

**Mississippi Valley Title Insurance
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Current Legislative and Court Decisions

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I. Legislation.

A. 2013 Legislative Session.

Ad Valorem Exemptions. Act 2013-295 (HB 19) restores various exemptions on homesteads and principal residences to the form as they existed prior to the passage of Act 2012-313 and prohibits (providing penalties for) falsely claimed homestead exemptions.

Ad Valorem Tax Sales. Act 2013-370 (HB 47) requires that any excess bid at a tax sale be paid over to the person redeeming the property and provides for the holding of excess bids in an escrow account for three years before being paid into the general fund of the county.

Alabama Land Bank Authority. Act 2013-249 makes numerous changes to the Alabama Land Bank Authority Act.

Ancillary Service Contracts. Act 2013-117 (SB 153) authorizes municipalities that provide utility services to enter into agreements with providers of ancillary service contracts registered under Chapter 32 of Title 8 to make available ancillary service contracts to residential utility customers, "with the endorsement of the city or town if deemed appropriate."

Contractor Liability. Act 2013-401 (HB 335) limits liability of professional firms and employees providing construction monitoring services on behalf of various governmental agencies and subdivisions relating to construction, repair,

replacement, and other work on any public or private infrastructure if the construction monitoring services substantially comply with the requirements of the awarding authority; however, the limitation does not apply to the preparation of engineering design and other services.

Gulf State Park. Act 2013-222 (SB 231) repeals Chapters 14B and 14D of Title 9 of the Code of Alabama and prohibits the sale of approximately 29 acres of the Park as described in the Act, but allows for long-term leasing and management of the 29 acre project site.

Historic Preservation Tax Credits. Act 2013-241 (HB 140) provides for a tax credit against the liability of a taxpayer for the rehabilitation, preservation, and development of certified historic structures. Applications and rehabilitation plans must be submitted to the Alabama Historical Commission for approval. If approved, the commission notifies the applicant of the reservation for the benefit of the owner of the reservation of tax credits. Rehabilitation must then commence within 18 months of the notice. Upon completion the owner must notify the commission and provide a certification of the expenditures and the total amount of tax credits for which the owner is eligible. The commission then issues a tax credit certificate which is to be filed with the owner's state income tax return.

Improvement Districts. Act 2013-373 (HB 323) makes various changes in the Alabama Improvement District Act, ALA. CODE § 11-99A-1, *et seq.*, including the composition and replacement of members of the board of directors, making and enforcement of assessments, and validation of prior improvement districts.

Municipal Boundaries.

Baldwin County. Act 2013-230 (SB 357), Act 2013-231 (SB 358), Act 2013-232 (SB 359), Foley; Act 2013-235 (SB 395) Fairhope.

Calhoun County. Act 2013-314 (SB 338) Weaver.

DeKalb County. Act 2013-296 (HB 235) Fort Payne.

Lauderdale County. Act 203-244 (SB 434) Florence.

Macon County. Act 2013-406 (HB 622) Tuskegee (however, the annexation does not extend the police jurisdiction, planning jurisdiction, or applicability of building codes or other ordinances beyond city limits).

Randolph County. Act 20131-392 (HB 569) Woodland.

Shelby County. Act 2013-225 (SB 249) Alabaster.

St. Clair County. Act 2013-433 (HB 650) Springville.

Tuscaloosa County. Act 2013-298 (HB 341) Tuscaloosa and Northport common boundary rearranged.

Probate Judges. Act 2013-260 (HB 205) (Constitutional Amendment) requires that the probate judge of Shelby County shall be an attorney licensed in this state.

Public Waters. Act 2013-348 (HB 204) imposes criminal penalties if a person anchors, moors, or abandons a floating pier, barge, or vessel that obstructs navigation on public waters which are not used primarily for agricultural, industrial, power generation, public water supply, and sanitation purposes.

Readoption of Code of Alabama. Act 2013-210 (HB 234) readopts the Code of Alabama and incorporates all laws of a general or permanent nature through the 2012 Regular and Special sessions, as well as various other local laws.

Recording Fees. Act 2013-408 (HB 408) authorizes an increase in the recording and indexing fees in Fayette County. Acts 2013-359 (HB 480) authorizes a special recording fee for Shelby County. Acts 2013-365 (HB 510) authorized a similar increase in recording fees in Russell County and directs a deposit of the fees to be made in a bank or financial institution doing business in that county and kept and maintained for the purpose of modernizing the records kept in the probate office.

Tax Increment Districts. Act 2013-424 (HB 455) amends Chapter 99 of Title 11 to allow governing bodies of counties to designate large tracts of land as major 21st Century Manufacturing Zones. Acts 2013-51 (SB 96) gives similar authority to counties.

Wind Turbines. Act 2013-440 (HB 676) authorizes the Baldwin County Commission to regulate the permitting, construction, placement, and operation of wind turbines, wind mills, and wind farms in the unincorporated areas of Baldwin County.

B. 2014 Legislative Session.

Expedited Quiet Title Actions. Act 2014-108 (HB 200) (approved March 3, 2014) tweaks some of the provisions of the Expedited Quiet Title and Foreclosure Act applicable to Class 2 municipalities.

Government Acquisitions. Act 2014-133 (SB 173) would require the disclosure of certain information within 60 days after the purchase of real property with any public funds, except if the purchase is made in connection with a specific economic development project, in which case, the disclosure must be made within 60 days of the announcement of the project.

Immunity. Act 2014-124 (HB 64) provides statutory sovereign immunity to any officer, or employee of the state, including an employee of the State Board of Education' employees of local boards of education, and other named educational institutions with certain exceptions.

Limited Liability Companies. The law relating to limited liability companies is substantially rewritten by the Alabama Limited Liability Company Law of 2014, Act 2014-144 (HB 2) (approved March 11, 2014).

Manufactured Dwellings. Act 2014-167 (SB 177) (approved March 13, 2014) makes significant modifications to Chapter 12A of Title 35 and substantially increases remedies of the owner of a manufactured dwelling community in the event of non-payment of rent or abandonment by an owner of a manufactured dwelling.

Municipal Boundaries.

Baldwin County. Act 2014-409 (Foley); Act 2014-410 (Spanish Fort); Act 2014-129, 2014-130 (Summerdale).

Calhoun County. Act 2014-182 (Weaver).

Lauderdale County. 2014-212 (Rogersville); Act 2014-266 (St. Florian).

St. Clair. Act 2014-128 (Trussville).

Shelby County. Act 2014-291 (Alabaster).

Talladega County. Act 2014-249 (Lincoln).

Navigable and Territorial Waters. Act 2014-243 (HB 403) amends ALA. CODE § 41-1-1 to declare the limits and boundaries of the territorial waters and submerged lands to be all territory included in the Act creating the State of Alabama and all territory later ceded by the United States extending seaward three Marine Leagues.

Partition. The Alabama Uniform Partition of Heirs Property Act is adopted by Ala. Acts 2014-299. The Act provides an elaborate scheme for partition or sale of "heirs property."

Subdivision Regulation. Ala. Acts 2014-332 (HB 46) eliminates the *Kilgore* rule prohibiting contracting for the sale of a lot or lots in a subdivision prior to the recordation of a map or plat of the subdivision and purports to cover both municipal and county regulations.

Taxation. Act 2014-15 (SB 207) (approved February 18, 2014) Business license tax on residential real estate on a per unit basis prohibited unless municipality was imposing tax prior to January 1, 2014.

Tax Sale Excess Bids. Ala. Acts 2014-442 (HB 349). This bill amends ALA. CODE § 40-10-28 to provide for the disposition of any excess bid in the event the owner negotiates redemption with the purchaser at the tax sale.

Zoning and Planning. Act 2014-13 (SB 80) adds a new Chapter 106 to Title 11 to require notice to the commanding officer of any military installation of any "local impact issue." A "local impact issue" is any adoption or amendment of a proposed zoning plan, comprehensive master plan, or land regulations that may or will significantly affect any area or airspace that is within two miles of the installation. The bill also amends ALA. CODE § 11-52-8 to require that military installations be included within any master plan.

II. United States Supreme Court Decisions.

Railroads. A right of way granted pursuant to the General Railroad Right-of-Way Act of 1875, unlike the pre-1871 Acts, is a mere easement and is analyzed under general common law principles, including the extinguishment of the easement upon abandonment. *Marvin M. Brandt Rev' Trust v. United States*, 572 U.S. ___ (2014) (No. 12-1173; March 10, 2014).

Takings; Monetary Exactions. The owner of a parcel of land designated as wetlands sought a permit to build on a portion of that parcel. To mitigate the environmental impact of his building proposal, which included filling a portion of the land and constructing a storm water retention pond, the land owner offered to grant the District a conservation easement on approximately $\frac{3}{4}$ of the property. The District rejected the landowner's proposal and informed him that it would approve the permit only if he either (1) reduced the size of the development and granted a larger easement, or (2) paid for improvements to District-owned wetlands in another area. In reversing the Florida Supreme Court, the Court reaffirmed previous holdings, specifically *Nollan* and *Dolan*, that a government's exaction must be roughly proportional to the permit's impact on the land and that there must be a nexus between the exaction and the impact. Moreover, these requirements apply whether the government is approving or denying the permit. Additionally, the Court held that the nexus and proportionality requirements apply whether the exaction takes the form of a demand for real property or for money. *Koontz v. St. John's River Water Mgmt. Dist.*, 570 U.S. ____ (2013) (June 25, 2013).

Takings; Ripeness. The Agricultural Marketing Agreement Act of 1937, enacted for the purpose of stabilizing prices for agricultural commodities, regulates "handlers" and not "producers." Raisin growers refused to surrender a portion of their raisins to an annual reserve pool and the USDA commenced an administrative proceeding against the growers. As a defense to the administrative action, the growers claimed that they were not handlers but producers and that the requirement that they surrender a portion of their crop constituted a taking without just compensation. An Administrative Law Judge, a District Court, and the Ninth Circuit Court of Appeals all affirmed. On the growers' petition for certiorari the Court held that jurisdiction in the Court of Federal Claims under the Tucker Act gives way to the AMAA's comprehensive remedial scheme, that the growers' taking defense was ripe because of a final agency order imposing fines and penalties, and since there is no jurisdiction under the Tucker Act there is no alternative remedy thus rejecting the USDA's position that the takings defense was barred by *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). *Horne v. Department of Agriculture*, 569 U.S. ____ (2013) (June 10, 2013).

III. United States Court of Appeals for the Eleventh Circuit Decisions.

Implied Restrictive Covenants. Bankruptcy Court's judgment, after certification to Alabama Supreme Court, that implied restrictive covenant existed so as to prevent diversion of the use of property from golf course affirmed on the facts of the case. *In re Heatherwood Holdings, LLC*, ___ F. 3d ___ (11th Cir. 2014) (March 27, 2014).

IV. Alabama Supreme Court Decisions.

Ad Valorem Taxation; Jurisdiction. Ordinarily an appeal cannot be prosecuted from a consent judgment as a party to such a judgment is conclusively presumed to have waived all errors, except those going to the jurisdiction of the court rendering the judgment. Where an assessment is appealed to the circuit court, the appeal may be amended to include subsequent tax years without filing a notice of appeal for each subsequent year. Thus, the circuit court had jurisdiction to render a consent judgment on three years of valuations, two of which were brought in by amendment of the original appeal. *Board of Equalization and Adjustment of Shelby County v. Shelby 39, LLC*, ___ So. 3d ___ (Ala. 2013) (August 30, 2013).

Ad Valorem Taxation; Standing. A claim against a county for interest on an overbid at a tax sale goes to the merits of the claim and whether relief could be granted under Alabama law and not to a lack of standing of the plaintiff to maintain the action which would deprive the trial court of jurisdiction to maintain the action. *Whitty v. Montgomery County*, ___ So. 3d ___ (Ala. 2013) (September 20, 2013).

Arbitration; Entry of Judgment. The Alabama Supreme Court dismissed an appeal and vacated the trial court's order denying a motion to vacate or modify an arbitration award. The trial court failed to comply with Ala. R. Civ. P. 71B(f), because it never entered the arbitration award as the judgment of the court. Thus, the trial court's ruling on the motion to vacate an arbitration award was void as there was no final judgment to appeal. *Guardian Builders, LLC v. Useton*, 130 So. 3d 179 (Ala. 2013). See also *Raymond James Financial Services, Inc. v. Honea*, ___ So. 3d ___ (Ala. 2013) (September 20, 2013).

Constitutional law; Amendments. The Alabama Constitution provides for two methods of Amendment; Section 284 provides for general amendments of statewide significance and Section 284.01 relates to constitutional amendments affecting only one county. If a proposed amendment affects only one county, the amendment process contained in Section 284.01 is mandatory and the procedure set out in that section must be followed for an amendment to be valid. *Water Works and Sewer Board of the City of Pritchard v. Board of Water and Sewer Commissioners of the City of Mobile*, ___ So. 3d ___ (Ala. 2013) (September 13, 2013).

Constructive Trusts; Jurisdiction. Though a probate court has jurisdiction to try a will contest, where a will contest is begun in the probate court and claims are asserted in a probate court lacking equity jurisdiction for a constructive trust and to set aside deeds, the probate court has no jurisdiction over the latter claims and a transfer of the entire matter does not vest jurisdiction in the circuit court as the transferring court lacked jurisdiction. *Hughes v. Branton*, ___ So. 3d ___ (Ala. 2013) (September 20, 2013).

Decedent's Estates. Compensation of the personal representatives of an estate in an amount of \$1,964,367.82 which was less than the statutory maximum set out in ALA. CODE § 43-2-848(a) (two and one-half percent of receipts and two and one-half of disbursements) held not an abuse of discretion, but where a personal representative compensates himself without express authorization in the will or prior order of a court, ALA. CODE § 43-2-844(7), the personal representative is liable for interest on the compensation from the date it is made until the date when approval is obtained.

A personal representative seeking an award of attorney's fees pursuant to ALA. CODE § 43-2-849 bears the burden of proof and must present evidence of entitlement and reasonableness of an award. *Wehle v. Bradley*, ___ So. 3d ___ (Ala. 2014) (March 14, 2014).

Developer Agreements; Bid Laws. In an action by the Attorney General against a developer who had entered into an agreement with a municipality regarding water service and associated infrastructure, the Alabama Supreme Court interpreted ALA. CODE § 39-2-2 in accordance with its plain meaning that there be clear and convincing evidence that a party have knowledge of a violation of the statute before payments can be recovered under ALA. CODE § 39-5-3. *Lake Cyrus Development Co. v Attorney General*, ___ So. 3d ___ (Ala. 2014) (January 10, 2014).

Ejectment; Standing. On September 13, 2013, the Alabama Supreme Court released three noteworthy opinions dealing with standing of a purchaser at a mortgage foreclosure sale to bring an ejectment action against the mortgagor who remains in possession.

Ex parte BAC Home Loans Servicing, LP, ___ So. 3d ___ (Ala. 2013) (September 13, 2013), was the first, and the most important, of the three opinions. In that decision, the Court acknowledged that in one of the cases, *Sturdivant v. BAC*, the Court of Civil Appeals had followed the Supreme Court's holding in *Cadle Co. v. Shabani*, 950 So. 2d 277 (Ala. 2006) (holding that if a plaintiff fails to prove legal title or a right to possession at the commencement of the action, there is a lack of standing and that a lack of standing goes to subject matter jurisdiction of the trial court), in reversing a summary judgment in favor of a purchaser at a foreclosure sale. In the other consolidated case, the borrower relied on *Sturdivant* as authority for its requested reversal of the trial court's summary judgment in favor of purchasers at a foreclosure sale. Acknowledging confusion in the decisions relating to standing, the Court held that the concept of standing "appears to have no necessary role to play in private-law actions, which, unlike public-law cases [] come with established elements that define an adversarial relationship and "controversy" sufficient to justify judicial intervention." "At a very fundamental level, the concept of standing is already embodied in the various elements prescribed, including the common requirement of proof of a sufficient existing or threatened injury." Thus, if a purchaser at a foreclosure sale cannot prove legal title or a right to possession, that is not a standing problem, but a "cause of action" problem that a trial court has jurisdiction to hear. "To the extent *Cadle* holds otherwise, i.e., that a plaintiff in an ejectment action lacks "standing" if it cannot prove one of the elements of its claim (namely, legal title or the right to possession of the property) and the trial court in turn lacks subject-matter jurisdiction over that claim—it and other cases so holding are hereby overruled."

In *Ex parte GMAC Mortgage, LLC*, ___ So. 3d ___ (Ala. 2013) (September 13, 2013), the Court granted a petition for a writ of certiorari to review the decision of the Court of Civil Appeals in *Patterson v. GMAC Mortgage, LLC*, ___ So. 3d ___ (Ala. Civ. App. 2012), which held that a foreclosing mortgagee must have standing to foreclose when it initiates foreclosure proceedings in order for a foreclosure to be valid. The Supreme Court held that the validity of a foreclosure does not depend on whether a foreclosing mortgagee held the mortgage and power of sale at the time of the initiation of the foreclosure process, but whether the foreclosing mortgagee holds that power at the time the power of sale is exer-

cised or executed. The power of sale is ultimately exercised by the signing and delivery of a foreclosure deed to the purchaser at the sale.

Harris v. Deutsche Bank National Trust Company, ___ So. 3d ___ (Ala. 2013) (September 13, 2013), followed the decisions in *Ex parte BAC Home Loans Servicing, LP*, ___ So. 3d ___ (Ala. 2013), and *Ex parte GMAC Mortgage, LLC*, ___ So. 3d ___ (Ala. 2013). However, because it was conceded that summary judgment was not appropriate because of controverted issues of fact as to whether the assignee of the party conducting the foreclosure was entitled to the money secured by the mortgage, the case was reversed.

See also *Ex parte Rhodes*, ___ So. 3d ___ (Ala. 2013) (November 22, 2013), (petition for writ of mandamus based on lack of standing denied).

Highways; Accepted – Work Doctrine. ALDOT controls the public roads of the State and a road construction company can perform work on a public road only with ALDOT's permission. Accordingly, the "accepted-work doctrine" is adopted by the court as applicable in Alabama. Under this doctrine an independent contractor is not liable to a third party after the contractor has completed the work, turned it over to ALDOT, and ALDOT has accepted the work, even if the injury results from negligence or failure to perform the contract with ALDOT. As there is no duty owed to the plaintiffs, there can be no liability in negligence. *Hosea O. Weaver and Sons, Inc. v. Balch*, ___ So. 3d ___ (Ala. 2013) (June 28, 2013) (On Application for Rehearing, September 20, 2013).

Immunity. A petition for writ of mandamus was granted ordering the trial court to dismiss ALDOT from a case where the plaintiff asserted trespass and inverse condemnation claims. Claims against the director of ALDOT in his official capacity for inverse condemnation and injunctive relief were allowed to proceed as exceptions to Section 14 immunity. *Ex parte Alabama Dep't of Transportation*, ___ So. 3d ___ (Ala. 2013) (December 6, 2013).

Indemnity. An indemnity "for action taken against [the indemnitee] arising as a result of [the indemnitee's] failure to perform its duties under this Agreement" was held unenforceable where the agreement imposed an obligation to utilize best efforts to prepare documents; an agreement to make a good-faith effort to prepare the documents is not a guarantee of results. An indemnification for attorney fees does not extend to the attorney fees incurred in establishing the right of indemnity. *Nationwide Retirement Solutions, Inc. v. PEBCO, Inc.*, ___ So. 3d ___ (Ala. 2014) (March 28, 2014).

Indemnity. Generally, in the absence of a statute or contract between two parties, there is no right of contribution between joint tortfeasors for a payment made in settlement of a claim or for attorney fees for defense of the claim. If an indemnitee makes a voluntary payment in settlement of a claim against it, indemnification is not allowed. Because of the language of an agreement, the trial court's judgment was reversed for a determination of the amount of attorney fees incurred in defense of the non-tort based claims. *Parker Towing Co., Inc. v. Triangle Aggregates, Inc.*, ___ So. 3d ___ (Ala. 2013) (December 13, 2013).

Insurance; Defective Construction. In an appeal from a summary judgment determining that an entire arbitration award is covered by a commercial general liability insurance policy which provided coverage for bodily injury and property damage caused by an occurrence (which is defined in the policy as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions") the Court, on original submission, held that whether poor workmanship constitutes an occurrence depends on the nature of the damage caused by the faulty workmanship. Faulty workmanship performed in connection with a construction or repair project may lead to an occurrence if the faulty workmanship subjects personal property or other unrelated parts of the structure outside the scope of the project to damage. As the project was the construction of a new residence, any damage that resulted from poor workmanship was damage to the product itself and not covered by the policy. *Owners Insurance Co. v. Jim Carr Homebuilder, LLC*, ___ So. 3d ___ (Ala. 2013) (September 20, 2013).

Interstate Land Sales Full Disclosure Act. Two separate statutes of limitations exists under the ILSFDA, both of which are for a period of three years; however, one begins to run on the signing of the contract, 15 U.S.C. § 1711(a)(1), and the other begins to run upon discovery of the violation, 15 U.S.C. § 1711(a)(2). Though an arbitration award is not to be vacated on account of a misapplication of the law, the reliance on one particular statute of limitations while not relying on another (on which the arbitrator based his award) requires reversal of the award on the ground of the award exceeding the powers of the arbitrator. *Gower v. Turquoise Props. Gulf, Inc.*, ___ So. 3d ___ (Ala. 2013).

Inverse Condemnation; Section 235. The following summaries of two important inverse condemnation cases decided last year by the Alabama Supreme Court, *Housing Authority of the Birmingham District v. Logan Properties, Inc.*,

127 So. 3d 1169 (Ala. 2012), and *Town of Gurley v. M & N Materials, Inc.*, ___ So. 3d ___ (Ala. 2012) (December 21, 2012, *modified on rehearing* September 27, 2013), were prepared by Casey Pipes for the CLE Alabama Real Estate Seminar held in Tuscaloosa on October 18, 2013. Casey has been so kind as to allow me to reprint them here:

An operating apartment complex was going to be acquired and torn down as part of a low income housing project. Federal grants for the housing project were awarded in 2004. Plans to condemn the apartment complex were made public. Tenants at the apartment complex were advised of the impending condemnation. Tenants either left early or eventually left when their leases expired. Fewer new tenants arrived to take their place. The property declined in value and the business declined as vacancy rates soared. In 2007 the Housing Authority finally filed a direct condemnation action to acquire the property. Contemporaneously with the filing of the complaint, the Housing Authority also filed a *lis pendens* in the real property records. The direct condemnation action was dismissed on a procedural ground in 2008. The Housing Authority continued to publicly plan to condemn the property, but it never filed a new condemnation action. The apartment complex further deteriorated and there were no tenants left in the buildings. In 2010 the owner filed an inverse condemnation action alleging that the Housing Authority's actions and delays constituted a taking of its property. At this point, the property had been vacant for so long the buildings had become unlivable, but the owner could not get financing to repair, improve or maintain them, and the owner could not sell the property or get tenants to lease the apartments. Logan Properties won a judgment on a jury verdict in the amount of \$350,000 plus \$100,000 for its litigation expenses. The Housing Authority appealed. The Alabama Supreme Court reversed. The Court found that the owner's "property" was not taken, injured or destroyed since the Housing Authority never physically went on the property. Further, the Court held that even if there was some property taken, it was not caused by the "construction or enlargement" of the Housing Authority's works or improvements since the Housing Authority never built anything. The Supreme Court discussed prior case law on inverse condemnation liability in situations without a physical taking and reversed *McEachin v. City of Tuscaloosa*, 164 Ala. 263, 51 So. 153 (1909) to the extent it held that a compensable injury can occur in the absence of a physical intrusion, injury or destruction that does not involve impairment of access. The Court left open the possibility that a loss of access case can result in inverse condemnation liability. The Court held that absent a direct, physical disturbance of the property as part of the construction or enlargement of a project, there can be

no inverse condemnation liability under Alabama law. *Housing Authority of the Birmingham District v. Logan Properties, Inc.*, 127 So. 3d 1169 (Ala. 2012).

M&N Materials, Inc. acquired several hundred acres of property for use as a rock quarry in an unincorporated area of Madison County, Alabama. Neighboring property owners and a nearby municipality, the Town of Gurley, were opposed to the rock quarry. The Alabama Legislature passed a local annexation bill that authorized the Town of Gurley to annex the quarry property. Once annexed, the Town denied a business license application filed by the quarry operator and imposed "an immediate moratorium on the acceptance of applications for use permits, building permits, right-of-way permits, zoning classification, variances, special exceptions or business licenses relating to" the quarry. Later the quarry was zoned for agricultural use which prohibited rock quarrying operations, and the operator was again denied a business license. M&N sued the Town and others. The claims against the Town included an inverse condemnation claim which was initially brought under both the Fifth Amendment to the U.S. Constitution and the corresponding sections of the Alabama Constitution. When the case was removed by the defendants to federal court based on federal question jurisdiction, M&N dismissed the Fifth Amendment claim and relied only on the Alabama Constitution and state law. This allowed the case to be remanded to state court for trial. The jury returned a verdict in favor of M&N and against the Town on the inverse condemnation claim and awarded damages of \$2,750,000 plus interest. The trial court added \$1,200,169.20 in attorney's fees and litigation expenses in favor of M&N for prevailing on its inverse condemnation claim. The Town appealed. The Alabama Supreme Court reversed and held that regulatory takings were not recognized or compensable under Alabama law. "Within the plain meaning of its text, § 235 does not make compensable regulatory "takings" by an entity or person vested with the privilege of taking property for public use. As set forth in our long-standing precedent, the taking, injury, or destruction of property must be through a physical invasion or disturbance of the property, specifically "by the construction or enlargement of [a municipal or other corporations'] works, highways, or improvements," not merely through administrative or regulatory acts." *Town of Gurley v. M & N Materials, Inc.*, ___ So. 3d ___ (Ala. 2012) (December 21, 2012; modified on rehearing September 27, 2013)

Jurisdiction; Redstone Arsenal. In 1943, the State of Alabama conveyed the property where Redstone Arsenal is located to the United States. The deed provides that the United States government has exclusive jurisdiction over the land included by the deed. In 2010, two individuals died in an explosion at Red-

stone Arsenal. Their estates brought wrongful death actions against U.S. Innovations Group, Inc., in the Madison Circuit Court. The cases were subsequently consolidated. However, before consolidation, the defendants argued that the federal courts have exclusive jurisdiction over claims arising on federal enclaves and moved to dismiss the claims in both cases. The motions were denied. Defendants filed a petition for writ of mandamus which was subsequently denied. The defendants then applied for rehearing and, again, the Alabama Supreme Court denied the writ of mandamus. In doing so, the Court held that nothing inherent in exclusive federal sovereignty over a territory precludes a state court from entertaining a personal injury action concerning events occurring in a territory governed by federal law. Additionally, nothing in the deed by the State of Alabama indicated that the state intended to create exclusive federal court jurisdiction over Redstone Arsenal or to oust the state courts of subject matter jurisdiction of claims arising on that land. *Ex parte U.S. Innovations Group, Inc.*, ___ So. 3d ___ (Ala. 2013) (June 28, 2013).

Landlord and Tenant; Forum Selection. The Alabama Supreme Court issued a writ of mandamus directing the trial court to transfer a case to Tuscaloosa County and to vacate its order denying the lessor's motion to enforce a forum-selection clause in a lease. Lessee filed a declaratory judgment seeking a determination of the parties' respective rights under a lease agreement. Lessor filed a motion to transfer, citing in support a clause in the lease stating that all disputes must be brought in Tuscaloosa County. Although the lessee provided self-serving testimony by way of an affidavit that he had not been provided a copy of the original lease and that the lease admitted into evidence bearing his signature was not the lease he signed, the trial court denied the motion to transfer. The Court determined that the forum selection clause was valid because the lessee failed to prove that enforcement of the forum selection clause was affected by fraud, undue influence, or overwhelming bargaining power. The lessee also failed to prove enforcement of the forum selection clause would be unreasonable on the basis that the selected forum would be seriously inconvenient. Accordingly, the Court upheld the forum selection clause and issued the writ. *Ex parte Riverfront, LLC*, ___ So. 3d ___ (Ala. 2013) (May 31, 2013).

Landlord and Tenant; Jurisdiction. In an action brought by a county against a county fair association for money paid by mistake, breach of a lease, and rescission of the lease, the Alabama Supreme Court held that the claims based on the mistaken payment of money were not barred by the separation of

powers doctrine contained in Sections 42 and 43 of the Alabama Constitution, and that the claims for breach and rescission of the lease were not claims for possession that would require the bringing of an unlawful detainer action in the first instance in the district court. *Baldwin County v. Baldwin County Cattle & Fair Association, Inc.*, ___ So. 3d ___ (Ala. 2013) (September 20, 2013).

Municipal Incorporation. Section 11-41-1, *et seq.*, of the CODE OF ALABAMA permits the incorporation of a municipality on the petition of 300 inhabitants of the territory to be incorporated. A petition by 51 people actually living within the territory and 269 who have merely declared their place of residency to be within the territory pursuant to ALA. CODE § 12-13-23 is insufficient. *In re The Incorporation of Caritas Village, Alabama*, ___ So. 3d ___ (Ala. 2014) (January 10, 2014).

Quieting Title. When a plaintiff seeking to quiet title establishes peaceable possession, the burden shifts to the defendant to show a valid legal title. A valid legal title may be shown by a conveyance or adverse possession. When a legal title is proven by the defendant, the burden shifts back to the plaintiff to show a superior title. Possession begun permissively will not ripen into adverse possession by a mere lapse of time; a clear and positive disclaimer or repudiation of the true owner's title is required. *Ex parte Cottrell*, ___ So. 3d ___ (Ala. 2014) (February 28, 2014).

Recording Fees: Standing. Probate judges have standing to sue to recover recording fees of unrecorded securitized mortgage assignments though they may not have a cognizable cause of action or legal theory to do so; accordingly, two petitions for writs of mandamus to compel dismissal for lack of subject-matter jurisdiction were denied. *Ex parte MERSCORP, Inc.*, ___ So. 3d ___ (Ala. 2013) (September 20, 2013).

Title Insurance; Policy Contents; Liability. The Alabama Supreme Court affirmed the trial court's denial of a bank's motion for summary judgment and entered summary judgment in favor of a title insurer holding that the clear terms of the policy limited the insured bank to a breach of contract claim, see *Soutullo v. Commonwealth Land Title Insurance Co.*, 646 So. 2d 1352, 1355 (Ala. 1994), which precluded it from pursuing a negligence claim, and that the insurer cured the title defect shortly after suit was filed, which relieved it from any further liability to the insured bank under the policy. Accordingly, the insurer was entitled to

summary judgment as to the bank's breach of contract claims as well. The bank had argued that the policy consisted of only the schedules and not the jacket containing the insuring provisions and conditions and stipulations. Though counsel representing the bank at the closing had a complete copy of the policy in his file, the bank countered this "by arguing that these were merely mid-negotiation documents exchanged between the parties." The Court held that a prior adjudication in a bankruptcy court that the mortgage was "not invalid" meant that, at least in this case, the mortgage is valid, and, to "settle the dust," declared the title marketable. The Court further held that dismissal of insurer's counterclaims for, among other things, abuse of process and breach of contract was proper, noting that "we are aware of no case in which an insurer has sued for damages based on the insured's alleged breach of a cooperation clause." The insurer's Alabama Litigation Accountability Act claim against the bank was considered by the trial judge to be a request for attorney fees and expenses. *M & F Bank v. First American Title Ins. Co.*, ___ So. 3d ___ (Ala 2013) (August 16, 2013).

Zoning; Judicial Review; Evidence. A developer's request for rezoning from a business classification, so zoned at the request of the developer five years before, to a multi-family classification was denied and, in the developer's subsequent civil action, the trial court granted a summary judgment in his favor ordering the property rezoned. On appeal, the Alabama Supreme Court reversed holding the decision of the city council refusing to rezone the property to bear a substantial relationship to the police powers. The Court acknowledged the significant deference afforded municipalities in making zoning decisions but recognized that it had "noted that there are two applicable rules: the 'substantial relationship rule' and the 'fairly debatable rule.'" The Court held that, as the burden of proving the invalidity of a zoning ordinance is on the party challenging the ordinance, the developer challenging the ordinance had not carried the burden. As to the second step in the inquiry, the "fairly debatable" inquiry, the Court held that "courts are free to consider evidence that was not before the governmental body at the time of the decision, so long as it is relevant to the issues considered by the governmental body when making its decision." A trial court is generally not allowed to substitute its judgment for that of a legislative body in a zoning case. *City of Alabaster v. Shelby Land Partners, LLC*, ___ So. 3d ___ (Ala. 2014) (January 24, 2014).

V. Alabama Court of Civil Appeals Decisions.

Acceleration; Oral Loan Agreement. As with written loan agreements, a borrower under an oral agreement for the loan of money must expressly agree to the acceleration of the indebtedness in the event of default, and a court is not permitted to read an acceleration clause into an oral loan agreement. *Meigs v. Estate of Mobley*, ___ So. 3d ___ (Ala. Civ. App. 2013) (June 21, 2013).

Adverse Possession; Tolling. The trial court awarded ownership to the plaintiff, finding that the defendants had not adversely possessed the disputed property because they had been in possession for less than 10 years at the time that the original complaint was filed. On appeal, the defendants argued that the trial court erred because they had not claimed adverse possession until the filing of a third-party complaint, at which time the defendants had been in possession of the property for more than 10 years. In affirming, the Court of Civil Appeals held that the period of adverse possession stopped running when the original complaint was filed and not when the third-party complaint was filed. *Edgil v. Spann*, 127 So. 3d 1245 (Ala. Civ. App. 2013).

Administrative Appeals; Standing. A county personnel board that had decided appeal of adverse employment decision while acting in a quasi-judicial capacity does not have standing to participate in subsequent appeal from the board's decision by the employee. *Mobile County Personnel Board v. Mobile Area Water & Sewer Systems*, ___ So. 3d ___ (Ala. Civ. App. 2013) (July 12, 2013).

Boundaries. Boundary line fixed by trial court at location of fence destroyed by defendant held supported by evidence under *ore tenus* standard of review. *Dungan v. Early*, ___ So. 3d ___ (Ala. Civ. App. 2013) (October 11, 2013).

Churches. The Court of Civil Appeals reversed the grant of a summary judgment in favor of a national church corporation. In doing so, the Court held the trial court incorrectly applied the provisions of Ala. Code § 10A-20-2.07 and § 10-20-2.07 to the specific church organizations involved in the action. The statutes the trial court relied upon did not govern the conveyances made by trustees of this particular local church because the churches were not incorporated under Alabama law, much less article 2 of Chapter 20 of the corporations title of the Alabama Code. Additionally, genuine issues of material fact existed as to the actual ownership of the property. *King v. African Methodist Episcopal Church, Inc.*, ___ So. 3d ___ (Ala. Civ. App. 2013) (June 7, 2013).

Churches; Deed Construction. Alabama applies the "neutral principles of law" approach to church disputes: "[C]ivil courts cannot resolve disputes concerning spiritual or ecclesiastical affairs, and decisions of a hierarchical church's judicatories must be followed regarding such matters, . . . civil courts [may] resolv[e] disputes concerning civil or property rights. "Where the language describing the grantees in three deeds conveying property to a church is ambiguous, summary judgment disposition is improper. *Mountain Lakes District, North Alabama Annual Conference, United Methodist Church, Inc. v. Oak Grove Methodist Church*, 126 So. 3d 172 (Ala. Civ. App. 2013).

Condominiums; Surface Water Damage. Under the facts of the case, a condominium owners association was held to have a duty, both under the declaration and Ala. Code § 35-8A-307(a), to maintain the common elements so as to prevent surface water from damaging the unit owner's property. Because the association was not a party to the contract for the sale of the unit, it had no duty to disclose an amendment to the declaration adopted after the contract for sale had been entered into but before the closing of the sale of the unit, particularly where the conveyance to the purchasers disclosed the existence of the amendment. Moreover, under Ala. Code § 35-8A-217(b) any challenge to an amendment adopted by the association must be brought within one year of the date of recording the amendment. *Auburn's Gameday Center at Magnolia Corner Owners Ass'n, Inc. v. Murray*, ___ So. 3d ___ (Ala. Civ. App. 2013) (May 10, 2013).

Contracts; Subdivision Regulation; Breach. The sale of a parcel of property that is part of a larger parcel for condominium development does not violate the rule laid down in *Kilgore Development, Inc. v. Woodland Place, LLC*, 47 So. 3d 267 (Ala. Civ. App. 2009), because "the contract in the present case conveyed the property from [the Seller] to [the Buyer] in one parcel . . . although it is true that we have previously held that condominiums are subdivisions and are subject to relevant subdivision statutes and regulations, [the contract] does not reference a subdivision plat or map, lot, or even a specific condominium unit." Where the contract did not specify a time for performance of an option to purchase to-be-built condominium units or whether construction of the condominium was a condition precedent, issues of fact remained unresolved and disposition by summary judgment was held to be improper. *Grand Harbour Development, LLC v. Lattof*, 127 So. 3d 1230 (Ala. Civ. App. 2013).

Covenants; Assessments. The homeowners owned property within a subdivision subject to restrictive covenants and the homeowners association's (HOA) articles of incorporation (Articles). In 2010 and 2011, the homeowners filed instruments with the Probate Court indicating that they, together with a majority of other subdivision property owners, had chosen to terminate the restrictive covenants as provided for in the covenants. The homeowners then stopped paying the HOA assessments. The HOA recorded a lien in its favor on the homeowners' property and the homeowners sued, seeking a declaration that the HOA did not have the authority to levy assessments or file liens, and further sought cancellation of the existing lien. The HOA counterclaimed, seeking a declaration that the homeowners were HOA members and were subject to the assessments. On cross motions for summary judgment, the trial court granted the homeowners' motion, declaring that the HOA did not have authority to impose assessments or file liens against the property, and canceling the existing lien. The Court of Civil Appeals reversed. The appellate court found that, while the restrictive covenants had been effectively terminated, the homeowners' deed specified that the conveyance was subject to the HOA's Articles. The Articles, in turn, provided that all owners were required to pay the HOA assessments. As such, the Court of Civil Appeals held that the Articles were separate and distinct from the cancelled covenants, and that the provisions in the Articles "were intended to run with the land." *Fairfield Place Homeowners Association, Inc. v. Pipkin*, ___ So. 3d ___ (Ala. Civ. App. 2013) (July 19, 2013).

Decedent's Estates. While constructive trusts and resulting trusts both arise by operation of law, they are distinct concepts. A constructive trust is a remedy created to prevent unjust enrichment. The constructive trust is an equitable remedy and not an independent cause of action that will stand independent of some wrongdoing; there must be a viable underlying cause of action in order to impose a constructive trust. A resulting trust arises on the failure of an express trust or when a conveyance is made to one person and another pays the consideration for the conveyance. *Keeling v. Keeling*, ___ So. 3d ___ (Ala. Civ. App. 2014) (January 17, 2014). *See also Smith v. Smith* ___ So. 3d ___ (Ala. Civ. App. 2013) (December 12, 2013).

Decedent's Estates; Claims. When a party brings a claim against an estate, the personal representative may give notice in writing of a dispute as to the claim and if the claimant does not prevail on the disputed part, costs are to be taxed against the claimant. ALA. CODE § 43-2-354. Costs under this statute does

not include attorney's fees. *Keeling v. Keeling*, ___ So. 3d ___ (Ala. Civ. App. 2014) (January 17, 2014).

Dedication; Adverse Possession. A road may be made a public road in one of three ways; statutory dedication, common law dedication, or prescriptive use. In order for there to be a statutory dedication, the road must be identified on the map as to location, width, and length so that a surveyor could lay it out on the ground. The lack of an identified northern boundary of the road precluded a finding that the road was statutorily dedicated. Moreover, because there was insufficient evidence of acceptance or use, a finding of a common law dedication or prescriptive use was precluded. Though intent to claim a disputed strip is required in an adverse possession case, there is no requirement that the intent be to claim the property of someone else as that would make the rule dependent on bad faith. *Hardy v. Smith*, ___ So. 3d ___ (Ala. Civ. App. 2013) (April 12, 2013).

Deeds; Construction; Delivery. A quitclaim that recited that it "remise[d], released[d], quitclaim[ed], and convey[ed] to the lot owners [in a particular subdivision] . . . all right, title, interest, and claim in and to "a roadway and boat ramp" shown on a particular subdivision map was held to be a conveyance in fee of those interests as there was no evidence presented that a lesser interest, such as an easement, was intended. The quitclaim was held to be sufficient as against a claim of insufficient identification of the grantees because the identity of the lot owners was ascertainable. A deed must be delivered to be valid; however, when a deed is duly acknowledged and recorded, a presumption of delivery attaches. *Barter v. Burton Garland Revocable Trust*, ___ So. 3d ___ (Ala. Civ. App. 2013) (April 5, 2013).

Descriptions. Trial judge did not abuse his discretion in awarding devise an irregularly shaped parcel of property where the will devised "my dwelling house and the one acre of land on which same is situated," though a conveyance of a definite quantity with a given starting point generally means a quadrangle with equal sides. *Smith v. Smith*, 124 So. 3d 152 (Ala. Civ. App. 2013).

Ejectment. A plaintiff in an ejectment action must show that as a purchaser at a foreclosure sale it has a superior legal title to the defendant debtor. Thus, a foreclosing entity must show that it was the holder of the note at the time of foreclosure. "Holder" status is determined under the Uniform Commercial Code.

Gray v. Federal National Mortgage Ass'n, ___ So. 3d ___ (Ala Civ. App. 2014) (No. 2120087; January 10, 2014).

Ejectment; Jurisdiction; "Show me the Note." The Court of Civil Appeals, when jurisdiction was questioned, transferred an appeal to the Supreme Court and it was transferred back to the Court of Civil Appeals. An objection to a request for production, to the extent documents are not in the custody, possession, or control of a foreclosing mortgagee or could be obtained from another source, is not a statement that the mortgagee does not possess the requested documents. Moreover, a foreclosing mortgagee need not produce a "wet-ink" promissory note in support of a motion for summary judgment but may produce a copy under Ala. R. Evid. 1003. *Ballentine v. Alabama Farm Credit*, ___ So. 3d ___ (Ala. Civ. App. 2013) (May 17, 2013).

Intestate Succession; Illegitimates. If the law applicable to inheritance by intestate succession at the time of death of a decedent, 1975 in the present case, is subsequently held unconstitutional, courts apply the constitutional law governing at the time of the present action. The relationship of parent and child for intestate succession purposes is determined by ALA. CODE § 43-8-48(2)(b) providing "[i]f, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person[,]". "A child born out of wedlock is the child of the father [i]f paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof . . ." and not under the Alabama Uniform Parentage Act, ALA. CODE § 26-17-101, *et seq. Clemons v. Howard*, 124 So. 3d 738 (Ala. Civ. App. 2013).

Finality of Judgments. A summary judgment on the merits of a claim is final for purposes of an appeal though a claim for litigation costs under the Alabama Litigation Accountability Act remains pending in the trial court. *Wolfe v. JPMorgan Chase Bank*, ___ So. 3d ___ (Ala. Civ. App. 2013) (October 11, 2013).

Homeowners Associations; Elections; Powers. Though there had never been a quorum of 51% as set out in the by-laws at a members meeting for the selection of a board of directors, another provision of the by-laws stating that "[b]oard [m]embers may be filled for the unexpired term, and until the [m]embers shall have elected a successor, by the [c]hairman, subject to approval of the [b]oard" allowed for the board of directors to appoint members. Given the

language of the covenants, the Court of Civil Appeals held that the right to adopt guidelines for enforcement of the covenants, including the imposition of reasonable monetary fines, was within the power of the board of directors. *Elliott Builders, Inc. v. Timbercreek Property Owners Ass'n*, 128 So. 3d 755 (Ala. Civ. App. 2013).

Judgment Liens. A judgment lien was held to not be valid as against a bona fide purchaser who acquired property after a district court had set aside the judgment pursuant to ALA. R. CIV. P. 60(b) for lack of service but before the judgment was "revived" by a circuit court's reversal of the district court's decision. A judgment lien cannot exist independently of the judgment. Moreover, the filing of a petition for a writ of mandamus in the circuit court seeking to have the district court's judgment vacated does not stay the decision of the district court. *Daugherty v. Campbell*, ___ So. 3d ___ (Ala. Civ. App. 2014) (March 21, 2014).

Judgments; Enforcement. A trial court retains residual jurisdiction to interpret and enforce its own judgments though any substantive modification of a judgment is not permitted after the period allowed for post-trial motions. *Stephens v. Nelson*, ___ So. 3d ___ (Ala. Civ. App. 2013) (September 6, 2013).

Landlord and Tenant; Damages. A trial court's determination of \$10,000.00 in damages against a tenant was reversed because the judgment had no evidentiary basis as the tenant admitted owing two months' rent of \$5124.66 per month. *Chantilly Properties I, LLC v. Justice*, ___ So. 3d ___ (Ala. Civ. App. 2013) (April 12, 2013).

Landlord and Tenant; Security for Costs. Though a party must file a notice of appeal within seven days of a judgment in an unlawful detainer action, ALA. CODE § 6-6-350, the failure to pay costs or give security for costs within that time is not a jurisdictional defect depriving the circuit court of jurisdiction. *Penick v. Southpace Management, Inc.*, 121 So. 3d 1015 (Ala. Civ. App. 2013).

Landlord and Tenant; Bond for Title. A transfer of an unlawful detainer action to the circuit court was held improper because exclusive jurisdiction of those actions lie, in the first instance, with the district court. The relationship between the parties was based on a bond for title arrangement which was held to create a landlord and tenant relationship upon default by the purchaser. Moreover, an amendment asserting an ejectment claim after the transfer to the circuit court was ineffectual to confer jurisdiction as the required filing fee was not paid

when the amendment was filed. *Alexander v. Hawk*, ___ So. 3d ___ (Ala. Civ. App. 2013) (August 9, 2013).

Materialmen's Liens. A "full-price" lien is available to a supplier of materials in one of two instances: where the supplier is an "original contractor" or where a pre-contribution notice is given by the supplier to the owner. ALA. CODE § 35-11-210. Strict compliance with the lien statutes is required in order to protect and enforce the lien. Accordingly, it is incumbent on the lien claimant to prove that a pre-contribution notice was given before furnishing the materials, that the materials be specified, and that the specific price of the materials be provided. *Gunther v. Carpet Systems of Huntsville*, ___ So. 3d ___ (Ala. Civ. App. 2013) (October 4, 2013).

Mortgages; Indispensable Parties. Where a note and mortgage were admitted at trial and all parties were proceeding *pro se*, the failure to join a mortgagee as a party to an action where the trial court held the conveyance to the mortgagee's borrower invalid as fraudulent is "wholly inconsistent with equity and good conscience." Thus the mortgagee's Ala. R. Civ. P. 60(b) motion denial was reversed because the mortgagee was an indispensable party. *JPMorgan Chase Bank N.A. v. Bradshaw*, 124 So. 3d 162 (Ala. Civ. App. 2013).

Mortgages; Notice of Acceleration. The "Law of the Case" doctrine did not preclude consideration of additional notices by the trial court after reversal of prior summary judgment on appeal where notice was not in the record and there was no definitive decision as to whether proper notice had been given; the notice issue remained unresolved after the prior reversal. Where a notice provision in mortgage requires notice to be sent, and the assertion by a borrower that the notice was not received does not make up a factual dispute sufficient to avoid summary judgment. *Jackson v. Wells Fargo Home Mortgage, N.A.*, ___ So. 3d ___ (Ala. Civ. App. 2014) (March 21, 2014), *prior appeal*, *Jackson v. Wells Fargo Bank, N.A.*, 90 So. 3d 168 (Ala. 2012).

Municipal Finance; Sewer System Bonds. The trial court granted Jefferson county's motion for summary judgment and imposed liens on the defendant-landlord's properties for unpaid sewer service charges. The issue on appeal was whether the County has the authority to impose a lien on property for unpaid sewer service charges. The Kelly Act, ALA. CODE § 11-81-160, *et seq.*, permits counties and municipalities to issue revenue bonds for the purpose of acquiring,

improving, enlarging, extending, and repairing a sanitary sewer system. The defendant-landlords contended that the liens on their property could only be in the amount required to satisfy these enumerated purposes, and not for the entire amount of the sewer service charges. The Court of Civil Appeals disagreed, and affirmed summary judgment. *Hilgers v. Jefferson County*, ___ So. 3d ___ (Ala. Civ. App. 2013) (June 21, 2013).

Quarantine. Section 43-8-114 of the Code of Alabama secures to a surviving spouse a right of quarantine, the right to retain possession of the dwelling house until the homestead is assigned. The right may be waived; however, a signature on a property sale contract "Approved by: [surviving spouse]" does not amount to a waiver or release of the right where the surviving spouse refuses to execute a deed by the personal representative conveying the property to a third party. *Poulin v. Norwood*, ___ So. 3d ___ (Ala. Civ. App. 2013) (December 31, 2013).

Reformation; Intervention. The original action was an action for reformation of a deed; the owners of property asserted that the deed erroneously contained language indicating that the property was subject to a subdivision association's covenants and restrictions. The seller failed to appear and the trial court entered a default judgment and ordered reformation of the deed. Shortly after the judgment was entered, the Association moved to intervene, asserting that the property was located within the subdivision. The Association filed a motion to vacate the default judgment, asserting that, at the time that it filed its motion to intervene, it was unaware of the judgment. The court did not rule on either motion and, assuming that the motion to vacate had been denied by operation of law, the Association appealed, arguing that it was a necessary party to the reformation action. The Court of Civil Appeals held that, because the trial court never ruled on the motion to intervene, it was still pending below. Accordingly, there was no final appealable order and the appeal was dismissed. *Stillwaters Residential Ass'n, Inc. v. SW Props., LLC*, ___ So. 3d ___ (June 28, 2013).

Zoning; Appeals from Administrative Decisions. In an appeal from a board of zoning adjustment's affirmance of the decision of an administrative officer, the circuit court sits as a "glorified board of adjustment." The appeal is *de novo* and is not reviewed under an arbitrary and capricious standard. An administrative officer is required to follow the procedures set out in the municipality's zoning ordinance. The phrase "extend its useful life" when used in the context of a non-conforming use is not so vague and ambiguous as to be unenforceable.

When a term is not defined in an ordinance the commonly accepted definition of that term should be applied. *Board of Zoning Adjustment of the City of Trussville v. Tacala, Inc*, ___ So. 3d ___ (Ala. Civ. App. 2013) (April 12, 2013).

Zoning; Non-conforming Uses. A legal nonconforming use is not recognized unless there is sufficient evidence to prove that it was lawfully in existence at the time of enactment of an ordinance prohibiting the use and that it has continued in existence since that time. The burden of proving a legal nonconforming use is on the party asserting the right to maintain it. The standard of review in a rezoning case is informed by the "fairly debatable" rule, that is, if the application of a zoning classification is fairly debatable (if the minds of reasonable persons may differ in light of all the circumstances), judicial intervention is unwarranted. A highly deferential standard applies to legislative zoning decisions. An appeal from a decision of a BZA must be taken within the jurisdictional time period of 15 days under ALA. CODE § 11-52-81. *City of Prattville v. S&M Concrete, LLC*, ___ So. 3d ___ (Ala. Civ. App. 2013) (September 13, 2013).