



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).*

The Alabama legislature convenes January 12, 2010. The following is a summary of the new revisions the Institute will ask the legislature to consider.

## Alabama Power of Attorney Act

The Alabama Law Institute has completed a two-year study of Alabama's Power of Attorney Act statute. This committee, chaired by **Richard Cater** of Montgomery, included the following committee members:

Lee Armstrong, Auburn  
 John Daniel, Birmingham  
 Edward Dean, Birmingham  
 Professor Michael Floyd, Birmingham  
 Randy Fowler, Tuscaloosa  
 Anna Funderburk Buckner, Birmingham  
 Professor Tom Jones, Tuscaloosa  
 Bruce McKee, Birmingham  
 Robert Meadows, III, Opelika  
 Marcus Reid, Gadsden  
 Ronald Sims, Birmingham  
 Carol Ann Smith, Birmingham  
 Finis St. John, IV, Cullman  
 L. Vastine Stabler, Jr., Birmingham  
 Leonard Wertheimer, III, Birmingham  
 Brian Williams, Birmingham  
 Scott Adams, Birmingham

A "power of attorney" is an authorization for one person to act on someone else's behalf in a legal or business matter. The person authorized to act is the "agent" and the person granting the authorization is the "principal." A durable power of attorney is a power that continues or becomes effective after the principal becomes incapacitated. The concept of a durable power of attorney was first incorporated into the *Uniform Probate Code* in 1969 to offer an inexpensive method of allowing another decision maker to those whose modest assets did not justify a trust or property management with a conservator appointed by the court.

# LEGISLATIVE WRAP-UP

Continued from page 469

Alabama passed our current durable power of attorney statute in 1997 (*See Ala. Code § 26-1-2*). This is the only *Code* section relating to durable power of attorneys. One must designate the power of attorney as “durable” for it to remain in effect even when the maker subsequently becomes incompetent. The default rule remains for powers of attorney to be void when the maker becomes incompetent and has not specifically designated the power to continue when the maker is incompetent. This act preserves the effectiveness of durable powers as a low-cost, flexible and private form of decision-making for property, and does not include health care decisions.

The act offers clear guidelines for the agent, who is often a trusted family member. The act:

- Recognizes that an agent who acts with care, competence and diligence for the best interest of the principal is not liable solely because he or she also benefits from the act or has conflicting interests;
- Permits a principal to include in the power of attorney an exoneration provision for the benefit of the agent; and
- Provides ways for the agent to give notice of resignation if the principal is incapacitated.

The act encourages acceptance of a power of attorney by third parties by:

- Providing broad protections for the good faith acceptance or refusal of an acknowledged power of attorney;
- Recognizing portability of powers of attorney validly created in other states;
- Offering an additional protective measure for the principal by providing that third persons may refuse the power if they have the belief that “the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or person acting for or with the agent, and make a report to the appropriate adult protective service agency”; and
- Providing a statutory form for designation of an agent and grant of authority through this optional statutory form.

The act is effective for powers of attorney made after January 1, 2011.

## Model State Trademark Act

In the spring of 2009, the Alabama Law Institute constituted a committee to review the status of Alabama’s Trademark Act and determine what, if any, revisions



### Accounting, Economics & Appraisal Group, LLC

Certified Public Accountants  
Certified Computer Examiner  
Accredited in Business Valuation  
Certified Fraud Examiners



Les Alexander, Managing Principal	205-488-1150
Denise Dauphin, Principal	205-488-1130
Bill Long, Principal	205-488-1138

Accounting & Computer Forensics, Business & Asset Valuation, Economic & Demographic Studies, Enterprise Risk Management & Fraud Investigations

Accounting, Economics & Appraisal Group, LLC, a Certified Public Accountancy Firm  
Two North 20<sup>th</sup> Street, Suite 1400 Birmingham, Alabama 35203  
Telephone (205) 488-1100 • Facsimile (205) 488-1101 • www.aeagroup.com

and updating were necessary. This review was prompted by the promulgation of a Model State Trademark bill by the International Trademark Association. The current Alabama act had been unchanged since 1988 and since that time there have been a number of changes to federal law in this area.

The committee is composed of the following members:

Lee Armstrong, chair, Auburn  
Donna Bailer, Birmingham  
Jean Brown, Montgomery  
Brian Clark, Birmingham  
Diane Crawley, Birmingham  
Stephen Hall, Huntsville  
Lee Huffaker, Birmingham\*  
Thad Long, Birmingham  
Sheree Martin, Tuscaloosa  
Kimberly Powell, Birmingham  
David Quittmeyer, Mobile  
Richard Rouco, Birmingham  
Justice Harold See, Montgomery  
James Dale Smith, Mobile  
Will Hill Tankersley, Jr., Birmingham  
Chad Tindol, Tuscaloosa  
India Vincent, Birmingham  
Lance Wilkerson, Birmingham

\* **Lee Huffaker** served as reporter for the committee until his untimely death in August.

The committee, which is chaired by **Lee Armstrong**, determined that while the current Alabama law should not be replaced in whole, there were concepts in the model act which would be improvements to Alabama law and, therefore, the review would address those areas and determine what if any amendments to the Alabama act would be appropriate. The general areas at issue were dilution, the term for the registration period, the classification system and what remedies are available for infringement.

On the concept of dilution, the committee recommends that §8-12-6 of the Alabama *Code* be amended to include definitions of the terms "dilution," "dilution by blurring" and "dilution by tarnishment." The committee also recommends amendments to §8-12-17 to clarify how a claim for dilution can be made by a trademark holder. Such a person would continue to be able to seek injunctive relief, but would now also have available the full set of remedies contemplated in the act if they could prove that a violator willfully caused dilution of the mark.

Another issue addressed in the model act is a reduction in the applicable term of a trademark registration. The model act adopted a term of five years as opposed to the current period of 10 years in Alabama. The committee recommends amending §8-12-10 of the Alabama *Code* and adopting the five-year period to promote uniformity as well as to more regularly purge the filings of registrations that are no longer active.

evidence at your fingertips.

**AVANSIC**  
E-Discovery & Digital Forensics

**Online Review Repository**  
is now one of our  
E-discovery Services

**(205) 994-2766**  
**www.avansic.com**

- Data Preservation
- Digital Forensics
- Electronic Discovery
- Expert Services
- Consulting

# LEGISLATIVE WRAP-UP

Continued from page 471

When the Alabama act was last amended in 1988 the classification system contained in §8-12-14 was consistent with the system used by the U.S. Patent and Trademark System, which uses the international classification system. Since that time the international classification system has undergone a number of changes. The committee recommends amending §8-12-14 to incorporate by reference the federal system so that it will continually be current with the federal classification system.

Another area where the Alabama act differed substantially from both the model act and the federal system was in the remedies available to a person upon whose trademark has been infringed. In order to bring Alabama's act more into line, the committee recommends amending §8-12-18 to include giving a

judge the discretion to award up to treble damages for a violation. In addition, the court could award the recovery of attorney fees if there was a finding that a party acted in bad faith.

It is worth noting that a number of unique characteristics of the Alabama act will remain unchanged. These include Alabama's recognition of niche fame and the ability to register a trade name in addition to a trademark.

Other Law Institute Bills for 2010 include the Uniform Adult Guardianship Protective Proceedings Act (*See Sept. 2009 AL Lawyer*), the Uniform Child Abduction Prevention Act (*See Sept. 2009 AL Lawyer*) and the Uniform Mortgage Satisfaction Act (*See January 2009 AL Lawyer*). ▲▼▲

**UNITED STATES POSTAL SERVICE® (All Periodicals Publications Except Requester Publications)**

**Statement of Ownership, Management, and Circulation**

1. Publication Title: *The Alabama Lawyer*

2. Publication Number: 00024287

3. Filing Date: *Oct 19, 2009*

4. Issue Frequency: *Bi-monthly: January, March, May, July, September, November*

5. Number of Issues Published Annually: *Six (6)*

6. Annual Subscription Price: *\$15 Yearly \$30 Two Yearly*

7. Complete Mailing Address of Known Office of Publication (Street, City, County, State, and ZIP+4®): *Alabama State Bar 415 Austin Avenue Montgomery, Alabama 36104-3742*

8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer): *Alabama State Bar 415 Austin Avenue Montgomery, Alabama 36104-3742*

9. Full Name and Complete Mailing Address of Publisher, Editor, and Managing Editor (Do not leave blank):

*Alabama State Bar 415 Austin Avenue Montgomery, Alabama 36104-3742*

*Robert A. Jaggard 174 Commerce Street Montgomery, Alabama 36104-3742*

*Margaret Markey 415 Austin Avenue Montgomery, Alabama 36104-3742*

10. Known Bondholders, Mortgagees, and Other Security Holders Owring or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box:  None

11. Publication of Statement of Ownership:  If the publication is a general publication, publication of this statement is required. Will be printed in the *July, 2009* issue of this publication.  Publication not required.

12. Signature and Title of Editor, Publisher, Business Manager, or Owner: *Margaret M. Markey, managing editor* Date: *October 21, 2009*

PS Form 3526, September 2007 (Page 1 of 2) Instructions (Page 2) PSN 7530-01-000-9001 PERMITS NOTICE. See our privacy policy on www.usps.com

13. Publication Title: *The Alabama Lawyer*

14. Issue Date for Circulation Data Below: *September 2009*

13. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)		16,097	16,260
b. Paid Circulation (By Mail and Outside the Mail)	(1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3841 (Include paid distribution above normal rate, advertiser's proof copies, and exchange copies)	15,203	16,267
	(2) Mailed In-County Paid Subscriptions Stated on PS Form 3841 (Include paid distribution above normal rate, advertiser's proof copies, and exchange copies)	-0-	-0-
	(3) Paid Distribution Outside the Mail (including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS)	-0-	-0-
	(4) Paid Distribution by Other Classes of Mail Through the USPS (e.g. First-Class Mail®)	-0-	-0-
c. Total Paid Distribution (Sum of 13b(1), (2), (3), and (4))		15,203	
d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)	(1) Free or Nominal Rate Outside-County Copies Included on PS Form 3841	-0-	-0-
	(2) Free or Nominal Rate In-County Copies Included on PS Form 3841	-0-	-0-
	(3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g. First-Class Mail®)	-0-	-0-
	(4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	123	149
e. Total Free or Nominal Rate Distribution (Sum of 13d(1), (2), (3) and (4))		123	149
f. Total Distribution (Sum of 13c and 13e)		15,326	16,416
g. Copies not Distributed (See Instructions to Publishers at page 8)(2)		171	384
h. Total (Sum of 13f and 13g)		16,097	16,800
i. Payment Post (15c added to 15b times 100)		99%	99%

15. Signature and Title of Editor, Publisher, Business Manager, or Owner: *Margaret M. Markey, managing editor* Date: *October 21, 2009*

PS Form 3526, September 2007 (Page 2 of 2)