



Mississippi Valley Title 2017 AL Agency Seminar:

An Update of Selected Title Insurance Underwriting Issues

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RIGHTS OF REDEMPTION: EFFECT OF ACT NO. 2015-79

Foreclosure Issue- Rights of Redemption

A valid foreclosure of a mortgage cuts off and extinguishes junior liens and encumbrances unless the junior lienholders redeem during the statutory right of redemption period. Exception – **A special procedure must be followed to extinguish a subordinate federal tax lien or a subordinate SBA lien.**

Right of Redemption for All Properties except for “Homestead Property” Subject to Act No. 2015-79 (Section 6-5-248 (h) of the Code of Alabama):

- One (1) year from the date of foreclosure

Foreclosure – Continued

Right of Redemption on “Homestead Property” Subject to Act No. 2015-79 (Section 6-5-248 (h) of the Code of Alabama):

- 180 days from the date of foreclosure, **if notice as required by the Act is provided**

Applicability. Act No. 2015-79 became effective on January 1, 2016. It applies only to foreclosure sales of homestead property, as defined in the Act, **made pursuant to mortgages dated on or after January 1, 2016.**

Homestead Property. For redemption purposes, homestead property is defined as **residential property on which a homestead exemption was claimed in the tax year during which the foreclosure sale occurred.**

Foreclosure- continued

Notice Requirements. Actual notice to the mortgagor is now required and additional language must be added to the published notice already required under other statutes.

- **Actual notice- Notice of the right of redemption and other rights in the substance as set out in the Act** must be mailed to the mortgagor(s) at the address of the property to be foreclosed at least 30 days prior to the foreclosure by certified mail with proof of mailing.
- **Notice by publication- The required wording regarding redemption and other rights** must now be included in the published notice required under Section 35-10-13, Code of Alabama, 1975.

Foreclosure- continued

Consequences of Failure to Provide Required Notices. Fulfillment of the notice requirements of the Act is critical.

- Failure to give the notices required under the Act, or a defective notice, does not affect the validity of the foreclosure , including the transfer of title to the property.
- There is a two year time period after the date of the foreclosure to bring an action related to the notice requirements, or the action is barred.
- **The reduced period to redeem of 180 days does not begin to run until the newly required notices are given, and failure to provide the required notices could extend the period to redeem to up to two years, or possibly a few months beyond 2 years if notice is sent shortly before the expiration of 2 years from the date of foreclosure.**

Foreclosure- continued

With respect to the Right of Redemption Period on “Homestead” Property subject to Act No. 2015-79 (**Section 6-5-248 (h) of the Code of Alabama**), **the following is required prior to underwriting as if the redemption period is 180 days from the date of foreclosure:**

- Verify that the foreclosed mortgage is dated on or after January 1, 2016.
- Verify that the foreclosed property was assessed as homestead property in the tax year during which the foreclosure occurred.
- Require satisfactory proof that notice **in the substance as set out in the Act** was mailed to the mortgagor(s) at least 30 days prior to FC at the property address of the foreclosed property by certified mail; AND that the required language was included in the published notice.

**EFFECT OF *ALA. CODE § 30-4-17* ON
SURVIVORSHIP DEEDS & CERTAIN
TRANSFERABLE PROPERTY RIGHTS**

Divorce/Dissolution of Marriage Issues

In Alabama, dissolution of marriage or divorce can and often does have an effect on title to real property.

Divorce Decree.

It is always best to require the spouse being divested of the property to sign a Deed conveying the property to the other spouse. However, if a deed is not executed and recorded at the time of divorce, and the former spouse is now unavailable or uncooperative, ORT may be willing to insure based on recordation of a certified copy of the Divorce Decree. The Decree must fully and specifically **divest** one spouse of the property, **AND vest** title into the other spouse.

Will Provisions for Spouse.

Section 43-8-137, Code of Alabama (1975) states that a divorce or annulment operates as a revocation of that part of the will made during the marriage that provides for the other spouse.

Effect on Survivorship Deeds.

Until the enactment of *Ala. Code § 30-4-17*, which went into effect on September 1, 2015, a divorce judgment alone did not automatically destroy a joint tenancy with right of survivorship. **Section 30-4-17 deals with the effect of divorce or annulment on property held as joint tenants with the right of survivorship, and on certain transferable property rights.**

Divorce/Dissolution of Marriage- continued

Effect on Survivorship Deeds- continued.

With regard to severance of joint tenancies with rights of survivorship, this Section states that except as provided by the express terms of a governing instrument (such as the Deed), a court order, or a contract between the divorcing parties, the divorce or annulment of a marriage severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship transforming the interests of the former spouses into equal tenancies in common.

To protect certain third parties, this Section states that a severance under subdivision (2) of subsection (b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership. **Unfortunately, this section is somewhat broad and rather vague with regard to the form the writing declaring the severance must take.**

Divorce/Dissolution of Marriage- continued

Effect on Survivorship Deeds- continued. If your transaction involves a surviving spouse under a deed where the married couple held title as joint tenants with the right of survivorship, require an Affidavit of Continuous Marriage to be recorded or include a certification of continuous marriage in the Deed from the surviving spouse. The affidavit or deed should state that the parties to the survivorship deed were not divorced during any of the time they held title under the survivorship deed. If you are furnished a death certificate for the deceased spouse, also pay particular attention to the marital status of the deceased noted on the certificate. If an affidavit, a death certificate or other information available to you discloses that the parties were divorced during any of the time they held title as joint tenants under the survivorship deed, require satisfactory proof that none of the documents in connection with the divorce proceedings contain express provisions that nullify the effect of this Section to sever the joint tenancy with the right of survivorship held by the parties under the survivorship deed. **If the parties were divorced and none of the pertinent documents specifically alter or undo the severance effect of this Section , underwrite as if the parties to the deed held title as tenants in common, and not as joint tenants with the right of survivorship.**

Underwriting consequences?

Powers of Attorney Issue

Termination

Termination. Section 26-1A- 110 of the Code of Alabama sets out the events under which a POA, or an agent's authority, is terminated. Title agents should be familiar with these events of termination under the Alabama Uniform Power of Attorney Act, most of which are consistent with prior Alabama law.

Section 110(b)(3) of the Act. This section of the Act provides that a spouse-agent's authority is revoked when an action is filed for divorce or annulment of the agent's marriage to the principal **or their legal separation**, unless the POA otherwise provides

POA's- continued

Termination- continued

Ala. Code § 30-4-17, (Divorce or Annulment). This Section became effective on September 1, 2015 and deals in part with the effect of divorce or annulment on revocable nominations made by a divorced individual in a governing instrument (such as a POA) prior to the divorce or annulment, nominating the divorced individual's **former spouse or a relative of the former spouse** to serve in any representative or fiduciary capacity, such as an agent under a Power of Attorney. Except as provided otherwise by the express terms of a governing instrument, such as a Power of Attorney, a court order or a contract between the former spouses, a divorce or annulment **(but not a legal separation)** under this Section revokes a prior nomination by the divorced individual of **his or her former spouse or a relative of the former spouse** to act in a representative or fiduciary capacity for the divorced individual.

POA's- continued

Termination- continued

A governing instrument revoked solely by divorce or annulment under this Section is revived by the divorced individual's remarriage to his or her former spouse or by the nullification of the divorce or annulment. In the case of a revoked nomination in a fiduciary or representative capacity, provisions of a governing instrument, such as a POA, are given effect as if the former spouse or relatives of the former spouse died immediately before the divorce or annulment. **Use the Agent's Certification form to be recorded to address the issues created by this Section, and Section 110(b)(3) of the Alabama Uniform Power of Attorney Act.**

Trusts Issue

Alabama Act No. 2015-312 (Effect of Divorce or Annulment)

Ala. Code § 30-4-17, (Divorce or Annulment). This Section became effective on September 1, 2015 pursuant to the above Act and deals in part with the effect of divorce or annulment on revocable nominations made by a divorced individual in a governing instrument (such as a Trust) prior to the divorce or annulment, nominating the divorced individual's **former spouse or a relative of the former spouse** to serve in any representative or fiduciary capacity, such as a Trustee under a Revocable Trust. Except as provided otherwise by the express terms of a governing instrument (such as a Trust), a court order or a contract between the former spouses, a divorce or annulment under this Section revokes a prior nomination by the divorced individual of **his or her former spouse or a relative of the former spouse** to act in a representative or fiduciary capacity for the divorced individual. A governing

Trusts- continued

Alabama Act No. 2015-312 (Effect of Divorce or Annulment)- continued

instrument revoked solely by divorce or annulment under this Section is revived by the divorced individual's remarriage to his or her former spouse or by the nullification of the divorce or annulment.

In the case of a revoked nomination in a fiduciary or representative capacity, provisions of a governing instrument, such as a trust, are given effect as if the former spouse or relatives of the former spouse died immediately before the divorce or annulment.

The issues created by this Section should be addressed on the front end in the COT to be recorded.



THANK YOU

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