

**NEWSLETTER OF THE REAL PROPERTY SECTION  
OF THE MISSISSIPPI BAR**

**FEBRUARY 2014**

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**PENDING LEGISLATION**

Below is a list of bills relevant to real property that have been introduced in the 2014 Mississippi legislature. The status of these bills is as of Friday, January 31, 2014. You can check the status or get a copy of any of these bills from the website of the Mississippi legislature at [www.legislature.ms.gov](http://www.legislature.ms.gov).

Subcontractors' lien

The Fifth Circuit has held that Mississippi's stop-notice procedure is unconstitutional because it deprives a contractor of property without due process. The Senate and House Judiciary A Committees held a rare joint session on this issue on January 16, 2014. Both the Lieutenant Governor and the Speaker of the House attended the hearing.

The draft bill prepared by the general contractors that was circulated on the Real Property Section list serve was not introduced.

HB 744 is the bill drafted on behalf of the subcontractors. SB 2622 and SB 2708 appear to be substantially the same. The principal authors of HB 744 and SB 2622 are identified as the chairs of the House and Senate Judiciary A Committees respectively, so these bills have "legs." These bills, or at least one of them, will be amended in the next

few days to address issues raised by general contractors and others, including issues raised on the Real Property Section list serve, so stay tuned for further developments.

HB 811 simply adds to existing stop notice statute a paragraph that notice must be provided to the parties within thirty days and that a hearing will be conducted within ninety days of the notice to ensure due process.

HB 1037 would amend Sections 85-7-131 and 85-7-135 to provide that architects will have a contractor's lien. It also provides that the contractors lien for professionals is limited to "prime professionals" who have direct contract with the owner, and "professional consultants" to the prime professionals and who give notice to the owner.

#### Central filing of state tax liens

HB 487 creates a central registry for state tax liens. Rather than file notices of tax liens in each county, the Department of Revenue would enroll a notice of tax lien in the tax lien registry. The tax lien would be a lien on the debtor's real and personal property located anywhere in the state and would be perfected at the time of enrollment. The tax lien would be valid for seven years and the Department of Revenue could re-enroll the lien. The tax lien registry would be searchable online for free, but the Department of Revenue could charge for certifying a record. The House Judiciary Committee approved this bill on January 29. SB 2795 and SB 2026 appear to be identical.

#### Commercial real estate brokers liens

HB 1395 gives the owner's broker the right to file a notice of lien. The lien attaches only after the notice is filed. The lien is only available for "commercial real estate" as defined in the bill. The editor isn't sure if this bill would apply to apartments. It looks like the intent was that it would apply to multi-family dwellings with five or more dwelling units, but there seems to be some text missing in Section 2(c)(i).

Note: There is an excellent article about commercial brokers' liens in the current article of the January/February 2014 edition of *Probate & Property*, the magazine of the ABA's Real Property, Trust and Estates Section. The article is "Commercial Real Estate Broker's Lien Acts: In Your State or a State Near You" by Brent Shaffer. According to the article, about half of the states have some form of commercial brokers lien.

#### Foreclosure mitigation

HB 312, among other new constraints on non-judicial foreclosures, would require the foreclosing lender to provide the borrower with a list of approved housing counselors, would require the lender to meet with the borrower and the borrower's housing counselor, and would require a judicial foreclosure at the borrower's option if the lender did not modify the loan and the borrower thought that the loan could be modified. This bill does not distinguish between residential and commercial properties. HB 1169 appears to be substantially the same.

HB 792 would impose an elaborate mediation proceeding on every judicial foreclosure of residential property filed in circuit court.

Note: Not to be critical of someone who is trying to help others, but it appears that this bill was drafted by someone who was not familiar with Mississippi foreclosure law. For one thing, under Mississippi law, an action for judicial foreclosures must be filed in chancery court, not circuit court. For another, since 99% (the editor's estimate) of all foreclosures in Mississippi are non-judicial, and most (also an estimate) of the judicial foreclosures are commercial properties because of the cost involved, this bill would only affect a very small number of foreclosures.

#### Homeowners associations

HB 97 provides that when protective covenants for a subdivision have expired or are incomplete, deficient or defective, a petition may be filed in chancery court to revive, reform, modify or correct the covenants. If the chancellor finds that the petition is "well taken," he can enter a decree accordingly. The chancellor also has the authority to impose new protective covenants, create a new homeowners association and impose assessments.

HB 1381 would govern homeowners associations. Among many other provisions, this bill would require that when the developer has sold half of the lots, not less than a third of the directors of the association must be elected by owners other than the developer; the board has to give notice of its meetings and have open meetings; the association has to maintain a reserve account to maintain common areas; and the board's ability to impose fines on members is limited. SB 2805 appears to be substantially the same.

Note: Currently state law does not regulate homeowners associations or provide any protection for lot purchasers. This permits the developer to draft the association documents so that the developer maintains total control of the board as long as the developer owns a single lot.

#### Landowner's standard of care to third parties

HB 263 provides that a landowner is not liable to a guest or business invitee except for clear and convincing proof of willful, wanton or grossly negligent conduct.

SB 2401 provides that an owner has no duty to a licensee or trespasser except in those situations when a common law or statutory right of action exists as of the effective date of the act (July 1, 2014).

#### Partition

HB 32 would amend Section 11-21-15, regarding partition, to provide that if the petition is in kind, the court can appoint one freeholder to make the partition the property rather than three freeholders.

## Homestead

HB 344 would increase the number of acres in the homestead exempt from seizure from 160 acres to 320 acres. It would not change the cap in value of \$75,000.

HB 36 would amend Section 27-33-75 to increase the amount of the homestead exemption from ad valorem taxes from \$7500 to \$9000.

SB 2580 would amend Section 27-33-19 to make clear that one who owns his home through a living trust is entitled to the homestead exemption from ad valorem taxes.

## Uniform Trust Code

HB 845 would adopt the Mississippi Uniform Trust Code. This bill is a product of one of the Mississippi Secretary of State's study groups. SB 2727 is the same. The Senate Judiciary Committee A approved SB 2727 on January 30.

## Historic tax credits

HB 1436 would extend the time for which taxpayers can use historic tax credits.

## Rule Against Perpetuities

HB 891 would abolish the Rule Against Perpetuities any document creating the trust explicitly states the term of the trust and the term does not exceed 360 years. It also provides that a future interest or trust is void if the future interest or trust suspends the power of alienation of real or personal property for more than 360 years. SB 2804 is the same. This bill is the product of one of the Secretary of State's study groups. The House Judiciary Committee A approved HB 891 on January 28.

Note: There is a Uniform Statutory Rule Against Perpetuities that has been adopted by many neighboring states, but this bill is not the uniform rule. Several other neighboring states have adopted the 360-year period.

## Transfer on death deeds

HB 672 would authorize deeds that would be effective on the grantor's death.

## Use of English language

HB 881 would require that all instruments filed in the land records be in the English language.

## Miscellaneous

The following bills have been introduced every year for many years. So far they have always died a quick and ignominious death.

HB 522 would repeal Section 15-1-13, which provides for title by adverse possession.

HB 860 would increase the penalty for failing to cancel deeds of trust from a total of \$200 per day.

HB 1377 provides that mineral estates severed from the surface estate will revert to the owner of the surface estate after twenty years of nonproduction.

## GENERAL

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