cases, and no writ of possession shall issue until such judgment has been satisfied, and the court may order

the land sold or condemn it to the satisfaction of the debt.

"§40-10-83.

"When the action is against the person for whom the taxes were assessed or the owner of the land at the time of the sale, his or her heir, devisee, vendee, or mortgagee, the court shall, on motion of the defendant made at any time before the trial of the action, ascertain (i) the amount paid by the purchaser at the sale and of the taxes subsequently paid by the purchaser, together with ~~12 percent per annum~~ **interest** thereon **at the rate allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**, subject to the limitations set forth in Section 40-10-122(a); (ii) with respect to property located within an urban renewal or urban redevelopment project area designated pursuant to Chapters 2 or 3 of Title 24, all insurance premiums paid or owed by the purchaser for casualty loss coverage on insurable structures and the value of all permanent improvements made by the purchaser determined in accordance with Section 40-10-122, together with ~~12 percent per annum~~ **interest** thereon **at the rate allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**; (iii) with respect to any property which contains a residential structure at the time of the sale regardless of its location, all insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure and the value of all preservation improvements made by the purchaser determined in accordance with Section 40-10-122, together with ~~12 percent per annum~~ **interest** thereon **at the rate allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**, subject to the limitations set forth in Section 40-10-122(a); and (iv) a reasonable attorney's fee for the plaintiff's attorney for bringing the action. The court shall also determine the right, if any, of the defendant to recover any excess pursuant to Section 40-10-28 and shall apply a credit and direct the payment of the same as set forth in subsection (b) of Section 40-10-78. Upon such determination the court shall enter judgment for the amount so ascertained in favor of the plaintiff against the defendant, and the judgment shall be a lien on the land sued for. Upon the payment into court of the amount of the judgment and costs, the court shall enter judgment for the defendant for the land, and all title and interest in the land shall by such judgment be divested out of the owner of the tax deed.

"§40-10-121.

"(a) In order to obtain the redemption of land from tax sales where the same has been heretofore or hereafter sold to the state, the party desiring to make such redemption shall apply therefor as hereinafter provided and shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest thereon at the rate ~~of 12 percent~~ **allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**, together with the amount of all taxes found to be due on such land since the date of sale, as provided herein, with interest at the rate ~~of 12 percent~~ **allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time** and all costs and fees due to officers.

"(b) Upon application to the probate judge to redeem land where the same has been sold to the state for taxes, which application shall be made on blank forms to be furnished by the Land Commissioner, the probate judge shall submit such application to the tax assessor of the county in which the land sought to be redeemed is located, and the assessor shall without delay enter on such application an assessment value for each of the years for which taxes are due, subsequent to the year for which such land was sold to the state for taxes, and such assessment value shall be such percentage as established by law of the fair and reasonable market value of such lands as of October 1 of the year or years subsequent to the year for which the land was sold for taxes.

"(c) Any party having a right to redeem ~~said~~ **the** property, his **or her** agents, or attorney, shall have the right to file a written protest with the board of equalization, objecting to the valuation of ~~said~~ **the** land as placed on ~~said~~ **the** property by the tax assessor, setting forth his the ground of objection to the assessed value of ~~said~~ **the** property as fixed by ~~said~~ **the** tax assessor, and the board of equalization shall, thereafter, fix a day for hearing ~~said~~ **the** protest by giving to the tax assessor and party desiring to redeem, his **or her** agents, or attorney, at least 10 days' written notice of the day and place of hearing ~~said~~ **the** petition, and upon the hearing of ~~said~~ **the** cause, the board of equalization shall have the right

to review the assessed value of ~~said~~ **the** property as fixed by the tax assessor and shall fix and determine the assessed value for each of the years subsequent to the year for which such land was sold to the state for taxes, and the board of equalization shall certify to the probate judge the assessed value of the land so fixed.

"(d) The redemptioner shall deposit with the probate judge the amount of money for which lands were sold for taxes, plus the amount due for subsequent years based on the assessment value as required to be fixed herein, and interest, costs, and fees as provided in this section.

"(e) If any balance remains due to the state upon any lien arising by reason of any installment redemption the payment of which is secured under the provisions of Section 40-10-141, the redemptioner shall also deposit with the probate judge the amount of the balance due upon such lien, with interest to the date of redemption.

"(f) If the lands sought to be redeemed, or any portion thereof, are situated in any municipality, the redemptioner shall also deposit with the probate judge the amount of any unpaid taxes assessed against the same by such municipality, and an amount equal to any municipal taxes thereon which, subsequent to the tax sale, were not assessed by reason of the fact that such land had been purchased by the State of Alabama, plus interest which would have accrued upon such municipal taxes from the time the same would have otherwise become delinquent, which amounts, with interest, shall be treated and distributed in the same manner as taxes and interest thereon.

"§40-10-122.

"(a) In order to obtain the redemption of land from tax sales where the same has been sold to one other than the state, the party desiring to make such redemption shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest payable at the rate ~~of 12 percent per annum~~ **allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time** from date of sale, and, on the portion of any excess bid that is less than or equal to 15 percent of the market value as established by the assessing official, together with the amount of all taxes which have been paid by the purchaser, which fact shall be ascertained by consulting the records in the office of the tax collector, or other tax collecting official, with interest on the payment at ~~12 percent per annum~~ **the rate allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**. If any taxes on ~~said~~ **the** land have been assessed to the purchaser and have not been paid, and if the taxes are due which may be ascertained by consulting the tax collector or other tax collecting official of the county, the probate judge shall also require the party desiring to redeem the land to pay the tax collector or other tax collecting official the taxes due on the lands which have not been paid by the purchaser before he or she is entitled to redeem the same. In all redemptions of land from tax sales, the party securing the redemption shall pay all costs and fees as herein provided for due to officers and a fee of $.50 to the judge of probate for his or her services in the matter of redemption. This application and payment may be executed by an on-line transaction via the Internet or other on-line provision.

"(b) With respect to property located within an urban renewal or urban redevelopment project area designated pursuant to Chapters 2 or 3 of Title 24, the proposed redemptioner must pay to the purchaser or his or her transferee, in addition to any other requirements set forth in this section, the amounts set forth below:

"(1) All insurance premiums paid or owed by the purchaser for casualty loss coverage on insurable structures with interest on ~~said~~ **the** payments ~~at 12 percent per annum~~ **the rate allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**.

"(2) The value of all permanent improvements made on the property determined in accordance with this section with interest on ~~said~~ **the** value at ~~12 percent per annum~~ **the rate allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**.

"(c) With respect to property which contains a residential structure at the time of the sale regardless of its location, the proposed redemptioner must pay to the purchaser or his or her transferee, in addition to any other requirements set forth in this section, the amounts set forth below:

"(1) All insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure with interest on the payments at ~~12 percent per annum~~ **the rate allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**.

"(2) The value of all preservation improvements made on the property determined in accordance with this section with interest on the value at ~~12 percent per annum~~ **the rate allowed to be charged on money judgments pursuant to Section 8-8-10, as amended from time to time**.

"(d) As used herein, "permanent improvements" shall include, but not be limited to, all repairs, improvements, and equipment attached to the property as fixtures. As used herein, "preservation improvements" shall mean improvements made to preserve the property by properly keeping it in repair for its proper and reasonable use, having due regard for the kind and character of the property at the time of sale. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value of all permanent or preservation improvements as applicable made on the property since the tax sale. In response to written demand made pursuant to this subsection, within 10 days from the receipt of such demand, the purchaser shall furnish the proposed redemptioner with the amount claimed as the value of such permanent or preservation improvements as applicable; and within 10 days after receipt of such response, the proposed redemptioner either shall accept the value so stated by the purchaser or, disagreeing therewith, shall appoint a referee to ascertain the value of such permanent or preservation improvements as applicable. The proposed redemptioner shall in writing (i) notify the purchaser of his or her disagreement as to the value; and (ii) inform the purchaser of the name of the referee appointed by him or her. Within 10 days after the receipt of such notice, the purchaser shall appoint a referee to ascertain the value of the permanent or preservation improvements as applicable and advise the proposed redemptioner of the name of the appointee. Within 10 days after the purchaser has appointed his or her referee, the two referees shall meet and confer upon the award to be made by them. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of such body shall be made within 10 days after the appointment of the umpire and shall be final between the parties.

"(e) If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection (d), he or she must pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection (d), the purchaser shall forfeit his or her claim to compensation for such improvements. The failure of the referees or either of them to act or to appoint an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises and in the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of such permanent or preservation improvements as applicable and enforce the redemption accordingly."

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

2013 AL H.B. 309 (NS)

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Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

**Exhibit I**

CFPB Bulletin 2012-03

Date: April 12, 2012

Subject: Service Providers

The Consumer Financial Protection Bureau ("CFPB") expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm. The CFPB's exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.

This Bulletin uses the following terms:

*Supervised banks and nonbanks* refers to the following entities supervised by the CFPB:

- Large insured depository institutions, large insured credit unions, and their affiliates (12 U.S.C. § 5515); and
- Certain non-depository consumer financial services companies (12 U.S.C. § 5514).

*Supervised service providers* refers to the following entities supervised by the CFPB:

- Service providers to supervised banks and nonbanks (12 U.S.C. §§ 5515, 5514); and
- Service providers to a substantial number of small insured depository institutions or small insured credit unions (12 U.S.C. § 5516).

*Service provider* is generally defined in section 1002(26) of the Dodd-Frank Act as "any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service." (12 U.S.C. § 5481(26)). A service provider may or may not be affiliated with the person to which it provides services.

*Federal consumer financial law* is defined in section 1002(14) of the Dodd-Frank Act (12 U.S.C. § 5481(14)).

A. Service Provider Relationships

The CFPB recognizes that the use of service providers is often an appropriate business decision for supervised banks and nonbanks. Supervised banks and nonbanks may outsource certain functions to service providers due to resource constraints, use service providers to develop and market additional products or services, or rely on expertise from service providers that would not otherwise be available without significant investment.

However, the mere fact that a supervised bank or nonbank enters into a business relationship with a service provider does not absolve the supervised bank or nonbank of responsibility for complying with Federal consumer financial law to avoid consumer harm. A service provider that is unfamiliar with the legal requirements applicable to the products or services being offered, or that does not make efforts to implement those requirements carefully and effectively, or that exhibits weak internal controls, can harm consumers and create potential liabilities for both the service provider and the entity with which it has a business relationship. Depending on the circumstances, legal responsibility may lie with the supervised bank or nonbank as well as with the supervised service provider.

B. The CFPB's Supervisory Authority Over Service Providers

Title X authorizes the CFPB to examine and obtain reports from supervised banks and nonbanks for compliance with Federal consumer financial law and for other related purposes and also to exercise its enforcement authority when violations of the law are identified. Title X also grants the CFPB supervisory and enforcement authority over supervised service providers, which includes the authority to examine the operations of service providers on site.[1] The CFPB will exercise the full extent of its supervision authority over supervised service providers, including its authority to examine for compliance with Title X's prohibition on unfair, deceptive, or abusive acts or practices. The CFPB will also exercise its enforcement authority against supervised service providers as appropriate.[2]

C. The CFPB's Expectations

The CFPB expects supervised banks and nonbanks to have an effective process for managing the risks of service provider relationships. The CFPB will apply these expectations consistently, regardless of whether it is a supervised bank or nonbank that has the relationship with a service provider.

To limit the potential for statutory or regulatory violations and related consumer harm, supervised banks and nonbanks should take steps to ensure that their business arrangements with service providers do not present unwarranted risks to consumers. These steps should include, but are not limited to:

- Conducting thorough due diligence to verify that the service provider understands and is capable of complying with Federal consumer financial law;

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[1] *See, e.g.*, subsections 1024(e), 1025(d), and 1026(e), and sections 1053 and 1054 of the Dodd-Frank Act, 12 U.S.C. §§ 5514(e), 5515(d), 5516(e), 5563, and 5564.

[2] *See* 12 U.S.C. §§ 5531(a), 5536.

- Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
- Including in the contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices;
- Establishing internal controls and on-going monitoring to determine whether the service provider is complying with Federal consumer financial law; and
- Taking prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

For more information pertaining to the responsibilities of a supervised bank or nonbank that has business arrangements with service providers, please review the CFPB's *Supervision and Examination Manual: Compliance Management Review* and *Unfair, Deceptive, and Abusive Acts or Practices.*[3]

[3] http://www.consumerfinance.gov/wp-content/themes/cfpb_theme/images/supervision_examination_manual_11211.pdf at 32 (CMR 1), 37 (CMR 6), 44 (UDAAP 1), and 59 (UDAAP 6).

# ALABAMA TITLE INSURANCE LICENSING - UPDATE

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## OUTLINE

**Rule 482-1-148-.01 – Purpose, Scope and Authority.**
Generally self-explanatory.

**Rule -.02 – Definitions.**
Same as found in § 27-25-3, plus:

(c) Licensee – generally used through the regulations to refer to a title insurance agent licensed in accordance with this regulation.

(e) NIPR – The National Insurance Producer Registry – which is used for on-line licensing.

(g) Prelicensing Course - A course of study approved by the Commissioner as satisfying the prelicensing education requirements of Ala. Code § 27-25-4.3 and offered through a prelicensing course provider authorized by the Commissioner to issue certificates of course completion. Discussed throughout regulation, and in detail in Rules -.03, -.04 and -.05.

(h) Principal place of business – The place from which a business entity's officers or other principals direct, control, and coordinate the entity's business activities. This is used in Rule -.07 in the qualifications of a non-resident individual. The definition is taken from *Hertz Corp. v. Friend,* 559 U.S. ___, 130 S. Ct. 1181 (2010).

**§ 27-25-3 – Definitions.**
New definitions:

(2) Business entity – A domestic entity properly formed and existing under Title 10A.

(4) Individual – a natural person

(5) NAIC – The National Association of Insurance Commissioners, its subsidiaries and affiliates, and any successor thereof.

(7) Person – An individual or business entity.

**Rule -.03 – Prelicensing Course.**

(1) Individuals subject to the examination requirement must first complete a prelicensing course. Required in § 27-25-4.3(a)(1).

(2) Course must have been completed within 12 months before the date of the examination. Required in § 27-25-4.3(a)(1).

(3) Individuals must present a certificate of completion of the prelicensing course, along with photographic identification, as a condition of taking the examination.

**Rule -.04 – Approval and Regulation of Prelicensing Course Providers.**

(1) Providers must be approved by DOI prior to offering course. § 27-25-4.3(a)(1). If the provider is not approved, the certificate of completion will not be accepted to take the examination.

(2) Providers must apply for authority annually. § 27-25-4.3(a)(3). This is by calendar year, expiring December 31 each year. Renewal starts October 1. The initial fee is set at $75 and annual renewal fee is set at $50. § 27-25-4.3(a)(4). Public institutions are exempt from the fee but subject to all other requirements.

(3) Providers must furnish a certificate of completion to each individual successfully completing a course using form approved by DOI and signed by instructor or provider.

(4) Providers must main records for minimum of 3 years and make records available for review upon request by COI.

(5) COI may audit any provider at any time. Includes review of attendance and curriculum records and observation of instructional sessions.

(6) COI may revoke, suspend or place on probation any provider for a list of reasons, including (g) having a passing rate for first time testers over the last year less than 70% of the statewide passing rate for first time testers. Example: If the statewide passing rate of all first time testers is 72%, then 70% of that would be 50.4, so an individual provider's passing rate below 50.4 would potentially subject the provider to probation.

(7) Probation may be imposed without a hearing, but the provider is allowed 30 days from the date of the notice to appeal to the COI. An administrative complaint will be filed for any action the DOI believes warrants a suspension or revocation.

(8) A provider on probation remains authorized to offer courses.

**Rule -.05 – Approval and content of prelicensing courses.**

(1) Course must be approved by DOI prior to being offered or conducted. § 27-25-4.3(a)(1). If the course is not approved, the certificate of completion will not be accepted to take the examination.

(2) Course must consist of 20 classroom hours. Equivalent individual (non-classroom) instruction can also be approved. § 27-25-4.3(a)(1).

(3) Course outline, etc., to be provided to DOI

(4) Course outline, etc., to show the subject matter covering general principles of title insurance, the duties and responsibilities of a title insurance agent, etc.

(5) Instructors to be knowledgeable of the title insurance industry, etc.

(6) COI may review any course at any time, to include review of records or observation of instructional sessions in progress.

**Rule -.06 – Title Insurance Agent Examinations.**

(1) All individuals must pass exam to become licensed as title insurance agent. An outline of the exam will be posted on the DOI Web site.

(2) Only two exemptions from exam:

(a) The individual was an authorized signatory for title commitments, policies and endorsement on behalf of a title insurer from 1/1/2008 to 12/31/2012 – but must request the exemption on or before March 31, 2013.

(b) The individual was previously licensed as a title insurance agent in this state after passing an examination or exempt under (a) – but must request the exemption within 12 months of license cancellation.

(3) Passing grade on the exam is 70.

(4) Limitations on Repeat Examinations.

(a) Can take exam twice without waiting period, then must wait 90 days before the third attempt.

(b) Can take the exam twice again after the 90 day waiting period, but then must wait 180 days thereafter between each subsequent exam.

(c) After 24 months without taking an exam the waiting period expires.

(5) Individual to receive exam results certificate upon passing exam, to be provided to DOI upon request.

(6) Exam results certificates are valid for one year after date of issuance.

(7) Exam fee of $75 must be paid for each exam scheduled.

**Rule -.07 – Title Insurance Agent License.**

(1) All title insurance commitments, policies and endorsements issued by a title insurance agent and insuring an interest in real property in Alabama must be issued and signed by a duly licensed and appointed title insurance agent. The signature block shall also contain the license number for the issuing and signing agent.

(2) Business Entity Agent.

(a) Must be an Alabama entity and must have its principal place of business physically located in Alabama. A sole proprietorship is only licensed as an individual. Two or more individuals doing business under a trade name cannot obtain a business entity license without formal organization as an entity.

(b) Follow on-line licensing process.

(c) Must have at least one licensed individual title insurance agent designated as responsible for the business entity's compliance with all applicable laws, rules and regulations and designated as signatory on commitments, policies and endorsements issued by the business entity agent. The individual so designated must have such a degree of affiliation with the entity in terms of ownership, as an

officer, or otherwise as reasonably assures the individual can cause or influence the entity's lawful compliance.

(d) Business entity title insurance agents must be appointed to act on behalf of any title insurer with which it has an agency agreement. (The individual agents must also be appointed.)

(3) Individual Agent.

(a) Must be at least 19 years of age.

(b) Must be either

1. An Alabama resident citizen.
2. A non-Alabama resident who is employed on a full-time basis by a duly licensed title insurance agent whose principal place of business is physically located in Alabama.

(c) Follow on-line licensing process.

(d) Must be appointed to act on behalf of each title insurer it represents.

(4) Must comply with the prelicensing course and exam requirements, unless exempt.

(5) On-line licensing process instructions provided on DOI Web page.

(6) Initial licensing fees are set by law and listed on DOI Web page.

(7) Subsequent changes in name or address must be reported within 30 days of the change. There is no fee to report a change but there is a penalty of $50 for failure to report a change within 30 days. Instruction listed on DOI Web page.

(8)(a) Individual and business entity title agents subject to license renewal as set out in Rule -.08.

(b) Failure to renew results in license expiration and cancellation of all appointments.

(c) Can reapply with 12 months of expiration without retaking prelicensing course and examination. Upon reinstatement, must again be appointed by title insurers. Both processes are done on-line.

(d) After 12 months, former licensee must reapply as if never licensed.

(9) If license is suspended or revoked, former licensee should contact DOI Legal Division for instructions if desiring to be licensed again.

**Rule -.08 – Renewal of Licenses.**

(1) All title insurance agents must renew online and pay these fees:

(a) Individuals:

1. Renewals on or before the license expiration date [§27-25-4.7(a)(1)a.2.] - $40
2. Renewals within 30 days after expiration [§27-25-4.7(a)(1)d.] - $90
3. Reinstatements after 30 days but with 12 months [§27-25-4.2(d)] - $80

(b) Business entities:
1. Renewals on or before license expiration date - $100
2. Renewals within 30 days after expiration - $150

(2)(a)1. All individuals renew biennial based on month and year of birth.
2. Licensees born in Even-numbered years. Beginning in 2014, the license of an individual licensee born in even-numbered year will expire if not renewed at end of licensee's birth month in 2014 and every other year thereafter.
3. Licensees born in Odd-numbered years. Beginning in 2015, the license of an individual licensee born in odd-numbered year will expire if not renewed at end of licensee's birth month in 2015 and every other year thereafter.

(b) Individual licensees can renew starting approximately 75 days prior to expiration date following instructions on DOI Web page. An initial license will not expire within the first 75 days of its effective date.

(c) Individual licensees shall complete license renewal on-line, to include payment of license fees.

(3)(a) Business entity license expires, if not renewed, on December 31 2014, and every other year thereafter.

(b) Business entities can renew starting October 1 next preceding license expiration following instructions on DOI Web page.

(c) Business entity licensees shall complete license renewal on-line, to include payment of license fees.

**Rule -.09 – Continuing Education.**

(1)(a) All individual title insurance agents must complete 24 hours of CE, 3 hours of which are on the topic of ethics, to be eligible to renew the license, except as otherwise indicated below.

(b) Licensees born in even-numbered years, renewal in 2014. Must only complete 12 hours of CE, 2 of which are on the topic of ethics. This is a temporary, transitional reduction applicable only for the first renewals under the new law.

(c) Licensees born in odd-numbered years, renewal in 2015 and thereafter. Must complete full 24 hours, 3 of which are on the topic of ethics.

(d) Licensees born in even-numbered years, renewal in 2016 and thereafter. Must complete full 24 hours, 3 of which are on the topic of ethics.

(2) A person teaching an approved course only qualifies for same number hours as granted to person taking the course.

(3) Title agents cannot receive credit for any course more than once in a reporting period.

(4) A "classroom hour" is 50 minutes.

(5) Title agents licensed less than one full year prior to license expiration date are not required to complete CE to renew.

**Rule -.10 – Continuing Education Providers.**

(1) CE Providers must be approved and annually renewed.
(2)(a) Courses and seminars will be approved and qualify for the hours assigned by the COI.
(b) Correspondence or internet course also approved and qualify for the hours assigned by COI, but must also have an exam with minimum grade of 70.
(3) Courses that are not approved.
(4) CE Providers to report attendance within 10 days of course completion.
(5) CE Provider fees – initial fee of $300, annual renewal fee of $100. Renewal is from November 1 to December 31 each year.
(6) Course approval fee is $50.

**Rule -.11 – Appointments.**

(1) All title insurance agents must be appointed by the title insurers they represent.
(2) All appointments are handled on-line through NIPR.
(3) Notice of appointment completed within 15 days after agency contract executed or first application is submitted, whichever occurs first.
(4) Title insurers may terminate an appointment at any time, subject to any contract rights. If the agent wishes to cancel an appointment, the agent should request the insurer to cancel the appointment. All appointment cancellations are also handle on-line through NIPR.
(5) Title insurers are to comply with Regulation 109 (Chapter 482-1-109) for appointment continuation process.
(6) Appointment fees (per agent per company):
(a) Notice of Appointment [§27-25-4.7(a)(2)a.] - $30
(b) Annual appointment continuation [§27-25-4.7(a)(2)b.] - $10

**Rule -.12 – Compliance.**

(1)(a) All title agents shall complete license renewal in accordance with Rule -.08.
(b) The license will expire if not renewed by expiration date, but there is a 30-day grace period following expiration to renew with a late fee.
(2) Licensee must complete applicable CE requirements to renew.
(3) Licensee completing CE and otherwise complying with regulation will be renewed.

**Rule -.13 – Effect of Disciplinary Actions.**

(1) The willful violation of any material provision of the regulation may subject the licensee to an administrative action.

(2) With a settlement agreement and consent order, or by order issued after an administrative proceeding, an applicant may be licensed on a probationary basis or an existing license may be placed on probation for a specified period of time or until certain conditions are met. A licensee on probate is allowed to become or remain licensed according to terms of agreement or order. If stated in the order, failure to comply with the conditions of the probation may result in immediate suspension or revocation of the license without further administrative proceeding.

(3) A suspension may be for a specified period of time or until certain specified conditions are met.

(a) During the term of the suspension, the licensee cannot engage in any actions for which a license is required, but continues to be subject to CE.

(b) A suspended license cannot be renewed if the renewal date occurs during the suspension term.

(c) A suspension is lifted upon expiration of its term or upon issuance of an order lifting suspension. Upon lifting of suspension, the license is deemed reinstated unless the license has expired during the suspension term.

(d) If the license has expired during a suspension term of less than 12 months, the licensee can immediately apply for license without taking the prelicensing course or examination. If over 12 months have elapsed, the licensee must comply with prelicensing course and exam requirements.

(4) A license can also be revoked.

(a) A "voluntary surrender" in lieu of administrative proceedings is considered revocation.

(b) After revocation, the licensee cannot engage in any activity for which a license is required.

(c) After revocation, a licensee must wait at least two years to reapply. Process begins with letter to COI explaining why the prior actions should no longer bar license.

(d) If COI agrees to reissue license, COI will issue an order.

**Rule -.14 – Transitory provisions.**

(1) Replacement Licenses. **(for title agents authorized in 2012)**

(a) Any title agent certificate of authority existing on 12/31/2012 will be renewed and a replacement license will be issued to the agent and an appointment with the insurer.

(b) Replacement license only valid for 6 months (until June 30, 2013) during which time the agent must apply for a new license under the new law. All appointments under the replacement license will then transfer to new license with no additional appointment fees.

(2) Fingerprinting.

(a) Under §27-25-4.8(e), COI can delay enforcement of the fingerprinting requirement for up to 24 months following January 1, 2013, to allow for implementation.

(b) A separate regulation will be adopted for fingerprinting.

(3) Temporary Title Agent License. **(for title agents first licensed 2013)**

(a) Under §27-25-4.8(f), COI can delay enforcement of the examination requirement for up to 24 months following January 1, 2013, to allow for implementation. During this time, any individual otherwise qualified will be **issued*** a temporary license. [*Note: licenses will be "issued" and so indicated online but you must go online to print your license. No licenses are mailed.]

(b) The individual will apply on-line.

(c) Temporary license valid until 3 months after examination implemented.

(d) Temporary licensee can renew once.

(e) Temporary licensee will be notified in advance of the examination implementation date.

**Rule -.15 – Severability and Effective Date.**

(1) Provisions are severable.

(2) Regulation is effective January 1, 2013.