

**2020 Alabama Agent Seminar**  
**Legislative and Case Law Update**

**J. Price Evans IV**  
**Old Republic National Title Insurance Company**  
**505 20<sup>th</sup> Street North**  
**Suite 805**  
**Birmingham AL 35203**  
**205-682-2770**  
**[pevans@mvt.com](mailto:pevans@mvt.com)**

## **I. Legislation.**

### **A. 2019 Legislation**

[Act No. 2019-94](#) - Relating to business entities; to amend and add sections and revise Alabama Business Corporation Law

The new Alabama Business Corporation Law is a complete restatement of Chapter 2, and will codified as Chapter 2A under 10A-2A-2.01. The Business Entities Committee of the Alabama Law Institute, utilizing the Revised Model Act as its starting point, but also adding certain provisions from the Delaware General Corporation Law, prepared the new Alabama Business Corporation Law of 2019 as a comprehensive revision of the previous act.

[Act No. 2019-190](#) - Constitutional Amendment relating to Judge of Probate in Houston County

To propose an amendment to the Constitution of Alabama of 1901, to provide the Judge of Probate of Houston County would be required to be an attorney licensed in this state.

[Act No. 2019-191](#) - Constitutional Amendment relating to Judge of Probate in Lamar County

Authorize the legislature to place the Lamar County Judge of Probate on salary and provide for the fees, commissions, allowance, and percentages collected by the judge of probate to be deposited in the county treasury.

[Act No. 2019-200](#) - Relating to Class 2 Municipalities

To amend Ala. Code §§ 11-54B-40, 11-54B-41, 11-54B-43 to 11-54B-50, 11-54B-57 and 11-54B-58 and provide procedures for the establishment of self-help business improvement districts for promoting tourism, creation of nonprofit district management corporations, levy of special assessments on particular classes of business, and procedures for the reduction or expansion of some districts under certain conditions.

[Act No. 2019-229](#) - Constitutional Amendment to allow Baldwin County Probate Judge to exercise equity jurisdiction

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

[Act No. 2019-239](#) - To amend sections relating to the certificate of title transaction fees & manufactured housing certificates of title

\$15 dollar fee paid to the Department of Revenue for each application for cancellation of a certificate of title, with \$5.00 additional fee added and that amount is to be distributed to the Alabama Housing Foundation. No certificate of title shall be issued for a manufactured home designated 1999 and prior year models. The act changes from “more than 20 model years, and all 1989 and prior model years.

[Act No. 2019-251](#) - To provide for the zoning authority of municipalities incorporated after 1990

Provides for the zoning authority of municipalities incorporated after 1990 located in a county in which another municipality in the county has zoning authority in its police jurisdiction. Also

provides procedure for overlapping municipal police jurisdictions to object to disputes over zoning matters.

[Act No. 2019-304](#) - To amend Ala. Code §§ 10A-1-3.33, 10A-8A-1.02 and 10A-8A-4.11 relating to business corporations

To specify which law governs the right of inspection and access by governing persons under existing and proposed law; to make certain technical corrections regarding the name of the Alabama Limited Liability Company Act; the ability of a partnership to continue as an entity for a brief period of time under the law with one partner or no partners, and the duty of a partner in a general partnership to not compete with the partnership before the partnership is dissolved, and to provide for a retroactive effective date.

[Act No. 2019-333](#) - Relating to Geneva County recording fees

Provides for an additional special recording fee for each document or instrument filed for record in the Office of the Judge of Probate and provides for the distribution of those fees.

[Act No. 2019-405](#) - Relating to Circuit and District Courts, to provide further for their jurisdictions

The Circuit Court shall have exclusive original jurisdiction of all civil actions in which the matter in controversy exceeds \$20,000 exclusive of interest and cost. District Court original civil jurisdiction in all actions in which the matter in controversy does not exceed \$20,000 exclusive of interest and costs.

[Act No. 2019-438](#) - Relating to Shelby County recording fees

Provides for an additional special recording fee for each document or instrument filed for record in the Office of the Judge of Probate and provides for the distribution of those fees.

[Act No. 2019-466](#) - To exempt timber lands from local fire district service charges and fees

Local fire districts are not authorized to assess any type of fees or dues upon forest land that is treated as timber land for ad valorem tax purposes. Fire prevention, fire protection and fire fighting services on land treated as timber land for ad valorem tax purposes shall be under the jurisdiction of the Alabama Forestry Commission.

[Act No. 2019-489](#) - Relating to the Medicaid estate recovery program

Requires specific notice be provided to the Alabama Medicaid Agency at the commencement of a probate proceeding and bar payments of claims in the sixth order of preference as well as summary distributions until proof of such notice has been filed and Medicaid has timely responded to the notice. Additionally, the Medicaid Agency may petition to open the probate estate of a Medicaid recipient by filing a petition to appoint a third-party administrator and issue letters of administration, pursuant to the timing limitations of Ala. Code §43-2-43.

[Act No. 2019-539](#) - To amend sections relating to the qualifications for serving as a Circuit or District Judge

Persons elected to or appointed to a circuit court judgeship must have been admitted to practice law in this state a combined total of seven years or more, or admitted to practice law by another state for a combined total of seven years or more, prior to beginning a term of office or appointment to serve a vacant term of office. District Court, four years.

## **B. 2020 Regular Legislative Session**

### [HB 12](#) - Annexation

This bill would allow annexation of all of the property in overlapping police jurisdictions upon consent of all of the property owners and assent to the annexation by all of the affected municipalities by adoption of a resolution.

### [HB21](#) and [HB62](#) - Residential Mortgage Satisfaction Act

This bill would make conforming changes and expand the act to require recordation of satisfaction to include mortgages securing commercial agricultural properties and would rename that act the "Alabama Residential and Agricultural Mortgage Satisfaction Act."

### [HB65](#) - Evictions

This bill would clarify required notices from landlord to tenant prior to commencing an eviction.

### [HB138](#) - Local Legislation – Bibb County

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

### [HB202](#) / [SB206](#) - Alabama Business and Nonprofit Entities Code

This bill would make changes to the Alabama Business and Nonprofit Entities Code to allow business corporations to elect to become benefit corporations; allow electronic filing of all entity filings to increase the speed at which businesses may be formed and by which transactions may be accomplished; update definitions to include terms applicable to the allowance of electronic and digital transactions and transmissions of filings, notices, and data; establish certain basic standards for all filing instruments to allow for easier electronic transmission; provide a mechanism to allow the Secretary of State to reject certain filing instruments which are not accompanied by full payment, to assist in the electronic filing process; clarify the requirements of certificates of existence for entities; remove certain outdated definitions and matters to streamline the code; and to clarify that volunteer partners, managers, members, governing persons, and other members of a governing authority are considered officers of a qualifying nonprofit entity, thereby recognizing that there are nonprofit partnerships, nonprofit limited partnerships, and non-profit limited liability companies.

### [SB72](#) - Class 8 Municipalities

This bill would provide an alternative procedure for any Class 8 municipality to abate grass or weeds which become a nuisance and would provide for the assessment and collection of the costs of the abatement when the work is required to be performed by the municipality.

### [SB103](#) - Mortgage Taxation

This bill would increase the fee for recording of certain mortgages, deeds of trust, contracts of conditional sale, or other instruments of like character which is given to secure the payment of any debt which conveys any real or personal property. Additionally, this bill would modify the rate and further provide for the distribution of the mortgage record tax in order to provide a dedicated revenue for the Alabama Housing Trust Fund.

#### [SB124](#) - Class 1 through 5 Municipalities

This bill would provide that any Class 1, 2, 3, 4, or 5 municipality that has not created or adopted a municipal plan, or has neglected or otherwise failed to adopt and execute its plan in good faith, is ineligible to receive any grants from the Alabama Department of Economic and Community Affairs.

#### [SB199](#) - Estates

This bill would provide that if the proceeds from an estate sale without heirs exceed \$250,000, one-half of the net proceeds over \$250,000 would be paid to the county where the estate was probated and the remainder would be paid to the State Treasurer to be used for education purposes.

#### [SB232](#) - Eminent Domain

This bill would provide that for eminent domain purposes, park and recreation facilities do not include trails for biking or hiking

#### [SB247](#) - Uniform and Residential Landlord and Tenant Act

This bill would provide that in an action by a tenant against a landlord, the tenant shall be required to continue paying rent, except the rent shall be paid to the clerk of the court.

#### [SB251](#) - Local Legislation – Baldwin County

Relating to Baldwin County and to amend Section 45-2-216.10 of the Code of Alabama 1975, further providing for the appointment and jurisdiction of boards of adjustment to hear appeals relating to the administration of planning and zoning in districts in the unincorporated area of the county and to provide for alternate members to be appointed to serve on each board of adjustment.

## **II. Decisions**

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

#### **Materialman's Lien and Future Advance Mortgage Priority**

GHB Construction and Development Company, Inc. v West Alabama Bank and Trust, \_\_\_ So. 3d \_\_\_ WL 1170484 (September 21, 2018, on rehearing March 29, 2019).

Construction company's materialman's lien was superior to future-advance mortgage lien, because mortgage lien was not created until some indebtedness was incurred by mortgagor. On application for rehearing, Court held the future-advance mortgage was legally valid, absent any initial consideration pursuant to Ala. Code § 35-4-34, and therefore had priority over the materialman's lien, because mortgage was created when executed, whether or not funds were advanced.

#### **Unlawful Detainer; Service**

Mays v. Trinity Property Consultants, LLC, \_\_\_ So. 3d \_\_\_ WL 2170867 (Jan. 11, 2019, on rehearing March 8, 2019, on second rehearing May 3, 2019).

Tenant moved to set aside a default judgment entered against her in an eviction and unlawful-detainer action. District Court, Shelby County denied motion and tenant appealed. Circuit Court dismissed appeal. Tenant appealed, and the Court of Civil Appeals, reversed and remanded with instructions and later, denied landlord's application for rehearing. Landlord petitioned for a writ of certiorari and Court held that process server's single attempt to serve tenant with notice of action, which consisted of knocking on the door to determine if anyone was home and subsequently posting and mailing notice, was suitable under the circumstances and satisfied the requirements of due process. Application for rehearing filed September 13, 2019.

### **Easement Abandonment**

Monroe County Commission v. A.A. Nettles Sr. Properties, Ltd., \_\_\_ So. 3d \_\_\_ WL 1170738 (April 26, 2019).

In a very fact specific case concerning abandonment considerations and use of rail road right of way for recreational use in accordance with the National Trails System Act, Circuit Court, quieted title in favor of owner against county commission. Applying Alabama law, when railroad undisputedly ceased using right-of-way for railroad purposes, the right-of-way was extinguished and vested in fee owner by operation of law. A subsequent conveyance by quitclaim deed from railroad company to county commission, conveyed no interest, because railroad company had no interest to convey. Affirming trial court's decision, the easement reserved to the railroad by a right-of-way as provided in the quitclaim deed to the owner lapsed by nonuse and thus extinguished by operation of law, therefore leaving nothing for the railroad to convey to the commission.

### **Zoning, Government Exemption**

W.R. Meriwether, Factors and Drayage, LLC, and Gregory P. Thompson v. Pike Road Volunteer Fire Protection Authority, a corporation, et al., \_\_ So. 3d. \_\_\_ WL 2482324 (June 14, 2019).

Landowners whose parcels adjoined parcel owned by volunteer fire protection authority brought action against fire authority and other defendants in which landowners sought a judgment that the fire authority was subject to a zoning ordinance restricting development on the parcels to low density, single-family residential development, and landowners sought judgment declaring the fire authority's construction of a fire station on its parcel would violate the ordinance. The Circuit Court granted motion filed by some defendants for judgment on the pleadings and granted motion filed by rest of defendants to dismiss. Landowners appealed and Court held the fire authority did not qualify as a governing body or political subdivision exempt from zoning regulation.

### **Tax Sale Redemption**

Austill v. Prescott, \_\_\_ So. 3d \_\_\_ WL 3050439 (July 12, 2019).

Successor in interest of previous owner of property sold at tax sale brought action for judicial redemption of the property, which was property that was the subject of a dismissed quiet-title action brought by purchaser of the property at the tax sale. Baldwin County Circuit Court determined that successor in interest was entitled to redeem the property, but denied successor in interest's request for an award of attorney fees under the Alabama Litigation Accountability Act (ALAA). Purchaser appealed, and successor in interest cross-appealed. Court held dismissal of quiet-title action for failure to state a claim constituted a judgment on the merits; quiet-title action

and the redemption action presented the same cause of action; and trial court did not abuse its discretion in determining that purchaser's argument that he adversely possessed the property so as to preclude its redemption was not without substantial justification.

### **Power of Attorney**

Dale Forbes, administrator ad litem for the Estate of Gay Nell Mize, deceased v. Platinum Mortgage, Inc., and PennyMac Loan Services, LLC, \_\_\_ So. 3d \_\_\_ WL 746533 (February 14, 2020)

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

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

### **Home Owner's Association**

Great Bend Yacht Club, Inc. v. MacLeod, \_\_\_ So. 3d \_\_\_ WL 2170815 (Jan. 11, 2019).

Owners of allegedly combined lot in a planned residential community brought action for a judgment declaring that homeowners association, a nonprofit corporation founded for the purposes of owning, maintaining, and managing the common areas and marina facilities in the community, was not entitled to seek the imposition of a lien against owners' land for failing to pay a second assessment. County Circuit Court determined that only one assessment was permitted on the land in question. Landowners appealed and court held that association was authorized to require owners to pay two assessments. Reversed and remanded with instructions.

### **Ejectment; Lack of Subject-matter Jurisdiction**

Kelton v. Caldwell, \_\_\_ So. 3d \_\_\_ WL 641358 (February 15, 2019).

Alleged purchaser of parcel of real property at a tax sale brought action against previous owner, who had since died, for possession of the property and damages. After allowing alleged purchaser to amend the complaint to add previous owner's widow as a defendant, Circuit Court entered a judgment providing that widow would have to pay a certain amount of money to purchaser or forfeit her right to redeem the property. Widow appealed. Court held that previous owner's death made the action void ab initio and deprived the trial court of subject-matter jurisdiction.

### **Finality; Boundary Line Dispute**

Donald v. Kimberly, \_\_\_ So. 3d \_\_\_ WL 2170991 (Jan. 11, 2019, on rehearing March 8, 2019).

Landowner brought action against neighbors based on claim that neighbors had installed fence posts, barriers, and other markers on landowner's property. Neighbors brought a counterclaim for trespass. County Circuit Court entered an order stating that the complaint and counterclaim were severed, denying plaintiff landowner relief, and setting a trial date for the counterclaim. Landowner appealed. On rehearing ex mero motu, the court held that the trial court's order was not a final judgment capable of supporting an appeal.

### **Adverse Possession; Sufficiency of Evidence**

Littleton v. Wells, \_\_\_ So. 3d. \_\_\_ WL 2170948 (Feb. 22, 2019).

Landowners brought action to determine the boundary line between their property and the property of neighboring landowners, and neighboring landowners asserted a counterclaim of adverse possession. After entering a judgment determining the boundary line and ordering landowners to have a survey conducted. Circuit Court entered an order adopting the line depicted in the survey as the true boundary and specifically rejected the counterclaim. Neighboring landowners appealed. Court held that neighboring landowners adversely possessed disputed area on the boundary between the two parcels. Reversed and remanded.