

**2019 Alabama Agent Seminar  
Legislative and Case Law Update**

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## **I. Legislation.**

### **Alabama Land Bank Authority.**

Prior legislation authorizing the Alabama Land Bank Authority is codified in Chapter 9 of Title 24 of the Code of Alabama, though it appears that the Alabama Land Bank Authority Board has never been organized and there has never been a meeting held by the Authority. Ala. Acts No. 2018-192 requires the Commissioner of Revenue to convene a meeting of the Authority.

### **Centralized Mailboxes.**

Recently the United States Postal Service has communicated its desire to eliminate or restrict individualized curbside mail delivery in new residential developments in favor of centralized or cluster box units. Mail delivery is governed by the Postal Operations Manual which recognizes curbside delivery as a viable delivery method. The Legislature of Alabama urged the United States Postal Service to abandon efforts to require cluster or centralized box units within residential developments and to favor the use of individualized curbside delivery boxes. Act 2018-108.

### **Condominiums.**

After several years of study, the Alabama Law Institute promulgated a number of relatively minor changes to modernize and update the Alabama version of the Uniform Condominium Act. Ala. Acts No. 2018-403.

### **First-Time and Second Chance Home Buyers.**

The Alabama First-time and Second Chance Home Buyer Savings Account Act, Act No. 2018-467, authorizes the establishment of savings accounts (and tax-deductible contributions to them) for qualified first-time and second chance home buyers. Beginning January 1, 2019, a qualified individual may open an account with a financial institution and contribute funds to the account without limitation on the amount of the contributions. State tax deductions of \$5,000.00 per individual or \$10,000.00 for joint filers may be claimed during each year in which the deduction is claimed, for up to 5 years. Only “eligible costs,” specifically down payments and closing costs, may be paid out of the account.

### **Home Builders Liability Insurance.**

Act No. 2018-398 requires a residential home builder licensed under Ala. Code § 34-14A-1, *et seq.* to disclose in writing to a purchaser homeowner of a residence prior to the commencement of construction whether the residential home builder “has obtained and is currently maintaining liability insurance.” The disclosure must be signed by the residential home builder, the purchaser or homeowner and attested by a witness selected by the homeowner.

### **Home Builders Licensure Board.**

Various amendments to the Home Builders Licensing Act, Ala. Code § 34-14A-1, *et seq.*, are included in Ala. Acts No. 2018-143. Notable among the amendments are:

- Ala. Code § 34-14A-2(4) expands the definition of improvement to specifically include “attached or detached” additions and enhancements;
- Ala. Code § 34-14A-2(9) articulates those entity representatives who may serve as “qualifying representatives;”
- Ala. Code § 34-14A-2(11), -(12) requires licensing by the Board of a residential roofer where the cost of the undertaking exceeds \$2,500.00;
- Ala. Code § 34-14A-5 authorizes multiple types of licensing; and
- Ala. Code § 34-14A-8 increases the amount of fines that may be levied to \$5,000.00.

### **Landlord and Tenant Act.**

The number of non-curable breaches under Ala. Code § 35-9A-421 was expanded by Ala. Acts No. 2018-473 to include the manufacture, cultivation, furnishing or administering illegal drugs, and the illegal use, importation, possession or discharging of a firearm except in certain cases of self-defense. Any breach substantially the same as a prior breach for which notice to terminate was given and cured within six months now constitutes a non-curable breach.

### **Partnerships.**

Ala. Acts No. 2018-125 extensively revises and replaces the Alabama Partnership Act.

### **Assistance and Service Animals.**

The Alabama Assistance and Service Animal Integrity in Housing Act provides guidance to landlords leasing to tenants with federally recognized disabilities. Ala. Acts No.2018-235. Under this Act, a landlord who receives a request for an exception to a policy of the landlord prohibiting pets may require the person making the request to provide reliable documentation showing the non-apparent need for the assistance animal.

Criminal penalties are provided for misrepresentations.

### **Statutory Right of Redemption From Foreclosure.**

Ala. Code § 6-5-248 is amended to provide that under no circumstances may the right of redemption from foreclosure be exercised more than one year after the date of foreclosure. Ala. Acts No. 2018-126.

### **Voidable Transactions.**

Alabama has adopted an amended version of the Uniform Fraudulent Transfers Act, re-named the Uniform Voidable Transactions Act. Act No. 2018-163. The Act will be codified as Chapter 9B of Title 8 of the Code of Alabama and will be applicable to transactions made on or after January 1, 2019.

The Act is not a comprehensive revision of the existing statute but was designed to address a limited number of narrowly defined issues. Some of the revisions include updating rules allocating the burden of proof, updating the language of the act to accommodate modern technology, and provisions relating to series organizations organized under the limited liability company statutes.

## II. Decisions

### A. Supreme Court of Alabama

#### State Immunity; Inverse Condemnation.

*Portersville Bay Oyster Company, et al. v. Christopher Blankenship, in his official capacity as Commissioner of the Alabama Department of Conservation and Natural Resources*, \_\_\_ So. 3d \_\_\_ (August 29, 2018). Trial court erred in dismissing Commissioner as oyster farmers properly state claims of inverse condemnation upon which relief can be granted. Additionally, because the exception from State immunity based on the taking of property for public use applies, State immunity defense is not available as to the inverse condemnation claims.

#### Reformation; Mutual Mistake.

*G.R.L.C. Trust v. Garrison Decatur Crossings, LLC*, \_\_\_ So. 3d \_\_\_ (June 15, 2018). Trial did not err in reforming lease memorandum based on mutual mistake, to include “Exhibit A” reciting the legal description of the leasehold estate. Clear and convincing evidence demonstrated both parties knew the premises subject to the leasehold, and that their intent was to record the memorandum of lease with the legal description attached, but that through inadvertent error it was never recorded.

#### Materialman’s Lien.

*GHB Construction and Development Company, Inc. v. West Alabama Bank and Trust*, \_\_\_ So. 3d \_\_\_ (September 21, 2018). Circuit court erred in granting West Alabama Bank and Trust’s motion to dismiss based on mortgage being recorded prior to delivery of building materials. Under *Morvay v. Drake*, 352 So. 2d 165 (Ala. 1976), a future-advance mortgage does not create a mortgage lien until some indebtedness is incurred by the mortgagor under the future-advance mortgage. As such, WABT’s mortgage lien was not created when the borrower executed the promissory note and future-advance mortgage, or when the security instrument was recorded, but rather when the mortgagee made its initial advance of money to mortgagor.

### B. Alabama Court of Civil Appeals

#### Tax Sale.

*Rioprop Holdings, LLC v. Compass Bank et al.*, \_\_\_ So. 3d \_\_\_ (January 12, 2018). In affirming the trial court, pursuant to Ala. Code § 40-10-82, “[n]o 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....” Because Rioprop failed to exercise its right to obtain possession during the three years after the date Rioprop was entitled to demand the tax deed, and took no action to actually possess the property or file an ejectment action, title to the property reverted to the taxpayer.

*Henderson v. Seamon*, \_\_\_ So. 3d \_\_\_ (March 23, 2018). Circuit court’s judgment resolving factual issues determining redemption was void for lack of jurisdiction. Under Ala. Code § 40-10-122, probate court has exclusive jurisdiction over the redemption process. (However, for statutory-redemption proceedings in Elmore County, as is the case here, Ala. Code § 45-26-241(b) and 242(b) the revenue commissioner had exclusive jurisdiction).

### **Lien Priority; Interpleader**

*Alabama Medicaid Agency v. Southcrest Bank et al.*, \_\_\_ So. 3d \_\_\_ (August 3, 2018). Medicaid was a junior lien holder behind foreclosed Southcrest mortgage that resulted in surplus funds. Southcrest sought to interplead funds and requested an award of attorney fee for filing action. Under *Bailey Mortgage Co. v. Gobble-Fite Lumber Co.*, 565 So. 2d 138 (Ala. 1990), “if there are inferior liens and there is a surplus, all encumbrances inferior to the mortgage on which the sale is based must be paid in the order of time in which they respectively became liens.” Here, Medicaid lien had priority over conservator for former ward and funeral home for its expenses. Though awarding attorney’s fees to interpleading party is within trial court’s discretion under *Youngblood v. Bailey*, 459 So. 2d 855, 861 (Ala. 1984), the trial court erred in doing so. Because Medicaid is an agency of the State, an award of Southcrest’s attorney fee would therefore reduce the amount of Medicaid’s award and affect the financial status to the state treasury, as provided under § 14 of the Alabama Constitution of 1901.

### **Fraudulent Transfer Act**

*Holsembeck v. USAmeribank f/k/a Aliant Bank*, \_\_\_ So. 3d \_\_\_ (March 16, 2018; April, 27 2018). Substantial evidence supported the trial court’s determination that a divorce settlement agreement had been crafted to transfer the husband’s interest in the marital asset to the wife with an actual intent to hinder, delay or defraud the bank in its collection of notes owed by husband’s entity and personally guaranteed by husband, based upon the circuit court’s considerations of the factors provided by Ala. Code § 8-9A-4(b). Specifically, the circuit court properly considered to whom the transfer was made, the amount of assets transferred and the financial condition of the debtor before and after the transfer.

### **Materialmans’ Lien**

*McGee v. Dillard*, \_\_\_ So. 3d \_\_\_ (January 12, 2018). Action by general contractor for recovery of debt which did not mention a prior-filed materialmans’ lien was not an action for enforcement of the lien, which is required for the lien to be perfected under Ala. Code § 35-11-220. Because no action for the enforcement of the lien was commenced within six months after the maturity of the debt the lien secured, the limitations period for the enforcement of the lien expired. Ala. Code § 35-11-221.

### **Landlord/Tenant**

*Morrow v. Pake*, \_\_\_ So. 3d \_\_\_ (April 20, 2018). Tenant’s claim for damages under the Landlord Tenant Act, Ala Code § 35-9A-101, was not compulsory counterclaim to a landlord’s

action in unlawful detainer and for unpaid rent, because the latter invokes only *quasi in rem* jurisdiction, and *in personam* jurisdiction would have to exist over the tenant in order to trigger compulsory counterclaim status. Res judicata did not bar tenant's subsequent action under the Act, because landlord dismissed his action voluntarily after tenant had moved out, before final adjudication of the unlawful detainer case.