



The 2009 legislature convenes February 3, 2009 and may continue until May 19, 2009. If things begin as usual there will be over 500 bills introduced on the first day. Most of the 1,606 bills introduced during the 2008 session were not passed and most likely will be reintroduced.

The Alabama Law Institute has six bills it will introduce this year. These are:

### 1. Redemption from Ad Valorem Tax Sales

This bill will again be introduced in the legislature. In 2008 the house bill passed the house of representatives and the senate bill passed the senate. To become law the same bill must be passed by both houses. The bill will again be sponsored by Senator Wendell Mitchell and Representative Mike Hill.

When section 40-10-122 was amended in 2002 to limit 12 percent interest paid at tax sale to taxes and on the overbid up to 15 percent of assessed value, other sections of the law should have been amended. This bill will clarify and codify the current law by amending other relevant code sections concerning the redemption of property from ad valorem tax sales. It also codifies case law on redemption and delineates the counties' responsibility with regard to holding and refunding an "overbid" by the tax sale purchaser who paid all taxes, fees and charges and any additional sums paid to the tax collector.

The bill also:

- Provides a procedure for redemption by the landowner from multiple tax sales.
- The owner who remains in possession after the sale may always redeem. (The owner has a statutory redemption period for three years from sale; there is an additional three years' redemption period by the owner from the purchaser after the original three-year statutory redemption period.)
- Allows the tax status for Class 3 property to remain to be taxed as Class 3 residential property as long as the owner occupies the property.
- 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.
- Provides a less complicated procedure for redeeming property sold at a tax sale.
- Bill is effective September 1, 2009.

### 2. Uniform Revised Limited Partnership Act

This bill will again be introduced in the legislature. In 2008, the house bill passed the house of representatives and the senate bill passed the senate. (To become law, the same bill must be passed by both houses.) The bill will again be sponsored by Senator Roger Bedford and Representative Cam Ward.



**ROBERT L. MCCURLEY, JR.**

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

# LEGISLATIVE WRAP-UP

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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 of a limited partnership unless the agreement so provides. A limited partner who leaves does not dissolve the entity.
- **Entity Status.** A limited partner is clearly an entity.
- **Convenience.** The new Limited Partnership Act 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 (LLLP), 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.** The current limited partnership law 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.

## 3. Uniform Satisfaction of Residential Mortgages

This bill will again be introduced in the legislature and again be sponsored by Senator Myron Penn and Representative James Buskey.

This act only applies to residential real estate in Alabama. The process of clearing titles 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:

- **Payoffs.** The mortgage lender must give a payoff statement within 14 days after a written request. If the lender fails to do so, there is a \$500 penalty payable to the borrower. This is identical to the penalty in section 7-9A-210 and 7-9A-625 of the UCC for failure to give a payoff statement for personal property.
- **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 \$500 penalty. An identical penalty is in section 7-9A-210 and 7-9A-625 of the UCC for failure to satisfy a lien on personal property. (Since 1852, Alabama has had a \$200 penalty for failure to satisfy a mortgage after 30 days [see section 35-10-30].). After a second 30-day notice, if the mortgage is still not satisfied and the mortgagor has to hire an attorney, the mortgagor may be awarded reasonable attorney's fees.
- **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, under bond, can follow the specified

procedure of giving the mortgagee 30 days notice to satisfy the mortgage or object to a satisfaction and record an affidavit of satisfaction using 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.

#### 4. Business and Nonprofit Entities Code

This bill will again be introduced in the legislature and again be sponsored by Senator Rodger Smitherman and Representative Marcel Black.

The revision, which was nine years in the making, was reviewed in the November 2008 edition of *The Alabama Lawyer*.

#### 5. Electronic Recording of Real Estate Records

This bill is being introduced this year for the first time in Alabama, although it has been widely adopted across the county.

Recording of real estate records is now available in 20 states due to the passage of the Uniform Real Property Electronic Recording Act. Tennessee, Florida, South Carolina and North Carolina have already adopted this act.

As a result of the enactment of the Uniform Electronic Transactions Act passed by the Alabama legislature in 2001, it is now possible to have contracts in electronic form with electronic signatures of the parties. However, real estate transactions require another step not addressed by the e-sign law.

Real estate documents must be recorded in public records in order to provide notice of the current owner of the property. Real estate records establish a chain of title based on filing the original document, preserving it by copying it and recording the document in the probate office.

Another example of the growing use of electronic recording is the 2005 court rule by the Alabama Supreme Court, authorizing electronic filing of circuit and district court documents. Electronic filings occur pursuant to this rule in 48 counties by registered users.

This act does essentially three things:

- Equates electronic documents and electronic signatures to original paper documents and manual signatures. Thus, any requirements for original paper documents or manual signatures are satisfied by an electronic document and signature. The process is essentially a scan-in of the document and electronic filing by e-mail.
- Establishes that electronic filing and storage of electronic records is purely an opt-in option by probate offices in each of the 67 counties and does not mandate them. Those electing to have electronic recording will be able to do so while maintaining the procedure for walk-up filing of paper documents.
- Establishes a board to set uniform standards for filing electronically in every probate office that elects to opt-in to utilize electronic filing. This 13-person board consists of probate judges, lawyers and other officials who have an interest in the recording process.

#### 6. Residential Landlord-Tenant Act Amendments

The Residential Landlord-Tenant Act was passed in 2006. These are the first amendments to the act and are to clarify provisions in the Landlord Tenant Act.

- The bill clarifies that a landlord may enter a unit to show the dwelling to prospective future tenants within four months of the end of the lease and schedule pest control of a unit during certain times, provided the tenant has at least two days' notice.
- The bill provides there are certain "non-curable" acts of the tenant, such as possession of illegal drugs, discharge of a firearm on the premises and criminal assault on a tenant or guest. Therefore, the rental agreement may be terminated after 14 days' notice.
- The tenant may be served anywhere in the state.
- The bill clarifies the filing of a post-judgment motion and suspends the time for the filing of an appeal.
- The amendments address the rights of a tenant to be restored to the premises after a successful appeal.

Copies of these bills and commentary to them are available on the Law Institute's home page at [www.ali.state.al.us](http://www.ali.state.al.us). ▲▼▲