

2008 Regular Session of the Legislature

The Alabama Law Institute will present six acts to the legislature that will be major improvements of the current law.

Ad Valorem Tax Sale and Redemption Process

Sponsors: Senator Wendell Mitchell and Representative Mike Hill

This will clarify and codify the current law concerning the redemption of property from ad valorem tax sales. It also clarifies the redemption process by codifying case law on redemption and it delineates the counties' responsibility with regard to holding and refunding overpayment. It also:

1. Provides a procedure for redemption by the landowner from multiple tax sales.
2. The owner who remains in possession after the sale may always redeem.
3. Allows the tax status for Class 3 property to remain to be taxed as a Class 3 property as long as the owner occupies the property.
4. After three years from the date of the tax sale the probate judge must receive proof that all ad valorem taxes have been paid before a tax deed is issued.
5. The county will retain the overbid until there is a final disposition of the property.
6. When the property is redeemed, the amount of the overbid will be distributed to the land purchaser. If the property is foreclosed, the amount of the overbid will be paid to the person against whom the property was accessed. Any earnings paid by the county's depository on the overbid shall be retained by the county.



ROBERT L. MCCURLEY, JR.

For more information about the Institute, contact Bob McCurley at (205) 348-7411 or visit www.ali.state.al.us.



Uniform Anatomical Gift Act

Sponsors: Senator Ted Little and Representative Robert Bentley

Alabama adopted the current Anatomical Gift Act in 2003, however, it was based on the 1987 Uniform Act. The new revision will provide:

1. Donor's consent (i.e., an individual's anatomical gift of their own organs, eyes and tissue, to take effect at death) is substantially strengthened to bar others from amending, revoking or refusing to honor a gift made by the donor.
2. Absent a donor's consent, gifts by family members are facilitated if the deceased has not acted to make a donation or specifically refuses to make an anatomical gift by:
 - Expanding those that can act to include a health care agent, grandchildren and persons exhibiting special care;
 - Easing consent by enabling a majority of the children to decide;
 - Eliminating the need for consent from individuals who are not "reasonably available;" and
 - Clarifying the manner by which consent may be obtained.
3. Specifically authorizes gifts on donor registries and state-issued identification cards.
4. Registries are encouraged and standards are provided for their operations.
5. Provides for cooperation and coordination between procurement organizations and medical examiners, particularly with regard to procurement from potential donors under the jurisdiction of the medical examiner.
6. Remedies for intentional acts in violation of the Act are provided while retaining immunity for good faith acts under the Act.
7. Harmonizes the Uniform Anatomical Gift Act with federal law, current technology and practice and an Advance Medical Directive.

Prudent Management of Institutional Funds

Alabama's law was last revised in 2002; however, the current law was based on the 1972 Management of Institutional Funds Act. The Act governs investment of the funds of charitable organizations and total return expenditure of those funds. It establishes a prudent management investment policy that was derived from the Uniform Prudent Investor Act that applies only to trusts which were passed in Alabama in 2006. It also provides for a delegation of authority for investment to outside agents and reformation of donor restrictions (*cy pres*) on funds when they are so outdated that the original objective can no longer be followed.

The Act will:

1. Make sure the best investment practices govern the actual investment of the institutional funds.
2. Change obsolete rules governing prudent total return expenditure and provide a modern rule of prudence consistent with the rules that govern investment.
3. Eliminate differences in investment and expenditure rules that apply to different types to nonprofit organizations. The same rules govern all institutions under this act.
4. Encourage growth of institutional funds while eliminating investment risks that threaten the principal.
5. Assures that there are adequate assets in any institutional fund to meet the program need.
6. Make the law governing institutional funds uniform in all states.

This new Act was adopted in 19 states last year.

Uniform Limited Partnership Act

Sponsors: Senator Roger Bedford and Representative Cam Ward

Alabama last revised its Limited Partnership Act in 1983. This revision updates the Limited Partnership Act to reflect modern business practices. Limited partnerships are now used primarily in two ways—for family limited partnerships

in estate-planning arrangements, and for highly-sophisticated, manager-controlled limited partnerships.

A limited partnership is distinguished from a general partnership by the existence of limited partners who invest in the partnership; in return for limited liability, the limited partner usually relinquishes any right of control or management of partnership affairs. However, the general partner of a limited partnership traditionally receives no direct liability protection.

This new act provides:

Perpetual Entity—No termination unless the agreement so provides. A limited partner leaving does not dissolve the entity.

Entity Status—A limited partner is clearly an entity.

Convenience—The new Limited Partnership Act (Lt. P) provides a single, self-contained source of statutory authority for issues pertaining to limited partnerships. The act is no longer dependent upon the general partnership law for rules that are not contained within it.

LLLP Status—Under this new act, limited partnerships may opt to become limited liability limited partnerships (LLLLP), simply by so stating in the limited partnership agreement and in the publicly filed certificate. The primary reason for a limited partnership to elect LLLP status is to provide direct protection from liability for debts and obligations of the partnership to the general partner of the limited partnership.

Liability Shield—In the current limited partnership law, it provides only a restricted liability shield for limited partners. The new act provides a full, status-based shield against limited partner liability for entity obligations. The shield applies whether or not the limited partnership is an LLLP.

Express Default Statute—The act provides default provisions between the partners and between partners and the partnership. Therefore, when the partnership agreement does not define the relationship, there is a fall-back default law.

The act also addresses issues such as allocating power between general partners and limited partners, and setting

fiduciary duties owed by general partners to other general and limited partners.

Alabama Uniform Parentage Act

Sponsors: Senator Kim Benefield and Representative Demetrius Newton

The Alabama Uniform Parentage Act was last revised in Alabama in 1984. This act, which revises the Uniform Parentage Act of 1973, modernized the law for determining the parents of children, and facilitates modern methods of testing for parentage. With the rising incidence of children born to unmarried parents, parentage determinations must be improved for the enforcement of child support. The Uniform Act was completed by the Uniform Law Commissioners in 2000 (and amended in 2002). This act will repeal the current parentage law. *Ala. Code* §§26-17-1 through 22.

Article 1—General Provisions

Article 2—Parent-Child Relationship (Determination of legal father)

The legal father may be one of the following: an un rebutted presumed father, a man who has acknowledged paternity under Article 3, an adjudicated father as the result of a judgment in a paternity action, an adoptive father, or a man who consents to an assisted reproduction under Article 7.

Article 3—Voluntary Acknowledgment of Paternity (Provides a non-judicial, consent proceeding for acknowledgment of paternity)

The non-judicial acknowledgment of paternity proceeding under Article 3 of the new Uniform Act allows a knowing and voluntary acknowledgment of paternity that is the equivalent of a judgment of paternity for enforcement purposes. An acknowledgment from another state is given the privilege of full faith and credit in Alabama.

Article 4—Registry of Paternity (Continues Alabama's current putative father's registry)

Ala. Code § 26-10C-1.

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Article 5—Genetic Testing (Establishes a separate procedure for genetic testing)

Standards for genetic testing are part of Article 5. The standard for a presumption of paternity as a result of testing is also established by statute. The measure is 99 percent probability of paternity based on appropriate calculations of “the combined paternity index.”

Article 6—Proceeding to Adjudicate Parentage (Governs the basic proceeding to determine parentage)

Under the new Uniform Act, the child, the mother of the child, a man whose paternity is to be adjudicated, DHR, an authorized adoption agency or licensed child-placing agency, a representative of a deceased, incapacitated or minor person, or “any interested person” has standing.

Article 7—Child of Assisted Conception (Deals with parentage when there is assisted conception)

Generally, if a married couple consents to any sort of assisted conception, and the woman gives birth to the resultant child, they are the legal parents.

Alabama Uniform Residential Mortgage Satisfaction Act

Sponsors: Senator Myron Penn and Representative James Buskey

This act only applies to residential real estate in Alabama. The process of clearing title for residential real estate mortgage has been complicated by the failure of lenders to render a timely payoff statement and mortgage satisfaction when the mortgage is to be paid off or has been fully paid but not satisfied.

In some instances, the original lender is no longer in business and the mortgage has been sold to another party, however, the legal assignment has not been recorded or has become lost.

The act basically does the following:

1. **Payoffs**—The mortgage lender must give a payoff statement within ten days after written request. If the lender fails to do so, there is a \$500 penalty

payable to the borrower. When the mortgage lender fails to pay the \$500 penalty after the second 30-day notice, and if the creditor is forced to hire a lawyer, the borrower may collect an attorney’s fee.

2. **Mortgage Satisfaction**—A mortgage lender has 30 days after receiving a full payment to submit a satisfaction document. A mortgagee that neglects to file a mortgage satisfaction within the 30 days after being paid may be subject to a \$1,000 penalty and any reasonable attorney’s fees incurred. (Since 1852, Alabama has had a \$200 penalty.)
3. **Self-Help Satisfaction**—When the mortgage lender cannot be found or is non-responsive, the bill provides for a self-help method to remove the satisfied mortgage. After the lender receives full payment, a title insurance company or licensed attorney can follow specified procedure of giving the mortgagee 30 days notice to satisfy the mortgage or object to a satisfaction and record an affidavit of satisfaction on a specific form. This results in a satisfying of the paid mortgage on the record. A satisfaction agent or anyone who knowingly makes a false satisfaction is liable for actual damages as well as attorney’s fees and costs.

Unlawful Detainer Statutes

Sponsors: Senator Lowell Barron and Representative Jeff McLaughlin

Alabama currently has 22 unlawful detainer statutes dating back for over 100 years. Many of these are confusing, outdated and no longer applicable. These statutes that have been left on the books often confuse the eviction process. This bill repeals or revises the existing statutes and further reinforces the provisions of the Residential Landlord/Tenant Act to make clear the intentions of the original act which may have been misinterpreted by parties. ▲▼▲