



Robert L. McCurley, Jr.

Alabama Legislature Holds Organizational Session

The Alabama legislature met in an organizational session January 9-16 to elect presiding officers, determine their rules for the next four years and make committee assignments.

The senate, by an 18-to-17 vote, elected Senator Hinton Mitchem pro tem. Senator Mitchem, from Marshall County, has been a member of the senate since 1974. The stated plan is for Senator Mitchem to be the pro tem for the first two years, and Birmingham attorney and Senator Rodger Smitherman to serve as pro tem of the senate for the remaining two years. Former Pro Tem Senator Lowell Barron becomes chair of the Rules Committee.

Lawyers in the senate holding positions of leadership are:

Senator Zeb Little, Cullman, majority leader and chair of Local Legislation;

Senator Myron Penn, Union Springs, chair of Confirmations;

Senator Hank Sanders, Selma, chair of Education, Finance and Taxation;

Senator Roger Bedford, Russellville, chair of General Fund, Finance and Taxation;

Senator Ted Little, Auburn, chair of Physical Responsibility & Accountability;

Senator Rodger Smitherman, Birmingham, chair of Judiciary;

Senator Wendell Mitchell, Luverne, chair of Governmental Affairs;

Senator Bobby Singleton, Greensboro, chair of Tourism and Travel; and

Senator Pat Lindsey, Butler, chair of Constitution Campaign Finance, Ethics.

The house of representatives unanimously re-elected Representative Seth Hammett from Andalusia as speaker of the house. Representative Hammett has been in the legislature since 1978.

Lawyers who obtained key positions are: **Representative Demetrious Newton**, Birmingham, re-elected as speaker pro tem; **Representative Ken Guin**, Carbon Hill, majority leader and chair of Rules; and **Representative Marcel Black**, Tuscumbia, chair of Judiciary.

The Judiciary Committee is where bills of interest to lawyers are generally sent. The following lawyers are on the house committee, in addition to its chair, Marcel Black:

Paul DeMarco, Birmingham;

Chris England, Tuscaloosa;

Tammy Irons, Florence;

Mark Keahey, Grove Hill;

Yusuf Salaam, Selma; and

Cam Ward, Alabaster.

The senate Judiciary has the following lawyers in addition to its chairman:

Rodger Smitherman;

Roger Bedford, Russellville;

Ben Brooks, Mobile;

Bradley Burns, Mobile;

Pat Lindsey, Butler;

Ted Little, Auburn;

Myron Penn, Union Springs;

Hank Sanders, Selma; and

Bobby Singleton, Greensboro.

Regular Session

The Regular Session begins Tuesday, March 6, and can continue until June 18.

The Institute has completed and will present the following bills to the legislature:

- Uniform Apportionment of Estate Taxes;
- Uniform Residential Mortgage Satisfaction Act;
- Uniform Environmental Covenants Act;
- Redemption from Ad valorem Tax Sales; and
- Uniform Management of Institutional Funds.

Also to be presented later in the session will be the Uniform Parentage Act and the Business Entities Code.

Apportionment of Estate Taxes

The Internal Revenue Code places the primary responsibility of paying federal and state tax on the personal representative but does not direct from which beneficiary the taxes are to be paid. This is left to state law. Forty-four states have an Apportionment of Tax Law but Alabama requires the taxes to be taken from the residuary of the account unless the will directs otherwise.

This Act applies only to:

1. Estates over \$2 million (\$3.5 million in 2009);
2. Where there is a will and the will does not enumerate who pays the taxes; or
3. Persons who die after January 1, 2008.

The Act does not affect:

1. The total amount of tax paid;
2. Estates with no will;
3. Estates less than \$2 million;
4. Charitable gifts;
5. Specifically willed gifts of personal property less than \$100,000 to any person;
6. Specifically willed gifts of money less than \$100,000 to any person;
7. Persons who are incompetent; or
8. Any person who dies before January 1, 2008.

Except for a spouse, the Act generally will allow taxes to be shared by beneficiaries proportional to the amount received when the testator does not direct otherwise.

Uniform Residential Mortgage Satisfaction Act

Problem:

Due to the booming real estate market over the past several years, in part because of low interest rates and new homes sales, refinancing has been at record highs. The process of clearing a title for residential real estate mortgages when a mortgage is to be paid off or has been fully paid but not satisfied has been complicated by the failure of the mortgagee to render timely payoff statements and mortgage satisfactions.

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When a mortgage is paid off, the mortgagee generally owes the landowner two things: a document called a payoff statement that provides the landowner proof that the mortgage amount has been paid off, and the secured creditor is also obligated to record a statement that establishes the mortgage is satisfied in the land records. The statement makes it clear to subsequent purchasers and their secured creditors that the title is clear of the mortgage obligation. In this era of remote secured creditors, the timely transmittal of payoff statements and recording of mortgage satisfactions has become more problematic. There is a cost to the landowner, particularly if the landowner has paid off the mortgage in order to sell the real estate to another person. The sale cannot go forward if his or her secured creditor is tardy in providing payoff statements or recording mortgage satisfactions.

In some instances, the original lender is no longer in business and the mortgage has been sold to another party but the assignment has not been recorded or has become lost. With the proliferation of the secondary mortgage market the lender who makes the mortgage sells it to another to collect. Over the last decade this problem has been brought to the forefront with the landowner being required to file a lawsuit to clear the title or asking title companies to insure over the defect of an unsatisfied mortgage.

In frustration, some states, as South Carolina, have gone so far as to provide that a mortgage lender who fails to timely satisfy a mortgage must pay a penalty of \$25,000, or half the amount of the mortgage. Alabama's penalty of only \$200 for the failure of the mortgagee to satisfy a mortgage is seldom invoked and serves as little incentive to assure mortgage satisfaction.

Solution:

The Act provides the landowner or other entitled person with the right to request a payoff statement and requires secured creditors to record mortgage satisfactions. A request for a payoff statement must be in the form of a "notification." It may be transmitted to the secured creditor by first-class mail or other commercially reasonable delivery service. If there is agreement between the sender and the recipient of "notification" to do so, it may be transmitted by electronic means, including facsimile or e-mail. Upon notification, the secured creditor has 30 days to comply with the request or be liable for damages. A mortgage satisfaction must be recorded within 30 days of the day the mortgage is paid or the secured creditor may face liability for damages. Damages are limited to actual damages plus \$500 in

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either case. Punitive damages are disallowed. There also may be attorney fees for a payoff statement, if damages plus a penalty are not paid upon demand. Attorney fees are also available if an action is brought for failure to record a mortgage satisfaction.

The Act also provides a self-help title-clearing remedy to a person entitled to the recording of a mortgage satisfaction. An "Affidavit of Satisfaction" may be filed by a "Satisfaction Agent" if the secured lender neglects to file a mortgage satisfaction within the 30-day period. A "satisfaction agent" may be either a title insurance company or a licensed attorney. The satisfaction agent acts under the authority of the landowner. Only a title insurance company or licensed attorney may act as a satisfaction agent because of the liability potential for recording the affidavit. Their expertise and financial soundness provide a sense of security for the secured creditor and the landowner that the affidavit will be correct and recorded correctly. The contents of payoff statements, mortgage satisfactions and affidavits of satisfaction are very particularly established in the Act. This encourages uniformity of documentation, which is particularly important for recording in the land records. There is a specific form for mortgage satisfactions. Using the form guarantees that it may be recorded, and that it may not be rejected when presented to recording officers.

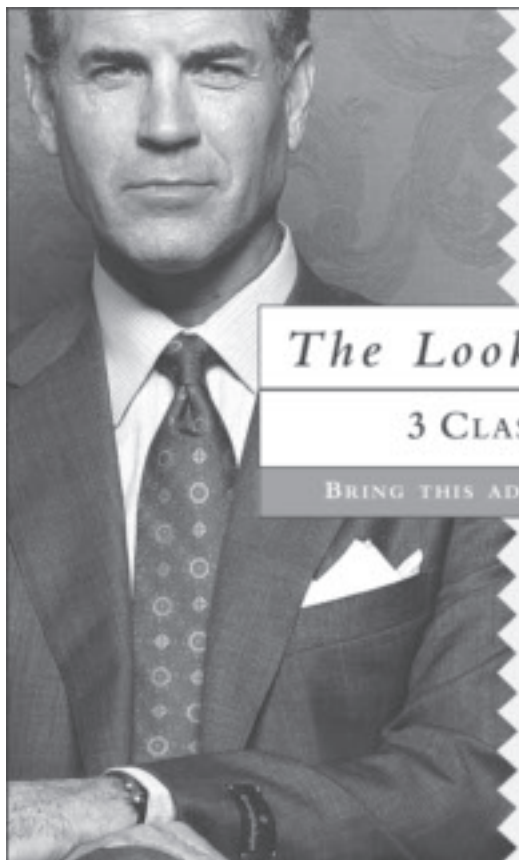
The Act further provides for a "Document of Rescission" with which a secured creditor may rescind an erroneous recording of a mortgage satisfaction, and thereby limit potential liability that may result from the error. A secured creditor also has the ability to limit liability for providing an understated payoff statement by tendering a correction. The Act also provides the secured creditor with a defense against liability for events beyond the secured creditor's control that prevent it from meeting notification requirements.

The Environmental Covenants Act, redemption from ad valorem sales tax and management of institutional funds will be discussed in the next *Alabama Lawyer*.

For more information, contact Bob McCurley, director, Alabama Law Institute, at P.O. Box 861425, Tuscaloosa 35486-0013, fax (205) 348-8411, or phone (205) 348-7411, or visit our Web site at www.ali.state.al.us. ■

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Robert L. McCurley, Jr. is the director of the Alabama Law Institute at the University of Alabama. He received his undergraduate and law degrees from the University.



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