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## SELECTED STATUTES

### HB 153 - MISSISSIPPI UNIFORM STATUTORY RULE AGAINST PERPETUITIES.

The “Mississippi Uniform Statutory Rule Against Perpetuities” act provides that A non-vested property interest is invalid unless it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or within 90 years after its creation.

This also applies to a general power of appointment and a non-general power of appointment.

In determining whether a nonvested property interest or power of appointment is valid, the possibility of a child being born to someone after their death is disregarded.

In measuring the period from the creation of a Trust which seeks to disallow vesting or termination of any interest which exceeds or might exceed 21 years after the death of the last survivor, that language is inoperative to the extent that it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

Every nonvested property interest or power of appointment created through the exercise of other nongeneral or testamentary power of appointment is considered

to have been created at the time of the first nongeneral or testamentary power of appointment.

Section 4 states that upon petition, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed under Sections 2 & 3 of this act or 360 years allowed for personal property and 110 years allowed for real property in section 5 of this act which provides certain exclusions from the statutory rule

This act supersedes the common law rule as to dispositions after its effective date of July 1, 2015. Dispositions prior to this date which would violate the common law rule may be reformed by petition to a court.

#### **HB 405 - COMMERCIAL REAL ESTATE BROKER LIEN ACT.**

AMENDS Section 85-7-503, Mississippi Code of 1972, to include multi-family apartments with 5 or more units under the definition of Commercial Real Estate".  
Effective March 13, 2015.

#### **HB 700 - BOND ON SALE OF LAND**

Amends Section 85-7-205, Mississippi Code of 1972, to give the Court discretion to waive the bond required when an Executor or Administrator sells land pursuant to a court decree, but in such case the "Chancellor shall make adequate and

sufficient provision for the maintenance and safety of the assets of the estate".  
Effective July 1 2015.

### **SB 2310 - MISSISSIPPI UNIFORM LIMITED PARTNERSHIP ACT.**

This act replaces Chapter 14, Title 79, Mississippi Code of 1972 which is repealed in Section 8 of the Act.

Before January 1, 2017, this act governs only a limited partnership formed on or after July 1, 2015, unless the partnership elects, as provided in its partnership agreement or by law for amending its partnership agreement, to be subject to this act.

On and after January 1, 2017, this act governs all limited partnerships.

Generally the new act is similar to the old act in many respects. The Act begins with the title, Mississippi Uniform Limited Partnership Act followed by a number of definitions for such terms as Certificate of Limited Partnership, Contribution, Distribution, Foreign Limited Liability Limited Partnership, Foreign Limited Partnership, General Partner, Limited Partner and many others.

The Act then defines KNOWLEDGE, which means actual or legal knowledge and NOTICE which means knowledge by virtue of filings with the Secretary of State and states that the governing law is the law of this state.

The partnership agreement governs all matters concerning the partnership except as otherwise provided in subsection (c) and (d) of section 105 thereof, and the effect of the agreement on third parties.

It sets forth the "required information" that must be kept at the principal office of the partnership.

Its name must be distinguishable on the records of the Secretary of State and may not contain certain terms such as trust, bank, corporation and words of similar import and its certificate of limited partnership as well as any amendments must be filed with the Secretary of State which must contain all of the required information in Article 2 of the Act.

Article 3 describes how a person becomes a limited partner, his power or lack thereof, the fact that he has no liability for partnership obligations, his duties and his right to information.

Article 4 describes how a person becomes a general partner his powers, liability, management rights and duties as well as his standard of conduct.

Article 5 discusses the form of contributions, the obligation to make contributions, and the right to distributions upon dissolution.

Article 6 discusses the disassociation of a limited or general partner and the effect thereof.

Article 7 discusses transferable interest and the rights of transferees and creditors.

Article 8 discusses the dissolution of a limited partnership and the reinstatement of

an administratively dissolved limited partnership.

Article 9 discusses direct action by a partner against another partner or the partnership.

Article 10 discusses foreign limited partnerships, the laws that govern, the liabilities of the partners and the partnership, the requirement for registration with the Secretary of State to do business in this state and activities not constituting doing business.

Article 11 discusses the merger of a limited partnership and the effect thereof.

Article 12 discusses miscellaneous provisions which mostly concern filing fees and penalties, notices by the Secretary of State and the statutes that were repealed.

**SB 2364 AMENDS SECTION 85-7-433, MISS. CODE TO REVISE THE  
“NOTICE OF CONTEST OF LIEN” FORM**

Amends the "Notice of Contest of Lien Form" to provide that a mechanics lien will expire and be void unless the lienholder commences a payment action within 90 days from the receipt of this notice and files a Lis Pendens with the Chancery Clerk upon commencement of the payment action with a copy to the lien claimant, owner and Contractor.

Effective July 1, 2015

## **SB 2542 LIMITED LIABILITY COMPANIES**

Amends Section 79-29-1203 to show the filing fees for a Limited Liability Company documents and to delete the repeal clause on Limited Liability Company Fees.

Effective March 17, 2015

## **SB 2589 WITHHOLDING ON SALE OF REAL PROPERTY**

Amends Section 27-7-308 to shift the responsibility from the Buyer to the Seller for withholding 5% of the amount realized by the seller when the gross proceeds exceed \$100,000. and the seller is a non-resident. It also relieves all other persons of any liability or responsibility for withholding.

Effective July 1, 2015

**A COPY OF OUR MEMO CONCERNING THIS STATUTE IS CAN BE FOUND ON THE NEXT PAGE.**



## SELECTED CASES

### **ADVERSE POSSESSION - Rester v. Greenleaf Resources, 160 So.3d 743 (2015)**

In 2004, L. O. Crosby, III conveyed 297.61 acres in Pearl River County to Greenleaf, which included 19.6 acres claimed adversely by Sylvia and L. B. Davis, after which the Davis' filed a complaint claiming adverse possession of the 19.6 acre tract. At trial, the Davis' had several people including Hubert Gentry, manager for the Crosby property who served as a forester for the St. Regis Paper Company from 1960 to 1982 who testified that the general public referred to land as the 'Rob Davis property' and that Davis fenced the property and cut the timber after hurricane Camille and the Crosbys did not object and that they were in fact the only people in possession of the disputed property for over 50 years, that they cut the timber, lived on the property, rented the house 3 or 4 years, planted crops, maintained the fences and did all the things that an owner would do. The Davis' testified that the property had been in their family for their whole life and that it had been fenced in by their father and until now, there had never been a dispute over who had owned the property. Kent Robins testified that he managed the Crosby property and later the Greenleaf property from 1982 to 2007, and had no reason to believe that it was not part of the property that he managed. In Feb. 2014, the trial court ruled that the Davis' had not met the burden necessary to prove adverse possession from which the Davis' appealed. The Court of appeals held that there

was sufficient evidence to warrant further inquiry into whether the Davis' established title to the land via adverse possession for the period of time prior to Greenleaf s purchase, stating that the trial court erred in limiting it's focus to the period of time after the date of Greenleaf s purchase. Therefore the Court of Appeals reversed and remanded to the Pearl River county Chancery Court.

**APPEAL PERIOD - Rodwell v. Crisman, 149 So.3d 566 (2014)**

In 2011, Crisman brought an action against Rodwell to collect the balance on promissory notes following the sale of real property that secured the notes under a deed of trust. In July 2012, Crisman filed a motion for summary judgment for the balance due under the promissory notes which was granted September 13, 2012, and the court entered its final order and judgment that same day. Rodwell filed a motion to reconsider. The trial court's order denying Rodwell's motion to reconsider was dated and filed on Jan. 28, 2013. On Feb. 28, 2013, 31 days later, Rodwell filed a notice of Appeal from the trial courts denial of his motion to reconsider. On March 20, 2013, Crisman filed a motion to dismiss Rodwell's appeal as untimely filed, asserting that Rodwell filed his notice of appeal thirty-one days after the trial court's denial of his motion to reconsider. That motion was denied by the Supreme Court and the appeal was subsequently assigned to the Court of Appeals which ruled that the motion to reconsider was indeed untimely filed 31 days after the denial of the motion.

Therefore, the Court of Appeals dismissed the appeal of the Harrison County

Circuit Court judgment.

**BANKRUPTCY - Bank of America, N. A. v. Caulkett, 135 S.Ct. 1995 (2015)**

**Bank of America, N. A. v. Toledo-Cardona**

Toledo-Cardona Opinion is subject to formal revision and had not been released for publication when this material was prepared.

The debtors each have two mortgages each on their respective houses and Bank of America holds the junior mortgage liens on each home. The amount owed on the senior mortgages exceeds the value of the property, so if the property were foreclosed, Bank of America would receive nothing. In 2013, the debtors each filed for Chapter 7 bankruptcy and moved to "strip off" or void the junior mortgages to Bank of America. In each case, the Bankruptcy Court granted the motion and the District Court and the Court of Appeals affirmed. The Supreme Court Granted certiorari, 574 U. S. \_\_\_\_\_ (2014), and reversed the judgments of the Eleventh Circuit holding that a debtor in a Chapter 7 Bankruptcy proceeding may not void a junior mortgage lien under sec. 506(d) of the Bankruptcy Code if the creditors claim is both secured by a lien and allowed under sec. 502 of the Bankruptcy Code. Under *Dewsnup v. Timm*, 502 U. S. 410, a "secured claim" is a claim supported by a security interest in property, regardless of whether the value of that property would be sufficient to cover the claim. This decision effectively reverses all decisions holding that a Chapter 7 debtor may avoid a junior lien if the value of the property is less than the amount due under a senior mortgage. U.S. Supreme Court reversed the U. S. Court of Appeals and remanded for further proceedings

consistent with this opinion.

**BOUNDARY LINE DISPUTE - Dobbs v. Crawford,  
2013-CP-01935-COA(2015)**

Nellie Pruitt had five daughters: Joy, Laura, Ruth, Ann, and Edith. When Pruitt died in 1974 she left 24.12 acres to her husband and daughters. The family hired Wayne Lambert to survey and divide the property and following a series of conveyances, each of Pruitt's daughters received an equal share. In 2007 Joy's husband hired C. Milton Guice who found a number of errors in the Lambert survey. Freddie Dobbs, acquired Laura's interest and hired Horace Ledgwood to survey his property and according to Dobbs, his survey confirmed the existing lines from the Lambert survey. Based on the Ledgwood survey, Dobbs bulldozed several trees, raised land and tore down a fence where title was disputed. In response Joy and others filed a complaint to reform the deeds, remove clouds on title, quiet and confirm title, and for injunctive relief and damages against Dobbs for trespass, expert witness fees and attorney's fees. At the hearing for summary judgment, plaintiffs presented the Guice survey and an affidavit by Guice. Dobbs proceeded pro se, testifying regarding the Ledgwood survey, but did not admit anything into evidence. Dobbs also admitted removing the trees from the land. The Chancery Court found Dobbs liable for trespass and cutting down and deadening trees and ordered Dobbs to pay actual damages for trespass and property damage, reasonable expert witness fees and expenses and reasonable attorney's fees. Dobbs appealed

and the Court of Appeals held that in boundary disputes, a determination of the legal boundary between properties is a question of fact for the chancellor, the same standard applies to questions involving the accuracy of a survey. Therefore, summary judgment was proper because Dobbs failed to produce any evidence other than his own testimony to support his claim. Therefore, the Court of Appeals affirmed the judgment of the Tishomingo County Chancery Court.

### **CONTRACTS -Easterling v. Russell, 2014-CA-00103-COA (2015)**

Easterling and Russell formed an LLC to purchase real estate. Eventually they discussed dissolving the LLC and dividing the property therein. Easterling sent a settlement offer to Russell with terms for dissolving the LLC and distributing the properties. Russell agreed to the settlement offer and replied with a letter accepting Easterling's offer and prepared deeds in accordance with the agreement. Receiving no response from Easterling, Russell proceeded to record the deeds dividing the properties. Easterling filed a complaint with the Chancery Clerk of Lee County to set aside the deeds and judicially dissolve the LLC, claiming that there was no binding contract and the deeds did not address all the terms. Both filed motions for summary judgment and the Chancellor granted Russell's motion, finding that there was a binding contract. Easterling appealed.

The Court of Appeals held that a contract is binding when the offeree accepts the offeror's terms and upon Russell's acceptance of Easterling's offer, Russell implicitly agreed to all of Easterling's conditions, creating a binding contract.

Therefore, the Court of Appeals affirmed the judgment of the Lee County Chancery court.

**CONSTRUCTION LIEN-OLD STATUTE-Westford Asset Mgmt. v. Batson & Brown, Inc. 2013-CA-005 10-COA (2015)**

In 2004, Westford loaned Ocean Golf Investors approximately \$37,000,000.00 over 30 months, which went into the project. In Feb., 2008, Batson & Brown filed a construction lien after which, Ocean defaulted. There was a dispute concerning the priority of the construction lien and in July, 2011, Westford and Batson & Brown filed a joint motion to release the construction lien and allow Westford to foreclose. Westford acquired the property free of the lien at the foreclosure sale by Commissioner's Deed and Batson & Brown would enforce its rights against a \$900,000. bond that Westford would post. However, in it's final order, the Circuit Court acknowledged the lien was not timely filed, but that Westford had a bond and had waived the timeliness of the lien. Therefore, the Circuit Court held that Westford acquired the property subject to the construction lien and awarded Batson & Brown \$340,000.00 to be paid from the bond. Westford appealed.

The Court of Appeals Reversed and rendered because all of the loan proceeds went into the project, the bid was not shockingly low and the Circuit Court erred when it held that Westerford acquired title subject to the construction lien.

**FORECLOSURE - ROBINSON V. TRUSTMARK NATIONAL BANK  
2013-CA-01210-COA (2015)**

Robinson executed a promissory note to First Bank and Trust of Mississippi and a deed of trust to MERS. Robinson defaulted and Trustmark commenced foreclosure. Robinson received notice of the sale by certified mail, but failed to respond and the Substituted Trustee conducted the sale and filed a complaint for unlawful detainer which the court approved and ordered Robinson to vacate the premises. Then Robinson filed a complaint in Circuit Court for injunctive and declaratory relief to enjoin the writ of possession and set aside the sale. The court denied the request to enjoin and transferred the rest of the complaint to Chancery Court and sanctioned Robinson and her Attorney for bringing the action in the wrong court. Then Robinson filed a notice of appeal and appealed the sanctions levied against her and her attorney. Trustmark filed a motion to dismiss and dismissed the appeal without prejudice. Robinson then filed a complaint in Chancery Court to which Trustmark did not respond, but filed a motion to dismiss or in the alternative for summary judgment. After a hearing, the court granted Trustmark's motion for summary judgment from which Robinson appealed.

The Court of Appeals ruled that Robinson had a duty to speak prior to the sale, and her silence as to the legitimacy of the foreclosure effectively estopped her from challenging the manner of the sale or the resulting change in title, thereby waiving any ground to challenge the foreclosure. Judgment of the Jackson County Chancery Court was affirmed.

**HOMESTEAD -Avakian v. Citibank, 773 F.3d 647 (2014)**

Burnette and her husband, Norair Avakians purchased a house, borrowing the money from Citibank that was secured by a deed of trust. The property was their homestead. Citibank later refinanced the loan and the Note only listed Norair as the debtor. Only Norair signed the deed of trust. The Next day, Burnette sign an identical deed of trust. The deeds of trust did not mention each other. Citibank recorded the two deeds of trust "back to back". The only question is if these deeds of trust are valid under Mississippi Law. The Avakians defaulted and Citibank was taking steps to foreclose. Norair died and Burnette brought an action in State Court to halt the foreclosure, which Citibank had removed to Federal District Court which granted partial summary judgment to Burnette. It found that if Burnette and Norair were living together at the time the deeds of trust were signed, they were invalid, from which Citibank appealed.

The Fifth Circuit Court of Appeals held that under Mississippi law, identical counterpart deeds of trust on homestead, which were separately signed by spouses within a day of one another, were valid and reversed the judgment in favor of Burnette and remanded the case for further proceedings consistent with this opinion.

**LIMITATION OF ACTION - Kennedy v. Estate of Kennedy, 2013-CA-01349-COA (2014)**

Thomas Kennedy, Sr.'s will divided his estate equally among his six children and



appointed Thomas Kennedy, Jr. as Executor. The Estate discovered that Timothy Kennedy had not repaid a series of loans represented by checks totaling \$180,900. Eighteen months after the estate was opened, the estate filed a motion for first and final accounting and to close the estate. The estate requested that Timothy either pay back the \$180,900. or have his share reduce by that amount. Timothy argued that the checks were not loans and that even if they were, the statute of limitations had run. Half of the checks had been written more than three years prior to the motion and half had been written within three years of the motion. The Chancellor found that the checks were loans and the loans made more than three years before the motion were not recoverable and the checks written within three years of the motion were recoverable. These loans totaled \$91,700. and the Chancellor ordered Timothy to either repay the \$91,700. or have his share of the estate reduced by that amount. Timothy appealed.

The Court of Appeals held that the Chancellor properly concluded that, since there was no due date the three year statute of limitation began to run the day each loan was made and that filing a motion to recover in the Estate proceeding was an appropriate action. Therefore the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

#### **OPTIONS - Prestenbach v. Collins, 159 So.3d 53 1(2014)**

Collins granted Prestenbach a one year option which contained a provision that

Prestenbach intended to obtain a USDA loan and a recital that the option was irrevokable for the first three months and thereafter by giving ten days written notice.

After three months, Collins attorney attempted to terminate the option by letter. Prestenbach responded by hand delivering a letter exercising his option to purchase. Collins refused and filed a quiet title action against Prestenbach.

Prestenbach counterclaimed that he was ready, willing and able to close the deal. Both parties filed for summary judgment and the Chancellor granted Collin's motion finding that Prestenbach was not entitled to specific performance because, at the time he executed the option, he could not pay the entire purchase price.

Prestenbach appealed and the Court of Appeals affirmed the judgment of the Chancery Court of Marion County and Prestenbach then appealed to the Supreme Court which held that the option was a valid contract, Prestenbach had timely exercised his option to purchase and that he was entitled to specific performance of the contract to sell as a matter of law. Therefore the Supreme Court reversed and remanded the judgment of the Court of Appeals and the dismissal of Prestenbach's claim.

## **TAX SALES -McNatt v. Turbeville, 2913-CA-01666-COA (2015)**

In 1993, McNatt rented a lot to Turbeville for \$100. a month. McNatt did not pay the 2001 ad valorem taxes and in August, 2002 Turbeville purchased the property at the Rankin County tax sale, after which Turbeville consistently paid the taxes. McNatt did not redeem the taxes and Turbeville received a tax deed in August, 2004 and filed it during 2005. In 2009 McNatt quitclaimed his interest to his cousin, Finch. Finch then sued to set aside the tax sale based on deficiencies in publication and the description and Finch also claimed that McNatt did not receive proper notice. The Chancellor found that Turbeville treated the property as her own for more than three years after she bought it at the tax sale, so Finch was statutorily barred from claiming that deficiencies in the tax sale rendered it void. The Chancellor then confirmed title in Turbeville and rendered the quitclaim deed to Finch void. Finch Appeals.

Court of appeals held that Turbeville had fee simple title to the property.

Mississippi Code Annotated Section 15-1-15 provides: Actual occupation for three years, after two years from the date of the sale shall bar any suit to recover such land or assail such title because of any defect in the sale of the land for taxes....

Therefore, the Chancellor did not err when he found that Turbeville's occupancy of the property for approximately seven years after the tax sale cured any defect in the publication. Judgment of the Rankin County Chancery Court is Affirmed.

## **ZONING - Wrigley v. Harris, 161 So.3d 1114 (2015)**

Wrigley submitted a request for rezoning to the Jackson County Planning Department (Jackson) Seeking a change in zoning from A-1 to A-3 (small lot development). After a hearing, Jackson denied the request. On a second motion Wrigley requested a change from A-1 to A-2 (large lot development) and was again denied. Wrigley appealed to the Jackson county Board of Supervisors (Board) and his request was approved. The Harris', adjacent property owners, filed an appeal to the Jackson County Circuit Court. At trial Wrigley introduced evidence that the neighborhood had changed to the extent that a need existed for rezoning. This was based on general statements and predictions about future need and other vague speculations. However, Wrigley failed to introduce any statistics showing that the neighborhood had changed or that there was a public need for the rezoning. Therefore, the Circuit Court reversed the Board's decision and Wrigley appealed. The Court of Appeals affirmed the decision of the Circuit Court because the decision of the Board was based on Wrigley's general statements about future need and other vague speculations regarding the changed character of the neighborhood. Therefore Wrigley's evidence was insufficient to meet the burden required for zoning.