

**2016 OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY AGENTS SEMINAR**

Case Law and Legislation Update

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I. United States Supreme Court.

A. October 2014 Term Decisions.

Fair Housing—Disparate Impact.

Disparate impact claims are cognizable under the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* *Texas Dep't of Housing and Comm. Affairs v. Inclusive Communities, Inc.*, ___ U.S. ___ (2015).

Fourth Amendment—Hotel Operators.

Facial constitutional challenges under the Fourth Amendment are not categorically barred or disfavored. A city ordinance requiring hotel operators to keep and record information about guests for a ninety-day period which “shall be made available to any officer of the Los Angeles Police Department for inspection . . . at a time and in a manner that minimizes any interference with the operation of the business” is facially unconstitutional in that it fails to provide hotel operators an opportunity for review prior to compliance with the inspection. The ordinance must afford the opportunity for precompliance review though actual review need occur only when there is an objection to the inspection. *City of Los Angeles v. Patel*, ___ U.S. ___ (2015).

Takings—Personal Property.

The Fifth Amendment requires the payment of just compensation for the taking of personal property just the same as when real property is taken. *Horne v. Dep't of Agriculture*, ___ U.S. ___ (2015).

B. October 2015 Term Pending Cases.

Clean Water Act—“Final Agency Action.”

United States Army Corps of Engineers v. Hawkes Co., Inc., No. 15-290, presents the following issue:

Whether the United States Army Corps of Engineers’ determination that the property at issue contains “waters of the United

States” protected by the Clean Water Act, constitutes “final agency action for which there is no other adequate remedy in a court,” and is therefore subject to judicial review under the Administrative Procedure Act.

Under prevailing regulations, the Corps is authorized to provide its view on whether a particular tract of land contains “waters of the United States” so as to be subject to the Corps’ regulatory authority under the Clean Water Act, 33 U.S.C. 1251 *et seq.* On the other hand, an “[a]pproved jurisdictional determination is a document stating the presence or absence of waters of the United States on a particular tract of land. 33 C.F.R. 331.2 An affected party can take an administrative appeal of a jurisdictional determination. Irrespective of whether a jurisdictional determination has been requested or issued, an owner may apply for a permit under Section 404. 33 U.S.C. 1344.

Hawkes applied for a Section 404 permit. The Corps made a jurisdictional determination that the tract contains waters of the United States and Hawkes appealed. The appeal was remanded for lack of a sufficient analysis to support the Corps’ determination. The Corps again issued an approved jurisdictional determination that the tract contained waters of the United States. Hawkes then filed an action in the District Court alleging that the determination was arbitrary and capricious. The Corps moved to dismiss on the basis that the approved jurisdictional determination was not “final agency action” and the claims in the complaint were not ripe. The District Court dismissed the action and on appeal the Eight Circuit reversed creating a division among the Circuits.

Argument is scheduled for March 30, 2016.

C. October 2016 Term Pending Cases.

Takings—Relevant Parcel.

Murr v. Wisconsin, No. 15-214, raises the issue of “[w]hether, in a regulatory taking case, the “parcel as a whole” concept as described in *Penn Central Transportation Company v. City of New York*, establishes a rule that two legally distinct but commonly owned contiguous parcels must be combined for takings analysis purposes.”

Because of the briefing schedule, the case has been pushed to the October 2016 Term.

D. Original Cases.

Mississippi v. Tennessee, No. 143, Original, deals with the right of the State of Tennessee to extract groundwater from commercial wells located near its boundary with the State of Mississippi where the water is alleged to have originated in Mississippi and under natural conditions would not leave Mississippi's groundwater storage in the Sparta Sand.

E. Certiorari Denials.

Lower courts are divided over the issue of whether the test set out in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (government "may not condition the approval of a land use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use") is applicable only to administrative action and not legislative action. In a concurring opinion on denial of a petition for a writ of certiorari, Justice Thomas "doubt[ed] that the 'existence of a taking should turn on the type of governmental entity responsible for the taking,' " and observed the uncertainty created by the Court's not addressing the issue. "These factors present compelling reasons for resolving this conflict at the earliest practicable opportunity." *California Building Industry Ass'n v. City of San Jose*, 577 U. S. ___ (2016) Thomas, J., concurring in denial.

II. Other Federal Courts.

A. Eleventh Circuit Court of Appeals.

Title Insurance—Agent Liability.

After the district court granted a summary judgment based on an indemnity provision in an agency agreement in favor of a title insurer, the Eleventh Circuit certified the following question to the Alabama Supreme Court:

Is an attorney whom an insurance company hires as an attorney agent providing a "legal service" within the meaning of Ala. Code § 6-5-574 when he performs a title search, forms an unwritten opinion about the status of title, and then acts on that unwritten opinion by issuing a commitment to insure or an insurance policy?

Miss. Valley Title Ins. Co. v. Thompson, 754 F. 3d 1330 (11th Cir. 2014). The Alabama Supreme Court declined to answer the certified question. The Eleventh Circuit subsequently reversed the district court's summary judgment holding that a genuine issue of material fact existed regarding the contractual nature of the relationship between the agent and the insurer saying that "[t]he critical issue to be determined on remand is whether the parties entered into an attorney-client relationship, which in turn depends on what [the agent's] intended employment duties were as understood by [the insurer]." *Miss. Valley Title Ins. Co. v. Thompson*, 802 F. 3d 1248 (11th Cir. 2015).

B. District Courts.

Foreclosures—Resale.

When a mortgage went into default, Fannie Mae assigned the mortgage and note to Wells Fargo so as to allow Wells to foreclose. Fannie Mae bid the amount of the indebtedness at foreclosure and Wells executed a foreclosure deed to it and, pursuant to an agreement between the parties, the possession of the note "reverted" to Fannie Mae. The borrower's right of redemption was never forfeited, waived, or otherwise extinguished. Within the period of redemption Fannie Mae sold the property for approximately \$122,000.00 more than the indebtedness at the time of the foreclosure. The borrower sued seeking to recover the excess over the indebtedness.

The court denied the defendants' motion to dismiss relying on *Springer v. Baldwin County Savings Bank*, 562 So. 2d 138 (Ala. 1989); *Davis v. Huntsville Production Credit Association*, 481 So. 2d 1103 (Ala. 1985); and *Bartlett v. Jenkins*, 105 So. 654 (Ala. 1925), and essentially held that the borrower is entitled to the excess over the indebtedness upon a resale during the redemptive period. *Williams v. Wells Fargo*, 2015 WL 4602949 (S.D. Ala. 2015). The defendants' motion to certify the question of law to the Alabama Supreme Court was denied on October 7, 2015. *Williams v. Wells Fargo*, 2015 WL 5884870 (S.D. Ala. 2015).

Zoning—Procedural Due Process.

The procedural prong of the Due Process Clause, at a minimum, requires notice and the opportunity to be heard incident to governmental action involving a deprivation of life, liberty or property. The type of notice varies depending on the circumstances, but it must be reasonably calculated to apprise interested parties of

the pendency of the action and afford them an opportunity to present their objections. Actual notice to a property owner of an alleged adverse zoning action by a municipal legislative body is not required, particularly where the owner, its representative, and its attorney are present at the public hearing and present objections to the zoning action. *South Grande View Dev. Co., Inc., v. City of Alabaster*, 2016 WL 795797 (N.D. Ala. 2016).

III. Alabama Appellate Courts.

A. Supreme Court of Alabama.

Arbitration—Waiver.

While Ala. R. Civ. P. 8(c) lists, among other affirmative defenses that should be asserted when pleading to a preceding pleading, arbitration, the failure to do so is not in-and-of-itself a waiver of the right to demand arbitration. In *Ex parte Liberty National Life Insurance Co.*, 858 So. 2d 950, 953 (Ala. 2003), the Court noted that there are exceptions to the rule requiring pleading of affirmative defenses. “One such exception involves arbitration.” Waiver of the right to demand arbitration depends largely on participation in the action to the extent that a party has substantially invoked the litigation process and prejudice to the party opposing arbitration has occurred.

The filing of a verified statement of lien and a counterclaim seeking to enforce the lien is not such a substantial invocation of the litigation process as to amount to a waiver of the right to demand arbitration. *Hoover General Contractors-Homerwood, Inc., v. Key*, ___ So. 3d ___ (Ala. 2016) [2016 WL 687070].

Decedents Estates—Contracts to Not Revoke Will or Devise.

Section 43-8-250 plainly and unambiguously sets out three ways that a person may make a contract to not revoke a will or devise. Under that statute the contract may be made by stating material provisions of the contract in a will, express reference in a will to a contract and extrinsic evidence of the terms of the contract, or by a writing signed by the decedent evidencing the terms of the contract. Language in a will that if a simultaneously executed family trust is revoked or held

invalid the distribution plan for assets provided in the family trust shall be incorporated into the will does not set forth “material provisions” of a contract agreeing to not revoke a will or devise. *Butler v. Butler*, ___ So. 3d ___ (Ala. 2015) [2015 WL 5511244].

Decedents Estates—Time Within Which to Probate Will.

A will is not effective until it is probated, but it must be filed for probate within five years of the death of the testator. Though Ala. Code § 43-8-161 has been held to be a statute of limitations, the Court has held that the language of the statute “is intended to cut off the remedy.” *Hardy v. Hardin*, ___ So. 3d ___ (Ala. 2016) [2016 WL 280751].

Immunity—ALDOT.

Circuit court had a duty to dismiss claims for injunctive relief where plaintiffs failed to show that the Director of ALDOT acted fraudulently, in bad faith, beyond his authority, or under mistaken interpretation of law in denying a permit request because of Section 14 immunity. Moreover, the prior taking of an easement for flood control and erosion prevention that was to cease only if flood control projects are constructed as to render the easement unnecessary barred the plaintiffs’ claims. *Cooper v. Zeigler*, ___ So. 3d ___ (Ala. 2015) [2015 WL 5511322].

Jury Trial—Waiver.

A waiver of the right to trial by jury contained in an assignment of rents and leases (“ . . . hereby waives any right to trial by jury in any civil action arising out of, or based upon, this assignment”) is not operative as a waiver of a right to trial by jury in an action brought by the creditor on the promissory notes evidencing the indebtedness. *Ex parte Acosta*, ___ So. 3d ___ (Ala. 2015) [2015 WL 3537476].

Mortgages—Arbitration.

Whether a specific dispute is covered by an arbitration agreement presents a threshold question of “substantive arbitrability.” Agreement language that “Borrower and Lender agree that any question as to the scope of this Agreement shall be determined by the Arbitrator (including without limitation all issues of . . . arbitrability. . . .”) is broad enough to have the arbitrator and not a court decide substantive arbitrability issues. *Regions Bank v. Neighbors*, 168 So. 2d 1 (Ala. 2014).

Powers of Attorney—Capacity of Principal.

All persons are presumed sane until the contrary is proven. Proof of insanity at intervals or of a temporary nature create no presumption and proof of insanity at the time of the execution of an instrument is required in order to invalidate it. The standard for determining whether a person is competent to execute a power of attorney is whether that person is able to understand and comprehend his or her actions. The initial burden is on the party claiming insanity at the time of execution of the instrument. If habitual or permanent incompetence prior to execution is proven, the burden shifts to show that the instrument was executed during a lucid interval. *Troy Health and Rehabilitation Center v. McFarland*, ___ So. 3d ___ (Ala. 2015) [2015 WL 5086430].

Statute of Frauds—Development Loan.

Any agreement or commitment to lend money or delay or forebear repayment, with the exception of certain consumer loans, must be in writing to be enforceable. Accordingly, alleged promises to “carry” the interest after the initial two-year term of a loan or to loan additional funds for development are caught by the statute and must be in writing in order to be enforceable irrespective of the “survival” language in a loan agreement. *Branch Banking & Trust Co. v. Nichols*, ___ So. 3d ___ (Ala. 2015) [2015 WL 1877666].

Will Contests—Parties.

A will may be contested within six months after it has been probated by the filing of a complaint in the circuit court. Ala. Code § 43-8-199. Section 43-8-200 governs who shall be made parties to the contest:

In the event a contest of the probate of a will is instituted in the circuit court, as is or may be authorized by law, all parties interested in the probate of the will, as devisees, legatees or otherwise, as well as those interested in the testator if he had died intestate, as heirs, distributees or next of kin, shall be made parties to the contest; and if there be minors or persons of unsound mind interested in the estate or in the probate of the will, they shall be represented by their legal guardian, if such they have; if they have no such guardian, the

court shall appoint an attorney-at-law as guardian ad litem to represent their interest in the contest, and the final judgment in such contest proceedings shall be conclusive as to all matters which were litigated or could have been litigated in such contest; and no further proceedings shall ever be entertained in any courts of this state to probate or contest the probate of such will.

Necessary parties not joined at the time the contest is filed or within the six-month period to contest the will may be joined pursuant to Ala. Code § 43-8-200 after the expiration of the period. *See also, Hons v. A. Bertolla & Sons*, 537 So. 2d 465 (Ala. 1988).

B. Court of Civil Appeals of Alabama.

Boundaries—Res Judicata.

A prior adjudication of the true location of a boundary is preclusive of a subsequent action between one party to the prior action and a successor to the other party in that action. The party identity criterion does not require complete identity but only that the party against whom res judicata is asserted was either a party or in privity with a party to the prior action. Successors in title are in privity with their predecessors. *Bullock v. Howton*, 168 So. 3d 1270 (Ala. Civ. App. 2015).

Condominiums—Damages and Attorney’s Fees.

Section 35-8A-414, of the Alabama Uniform Condominium Act of 1991 provides that if any person subject to the act fails to comply with it, anyone damaged by the failure to comply may recover actual damages or equitable relief. “The court, in an appropriate case, may award reasonable attorney’s fees” The trial court determined that an assessment lien had been improperly foreclosed because of the failure to give the owner of two units the reasonable advance notice required by Ala. Code § 35-8A-316(a). Title to the units was restored to the owner but his claims for damages and attorney’s fees were denied by the trial court.

The Court partially reversed on appeal. As to the damage claims, the Court held that the owner’s efforts in obtaining quit claims from the purchasers of a unit for the sum of \$8,000.00 was an item of damage to which he was entitled as well as

rents paid by a tenant to a purchaser of another unit. The portion of the judgment denying the claim for attorney's fees was denied on the basis that the statutory language "in an appropriate case" implicates the exercise of discretion by the trial court which was not improper under the facts of the case. *Ross v. West Wind Condominium Ass'n, Inc.*, ___ So 3d ___ (Ala. Civ. App. 2016) [2016 WL 482410].

Condominiums—Limited Common Elements.

Storage unit and parking space which had been designated as limited common elements and assigned to a particular unit in a multi-level condominium cannot be conveyed by quitclaim but can only be "reallocated" by an amendment to the declaration executed by the unit owners affected. *Dorsett v. Singla*, ___ So. 3d ___ (Ala. Civ. App. 2015) [2015 WL 5918751].

Contracts—Damages.

The doctrine of caveat emptor applies to sales of used residential real estate in Alabama, but it must be raised as a defense at the trial court level. The record in the case did not reflect that the issue of caveat emptor was tried by express or implied consent. *Shankles v. Moore*, ___ So. 3d ___ (Ala. Civ. App. 2016) [2016 WL 661098].

Easements—Abandonment.

Easements may be extinguished by abandonment. Abandonment requires proof of nonuse of the easement and a decisive act or omission indicating an intent to abandon the easement. *Satterwhite v. Rodney Byrd Millennium Properties, Inc.*, 180 So. 3d 890 (Ala. Civ. App. 2015).

Easements—Necessary Parties.

If an easement by necessity or by implication is claimed, ordinarily all affected property owners must be made parties to the action, otherwise the judgment will be void. Accordingly, where the easement is claimed over a corner which is merely a mathematical point, the owners of the opposite corners must be made parties to the action. *King v. King*, ___ So. 3d ___ (Ala. Civ. App. 2015) [2015 WL 5086396].

Ejectment—Evidence of Rental Value.

An ejectment action is a mixed action for the recovery of land and for damages for use and occupation of the land. A stipulation that the defendants are no longer in possession of the land supports the dismissal of a claim for recovery of the property but does not support a dismissal of a claim for damages for use and occupation.

A person need not be an expert to testify as to the fair rental value of property: “Direct testimony as to the market value is in the nature of opinion evidence; one need not be an expert or dealer in the article, but may testify as to value if he has had an opportunity for forming a correct opinion.” Ala. Code § 12-21-224. However, as the plaintiff never raised the argument in the trial court that non-expert opinion evidence is admissible, the Court, on appellate review, “consider[ed] only whether May [a corporate representative] or Dunaway [a realtor] should have been permitted to testify as an expert witness.” Relying solely on Ala. R. Evid. 702, the Court held that the realtor was qualified as an expert witness to render an opinion of the fair rental value of the property and should have been allowed to testify. *Re-nasant Bank v. Clark*, ___ So. 3d ___ (Ala. Civ. App. 2016) [2016 WL 100233].

Ejectment—Standing; Damages.

When a party, such as a conservator or guardian, brings an action on behalf of another, the issue is one of capacity and not standing. Lack of capacity is an affirmative defense that must be affirmatively pled else it is waived. Moreover, a general assertion of lack of capacity in an answer does not equate to an assertion of the affirmative defense of lack of capacity.

The affidavit of the guardian as to the fair rental value of the property was properly admitted by the trial court. A lay person is competent to testify as to an opinion of the value of real property if the witness has had an opportunity to form an opinion and testifies in substance that he or she has indeed formed an opinion. Though the affidavit in question did not indicate that the witness had formed an opinion based on his observation, the motion to strike filed by the defendant was insufficient because it was based on the claims that the affiant did not claim to be a real-estate expert, did not describe the condition of the property, and did not set out any comparable rental values. A motion to strike testimony from an affidavit

“should specify the objectionable portions of the affidavit and the grounds for each objection.” *Barber v. Barber*, ___ So. 2d ___ (Ala. Civ. App. 2015) [2015 WL 3821884].

Evidence—Proof of Writing.

The trial court was held to have committed a reversible error in excluding a copy of a promissory note where there was a general objection of failure to offer the original note without a showing of a genuine question as to the authenticity of the original or unfairness under Ala. R. Evid. 1003. *Pepin Manufacturing, Inc. v. ESwallow USA, LLC*, ___ So. 3d ___ (Ala. Civ. App. 2015) [2015 WL 5773832].

Landlord and Tenant—Finality.

In order for a judgment in an action by a landlord against a tenant to be final, the trial court must dispose of any claims for rent as well as possession; an unadjudicated claim for rent makes any judgment awarding possession non-final. *Robbins v. Coldwater Holdings, LLC*, ___ So. 3d ___ (Ala. Civ. App. 2015) [2015 WL 2161158].

Leases—Ambiguity.

Whether a lease is ambiguous is a question of law for the trial court whose decision is reviewable *de novo*. A lease is ambiguous if it is reasonably susceptible of more than one meaning. In determining whether a lease is ambiguous, the trial court may consider extrinsic evidence in order to determine if there is a latent ambiguity arising from collateral matter outside the writing. A patent ambiguity is an ambiguity apparent on the face of the instrument, arising by reason of inconsistency or uncertainty in the language employed. A latent ambiguity is one that appears only when reference is had to extrinsic or collateral facts.

On the facts of the case, the Court held that the lease was not ambiguous and, therefore, not subject to reformation. *Brown v. Butts*, ___ So. 3d ___ (Ala. Civ. App. 2016) [2016 WL 661173].

Licenses—Revocability.

A license is authority for a licensee to do some act or a series of acts on the land of another for the benefit of the licensee, without passing any estate in the land. A license is ordinarily a mere personal right which may be revoked by the licensor at will. *Camp v. Milam*, 291 Ala. 12, 277 So. 2d 95 (1973) recognized a significant exception to the general rule that a license becomes irrevocable when the license is

coupled with an interest by the licensee making expenditures contemplated by the licensor and for his benefit when the license was given. In instances such as this, the license is said to have been executed and, for reasons akin to principles of estoppel, confers in the licensee a substantive right in the property of the licensor. Payments made pursuant to the contractual provisions of a license for services provided the licensee will not alone give rise to a license coupled with an interest.

But if a license constitutes a contract, the rights and obligations under the license are dictated by the terms of the contract. Where the license agreement recites that it is expressly made binding on the licensor's successors and assigns, the licensee (but not the licensor) was given the right to periodically terminate the license, and the licensee contributed to certain operational expenses, the license becomes irrevocable and is enforceable against successors of the original licensor. *Riverbend Association, Inc., v. Riverbend, LLC*, ___ So. 3d ___ (Ala. Civ. App. 2015) [2015 WL 4506659] *cert. petition pending*, No. 1141191.

Life Estates – Conditions – Forfeiture.

Where antenuptial agreement provided that the wife “will have a life estate to live at [residence]. She shall use the rental property proceeds to maintain the [residence] a conveyance of the life estate in the residence did not operate as a forfeiture. The language “to live” did not require, as a condition on the life estate, continued occupancy by the life tenant. *Thrasher v. Thrasher*, 169 So. 3d 1043 (Ala. Civ. App. 2014).

Lis Pendens – Slander of Title.

An action was filed alleging trespass and unlawful removal of timber. At the time the original action was filed, lis pendens notices were filed in two counties on “any and all” real property owned by the defendants in that action. Various amendments to the pleadings were filed, one of which was a counterclaim for slander of title and other causes of action. The lawyer for the original plaintiffs was added as a defendant. The counterclaim was dismissed as to all counter-defendants except the lawyer and was severed for separate trial. The lawyer later filed a third party claim against the original plaintiffs (clients) in the severed action claiming common law indemnification. Eventually the trial court denied a motion by the lawyer to add the original plaintiffs as third parties. After a nonjury trial in the severed action,

the trial court awarded \$15,000.00 in compensatory damages and punitive damages of \$22,500.00 for the lawyer's "wanton and intentional conduct."

The Court of Civil Appeals affirmed. A notice of lis pendens, while only giving notice of the pendency of litigation, renders title to property unmarketable. The evidence was clear that the property ("any and all") was not the subject of any action and the original plaintiffs did not claim an interest in it, Ala. Code § 35-4-131, but that the lis pendens notices were filed in an attempt to enforce any possible future judgment that might have been rendered in the original action. *Chamblee v. Duncan*, ___ So. 3d ___ (Ala. Civ. App. 2015) [2015 WL 3935410].

Materialman's Lien—Timeliness.

Corrective work pursuant to a warranty does not extend the time within which a verified statement is required to be filed under Ala. Code § 35-11-215; for an original contractor, the verified statement should have been filed within six months of completion of the original work under the contract, and any action to perfect the lien must be brought within six months of when the indebtedness is due, ordinarily on the date the last work is performed. *Massey Asphalt Paving, Inc., v. Lee Land Dev., Inc.*, ___ So. 3d ___ (Ala. Civ. App. 2016) [2016 WL _____].

Mortgages—Execution.

A mortgage is a conveyance or alienation of land and is void under Ala. Code § 35-4-20 if not executed and witnessed. The acknowledgment of the execution of the instrument pursuant to Ala. Code § 35-4-24 dispenses with the requirement of witnesses, but the party executing the instrument must appear before the notary public. Accordingly, where the Plaintiff alleged in her pleading that she had never appeared before the notary public, it was improper to grant a motion in favor of the defendant on its Ala. R. Civ. P. 12(c) motion. *Lowery v. Wells Fargo Home Mortg.*, 177 So. 3d 1183 (Ala. Civ. App. 2015).

Partition—Purchase by a Party.

Section 35-6-100 permits the purchase of property involved in an action to sell for division of the proceeds provided a party, at least ten days prior to hearing, makes an offer to purchase and the party makes a timely deposit of the purchase price as provided by statute. *Barrow v. Myhand*, ___ So. 3d ___ (Ala. Civ. App. 2016) [2016 WL 661123].

Reformation—Trespass.

In an action to reform a mortgage so as to include improved property rather than an unimproved lot, the Court of Civil Appeals held that reformation dates back to the date of the original mortgage transaction and that, pursuant to the loan documents, the mortgagee had a right to enter the premises and secure the residence. Any civil claim for “breaking and entering” is essentially a trespass action. *Tennant v. Chase Home Finance, LLC*, ___ So. 3d ___ (Ala. Civ. App. 2015) [2015 WL 4506525].

Residential Home Building—Subcontractors; Licensing.

Subcontractors who had no agreement with purchasers of residence owed no duty to purchasers; in the absence of a legal duty, there can be no negligence claim.

Section 34-14A-5 of the Code of Alabama requires that all residential home builders be licensed. A residential home builder is one who constructs a residence for sale. An exemption exists in the statute, Ala. Code § 34-14A-6(5), for owners of property acting as their own contractors and providing all material supervision themselves “. . . for the occupancy or use of such owners and not offered for sale.” Where an owner begins construction of a residence for his or her own use, but decides to put the house on the market for sale, he or she is required to be licensed “at least from the point in time when he was no longer constructing the residence for himself.” *Barrett v. Roman*, 181 So. 3d 364 (Ala. Civ. App. 2015).

IV. 2015 Regular Legislative Session.

Compliance certificates—Department of Revenue.

The authority of the Department of Revenue to issue certificates of good standing is changed to authorize the issuance of a “compliance certificate” with a payment of a fee of \$10.00 for each certificate. Ala. Acts 2015-382.

Divorce—Revocation of Transfers and Appointments.

Unless provided to the contrary in an agreement or a court order, a divorce or annulment revokes any revocable:

a. disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

b. provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

c. nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian.

The divorce or annulment of a marriage between joint tenants also severs the joint tenancy so as to make them tenants in common. To the extent of a revocation or severance caused solely by operation of the act, they are revived upon the remarriage of the former spouses or "nullification of the divorce or annulment." Ala. Acts 2015-312.

Eminent Domain—Mortgages.

Sections 11-47-170, 11-80-1, and 18-1B-2 are amended to prevent the use of eminent domain "for the primary purpose of acquiring a mortgage or deed of trust." Ala. Acts 2015-39.

Exemptions—Increased Amounts.

The monetary limit of the homestead exemption allowed under Ala. Code § 6-10-2 is increased to \$15,000.00. The monetary limit of the personalty exemption allowed under Ala. Code § 6-10-6 is increased to \$7500.00. The post-mortem homestead allowance limit under Ala. Code § 43-8-110 is increased to \$15,000.00 and the personalty allowance limit under Ala. Code § 43-8-111 is increased to \$7500.00. The family allowance under Ala. Code § 43-8-113 is increased to \$15,000.00. These amounts are to be adjusted by the State Treasurer on July 1, 2017, and at the end of each three-year period thereafter in accordance with the consumer price index. Ala. Acts 2015-484.

Homeowners' Associations—Alabama Homeowners' Association Act.

All homeowners' associations, except for condominiums and the like, are governed by the Act if recorded after January 1, 2016. Associations created prior to that time may "opt in." All associations subject to the Act must be organized as a nonprofit corporation with certain required and optional provisions. The Association must be created prior to the conveyance of a lot by the declarant.

In organizing the Association, all of the normal and usual filings necessary to create a nonprofit corporation are required. Additionally, certain documents, such as the certificate of formation, bylaws, original covenants or other governing documents must be filed with the Secretary of State. The Secretary of State is to provide for a method of electronic filing. Filings with the Secretary of State do not have the notice effect of filing under the recording statutes.

The documents may provide for a period of declarant control and may provide for a right of the declarant to "reasonably alter, amend or modify the declaration."

Turnover must occur within 120 days of the date when the members have the right to elect the members of the Board of Directors. Section 10 of the Act articulates the documents that the declarant is to turn over.

The declaration or governing documents may provide for the imposition and enforcement of liens for unpaid dues, but if not, Section 12 provides a statutory fallback.

Section 14 of the Acts makes mandatory the keeping and maintenance of various records and requires that these records be made available upon the payment of reasonable costs. The records may be made available in paper or electronic form "or direct the member or potential purchaser to the location of any public record containing the records or information." The records that are required to be disclosed are:

- Most recent and "any pending . . . assessments . . . not yet in effect."
- Common areas.
- Operating budget and any statement of financial condition.
- Evidence of insurance and any fidelity bonds.

- “Loans against the association.”
- Name of the HOA and contact information for officers.
- Declaration and all covenants and amendments.
- Any initiation or transfer fees.
- List of common areas.
- Identifying information as to any lawsuits, etc.

Upon termination of the declaration, the Board of Directors is required to dissolve the Association. Ala. Acts 2015-292.

Probate Courts—Equity Jurisdiction.

Extends equity jurisdiction to Houston County probate judge “if the judge of probate is licensed to practice law in the State of Alabama.” Ala. Acts 2015-46 CA.

Residential Garbage Service—Tenant Responsibility.

If approved, the Alabama Constitution of 1901 will be amended to specify that a tenant or tenants who receives residential garbage service in Jefferson County from the county, a municipality, or a local governmental entity shall be solely responsible for the garbage bill. Ala. Acts 2015-339 CA.

Statutory Redemption—Period shortened.

If a homestead exemption is claimed on residential property in the tax year when the property is sold at a judicial sale, the period is reduced to 180 days. Notice to the mortgagor stating that the right of exemption exists, assistance programs may be available, and that an attorney should be consulted is required to be given by the foreclosing mortgagee shall be given by certified mail at least 30 days prior to the foreclosure date. The period for redemption does not begin to run until the notice is given, but a defect in the notice or the failure to give the notice does not affect the validity of the foreclosure sale. Any action based on the failure to give notice must be brought within two years. The period allowed insane persons under Ala. Code § 8-1-172 is reduced to 180 days, but there is no notice required in the amendment to this statute. Ala. Acts 2015-79.

Subdivisions—Minor Subdivisions.

Minor subdivisions of no more than six lots not requiring any public improvements, dedications of a public way, or the expenditure of public funds, and in accordance with a master plan, the zoning ordinance and map, may be approved administratively without a public hearing provided the municipal planning adopts regulations to that effect. The act does not apply to subdivision approvals by counties. Ala. Acts 2015-460.