Alabama Law Institute

REPORT TO THE ALABAMA LEGISLATURE AND INSTITUTE MEMBERSHIP 2017-2018

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HONORABLE CAM WARD, PRESIDENT

REPORT TO THE ALABAMA LEGISLATURE AND INSTITUTE MEMBERSHIP 2017-2018

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January 2018

TO: The Alabama Legislature and Alabama Law Institute Membership

It is my pleasure to submit the Alabama Law Institute's Annual Report to the Alabama Legislature and ALI Membership.

The Alabama Law Institute is the official law revision and reform agency for the State of Alabama. Its purpose is to aid the Legislature in proposing and drafting clearer, simpler, and more up-to-date laws.

Next year the Legislature will be asked to consider a number of bills including: the General Partnership Act, the Uniform Voidable Transactions Act, the Uniform Condominium Act, the Criminal Code Revision, the Uniform Decanting Act, and Amendments to Alabama's Custody statutes. Additionally, the updated Alabama Uniform Corporation Act is tentatively planned to appear as well. A copy of these drafts and pending bills in the Legislature will be available at the Law Institute office in Suite 207 of the State House.

We wish to express our sincere gratitude to the more than 170 lawyers representing communities all across Alabama who have served on Law Institute committees this year and have donated more than 3,500 hours of their time to these important projects.

It is the hope of the staff of the Law Institute to always be of assistance to members of the Legislature. If the Institute can help you, please call me or Othni Lathram who serves as Director. The continued cooperation of all members of the Institute and the Legislature will ensure that the Law Institute will continue to provide an important service to the Legislature and the people of the State of Alabama.

Respectfully,

Cam Ward

Cam Ward
President

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2017 - 2018

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REPORT OF THE DIRECTOR

The members of the Alabama State Bar are a generous, engaged, and highly skilled group. They have a tremendous dedication and commitment to improving the state in which they live and practice. It is that spirit that makes it such a joy to report on the work of the Alabama Law Institute each year.

In Fiscal Year 2017 more than 150 lawyers from every corner of Alabama donated 3,000 hours of time working on Law Institute drafting committees. This time does not include the time spent by the Law Institute Council and Membership reviewing, commenting on, and improving those drafts prior to submission to the Alabama Legislature for consideration.

The remarkable consistency of the dedication of the lawyers and legislatures who help the Law Institute fulfill its mission is tremendous. The three pillars of the Law Institute—code revision, legislative service, and education—continue to thrive thanks to the many lawyers, legislators, and local officials who help make each year better than the last. It is with a spirit bolstered by the work of so many that humbles me as I have the great honor of reporting on the work of the Law Institute in 2017.

2017 Legislation

The Alabama Legislature passed three Institute prepared bills during the 2017 Session: the Revised Uniform Fiduciary Access in Digital Assets Act sponsored by Senator Cam Ward and Representative Juandalyn Givan, Amendments to Alabama's Alimony statutes sponsored by Senator Linda Coleman-Madison and Representative Mike Jones and the Division of Retirement Benefits upon Divorce Act sponsored by Senator Linda Coleman-Madison and Representative Merika Coleman. It is bills like these that update and modernize Alabama's law and keeps the State in these areas in the forefront of legal jurisprudence. The Legislature's trust in these three pieces of legislation is a great testament to the legal work of the many lawyers who met for many hours and painstakingly pored through the emerging law to reach a consensus on how the bills should be drafted. These were several

more Institute prepared bills that were awaiting a final vote in the House of Representatives on the last day but time prevented them from being reached. These were amendments to the Alabama Custody Act; Alabama Uniform Voidable Transactions Act; Amendments to the Alabama Condominium Act of 1990 and Alabama's Partnership Law.

Legislative Services

During the 2017 Legislative Session, the Institute again provided legal services to a number of legislative committees and to individual legislators. In addition to the Institute staff, outside lawyers were hired to assist with nine legislative committees.

The Legislative Intern Program exposed a number of student interns to the legislative process of state government. Student interns work thirty-two hours per week in the State House in Montgomery. Many of these student interns received academic credit for their participation.

The Legislative Law Clerk Program continues to be successful with upper level law students providing research assistance on legislative issues.

Official Training

The Institute, together with the Abatement Probate Judges Association, put on four continuing legal education seminars around the state providing opportunities for Probate Judges to stay updated on legal trends around the country and reinforce their knowledge of current Alabama law.

Othni J. Lathram
Director

January 2018

I.

INTRODUCTION

Created by act of the Legislature in 1967, the Alabama Law Institute commenced operations in 1969.[1] The Institute was initially housed solely in the Law Center Building on the University of Alabama Campus, home to the state's largest law library, which is essential for major law revision. This location also allowed the Institute immediate access to legal experts in the various fields under study as ready consultants. The Institute was placed in Alabama's state-sponsored law school not only as a cost-efficient research measure, but also to remove it from the political influence of the State Capitol. However, as the Institute's role has expanded to include a full complement of legislative support functions, including supervision of capital interns and legislative committee analysts, the Institute now maintains a second office at the State House. This office enables the Institute staff to be readily available to assist legislators.

The primary purpose of the Institute is to clarify and simplify the laws of Alabama, to revise laws that are out-of-date, and to fill in gaps in the law where there exists legal confusion. The Law Institute receives projects from members of the Legislature, state government, or the Bar, but may also initiate studies itself when revisions are needed. Once a topic is selected, the Institute selects someone to serve as chief draftsman, who is called a reporter for the study. Experts in the field under revision, as well as legislators, are requested to serve on an advisory committee to prepare the proposed revision. Written commentaries accompany the proposed bill to assist legislators and those interested in the revision. The Institute issues written drafts with commentaries to each legislator. Many of these projects require intensive study over several years. However, this meticulous and proficient study and documentation allows the Legislature to examine the bills' technical accuracy. Once a revision is complete, hearings are held around the state for further consideration by the Council of the Alabama Law Institute.

[1] Ala. Code §§ 29-8-1 through 29-8-6.

As the Law Revision Division of the Legislative Services Agency, the Alabama Law Institute also works closely with the Legal Division in the yearly organization of acts passed by the Legislature within the Code of Alabama for proper placement and codification. The Legal Division prepares the vast majority of bills for each session for the Legislature, but major code revision work, such as revision of an entire section of law, (Alabama's Business Corporation Law, Criminal Code, etc.) is handled by the Alabama Law Institute.

The Alabama Law Institute is essentially a volunteer organization with a small staff of attorneys and secretaries who help manage and organize the efforts of its members. Committee members and reporters render their services without compensation. Additionally, extensive use is made of law students as law clerks.

The membership of the Alabama Law Institute is limited to a maximum of 150 members of the Alabama State Bar Association who are elected for fixed terms, as well as the judges of the Alabama Supreme Court, courts of appeals, and circuit courts, federal judges domiciled in Alabama, full-time law faculty members of Cumberland Law School and the University of Alabama School of Law, the Institute Council, and the members of the Legislature who are licensed to practice law in Alabama. The governing body of the Institute is the Institute Council composed of six practicing attorneys from each congressional district as well as representatives from the judiciary, Attorney General's office, Alabama State Bar Association, law schools, Alabama Legislature, and the Governor's office.

Alabama’s legislators operate with limited staff resources. However, they can receive assistance with legal research and legislative drafting from the Alabama Law Institute. The Institute employs law clerks and utilizes attorneys and other legal experts to provide an in-depth study of technical legal problems. This coordination of efforts means that generally over $1,000,000 of donated legal talent is contributed annually on Institute projects. In 2017, 172 attorneys from around the state donated over 3,500 hours, representing more than $875,000 worth of time served on Law Institute committees. As an example of the magnitude of these benefits to the state, $2,000,000 of donated legal services

over nine years went into drafting the Business and Nonprofit Entities Code alone. Like sums are prevalent in the preparation of all Law Institute revisions. Wide exposure is given to all bills before they ever reach the Legislature. The drafts are placed on the internet and written drafts are prepared for review. Input is encouraged from all affected parties as well as the general public.

For over thirty years, the Institute has provided legal counsel to the House and Senate Judiciary committees. Over the same time period, the Institute has provided legal counsel to other committees upon request.

Finally, as mandated by its enabling statute, the Institute also serves as the conduit for legal training for public officials throughout the state. The Institute regularly publishes handbooks and organizes training conferences for public officials.

II.

PROCEDURE FOR NEW PROJECTS

1. The Institute, through the Director, receives and considers suggestions from legislators, judges, public officials, the practicing bar, and the general public to discover inequities and inconsistencies in the law and possibilities for its improvement and expansion.

2. The Director of the Institute submits the suggestions for revision or clarification of the law which the Institute has received to the Institute Executive Committee and then to the Institute Council.

3. The Council selects a limited number of suggestions as its projects.

4. The Council, through the Director, selects an advisory committee composed of experts on the subject who are responsible for drafting the act or revision.

5. Usually, the Director and advisory committee select a Reporter from one of the Alabama law schools, an Alabama lawyer, or the Institute staff to prepare the initial draft.

6. The Reporter prepares a draft of the proposed legislation and presents a draft with commentary to the advisory committee for comments and criticisms. The advisory committee makes such changes as it deems appropriate before approving the draft.

7. The advisory committee then submits to the Institute Council the proposed act for their consideration and approval.

8. Once approved by the Law Institute Council, the recommended law revision is presented to the Alabama Legislature for consideration. The time required for

preparation and approval of such revisions varies from a matter of months to several years.

III.

PROJECTS TO BE PRESENTED TO

THE LEGISLATURE IN 2018

1. <u>Alabama General Partnership Act</u>

Chairman: James C. Wilson
Reporter: Scott Ludwig

Following previous revisions to Alabama's Limited Liability Company Law and Limited Partnership Law, the business entities committee turned to the task of updating the general partnership law.

This new act would update Alabama's partnership law to better align it with the Limited Partnership and Limited Liability Company Laws. The proposed act is not based on a single source, but rather has borrowed concepts and provisions from a variety of sources.

Significant features of the proposed act include:

(a) <u>Contractual Nature.</u> The proposed act focuses on the contractual nature of the partnership. There are few mandatory provisions in the proposed act. Most features of a partnership can be modified by the parties to suit their needs. The proposed act includes many default provisions that apply if the partners do not modify those default provisions in the partnership agreement.

(b) <u>Mandatory Safeguards</u>. Despite the emphasis on allowing the parties to make their own contract, the proposed act provides that certain obligations, such as the implied contractual covenant of good faith and fair dealing, cannot be modified.

(c) <u>Notice Filing</u>. Normally, a filing is not required to form a partnership. Rather, a partnership is the least formal of Alabama's entities, and thus the partners and third parties must look to the partnership agreement to determine many aspects of a partnership. However, the

proposed act does permit or under certain circumstances require notice filings normally referred to in the Law as "statements," such as (i) a statement of partnership, (ii) a statement of not for profit partnership, (iii) a statement of limited liability partnership, (iv) a statement of authority, (v) a statement of dissolution, (vi) a statement of conversion, (vii) a statement of merger, and (viii) a certificate of reinstatement. These statements are designed to notify the State and third parties that the partnership exists and how to contact it. The details about the conduct of the partnership will generally be contained in the partnership agreement.

(d) Not for Profit Partnerships. In addition, a new feature allows a partnership to conduct not for profit activities. Under existing law, partnerships are by definition only "for profit" entities. The main difference is that formation of a "for profit" partnership requires little formality and can be accomplished with or without an intention to do so. However, in order to form a not for profit partnership, the partners must intend to do so, and must file a statement of not for profit partnership with the Secretary of State.

(e) Agency. Unlike a limited liability company, but similar to a limited partnership, agency of a partnership is set by statute and is vested in the partners.

2. Alabama Uniform Voidable Transactions Act

Chairman: Bill Hairston, III
Reporter: Bill Hairston, III

The Uniform Fraudulent Transfer Act (UFTA) (enacted in Alabama in 1989 as Alabama Code §8-9A-1 et seq., with only minor variations) governs not only transfers made with the intent to hinder or delay any creditor but also transfers made by an insolvent or to be insolvent debtor for less than reasonably equivalent value. To better emphasize this overriding dual role of the UFTA, the Uniform Bar Commissioners in 2014 revised the

UFTA by amendments and promulgated the Uniform Voidable Transfer Act (UVTA) upon which this proposed act is modeled. Under the UVTA the term "fraudulent" is replaced by the word "voidable" to minimize confusion and to emphasize the continuing dual role of the act.

In addition to this clarifying wordsmithing, the UVTA also deals with a small number of narrowly-defined issues (as opposed to being a comprehensive revision). These issues include:

(a) Choice of Law. The proposed act adds a new § 10, which sets forth a choice of law rule focusing on the residence of the debtor.

(b) Evidentiary Matters. New §§ 4(c), 5(c), 8(g), and 8(h) add uniform rules allocating the burden of proof and defining the standard of proof with respect to claims for relief and defenses under the act.

(c) Deletion of the Special Definition of "Insolvency" for Partnerships. Section 2(c) of the UFTA sets forth a special definition of "insolvency" applicable to partnerships. The proposed act deletes UFTA § 2(c), with the result that the general definition of "insolvency" in § 2(a) now applies to partnerships. One reason for this change is that original § 2(c) gave a partnership full credit for the net worth of each of its general partners. That makes sense only if each general partner is liable for all debts of the partnership, but such is not necessarily the case under modern partnership statutes. A more fundamental reason is that the general definition of "insolvency" in § 2(a) does not credit a non-partnership debtor with any part of the net worth of its guarantors. To the extent that a general partner is liable for the debts of the partnership, that liability is analogous to that of a guarantor. There is no good reason to define "insolvency" differently for a partnership debtor than for a non-partnership debtor whose debts are guaranteed by contract.

(d) Defenses. The proposed act refines in relatively minor respects several provisions relating to defenses available to a transferee, as follows:

(1) Section 8(a) of the UFTA created a complete defense to an action under § 4(a)(1) (which renders voidable a transfer made with actual intent to hinder, delay, or defraud any creditor of the debtor) if the transferee takes in good faith and for a reasonably equivalent value. The proposed act adds to § 8(a) the further requirement that the reasonably equivalent value must be given the debtor.

(2) Section 8(b), derived from Bankruptcy Code §§ 550(a), (b) (1984), creates a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent transferee from such a person. Among other things, the proposed act make clear that the defense applies to recovery of or from the transferred property or its proceeds, by levy or otherwise, as well as to an action for a money judgment.

(3) Section 8(e)(2) of the UFTA created a defense to an action under § 4(a)(2) or § 5 to avoid a transfer if the transfer results from enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code. The proposed act excludes from that defense acceptance of collateral in full or partial satisfaction of the obligation it secures (a remedy sometimes referred to as "strict foreclosure").

(e) Series Organizations. A new § 11 provides that each "protected series" of a "series organization" is to be treated as a person for purposes of the act, even if it is not treated as a person for other purposes. This change responds to the emergence of the "series organization" as a significant form of business organization. See Alabama Code § 10A-5A-11.01 et seq.

(f) Medium Neutrality. In order to accommodate modern technology, the references in the act to a "writing" have been replaced with "record," and related changes made.

(g) Style. The proposed act make a number of stylistic changes that are not intended to change the meaning of the act. For example, the proposed act consistently uses the word "voidable" to denote a transfer for which the act provides a remedy. As originally written the UFTA sometimes inconsistently used the word "fraudulent." No change in meaning is intended.

In keeping with Alabama's long standing practice of not addressing "obligations," within the purview of the act, the committee has once again (as in 1989) removed all references to obligations from the act, leaving their determination to existing common law. See Alabama Comment 1 to Section 1. Whether an obligation is void as a voidable conveyance is to be determined by the courts by applying by analogy all the law that existed before the enactment of this act. The proposed act is neutral on this issue concerning an obligation.

Likewise, the committee retained Alabama's existing statute of limitations for actions under this proposed act.

Once enacted this new act will be controlling for transfers made on or after January 1, 2019, and the old Alabama Uniform Fraudulent Transfer Act is amended to only apply to transfers made prior to January 1, 2019.

3. Alabama Uniform Condominium Act

Chairman: John Plunk
Reporters: Carol Stewart and Melinda Sellers

Alabama's Condominium Act was passed in 1990 and is located in Chapter 8A of Title 35 of the Code of Alabama. During the past 26 years several issues have arisen which need clarification. This proposed bill would provide for consistent language throughout and address a number of practical matters. The bill would make the following changes:

(a) Section 35-8A-102(c) was amended to clarify when an offering statement is required for the sale of units in condominiums located outside of Alabama which are sold to Alabama residents.

(b) The amendment to § 35-8A-103(4) recognizes that easements and other interests in real property can be a common element.

(c) The amendment to § 35-8A-103(11) identifies the development right to convert common elements to units when reserved in the declaration.

(d) The amendment to § 35-8A-105(c) recognizes that some property subject to development rights cannot be separately assessed and taxed.

(e) The amendment to § 35-8A-107(c) requires that any portion of an award attributable to condemnation of limited common elements be divided among the owners in accordance with the value of the interest in a particular limited common element assigned to the units rather than requiring the amounts to be equally divided among the unit owners.

(f) Section 35-8A-201(b) was amended to delete the requirement of maintenance of a condominium book by the judge of probate in each Alabama county.

(g) Section 35-8A-201(c) was amended to clarify that a declaration or an amendment to the declaration is not effective until there is substantial completion of the structural and mechanical systems in the buildings located on the property being submitted to the condominium form of ownership. The amendment to § 35-8A-210(c) also removes the requirement that the engineer or architect certify that the structural and mechanical systems of all buildings were "completed in accordance with the plans."

(h) Section 35-8A-208(a) was amended to require the association's consent for limited common element reallocations.

(i) The amendments to § 35-8A-209(b) were substantially revised to require all information to be included on the plat to the extent such information could be shown on a two

dimensional page, showing the subdivision of land and reciprocal rights relating to the subdivision.

(j) The amendments to § 35-8A-209(d) eliminate the requirement of showing development rights to subdivide if such rights are described in the declaration.

(k) Section 35-8A-(209)(g) was amended to allow a licensed surveyor to provide the required certification. This change expands the prior law which provided that only a licensed engineer or architect could certify to a plat.

(l) Section 35-8A-313 was amended to clarify that the association shall be responsible for the insurance deductible unless the declaration provides otherwise.

(m) Section 35-8A-410 was previously amended in 2015 by and the current draft of this bill includes such language as previously amended.

4. <u>Custody Amendments</u>

Chairman: Dean Noah Funderburg
Reporter: Penny Davis

This act amends and expands the current statutory law relating to joint custody to all custody arrangements. First, it makes an important structural change. Under the current law, when one parent is awarded sole physical custody, the other parent merely receives "visitation." Under the new act, this concept of custody is replaced with a different framework. If the parents are not awarded joint physical custody, then one parent will have primary physical custody and the other parent will be the non-residential custodial parent or will have restricted physical custody.

Second, under this act parents will have greater input in scheduling their shared parenting time. Under existing law, both parents are required to submit a parenting plan to the court only if they both seek joint physical custody. Under this bill, both parents are required to submit parenting plans in all custody cases. Moreover, if both parents submit to the court the same parenting

plan, that parenting plan shall be granted in the final court order unless the court makes specific findings as to why the parenting plan jointly submitted by the parties should not granted. By requiring plans in all cases, this provision seeks to inject more forethought into the division of parenting time from the start in order to avoid later conflict and encourage both parents to play a permanent, active role in the child's life.

The act also enumerates the factors that the court shall consider when determining whether to award joint physical custody. Likewise, the act enumerates the factors to be used to determine which parent shall be designated as the parent with primary physical custody if joint custody is not awarded.

Finally, a new section provides additional remedies to a party when one parent, without proper cause, fails to adhere to the time-sharing schedule in a parenting plan. Make-up parenting time and reimbursement for costs and attorney fees are now among the remedies available when a parent violates the time-sharing schedule in a parenting plan.

5. Criminal Code

Chairman: Howard Hawk
Reporter: William Bowen

The Alabama Criminal Code became effective on January 1, 1980. In the thirty-seven years since, it has never undergone a comprehensive review. The Alabama Law Institute has undertaken such a review, and this project represents the culmination of several years of effort.

The committee has aimed to revise the Code to better achieve its purposes as set out in § 13A-1-3, Code of Alabama 1975; to better achieve clarity and consistency with subsequent legislation and State and Federal Supreme Court rulings; and to ensure that specific sections of the Criminal Code satisfy mandatory constitutional principles and requirements, with special emphasis on achieving notice and fair warning of the nature of the proscribed conduct and the punishment authorized upon conviction.

Given the extent of the committee's work on almost the entirety of Title 13A, this project is currently planned as multiple bills addressing only a few chapters each.

IV.

REVISIONS UNDER STUDY

1. <u>Family Law Standing Committee</u>
Chairman: Dean Noah Funderburg
Reporter: Penny Davis

In the last two years, the Alabama Legislature has passed three bills drafted by this committee: The Grandparent Visitation Act, the Division of Retirement Benefits upon Divorce Act, and an act amending several alimony provisions.

There are several subcommittees currently working on various topics. One is working on a set of parenting plans to be used by lawyers and pro se litigants. Recent trends reflect that more and more litigants are acting on their own behalf, without lawyers, in petitioning for divorce. These litigants are not well-versed in the legal procedures of the courts, which slows down the system and requires more of judges' time. The parenting plans are detailed forms that force parents to consider all of the responsibilities of a custody matter after a divorce before they appear before a judge. This will have the two-fold purpose of informing the parents of what to expect regarding the various custody possibilities and helping judges make better-informed decisions regarding the well-being of the children.

Another sub-committee is studying gestation and surrogacy agreements. Current Alabama law is inconsistent among jurisdictions with no uniform standard, rules, or procedures addressing the legal rights of all interested parties. By adopting a set of laws in this important area of family law, Alabama could provide greater legal certainty to all those involved.

2. <u>Adoption Committee</u>
Chairman: Honorable Alice Martin
Reporter: Penny Davis

In 2016, the Family Law Standing Committee formed a subcommittee to undertake a review of the current Alabama Adoption Code. The current law was drafted by a Law Institute committee in the late 1980's. That act was based on a draft of the

ABA Model State Adoption Act. At that time, there was little uniformity in adoption laws among the states and it was hoped that the ABA Model would serve as the vehicle to create uniformity in state adoption laws. Unfortunately, that lack of uniformity among the states remains entrenched today.

Subsequent to its enactment, the current Adoption Code has been amended numerous times, both in reaction to appellate decisions and as a result of the general evolution in the area of family law. Within the structure of the subcommittee, two groups have been formed to systemically review the existing code. One of the groups will focus on consent and the other group will focus on the adoption process itself.

3. <u>Standing Trust Committee</u>

Chairmen: Brian Williams and Leonard Wertheimer
Reporter: Bob Riccio

The 2017 Alabama Legislature passed the Revised Uniform Fiduciary Access to Digital Assets Act which will provide much needed guidance to citizens and judges concerning how a fiduciary can access the digital assets (documents, photographs, email, and social media accounts) of deceased family members.

This committee is reviewing and editing a Uniform Law Commission proposed Uniform Trust Decanting Act. Alabama does not currently have a specific statute governing trust decanting. Once this uniform act is thoroughly discussed, debated, and compared to similar acts in other states, this committee will draft a proposed bill for the legislature's consideration. The committee's next project is a review of Alabama's asset protection trust statutes and case law.

4. <u>Real Estate Standby Committee</u>

Chairman: John Plunk
Reporter: Melinda Sellers

Alabama's Condominium Act was passed in 1990 and is located in Chapter 8A of Title 35 of the Code of Alabama. During the past twenty-six years, several issues have been raised needing clarification. This committee, in late 2016, finished an extensive

review of the law and has proposed a significantly amended version of the Alabama Uniform Condominium Act of 1991 to the Alabama Legislature.

Additionally, one subcommittee is currently studying issues surrounding subdivisions, subdivision plats, and planning commission overreach.

A second subcommittee is studying Alabama's tax redemption process with the goal of making it easier, less confusing and more modern.

5. <u>Alabama Criminal Code Committee</u>
Chairman: Howard Hawk
Reporter: Bill Bowen

This committee was originally formed to undertake the first comprehensive review of Alabama's Criminal Code since its passage in 1980. As this substantial undertaking winds up with the presentation of several bills in 2018, the committee intends to continue its work by reviewing newly passed criminal statutes, while also continuing to search the Code for outdated provisions.

6. <u>Business Entities Standing Committee</u>
Chairman: Jim Wilson
Reporter: Scott Ludwig

In 2012, the Institute formed a standing committee on Business Entities to address issues related to the adoption and implementation of Title 10A and to discuss developing issues related to business entities as they arise. The initial concern for the committee was to review and update the Name Reservation provisions in light of new technology advances. A bill to amend the Business Entities Code on name reservations was passed by the Legislature in 2013. In the 2014 session, the legislature passed amendments relating to Mergers and Conversions.

The committee drafted amendments to the Alabama Limited Liability Company Act in 2015 which passed the Alabama Legislature that year, amendments to Alabama's Limited Partnerships Law in 2016 which passed the Alabama Legislature

that year, and amendments to the Alabama General Partnership Act in 2017 which will be offered for passage in the 2018 session of the Alabama Legislature.

This committee is currently reviewing chapter by chapter the Alabama Business Corporation Law and comparing it with the Model Business Corporation Act, 2016 with the goal of having the adoption of the Model Act, with changes, ready for the 2018 Alabama Legislative session.

7. <u>Collateral Consequences Committee</u>

Chairman: Cam Ward

A felony conviction imposes a status upon a person which not only makes him or her vulnerable to future sanction, but also affects their economic opportunities. Record numbers of individuals with a felony record are exiting prisons and returning to communities across the state of Alabama. These individuals must confront a wide range of collateral consequences stemming from their convictions, including ineligibility for federal welfare benefits, public housing, student loans, and employment opportunities, as well as various forms of civic exclusion, such as ineligibility for jury service and disenfranchisement. These consequences result in a wide range of social, economic and political privileges being unattainable.

Review of an ABA-sponsored project revealed approximately 815 collateral consequences in the state of Alabama. After reducing this list to the 560 affecting felons and other criminal offenders, the committee is currently pursuing a form of blanket remedy. Such a remedy would be similar in form to past expungement proposals in creating a path to judicial relief for affected individuals.

8. <u>Article VI Constitutional Committee</u>

Originally passed in 1973, the revised Judicial Article revolutionized Alabama's court system into a model for the nation. However, there has been no comprehensive review of the Judicial Article in the nearly forty-five years since its passage. This committee will review Article VI to explore whether it may be

adapted to better face the modern challenges facing Alabama's courts.

Though newly formed, this committee has already formed three subcommittees to examine a variety of issues within Alabama's court system. First, one committee will examine judicial allocation across the state to determine whether any changes might better divide the courts workload to prevent docket congestion. The second committee will review pending legislation directed toward reorganizing the Administrative Office of Courts with the goal of developing a solution to the problem of frequent leadership changes in that office. Finally, the third committee will study disparities in court costs across the state to see how these fees could be made more uniform.

V.

ENACTED LEGISLATION AND COMPLETED PROJECTS

2014-2018 Quadrennium

1. Alabama Uniform Fiduciary Access to Digital Assets Act

This act was passed in 2017 as Act #2017-316. It becomes effective on January 1, 2018.

The Revised Uniform Fiduciary Access to Digital Assets Act (Revised UFADAA) modernizes fiduciary law to accommodate our digital lives. Nearly everyone now has digital assets, such as documents, photographs, email, and social media accounts. Often times, fiduciaries are prevented from accessing those accounts by various means of protection or restrictive terms of service. While digital assets have both monetary and sentimental value, they also present novel privacy concerns. The Revised UFADAA provides legal authority for fiduciaries to manage digital assets in accordance with the user's estate plan, while protecting a user's private communications from unwarranted disclosure.

2. Alimony

This act was passed in 2017 as Act #2017-164. It becomes effective on January 1, 2018.

This law applies to divorce, legal separations, or annulment actions filed after the effective date. It furthers existing law that allows the court to award interim alimony by enumerating the factors for the court to consider when determining whether to award interim alimony. The court may also order that litigation costs and expenses, including attorney fees necessary to pursue or defend the action, be paid out of marital property.

While the act does continue the existing law of allowing the court to award alimony after a final decree, the act also establishes priorities, limitations, and factors to be considered when making an award. Unless the court expressly finds that rehabilitative alimony

is not feasible, the court is to award rehabilitative alimony, which is limited to five years absent extraordinary circumstances.

If the court determines that rehabilitative alimony is not feasible or has failed, the court may award periodic alimony. Generally, for marriages of less than 20 years, periodic alimony shall be limited to a period not to exceed the length of the marriage. If the parties have been married for 20 years or longer, the time limit on the eligibility to receive alimony does not apply. However, both rehabilitative and periodic alimony continue to terminate upon remarriage or cohabitation as provided in current law.

Modification of both rehabilitative and periodic alimony continues to be allowed based on a showing of a material change in circumstances. Also unchanged is the current law that if there is not an award of alimony or a reservation of jurisdiction for awarding alimony at the time of the divorce, the court permanently loses the ability to subsequently award alimony.

3. Division of Retirement Benefits Upon Divorce Act

This act was passed in 2017 and will become effective on January 1, 2018. It will be codified at Section 30-2-51 of the Code of Alabama.

This act significantly amends Section 30-2-51 of the Code of Alabama, which concerns the division of retirement benefits upon divorce. The court retains the discretion to award retirement benefits to the non-employed spouse within certain limitations. The act retains the limitation that precluded the court from awarding more than 50% of the non-employed spouse's retirement benefits accrued during the marriage. However, the act eliminated the threshold requirements that the parties must be married for at least 10 years before the court could consider awarding retirement benefits.

The act grants the court broad discretion to use any equitable method of valuing, dividing, and distributing the benefits. It eliminates the costly requirement of providing evidence of the present value of the retirement benefits in all cases. Subsection (d) provides a more equitable result by requiring that each party equally bear the burden or benefit of the passive

appreciation or depreciation of the retirement benefits during the time between the award of the benefits and their distribution.

Finally, the court is given the authority to enter orders to protect and preserve the interest of either spouse in the retirement benefits.

4. Common Law Marriage Repeal

This act was passed in 2016 and became effective on January 1, 2017. It is codified at Section 30-1-20 of the Code of Alabama.

Prior to this law, Alabama was in the minority of states that retained common law marriage. To address the issue, the Institute prepared two bills for the 2016 Legislative Session. One codified the elements required to establish the existence of a common law marriage, while the other abolished the practice entirely. The second bill passed. Accordingly, Alabama has now joined the majority of states that no longer recognize common law marriage. Only Alabama common law marriages entered into before January 1, 2017, remain valid.

5. Alabama Limited Partnership Law

This act was passed in 2016 and became effective on January 1, 2017. It is codified as Chapter 9A of Title 10 of the Code of Alabama, replacing Alabama's previous Limited Partnership Law.

The previous Alabama Limited Partnership Law and the Alabama Business and Nonprofit Entity Code were both enacted in 2010, but had not been through the Alabama Law Institute process of integration with the Alabama Business and Nonprofit Entity Code. Rather, that integration process was left to the Code Commissioner. See Section 10A-1-1.02(e).

During the drafting of the Alabama Limited Liability Company Law of 2014 (the "LLC Law"), several anomalies were found in the current Alabama Limited Partnership Law (the "current LP Law"), including a number of integration issues. It was also determined that the two laws had many similar provisions, but utilized different language to accomplish the same result.

The Business Entities Committee charged with keeping the Alabama Business and Nonprofit Entity Code (the "Code") current agreed that the LP Law needed to be better integrated with the Code using the process developed in the drafting of the LLC Law. Also the language of the current LP Law and the LLC Law needed to be as similar as possible in areas where the same result was sought. This harmonization of the current LP Law and the LLC Law, along with the better integration of the current LP Law, is intended to (i) assist the practitioner by reducing the differences between the two laws where possible and (ii) allow for more consistent case law developments between the two laws.

A few noteworthy features of the law are:

(a) Contractual Nature. Much like the current LP Law, this new LP Law focuses on the contractual nature of the limited partnership, and thus, there are few mandatory provisions. Most features of a limited partnership can be modified by the partners to suit their needs in a partnership agreement. However, since the new LP Law, like the current LP Law, includes many default provisions, those default provisions apply if the partners do not modify them in the partnership agreement.

(b) Mandatory Safeguards. Despite the emphasis on allowing the partners to make their own contract, the new LP Law maintains that certain obligations, such as the implied contractual covenant of good faith and fair dealing, cannot be modified.

(c) Notice Filing. In keeping with the contractual nature of the limited partnership, the filings required to form, dissolve, merge, or convert a limited partnership are designed only to notify the State and third parties that the limited partnership exists and how to contact it. The details about the limited partnership will be contained in the partnership agreement.

(d) Agency. Unlike a limited liability company, the agency of a limited partnership is set by statute and is vested in the general partners. Thus, the certificate of formation requires that the general partners be listed.

(e) Purposes. The rules governing limited partnerships are phrased in terms of "activities and affairs," reflecting the fact that limited partnerships can be used for purposes other than carrying on a business (e.g., holding title to property, estate planning).

(f) Harmonization. The committee went to great lengths to harmonize, to the extent possible, the various processes of formation, filings, notice, amendment and restatement of certificates of formation, admission of limited partners and general partners, contributions and distributions, dissociation of partners and the effects thereof, transfers of interests, charging orders, rights of personal representatives, dissolution and winding up, direct and derivative actions, and conversions and mergers. This process revealed some issues with the Chapter 1 of the Code (the "Hub"), which are dealt with in Part 2.

(g) Dissolution. The dissolution process has been modified to follow the more modern rule of filing a statement of dissolution rather than amending the certificate of formation. This change places the new LP Law on the same footing as the Alabama General Partnership Law and the LLC Law.

(h) Conversions. The process for conversions was slightly modified to take into account a request from the Secretary of State—that is when both the converting entity and the converted entity are domestic entities, to have the statement of conversion and the certificate of formation filed simultaneously with the Secretary of State to resolve confusion that many practitioners were having utilizing the current LP Law. That change simply reflects current practice by the Secretary of State in its application of the conversion provisions under the Hub.

(i) Powers of Personal Representatives. During the drafting process, the Alabama Supreme Court issued its ruling in *L.B. Whitfield, III Family LLC v. Virginia Ann Whitfield et al.*, 150 So.3d 171 (Ala 2014). The new LP Law, along with the changes to the LLC Law in Part 3, clarifies that the

holding in that case should not apply to the default powers of a deceased partner's personal representative or other legal representative so long as that personal representative or other legal representative holds the deceased partner's transferable interests.

6. Grandparent Visitation Act

This act was passed in 2016 and became effective August 1, 2016. It is codified at Section 30-3-4.2 of the Code of Alabama. It repealed the previous grandparent visitation statute codified at Section 30-3-4.1.

This law was drafted by the Standing Family Law Committee. Under common law, grandparents did not have any legal rights to court-ordered visitation with their grandchildren over the objection of the parents of the grandchild. Thus, grandparent visitation has been authorized by legislative enactment.

In 2011, Alabama's previous grandparent visitation statute was declared unconstitutional in *Ex parte E.R.G.*, 73 So.3d 634 (Ala. 2011), based in part on *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). This law is intended to meet the constitutional requirements the court determined to be lacking in the existing statute by providing for a rebuttable presumption that a fit parent's decision denying or limiting visitation to the petitioner is in the best interest of the child. It is based on an Arkansas law held by Arkansas courts to meet the *Troxel* requirements.

Moreover, in this law Alabama uses an enhanced standard of clear and convincing evidence, rather than the preponderance of the evidence standard embraced by the Arkansas statute.

Thus to rebut the decision of the parent to deny visitation, the grandparent must prove by clear and convincing evidence, both of the following: the grandparent has a significant and viable relationship with the grandchild and visitation with the grandparent is in the best interest of the grandchild.

Under limited circumstances, courts may grant temporary visitation pending a final order. The court also has the discretion to

award any party reasonable expenses incurred by or on behalf of the party.

7. Restrictive Covenants in Contracts

This act was passed in 2015 and became effective January 1, 2016. It is codified as Article 10 of Chapter 1 of Title 8 of the Code of Alabama.

The prior law, Section 8-1-1 of the Alabama Code, dated back to the Code of 1923 and stood for the proposition that contracts in the restraint of trade were void.

The new act provides clarity and statutory structure to this area of the law, while not varying widely from prior principles. Section 1 preserves the prior presumption in Alabama Code Section 8-1-1 against contracts in restraint of trade. It also retained two exceptions from the previous statute. Because other "partial restraints" have been recognized by the courts as not being inconsistent with the general prohibition, this new act codifies those exceptions.

In addition, it makes explicit three limitations to those exceptions which have developed over time. The first is the requirement in Section 1(b) that all exceptions must preserve a protectable interest, defined in Section 2. The second is that two of the limitations, Sections 1(b)(3) and (4), impose a requirement that time and place restraints be reasonable. The third is that courts are given a general power not to enforce, in whole or in part, restraints which cause undue hardship.

Section 2 confirms prior Alabama law with regard to the requirement to show the actual protectability of the information or commercial relationship that is the purported subject of the restrictive. Merely prospective commercial relationships are not be protectable, unless the proponent of the covenant can show substantial investment in the specific prospective commercial relationship. Restrictive covenants related to good will in franchise or other agreements that otherwise satisfy the requirements of this act are enforceable.

Section 3 requires mutuality with respect to all significant provisions of a restrictive covenant. Section 7 continues the professional exemptions recognized by Alabama law.

8. Right of Publicity Act

This act was passed in 2015 and became effective August 1, 2015. It is codified as Article 39 of Chapter 5 of Title 6 of the Code of Alabama.

The right of publicity can be defined as the right to control the commercial use of one's identity. The right of publicity evolved from the general principles of invasion of privacy that prohibit using a person's name or likeness to gain a benefit. The elements typically comprising the right of publicity are referred to as the name, image and likeness of every person. The right of publicity presumes that everyone, regardless of fame, has a right to prevent unauthorized use of their name or image to sell products. This right has also been held to prohibit any implication that a person endorses a product (without the person's permission).

This act protects a person from the wrongful commercial use of his or her likeness during life and creates a descendible right for a period of 55 years after death. The act recognizes that many uses are protected by the First Amendment, but creates a cause of action and statutory damages for those that are not

9. Uniform Interstate Family Support Act

This act was passed in 2015 and became effective June 2, 2015. It is codified as Chapter 3D of Title 30 of the Code of Alabama.

The Uniform Interstate Family Support Act (UIFSA) provides universal and uniform rules for the enforcement of family support orders. In 1996, the U.S. Congress mandated the enactment of UIFSA (1996) as a condition of state eligibility for the federal funding of child support enforcement. Each state, including Alabama, subsequently enacted the UIFSA (1996).

In 2008, amendments to UIFSA were drafted to incorporate the provisions of the 2007 Hague Convention on the International Recovery of Child Support of Family Maintenance into state law ("the Convention"). The Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases.

In 2014, Congress enacted the Preventing Sex Trafficking and Strengthening Families Act. That act required each state to expeditiously enact the UIFSA 2008 amendments during their 2015 legislative session as a condition for continued receipt of federal funds supporting state child support programs. Failure to enact these amendments by that time may result in a state's loss of important federal funding.

Additionally, the enactment of the 2008 UIFSA amendments will improve the enforcement of American child support orders abroad and will ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside. The amendments provide guidelines and procedures for the registration, enforcement, and modification of foreign support orders from countries that are parties to the Convention.

10. Deployed Parents Custody and Visitation Act

This act was passed in 2015 and became effective June 5, 2015. It is codified as Section 30-3-9 of the Code of Alabama.

This act was drafted by the Standing Family Law Committee and concerns the custody and visitation issues of deployed parents. This act is drafted in conformity with a provision of the National Defense Authorization Act of 2014 passed by the United States Congress in December 2013. It provides that a military deployment may not be the sole factor considered by the court in making a custody determination. Furthermore, it provides clarification to the court on its ability to issue a pendente lite custody determination order in situations in which a case is continued or stayed based on Federal law.

11. Alabama Limited Liability Company Law of 2014 Amendments (2015)

This act was passed in 2015, and became effective May 7, 2015. It is codified as Chapter 5A of Title 10A of the Code of Alabama.

This act amends the Alabama Limited Liability Company Law of 2014 to clarify three issues. First, the act clarifies the law to make clear that the law of the state in which a foreign limited legality company is formed governs the internal affairs of that entity. Second, the act clarifies that under normal circumstances the liability of a member of a limited liability company for wrongful distributions is limited to the amount of the distributions received. Third, the act corrects some technical errors in cross-references.

12. Amendments to Probate Code

This act was passed in 2015 and became effective September 1, 2015. It is codified as Section 30-4-17 of the Code of Alabama.

Under existing law, a person who is divorced from a decedent is not a surviving spouse for purposes of inheritance through a will. However, the prior law was silent as to the passage of assets through other devices or payable on death instruments.

This act expanded this concept to cover "will substitutes" such as revocable inter-vivos trusts, life insurance and retirement-plan beneficiary designations, transfer-on-death accounts, and other revocable dispositions to the former spouse that the divorced individual established before the divorce or annulment.

The act also affected a severance of the interests of the former spouses in property that they held at the time of the divorce or annulment as joint tenants with the right of survivorship by causing their co-ownership interests become tenancies in common.

2010-2014 Quadrennium

13. Article 9 of the Uniform Commercial Code (2010 Amendments)

This act was passed in 2014 and became effective July 1, 2014. It is codified in Chapter 9A of Title 7 of the Code of Alabama.

Article 9 of the Uniform Commercial Code governs secured transactions in personal property. It provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest."

The 2010 amendments to Article 9 modified the existing statute to respond to filing issues and address other matters that have arisen in practice following experience with the current law.

One of the most importance aspects of the amendments is that it provides greater guidance as to the name of an individual debtor to be provided on a financing statement. For business entities and other registered organizations, the amendments clarify the proper name for perfection purposes.

Other improvements made by the Amendments to Article 9 of the Uniform Commercial Code include:

(a) Amendments providing greater protection for an existing secured party having a security interest in after-acquired property when its debtor merges with another entity;

(b) Amendments addressing perfection issues arising on after-acquired property when a debtor (individual or organization) moves to a new jurisdiction by giving the filer perfection for four months in collateral acquired post-move; and

(c) Safe harbor for the transfer of chattel paper in conformance with the Uniform Electronic Transactions Act.

14. Alabama Limited Liability Company Law of 2015

This act was passed in 2014 and became effective January 1, 2015. It is codified as Chapter 5A of Title 10A of the Code of Alabama.

This act marks a significant improvement in the state of the law in Alabama relating to limited liability companies. Prior to this act, the last substantive revision to Alabama's Limited Liability Company Act came in 1997. This revision brings Alabama to the forefront in laws governing limited liability companies.

This act updates Alabama's Limited Liability Company Law. It continues the practice of updating the law as the laws governing limited liability companies continues to evolve. This act, like its predecessors, is not based on a single source, but rather has borrowed concepts and provisions from a variety of sources including the Revised Uniform Limited Liability Company Act and the Revised Prototype Limited Liability Company Act. A few important features of this act are:

(a) Contractual Nature. The act focuses on the contractual nature of the limited liability company. There are few mandatory provisions in the act. Most features of a limited liability company can be modified by the parties to suit their needs. The act includes many default provisions that apply if the members do not modify them in the limited liability company agreement.

(b) Mandatory Safeguards. Despite the emphasis on allowing the parties to make their own contract, the act provides that certain obligations, such as the implied contractual covenant of good faith and fair dealing, cannot be modified.

(c) Notice Filing. In keeping with the contractual nature of the limited liability company, the filings required to form, dissolve, merge, or convert a limited liability company are

designed only to notify the State and third parties that the limited liability company exists and how to contact it. The details about the limited liability company will be contained in the limited liability company agreement.

(d) Right To Direct. A person's right to direct and oversee the activities and affairs of the limited liability company will be determined by the limited liability company agreement. If the limited liability company agreement is silent, the members will direct and oversee the activities and affairs of the company.

(e) Right to Bind. There is no statutory authority to bind. Rather, a person's authority to bind the limited liability company will be governed by the limited liability company agreement and the law of agency.

(f) Purposes. The rules governing limited liability companies are phrased in terms of "activities and affairs," reflecting the fact that limited liability companies can be used for purposes other than carrying on a business (*e.g.*, holding title to property, estate planning).

(g) Series. Series provisions are provided throughout the act in an effort to accommodate the appearance of series rules in many other state limited liability company laws. The act permits a limited liability company to establish, by way of its certificate of formation and its limited liability company agreement, one or more designated series of assets with which certain members may be associated. It is intended that the assets of a series not be liable for the obligations of the limited liability company or another series.

15. Alabama Uniform Partition of Heirs Property Act

This act was passed in 2014 and became effective January 1, 2015. It is codified as Chapter 6A of Title 35 of the Code of Alabama.

The Uniform Partition of Heirs Property Act addresses a problem faced by many middle to low-income families who own

real property: dispossession of their land through a forced sale. For many of these families, real estate is their single most valuable asset.

In summary, the Uniform Partition of Heirs Property Act preserves the right of a cotenant to sell his interest in inherited real estate, while ensuring that the other cotenants will have the necessary due process to prevent a forced sale: notice, appraisal, and right of first refusal. If the other cotenants do not exercise their right to purchase property from the seller, the court must order a partition-in-kind if feasible, and if not, a commercially reasonable sale for fair market value.

Section 7 of this act, concerning cotenant buyout, has been extensively revised from the uniform act. Likewise, Section 10 of this act, concerning sales, has been extensively revised from the uniform act. This section has been revised to clarify that when a court orders a sale it can be conducted by one of several specific methods which are listed. The court can choose the method more economically advantageous to the cotenants as a whole.

This act supplements Chapter 6 of Title 35 of the Code of Alabama which continues to apply to partition of all property not deemed to be heir property. This act is effective for partition actions filed on or after January 1, 2015.

16. Amendments to Title 10A: Merger and Conversion Provisions

This act was passed in 2014 and became effective July 1, 2014. It amended Chapter 1 of Title 10A of the Code of Alabama.

In 2011, the new Alabama and Nonprofit Entities Code became effective. Since that time the Institute created the Standing Committee on Business Entities to continuously address amendments to improve the operation of Alabama's business formation and governance laws.

These revisions to the merger and conversion portions contained in Chapter 1 of the Alabama Business and Nonprofit

Entities Code improve the operation of the laws related to the conversion and merger of business entities.

17. Constitutional Revision Commission

In 2011, the Legislature passed Act 2011-197, creating the Constitutional Revision Commission. The Commission was charged with completing an Article by Article Plan for revising the 1901 Alabama Constitution. The act further directed the Alabama Law Institute to staff the Commission. The plan was as follows:

Year 2011	
- Article XII	Private Corporations
- Article XIII	Banking
- All Articles	Remove unconstitutional racist language
Year 2012	
- Article III	Distribution of Powers
- Article IV	Legislative Department
- Article IX	Representation
Year 2013	
- Article I	Declaration of Rights
- Article V	Executive Department
- Article XIV	Education
Year 2014	
- Article VII	Impeachments
- Article X	Exemptions
- Article XVII	Miscellaneous

Taxation was specifically excluded

Commission members were appointed by Governor Bentley, Senate Pro Tem Marsh and Speaker Hubbard with the Chairs of the House and Senate Judiciary and Constitution Committees as Ex-officio Members.

18. 10A Name Reservation

This act was passed in 2013 and became effective August 1, 2013. It amended Article 5, Division A of Chapter 1 of Title 10A of the Code of Alabama.

This act amended the Hub provisions of the Business and Entities Act to make name reservation a mandatory and universal process for all entities, including covering foreign entities. It extended the effectiveness of name reservations to one year. It deleted sections 10A-1-5.21through 10A-1-5-25 (Division C) relating to name reservations of a foreign filing entity.

19. Study Committee on Campaign Finance Reform

In 2012, the Legislature passed Act 2012-358, creating the Study Committee on Campaign Finance Reform.

The committee was charged with studying Alabama's Fair Campaign Practices Act and making recommendations on its improvement. At the request of the Chairpersons, the Law Institute served as research and drafting staff to the committee.

In 2013, the committee made numerous recommendations to the Legislature which were ultimately passed as part of Act 2013-311.

As part of its support of this committee, the Institute in conjunction with the Secretary of State and Alabama State Bar facilitated numerous training seminars to educated public officials, candidates and the public on these significant changes to the law.

20. Unitrust

This act was passed in 2013 and became effective August 1, 2013. It amended the Alabama Principal and Income Act codified in Chapter 3A of Title 19 of the Code of Alabama.

Under federal law, a state is authorized to permit a trust to provide for an alternative for reasonable apportionment between the income and remainder beneficiaries of the total return of the

trust. This type of provision is commonly referred to as a "unitrust." The unitrust amount is determined by applying a fixed unitrust percentage to the net fair market value of the trust assets. For this purpose, net fair market value is determined by reducing the fair market value of the assets by the liabilities of the trust.

The Act updated the Alabama Principal and Income Act to allow trusts to be established initially as unitrusts and also provided procedures for existing trusts to be converted into unitrusts.

21. Uniform Commercial Code Article 4A Amendments

This act was passed in 2013 and became effective August 1, 2013. It amended Section 7-4A-108 of the Code of Alabama.

The Dodd-Frank Wall Street Reform and Consumer Protection Act is an amendment to the Federal Electronic Funds Transfer Act (EFTA) that will have an important impact on the scope of Article 4A of the Uniform Commercial Code. Presently Article 4A does not apply to a funds transfer any part of which of which is governed by EFTA. The implementing regulations for the federal act were published in the Federal Register in November 2011, with a delayed effective date of the rules to February 2013, expressly to permit changes to UCC 4A so it might continue to govern aspects of some remittance transfers. Absent a change to Article 4A, there could be legal uncertainty for a class of remittance transfers currently governed by Article 4A. The Permanent Editorial Board for the Uniform Commercial Code has recommended an amendment to § 4A-108 and its comments. Both the American Law Institute and the Uniform Law Commission have approved the amendment.

UCC Article 4A was originally drafted to govern transfers between commercial parties. At the time of drafting, the EFTA governed only consumer wire transfers. UCC § 4A-108 was drafted with that in mind. When the amendment to EFTA goes into effect in 2013, EFTA will govern "remittance transfers", whether those remittance transfers are also "electronic fund transfers" as defined in EFTA. Thus, when the amendment and its

implementing regulation go into effect, the result of UCC § 4A-108 in its present form will be that a fund transfer initiated by a remittance transfer will be entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer (not a consumer remittance transfer). Thus a number of important issues in those remittance transfers will be governed neither by Article 4A or the EFTA.

The amendment revised UCC § 4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the EFTA. The amendment then restated the rule of the supremacy clause that the federal statute controls in the case of any conflict between UCC Article 4A and the EFTA.

22. Alabama Uniform Collaborative Law

This act was passed in 2013 and became effective January 1, 2014. It is codified as Section 6-6-26 of the Code of Alabama.

The Uniform Collaborative Law Rules/Act (UCLR/A), was originally promulgated by the Uniform Law Commission as an act in 2009 and subsequently amended in 2010. The 2010 Amendments to the Uniform Collaborative Law Rules/Act created an explicit mechanism for the operative provisions of the act to be adopted in rule, rather than statute, thereby giving the state the option of the method for adoption. Alabama chose a hybrid position. The majority of the provisions were being presented as statutes to the Legislature for their consideration. However, several of the provisions that are more suited to adoption by rule were omitted and will be left to court rule. The act also provided states with the option to either limit application of the act to family law matters or to not impose such a limitation. Alabama chose to limit the application of the act to family law matters, but did broaden the application to family law matters in Probate Court, such as guardianships.

Collaborative law is a voluntary, contractually based alternative dispute resolution process for parties who seek to negotiate a resolution of their matter rather than having the matter decided by a court. Under the provisions of the act the lawyers and

clients agree that the lawyers will represent the clients solely for purposes of settlement, and that the clients will hire new counsel if the case does not settle. The parties and their lawyers work together to find an equitable resolution of a dispute, retaining experts as necessary. No one is required to participate, and parties are free to terminate the process at any time.

The basic ground rules for collaborative law are set forth in a written agreement ("collaborative law participation agreement") in which parties designate collaborative lawyers and agree not to seek a judicial resolution of a dispute during the collaborative law process. The parties agree that they have a mutual right to terminate collaborative law at any time without giving a reason.

The act mandated essential elements of a process of disclosure and discussion between prospective collaborative lawyers and prospective parties to better insure that parties who sign participation agreements do so with informed consent. It required collaborative lawyers to make reasonable inquiries and take steps to protect parties against the trauma of domestic violence.

Specifically, the act:

(a) Applied only to collaborative law participation agreements that meet the requirements of the act;

(b) Established minimum requirements for collaborative law participation agreements;

(c) Specified when and how a collaborative law process begins and is concluded;

(d) Created a stay of proceedings when parties sign a participation agreement to attempt to resolve a matter related to a proceeding pending before a court while allowing the court to ask for periodic status reports;

(e) Made an exception to the stay of proceedings for emergency orders to protect health, safety, welfare, or interests of a party or child of a party;

(f) Required parties to voluntarily disclose relevant information during the collaborative law process without formal discovery requests and update information previously disclosed that has materially changed; and

(g) Authorized judicial discretion to enforce agreements that result from a collaborative law process.

23. Uniform Principal and Income Act

This act was passed in 2012 and became effective January 1, 2013. It is codified as Chapter 3A of Title 19 of the Code of Alabama.

The Uniform Principal and Income Act provided the procedures for trustees administering an estate in separating principal from income. It was originally promulgated by the Uniform Law Commissioners in 1931 and has been revised or amended several times subsequent to the initial act. Alabama's current law was passed in 2000 and is codified at Code of Alabama section 19-3A-101 et seq. The basic purpose of the act, like the earlier versions, was to ensure that the intention of the trust creator is the guiding principle for trustees.

This revision continued to distinguish between property that is principal, which will be distributed to remainder beneficiaries (persons entitled to receive principal when an income interest ends), and property that is income, distributed to income beneficiaries. The Uniform Act has always provided the default rules for such allocations in the event the trust investment is silent. These amendments updated the traditional income and allocation rules so that they can work with the doctrine of modern investment theory.

Improvements to the Uniform Principal and Income Act made by the amendments are as follows:

(a) It updates the act to reflect current policy of the Internal Revenue Service and clarified technical language regarding withholdings.

(b) It clarifies allocations of acquired assets, such as those from corporate distributions.

(c) It includes an "unincorporated entity" concept to deal with businesses operated by a trustee, including farming and livestock operations, and investment activities in rental real estate, natural resources, and timber.

(d) It adds a provision which deals with the problem of disbursements made because of environmental laws.

(e) It follows the principles in Uniform Prudent Investor Act (adopted by Alabama—Ala. Code § 19-3B-901 et seq.), especially the principle for investing for total return instead of for a certain level of income.

(f) It provides the power to make adjustments between principal and income to correct inequities caused by tax elections or peculiarities in the way the fiduciary income tax rules apply.

(g) It promotes the uniformity of law necessary for a healthy interstate investment environment.

24. Uniform Foreign-Country Money Judgments Recognition Act

This act was passed in 2012 and became effective January 1, 2013. It is codified as Section 6-9-250 of the Code of Alabama.

The Uniform Foreign-Country Money Judgments Recognition Act is a revision of the Uniform Foreign Money Judgments Recognition Act of 1962, which codified the most prevalent common law rules with regard to the recognition and enforcement of money judgments rendered in other countries. Under the 1962 Act, a state was required to recognize a foreign-country money judgment if the judgment satisfied the standards for recognition set out in the Act.

Since its promulgation more than 40 years ago, the 1962 Act has been adopted in a majority of the states. Alabama adopted

the 1962 Act in 1986, and it is codified at Section 6-9-232 et seq. of the Code of Alabama. The prior law was generally viewed as successful in carrying out its purpose of establishing clear and uniform standards under which state courts enforce the foreign money judgments that came within its scope.

However, in spite of the similarities in titles, these acts deal with quite different problems of judgment enforcement. The Enforcement of Foreign Judgments Act provided for enforcement of a state court judgment in another state to implement the Full Faith and Credit clause of the U.S. Constitution. The Foreign-Country Money Judgments Recognition Act provided for enforcement of foreign country judgments in a state court in the United States.

The increase in international trade in the United States has also meant more litigation in the interstate context. This means more judgments to be enforced from country to country. There is a strong need for uniformity between states with respect to the law governing foreign-country money-judgments. If foreign country judgments are not enforced appropriately and uniformly, it may make enforcement of the judgments of American courts more difficult in foreign country courts.

Thus, it was necessary to update the 1962 Act to make it timely because of the continuing increase in international trade and the need to make Alabama a recognized forum for international business.

Among a long list of improvements, the Revised Act:

(a) Provides simple court procedures for the enforcement of foreign-country money judgments;

(b) Closes the gaps in the 1962 Act;

(c) Addresses burdens of proof of the parties which is not covered in the current law;

(d) Revises the grounds for denying recognition of foreign-country money judgments;

(e) Establishes a statute of limitations for recognition actions;

(f) Provides clear and certain rules for obtaining foreign-country money judgments; and

(g) Provides a better response to the current conditions of international trade.

25. Uniform Interstate Depositions and Discovery Act

This act was passed in 2012 and became effective January 1, 2013. It is codified as Section 12-21-400 of the Code of Alabama.

The Uniform Interstate Depositions and Discovery Act addressed the need for an efficient and inexpensive procedure that would allow litigants to depose individuals and conduct discovery in a state other than the trial state.

Under the act, litigants can present a clerk of the court located in the state where discoverable materials are sought with a subpoena issued by a court in the trial state. Once the clerk receives the foreign subpoena, the clerk will issue a subpoena for service upon the person or entity on which the original subpoena is directed. For example, an Alabama litigant would be able to obtain service of a subpoena on a party in a neighboring state. The terms of the issued subpoena must incorporate the same terms as the original subpoena in Alabama and contain the contact information for all counsel of record and any party not represented by counsel.

The Uniform Act improved current state procedures in the following ways:

(a) It provided an efficient procedure for the clerk of court in the discovery state to follow.

(b) It lowered costs by eliminating the need for out-of-state litigants to obtain local counsel in the discovery state.

(c) It decreased the need for judicial oversight since under the act there is no need to present the matter to a judge in the discovery state before a subpoena can be issued.

(d) It clarified that discovery permitted by the Act must comply with the laws of the discovery state.

(e) It recognized that the discovery state has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from unreasonable or burdensome discovery requests.

(f) It specified all motions to quash or modify a subpoena must comply with the law of the discovery state.

26. Share Exchange Act

This act was passed in 2012 and became effective May 23, 2012. It amended Section 10A-2-11.02 of the Code of Alabama.

Act 2012-563 provided for a share exchange between two corporations whereby a corporation may acquire all of the outstanding shares of one or more classes or series of stock of another corporation.

27. Uniform Durable Power of Attorney Act

This act was passed in 2011 and became effective January 1, 2012. It is codified as Sections 26-1A-101 et seq. of the Code of Alabama.

This act revised the former Durable Power of Attorney law. § 26-1-2. It followed the Uniform Power of Attorney Act drafted by the Uniform Law Commission in 2006.

Under prior law, one must designate the power of attorney as "durable" for the power to remain in effect when the maker subsequently becomes incompetent. The prior default rule was for powers of attorney to be void when the maker becomes incompetent unless the power of attorney specifically makes it

durable. This act reversed the default to make all powers of attorney "durable" unless they specifically provide otherwise.

This act is prospective only in application. Prior § 26-1-2 will continue to govern all powers executed prior to the effective date of the new act. Furthermore, the prior durable attorney law and this act do not include healthcare decisions. Healthcare powers are governed by § 26-1-2.1 which will carry forward prior law as it relates to healthcare powers.

The act offered clear guidelines for the agent. It provided:

(a) Agent protections, such that an agent who acts with care, competence, and diligence for the best interest of the principal is not liable solely because he or she also benefits from the act or has conflicting interests; and

(b) Methods for the agent to give notice of his or her resignation if the principal becomes incapacitated.

The act encouraged acceptance of a power of attorney by third parties by:

(a) Providing broad protections for the person who accepts or refuses a power of attorney without actual knowledge that the power of attorney is invalid or has been terminated;

(b) Offering an additional protective measure for the principal by providing that third persons may refuse the power if they have the belief that "the Principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the Agent or person acting for or with the Agent, and make a report to the appropriate adult protection service agency"; and

(c) Providing an optional statutory form for granting a durable power of attorney.

28. Alabama Rule Against Perpetuities

This act was passed in 2011 and became effective January 1, 2012. It is codified as Sections 35-4A-1 et seq. of the Code of Alabama.

Alabama was the last of the fifty states to have the original common law rule against perpetuities in full force and effect. This distinctiveness was heightened because Alabama imposed by statue the rule upon personal property and land. (*See* Alabama Code of 1975 § 35-4-4). Simply stated, the common law rule provided that no future interest was good unless it must vest, if at all, no later than twenty-one years after a life in being at the creation of the interest.

Under the common law rule, any violation of the rule results in the transfer at issue being void. The rule can cause harsh results for two reasons. First, even a hypothetical violation of the rule, no matter how improbable, voids the transfer. Second, if the transfer is to a class of persons and even one has the potential of vesting outside the permissible time period, the transfer to all members of the class is void.

The Uniform Statutory Rule adopted a "wait-and-see" approach. This means that rather than a transfer becoming void because of a possible violation of the rule, the Uniform Statutory Rule provides a period of time within which an interest can vest. If vesting occurs, the transfer is saved, if not, then it is invalid. This period of time in this act is one hundred years.

Next, the Uniform Statutory Rule allowed for a court to reform a transfer which violated the rule. This means that if the transfer does not vest within the one-hundred year time period allowed, an interested person can petition a circuit court to reform the transfer in a manner that would allow it to occur and which most approximates the will of the grantor.

There are a number of exceptions to the rule contained in the act as well. These include transfers which are business transactions and those related to charities. There is also an exemption which provides for a 360 year "wait-and-see" period for

trusts which are governed by the laws of Alabama in which the trustee has the power to sell, lease or mortgage all of the property which is held in trust.

This act in essence continues the public policy goal of preventing perpetual non-vested interests in a manner which is more practical, less onerous, and less likely to result in harsh outcomes for the unsuspecting.

29. Alabama Unsworn Foreign Declarations Act

This act was passed in 2011 and became effective January 1, 2012. It is codified as Sections 12-21-80 et seq. of the Code of Alabama.

Declarations of persons abroad are used for numerous reasons in Alabama courts and administrative proceedings. The prior acceptable form of such declarations in Alabama was an affidavit sworn to in the presence of a notary public.

In recent years, access to United States Embassies and Consulates has become more difficult because of closing and added security. This has made the obtaining of appropriately sworn foreign declarations more difficult.

The Uniform Unsworn Foreign Declarations Act (UUFDA) allows for the use of declarations made by persons outside the territorial boundaries of the United States which are signed under penalty of perjury, but are not sworn to in the presence of a notary public. The act excluded from its application declarations for depositions, oaths of office, oaths related to self-proving wills, declarations recorded under Title 35, oaths required to be given before specified officials other than a notary, and powers of attorney.

Federal Courts have allowed the flexibility of using unsworn declaration for many years. Since 1976, federal law has allowed an unsworn declaration to be recognized and valid as the equivalent of a sworn affidavit if it contained an affirmation substantially in the form set forth in the federal act.

30. Alabama Revised Notary Act

This act was passed in 2011 and became effective January 1, 2012. It is codified as Sections 36-20-70 et seq. of the Code of Alabama.

Alabama's Notary Laws were amended in 1987. Subsequently, a number of the provisions became outdated. Examples of outdated provisions included the requirement that a notary seal must leave an impression by embossing, limiting notaries to one county, and low bond limits.

These amendments changed the law in four ways:

(a) The amendments allowed for the use of a stamped seal. This results in the seal on documents which are filed or stored electronically to show up better after scanning.

(b) All new notaries and renewals are for a statewide commission. Prior law allowed for a notary to be either for one county or statewide. At the time of the passage of the amendments, there were more than 50,000 active notaries and only 14 were limited to one county.

(c) These amendments removed the statutory requirement for notaries to keep a journal of their notarial acts and to file them in probate court.

(d) This act increased the bond a notary must hold from $10,000 to $25,000.

Notaries in existence at the passage of the act remain valid and unchanged until renewed. These amendments make no changes for Alabama International Notaries or Civil Law Notaries.

2006-2010 Quadrennium

31. Uniform Adult Guardianship Jurisdiction Act

This act was passed in 2010 and became effective January 1, 2011. It is codified as Sections 26-2B-101 through 503 of the Code of Alabama.

The current Guardianship and Protective Proceedings Act was passed by Alabama in 1987 and was based on the Uniform Act at the time.

With population mobility, cases involving simultaneous and conflicting jurisdiction over child custody increased to the point that Alabama passed the Uniform Child Jurisdiction Enforcement Act in 1999 to clarify the law concerning child custody when the parents are in different states.

This same jurisdictional problem existed for adult guardianships of aging parents as with children living in different states. Guardians are regularly appointed by courts to care for an aging adult in one state, then the individual moves to a second state. Sometimes guardianships must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in a second state.

This act provided an effective mechanism for resolving multi-jurisdictional disputes.

This law is organized into articles.

Article 1 - General Provisions contains definitions and provisions designed to facilitate cooperation between courts in different states.

Article 2 - Jurisdiction specifies which court has jurisdiction to appoint a guardian or conservator. Its overall objective is to have jurisdiction in only one state except in cases of an emergency or in situations where the individual owns property located in multiple states.

Article 3 - Transfer of Guardianship or Conservatorship specifies a procedure for transferring guardianship or conservatorship proceedings from one state to another.

Article 4 - Registration and Recognition of Orders from Other States addresses enforcement of guardianship and protective orders in other states.

The Uniform Adult Guardianship Jurisdiction Act clarified many guardianship issues including, registration and transfer, for out-of-state cases. The procedures in the act help reduce the cost of guardianship and protective proceedings from state to state.

32. Uniform Child Abduction Prevention Act

This act was passed in 2010 and became effective January 1, 2011. It is codified as Section 30-3C-1-13 of the Code of Alabama.

While prior Alabama law addressed initial child custody determination as well as criminal repercussions for child abductions, this act clarified the procedure for courts to follow to protect the child and all parties.

In 1999, Alabama passed the Uniform Child Custody Jurisdiction and Enforcement Act. This act complimented that act including the temporary emergency jurisdiction available for minors.

The act also addressed special problems involved in international child abduction. These include risk factors related to whether the party is likely to take the child to a country that is not a party to The Hague Convention on the Civil Aspects of the International Child Abduction or to a country that is on a current risk of state sponsors of terrorism or engaged in active military war.

If an abduction appears imminent, the court may issue a warrant to take physical custody of the child, direct law

enforcement officers to take steps to locate and return the child or exercise other appropriate powers existing under state law.

33. Alabama Trademark Act Amendments

This act was passed in 2010 and became effective January 1, 2011. It amended Chapter 12 of Title 8 of the Code of Alabama.

Rather than fully replace current Alabama trademark law, the Alabama Trademark Act was amended to add concepts from the Model State Trademark Act which improve existing law. The general areas improved were: dilution, the term for the trademark registration period, the classification system, and the remedies available for infringement.

Alabama retained the ability to register a trade name in addition to a trademark.

34. Redemption of Ad Valorem Tax Sales

This act was passed in 2009 and became effective September 1, 2009. It amended Title 40 of the Code of Alabama.

When Section 40-10-122 was amended in 2002 to limit 12% interest paid at tax sale to taxes and on the overbid up to 15% of assessed value, other sections of the law should have been amended. This act clarified and codified the existing law by amending other relevant code sections concerning the redemption of property from ad valorem tax sales. It also codified case law on redemption and delineated the counties' responsibility with regard to holding and refunding an "overbid" by the tax sale purchaser who paid all taxes, fees and charges and any additional sums paid to the tax collector.

The act also:

(a) Provided a procedure for redemption by the landowner from multiple tax sales;

(b) Established that the owner who remains in possession after the sale may always redeem (The owner has a statutory

redemption period for 3 years from sale; there is an additional 3-year redemption period by the owner from the purchaser after the original 3-year statutory redemption period.);

(c) Allowed the tax status for Class 3 property to remain to be taxed as Class 3 residential property so long as the owner occupies the property;

(d) Provided that after three years from the date of the tax sale, the probate judge must receive proof that all ad valorem taxes have been paid before a tax deed is issued; and

(e) Provided a less complicated procedure for redeeming property sold at a tax sale.

35. <u>Revised Uniform Limited Partnership Act</u>

This act passed in 2009 and became effective January 1, 2010 for new Limited Partnerships. After January 1, 2011, the act governed all Limited Partnerships as a part of the Business and Nonprofit Entities Code. The act is codified in Chapter 9 of Title 10A of the Code of Alabama.

This revision updated the Limited Partnership Act to reflect modern business practices. The prior law had been revised in 1983. Limited partnerships are now used primarily in two ways: for family limited partnerships in estate planning arrangements, and for highly sophisticated, manager-controlled limited partnerships.

A limited partnership is distinguished from a general partnership by the existence of limited partners who invest in the partnership. In return for limited liability, the limited partner usually relinquishes any right of control or management of partnership affairs. However, the general partner of a limited partnership traditionally receives no direct liability protection.

This act provisions include:

(a) Perpetual Entity. No termination unless the agreement so provides. A limited partner leaving does not dissolve the entity.

(b) Entity Status. A limited partner is clearly an entity.

(c) Convenience. The act provided a single, self-contained source of statutory authority for issues pertaining to limited partnerships, no longer dependent upon the general partnership law for rules that are not contained within it.

(d) LLLP Status. Under this act, limited partnerships may opt to become limited liability limited partnerships (LLLP), simply by so stating in the limited partnership agreement, and in the publicly filed certificate. The primary reason for a limited partnership to elect LLLP-status is to provide direct protection from liability for debts and obligations of the partnership to the general partner of the limited partnership.

(e) Liability Shield. The prior limited partnership law provided only a restricted liability shield for limited partners. This act provided a full, status-based shield against limited partner liability for entity obligations. The shield applied whether or not the limited partnership is an LLLP.

(f) Express Default Statute. The act provided default provisions between the partners and between partners and the partnership. Therefore, when the partnership agreement does not define the relationship, there is a fallback default law.

The act also addressed issues such as allocating power between general partners and limited partners; and setting fiduciary duties owed by general partners to other general and limited partners.

36. Business and Nonprofit Entities Code

This law was passed in 2009 and became effective January 1, 2011. This act is codified as Title 10A of the Code of Alabama.

This act is a reorganization of the business and nonprofit laws much like the revision in 2007 of the Election Code. There were no substantive changes except when there currently exist conflicts between entities.

The Code is organized on a "Hub and Spoke" model in Title 10. Article 1, constituting the "Hub," consists of provisions applicable to each of the various business entities. The remaining Articles of the "Spokes" of the Act and are the individual entities, such as the Business Corporation Act. When possible, each entity retains its prior Chapter designation in the "Spoke." For example, business corporation provisions formerly were in Chapter 2 and are in Chapter 2 of the act. This will make it easier to find for those familiar with the prior law.

Corporation, Nonprofit, Partnership, Limited Partnership, LLP, LLC, and numerous other entity laws were passed over the past 10 to 50 years with little regard as to the relation of similar, different or even conflicting provisions in one law to another. Businesses, in particular small business, may have multiple entities for ownership of their property and running their business. This requires knowledge by the owner and their attorney of each type law. Otherwise, these subtle differences become a trap for the unwary.

In May 1999, a committee of the Law Institute began its study of all the business entities in Alabama to clear up inconsistencies between the entities that are a trap for lawyers and those with multiple entity organizations. The committee first drafted the Alabama Entities Conversions and Mergers Act for all entities. The act passed the legislature in 2000 and is codified at Section 10-15-1 et seq. of the Code of Alabama. Nine years later, with over 50 meetings held, the Institute drafting committee completed its study by top lawyers in the state who donated over $2 million of their legal services.

The purpose of this Code is primarily non-substantive. It is to make the law encompassed by this Title more accessible and understandable by:

(a) Rearranging the kinds of business and non-business organizations and the statutes applicable to them into a more logical order by a non-substantive revision of analogous or comparable provisions found in the prior Alabama Business Corporation Act, Alabama Non-Profit Corporation Act, Alabama Limited Liability Company Act, Alabama Revised Partnership Act, Alabama Revised Limited Partnership Act, Alabama Real Estate Investment Trust Act, Alabama Professional Associations Act, Alabama Professional Associations Act, and other existing provisions of Alabama statutes governing domestic and foreign business and non-profit entities;

(b) Employing a format and numbering system designed to facilitate access to and citation of the law and to accommodate future expansion of the law;

(c) Eliminating repealed, duplicative, expired, executed, and other ineffective provisions; and

(d) Restating the law in modern language to the greatest extent possible.

The reorganization is as follows:

Chapter 1	General Provisions
Chapter 2	Alabama Business Corporation Act
Chapter 3	Non-Profit Corporation Act
Chapter 4	Alabama Professional Corporations Act
Chapter 5	Alabama Limited Liability Company Act
Chapter 8	Alabama Revised General Partnership Act
Chapter 9	Alabama Revised Limited Partnership Act
Chapter 10	Alabama Real Estate Investment Trust Act
Chapter 11	Employee Cooperative Corporations
Chapter 16	Business Trusts
Chapter 17	Alabama Unincorporated Nonprofit Corporations

Chapter 20	Special Purpose Entities
Chapter 30	Provisions for Entities that can no longer be formed

Alabama Professional Associations Act and Close Corporations

Chapter 1, General Provisions concerns: Definitions, application, and purposes; purpose and powers of a domestic entity; formation and governance; filings; names of entities, registered agents, and registered offices; indemnification and insurance; foreign entities; conversions and mergers; and winding up and termination of a domestic entity.

Chapter 2, Alabama Business Corporation Law and applicable portions of Chapter 1 concern: General provisions; formation and governing documents; purpose and powers; shares and distributions; shareholders; directors and officers; amendment of articles of incorporation; merger and share exchange; sale or mortgage of assets; dissenters' rights; dissolution; foreign corporations; records and reports; and application.

Chapter 3, Alabama Nonprofit Corporation Law and applicable portions of Chapter 1 concern: General provisions; substantive provisions; formation of nonprofit corporations; amendments; mergers and consolidation; sale of assets; dissolution; and miscellaneous provisions.

Chapter 4, Alabama Professional Corporation Law and applicable portions of Chapter 1 concern: General provisions; purposes, powers, and organization; shareholders; directors and officers and professional liability; special provisions as to amendments, merger, and consolidation; regulation of professional corporations, foreign professional corporations, and application to existing corporations; and limited liability corporations.

Chapter 5, Alabama Limited Liability Company Law and applicable portions of Chapter 1 concern: General provisions; formation; relationship of members and managers to third parties; relationship among members; contributions and distributions; transfer of membership interest; dissolution; and professional services.

Chapters 6 and 7 were reserved for future legislation.

Chapter 8, Alabama General Partnership Law and applicable portions of Chapter 1 concern: General provisions; nature of partnership; relations of partners to persons dealing with partnerships; relations to partners to each other and to partnership; transferees and creditors of partners; partners' dissolution; partners' dissolution when business not wound up; winding up partnership business; registered limited liability partnerships; and miscellaneous provisions.

Chapter 9, Alabama Limited Partnership Law and applicable provisions of Chapter 1 concern: General provisions; certificate of limited partnership; limited partners; general partners; finance; distributions and withdrawals; assignment of partnership interests; dissolutions; derivative actions; and miscellaneous provisions.

Chapter 10, Alabama Real Estate Investment Trust Law and applicable provisions of Chapter 1 concern: Form; compliance; declaration of trust; classification of shares; removal of trustee powers; investment and use; annual report; inspection of records; filing fees; amendment of declaration; merger; dissolution; liability of trust, shareholders, and trustees; service of process; income tax; and treatment.

Chapter 11, Alabama Employee Cooperative Corporations Law and applicable provisions of Chapter 1 concern: Election as employee cooperative and revocation of election; corporate names; members, membership shares, rights, and responsibilities; directors and officers; voting power, amendment of bylaws and protection of shareholders; apportionment of earnings and losses; internal capital accounts; internal capital account cooperatives; and conversion of membership shares and merger of employee cooperatives.

Chapters 12, 13, 14, and 15 were reserved for future legislation.

Chapter 16, Business Trusts concerns: Establishment and purpose; powers and liabilities of trustees and liability of trust; certificate of ownership and liability of beneficial owners; contents and

recordation of declaration of trust; duration and suits against trust; and attachment and execution.

Chapter 17, Alabama Unincorporated Nonprofit Association Law and applicable provisions of Chapter 1 concern: Governance; association as legatee, devisee, or beneficiary; statement of authority; liability in tort and contract; capacity to assert and defend and standing effect of judgment or order; disposition of personal property of inactive or dissolved association; appointment of agent; claims, venue, and service; transition; and acts not repealed, saving clause, and uniformity of application.

Chapters 18 and 19 were reserved for future legislation.

Chapter 20, Special Purpose Entities concerns: Bishop of diocese; churches, public societies, and graveyard owners; conferences of ministers; state conventions and association of churches; educational institutions; health care service plans; industrial development corporations; local fraternal orders; single tax and mutual economic associations; private foundations; charters of medical, dental, pharmaceutical, or similar associations; charters of corporations not of a business character; retail merchants' associations, wholesale merchants' associations; water and power companies; and liability of officers of nonprofit organizations.

Chapter 21, Certain Powers, Rights, and Duties of Corporations, concerns: Corporate political contributions; corporate powers of eminent domain; and prosecution of corporations.

Chapters 22 to 29, inclusive, were reserved for future legislation.

Chapter 30, Provisions Applicable to Existing Entities of a Type that May No Longer Be Formed concerns: Unincorporated professional associations and close corporations.

37. Electronic Recording of Real Estate Records

This act was passed in 2009 and became effective January 1, 2010. However, before implementation by a county, uniform standards must still be established. It is codified as Chapter 4 of Title 35 of the Code of Alabama.

As a result of the enactment of the Uniform Electronic Transactions Act passed by the Alabama Legislature in 2001, it is now possible to have contracts in electronic form with electronic signatures of the parties. However, real estate transactions require another step not addressed by the e-sign law.

Real estate documents must be recorded in public records in order to provide notice of the current owner of the property. Real estate records establish a chain of title based on filing the original document, preserving it by copying it, and recording the document in the probate office.

This act accomplished three primary objectives:

(a) It equated electronic documents and electronic signatures to original paper documents and manual signatures. Thus, any requirements for original paper documents or manual signatures are satisfied by an electronic document and signature. The process is essentially a scan-in of the document and electronic filing by email.

(b) It specified that electronic filing and storage of electronic records is purely an opt-in option by probate offices in each of the 67 counties and does not mandate them. Those electing to have electronic recording will be able to do so while maintaining the procedure for walk-up filing of paper documents.

(c) It established a board to set uniform standards for filing electronically in every probate office that elects to opt-in to utilize electronic filing. This 13-person board consists of probate judges, lawyers, and other officials that have an interest in the recording process.

38. <u>Uniform Prudent Management of Institutional Funds Act</u>

This act was passed in 2008 and became effective January 1, 2009. It is codified as Chapter 3C of Title 19 of the Code of Alabama.

The act governed investment of the funds of charitable organizations and total return expenditure of those funds. It established a prudent management investment policy that was derived from the Uniform Prudent Investor Act that applies only to trusts which were passed in Alabama in 2006. It also provided for a delegation of authority for investment to outside agents and reformation of donor restrictions (cy pres) on funds when they are so outdated that the original objective can no longer be followed.

The act:

(a) Made sure the best investment practices govern the actual investment of the institutional funds;

(b) Changed obsolete rules governing prudent total return expenditure and provide a modern rule of prudence consistent with the rules that govern investment;

(c) Eliminated differences in investment and expenditure rules that apply to different types to nonprofit organizations. The same rules govern all institutions under this act;

(d) Encouraged growth of institutional funds while eliminating investment risks that threaten the principal;

(e) Assured that there are adequate assets in any institutional fund to meet the program need; and

(f) Made the law governing institutional funds uniform in all states.

39. <u>Alabama Uniform Parentage Act</u>

This act was passed in 2008 and became effective January 1, 2009. It is codified as Sections 26-17-101 et seq. of the Code of Alabama.

This act, which revised the Uniform Parentage Act of 1973, modernized the law for determining the parents of children and facilitated modern methods of testing for parentage. With the rising

incidence of children born to unmarried parents, parentage determinations must be improved for the enforcement of child support. The Uniform Act was completed by the Uniform Law Commissioners in 2000 (and amended in 2002). This act repealed the prior parentage law, previously located at Ala. Code §§ 26-17-1 through 22.

There are seven substantive articles. Alabama chose to omit the optional Article 8 concerning surrogacy agreements. Although including an Article 4, Alabama chose to retain the current Alabama Putative Registry law rather than follow the policy and procedure embodied in the Uniform Act. The articles and their most notable features are:

Article 1 - General Provisions

Article 2 - Parent-Child Relationship

> Determination of legal father. The legal father may be one of the following: an unrebutted presumed father, a man who has acknowledged paternity under Article 3, an adjudicated father as the result of a judgment in a paternity action, an adoptive father or a man who consents to an assisted reproduction under Article 7.

Article 3 - Voluntary Acknowledgment of Paternity

> Consent proceeding for acknowledgment of paternity. The non-judicial acknowledgment of paternity proceeding under Article 3 of the new Uniform Act allows a knowing and voluntary acknowledgment of paternity that is the equivalent of a judgment of paternity for enforcement purposes. An acknowledgment from another state is given the privilege of full faith and credit in Alabama.

Article 4 - Registry of Paternity

> Continued Alabama's current Putative Father's Registry. Ala. Code § 26-10C-1.

Article 5 - Genetic Testing

Separate procedure for genetic testing. Standards for genetic testing are part of Article 5. The standard for a presumption of paternity as a result of testing is also established by statute. The measure is 99% probability of paternity based on appropriate calculations of "the combined paternity index."

Article 6 - Proceeding to Adjudicate Parentage

Basic proceeding to determine parentage. Under the new Uniform Act, the child, the mother of the child, a man whose paternity is to be adjudicated, DHR, an authorized adoption agency or licensed child-placing agency, a representative of a deceased, incapacitated or minor person, or "any interested person" have standing.

Article 7 - Child of Assisted Conception

Parentage in cases of assisted conception. Generally, if a married couple consents to any sort of assisted conception and the woman gives birth to the resultant child, they are the legal parents.

40. Revised Uniform Anatomical Gift Act

This act was passed in 2008 and became effective November 1, 2008. It is codified as Article 9 of Chapter 19 of Title 22 of the Code of Alabama.

Notable features of the revision include:

(a) Donor's consent (i.e., an individual's anatomical gift of the their own organs, eyes, and tissue, to take effect at death) is substantially strengthened to bar others from amending, revoking, or refusing to honor a gift made by the donor.

(b) Absent a donor's consent, gifts by family members are facilitated if the deceased has not acted to make a donation or specifically refuses to make an anatomical gift by:

(1) Expanding those that can act to include a health care agent, grandchildren, and persons exhibiting special care;

(2) Easing consent by enabling a majority of the children to decide;

(3) Eliminating the need for consent from individuals who are not "reasonably available"; and

(4) Clarifying the manner by which consent may be obtained.

(c) The revision specifically authorizes gifts on donor registries and state-issued identification cards.

(d) Registries are encouraged and standards are provided for their operations.

(e) It provides for cooperation and coordination between procurement organizations and medical examiners, particularly with regard to procurement from potential donors under the jurisdiction of the medical examiner.

(f) The new act provides remedies for intentional acts in violation of the Act while retaining immunity for good faith acts under the Act.

(g) It harmonizes the Uniform Anatomical Gift Act with federal law, current technology and practice, and Advance Medical Directives.

41. <u>Estate Tax Apportionment</u>

This act was passed in 2007 and became effective January 1, 2008. It is codified as Sections 40-15B-1 through 13 of the Code of Alabama.

The Internal Revenue Code places the primary responsibility of paying federal and state tax on the personal

representative but does not direct from which beneficiary the taxes are to be paid. This is left to state law. Most states have an apportionment of tax law but formerly Alabama required the taxes to be taken from the residuary of the account unless the will directs otherwise.

This act applies only to:

(a) estates over 2 million dollars;
(b) where there is a will and the will does not enumerate who pays the taxes; or,
(c) to persons who die after January 1, 2008.

The act does not affect:

(a) The total amount of tax paid;
(b) estates with no will;
(c) estates less than 2 million dollars;
(d) charitable gifts;
(e) specifically willed gifts of personal property less than $100,000 to any person;
(f) specifically willed gifts of money less than $25,000 to any person;
(g) persons who are incompetent; or,
(h) any person who dies before January 1, 2008.

The act generally allowed taxes to be shared by beneficiaries proportional to the amount received when the testator does not direct otherwise.

42. <u>Uniform Environmental Covenants Act</u>

This act was passed in 2007 and became effective January 1, 2008. It is codified as Sections 35-19-1 through 14 of the Code of Alabama.

This act was for the long-term enforcement of clean-up controls which will be contained in a statutorily-defined agreement known as an "environmental covenant" that is binding on subsequent purchasers of the property and filed in the local land records.

The fundamental purpose of this act was to remove various legal barriers to the use of environmental restrictions and lessen liability concerns of sellers and lenders associated with the redevelopment and sale of "brownfields." At the same time, this requires state approval of the remediation and control plan and gives notice to surrounding landowners, local governments, and other parties in interest. This act both protects human health and makes it economically feasible to reuse the property.

What the Act Does:

(a) It provides a legal mechanism for long term control of use and clean-up that allows some properties to be safely returned to use so that it may be bought and sold. Former real property law was inadequate. Various common-law doctrines and other legal rules often work against such long-term controls, a situation which undermines the use and marketability of contaminated property. Cleanup, if possible, would often cost much more than the market value.

(b) It creates a statutory legal framework called an "environmental covenant." Covenants are a means of creating restrictions on use of land. The act creates an environmental covenant for the specific purpose of controlling the use of contaminated real estate forever while allowing that real estate to be conveyed from one person to another subject to those controls. It does not affect the validity of prior recorded mortgages.

(c) It introduces the environmental covenant, a specific recordable interest in real estate in response to environmental issues that arise under a federal or state law for the clean up of the property or closure of a waste management site. No environmental covenant is effective without the Alabama Department of Environmental Management's signature. The covenant recites the controls and remediation requirements imposed upon the property. The rights under the covenant must be granted to a party.

The covenant is perpetual unless limited in time within the instrument.

(d) It promotes two principal policies, which are served by environmental covenants:

(1) It ensures that land use restrictions, mandated environmental monitoring requirements, and engineering controls designed to control the potential environmental risk of residual contamination will be recorded in the land records and enforced over time.

(2) It further allows the return of previously contaminated property to the stream of commerce. Under prior law, these properties did not attract interested buyers and remained vacant, blighted, and unproductive. Large numbers of brownfields are unlikely to be successfully recycled until regulators, owners, responsible parties, affected communities, and prospective purchasers and their lenders become confident that environmental covenants will be properly drafted, implemented, monitored, and enforced. This act is designed to encourage sale of property and re-use by offering a clear and objective process for creating, modifying, or terminating environmental covenants and for recording these instruments which will appear in any title abstract for the property in question.

(e) It applies to both federal and state-led cleanups. It ensures that a covenant will survive despite tax lien foreclosure, adverse possession, and marketable title statutes. The act also provides detailed provisions regarding termination and amendment of covenants, and included provisions on dealing with recorded interests that have priority over the new covenant. Any party to the covenant and appropriate agencies may enforce the covenant. Further, the act offers guidance to courts confronted with a proceeding that seeks to terminate a covenant through eminent domain or the doctrine of changed circumstances.

(f) The act does not supplant or impose substantive clean-up standards, either generally or in a particular case. The act assumes those standards will have been developed in the prior regulatory process. Despite best efforts, total cleanups of many contaminated sites are not possible, but property may be put to limited uses without risk to others. The act also does not affect the liability of principally responsible parties for the cleanup or any harm caused to third parties by the contamination—rather it provides a method for minimizing the exposure of third parties to such risks and for owners to engage in long-term cleanup mechanisms.

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43. Uniform Trust Code

This act was passed in 2006 and became effective January 1, 2007. It is codified as Chapter 3B of Title 19 of the Code of Alabama.

The UTC is a default act. With only limited exceptions, a settlor may spell out in the trust's terms how the trust is to be administered and distributed. The exceptions include the requirements for creating a trust and the rights of certain classes of a beneficiary's creditors, such as a child support claimant, to reach the beneficiary's interest in payment of a claim.

But for those settlors who have failed to so provide, the UTC contained a comprehensive set of rules. The Code contains provisions on the creation of trusts, their day-to-day administration, and their modification and termination. Included are such matters as the procedure for transferring administration to another state, the appointment, resignation, removal and compensation of a trustee, and the duties and management powers of a trustee.

The Alabama Uniform Trust Code is divided into twelve articles as follows:

Article 1 - General Provisions and Definitions does not address substantive topics, but deals with general provisions such as definitions.

Article 2 - Judicial Proceedings deals with jurisdiction over a trust in any state. It asserts the important rule that a trust is not supervised by a court unless there is a proceeding by an interested person that invokes the jurisdiction of the appropriate court. The place of administration of the trust is the place generally where the trust is created and court has jurisdiction over the trustee and beneficiaries of that trust.

Article 3 - Representation deals with the rather complex issues of who may represent whom in transactions or proceedings relating to a trust. In part, this article sets out a series of specialized agency rules, answering the question of who may be the agent of whom. Some of it is fundamental, such as the clear rule that the trustee represents the beneficiaries of a trust. Some of it is common sense, such as the rule that a guardian represents a ward or a conservator (if appointed) represents the estate of a ward. The most significant innovation is the provision for "virtual" representation. A minor, incapacitated person, unborn individual, or a person whose identity is not known may be represented by and legally bound "by another having a substantially identical interest with respect to the particular question or dispute" to the extent there is no conflict of interest in that representation.

Article 4 - Creation, Validity, Modification and Termination of a Trust has a self-evident set of rules. A trust is created when property is transferred to a trustee with the intent to create a trust relationship. There must be a definite or identifiable beneficiary unless the trust is a charitable trust, a trust for animals (specially provided for as a kind of honorary trust), or a trust for a non-charitable purpose (also a kind of honorary trust). These kinds of honorary trusts, which have a limited life, legitimize honorary trusts that are not generally allowed under the common law. They are, therefore, an innovation in the Uniform Trust Code.

It is not necessary to have a trust instrument to create a trust. Oral trusts are allowed, but the standard of proof for an oral trust is the higher "clear and convincing evidence" standard. By

not requiring a writing, the Uniform Trust Code avoids issues of electronic record and signature adequacy.

There are clear (default) rules that apply upon consent of the parties to the trust or that govern a court in modifying or terminating a trust. A court may apply the doctrine of cy pres to charitable trusts, when the charitable purpose is no longer attainable. A comparable larger charitable purpose may be selected.

Article 5 - Creditor's Claim, Spendthrift and Discretionary Trusts deals with creditor claims against the interests of a beneficiary or a settlor. A spendthrift provision in a trust restricts a beneficiary's creditor from attaching the beneficiary's interest in the trust until there is a distribution to the beneficiary. If there is no spendthrift provision, a creditor of a beneficiary may attach a distribution interest before it is distributed unless it is a discretionary trust, in which case attachment occurs when the discretion is exercised. A spendthrift provision is created simply by general reference to "spendthrift trust" in the trust instrument. A creditor may not compel a trustee to make a distribution to a beneficiary that is discretionary. A beneficiary who owes child support, spousal maintenance, or a creditor for services provided to protect the beneficiary's interest in the trust cannot rely on spendthrift provisions in a trust to avoid attachment of that interest. Creditors of the settlor of a revocable trust may attach the corpus of the trust, but only a settlor's distribution interest in an irrevocable trust.

Article 6 - Revocable Trusts expressly recognizes the most popular, modern trust form for estate planning. A revocable trust is one in which the settlor retains the power to control, amend, or revoke the trust. Property held in trust reverts back to the settlor if it is revoked. The revocable trust today is used primarily as a will substitute to avoid probate. A trust is revocable unless a trust instrument expressly provides that it is irrevocable. While the settlor of a revocable trust yet lives and has capacity, the trustee owes its duties exclusively to the settlor. The settlor controls the rights of beneficiaries. If the settlor becomes incapacitated or dies, the beneficiaries control their rights under the trust and the duties

of the trustee shift to the beneficiaries. The trust is no longer a revocable trust.

Article 7 - Office of Trustee deals with acceptance of the trust by the trustee, bond for the trustee, decision-making by co-trustees, and like matters. Perhaps the most important of the rules govern removal and compensation of the trustee. The settlor, a co-trustee, a beneficiary, or the court on its own initiative may request that a trustee be removed. The grounds are breach of trust, lack of cooperation among co-trustees substantially impairing the administration of the trust, defects of the trustee that require removal in the best interests of the beneficiaries, or substantial change of circumstances. The trustee may be removed upon the request of all qualified beneficiaries if removal is in the best interests of the beneficiaries, is not inconsistent with trust purposes, and a successor trustee is available. A trustee is entitled to reasonable compensation. A court may review and change a trustee's compensation.

Article 8 - Duties and Powers of the Trustee articulates the basic fiduciary obligations of a trustee, except for those articulated in the Uniform Prudent Investor Act. The basic duty is the duty of loyalty, which requires the trustee to manage the trust solely for the beneficiaries and to avoid conflicts of interest between trustee's interests and beneficiaries' interests. If a trustee provides services to an investment company or investment trust in which the trust invests money pursuant to the Uniform Prudent Investor Act, conflict of interest is not presumed.

Other fiduciary obligations include the duty of impartiality, the obligation of prudent administration, the obligation to incur only reasonable costs, and the obligation to apply the trustee's special skills when there is reliance on those skills when the trustee is named. A trustee may delegate certain duties and powers, but is held to a prudent standard of appointment in so doing. An agent is held to the fiduciary standard of the trustee in accepting an appointment. Delegation has not generally been permitted under the common law, but is an important feature of the Uniform Prudent Investor Act. The Uniform Code provision is based on the one in the Uniform Prudent Investor Act. The delegation rules in both acts are an innovation in trust law.

A trustee generally has all the powers necessary to carry on the business of the trust. The Uniform Code contains an updated list of specific powers derived from the widely accepted Uniform Trustee's Powers Act.

Article 9 - Prudent Investor Rule. Alabama currently has a Prudent Investor Rule, enacted in 1989 and found in Ala. Code § 19-3-120.2. This was passed prior to the Uniform Rule now the law in thirty-eight states. This Article prescribes a series of duties relevant to the investment and management of trust property.

Article 10 - Liability of Trustees and Rights of Persons Dealing with the Trustee provides for remedies when there is breach of an obligation by the trustee, who and under what circumstances there is a right of action by anybody, and a trustee's immunity from personal liability when doing business with others on behalf of the trust. A breach of duty to a beneficiary invokes a court's equity powers to compel performance, suspend, or remove the trustee upon grounds noted earlier in this summary. Available damages restore a beneficiary's position as if breach had not occurred. The trustee's profit (if any) is also a measure of damage. A trust instrument may not waive or vary the obligation of good faith or exculpate the trustee for reckless indifference. An exculpatory term in a trust will not be enforced if the inclusion of the term abuses the settlor's confidential relationship with the trustee.

A trustee does not incur personal liability to third parties for contracts on behalf of the trust so long as the fiduciary status of the trustee is disclosed. A trustee is not liable for a tort action against the trust unless the trustee is personally at fault.

A third party dealing with a trust, also, is not liable for any breach of the trustee's obligations to the beneficiaries resulting from the transaction, unless the third party has knowledge of the actual breach by the trustee.

Article 11 - Miscellaneous Provisions include the provision as to how this act applies to existing relationships and the effective date.

Article 12 - Pre-existing Alabama Trust Statutes. This article merely continues existing statutes that have been moved into this Code for organization and easy use.

44. Uniform Residential Landlord/Tenant Act

This act was passed in 2006 and became effective January 1, 2007. It is codified as Chapter 9A of Title 35 of the Code of Alabama.

The following is an outline of the act:

Benefits for tenants include:

(a) Warranty of habitability/applicability of building and housing codes (§ 35-9A-204);

(b) Limits on security deposits and timelines for deposit return (§ 35-9A-201);

(c) Repairs by landlords, 14 days after notice (§ 35-9A-401);

(d) Tenant's recovery of actual and injunctive damages for landlord's breach (§ 35-9A-401);

(e) Prohibition against landlord's retaliation (§ 35-9A-501);

(f) Prohibition against exculpatory clauses (§ 35-9A-163);

(g) Prohibition against intentionally including prohibited provisions in leases (§ 35-9A-164);

(h) Provision of attorney fees for successful party (§ 35-9A-401);

(i) Prohibition against changing material rules without tenants approval (§ 35-9A-302); and

(j) Repeal of the Sanderson Act (§ 35-9-80 to 88).

Benefits for landlords include:

(a) State law preempts local law on landlord tenant matters (§ 35-9A-121);

(b) Tenant's obligation to pay rent before enforcing rights (§ 35-9A-164);

(c) Right of landlord and tenant to enter into a separate agreement for tenant to assume some repair responsibilities (§ 35-9A-201 (c) & (d));

(d) Landlord's right to recover actual damages and injunctive relief for tenant's breach of lease (§ 35-9A-301);

(e) Security deposits forfeited by tenant if not claimed within 180 days (§ 35-9A-201(d));

(f) Responsibility of tenant maintaining dwelling (§ 35-9A-301);

(g) Landlord's right of entry to rental unit with advance notice, or in an emergency, without consent (§ 35-9A-303);

(h) Landlord not responsible for tenants' property abandoned on premises (§ 35-9A-423);

(i) Defines landlords liability for breach of lease (§ 35-9A-401(b));

(j) Shortens eviction notice to 7 days for non-payment of rent (§ 35-9A-421);

(k) Court eviction action by landlord is 7 days (§ 35-9A-461);

(l) Shortens appeal time to 7 days (Section 2 amends § 6-6-350); and

(m) Provides attorney fees for landlord (§ 35-9A-426).

The act excludes:

(a) public institutions,
(b) lease sale contracts,
(c) fraternities,
(d) hotels,
(e) condominiums, and
(f) primarily agricultural rentals.

The Landlord Tenant Act was amended (Act 2009-633) in 2009 to make the following changes:

(a) Clarified: Building codes by counties and municipalities must be the same for rental and owner occupied property.

(b) New: A landlord may enter a unit to show the dwelling to prospective future tenants or buyers within 4 months of the end of the lease with the tenant present, provided the tenant has signed a separate agreement allowing entry.

(c) Clarified: A landlord may schedule repairs or pest control of a unit during certain times, provided the tenant has at least 2 days notice separate from the lease.

(d) Clarified: The filing of a post judgment motion suspends the time for the filing of an appeal.

(e) Clarified: The right of a tenant to be restored to the premises after a successful appeal.

(f) New: After an eviction judgment, when no post trial motion or appeal is made by the tenant, an execution on the eviction judgment for possession of the property may be served after 7 days from the judgment.

45. <u>Election Code</u>

This act was passed in April 2006 and was to become effective January 1, 2007. However, the Attorney General's Office did not submit the revision to the Justice Department for approval under the Voting Rights Act until July 13, 2007. The act was

precleared by the Justice Department in October 2007. It is codified as Title 17 of the Code of Alabama.

This act reorganized Alabama's election laws and cleared up ambiguities that existed. The act does not make any substantive revisions per se.

The reorganization of the election code has the following chapters:

1. General Provisions
2. Help America Vote Act
3. Voter Registration
4. Voter Registration Lists
5. Fair Campaign Practices Act
6. Election Preparation
7. Electronic Voting Machines
8. Election Officers
9. Conduct and Management of Elections
10. Provisional Voting
11. Absentee Voting
12. Canvassing Returns
13. Primary Elections
14. General Elections
15. Special Elections
16. Post Election Procedures
17. Election Offenses

46. UCC Article 1 - General Provisions

This act was passed in 2004 and became effective January 1, 2005. It is codified as Sections 7-1-101 through 7-1-310 of the Code of Alabama.

Article 1 of the Uniform Commercial Code provides definitions and general provisions that, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. Other parts of the UCC have been revised and amended to accommodate changing business practices and development in the law.

Revised Article 1 contains technical, non-substantive modifications, such as reordering and renumbering of sections and adding of gender-neutral terminology. In addition, several other changes reflect an effort to add greater clarity to the provisions of Article 1. Finally, developments in the law require that certain substantive changes in Article 1 be made a well.

Scope. The substantive rules of Article 1 apply only to transactions governed by other articles of the UCC. There is no impact outside the UCC.

Applicability of supplemental principles of law. Revised Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. This section reflects the interrelationship between the Code's purposes and policies and the extent to which other law is available to supplement the Code.

Good Faith. Section 1-201 adopts the objective standard of "good faith" that applies in all of the recently revised UCC articles (except Revised Article 5).

Choice of Law. Default choice of law provisions have been revised and are now found in Section 1-301 to replace former Section 1-105.

With respect to all transactions, an agreement by the parties to use the law of any state (or country) is generally effective, regardless of whether the transaction bears a reasonable relation to that state.

In a consumer transaction, except in certain circumstances, a choice of law provision cannot deprive a consumer of legal protections where the consumer is located.

Also, revised Section 1-301 provides certain safeguards against abuse of choice of law provisions that did not appear in former Section 1-105. For example, an agreement to use the law of a particular state of country will be ineffective to the extent the application would violate fundamental public policy of the state of

country that has jurisdiction to adjudicate a dispute arising from the transaction.

Course of Performance. Under revised Section 1-304, evidence of "course of performance" (a concept currently utilized only in Articles 2 and 2A of the UCC) may be used to interpret a contract along with a course of dealing and usage of trade.

Statute of Frauds. The statute of frauds requirement in former Section 1-201, which was aimed at transactions beyond the coverage of the UCC, has now been deleted.

47. UCC Article 7 - Documents of Title

This act was passed in 2004 and became effective on January 1, 2005. It is codified as Sections 7-7-101 through 704 of the Code of Alabama.

The purpose of this revision is to provide a framework for the further development of electronic documents of title and to update the article for modern times in light of state, federal, and international developments.

The concept of an electronic document of title allows for commercial practice to determine whether records issued by bailees are "in the regular course of business of financing" or "treated as adequately evidencing that the person in possession of control of the record is entitled to receive, control, hold, and dispose of a record and the goods the record the covers." Such records in electronic form are electronic documents of title and in tangible form are tangible documents of title.

Under this revision the control of an electronic document of title is the conceptual equivalent to possession endorsement of a tangle document of title. Also incorporated in the revision is the acknowledgment that parties may desire to substitute an electronic document of title for an already-issued paper document and vice versa. Section 7-104 sets forth the minimum requirements that need to be fulfilled in order to give effect to this substitute issued in the alternative medium.

If possible, the rules for electronic documents of title are the same or as similar as possible to the rules for tangible documents of title. Otherwise, if a rule is meant to be limited to one medium or the other it is clearly stated. Other changes that are made include changes to definition to correspond with the other revisions in the article. The act further clarifies the rule of when an indictment is nonnegotiable and when rules apply just to warehouse receipts of bills of laden. Other changes include conforming the language to the uses to modern shipping practices. Finally, conforming amendments to other articles of the UCC are included to accommodate the electronic documents of title revisions.

48. Alabama Uniform Interstate Enforcement of Domestic Violence Orders Act

This act was passed in 2003 and became effective January 1, 2004. It is codified as Chapter 5B of Title 30 of the Code of Alabama.

This act provided a uniform effective system for enforcement of domestic violence protection orders across state lines. To facilitate the interstate enforcement of civil and of qualified criminal domestic protection orders as stipulated in an important provision of the 1994 Federal Violence Against Women's Act, this full faith and credit provision directs states to honor "valid" protection orders issued by other jurisdictions and to treat those orders as if they were their own.

Although the Federal Violence Against Women's Act provided protection and was national in scope, it left several important questions unanswered and states to their own discretion as to how to set up procedures to effectively implement the enforcement.

For example, the federal act does not answer the question of whether states are required to enforce provisions of foreign orders that would not be authorized by the law of the enforcing state. It is silent as to whether protected individuals seeking enforcement of an order must register or file the order with the

enforcing state before the action can be taken on their behalf. It is also vague about whether custody and support orders are included.

In recent years some states have enacted their own enabling legislation but these statutes vary greatly, both in method and extent to which they will enforce foreign protection orders. This act had two purposes. It defined the meaning of full faith and credit in the context of the enforcement of domestic violence protection orders and it established uniform procedures for their effective interstate enforcement.

Under this act:

(a) Courts must enforce the terms of protection orders of other states as if they were their own, unless the order expires, regardless of which state the victim has entered.

(b) Enforcing states must enforce all of the terms of the order, even if the order provides relief that would be unavailable under the laws of the enforcement jurisdiction.

(c) Terms of orders that concern custody and visitation matters are enforceable if issued for the purpose of protection. Terms that concern support are not.

(d) Enforcement mechanisms must be applied to orders issued before the effective date of the act.

The act ensured that enforcement will require law enforcement officers in enforcing states to rely on probable cause judgments that a valid order has been violated. The law enforcement officers, as well as other government agencies, are encouraged to rely on individual judgments based on probable cause by the acts inclusion of the broad immunity provision protecting agencies of the government acting in good faith.

49. <u>Uniform Anatomical Gift Act</u>

This act was passed in 2003 and became effective January 1, 2004. It is codified as Sections 22-19-51 through 59.7 of the

Code of Alabama. It repealed Sections 22-19-41 through 47 of the Code of Alabama.

This act enlarged the list of individuals who may be consulted regarding the donation of organs. The act also specified the circumstances in which coroners, medical examiners, or other local public health officials may be permitted to remove a part of the body for the purpose of transplantation.

The act clarified the rights of the parties involved in the donation and clarified the authority of the individuals involved in the procedures for removing and transplanting a part.

This act also provided that if an organ donation authorization is attached or imprinted to a motor vehicle license, the revocation, suspension, expiration, or cancellation of that license does not invalidate the anatomical gift.

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50. Uniform Management of Institutional Funds Act

This act was passed in 2002 and became effective September 1, 2002. It is codified as Sections 16-16A-1 through 8 of the Code of Alabama.

In 1993 Alabama passed a modified version of the Uniform Institutional Funds Act and limited it to educational institutions. The Uniform Educational Institutional Funds Act is codified in Ala. Code §§16-61A-1 through 8.

The Uniform Management of Institutional Funds Act was passed by the Uniform Law Commissioners in 1972. It was subsequently approved by the American Bar Association and has been adopted in some form in almost every state. The premise of the Uniform Act is the need for the governing boards of educational institutions as well as charitable, religious, or any other eleemosynary institutions to be able to make more effective use of endowments and other investment funds. To modify investment restrictions that no longer seem necessary, the act provided the following:

(a) A standard of prudent use of appreciation in invested funds;
(b) Specific investment authority;
(c) Authority to delegate investment decisions;
(d) A standard of business care and prudence to guide governing boards in exercise of their duties under the act; and
(e) A method of releasing restrictions on use of funds or selection of investments by donor acquiescence or court action.

After reviewing the policy issue of limiting the current Alabama law to educational institutions, it was determined that charitable, religious, or other eleemosynary institutions in Alabama would benefit from having the opportunity to utilize the investment flexibility provided by the Uniform Act.

51. Interstate Compact for Adult Offender Supervision

This act was passed in 2002 and became effective in June 2002, once two-thirds of the states passed it. It is codified at §15-22-1.1 of the Code of Alabama.

The compact concerns the management, monitoring, and supervision of adult parolee and probationers in states other than where they were sentenced. The goal was to ensure that it remains an effective management tool for those adult parolees and probationers who travel to, or are supervised in, states other than where they were sentenced.

The current Interstate Compact has been in place for more than 60 years but has been found to no longer support an evolving criminal justice system. Concerns raised by both the public and corrections practitioners led the Council of State Governments (CSG), in collaboration with the National Institute of Corrections, to revise the existing Interstate Compact.

Alabama became a signatory to the original Interstate Compact (1937) with the enactment of Ala. Code § 15-22-1 in 1939. This act repealed the original Interstate Compact, and established the Interstate Compact for Adult Offender Supervision

on behalf of Alabama. The Compact will take effect once it has been enacted into law by 35 states. At the time of the passage of this act, 24 states had passed it. Once enacted, the signatory states will begin making administrative decisions, by-laws, and the rules that signatory states must follow. Within the first twelve months of the enactment, under Article VIII of the Compact, member states are required to make rules in ten specific areas. All member states have an equal vote, and while nonmember states may be present and heard, they may not vote.

52. Uniform Electronic Transactions Act

This act was passed in 2001 and became effective January 1, 2002. It is codified as Sections 8-1A-1 et seq. of the Code of Alabama.

The Electronic Signatures in Global and National Commerce Act or "E-SIGN" is a federal law that established for the first time base line rules to facilitate the nationwide use of electronic signatures, contracts, and records in commercial transactions. This act's focus was more on enabling electronic transactions and removed barriers to such transactions than on the technical requirements of electronic signatures. The "E-SIGN" functions to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures.

The federal law does provide states with limited authority to modify, limit, or supersede the E-Sign Act's basic provisions to comply with state law by the adoption of the Uniform Electronic Transactions Act. The following summary of UETA is adapted from the NCCUSL comments to the Uniform Act.

Although related to the Uniform Commercial Code, the rules of UETA are primarily for "electronic records and electronic signatures relating to a transaction" that are not subject to any article of the Uniform Commercial Code, except for Articles 2 and 2A. A "transaction" is an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

UETA applies only to transactions in which each party has agreed by some means to conduct them electronically. Agreement is essential. Nobody is forced to conduct by electronic transactions. Parties to electronic transactions come under UETA, but they may also opt out. They may vary, waive, or disclaim most of the provisions of UETA by agreement, even if it is agreed that business will be transacted by electronic means. The rules in UETA are almost all default rules that apply only in the event the terms of an agreement do not govern.

UETA does not attempt to create a whole new system of legal rules for the electronic marketplace. The objective of UETA is to make sure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing any of the substantive rules of law that apply. This is a very limited objective—that an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect, whatever that might be, as a manual signature. The basic rules in UETA serve this single purpose.

The basic rules are in Section 7 of UETA. The most fundamental rule in Section 7 provides that a "record or signature may not be denied legal effect or enforceability solely because it is in electronic form." The second most fundamental rule is that "a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation." The third most fundamental rule states that any law that requires a writing will be satisfied by an electronic record. And the fourth basic rule provides that any signature requirement in the law will be met if there is an electronic signature.

Almost all of the other rules in UETA serve the fundamental principles set out in Section 7, and tend to answer basic legal questions about the use of electronic records and signatures. Thus, Section 15 determines when information is legally sent or delivered in electronic form. It establishes when electronic delivery occurs—when an electronic record capable of retention by the recipient is legally sent and received. The traditional and statutory rules that govern mail delivery of the

paper memorializing a transaction can't be applied to electronic transactions. However, UETA provides the appropriate rule.

Another rule that supports the general validity of electronic records and signatures in transactions is the rule on attribution in Section 9. Electronic transactions are mostly faceless transactions between strangers. UETA states that a signature is attributable to a person if it is an act of that person, and that act may be shown in any manner. If a security procedure is used, its efficacy in establishing the attribution may be shown. In the faceless environment of electronic transactions, the obvious difficulties of identification and attribution must be overcome. Section 9 gives guidance in that endeavor.

A digital signature is really a method of encryption that utilizes specific technology.

UETA may not, however, be characterized as a digital signature statute. It does facilitate the use of digital signatures and other security procedures in rules such as the one in Section 9 on attribution. Section 10 provides some rules on errors and changes in messages. It favors the party who conforms to the security procedure used in the specific transaction against the party who does not, in the event there is a dispute over the content of the message.

Nothing in UETA requires the use of a digital signature or any security procedure. It is technologically neutral. Persons can use the most up-to-date digital signature technology, or less sophisticated security procedures such as passwords or pin numbers. Whatever parties to transactions use for attribution or assuring message integrity may be offered in evidence if there is a dispute.

UETA is procedural, not substantive. It does not require anybody to use electronic transactions or to rely upon electronic records and signatures. It does not prohibit paper records and manual signatures. Basic rules of law, like the general and statutory law of contracts, continue to apply as they have always applied.

There are three provisions in UETA that command special attention. First, UETA excludes transactions subject to the Uniform Commercial Code, except for those under Articles 2 and 2A, laws governing estates and trusts, and any other specific laws that a state wants to exempt from the rules applied in UETA. Some writing and signature requirements in state law do not impact the enforceability of transactions, and have objectives that should not be affected by adoption of a statute like UETA. The limitation of UETA to agreed electronic transactions will eliminate any conflict with other writing requirements for the most part.

Second, UETA provides for "transferable records" in Section 16. Notes under Article 3 and documents under Article 7 of the Uniform Commercial Code are "transferable records" when in electronic form. Notes and documents are negotiable instruments. The quality of negotiation relies upon the note or document as the single, unique item of the obligations and rights embodied in the note or document. Maintaining that quality as a unique item for electronic records is the subject of Section 16. A transferable record exists when there is a single authoritative copy of that record existing and unalterable in the "control" of a person. A person in "control" is a "holder" for the purposes of transferring or negotiating that record under the Uniform Commercial Code. Section 16 is essentially a supplement to the Uniform Commercial Code, until its relevant articles can be fully amended or revised to accommodate electronic instruments.

Third, UETA clearly validates contracts formed by electronic agents. Electronic agents are computer programs that are implemented by their principals to do business in electronic form. They operate automatically, without immediate human supervision, though they are certainly not autonomous agents. They are a kind of tool that parties use to communicate. Section 14 provides that a person may form a contract by using an electronic agent. That means that the principal, the person or entity that provides the program to do business, is bound by the contract that its agent makes.

When somebody buys something on the Internet, therefore, that person will be assured that the agreement is valid, even though

the transaction is conducted automatically by a computer that solicits orders and payment information.

Sections 17, 18, & 19 of UETA, deal with electronic records that state governmental agencies create and retain.

53. Alabama Uniform Athlete Agents Act

This act was passed in 2001 and became effective October 1, 2001. It is codified as Sections 8-26A-1 through 31 of the Code of Alabama.

In 1987 the Alabama Legislature established the "Alabama Athlete Agents Regulatory Commission." That law provided that no person could be an athletic agent in Alabama without first registering with the Commission. It was subsequently amended in 1994 to change the makeup of the Commission. The law was again amended in 1998 to add additional requirements in the approved form of contracts between the student athlete and the athlete agent and provide a criminal and civil penalty against the parties for failure to adhere to the law.

At the time of its passage over half of the states had enacted statutes regulating athlete agents. They vary in degree and do not contain registration reciprocity. An athlete agent intending to do business in each state was currently required to comply with 28 different sets of requirements for registration and regulation. This uniform act was drafted to protect the interest of student athletes and academic institutions by regulating the activities of athlete agents. This law provided the following:

(a) Reciprocity of registration;
(b) Denial, suspension, or revocation of registrations based upon similar actions in other states;
(c) Regulation of the conduct of individuals who contact student athletes for the purpose of obtaining agency contracts;
(d) Required notice to educational institutions when an agency contract is signed by a student athlete;
(e) A civil penalty for an educational institution damaged by the conduct of an athlete agent or a student athlete; and

(f) Civil and criminal penalties for violation of the act.

54. U. C. C. Article 9, Secured Transactions

This act was passed in 2001 and became effective January 1, 2002. It is codified as Sections 7-9A-101 et seq. of the Code of Alabama.

A major revision of Article 9 was drafted and approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws in 1999. It has been adopted in all 50 states and is now effective in each state.

The Uniform Commercial Code in Alabama was adopted in 1965 and was last revised in 1981. However, this revision is more wide-reaching than the earlier revision. Currently, financing statements are filed in either the probate office or in the Secretary of State's Office. Under this revision the place of filing follows the domicile of the debtor rather than the location of the security. Further, there will only be one central data base.

For natural persons living in Alabama the filing will still remain in Alabama. However, for foreign business entities located in Alabama and with property in Alabama, the filing will be in the state of organization.

This act permitted filing could either be paper documents or electronic records.

Article 9 is quite complex. The following summary of Article 9 is adopted from the NCCUSL comments and is not a treatise on Revised Article 9, but is a schematic summary of its relevant changes provided by the drafters.

(a) The Scope Issue. This revision expanded the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increased over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before now come under Article 9. These are some of the kinds of collateral that are

included in Revised Article 9 that are not in the original Article 9: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens come under Article 9 for determination of perfection and priority, generally the same as security interests come under Article 9 for those purposes.

(b) Perfection. Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is clearer in Revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. "Control" is the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased nationally from ten days in old Article 9 to Alabama's current twenty days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the twenty-day period. Then another method of perfection is necessary to continue the perfected security interest. However, a purchase money security interest in consumer goods remains perfected automatically for the duration of the security interest.

(c) Choice of Law. In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The Revised Article 9 makes two fundamental changes from old Article 9. In old Article 9, the basic rule chooses the law of the state in which the

collateral is found as the law that governs perfection, effect of perfection, and a creditor's priority. In Revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration. If an entity is a corporation, for example, the location of the debtor is the state in which the corporate charter is filed or registered. In old Article 9, the entity that is a debtor is located in the state in which it has its chief executive office. These changes in basic choice of law rules will change the place in which a financing statement is filed in a great many instances from the place it would have been filed under old Article 9.

(d) The Filing System. The filing system in the Revised Article 9 includes a full commitment to centralized filing—one place in every state in which financing statements are filed, and a filing system that changes filing from a system of filed documents to a system of electronic communications and records. Under Revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become physically part of the real estate and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.

(e) Consumer Transactions. Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a

security interest that is included in a consumer transaction is handled differently in certain respects in the Revised Article 9. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the Revised Article 9.

(f) Default and Enforcement. Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with "secondary" obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. These are some of the specific new rules: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lien holders who have filed financing statements must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an insider buyer, the price that the goods should have obtained in a commercially reasonable sale,

rather than the actual price, is the price that will be used in calculating the deficiency.

55. Conversions and Mergers of Business Entities

This act was passed in 2000 and became effective October 1, 2000. It is codified as Sections 10-15-1 through 7 of the Code of Alabama.

Over the last several years the number of business entities available in Alabama and throughout the United States has greatly expanded and virtually all existing business entities have been revised.

This act provided a convenient and simple way for the different types of business entities for profit to convert or merge with each other.

Business entities allowed to merge under this Act include the following:

(a) Business Corporations;
(b) Limited Liability Companies;
(c) General Partnerships;
(d) Limited Partnerships;
(e) Limited Liability Partnerships;
(f) Real Estate Investment Trusts; and
(g) Professional Corporations.

These laws, having been created and revised at different times, may provide clear laws for mergers and conversions of entities of like kind but when entities of different kinds merge or convert the laws are often incomplete and conflicting.

This act is not exclusive. Business entities may be converted or merged in the manner provided in their own acts or under this act.

56. <u>Uniform Principal and Income Act</u>

This act was passed in 2000 and became effective January 1, 2001. It is codified as Sections 19-3A-101 et seq. of the Code of Alabama.

The basic premise of a "principal and income" act is how to determine the allocation of income and expenses of a trust between a life beneficiary and a beneficiary after death.

Property may be left in trust with the income paid during the life of one individual and the remainder payable to another. This act allowed the trustee, when directed by the donor, to pay the life beneficiary more or less than the income when it is fair and equitable to all beneficiaries.

There were two uniform principal and income acts prior to this Uniform Principal and Income Act. The first was the 1931 Uniform Principal and Income Act [UPAIA] and followed by the 1962 Revised Uniform Principal and Income Act. Alabama basically had the 1931 Uniform Principal and Income Act with some amendments and additions that have been made through the years. Alabama never adopted the 1962 act. This revision allows Alabama Trustees and beneficiaries the same estate planning opportunity as that afforded in the other states.

This act continued the trend of giving fiduciaries more flexibility with broader powers and more discretion. As stated below, one of the major considerations in drafting this act was that financial instruments and investment opportunities have been developed over six decades that were not even conceptualized in 1931. A second major change has been that today fiduciaries, and particularly corporate fiduciaries, conduct multi-state operations as fiduciaries. Thirdly, much of the large holdings of property interests, particularly of timber and other natural resources, are held by property owners who operate interstate. Generally, with respect to real property, the law of the situs of the property controls. Alabama's Supreme Court has stated, in *Englund v. First National Bank of Birmingham*, 381 So.2d 8 (Ala. 1980), that even though a testamentary trustee was granted very broad power to allocate trust receipts between principal and income, the trustee

was not authorized to make allocations where proper allocation is not a matter of honest doubt. If a trustee is attempting to apply the principal and income acts of different states to different portions of the same trust, attempting to determine when "a proper allocation is not a matter of honest doubt" may put a trustee in some jeopardy. The latter two considerations make uniformity of legislation dealing with principal and income allocations among the various states important.

Revision was needed to support the now widespread use of the revocable living trust as a will substitute, to change the rules in those acts that experience has shown need to be changed, and to establish new rules to cover situations not provided for in the old acts, including rules that apply to financial instruments invented since 1931.

The other purpose was to provide a means for implementing the transition to an investment regime based on principles embodied in the Uniform Prudent Investor Act, especially the principle of investing for total return rather than a certain level of "income" as traditionally perceived in terms of interest, dividends, and rents.

57. Uniform Determination of Death Act

This act was passed in 2000 and became effective July 1, 2000. It is codified as Section 22-31-1 et seq. of the Code of Alabama.

This act provides a comprehensive basis for determining death in all situations. It is not radically different from prior Alabama law. This uniform law has been adopted in 43 states, including Georgia and Mississippi.

The interest in this statute arose from modern advances in life saving technology. A person may be artificially supported for respiration and circulation after all brain functions cease irrevocably. The medical profession has also developed techniques for determining loss of brain functions while cardiovascular support is administered. At the same time, the common law definition of death cannot assure recognition of these

techniques. The common law standard for determining death is a cessation of all vital functions traditionally demonstrated by an absence of spontaneous respiratory and cardiac functions. There is then, a potential disparity between current and accepted biomedical practice and the common law.

Part 1 codified the common law basis for determining death—total failure of the cardiac respiratory system. Part 2 extends a common law to include the new procedures for determination of death based upon irreversible loss of brain functions. The overwhelming majority of cases will continue to be determined according to Part 1. While artificial means of support preclude a determination under Part 1, the act recognizes that death can be determined by alternate procedures. Under Part 2 the entire brain must cease to function irreversibly. The "entire brain" includes the brain stem as well as the neocortex. The concept of "entire brain" distinguishes determination of death under this act and "neocortical death" or "persistent vegetative state". These are not deemed a valid medical or legal basis for determining death.

This act also does not concern itself with living wills, death with dignity, euthanasia, rules on death certificates, maintaining life support beyond brain death in cases of pregnant women or organ donors, and protection of a dead body. These subjects are left to other law.

This act remains silent on acceptable diagnostic tests and medical procedures. It set the general legal standard for determining death but not the medical criteria for doing so. The medical profession remains free to formulate acceptable medical practice and to utilize new biomedical knowledge, diagnostic tests, and equipment.

Time of death is not specifically addressed. In those instances in which time of death affects legal rights, this act states the basis for determining death. Time of death is a fact to be determined with all others in each individual case and may be resolved, when in doubt, upon expert testimony before the appropriate court.

58. Uniform Child Custody Jurisdiction and Enforcement Act

This act was passed in 1999 and became effective January 1, 2000. It is codified as Sections 30-3B-101 et seq. of the Code of Alabama.

The Legislature passed the Uniform Interstate Family Support Act (UIFSA) (§ 30-3A-101) that became effective in 1998 to clarify the law concerning child support when the parties live in different states. Complimenting that law is this act which is concerned with custody and visitation rights of parties who live in different states.

This act, the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) was promulgated by the National Conference of Commissioners on Uniform Laws. It revised and updated the Uniform Child Custody Jurisdiction Act passed in 1980 (Alabama Code §§ 30-3-20 through 44). Although this act followed to a large extent the format of Alabama's current laws there were a number of improvements.

First, the act added remedial provisions to enforce interstate visitation determinations that were not previously covered under current law. Swift access to the court is now available in visitation and custody cases. This is particularly critical in the area of visitation because if visitation rights cannot be quickly enforced then often the time frame available for the visitation by the non-custodial parent will have passed.

Second, this act revised the law on child custody jurisdiction in light of the enactment of several federal laws as well as the myriad problems that have developed over the last thirty years with inconsistent case law determinations. The changes in the law as it relates to child custody were drafted to parallel those of the Parental Kidnaping Prevention Act (PKPA) located at 28 U.S.C. § 1738A. For example, the act will prioritize home state jurisdiction in a similar manner as the PKPA. Moreover, the new act clarified the circumstances in which emergency jurisdiction applies, thus, clearing up the confusion that has developed as various courts have interpreted the current UCCJA language to

provide a court with jurisdiction to modify another court's custody determination based solely upon emergency jurisdiction. Under this act, the language specified that emergency jurisdiction may be exercised only to protect the child on a temporary basis, not to provide jurisdiction to modify another court's determination.

The establishment under this act of continuing exclusive jurisdiction eliminated some of the confusion in state courts as to which state has continuing jurisdiction. One manner of clarifying this was to provide a clear basis to determine when a court has relinquished jurisdiction. Specifically, for the first time, this act enunciated a standard of continuing jurisdiction and clarified the law as it relates to modification jurisdiction.

A further clarification has been defining which custody proceedings are intended to be covered by this act. For example, this law specifically provided that adoption is not covered by this statute.

Finally, one of the major purposes of the revision to the UCCJA was to provide an effective enforcement mechanism for interstate visitation and custody cases. Article 3 of the act provided several remedies for the enforcement of custody and visitation provisions. For example, there is a procedure under this act for registering a custody determination in another state so that a party will know in advance whether that state will recognize that party's custody determination. Also, a number of remedies, such as habeas corpus, will be available to a parent to assist them if there is any problem with the enforcement of a custody or visitation order. The court is given greater flexibility in utilizing extraordinary remedies such as issuing a warrant for the physical possession of a child under certain circumstances.

1994-1998 Quadrennium

59. Divorce, Legal Separation Act

This act was passed in 1998 and became effective January 1, 1999. It is codified as Section 30-2-40 of the Code of Alabama. It repealed Sections 30-2-30 and 31.

This act was designed to allow couples who are facing marital discord to have a viable alternative to immediately obtaining a divorce. It has been drafted to provide flexibility so that it can be utilized by couples who hope for a brief period of legal separation while they attempt to reconcile or it can be used by couples who anticipate a long, perhaps even permanent separation but do not want to obtain a divorce for religious or other reasons.

Under Section (1)(a) the court shall enter a legal separation if requested by one or both of the parties provided that the jurisdictional requirements for a dissolution of a marriage have been met. In so doing, the court must comply with Rule 32 relating to the mandatory child support guidelines, if the couple has children.

Section (1)(b) reiterates that a decree of legal separation does not terminate the marital status of the parties. Section (1)(c) specified that the terms of a legal separation can be modified or dissolved only by written consent by both parties and ratification by the court or by court order upon proof of a material change of circumstances. Moreover, the existence of a legal separation does not bar a party from later instituting an action for dissolution of a marriage.

Section (1)(d) contemplated that the terms relating to alimony or a property settlement in the legal separation will not generally be incorporated into a final divorce decree absent agreement by the parties. This section recognized that in many instances the parties hope to reconcile and therefore have not attempted to equitably divide their property during what is hoped will be only a brief period of separation. However, this section provided the flexibility of allowing the couple to agree that if a reconciliation does not occur that the division of property and the alimony provision will be continued in a final decree.

Section (1)(e) provided that "the best interest of the child" standard shall apply if the parties to the legal separation later file for dissolution of their marriage.

Section (1)(f) provided that if both parties consent, property acquired by each party subsequent to the legal separation will be deemed the sole party of the person acquiring the property. Likewise, if both parties consent, each spouse may waive all rights of inheritance subsequent to the legal separation. This section has been included to provide flexibility to those parties who desire more economic certainty when a legal separation is anticipated to extend for a long period of time or when the parties prefer to have those matters settled by consent prior to the entry of the legal separation.

Section (1)(g) provided that the cost for legal separation is the same as if a dissolution of the marriage was requested.

Sections 30-2-30 and 31 relating to divorce from bed and board have been repealed.

60. Uniform Multiple Persons Accounts Act

This act was passed in 1997 and became effective March 1, 1997. It is codified as Sections 5-24-1 through 34 of the Code of Alabama.

This act addressed deposits in all types of financial organizations and corrects the problem of inconsistent treatment of joint accounts among different financial institutions in Alabama. It contained several sections which resolve ownership questions affecting parties and death beneficiaries of accounts. Separate sections are devoted to protecting financial institutions if they make payment in accordance with the account contract terms.

The act included sample statutory forms that provide clear and simple instructions to both financial institutions and depositors in setting up multi-person accounts. Many of the account agreements formerly used in Alabama did not allow the depositor to distinguish among the different functions of the multiple-person account, with the result that the depositor's use of a joint account for one purpose may yielded unwanted results after death.

61. Alabama Uniform Interstate Family Support Act

This act was passed in 1997 and became effective January 1, 1998. It is codified as Sections 30-3A-101 through 906 of the Code of Alabama.

The Federal Welfare Reform Acts required each state to pass the Uniform Interstate Family Support Act (UIFSA). UIFSA was initially passed in 1992 and was adopted by a majority of the jurisdictions in the United States. In 1996, the Commissioners adopted the 1996 draft that included amendments designed to improve the act as well as provide a smoother transition between those jurisdictions who had adopted UIFSA with those who had not. This act replaced Alabama's prior law (Ala. Code § 30-4-80 through 98).

One of the major drawbacks to the former interstate income withholding law in Alabama is that the orders, in general, were not affected by other support orders. This resulted in the potential of several states issuing conflicting support orders relating to the same parties and child. This led to confusion on the part of a payor as to which amount he or she should pay and sometimes resulted in arrearage if the payor paid the lesser of the amounts specified in the orders.

UIFSA established a priority scheme in which there will be a determination as to which jurisdiction may issue a child support order. Thus, even though there may be more than one state involved in enforcing a child support order at the same time, the order that is being enforced will be the same amount. This is accomplished through the process of having one state assume continuing exclusive jurisdiction, with modification of that order under very limited circumstances.

UIFSA also contained a one-state enforcement mechanism that allows for direct withholding. Therefore, an order can be sent directly to an employer in a second state without the necessity of "domesticating" the order. The act also provides immunity for an employer who complies with income withholding order of another state in accordance with the provisions of the act.

UIFSA also substantially increased the methods in which courts and agencies may interact among each other concerning issues relating to child and spousal support. This allowed the state to take advantage of the new technology available to speed up the enforcement process.

Another component of UIFSA is a long-arm provision for asserting personal jurisdiction over a nonresident in an action to establish paternity or support. Also, a state that issues a support order and remains the residence of the obligor, obligee, or child has "continuing exclusive jurisdiction" unless the individual parties agree in writing for another state to exercise jurisdiction. Moreover, an ex parte temporary support order or a temporary support order pending a determination of a jurisdictional conflict does not affect the "continuing exclusive jurisdiction" of the issuing court.

It should be noted that UIFSA does not affect the calculation of an arrearage under an existing order. Under the Bradley amendments, 42 U.S.C § 666(a)(9), arrearages are judgments that are entitled to full faith and credit.

The act provided for uniformity in the procedure involved in the enforcement of spousal and child support orders from various states. The Department of Human Resources is designated as the support enforcement agency for the State of Alabama.

62. UCC Article 5 - Letters of Credit

This act was passed in the 1997 Regular Session and became effective January 1, 1998. It is codified as Sections 7-5-101 through 117 of the Code of Alabama.

The revision of this article was the first since the Uniform Commercial Code was passed in 1965.

A letter of credit is an instrument that participates in the payment system along with drafts, checks, electronic funds transferring money. A typical example would involve an American company buying goods from a European manufacturer, the European manufacturer is willing to do business provided it has

assurances of payment for the goods which are purchased. The American company then applies to its bank with which it has accounts and receives a letter of credit from the bank. The bank issues the document in actual letter form. The letter guarantees the manufacturer in Europe that the bank will pay money up to a certain amount upon receipt of an appropriate document, usually a draft, from the European manufacturer. The letter of credit may also contain other documentary conditions that the parties agree on. The letter of credit provides the guarantee of payment to the European supplier that at an appropriate time in the transaction the manufacturer is paid upon presentation of the draft to the bank. Then the bank debits the appropriate account of the American company to receive its money. The letter of credit business is a $200 billion industry in the United States. Half of all exports outside the United States are financed by letters of credit.

This act conformed our law with international law and practice which facilities international trade.

63. <u>Limited Liability Company Act Amendments</u>

This act passed in the First Special Session in 1997 and became effective January 1, 1998. It is codified in Chapter 5 of Title 10A of the Alabama Code.

Alabama adopted its Limited Liability Company law in 1993. When Alabama passed its law it was the fourteenth state to pass an LLC law. In the years since Alabama's enactment all other states have since passed LLC laws.

One of the major revisions in other states allowed for a one-person LLC organization, whereas Alabama formerly required two or more. There was also a need for a merger provision to enable other entities to be able to merge into LLCs. Filing provisions with the Secretary of State were modified to remove the filing of an annual report. Further there was a change in the buyout rule and additional fiduciary obligations to the members with each other.

64. Revised Limited Partnership Act, 1998

This act passed in the First Special Session in 1997 and became effective October 1, 1998. It was codified in Title 10 of the Alabama Code.

Alabama passed its prior limited partnership in 1983, however, it followed the 1976 Uniform Limited Partnership Act.

The revision of the Alabama Limited Partnership Act had two goals, one narrow and the other more broad. First, the act amended the "default" rules that apply, in the absence of a provision in the partnership agreement, to the withdrawal of a limited partner from the partnership. The second, broader goal was to bring the Alabama Act in line with the most current version of the Uniform Limited Partnership Act promulgated by the National Conference of Commissioners on Uniform State Laws by streamlining the information required to be set forth in the certificate of limited partnership and by clarifying the activities in which a limited partner may engage without loss of limited liability.

65. Transfer on Death of Securities Act

This act passed in 1997 and became effective August 1, 1997. It is codified as Article 6 of Chapter 6 of Title 8 of the Code of Alabama.

This act allowed for the transfer of stock upon the death of one of the parties without requiring the person's estate to be probated. Currently, Alabama has a statute which allows checking accounts in banks to be payable to a survivor upon the death of one of the parties. We also have a statute which allows "right of survivorship" for joint owners of real estate. This act is consistent with those laws by allowing joint tenancy for stock.

66. UCC Article 8 - "Investment Securities"

This act was passed in 1996 and became effective January 1, 1997. It is codified as Section 7-8-1 of the Code of Alabama.

In 1965 Alabama passed the Uniform Commercial Code. The Uniform Code was drafted by the Commissioners on Uniform State Laws and the American Law Institute. Article 8 had not been revised since that original legislation in 1965. Alabama law only recognized a stock purchase when a purchaser possessed a paper stock certificate. The revision of this act was technical in nature and protected stock holders by allowing transfer of stock to be done electronically with the issuer rather than being held by the brokers. This means stock transfers do not rely on paper certificates. Now stock purchases and transfers are effective by bookkeeping entries, rather than through the delivery of physical certificates. This uniform act was supported by all those in the securities industry and those dealing with securities.

67. Partnership Act

This act was passed in 1996 and became effective January 1, 1997. It is codified as Section 10-8A-101 of the Code of Alabama.

Although the revised Uniform Partnership Act retains the basic historical character of a partnership, there have been some changes to adapt to modern business practices. Under the UPA, the partnership formed is an entity and not an aggregate of individuals. The UPA does not require filing a certificate to form a partnership, preserving availability of the partnership form of organization to both large and small entities. It does however, permit the filing of a statement of partnership authority which may be used to limit the capacity of a partner to act as an agent of the partnership and to limit a partner's capacity to transfer property on behalf of the partnership. Such statement is voluntary. No partnership need file such a statement nor is the existence of the partnership dependent upon the filing of the statement. However, the statement if filed, has an impact upon a third party dealing with the partnership. Nonetheless, a limitation upon a partner's authority does not affect any third party who does not know about the statement, except as to real estate transactions. If there has been some limitation as to real estate transactions that are filed in the records office, then a third party dealing with that partner is held to know of that limitation.

68. Limited Liability Partnership Act

This act was passed in 1996 and became effective January 1, 1997. It is codified as Sections 10-8A-101 et seq. of the Code of Alabama. The Partnership Act of 1997 included a new chapter on Limited Liability Partnership.

The act contained articles on: Nature of the Partnership; Relations of Partners to Persons Dealing with Partnership; Relations of Partners to Each Other and the Partnership; Transfers and Creditors of Partner; Partners' Disassociation; Partner's Dissolution When Business Not Wound Up; Winding Up a Business; and Conversions.

69. UCC Article 6, Bulk Transfers - Repealed

This act was passed in 1996 and became effective January 1, 1997. It repealed Article 6 of Title 7 of the Code of Alabama.

Alabama passed all the Uniform Commercial Code in 1965 including Article 6 "Bulk Transfers". The national drafters of the UCC, realizing that it was too inconclusive and covered more transactions than were really necessary, attempted to revise this article beginning in 1987. After several years of study, a 1989 revision was completed. However, in 1991 the Commission on Uniform State Laws withdrew their support from Article 6 and recommended that the article be repealed.

The parties are protected under the Alabama Fraudulent Transfers Act that was passed by the Legislature in 1989. It has been the general consensus nationally that the Fraudulent Transfer Act, which has been enacted in 33 states makes the "Bulk Transfers" no longer necessary.

70. Joint Custody of Children

This act was passed in 1996 and became effective January 1, 1997. It is codified as Sections 30-3-150 et seq. of the Code of Alabama.

This act provided statutory clarification concerning joint and sole custody of children including enumerating factors for the court to consider as well as dealing with the accessibility of records by both parents. It espoused the policy of encouraging minor children to have frequent and continuing contact with both parents provided that such contact is in the best interest of the children. The act specified that joint custody does not necessarily require equal physical custody. Section 30-3-151 of the act provided definitions for joint legal and physical custody and sole legal and physical custody.

Under Section 30-3-152 the court may award any form of custody that has been determined to be in the best interest of the child. It delineated the factors that the court will consider in determining whether joint custody is in the best interest of the child. Section 30-3-152(c) established a presumption that joint custody will be in the best interest of the child if both parents request joint custody. If the court fails to grant joint custody when requested by both parents, the court must make a specific finding of fact as to why joint custody was not granted.

The parents are required to submit a plan for the court to review concerning specific matters relating to the care and custody of the child if joint custody is to be implemented by the court. In the event that the parties are unable to reach such an agreement then the court will establish a plan.

Unless otherwise prohibited by court order or statute all the records and information pertaining to the child shall be equally available to both parents in all types of custody arrangements. Rule 32 relating to child support guidelines will be followed by the court. The awarding of joint custody does not preclude the court from later finding that one parent has committed a violation of the UCCJA or the Interference of Custody Act as provided in Section 13A-6-45.

This act does not constitute grounds for modification of an existing order of child custody.

71. UCC Article 3, Negotiable Instruments

This act was passed in 1995 and became effective January 1, 1996. It is codified as Article 3 of Title 7 of the Code of Alabama.

Prior Articles 3 and 4 were written for a paper-based system. Therefore, they did not adequately address the issues of responsibility and liability as they relate to modern technologies now employed and the check collection procedures required by the current volume of checks.

Revised Article 3 modernized, reorganized and clarified the prior law. The changes to Article 4 are more modest. Article 4 was amended as necessary to conform to changes in Article 3, to modernize it for automated check processing and transaction, and, as feasible, to accommodate the impact of federal Regulation CC. Provisions in Article 4 that are heavily impacted by Regulation CC were largely left alone and retained for non-preempted provisions and for items other than checks. Many of the Official Comments to revised Article 4 direct the reader to those provisions in Regulation CC that impact on Article 4.

Revised Article 3 clarified the types of contracts within Article 3, thus promoting certainty of legal rules and reduced litigation costs and risks. For example, variable rate instruments were included under revised Article 3 (§§ 3-104(a), 3-112), as were traveler's checks (§ 3-104(I)).

Revised Article 3 made clear that a financial institution taking checks for processing or payment by automated means need not manually handle the instrument if such processing is consistent with the institution's procedures and the procedures do not vary unreasonably from those of other banks (§§ 3-103(a)(7), 4-104(c)). These provisions were designed to accommodate and facilitate efficiency, lower costs, and recognize the reality of existing check collection practices mandated by the Expedited Funds Availability Act and Regulation CC.

The definition of bank was expanded for the purposes of Articles 3 and 4 to include savings and loans and credit unions so

that their checks were directly governed by the Uniform Commercial Code (§§ 3-103(c), 4-105(1)).

Except as against a holder in due course, § 3-402 allowed a representative to show that the parties did not intend individual liability when the representative signed without adequate indication and representation. The revision allowed full protection to the agent who signs a corporate check, even though the signature does not show representative status. Section 3-402(a) specified that the law of agency will govern whether the person represented will be bound by the signature of the representative.

Revised § 3-404, as in present law, placed the risk of indorsements by imposters, and those generated by dishonest employees drawing instruments for drawers, on drawers, but does not require that the indorsement be in strict conformity with the payee's name to get the benefit (§ 3-404(c)).

Revised § 3-405 expanded the per se negligence rule in present § 3-405 to the case of an indorsement forged by a payee's employee, and in that case and that of the faithless employee who supplies a name to a drawer and then forges the indorsement of the payee, does not require strict conformity to the name to place loss on the drawer or employer. However, any negligence of the bank will be taken into account and a comparative negligence standard is adopted instead of the present absolute rule (§§ 3-404(d), 3-405(b)).

Prior § 3-406 was revised so that negligence of the financial institution does not prevent it from asserting the preclusion, and comparative negligence is also the rule (§ 3-406(b)).

Actions for conversion of instruments are governed by general conversion law (§ 3-420(a)). A payee who never received the check cannot sue a depositary bank for dealing with a check with a forged indorsement (§ 3-420(a)(ii)). What a joint payee can recover was clarified in missing indorsement cases (§ 3-420(b)). A depositary bank is made liable in conversion for acting inconsistently with the owner's rights when an indorsement is

unauthorized and the revision blocks suit by the drawer for conversion (§§ 3-420(a)).

72. UCC Article 4, Bank Deposits & Collections

This act was passed in 1995 and became effective January 1, 1996. It is codified as Article 4 of Title 7 of the Code of Alabama.

The American Law Institute and the National Conference of Commissioners on Uniform State Laws revised Articles 3 and 4 in conjunction with Article 4A, regarding fund transfers. The efforts to revise these articles were undertaken for the purpose of revising the laws to accommodate the modern technologies and practices involved in the banking area.

An important goal of the 1990 revision of Article 4 was to promote the efficiency of the check collection process by making the provisions for Article 4 more compatible with the needs of an automated system and, thus, increasing the speed and lowering the cost of check collections for those who write and receive checks. An additional goal of the revision was to remove any statutory barriers in the Article to the ultimate adoptions of programs allowing the presentment of checks to payor banks by electronic transmission. Thus, resulting in a great savings in time and the expense of transporting the huge volumes of checks from the depository to pay our banks.

Article 4 defined the rights between parties with respect to bank deposits and collections. It is not a regulatory statute and, thus, does not regulate the terms of the bank-customer agreement, nor does it prescribe what constraints different jurisdictions may wish to impose on that relationship in the area of consumer protections.

The revision created a legal framework which accommodated automation and truncation for the benefit of all bank customers. Any potential consumer problems which might arise from these changes were left with enacting jurisdictions to address through individual legislation.

Also addressed in this article were specifically overlapping problems and conflicts that might arise between Article 4 and Article 9.

73. Unincorporated Nonprofit Association Act

This act was passed in 1995 and became effective January 1, 1996. It is codified at Sections 10-3B-1 et seq. of the Code of Alabama.

This act reformed the common law concerning unincorporated, nonprofit associations in three basic areas—authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association. It also provides a default provision for the governance of such associations. It is based generally on the 1992 Uniform Unincorporated Nonprofit Association Act adopted by the Commission on Uniform State Law, and referred to hereafter as the "Uniform Act." The commentary was taken primarily from the Uniform Act with changes and additions to reflect Alabama law.

This law dealt with a limited number of the major issues relating to unincorporated, nonprofit associations in an integrated and consistent manner. Statutes dealing with particular types of unincorporated associations, including those in Title 10, Chapter 4 of the Alabama Code, and those dealing with agricultural cooperatives in Title 2, Chapter 10 of the Alabama Code are not affected by the act.

Similarly, passage of this law nevertheless, left other matters relating to unincorporated, nonprofit associations to the state's common law or to statutes on the subject, where they exist. Alabama has statutes at Title 10, Chapter 4 dealing with special kinds of associations, such as churches, mutual benefit societies, fraternal orders, and cooperatives. Statutes such as Ala. Code § 6-3-4, dealing with venue for actions against an unincorporated organization or association, remain applicable.

This act applied to all unincorporated, nonprofit associations. Nonprofit organizations are often classified as public

benefit, mutual benefit, or religious. For purposes of this act, it is unnecessary to treat differently these three categories of unincorporated, nonprofit associations. Unlike some state laws, it is not confined to the nonprofit organizations recognized as nonprofit under Section 501(c)(3), (4), and (6) of the Internal Revenue Code. There is no principled basis for excluding any nonprofit association. Therefore, this law covered unincorporated philanthropic, educational, scientific, and literary clubs, unions, trade associations, political organizations, cooperatives, churches, hospitals, condominium associations, neighborhood associations, and all other unincorporated, nonprofit associations. Their members may be individuals, corporations, other legal entities, or a mix.

This law was designed to cover all of these associations to the extent possible. To the extent that Title 10, Chapter 4 of the Code of Alabama and other Code provisions deal with special types of nonprofit associations, this act supplemented existing legislation.

The basic approach of the act was that an unincorporated, nonprofit association is a legal entity for the purposes that the act addresses. It did not make these associations legal entities for all purposes. It is left to the courts of Alabama to determine whether to use this law by analogy to conclude that an association is a legal entity for some other purpose.

It should be noted, too, that many of the provisions were intended to be supplemented by existing provisions of Alabama law. For example, § 10-3B-6, which provides for the recording of a statement of association authority, does not provide details concerning the filing process. It leaves to state law the details as whether the filing officer returns a copy marked "filed" and stamps the hour and date thereof and the amount of the filing fee.

It should be emphasized also that this act was needed for informal nonprofit organizations that do not have legal advice and so may not consider whether to incorporate.

74. Divorce, Retirement Benefits

This act passed in 1995 and became effective January 1, 1996. It amended Section 30-2-51 of the Code of Alabama.

Formally, the retirement benefits were excluded from consideration by the court when property was divided upon divorce. In a case decided in 1993, the courts began to divide retirement benefits upon divorce. This act amends the code section to provide statutorily for the trial court to have discretion to include the present value of future or current vested retirement benefits in making a property settlement upon divorce. However, certain conditions must be met.

Subsection (b) delineates that three conditions must be met in order for the judge to have the authority to divide the retirement benefit. First, the parties must have been married for a period of ten years during which the retirement was accumulated. The ten year requirement was selected because it is the same time requirement used for a spouse to draw social security benefits based on a former spouse's work record. Second, the court may not include the value of any retirement benefits that were acquired prior to the marriage including any interest or appreciation from those benefits that were acquired prior to marriage. Finally, the total amount of the retirement benefits that are paid to the non-covered spouse may not exceed 50% of the retirement benefits.

Under subsection (c) if the court determines that the covered spouse's benefits should be distributed to a non-covered spouse those benefits are not payable to the non-covered spouse until the covered spouse begins to receive his or her retirement benefits or reaches the age of sixty-five years old unless both parties agree to a lump sum settlement that is payable in one or more installments.

75. Divorce Cooling-Off Period

This act was passed in the 1996 Special Session and became effective January 1, 1997.

This act was designed to mandate a "Cooling Off Period", thereby, enabling couples to have an opportunity to contemplate the ramifications of their actions prior to obtaining a divorce. Under prior Alabama law, there was no waiting period for couples to obtain a divorce. A couple, both of whom resided in Alabama, formally could have been granted a divorce on the same day on which the petition was filed.

This act changed the law so that the court could not issue a final decree until at least thirty days elapsed from the date of the filing of the summons and the complaint in a divorce action.

Subsection (b) of Section 1 authorized the court during the waiting period to enter such temporary orders as are necessary concerning custody or support prior to the expiration of the waiting period.

76. <u>Rules of Evidence</u>

These Rules were adopted by the Alabama Supreme Court and became effective January 1, 1996.

The Alabama Supreme Court requested the Alabama Law Institute to undertake a study of revising the Rules of Evidence. The committee began its study on September 9, 1988 and met approximately every six to eight weeks for four and a half years. The Alabama Rules of Evidence were presented to the Supreme Court who held several hearings on the rules. The rules were presented to the State Bar for study and comment before adoption.

The Federal Rules of Evidence were used as the model. A consensus developed that the federal rules would be adopted unless there were good reasons to deviate from them. Accordingly, some of these rules differ significantly from the corresponding federal rule. The differences usually resulted in either modifying the federal rule or replacing it altogether with the preexisting Alabama common law principle. However, it was agreed to model the work on privileges after a combination of the Uniform Rules of Evidence and the preexisting Alabama privilege statutes since the original proposed federal rules on privileges had been rejected.

In most instances, these rules continue the historic Alabama law of evidence either identically or with slight modification or expansion. Some rules, however, do abrogate preexisting Alabama law. Where change occurs it generally is to implement the overall policy of promoting greater admissibility. These rules mark a shift from a system of exclusion to one of admissibility.

1990-1994 Quadrennium

77. Rules of Civil Procedure

The Alabama Supreme Court adopted amended rule changes which became effective October 1, 1995.

The Alabama Rules of Civil Procedure were 20 years old on July 3, 1993. The Federal Rules of Civil Procedure have undergone significant changes since the Alabama Rules were patterned after them in a project that ran from 1971 to 1973. The Institute requested funds from the State Bar's IOLTA to conduct this review. Funds were made available and Attorney Champ Lyons of Mobile compared the current Federal Rules with Alabama's Civil Rules. A number of changes were recommended and presented to the Civil Rules Committee and later to the Supreme Court.

78. Revised Business Corporations

This act was passed in 1994 and became effective January 1, 1995. It is codified at Sections 10-2B-1.01 et seq. of the Code of Alabama.

This act was based on the 1984 Revised Model Business Corporation Act but included changes recommended by the ABA Committee since 1984.

This act continued the filing system under the former Alabama act in which the principal filing office for corporate documents is the office of the probate judge of the county in which the initial registered office of the corporation is located. This differs from the ABA version of the Revised Model Business Corporation Act, under which the secretary of state's office is the

principal filing office. Section 1.25 is the provision of the act that details in which office various documents are to be filed. The requirements for the articles of incorporation were somewhat streamlined, but, unlike the ABA version of the Revised Act, continued to require that a corporate purpose be stated and that the initial directors be designated. Section 2.02. One change from the old Alabama act is to permit the initial bylaws to be adopted by the directors. Section 2.06(a).

The "deceptively similar" test for the availability of a corporate name is continued. Section 4.01.

The concept of treasury shares is continued because of the restrictions on issuance of shares in the Alabama Constitution since the Alabama Supreme Court has held that a corporation's sale of treasury shares is not an "issuance" subject to the Constitutional restrictions. *Brumfield v. Horn*, 547 So. 2d 415 (Ala. 1989).

This act resolved three important issues as to shareholder meetings not addressed in the prior act.

While the prior act recognized that a shareholder can expressly waive notice of a shareholder's meeting, Alabama Code § 10-2A-49 did not address the question of whether a shareholder's attendance at the meeting constituted a waiver. Section 7.05(b) of this act provided that unless a shareholder makes an appropriate objection, his attendance at the meeting waives objection to lack of notice. This parallels the rule as to directors under former law. Alabama Code § 10-2A-65.

A second issue left unresolved under prior law was whether a shareholder could withdraw from a meeting and thereby "break the quorum." The commentary to Alabama Code, Section 10-2A-52 of the prior act noted that the prior act was silent on that question. The new law gave a shareholder the power to break a quorum by withdrawal.

A third issue unresolved under the prior act was whether a shareholder voting agreement is specifically enforceable. Section 7.31(a) declared that it was.

79. Limited Liability Companies

This act was passed in 1993 and became effective October 1, 1993. It is codified as Sections 10-12-1 et seq. of the Code of Alabama.

A limited liability company is a hybrid version of a corporation and a partnership. It offers its equity investors protection from personal liability while being classified as a partnership for federal income tax purposes. Thus, it can avoid federal corporate-level tax and pass through profits and losses to its members.

The Wyoming statute was used initially as the model, in part perhaps because it had already received a favorable Revenue Ruling by the IRS. In its ruling the IRS decided that the limited liability company lacked the two corporate characteristics of free transferability of interest and continuity of life, while having the two corporate characteristics of limited liability and centralization of management. Thereby achieving tax classification as a partnership. Alabama initially followed many of the concepts of the Wyoming statute, the final draft, however, added some additional provisions from the ABA Model Act and Uniform Commissioners on State Laws' initial draft.

80. Criminal Pattern Jury Instructions, 1979, 1989, 1993

After the enactment of the Criminal Code in 1977 and at the request of the Administrative Office of Courts, the Institute and several judges developed the Criminal Jury Charges.

In 1979 the Criminal Pattern Jury Instructions were completed under the chairmanship of Circuit Judge Joseph Colquitt. The Criminal Pattern Jury Charge Committee drafted jury charges to accompany the implementation of the new Criminal Code. The committee began working July 1977 and completed comprehensive drafts of charges in four major felonies: homicide, theft, burglary, and robbery. Prior to the effective date of the Criminal Code, the committee drafted the balance of the charges. The committee drafts included general instructions as well as

lesser included charges. The draft was submitted to the Alabama Supreme Court and is in use today.

At the request of the Administrative Office of Courts, the Institute and several judges revised the Alabama Criminal Pattern Jury Instructions in 1989. The original work was completed in 1979 and had not been updated. There had been a substantial amount of change in criminal law, both legislative and case law since that time. The 1989 revision reflected those changes. It was also reorganized to more closely parallel the Criminal Code.

The 1993 revision added jury charges to include a number of lesser included offenses that were not covered under the 1989 edition. Additionally, capital jury charges were added. Judge Joe Colquitt also led the drafting of this edition.

81. Probate Procedure Act

This act was passed in 1993 and became effective January 1, 1994. However, estates filed prior to January 1, 1994 continue under the old law unless they elect to come under the new law. It is codified as Section 43-2-830 et seq. of the Code of Alabama.

Upon death, real property passes to the devisees or the heirs and personal property passes to the personal representatives for distribution to the devisees or heirs.

All of the decedent's property is subject to homestead allowance, exempt property, family allowance, rights of creditors, elective share of the surviving spouse, and administration. § 43-2-830.

Although the duties and powers of a personal representative commences upon appointment, the powers relate back with regard to acts which are beneficial to the estate performed by the personal representative prior to the appointment. Even prior to the appointment, the personal representative may carry out the written instructions of the decedent relating to the decedent's body, funeral, and burial arrangements. § 43-2-821.

The personal representative is a fiduciary who must follow the prudent person standard and if named as the personal representative because of special skills, is under a duty to use those skills. § 43-2-833.

Unless the will provides otherwise, the personal representative will usually have to file an inventory within two months. The inventory shall be sent by the personal representative to any interested person who requests it. § 43-2-835.

The personal representative shall make a supplement to the initial inventory if additional property is located or to change erroneous market values or descriptions. § 43-2-836.

Except as provided by will, the personal representative shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled to it until the personal representative needs it for purposes of administration. A personal representative's written request for delivery is conclusive evidence of its necessity for administration.

The personal representative may pay taxes and expenses necessary to manage, protect and preserve the property. § 43-2-837.

Section 43-2-843 of the Code of Alabama parallels the conservatorship law in that it enumerates actions that the personal representative may take without prior court approval unless the will or court specifically otherwise restricts the action.

Section 43-2-844 of the Code of Alabama parallels the conservatorship laws in that it enumerates actions that may only be taken with prior court approval unless the will expressly authorizes such action.

A personal representative is entitled to reasonable compensation. Factors to consider as guides in determining the reasonableness of the fee are established. Subsection (b) provides that the personal representative may under certain circumstances

renounce the provisions in a will related to compensation and receive reasonable compensation. § 43-2-848.

The personal representative is entitled to receive necessary expenses and disbursements including reasonable attorney's fees for defending or prosecuting an action. § 43-2-849.

After notice to all interested parties, the court may review the reasonableness of the compensation paid out of the estate and order a refund for any excessive compensation. § 43-2-850.

Unless waived in the will, the personal representative must execute a bond or give collateral generally equal to the amount under the personal representative's control less the value of property under § 43-2-843 that can only be sold or conveyed with court authority. Also, the court may waive the bond with the consent of all interested parties.

Even though the bond is waived in a will, it may nevertheless be required by the court under limited circumstances such as the likelihood of waste occurring otherwise. § 43-2-851.

The terms and requirements of the bond, such as the joint and several liability of the personal representative and sureties are established in § 43-2-852 of the Code of Alabama.

82. Administrative Procedure Amendments

The amendments to the Administrative Procedure Act were passed in 1993 and became effective July 1, 1993. They are codified in Chapter 22 of Title 41 of the Code of Alabama.

After working under the Administrative Procedure Act for approximately ten years, the committee reconvened to determine if there were any problems that needed to be addressed. Various agencies and interested parties submitted their suggestions for revisions to the committee. After several meetings the committee submitted a bill to accommodate most of those suggestions.

The following sections were amended as follows:

§ 41-22-5 The amendment to this section clarified that an agency rule may set the comment period on a rule to be between 35 to 90 days. If the agency takes action, it must then be filed with the Legislative Reference Service within 90 days after the end of the comment period. Once filed with Legislative Reference Service, the Legislative Review Committee has 35 more days to act. This gives the Legislative Review Committee additional time to meet and review agencies' rules.

§ 41-22-6 The amendment to this section clarified that completion of notice of the agencies action is the end of the notice period and not the beginning. Any rule not filed with Legislative Reference Service is invalid.

The amendment clarified that a rule is effective 35 days after filing with Legislative Reference Service unless:

(a) a later date is required by statute or rule;
(b) an earlier date is required by statute;
(c) it is an emergency rule; or
(d) the committee disapproves it.

§ 41-22-12 In contested cases, the act provided for subpoenas, discovery and protective orders in accordance with the rules of civil procedure. This can only be enforced by a court. This section does not apply to the Ethics Commission.

§ 41-22-20 The amendments to this section:

(a) Clarified that judicial review may be either under this act or as otherwise provided by agency law;
(b) Clarified that the time of appeal after rehearing begins running when notice of service is received;

(c) Clarified that all parties to the agency proceeding will be made parties in an appeal proceeding; and
(d) Clarified that an agency action may be reversed or modified if the petitioners rights are prejudice by any one or more of the seven enumerated reasons.

§ 41-22-22 The amendment clarified that a quorum for the Administrative Review Committee to be the same as for the Legislative Council. (At the time of this revision there were 22 members of the Legislative Council, but quorum for the Council is set by statute to be nine).

83. UCC Article 2A - Leases

This act was passed in 1992 and became effective on January 1, 1993. It is codified as Article 2A of Title 7 of the Code of Alabama.

A lease is a contract, subject to contract law construction and enforcement principles. In Alabama, leases have been construed and enforced in a manner generally consistent with contract principles. There has, however, been a dearth of case law applying contract law to leases. Therefore, parties have been left with little guidance in formulating the contours of their lease transactions. While general contract principles developed in other contexts are certainly competent to address and resolve a broad array of leasing issues, it is less clear that the general contract law is the best source of guidance for determining controversies involving considerations fundamental to the commercial law.

The drafting committee of the Uniform Act then identified and resolved several issues critical to codification:

Scope: The scope of the Article was limited to leases (Section 2A-102). There was no need to include leases intended as security, i.e., security interests disguised as leases, as they are adequately treated in Article 9. Further, even if leases intended as security were included, the need to preserve the distinction would

remain, as policy suggests treatment significantly different from that accorded leases.

Definition of Lease. Lease was defined to exclude leases intended as security (Section 2A-103(1)(j)). Given the litigation to date a revised definition of security interest was suggested for inclusion in the Act. (Section 1-201(37)). This revision sharpens the distinction between leases and security interests disguised as leases.

Filing. The lessor was not required to file a financing statement against the lessee or take any other action to protect the lessor's interest in the goods Section 2A-301). The refined definition of security interest will more clearly signal the need to file to potential lessors of goods. Those lessors who are concerned will file a protective financing statement (Section 9-408).

Warranties. All of the express and implied warranties of the Article on Sales (Article 2) were included (Sections 2A-210 through 2A-216), revised to reflect differences in lease transactions. The lease of goods is sufficiently similar to the sale of goods to justify this decision. Further, many courts have reached the same decision.

Certificate of Title Laws. Many leasing transactions involve goods subject to certificate of title statutes. To avoid conflict with those statutes, this Article is subject to them. (Section 2A-104(1)(a)).

Consumer Leases. Many leasing transactions involve parties subject to consumer protection statutes or decisions. To avoid conflict with those laws this Article is subject to them to the extent provided in Section 2A-104(1)(c) and (2). Further, certain consumer protections have been incorporated in the Article.

Finance Leases. Certain leasing transactions substitute the supplier of the goods for the lessor as the party responsible to the lessee with respect to warranties and the like. The definition of finance lease (Section 2A-103(1)(g)) was developed to describe these transactions. Various sections of the Article implement the substitution of the supplier for the lessor, including Sections 2A-

209 and 2A-407. No attempt was made to fashion a special rule where the finance lessor is an affiliate of the supplier of goods; this is to be developed by the courts, case by case.

Sale and Leaseback. Sale and leaseback transactions are becoming increasingly common. A number of state statutes treat transactions where possession is retained by the seller as fraudulent per se or prima facie fraudulent. That position is not in accord with modern practice and thus is changed by the Article "if the buyer bought for value and in good faith" (Section 2A-308(3)).

Remedies. The Article has not only provided for lessor's remedies upon default by the lessee (Sections 2A-523 through 2A-531), but also for lessee's remedies upon default by the lessor (Sections 2A-508 through 2A-522). This is a significant departure from Article 9, which provides remedies only for the secured party upon default by the debtor. This difference is compelled by the bilateral nature of the obligations between the parties to a lease.

Damages. Many leasing transactions are predicated on the parties' ability to stipulate an appropriate measure of damages in the event of default. The rule with respect to sales of goods (Section 2-718) is not sufficiently flexible to accommodate this practice. Consistent with the common law emphasis upon freedom to contract, the Article has created a revised rule that allows greater flexibility with respect to leases of goods (Section 2A-504(1)).

Though the Alabama act may occasionally differ in its formulation, the act is generally consistent with the approach of the Uniform Act with regard to the critical issues.

84. Family Law/Children's Code, 1993

The committee met for two years on a variety of topics relating to children and family law. They completed drafts of five family law bills:

(a) Legal separation;
(b) Cooling-off period;
(c) Joint custody;
(d) Retirement; and

(e) Putative father's registry.

The committee also considered the Uniform Interstate Family Support Act.

85. UCC Article 4A - Funds Transfers

This act was passed in 1992 and became effective January 1, 1993. It is codified as Article 4A of Title 7 of the Code of Alabama.

Article 4A of the UCC was developed to fill a void in the law relating to a type of payment made through the banking system called a "funds transfer." Generally a "funds transfer is a large, rapid money transfer between commercial entities." For example, the average transfer involves $5,000,000. Consumer transactions, such as credit cards, debit cards, automated teller machine transfers, and checks are governed by the Electronic Funds Transfer Act and not by this Article.

Although there is no comprehensive law governing commercial "funds transfers," Regulation J (federal law) covers the interbank part of any commercial "funds transfer" by the Federal Reserve network. Article 4A and Regulation J are compatible, embodying the same concepts. Thus, even though a majority of the "funds transfers" occurring in Alabama are covered under Regulation J, many transactions occur with no comprehensive rules and no readily ascertainable established law governing those transactions. Hence, the need for a comprehensive set of rules to govern these transactions.

Article 4A was designed to establish rules covering the rights and obligations connected with "funds transfers." The article balances the interest of banks, commercial users of this payment method, and the public concerning such problems as: unauthorized payment orders; improper execution of payment orders; fraud; and insolvency of participating banks. The article specified who takes the risk of loss, who will be liable, and what damages may be assessed.

Uniformity with Regulation J and with the majority of states who have enacted 4A is important to maintain a speedy and inexpensive system to transfer funds as Alabama expands into other national and international markets. A lack of uniformity could result in an inexperienced business person or entity inadvertently incurring excessive liability.

1986-1990 Quadrennium

86. Condominium Act

This act was passed in 1990 and became effective January 1, 1991. It is codified at Section 35-8A-101 of the Code of Alabama.

This act updated a 1973 statute by clarifying numerous technical matters relative to realty recordation, legal descriptions, insurance, termination, apartment conversions, and escrow of deposits, among others. It is a balanced re-adjustment of the authority of the developer, the condominium association and the condominium unit owners.

The following is a summary of the major changes:

(a) Developer. The developer ("declarant" in the act) was given certain "development" rights which provide greater flexibility in development, especially in the "staged" development of low-rise condominiums. It also protected the developer from some types of interference by the association during the construction and marketing phases.

(b) Association. The act regulated the transfer of control over the association from the developer to the public unit buyers. Associations are required to be incorporated. The act strengthened the authority of the associations regarding the enforcement of fines and assessments owed by unit owners, which can be foreclosed in the manner of a mortgage and giving such obligations a limited protection from being cut off by a foreclosure of a first mortgage on the unit.

(c) Unit Buyers. The initial public unit buyers are protected by requiring the developer to disclose matters which might affect the success of the development and the buyer's obligations. The developer must deliver to the initial buyers an offering statement containing the condominium documentation, current rules, covenants, and financial information. There is a seven-day "cooling-off" period after the delivery of the statement before a contract of purchase is enforceable. A penalty is provided for a conveyance without a delivery of the offering statement. Subsequent buyers are also protected by requiring, if a later buyer requests, a disclosure of some of the same material by the seller and the association.

Buyers are protected by permitting the association to cancel unfavorable long-term management contracts and recreation leases imposed by the developer on the association while the developer controls it. Unit buyers are protected from each other by requiring the condominium declaration to state limitations on use, occupancy, sales, and leasing. The declaration also sets voting limitations on amendments to the declaration.

87. Adoption Code

This act was passed in 1990 and became effective January 1, 1991. It is codified as Section 26-10A-1 of the Code of Alabama.

The act is based on the ABA Model Adoption Code and expanded and strengthened the current law in Alabama related to adoption. There are several significant improvements in the law. The first was to increase the criminal sanctions against individuals who attempt to profit from buying and selling children.

The second improvement was to expand the consent or relinquishment for adoption provisions. It is felt that the current statutes do not fulfill constitutional requirements and consequently may result in potential problems with children who are adopted without proper parental consent or relinquishment.

Third, confidentiality has been modified to increase the amount of non-identifying information available to the adult adoptee while safeguarding the identity of the natural parents who do not wish to be identified.

The final significant change was to clarify the inheritance laws concerning adopted children.

This act repealed the current statutes relating to adoption of children and repealed the provisions allowing for adult adoptions for inheritance purposes.

88. Alabama Securities Act

This act was passed in 1990 and became effective January 1, 1991. It is codified as Section 8-6-1 of the Code of Alabama.

The most significant substantive changes are as follows:

(a) Transactional exemption from registration. This law, at Alabama Code § 8-6-11(a)(9), substituted the "purchaser" concept for the revised "offeree" concept in determining the availability of a statutory exemption from registration for offerings of securities to a limited number of investors. Under the prior law, an offer of securities made to more than ten persons, regardless of how many of these actually purchase the securities, would render the exemption unavailable. Under the act, an offer can be extended to more than ten persons and is exempt from registration as long as there were no more than ten purchasers of the securities.

(b) Marketplace exemption from registration. This provision, at Alabama Code § 8-6-10(7), extended the previous exemption of exchange-listed securities to all securities, whether exchange-listed or traded in the over-the-counter market, which are designated as "national market system" securities and meet existing listing criteria of the New York Stock Exchange, the American Stock Exchange or NASDAQ/NMS markets.

(c) Regulation of investment advisers. This provided regulatory protection to investors who deal with investment advisers. Similar regulation has been enacted by approximately 40 other states to combat frauds estimated to be annually in excess of $500,000,000. It prohibited a number of fraudulent and abusive practices and requires registration similar to that already required of broker/dealers in this state.

(d) Registration by notification. This expanded the availability of registration by notification, the simplest method of registration under the statute. It is available to all exchange-listed and over-the-counter securities which are designated as "national market system" securities, in addition to the seasoned issuers for whom the procedure was previously available.

(e) Registration by qualification. This eliminated several requirements which practitioners have viewed as unnecessary impediments to the procedure for full registration. The revisions include the elimination of the bond requirement for issuers and the requirement that any applicant for registration be a dealer.

The foregoing represents only some of the more significant substantive revisions. In addition, the notice and hearing provisions of the statute were amended to conform with the Alabama Administrative Procedures Act.

89. Rules of Criminal Procedure

The Alabama Supreme Court approved the Alabama Rules of Criminal Procedure as a rule of court effective January 1, 1991.

These rules were a culmination of work that began in January 1975. A draft was presented to the Court in June 1977. The Court circulated a copy of the Proposed Rules to each member of the Alabama Bar in August 1977.

The Court reviewed the Rules, made some changes and returned them to the Committee for additional study. The

Committee re-presented the Rules to the Court in January 1983. In June 1989, the Court approved the Rules and published them in the November 30, 1989, West Southern Reporter advance sheets.

This comprehensive Code of Criminal Rules brought together for the first time the rules for the orderly disposition of criminal cases in the District and Circuit courts in Alabama.

The 36 rules included arrests, preliminary hearings, release, speedy trials, mental competency, juries, trials, verdicts, sentencing, probation, and appeals. These rules also provided 110 exemplary forms.

90. Alabama Fraudulent Transfers Act

This act was passed in 1989 and became effective January 1, 1990. It is codified as Sections 8-9A-1 through 12 of the Code of Alabama.

The act followed the 1985 version of the Uniform Fraudulent Transfers Act adopted by 20 states. It made Alabama compatible with the Bankruptcy Code.

This act defined "actual" fraud, generally the same as the prior Alabama law, by requiring actual intent to defraud. However, it also identifies a list of factors the court may consider in determining intent. The act further addressed "constructive" fraud, which must include inadequate consideration and enumerates factors for consideration.

91. Memorandum of Leases Act

This act was passed in 1989 and became effective January 1, 1990. It amended Section 35-4-6 of the Code of Alabama.

This act allows a memorandum of a lease to be recorded as an alternative to the lease itself. A lease must be recorded within one year after execution for it to be enforceable beyond twenty years. The memorandum must state:

a. the names of parties,

b. the term of lease,
c. any options,
d. a legal description, and
e. any other provisions.

92. Federal Lien Registration Act

This act was passed in 1989 and became effective January 1, 1990. It is codified at Section 35-11-42 of the Code of Alabama.

The act follows the Uniform Federal Lien Registration Act drafted by the Commissioners on Uniform State Laws

Enactment was needed because Section 6323 of the IRS Code (PL. 89-719, Federal Tax Lien Act of 1966) requires the state to designate an office for filing federal liens. In the absence of a statute, filing is with the clerk of the U.S. District Court. Under this law, filing is basically as follows:

(a) real property - local probate office
(b) personal property:
  (1) corporation or partnership - secretary of state
  (2) trust - secretary of state
  (3) decedent's estate - probate office
  (4) all other cases - probate office

Fees are the same as Uniform Commercial Code filings.

93. Notice for Statute of Nonclaims Act

In 1989 the Legislature amended Sections 43-2-60 and 61 of the Code of Alabama in response to changes in the law. They became effective May 16, 1989. In *Greyhound Financial Corp. v. Lochwood Investors* (9/21/88) the federal courts declared Alabama's Statute of Nonclaims unconstitutional. This was based on the United States Supreme Court case of *Tulsa Professional Services v. Pope*, 485 U.S. 478, 108 S. Ct. 1340, 99 L.Ed.2d 565 (1988).

This act cures the constitutional problems raised in the cases by requiring notice to be mailed to all known creditors as well as published in the paper.

94. Redemption of Real Estate Act

This act was passed in 1988 and became effective January 1, 1989 and is codified as Sections 6-5-247 through 257 of the Code of Alabama.

The act repealed §§ 6-5-230 through 246 and clarified the law of redemption of real property by codifying case law as well as revising the statutory law.

Specifically the act clarified who is entitled to redeem and their priorities. It also delineated what are allowable charges that may be added to the foreclosure sale price. The act retained the one year redemption period.

95. Power of Sale Contained in Mortgages

This act was passed in 1988 and became effective January 1, 1989. It is codified as Sections 35-10-11 through 16 of the Code of Alabama.

This law effected only those mortgages that were executed after December 31, 1988. The primary change from prior law is that it required one to foreclose through the court on mortgages that are silent as to how a foreclosure is to be conducted. The purpose of this change was to avoid any possible constitutional challenge because of "state action."

96. Trade Names

With passage of the Alabama Trademark Act in 1987, Alabama for the first time had a statutory system for the registration of trademarks and service marks. Ownership of such marks is established by common law through use. With registration, trademarks and service marks owners could put others on notice of their ownership claims. However, there has been no statutory scheme for registration of trade (business) names,

ownership of which also is established by common law through use. Many practitioners go to great efforts to cast such names as service marks in order to obtain registration. Some even treat corporate name reservation as if it were a trade name registration system, apparently unaware that such reservation neither creates ownership rights nor serves as constructive notice of ownership claims.

This act found in Ala. Code § 8-12-20 et seq. did not create an entire new registration scheme. Rather, it revised the classifications of the present trademark scheme to coincide with the federal and international registration classifications and added trade names. Under both Alabama and federal law, trademarks and service marks are registrable. Such marks, however, must be the names of products or services. Names under which persons or companies are known and do business previously were not registrable. This act, effective January 1, 1989, provided effective means for a business to put others on notice of its claims to its business name.

97. Uniform Guardianship and Protective Proceedings Act

This act was passed in 1987 and became effective January 1, 1988. It is codified as Sections 26-2A-1 et seq. of the Code of Alabama.

The act was based, to a large extent, on Parts 1, 2, 3, and 4 of Article V of the Uniform Probate Code. AUGPPA covers guardianships for minors, guardianships for reasons other than minority, and protective proceedings seeking court-appointed conservators or other protective orders for the estate concerns of minors, adult incompetents, absentees, and others. The act has several features which represent significant improvements over prior Alabama law.

First, this act distinguished between "guardians" of the person and "conservators" of the estates of wards. Prior to this act, Alabama used one term, "guardian," to characterize the duties and responsibilities of both of these offices. The single-term designation is ambiguous and not only confusing to persons dealing with the "guardian," but it also is confusing to the fiduciary

acting in that capacity. Use of the two designations, even though one person may be acting in both capacities, provides a much needed clarification.

Second, this act gave definition to the procedures for appointing guardians and conservators and to their respective powers and duties that had been lacking in Alabama. While Alabama has had guardianships for many years and, therefore, it cannot be said that procedures for appointing guardians were nonexistent, the procedures needed refinement and definition to make them clearer. More clearly stated procedures made these procedures more consistent throughout the state. A severe gap in Alabama law existed with respect to the powers and duties of guardians. This act made an enormous contribution with respect to the powers and duties of guardians and conservators.

Third, prior to this act for most of Alabama's history, guardians could be appointed only for minors and "incompetents." Even though there might be agreement that an individual needed help in their business or personal affairs, there was and is a stigma that accompanies having that individual judicially declared an "incompetent." This act used the term, "incapacitated," and greatly expands the various grounds for appointment of a guardian or conservator based on the definition of "incapacity." While Alabama has adopted this broader concept in some instances (e.g., with regard to "curators" and in the Adult Protective Services Act), this act consolidated the concept in one comprehensive act and gives more definition to the concept.

98. <u>Deed in Lieu of Foreclosure</u>

This act was passed in 1987 and became effective August 12, 1987. It is codified as Section 35-10-50 of the Code of Alabama.

Over the years numerous instruments often styled "Deed In Lieu of Foreclosure" have been recorded in Alabama. Usually these documents are conveyances from a mortgagor to a mortgagee of the equity of redemption. The practice has caused a great deal of confusion among real estate people, lawyers, title examiners, and the general population. It has been said that these conveyances

are foreclosure deeds, from which the statutory right of redemption emerges and that they preclude other lien holders from redeeming the property to protect their interests.

There is little doubt that these conveyances are not foreclosure deeds and they do not give rise to the statutory right of redemption. In addition, such deeds do not adversely affect the rights of persons who are not parties to the instrument.

This statute explained and rationalized the subsequent release of a mortgagor's equity of redemption to the mortgagee. The statute clearly described the law which exists, to the effect that deeds from mortgagors to mortgagees affect only the rights and obligations of the parties to the deed. Because the instrument is a private transaction between the mortgagor and the mortgagee there is no foreclosure of the security interest and no statutory right of redemption arises. The rights of other lien holders, judgment creditors, or other interests are not affected.

99. Trade Secrets Acts

This act was passed in 1987 and became effective August 12, 1987. It is codified as Sections 8-27-1 et seq. of the Code of Alabama.

Trade secret law, unlike patent or copyright law, does not create a property interest in intellectual property, rather it controls the means by which certain knowledge may be acquired. For trade secret protection to exist, there must first be a trade secret. For a trade secret to exist, there must first be a secret. That is, a device or process must not be generally known. Such a device or process must be used in one's trade or business on a continuing basis. Additionally, the device or process, while it need not give one an advantage over his competitors, must give one the opportunity to gain an advantage over his competitors.

The secrecy element in addition to requiring that the device or process not be generally known also requires that reasonable steps be taken to prevent others from acquiring the information as stated above. Trade secret protection does not protect the device or process itself. Rather, it protects the possessor of the trade secret

from the use of improper means in acquiring the trade secret. This usually means protection against the acquisition of a trade secret by means of breach of a confidence.

The proper means of discovering another trade secret are independent development, reverse engineering, and purchase from the owner of the trade secret or from a third person without notice that the third person has improperly obtained the trade secret. In the case of a trade secret obtained from a third person without notice, one is not liable for obtaining the trade secret if he either paid value for the secret or changed his position in such a way that subject him to liability would be inequitable.

The duration of a trade secret is as long as and only as long as the device or process remains secret. It follows from this that damages or injunctive relief are measured by the expected life of the trade secret absent its improper acquisition.

This act defined a trade secret as follows: "The whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes."

1982-1986 Quadrennium

100. Alabama Uniform Transfers to Minors

This act was passed in 1986 and became effective October 1, 1986. It is codified as Sections 35-5A-1 through 24 of the Code of Alabama.

The Uniform Transfers to Minors Act (UTMA) expanded the scope of the Uniform Gifts to Minors Act (UGMA). The UGMA provided for gifts of money, securities, and insurance policy proceeds to minor donees under the protection of a custodian. The UGMA was revised in 1966, but Alabama enacted the earlier version in 1957 and amended it to permit transfers by will and insurance policy proceeds. The primary advantages of this custodial mechanism, as compared with trusts,

conservatorships, and the like, are its economy and informality. The proposed UTMA expanded the UGMA's custodial mechanism to permit the transfer of personal and real property.

101. Uniform Enforcement of Foreign Judgments Act

This act was passed in 1986 and became effective October 2, 1986. It is codified as Sections 6-9-230 through 238 of the Code of Alabama.

The purpose of the Alabama Uniform Enforcement of Foreign Judgments Act was to simplify the method of giving recognition and effect to the judgments of other states in the courts of Alabama by means of legislation, already adopted in a majority of states, designed to provide for a simple filing procedure.

In 1948, the National Conference of Commissioners on Uniform State Laws and the American Bar Association approved the original Uniform Enforcement of Foreign Judgments Act. This act was a distinct advance over the usual method. It provided a summary judgment procedure for actions on foreign judgments. Even this advance, however, fell far short of the method provided by Congress in 1948 for the inter-district enforcement of the judgments of the Federal District Courts (28 U.S.C. § 1963). Further, widespread adoption by the states of some form of the Federal Rules of Civil Procedure which include regular summary judgment practice made special summary judgment acts superfluous.

This 1964 revision of the Uniform Enforcement of Foreign Judgments Act adopted the practice which, in substance, is used in Federal courts. It provided the enacting state with a speedy and economical method of doing that which it is required to do by the Constitution of the United States. It also relieved creditors and debtors of the additional cost and harassment of further litigation which would otherwise be incident to the enforcement of the foreign judgment. This act offered the states a chance to achieve uniformity in a field where uniformity is highly desirable.

102. Eminent Domain Code

This act was passed in 1985 and became effective January 1, 1986. It is codified as Sections 18-1A-1 et seq. of the Code of Alabama.

The constitutional promise contained in the Fifth Amendment to the Federal Constitution and Sections 23 and 235 of the Alabama Constitution that "private property shall not be taken for public use without just compensation" has been judicially held to require that the owner be put in as good a position pecuniarily as he would have occupied if his property had not been taken. The committee of the Alabama Law Institute, charged with the responsibility of preparing a Code on Eminent Domain, was primarily concerned with the method and procedure to insure the fair fulfillment of this constitutional commitment and due process.

Prior studies and suggested revisions of eminent domain statutes had not been enacted for various reasons, perhaps because sufficient consideration was not given to the multiple interests involved and affected. The committee, through many conferences and extended debates, sought to inject and resolve all interests. The Uniform Eminent Domain Code, approved by the National Conference of Commissioners on Uniform State Laws, prior revisions suggested in Alabama, including those of an earlier Code Committee of the Alabama Bar, and recommendations from attorneys, judges, appraisers, and property owners have been incorporated into the Code as recommended by the Committee.

103. Nonprofit Corporation Act

This act was passed in 1984 and became effective January 1, 1985. It is codified as Sections 10-3A-1 et seq. of the Code of Alabama.

The Alabama Nonprofit Corporation Act of 1955, former Alabama Code Section 10-3-1 et seq., hereinafter referred to as the "Alabama Act," was adopted in large part from the 1952 Model Nonprofit Corporation Act. This new act was based on the 1964 Model Nonprofit Corporation Act drafted by the Committee on Corporate Laws of the Section of Corporation, Banking, and

Business Law of the American Bar Association. It reflects a policy of parallelism in that it follows as closely as permitted by the difference in subject matter of the corresponding provisions of the Alabama Business Corporation Act codified at Section 10-2B-1 et seq. of the Alabama Code. Provisions in regard to stock are omitted and certain variations of practice are permitted for nonprofit corporations that are not customary or appropriate for business organizations. But otherwise, this act deliberately and closely parallels the provisions of the Alabama Business Corporation Act. It follows that decisions under the Alabama Business Corporation Act, or commentaries on it, which greatly outnumber those in regard to nonprofit corporations, should become increasingly helpful in the interpretation and application of this act.

104. Revised Limited Partnership Act

This act was passed in 1983 and became effective on January 1, 1984. It is codified as Sections 10-9A-1 et seq. of the Code of Alabama.

This act was based on the Revised Uniform Limited Partnership Act. The prior Alabama law was incomplete in that it did not fully delineate the liabilities of limited partners or provide safe harbor provisions for them. This act clarified the filing procedures for both foreign and domestic limited partners.

105. Professional Corporation Act

This act was passed in 1983 and became effective on January 1, 1984. It is codified as Sections 10-4-380 et seq. of the Code of Alabama.

This area of the law was formerly governed by two separate acts, the Professional Association Act of 1961 and the Professional Corporation Act of 1971. The new act brought these laws into conformity with the Alabama Business Corporation Act while combining them into one statute.

1978-1982 Quadrennium

106. Probate Code

This act was passed in 1982 and became effective January 1, 1983. It is codified as Sections 43-8-1 et seq. of the Code of Alabama.

This revision is basically Articles I and II of the Uniform Probate Code which deal with "definitions" and "intestate succession and wills".

107. Administrative Procedure Act

This act was passed in 1981 and became effective October 1, 1982. It is codified as Sections 41-22-1 et seq. of the Code of Alabama.

This law established three basic provisions:

(a) a procedure for rule-making and publishing;
(b) a procedure for handling contested cases; and
(c) legislative review of agency rules.

108. Article 9, UCC, 1982 - Secured Transactions

This act was passed in 1981 and became effective February 1, 1982. It is codified as Article 9 of Title 7 of the Code of Alabama.

This revision simplified the process of filing financial statements. it also clarifies the law governing priority of conflicts between competing claimants to collateral, and generally updates Article 9 of the Uniform Commercial Code that was enacted in 1966.

109. Business Corporation Act

The act was passed in 1980 and became effective January 1, 1981. It is codified as Sections 10-2A-1 et seq. of the Code of Alabama.

This revision allowed for both one-person corporations and close corporations, while also updating Alabama's 1958 corporation law.

110. Banking Code

The Banking Code was revised in 1979 to update Alabama banking laws that had not been revised since 1915. Ala. Code § 5-1A-1 et seq.

111. Rules of the Road Act

The Rules of the Road were revised in 1980 to update Alabama's driving laws that were passed in 1926. The revision followed recommendations made in the Uniform Vehicle Code and is found at Ala. Code § 32-5A-1 et seq.

112. Criminal Code Form Indictments

With the implementation of the new Criminal Code, existing indictment forms became obsolete. The Institute drafted new indictment forms for use under the Criminal Code. The committee was comprised of judges and district attorneys who drafted the indictments, not only for offenses under the new Criminal Code, but for a number of offenses that remain unchanged. Previously, Alabama did not have a complete set of form indictments. These form indictments are distributed by The Administrative Office of Courts and Office of Prosecution Services.

1974-1978 Quadrennium

113. Criminal Code

The Criminal Code was passed in 1978 and became effective January 1, 1980. It is codified as Title 13A of the Code of Alabama.

It was the first major revision of Alabama's Criminal Code in the history of the state. The Criminal Code is in accord with those in other states that are similar to the Model Penal Code

drafted by the American Law Institute. The Criminal Code is now codified in Title 13A of the Code of Alabama.

114. Warrant and Indictment Manual, 1979, Revised 1988, Revised 1998

In 1979 the Alabama Law Institute in conjunction with the Office of Prosecution Services and The Administrative Office of Courts developed the Indictment and Warrant Manual. It was revised in 1988 and again in 1998. The first two editions contained forms of offenses entitled 13A, "The Criminal Code." The third edition reprints those existing warrants and indictments for offenses entitled 13A and offers warrants and indictments for offenses, not covered in the previous edition.

In Volume I are the Criminal Code offenses. In Volume II are the other offenses in the Code of Alabama that are not found in the Criminal Code. Mr. Thomas Smith, former Tuscaloosa District Attorney, was the editor of the third edition. Mr. Bryan Morgan, Executive Director of the Office of Prosecution Services, coordinated the drafting revisions of the second edition. Mr. Lewey Stephens, a former District Attorney, was the chairman of the first edition and was aided by Mr. John Bell, Assistant District Attorney, Montgomery, and Mr. Tom Sorrell, District Attorney, Dothan.

VI.

RECENT PUBLICATIONS AND COMPLETED PROJECTS

1. Probate Judges' Training Conferences

Each year, the Institute sponsors four training conferences for Alabama's probate judges. In odd-numbered years, this slate includes the semi-annual Election Conference. Recent topics at these conferences include: Motor vehicle registration laws, will contests, recusal in probate cases, DNA evidence, cyber security, judicial ethics, and updates on statutory and case law.

2. 2017 Election Conference

On October 25–27, 2017, the Institute held its semi-annual Election Conference for Alabama's probate judges, chief clerks, sheriffs, and boards of registrars. Over three days, these election officials participated in a variety of sessions covering various election law topics.

Probate Judges

On Wednesday, October 25th, the probate judges held a special training session. Following a meeting of the education committee, their session began with a presentation on car tags. They continued with discussions of the Disabilities Act, election schools, and election preparations, before ending with a presentation concerning potential election day issues, including write-in voting. The probate judges also participated in the Conference's Joint Meeting.

Sheriffs

The sheriffs' conference began with a special session on Wednesday October 25th. Featuring a number of experienced officials, presentations, and roundtable discussions, this session allowed the sheriffs to address election topics specific to their positions. They also participated in the Conference's Joint Meeting.

Joint Meeting

On Thursday, October 26th, all four groups of election officials participated in a joint meeting concerning election topics of universal interest. Following welcome addresses from University of Alabama President Stuart R. Bell and Alabama Secretary of State John Merrill, Greg Butrus addressed the conference concerning the Fair Campaign Practices Act. Next, participants heard from a number of experienced officials on polling place security and electronic poll books. After lunch, the meeting continued with presentations on appointment board responsibilities and avoidance of liability issues. Finally, the joint meeting concluded with a discussion of Alabama's new crossover voting prohibition and an "Ask the Experts" panel featuring several senior elections officials and representatives from the Secretary of State's Office.

Boards of Registrars

The Conference concluded on Friday, October 27th with a special session for the boards of registrars. This session featured presentations on election day responsibilities unique to the boards, voter registration, and voter file maintenance. The session concluded with a question and answer panel featuring several experienced board members from across Alabama. The boards of registrars also participated in the Conference's Joint Meeting.

3. Election Handbook, 18th Ed. (2017)

The *Alabama Election Handbook*, first published by the Institute in 1977, was the successor to the 1952 *Election Officer's Handbook* by University of Alabama Professor Donald Strong. Beginning with the Sixth Edition, the *Alabama Election Handbook* also incorporated the Secretary of State's *Election Official's Handbook* produced first by Dr. Robert Montjoy of Auburn University in 1982. From 1977 until 2011, each edition was edited by Robert L. McCurley, Jr. who served as Director of the Institute during that time period. It is updated semi-annually in conjunction with the Institute's Election Conference.

The Seventeenth Edition was a substantial revision in form and substance. Following the publication of the Sixteenth Edition a committee was formed under the leadership of Greg Butrus to

explore the idea of re-drafting this Handbook to organize the material with an easier to use scientific numbering system, increased cross-referencing and indexing within the Handbook, and to reflect the expansion of campaign finance legal issues in recent years. Under his leadership and editorial supervision, that Edition was a significant step forward both in the information contained and form of presentation. The Eighteenth Edition builds upon this work, while also providing valuable new insights into Alabama's ever-changing body of election law. It will serve Alabama well in the upcoming election cycles.

As is always the case, this Handbook is done as a proud partnership with the Secretary of State's Office.

4. <u>Handbook for Alabama County Commissioners, 12th Ed. (2016)</u>

County government in Alabama has undergone a dramatic rebirth over the last two decades. For a large portion of Alabama's history, the primary function of the state's 67 county commissions was the construction, maintenance, and supervision of our rural road system. The counties still touch the lives of every citizen of Alabama today in ways far beyond the oversight of its transportation system. The essential role county government plays in our state's future has only increased the need for an accurate and timely resource document for county officials.

This handbook represents substantial research on the legal responsibilities of county commissioners, the role county government plays in the quality of life in our state, and the decisions that must be made by county commission members on a weekly, if not daily, basis. It strives to be an overview of the responsibilities, challenges, limitations, and relationships that influence the daily operation of the 67 county governments. Although the book is given to first-time county commissioners upon taking office, it also serves as a valuable resource guide for veteran commissioners, administrators, engineers, EMA directors, revenue officers, 9-1-1 directors, and others who serve in county government in Alabama.

The Twelfth Edition represents an almost complete rewrite since the handbook was last published in 2012. The need to revise

almost every page is further evidence of the responsibility that today's county commissioners must embrace.

The pages of this edition reflect the expertise, insight and experience of Mary E. Pons, who has spent the last two decades providing county government in Alabama with guidance and advice as Association Counsel. Despite her retirement from the Association in June of 2016, she continues to provide county government officials and employees with her perspective as reflected in the pages of this handbook.

Alabama Law Institute Director Othni Lathram and Assistant Director Teresa Norman also significantly contributed to the Twelfth Edition of this handbook. Its content will serve county government and its citizens well in the coming years.

5. 2015 Election Conference

On October 28–30, 2015, at the University of Alabama, the Institute held its semi-annual Election Conference for Alabama's probate judges, chief clerks, sheriffs, and boards of registrars. Over three days, these election officials participated in a variety of sessions covering various election law topics.

Probate Judges

On Wednesday, October 28th, the conference began with a special session for probate judges. This session featured a number of speakers covering the appointment of poll workers and the duties of the canvassing board, voter registration, qualification of candidates, election schools, election preparations, the Fair Campaign Practices Act, and other issues such as write-in voting, recounts, and contests. On Thursday, October 29th, the judges continued by holding a business meeting and hearing a presentation on election analytics and documentation. Their conference concluded with participation in the joint meeting Thursday afternoon.

Sheriffs

The sheriffs' conference began with a special session on Thursday morning. This session included presentations on election duties, election day expenses, security of ballots and voting

machines, and a question and answer session. Thursday afternoon, they participated in the joint meeting. Their conference ended with a special advanced training session on Friday, October 30th. This session featured training on election day security and election offenses, sheriffs' roles in guardianships and conservatorships, sovereign citizens, sheriffs' liability, electronic crimes, prison reform, and ethics.

Joint Meeting

Attended by all four groups, the joint meeting addressed topics of concern to all election officials and provided CLE credit for attorney attendees. Alabama Secretary of State John Merrill opened the meeting with a presentation on the Help America Vote Act, election night reporting, and election poll books. Next, Dr. Stuart Bell of the University of Alabama gave a brief welcome address. The meeting continued with a presentation from Ed Packard and Greg Butrus on the election timetable and associated deadlines. Next, Al Agricola provided an update on Alabama election law. After a short break, a panel discussion was conducted on election day responsibilities. This was followed by short talks from Frank Barger and Myles Mayberry on Provisional Ballots and the Fair Ballot Commission, respectively. Finally, the meeting concluded with a second panel discussion on election day problems and emergency planning.

6. Election Handbook, 17th Ed. (2015)

The *Alabama Election Handbook*, first published by the Institute in 1977, was the successor to the 1952 *Election Officer's Handbook* by University of Alabama Professor Donald Strong. Beginning with the Sixth Edition, the *Alabama Election Handbook* also incorporated the Secretary of State's *Election Official's Handbook* produced first by Dr. Robert Montjoy of Auburn University in 1982. From 1977 until 2011, each edition was edited by Robert L. McCurley, Jr. who served as Director of the Institute during that time period. It is updated semi-annually in conjunction with the Institute's Election Conference.

The Seventeenth Edition is a substantial revision in form and substance. Following the publication of the Sixteenth Edition a committee was formed under the leadership of Greg Butrus to explore the idea of re-drafting this Handbook to organize the

material with an easier to use scientific numbering system, increased cross-referencing and indexing within the Handbook, and to reflect the expansion of campaign finance legal issues in recent years. Under his leadership and editorial supervision, this edition is a significant step forward both in the information contained and form of presentation.

As is always the case, this Handbook is done as a proud partnership with the Secretary of State's Office.

7. <u>The Legislative Process, 11th Ed. (2015)</u>

This handbook is produced by the Institute in an effort to bring together in one convenient volume the basic constitutional and statutory laws and legislative rules and practices that govern the Alabama Legislature and its processes. It is written as a practical handbook for those involved in the legislative process in Alabama, and is directed especially to the members of the Alabama Senate and Alabama House of Representatives.

This is the eleventh edition of this book. The original was published in 1978 and the book has been updated every four years since.

The handbook begins with a description of the organization of the Legislature, covering such matters as its historical background, meeting dates, officers and employees, rules, and the composition of each house. This background is followed by a discussion of the lawmaking process, describing how a bill is drafted, introduced, and processed through both houses of the Legislature on its way to the Governor's office for his signature, where it will become an act.

8. <u>Sheriffs' Orientation 2015</u>

The Alabama Sheriffs' Orientation was held January 27–30, 2015. Over 65 sheriffs and deputies attended, including all 18 new sheriffs. On the first day of the orientation, the speakers discussed the powers of the office of sheriff and crime scene management. Secretary Spencer Collier, head of the newly formed Alabama Law Enforcement Agency, spoke to the group along with other representatives from various state agencies with whom the sheriffs will be working.

On the second day of the orientation, Judge Scott Donaldson spoke on search warrants, Judge Joe Colquitt spoke on criminal procedure and sentencing, and Judge John Carroll, Acting Director of the Alabama Ethics Commission, spoke to the sheriffs on ethics. There was also a discussion on current narcotic trends and immigration law. In the afternoon, Secretary of State John Merrill discussed the sheriff's duties in the administration of elections. Information about service of process, repossessions, and evictions was also provided.

On the third day of the orientation, Dr. Toppins, the Director of Psychology Services of Taylor Hardin Secure Medical Facility, discussed criminal commitments. A supervisory Special Agent of the FBI presented a PowerPoint and video on counterterrorism. At the noon luncheon, agents from the U.S. Marshal's office, DEA, and FBI discussed their interaction with the sheriff's office. Legal and employment issues were discussed in the afternoon.

On the final day of the orientation, representative from the State Comptroller's Office discussed financial matters with the sheriffs. Judge Philip Lisenby talked about the detention and care of juveniles. Other administrative matters were discussed including jail administration and transportation of prisoners. The laws relating to the Registration and Community Notification of Sex Offenders statute were presented. Experts also presented information about computer forensics and cyber-crimes.

9. Handbook for Alabama Sheriffs, 6th Ed. (2015)

At the request of the Alabama Sheriffs Association, the Alabama Law Institute developed this Handbook for Alabama Sheriffs. The first edition was written in 1992, and it has been continually updated through the years.

There are 13 chapters in the Handbook. The first two chapters concern the history of the office and the legal background of the sheriff's office. They include information about the qualification and powers of office. The third chapter deals with the administrative duties of the sheriff, including Peace Officers Standards and Training, budget, record access, and incarceration of prisoners.

The fourth chapter discusses criminal law, including criminal procedure, and provides an overview of the criminal code. The chapter also includes an extensive material on evidence, vehicular stops, domestic violence, and arrest. The fifth chapter includes a very detailed outline of the sheriff's responsibilities for jails and prisoners. The sixth chapter covers the sheriff's duties involving juveniles and incompetents.

Civil process, including subpoenas, evictions, and execution of judgments is the subject of chapter seven. Chapter eight outlines the duties of the sheriffs regarding elections. Rules of the road, health, environment, and public safety are the topics covered by chapters nine and ten. Chapters eleven and twelve concern liability and ethics. The final chapter gives a brief overview of the state and federal agencies in which the sheriff's office interact.

10. <u>Legislative Orientation 2014</u>

The Alabama Law Institute assisted the Legislative Orientation Committee in the planning of the 2014 Alabama Legislative Orientation. The three-day orientation was held in Montgomery, with virtually every legislator in attendance. During the course of the orientation, legislators heard from legislative staff on issues such as dealing with the press and State House security, received mandatory ethics training, and heard from Lieutenant Governor Kay Ivey and Governor Robert Bentley. Speakers also included representatives from the State Employee Insurance Board and Retirement Systems of Alabama.

11. <u>Alabama Competitive Bid and Water Laws (2014)</u>

At the request of the Examiners of Public Accounts, the Law Institute updated this book to reflect changes to the law since 2008, when the book was last revised. This handbook is written to assist those who must consult the Competitive Bid Law and Public Works Laws of Alabama.

The handbook is organized in two Parts: Part I – Contracts and Part II – Public Works. Each part is organized as follows: (1) a chapter of general introduction to the subject; (2) a chapter containing the applicable statutes; (3) a chapter summarizing the

cases that have interpreted the statutes; and (4) a chapter containing brief summaries of the opinions issued by the Attorney General and the Department of the Examiners of Public Accounts. Part I also contains additional chapters concerning the competitive bidding laws governing boards of education.

12. <u>Alabama Legislation, 8th Ed. (2014)</u>

This book is written to acquaint lawyers, law students and those involved in drafting, voting on and interpreting Alabama laws with the technical aspects of legislation. The book is organized in six parts:

Part One provides the reader or researcher with the historical background of the Alabama Legislature and the legislative services available to legislators.

Part Two is an orientation in the organization of the Legislature, discussing the general requirements of candidates, their election to office, reapportionment law, legislative sessions, and Senate and House Rules.

Part Three is a review of legislative procedure and covers legislative powers, oversight functions, local legislation, the non-law making functions of the Legislature, and the progression of bills through both houses of the Legislature to the Governor's office.

Part Four deals with the mechanics of legislative drafting, covering such subjects as resolutions, constitutional amendments, statute drafting, amendments, codification of acts, and repeal of laws.

Part Five deals with interpretation of statutes, the rules of construction, legislative intent, legislative history, and judicial meaning of words used within statutes.

Finally, Part Six reviews the obligations of legislators, the ethics act, and rules for lobbyists.

VII.

CURRENT PROJECTS OR STUDIES

1. Alabama Government Manual

The Alabama Government Manual is designed to be a ready reference for state and local officials, members of the legislature, and interested citizens and students on the overall organization of governmental agencies in Alabama.

Since publication of the Thirteenth Edition in 2010, a number of developments have taken place relating to the structure of government agencies in Alabama. A Fourteenth Edition is currently under development and is tentatively planned for publication in 2018.

2. Election Conference

In odd numbered years, the Institute hosts a conference for Alabama's probate judges, chief clerks, sheriffs, and boards of registrars. Over the course of several days, this conference provides elections training for these important government officials. All four groups attend a joint meeting that acts as the centerpiece of the conference. Additionally, each group has the option to schedule a special "breakout" session to provide more specific training.

The 2017 Election Conference was held October 25–27 at the University of Alabama.

3. Probate Judges' Training Conferences

In 1976, the Law Institute held their first orientation for newly elected probate judges. ALI continues to hold an orientation at the beginning of each term of office for the judges. After the Legislature enacted the new Probate Code in 1982, ALI held the first training conference for probate judges. Training conferences have been held regularly since then to apprise the judges of the legislative changes in statutes affecting their office. In 1986, a

basic law course was begun to teach each succeeding group of judges the laws affecting their office.

By rule of the Alabama Supreme Court, the Institute is charged with the continuing education of probate judges. In 2017, the Institute coordinated its usual slate of four conferences for the probate judges, including the election conference. In 2018 and beyond, the Institute anticipates continuing to offer four conferences annually.

4. Alabama Legislative Internship Program

In 1979, the Alabama Capitol Intern Program was established to include student interns in state government by allowing them to observe and participate in the legislative process of state government. The program was designed to provide gifted Alabama students with the opportunity to work with legislators in addressing the needs of constituents at the local level. All interns participate during the term of the Legislature's regular session.

During their tenure with the Legislature, interns research issues for individual legislators or legislative committees, handle constituent issues for legislators, provide tours to visiting groups if Capitol tour guides are unavailable, and attend legislative committees with the committees' lawyers. In addition, interns meet with various state department heads during their internship to learn more about each individual office's responsibility in state government. Throughout the entire internship, the goal is for the student to observe the legislative process.

The applicants for the internship must either be Alabama residents or students at a college or university in Alabama. They must also be a classified as a junior or higher if an undergraduate, or be in graduate school. The term of the program coincides with the regular session of the Alabama Legislature.

Beginning in 2012, the Institute worked with colleges and universities throughout Alabama to expand the program and to promote joint efforts to provide interns with college credit. As a result, the program is now an unpaid internship for college credit. During the 2017 session, the Institute had 19 interns.

5. Legislative Committee Legal Staff

For over 30 years the Alabama Law Institute has provided legal counsel for both the House and Senate Judiciary Committees.

The Institute continues to provide legal counsel to the Legislature. For the 2017 Legislative Session, the Institute provided five lawyers to assist in various committees in the House of Representatives and three lawyers to assist in various committees in the Senate.

6. Alabama Legislative Law Clerk Program

In 2013, the Law Institute began the Legislative Law Clerk Program to provide efficient and cost-effective legal research for Legislators. Law students from each of Alabama's accredited law schools were hired at a minimal cost to assist in legislative research and drafting during the Legislative Session. The law clerks are available during the regular session to assist individual legislators in researching legal points of law as well as determining how other states have dealt with issues of interest to the legislators.

The law clerks are also available to assist the committee chairs by reviewing legislation pending before their committees and researching any points of law as requested by the committee chair.

7. Model City Ordinances Review

In 1991, the Institute, in conjunction with the University of Alabama School of Law and the Alabama League of Municipalities developed a model set of municipal ordinances. A comprehensive revision and reorganization was completed in 2003 after a two-year study. Law students have been trained and are made available to cities to compare the cities' ordinances with the Model Ordinances to if updates to the cities' ordinances are necessary.

This model set of ordinances is primarily for the small municipalities in the state of Alabama that do not have a full-time city attorney.

Cities who desire to avail themselves of these services should contact the Alabama Law Institute directly. The current cost for the service is $450.00 for three days of review plus mileage and expenses. If additional time is needed to complete the project, it is billed at $15.00 per hour.

VIII.

PRIMARY PUBLICATIONS

Alabama Legislation – Cases and Statutes

Alabama Legislation, 394 pp., 1985
2nd Edition, 381 pp., 1989
3rd Edition, 473 pp., 1992
4th Edition, 600 pp., 1998
5th Edition, 582 pp., 2003
6th Edition, 600 pp., 2007
7th Edition, 618 pp., 2010
8th Edition, 686 pp., 2014

Annual Report

Alabama Law Institute Report to the Alabama Legislature and Institute Membership

1969-71, 1971-73, 1974-75, 1975-76, 1976-77, 1977-78, 1978-79, 1980-81, 1981-82, 1982-83, 1983-84, 1984-85, 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98, 1998-99, 1999-00, 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2017-18

County Commissioners' Handbook

Handbook for Alabama County Commissioners
4th Edition, 149 pp.,1982
5th Edition, 161 pp.,1986
6th Edition, 154 pp.,1989
7th Edition, 209 pp.,1993
8th Edition, 220 pp.,1997
9th Edition, 250 pp., 2001
10th Edition, 258 pp., 2007
11th Edition, 270 pp., 2012
12th Edition, 236 pp., 2016

Election Handbook

Alabama Election Handbook, 64 pp., 1977
2nd Edition, 73 pp., 1977
3rd Edition, 100 pp., 1980
Supplement to 3rd Edition, 24 pp, 1982
4th Edition, 118 pp., 1986
5th Edition, 128 pp., 1990
6th Edition, 320 pp., 1994
7th Edition, 302 pp., 1996
8th Edition, 354 pp., 1998
9th Edition, 393 pp., 2000
10th Edition, 347 pp., 2002
11th Edition, 352 pp., 2004
12th Edition, 361 pp., 2006
13th Edition, 452 pp., 2007
14th Edition, 418 pp., 2009
15th Edition, 450 pp., 2011
16th Edition, 444 pp., 2013
17th Edition, 432 pp., 2015
18th Edition, 568 pp., 2017

Government Manual

Alabama Government Manual
6th Edition, 504 pp., 1982
7th Edition, 559 pp., 1986
8th Edition, 615 pp., 1990
9th Edition, 640 pp., 1994
10th Edition, 622 pp., 1998
11th Edition, 670 pp., 2002
12th Edition, 668 pp., 2006
13th Edition, 686 pp., 2010

Legislative Directory

Alabama Legislative Directory
1978-1982, 1982-1986, 1983-1986, 1986-1990, 1990-1994, 1994-1998, 1998-2002, 2002-2006, 2006-2010, 2010-2014

Legislators' Handbook

The Legislative Process: A Handbook for Alabama Legislators, 94 pp., 1978

2nd Edition, 107 pp., 1980
3rd Edition, 160 pp., 1984
4th Edition, 167 pp., 1987
5th Edition, 198 pp., 1991
6th Edition, 216 pp., 1995
7th Edition, 250 pp., 1999
8th Edition, 242 pp., 2003
9th Edition, 238 pp., 2007
10th Edition, 248 pp., 2010
11th Edition, 192 pp., 2015

Probate Judges' Handbook

Handbook for Alabama Probate Judges
3rd Edition, 126 pp., 1982
4th Edition, 137 pp., 1985
5th Edition, 187 pp., 1989
6th Edition, 294 pp., 1995
7th Edition, 360 pp., 2001
8th Edition, 337 pp., 2007
9th Edition, 489 pp., 2013

Sheriffs' Handbook

Handbook for Alabama Sheriffs, 121 pp., 1992
2nd Edition, 152 pp., 1999
3rd Edition, 195 pp., 2003
4th Edition, 211 pp., 2007
5th Edition, 219 pp., 2011
6th Edition, 228 pp., 2015

Tax Administrators' Handbook

Handbook for Alabama Tax Assessors and Tax Collectors, 65 pp., 1978

Handbook for Alabama Tax Assessors, Tax Collectors and License Commissioners, 2nd Edition, 89 pp., 1981

Handbook for Alabama Tax Assessors, Tax Collectors, License Commissioners and Revenue Commissioners
3rd Edition, 96 pp., 1985
4th Edition, 134 pp., 1990
5th Edition, 145 pp., 1996

Handbook for Alabama Tax Administrators: Tax Assessors, Tax Collectors, License Commissioners, and Revenue Commissioners

6th Ed., 180 pp., 2005

7th Ed., 194 pp., 2010

IX.

TRAINING CONFERENCES

LEGISLATORS

Legislative Orientation Conference, 1974, 1978, 1982, 1986, 1990, 1994, 1998, 2002, 2006, 2010, 2014

Legislative Issues Conferences, 1976, 1977, 1979, 1980, 1981, 1985, 2008

Legislative - Congressional Conference, May 1979, April 1980

Legislative Tourism Conference, 2009

Legislative Ethics Conference, 2009

PROBATE JUDGES

Probate Law for Probate Judges Basic Course, 1986-87, 1989-91, 1995-1998, 2001-2004, 2007-2010

Probate Judges' Orientation 1976, 1985, 1989, 1995, 2001, 2007, 2008, 2013

Probate Judges' Training Conferences, 1982, 1993, 1994, 1999, 2003, 2004, 2005, 2007, 2008, 2011, 2012, 2013, 2014, 2015, 2016, 2017

Probate Judges Advanced Course, 1989-91

SHERIFFS

Sheriffs’ Orientation, 1979, 1983, 1987, 1991, 1995, 1999, 2003, 2007, 2011, 2015

Sheriffs’ Training Conference, 2007, 2013

LICENSE COMMISSIONERS

License Commissioners, 1992

DISTRICT ATTORNEYS

District Attorneys' Orientation, 1980

EXAMINERS OF PUBLIC ACCOUNTS

Annual Training Conference, 2007, 2008

ELECTIONS CONFERENCE

Elections Conference for Probate Judges, Circuit Clerks, and Sheriffs, 2007, 2009, 2011

Elections Conference for Probate Judges, Circuit Clerks, Sheriffs, and Boards of Registrars, 2013, 2015, 2017

X.

COMPLETED PROJECTS AND SPECIAL PUBLICATIONS

Administrative Procedure Act, 40 pp., 1978

Adoption Code, 82 pp., 1988

Adult Guardianship and Protective Proceedings Jurisdiction Act, 83 pp., 2009

Alabama Constitution Study, 2 Volumes, 2002
"Analysis of the Amendments to the Constitution of 1901"
"Recompilation Alabama Constitution of 1901 and 708 Amendments"

Alabama Competitive Bid and Public Works Law, 2007, '08, '14

Alabama Election Laws, 324 pp., 2005, '07

Alabama Law Institute Handbook, 1970, '78, '84, '95, '06

Alabama Rules of Evidence with Commentary, 336 pp. 1993

Alabama State Government Chart, 1984, '88, '95, '07, '10

Alabama Water Laws, 2 Volumes, 2007

Alabama's Law of Civil Process for Sheriffs, 2007

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Athlete Agents Act, 51 pp., 2001

Banking Code, 129 pp., 1979

Be It Enacted ... Alabama's Legislative Process, Video, 1993

Business and Nonprofit Entities Code, 699 pp., 2008

Business Corporations

Business Corporation Act, Revised, with Commentaries, 752 pp., 1993
Business Corporation Act, Revised, 426 pp., 1993
Business Corporation Act, 237 pp., 1974

Business Incentives Study, 1978

Child Abduction Prevention Act, pp. 64, 2009

Child Abuse and Neglect, 91 pp., 1978

Civil Pleading Before 1973, 148 pp., 1974

Coal Severance Tax Study, 28 pp., 1977

Condominium Act, 197 pp., 1986

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Conversions and Mergers of Business Entities, 54 pp., 1999

Criminal Code, 380 pp., 1974

Criminal Indictment and Warrant Manual

Criminal Indictment and Warrant Manual, 1979
2nd Edition, 1988
3rd Edition, 1998
4th Edition, 2012

Criminal Pattern Jury Instructions, 1979

Criminal Pattern Jury Instructions (Second Edition), 1989

Criminal Pattern Jury Instructions (Third Edition), 1994

Deed in Lieu of Foreclosure, 66 pp., 1987

Electronic Recording Act, 24 pp., 2008

Eminent Domain Code, 100 pp., 1980,

Eminent Domain Code, revised, 106 pp., 1984

Environmental Covenants, 56 pp., 2007

Evidence, Rules of, 336 pp., 1993

Family Violence, 100 pp., 1980

Federally Mandated State Legislation, 1986, ‘87, ‘88, ‘90

Foreign Judgments Act, 13 pp., 1986

Fraudulent Transfers Act, 46 pp., 1987

General Partnership Act

Guardianship and Protective Proceedings Act, 203 pp., 1986

An Informal Guide to Section 5 of the Voting Rights Act: A Manual for Citizens and Local Officials, 61 pp., 2008

An Informal Guide to Redistricting, 86 pp., 2010

Interstate Enforcement of Domestic Violence Act, 18 pp., January 2001

Issues Conference for Legislators, January 1977, November 1977, September 2008

Information Concerning a New Criminal Code for Alabama, 43 pp., 1974

Juvenile Laws and Agencies, 30 pp., 1981

Land Title Acts - Phase I

Land Title Acts - Phase II

Land Title Acts - Phase III

The Legislative Process Film, 1979, '88, '93

Limited Liability Company Act, 103 pp., 1993

Limited Partnership

Limited Partnership Act of 2009, Revised, 256 pp., 2008
Limited Partnership Act of 2008, 254 pp., 2007
Limited Partnership Act, 142 pp., 1997
Limited Partnership Act, Revised, 89 pp., 1981
Limited Partnership Act, 88 pp., 1981

Medicaid, Alabama Project on, 80 pp., 1977

Model City Ordinances, 1991, ‘03, ‘10

Nonprofit Corporation Act, 153 pp., 1983

Parentage Act, 145 pp., 2007

Power of Sale in Mortgages, 66 pp., 1987

Probate Code, 101 pp., 1981

Prudent Management of Institutional Funds Act, 60 pp., 2007

The Quest To Make The Laws of Alabama, 1993, ‘09, ‘11

Redemption from Ad Valorem Tax Sales, 19 pp., 2008

Redemption of Real Estate, 66 pp., 1987

Residential Mortgage Satisfaction Act, 88 pp., 2008

Rules of Criminal Procedure, 416 pp., 1977

Rules of Criminal Procedure, 455 pp., 1983

Rules of the Road Act, 1975

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XI.

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Administrative Procedure Act (1982)

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Banking Code (1979)

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Business Corporation Act 1980

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Business Entities (2013)

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Certificate of Title Act for Vessels

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Child Abduction Prevention Act (2008)

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Child Custody and Enforcement Act (2000)

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Children's Code (1988)

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Children's Code and Family Law (1993)

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Common Interest Ownership (1991)

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Condominium Act (1991)

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Criminal Code (1980)

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Criminal Pattern Jury Instructions (1988)

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Hardie Kimbrough
Randall Thomas

Criminal Pattern Jury Instructions (1994)

Jeri Blankenship
Henry W. Blizzard
Billy Burney
Randall Cole
Joe Colquitt* (**)
Jim Garrett
Hardie Kimbrough
Randall Thomas

Criminal Warrant and Indictments (1979)

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Ralph Loveless
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Bernard Sykes
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Criminal Warrant and Indictments (1988)

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Criminal Warrant and Indictments (2011)

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Guardianship and Protective Proceeding Act (1986)

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Landlord/Tenant (2002)

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John V. Lee
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H. Floyd Sherrod, Jr.
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Limited Liability Company (LLC) (1993)

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Bruce P. Ely
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Fred Helmsing
R. Kent Henslee
Ted Jackson
Gregory Leatherbury, Jr.
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George Maynard
Michael Rediker
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Professor Howard Walthall
Robert Walthall

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Ted Jackson
Robert G. Johnson
G. David Johnston
Professor Tom Jones
Greg L. Leatherbury, Jr.
Curtis O. Liles, III
Ralph Loveless
Scott Ludwig
John F. Lyle, III
Mark Maloney
Thomas Mancuso
George F. Maynard
Jim G. McLaughlin
Gordon Rosen
Bradley Sklar
Timothy S. Tracy
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Limited Liability Company (LLC), Revised

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Kent Henslee *
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Jim McLaughlin
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Lynn Belt Schuppert
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Limited Partnership Act (1981)

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Penny Davis
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Jay Guin
Fred Helmsing
Ted Jackson
Tom Krebs
Thomas Mancuso
George Maynard
Michael Rediker
Joe Ritch
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Limited Partnership, Revised (1998)

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Thomas Mancuso
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Professor Howard Walthall**

Limited Partnership, Revised (2004)

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D. Ashley Jones
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Multiple-Person Accounts (1997)

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Bill Hairston, III
Palmer Hamilton
Wallace D. Malone, III
Professor Gene Marsh**
Jerry Powell
Terrill W. Sanders
Ronald L. Sims
Joe Stewart
C. Stephen Trimmier
Sam Upchurch
Larry Vinson, Jr.*

Notarial Acts

Andres Allen
Honorable Don Banks
Charlie Beavers
Joe Colquitt
Greg Cook
Ernie Cory
Representative Paul DeMarco
Honorable Jim Fuhrmeister
William Hairston, III
Edward "Ted" Holt
Kermit Kendrick
Honorable David Kimberley
Othni Lathram **
Honorable Alice Martin
Dennis Pantazis
Harlan Prater, IV *
Emily Raley
William Ross
Nick Roth
Emily Thompson
Al Vance
W. Clark Watson

Nonprofit Corporation (1983)

Harold Albritton
Pat Burnham
Sidney Cook
L. B. Feld**
Ralph Gaines
Bill Hause
Ed Hines
George Maynard
Earnest Potter
Yetta Samford*
Watson Smith

Nonprofit Corporation Act - Current

Douglas Adair
David Baker
LaVeeda Morgan Battle
Professor James Bryce **
J. Sydney Cook, III
Linda Dukes Connor
Laura Crum
Thomas R. DeBray
L. B. Feld *
Greg Everett
Kent Henslee
K. Wood Herren
William Lineberry
Timothy Littrell
Gay Blackburn Maloney
Beth Marietta-Lyons
Warren Matthews
James M. Pool

Parentage (2004)

Gordon Bailey, Jr.
Honorable Don Banks
C. Park Barton, Jr.
Honorable Mike Bolin
David Broome
Jennifer Bush
Penny Davis **
Noah Funderburg *
Honorable Ed Gosa
Dorothy Harshbarger
Honorable Philip Lisenby
Robert E. Lusk, Jr.
Robert H. Maddox
Randall W. Nichols
Bryant A. Whitmire, Jr.

Partnership (1996)

Joseph T. Carpenter
C. Fred Daniels *
Jim B. Grant
Professor Tom Jones **
Robert G. Johnson
G. David Johnston
Curtis O. Liles, III
Ralph Loveless
John F. Lyle, III
Gordon Rosen
Timothy Tracy

Power of Attorney

Scott Adams
Lee Armstrong
Anna Funderburk Buckner
Richard Cater *
John Daniel
Edward A. Dean
Professor Michael Floyd
Randy Fowler
Professor Tom Jones **
Bruce J. McKee
Robert T. Meadows, III
Marcus W. Reid
Ronald L. Sims
Carol Ann Smith
Finis St. John, IV
L. Vastine Stabler, Jr.
Leonard Wertheimer, III
Brian T. Williams

Principal and Income Act (1999)

Joseph B. Cartee
Richard H. Cater
John W. Gant, Jr.
Lyman F. Holland, Jr.
Professor Tom Jones **
Harold Kushner
Daniel Markstein, III
Melinda Mathews
J. Reese Murray, III
Ralph Quarles
Debra Deames Spain
Leonard Wertheimer, III *
Ralph Yeilding

Principal and Income Act Amendments

Scott Adams
LaVeeda Morgan Battle
Anna Funderburk Buckner
Senator Linda Coleman
Richard Frankowski
William Hairston, III
Lyman Holland, Jr.
Professor Tom Jones
Othni Lathram **
J. Reese Murray, III
Myra Roberts, CPA
Alan Rothfeder
Leonard Wertheimer, III *
Brian Williams
Ralph Yeilding

Probate Code (1983)

E.T. Brown *
Annette Dodd
O. H. Florence
Randy Fowler
John W. Gillon
Lyman Holland
Professor Tom Jones **
Louis B. Lusk
Joe McEarchern
Irvine C. Porter
Judy Todd
Bob Woodrow
John N. Wrinkle

Probate Procedure (1994)

Mike Bolin
E.T. Brown, Jr.*
Annette Dodd
Keith Foster
Randy Fowler
Norman W. Harris, Jr.
Lyman F. Holland, Jr.
Professor Tom Jones **
Louis B. Lusk
Joe McEarchern
Lionel Noonan
Joe L. Payne
George Reynolds
Frank Riddick
Kirby Sevier
Judy F. Todd
Leonard Wertheimer, III
Bob Woodrow, Jr.
John N. Wrinkle

Professional Corporation Committee (1984)

Harold I. Apolinsky *
Joseph S. Bluestein
Professor Jim Bryce **
Ira Burleson
Harwell E. Coale, Jr.
Steve Crawford
C. Fred Daniels
David S. Dunkle
Norman Harris
Robert Johnson
Thomas G. Mancuso
Robert H. Pettey, Jr.
Stephen J. Pettit
Don F. Siegal
Robert Tanner

Prudent Management of Institutional Funds (2007)

Lee Armstrong
Anna Funderburk Buckner
Richard Cater *
John Daniel
Edward A. Dean
Professor Michael Floyd
Randy Fowler
Samuel Franklin
Professor Tom Jones **
R. Blake Lazenby
Wallace D. Malone, III
Bruce J. McKee
Robert T. Meadows, III
Marcus W. Reid
Ronald L. Sims
Carol Ann Smith
Finis St. John, IV
L. Vastine Stabler, Jr.
Leonard Wertheimer, III
Brian T. Williams
Ralph Yeilding

Public Employee Retirement Systems (1999)

Jerry Bassett
Professor Jim Bryce **
John Harrell
Kyle Johnson
Jack Levy
Richardson McKenzie, III
William E. Shanks, Jr.
Chris Simmons
William Stephens
Dana Thrasher
Brand Walton, Jr.

Real Estate (1987)

Joe Adams
Jim Campbell
Professor Harry Cohen **
Wayne Copeland
Fred T. Enslen, Jr.
Bill Hairston, Jr.
Bob Harris
Hugh Lloyd *
George Maynard
Drayton Pruitt, Jr.
Robert J. Russell
Louis Salmon
Yetta Samford
Morris Savage
James M. Tingle
Caroline E. Wells

Real Estate Committee - Current

Jeffery T. Baker
Charles Beavers, Jr.
Representative Marcel Black
Chris Booth
Paul E. Burkett
James M. Campbell
J. Milton Coxwell, Jr.
Jesse P. Evans, III
William J. Gamble
William B. Hairston, III
Warren Laird, II
Professor David Langum
Honorable Alice K. Martin
Robert L. McCurley **
William Z. Messer
Randall H. Morrow
John M. Plunk *
Courtney R. Potthoff
F. Don Siegal
David C. Skinner
Donna Snider
Carol H. Stewart
James M. Tingle
W. Clark Watson
Jerry Wood
David Whetstone

Residential Mortgage Satisfaction Act (2007)

Jeffery T. Baker
Charles Beavers, Jr.
Representative Marcel Black
Paul E. Burkett
James M. Campbell
J. Milton Coxwell, Jr.
Jesse P. Evans, III
William J. Gamble
William B. Hairston, III
Warren C. Herlong, Jr.
Representative Mike Hill
Warren Laird, II
Professor David Langum
Honorable Alice K. Martin
Robert L. McCurley **
Randall H. Morrow
John M. Plunk *
Courtney R. Potthoff
Mary Ponds
F. Don Siegal
David C. Skinner
Donna Snider
Carol H. Stewart
James M. Tingle
W. Clark Watson
Jerry Wood

Restrictive Covenants in Contracts (2013)

Eric Bruggink
Andy Campbell
Jerome Dees
Mike Ermert
Jill Evans
Michael Freeman
Bill Hasty
Harry Hopkins
Gorman Houston
Adam Israel
David Kimberley
Rebekah McKinney
Casey Pipes
Representative Bill Poole
Richard Raleigh
Stephen Shaw
Buddy Smith
Ashley Swink
Will Hill Tankersley*
Al Vance
Senator Phil Williams
Jim Wilson

Rule Against Perpetuities

Scott Adams
James Bridges, III
Glen Connor
J. Sydney Cook, III
Professor Michael Floyd
Randy Fowler
Robert Gardner
Duane Graham
Stephen Greene
William Hairston, III
Lyman Holland, Jr.
Nancy Hughes
Professor Tom Jones
Lane Knight
Professor David Langum
Bradley Lard
Robert Loftin, III
Mark Maloney
Joseph McCorkel, Jr.
J. Reese Murray, III
Honorable John Paluzzi
Bruce Rawls
William Shanks, Jr.
David Skinner
Carol Smith
Leonard Wertheimer, III

Rules of Civil Procedure (1993)

David A. Bagwell
A. W. Bolt, II
David R. Boyd
Hon. Robert L. Byrd, Jr.
Arthur Fite, III
Honorable James Haley
Francis H. Hare, Jr.
Professor Jerome Hoffman
Phillip A. Laird
Jack Livingston
Champ Lyons, Jr.
Bruce J. McKee
Richard S. Manley
Oakley Melton, Jr.
James D. Pruett
W. H. (Skip) Rogers
Honorable Dewaine L.Sealey
W. Stancil Starnes
John Taber
Larry Vines

Rules of Criminal Procedure (1983)

Oscar Adams, Jr.
Billy Burney
Ed Carnes
William N. Clark
Joseph A. Colquitt
Milton Davis
Rosa Hamlet Davis
Nancy Smith Gaines
Ian Gaston
Charles Graddick
Lawrence J. Hallett, Jr.
Robert E. Hodnette*
Karen Daniel Knight
William H. Lumpkin
Glenn F. Manning
Robert L. McCurley **
M. Clinton McGee
William McKnight
Joe McLean
Hugh D. Merrill
Newman Sankey
Tom Sorrell
Lavern Tate
Lewey Stephens
Charles Tarter *
Charles Trost**

Rules of Criminal Procedure

Hon. William Bowen, Jr.*
George L. Beck, Jr.
Hon. John Benjamin Bush
Rosa Davis
Robert G. Esdale
J. Doyle Fuller
Thomas M. Goggans
Arthur Green, Jr.
Jon B. Hayden
Alex Jackson
Honorable Clyde E. Jones
John A. Lentine
John Tommy Leverette
Honorable Eugenia Loggins
Justice Hugh Maddox
Lane W. Mann
Robert L. McCurley, Jr.**
Bill C. Messick
Honorable Daniel Reeves
Honorable Ashley Rich
Honorable Greg Shaw
Honorable Anetta H. Verin
Honorable Mary Windom

Rules of Evidence (1996)

Bill Clark, Ex Officio
Joe Colquitt
Greg Cusimano
Professor Charles Gamble**
Pat Graves *
Sally Greenhaw
Arthur J. Hanes
Brooks Holmes
A. Richard Igou
Ralph Knowles, Jr.
L. Tennent Lee, III
Howard Allyn Mandell
Bruce J. McKee
Frank B. McRight
William Hayes Mills
Richard Ogle
Abner R. Powell, III
Ernestine Sapp
C. Lynwood Smith, Jr
Clarence M. Small, Jr.

Rules of the Road (1980)

Charles E. Alexander
Gerald Anderson
Houston D. Anderson
James E. Berry
Jack Blumenfeld
Tommy Coleman
R.R. Evans
Harold J. Hammond
Professor Tim Hoff **
Frank D. Marsh
Sam P. McClurkin
William L. Sanky
Robert Simpson

Securities Act (1990)

Louis H. Anders, Jr.
L. Burton Barnes *
Carolyn L. Duncan
Meade Frierson, III
Carl L. Gorday
Marshall S. Harris
Thomas G. Mancuso
James L. North
Charles C. Pinckney
James D. Pruett
Yetta G. Samford, Jr.
R. Frank Ussery
Howard P. Walthall **
William J. Ward
Prof. Manning Warren, III
C. Larimore Whitaker

Securities Act (2003)

Ed Ashton
Jerry Bassett
Hamp Boles
Joseph P. Borg
Carolyn Duncan
Tom Krebs
Othni Lathram
Tommy G. Mancuso
Bruce J. McKee
T. Kurt Miller
James L. North
E. B. Peebles, III
Charles C. Pinckney
James D. Pruett
J. Michael Savage
Chris S. Simmons
Professor Howard Walthall
Mike Waters *
James C. Wilson, Jr.

Trademark Act (1988)

Ike Espy
Andrew J. Gentry, Jr.
Val Hain
Evelyn Ham
Nat Hansford
Thad G. Long
C. Henry Marston
Oakley W. Melton, Jr.*
Walter Owens
Harold See **
Donald Stewart

Trademark Act Amendments (2009)

Lee F. Armstrong *
Donna Bailer
Honorable Jean Brown
Brian Clark
Diane Crawley
Stephen Hall
M. Lee Huffacker **
Thad Long
Sheree Martin
Kimberly Powell
David Quittmeyer
Richard Rouco
Justice Harold See
Bruce Siegal
James Dale Smith
Will Hill Tankersley, Jr.
M. Chad Tindol
India Vincent
Lance Wilkerson

Trade Secrets/Trade Names (1987)

David B. Byrne, Jr.
Charles Cleveland
Richard H. Gill
Thad Long
Sam Phelps
Gary L. Rigney
Professor Harold See **
James Dale Smith
L. Vastine Stabler, Jr.*
Ross Thompson, Jr.

Transfers to Minors (1986)

Joe Bailey
C. Fred Daniels
William J. Gamble
Kent Henslee
Lyman F. Holland *
Kyle Johnson
Professor Tom Jones **
Winston V. Legge, Jr.
Ralph Quarles
Kirby Sevier
Don F. Siegal

Trust Code (2003)

LaVeeda Morgan Battle
Douglas Bell
Anna Funderburk Buckner
J. Sydney Cook, III
Robert T. Gardner
Lyman F. Holland, Jr.
Ted Jackson
Professor Tom Jones
Cynthia G. Lamar-Hart
Robert L. Loftin
Bruce J. McKee
J. Reese Murray, III
Bruce A. Rawls
Leonard Wertheimer, III
Ralph Yeilding *

Standing Trust Committee (2013)

Scott Adams
LaVeeda Battle
Douglas Bell
Justice Mike Bolin
Anna Funderburk Buckner
Ross Cohen
Sydney Cook
Fred Daniels**
Kay Donnellan
Richard Frankowski
Robert Gardner
Bill Hairston
Lyman Holland
Ted Jackson
Professor Tom Jones
Cynthia Lamar-Hart
Robert Loftin
Reese Murray
Bruce Rawls
Robert Riccio
Myra Roberts
Alan Rothfeder
William Walker
Leonard Wertheimer*
Brian Williams
Ralph Yielding*

Article 1
Uniform Commercial Code (2003)

Richard Allen
Rep. Marcel Black
Ed Dean
Professor Mike Floyd
William Hairston, III
Professor Bill Henning
Kent Henslee
Professor Gene Marsh **
Randall Morrow
Flynn Mozingo
James D. Pruett
Michael E. Ray
Ronald L. Sims
Joseph G. Stewart
Laurence D. Vinson, Jr.*
Lois Woodard

Article 2A
Uniform Commercial Code (1993)

Professor Peter Alces **
Douglas T. Arendall
Hamp Boles
Andy Campbell
Bob Fleenor *
Ralph Franco
John Givhan
Bill Hairston, Jr.
Neil Johnston
Jim Klinefelter
Barry Marks
Elbert Parsons, Jr.
Joseph Stewart
Mike Waters

Articles 3 & 4
Uniform Commercial Code (1996)

John Andrews
Douglas Arendall
L. Burton Barnes
Hamp Boles
Richard Carmody
David Carroll
Robert Couch
Edward A. Dean
Professor Michael Floyd
Bill Hairston, III
Palmer Hamilton
Wallace D. Malone, III
Professor Gene Marsh **
Ronald L. Sims
Judge James Sledge
Joe Stewart
C. Stephen Trimmier
Laurence D. Vinson, Jr.*

Article 4A
Uniform Commercial Code (1993)

John Andrews
Hamp Boles
L. Burton Barnes
Richard Carmody
Robert Couch
Palmer Hamilton
Bill Hairston, III
Ronald L. Sims
Judge James Sledge
Joe Stewart
Laurence D. Vinson, Jr.*

Article 5
Uniform Commercial Code (1998)

John H. Burton
Richard Carmody
Professor Mike Floyd **
William B. Hairston, III
George Maynard
E.B. Peebles, III *
Wesley Pipes
James Pruett
Joseph G. Stewart
Leonard C. Tillman
Sam Upchurch
Larry Vinson, Jr.
Robert Walston

Article 6
Uniform Commercial Code (1997)

John Andrews
Douglas Arendall
L. Burton Barnes
Hamp Boles
Richard Carmody
David Carroll
Robert Couch
Edward A. Dean
Professor Michael Floyd
Bill Hairston, III
Palmer Hamilton
Wallace D. Malone, III
Professor Gene Marsh **
Ronald L. Sims
Judge James Sledge
Joe Stewart
C. Stephen Trimmier
Laurence D. Vinson, Jr.*

Article 7
Uniform Commercial Code (2003)

Richard Allen
Rep. Marcel Black
Ed Dean
Professor Mike Floyd
William Hairston, III
Professor Bill Henning
Kent Henslee
Professor Gene Marsh **
Randall Morrow
Flynn Mozingo
James D. Pruett
Michael E. Ray
Ronald L. Sims
Joseph G. Stewart
Laurence D. Vinson, Jr.*
Lois Woodard

Article 8
Uniform Commercial Code (1997)

Ed Ashton
Kay Bains
Preston Bolt
Mike Ford
Debbie Long
Kris Lowry
Robert D. McWhorter, Jr.
Kurt Miller
E.B. Peebles, III *
James D. Pruett
James Dale Smith
Sam Upchurch
Professor Howard Walthall**
Bill Ward
Mike Waters
Helen Wells

Article 9 (Revised)
Uniform Commercial Code (1982)

Professor Don Baker **
J. Robert Fleenor
George Ford
John Givhan
William B. Hairston, Jr.
Lyman Holland
D. Paul Jones *
George Maynard
Robert L. Potts
Robert E. Steiner
George S. Wright

Article 9 (Revised)
Uniform Commercial Code (1999)

Edward J. Ashton
Professor Don Baker
Judy H. Barganier
Hampton Boles
Richard P. Carmody
Professor Mike Floyd
William B. Hairston, III
A. Lee Hardegree
Kris Lowry
Professor Gene Marsh
James Pruett
McDonald Russell, Jr.
James S. Sledge
Joseph C. Stewart
Julia S. Stewart
Stephen Trimmier
Lawrence D. Vinson, Jr.
Al Watkins
Mark Williams

Article 9 Amendments
Uniform Commercial Code (2011)

Edward Ashton
Representative Paul Beckman
Alfred Booth
Richard Carmody
Professor Mike Floyd
William Hairston
Professor Bill Henning **
Inge Johnstone
Kris Lowry
Joel Price, Jr.
James Pruett
Professor Gary Sullivan
Senator Bryan Taylor
Stephen Trimmier
Brian Vines
Laurence Vinson, Jr. *

Uniform Interstate Family Support Act (2014)

Gordon F. Bailey, Jr.
Honorable William K. Bell
Ron Boyd
David P. Broome
Jennifer M. Bush
Keith E. Brashier
David Byrne, Jr.
Kathy Coxwell
Penny Davis **
Honorable Wade Drinkard
Jack Floyd
Jim Jeffries
Sammye Kok
Susan B. Livingston
Robbie Lusk, Jr.
Bob Maddox
Karen Mastin-Laneaux
Randall W. Nichols
Julia Smeds Roth *
Honorable Philip K. Seay
Bryant A. Whitmire,Jr.

Unincorporated Nonprofit Association (1996)

Malcolm N. Carmichael
Manley L. Cummins, III
L.B. Feld *
Mark L. Gaines
Bill Hinds
Virginia Hopkins
Mary Ellen Lamar
Jim Main
Bob Pearson
Redding Pitt
Thomas D. Samford, III
Leah Scalise
L. Vastine Stabler, Jr.
Alyce Spruell
Julia Stewart
Dr. Richard Thigpen **
James W. Webb
James Jerry Wood

Unitrust

Scott Adams
LaVeeda Battle
Doug Bell
Anna Funderburk Buckner
Senator Linda Coleman
Sydney Cook
Fred Daniels**
Kay Donnellan
Richard Frankowski
Robert Gardner
Bill Hairston
Lymon Holland
Ted Jackson
Tom Jones
Cynthia Lamar-Hart
Bob Loftin
Reese Murray
Bruce Rawls
Bob Riccio
Myra Roberts
Alan Rothfeder
Leonard Wertheimer*
Brian Williams
Ralph Yielding*

XII.

FORMER RESEARCH ASSISTANTS

1975-1976
Al Agricola
Linda Breland
David Broome
Pat Boyd
Karen Callahan
George Callen
Andy Campbell
John Civils, Jr.
Jane de Lissovoy
Charles Dunn
Lucian Gillis, Jr.
Larry Hallett, Jr.
Carl Johnson
Tim McAbee
James McNeill, Jr.
David Martin, III
Barry Mazer
Joel Odum
Herman Pagent
Joe Pierce
Dennis Riley
Mike Tanner
Julie Waters
Tommy Wells

1976-1977
Al Agricola
Karen Callahan
George Callen
Andy Campbell
John Civils, Jr.
Jane de Lissovoy
Lucian Gillis, Jr.
Carl Johnson
Tim McAbee
James McNeill, Jr.
David Martin, III
Roy Moore
Mike O'Dell
Herman Pagent
Maury Sheven
Steve Still
Julie Waters

1977-1978
Al Agricola
John Civils, Jr.
Penny A. Davis
Therese de Saint-Phalle
Jim Frost
Ted Giles
Lucian Gillis, Jr.
Paula Hinton
Carl Johnson
David Martin, III
Roy Moore
Gerald Paulk
Steve Rowe
John Springer
Steve Still
Julie Waters
Caroline Wells

1978-1979
Shap Ashley
Jim Byram
Andy Campbell
Kathy Collier
Therese de Saint-Phalle
Penny A. Davis
Rayford Etherton
Jim Frost
Jim Goyer

Mike Graffeo
Paula Hinton
Jeff Jones
Kenny Mendleson
Bert Owen
Eddie Parker
Gerald Paulk
Perry Reeder
Helen Roan
Harold Stephens
Bill Stokes

1979-1980
Sabrina Andry
Paul Brown
Kin Clinton
George Day
Kirk Davenport
Edward Dean
Tom DeBray
Doug Dunning
Raymond J. Hawthorne
Regina Holmes
Clare Hughes
Jeff Jones
Keith Norman
Mary Lil Owens
Perry Reeder
Tommy Reynolds
George Simons
Elizabeth Skinner
Harold Stephens
Bill Stokes

1980-1981
Lynn Belk
Lew Burdette
Karen Burleson
George Day
William Gantt
Raymond J. Hawthorne
Regina Holmes
Paula Ivey
Michael Majure
Keith Norman
Perry Reeder Pearce
Dudley Reese
Tommy Reynolds
Jessica Smith
Harold Stephens
Bill Stokes
Jim Tompkins

1981-1982
Beverly Lynn Belt
Robert Lew Burdette
Brenda Burns
William G. Gantt
Anne J. Hendrix
Paula D. Ivey
Elizabeth Kim King
Debra Ann Lee
Jeffrey L. Luther
Michael K. Majure
James E. Smith, Jr.
Jessica Ann Smith
James B. Tompkins

1982-1983
Anne H. Avera
Brenda Burns
Gregg B. Everett
William H. Filmore
Clara L. Fryer
Kevin L. Johnson
Elizabeth Kim King
Debra Ann Lee
Elizabeth A. LeVan
Mike Majure
James E. Smith, Jr.
David Key Taylor

1983-1984
Grant Baldwin
Silver Broome
Chris Dozier
William H. Filmore
Timothy Francis
Lisa Huggins
Kevin L. Johnson
Elizabeth A. LeVan

1984-1985
Silver Broome
Manley Cummins
Ann Dozier
Tim Francis
Lisa Huggins
Mary Ellen Lamar
Elizabeth A. LeVan

1985-1986
Catherine Anderson
Manley Cummins
Mary Ellen Lamar
Richard Silfen
Mark Teal

1986-1987
Catherine Anderson
Tim Culpepper
Bob Maddox
Adam Porter
John Sharbrough
Richard Silfen
Wes Smith
Jim Sturdivant
Mark Teal

1987-1988
Belinda Barnett
George Martin, Jr.
Joe Steadman
Richard R. Whidden, Jr.
Sylvia Garvin
Michael J. Wiggins

1988-1989
Richard R. Whidden, Jr.
Sylvia Garvin
Rebecca J. Anthony
Michael J. Wiggins
Russell Sandidge

1989-1990
Richard R. Whidden, Jr.
Sylvia Garvin
Rebecca J. Anthony
Jean Powers
Sam Sullivan
Michael J. Wiggins
Russell Sandidge
Kevin Walding
Henry Perry
William H. Starnes

1990-1991
Jonathan E. Taylor
Jill O. Radwin
Rebecca J. Anthony
Henry L. Perry
Samuel Sullivan, Jr.
Kevin Walding
Charles A. Powell, IV
William H. Starnes

1991-1992
Jonathan E. Taylor
Jill O. Radwin
Rebecca J. Anthony
Amy Owen
Laura Proctor
Marjorie Dabbs
Timmy Milam

John McCulley

1992-1993
Richard P. Rouco
Jill O. Radwin
Charles E. Sanders, Jr.
Wendy A. Harvey
David Overstreet
Stephen Scott
William J. Daniel
Michael C. Strasavich
Mark P. Eiland
Risa B. Lischkoff
Laurence J. McDuff
Daniel Wood

1993-1994
Douglas C. Adair
Colby Allsbrook
Mark P. Eiland
John Daniel
Alan D. Leeth
Risa Lischkoff
Terre Su Little
Richard Rouco
Laurence J. McDuff
Stephen L. Scott
Jill O. Radwin

1994-1995
Douglas Adair
Robert Colby Allsbrook
Edward Shane Black
Joseph Brian D'Angelo
Leigh A. Haynie
Alan D. Leeth

1995-1996
Robert Colby Allsbrook
Edward Shane Black
Joseph Brian D'Angelo
Leigh A. Haynie
Alan D. Leeth
Karyl L. Rasmussen

1996-1997
Guy D. Chappell, III
Anna-Katherine Graves
Christopher A. Pankey
Sarita T. Sanders
Robert D. Selwyn
Laura H. Tucker

1997-1998
Shannon M. Moore
Christopher A. Pankey
Robert D. Selwyn

1998-1999
Thad A. Davis
Ralph A. Ferguson, III
Eric L. Johnson
Othni J. Lathram

1999 - 2000
Phillip Hale
Othni J. Lathram
Jason Osborn
Valanda D. Lewis
Eric Roberts
Eric L. Johnson
Ralph A. Ferguson, III

2000 - 2001
Stuart Albea
Daniel Alexander
Edgar Black
James Crane
Neal Huchens
Othni J. Lathram
Joseph Stutz
Rodney Waites

Kimberly Ward
Justin Williams

2001 - 2002
Stuart Albea
Daniel R. Alexander
David E. Black
James L. Crane
Neal Hutchens
Joseph Stutz
Rodney Waites
Kimberly Ward

2002 - 2003
Stewart Albea
Cyrus Tres Barger
Stephanie Blackburn
Jennifer Anne Harris
Hea "Jini" Koh
William H. Lindsey
Eris Bryan Paul
Martin M. Poynter
Joseph Stutz

2003 - 2004
Jennifer Anne Harris
Hea "Jini" Koh
Eris Bryan Paul
Daniel Hauser
Stephanie Blackburn
Andrew Freeman
Cyrus Tres Barger
Meredith Smith

2004 - 2005
Andrew Freeman
Meredith Smith
Hea "Jini" Koh
William D. Hocutt, IV
Jennifer Harris
Eris Bryan Paul
Matthew L. Benton
Steven P. Savarese, Jr.

2005 - 2006
John "Scott" Baldwin
Matthew Benton
Cullan Duke
Andrew "Andy" Freeman
William D. Hocutt, IV
Angela Lenski
Joseph "Trey" McClure
Steven Savarese

2006 - 2007
John "Scott" Baldwin
Chris Brinson
Drew Feeley
George Gaston
Jordan Gerheim
Heather Maney
Aaron McLeod
Kristin Osmer Drake
Chris Sanders
Brian Stewart
Nichelle Williams

2007 - 2008
Chris Brinson
Matthew Cannova
Kristin Osmer Drake
George Gaston
Jordan Gerheim
Heather Maney
Brian Stewart
Nichelle Williams

2008-2009
Barbara Agricola
Katriesa Crummie
George Gaston
Brett Hamock

Peter Jay
Melony Lockwood
Heather Maney
Kristin Osmer
D. G. Pantazis, Jr.
Brian Stewart
Nichelle Williams

2009-2010
Lee Fernon
Kimberly Goins
Benjamin "Hunter" Hill
Peter Jay
Thomas Mercado
Dennis Pantazis
Ryan Tyler
Jessica Welch

2010-2011
Lee Fernon
Kimberly Goins
Olaoluwaposi Oshinowo
Dennis Pantazis
Brittany Pugh
Stacie Vitello

2011-2012
Corey Colbert
Elizabeth Eiland
Chase Estes
SeTara Foster
Meagan Gantt

2012-2013
Susan BetSayad
Kate Clark
Jerome Dees
Elka Graham
Daniel Harris
Caitlyn Smith

2013-2014
Eric Coleman
Daniel Harris
Lauren Hislop
Meredith Maitrejean
Lane Morrison
Trevor Parrish
Alan Polson
Steven Strother
Brad Watts
Marshall Yates

2014-2015
Matthew Ingram
John David Lind
Ayla Luers
Lane Morrison
Elizabeth Oladoyinbo
Gillian Richard
James Walters
Andrew Wescott

2015-2016
Andrea Medders
Gillian Richard
Sarah Richardson
Nicholas Sciple
James Walters
Andrew Wescott
William Willett

2016-2017
Daniel Berens
Lauren Donaldson
Austin Dickinson
Shruti Jaishankar
Andrea Medders
Gillian Richard
Sarah Richardson
Nicole Skolnekovich
Neena Speer

Emily Van Haneghan
William Willett

2017-2018
Zachary Anderson
Austin Dickinson
Faulkner Hereford
Luke Kiszla
Jillsa Milton
Bill Mitchell
Sarah Richardson
Nicole Skolnekovich
Emily Van Haneghan
Rebekah Wilson

XIII.

ALABAMA CAPITOL / LEGISLATIVE INTERNS

Alabama Capitol Interns

1979

Sundra Escott	Governor's Office
Joe Varner	Lt. Governor's Office
Hoyt Baugh	Speaker's Office

1980

Karen Fairclothe	Governor's Office
Lamar Higgins	Governor's Office
Lynn Walker	Lt. Governor's Office
Charles Carlton	Speaker's Office

1981

Elizabeth Ann Valine	Governor's Office
Susan Alicia Waddell	Governor's Office
Kenneth Eugene White	Governor's Office
David Key Taylor	Lt. Governor's Office
Randall Virgill Houston	Speaker's Office

1982

Ben Thompson	Governor's Office
Darrell E. Sprowl	Governor's Office
Phil Baker	Lt. Governor's Office
Allen E. Champion	Lt. Governor's Office
Terry Moorer	Speaker's Office

1983

Joel Laird	Governor's Office
Stan Allen	Lt. Governor's Office
Tim Hermetz	Speaker's Office

1984

Thomas Michael Burnum	Governor's Office
Sheron J. Rose	Lt. Governor's Office
Charles D. Penry	Speaker's Office

1985

Ben Foster	Governor's Office
Terry Morgan	Lt. Governor’s Office
Jean Powers	Lt. Governor's Office
Debra Kelley	Speaker’s Office
Jane Shackelford	Speaker’s Office

1986

Richard R. Newton	Governor's Office
Carl A. Petty	Lt. Governor's Office
Timothy M. Broughton	Speaker's Office
Kristi Dubose	Speaker's Office

1987

Susan Gunnells	Governor's Office
Orlanda Davis	Lt. Governor's Office
Christopher Frechette	Speaker's Office

1988

Randall G. Mathews	Governor's Office
JoAnn Sutton	Lt. Governor's Office
Janice K. Harris	Speaker's Office

1989

Amy Michelle Meacham	Governor's Office
Susan "Leigh" Preuitt	Lt. Governor's Office
Reba Campbell	Speaker's Office
Patrice Oden	Speaker's Office

1990

Tony Allen	Governor's Office
Deitra Crawley	Lt. Governor's Office
Jeff Miller	Speaker's Office
Chris Pankey	Speaker Pro Tem's Office

1991

David Bryan Johnson	Governor's Office
Barry Eugene Robertson	Lt. Governor's Office
William J. Rushing	Speaker's Office
Laura Lee Weeks	Speaker Pro Tem's Office

1992

Jonathan M. Lyman	Governor's Office
Amy E. Dixon	Lt. Governor's Office
Sonia C. Norris	Speaker's Office
Timothy Fortner	Speaker Pro Tem's Office

1993

Cameron Ward	Governor's Office
Jack Draper	Lt. Governor's Office
Roger Brown	Speaker's Office
Rebecca Dormon	Speaker Pro Tem’s Office
Christine Rudolph	Legislative Reapportionment Office

1994

Allison Law	Governor's Office
Shane Sears	Lt. Governor's Office
Rodney Ellis	Speaker's Office
Amy Atchison	Speaker Pro Tem's Office

1995

David Fleming	Governor's Office
Kimberly Baker	Lt. Governor's Office
Kells Carroll	Lt. Governor's Office
Landra Stewart	Speaker's Office
Kelly Stallworth	Speaker Pro Tem's Office

1996

Shawn D. Freeman	Governor's Office
Amy Elizabeth Smith	Lt. Governor's Office
Latonska Dwain Boswell	House of Representatives

1997

Richard Jason Jordan	Governor's Office
Meagan Bishop	Lt. Governor's Office
Edward Dean Mott	Senate
Jonathan Scott Evans	Speaker's Office
Frank Jerome Tapley	Speaker's Office
Mahari A. McTier	House Judiciary

1998

Kristopher D. Robinson	Governor's Office
Melinda L. Stallworth	Lt. Governor's Office
Mary Rebecca Tyre	Speaker's Office

1999

Andrew "Drew" Dill	Governor's Office
Enjoli Donette White	Governor's Office
Denise S. Randall	Lt. Governor's Office
Brandon Paul Owens	Speaker's Office

2000

Jared Lyles	Governor's Office
David Bedsole	Lt. Governor's Office
Felicia Watkins	Speaker's Office

2001

James D. Martin	Governor's Office
Laura Beth Hammack	Lt. Governor's Office
Lara Allred Mendes	Speaker's Office
Yolanda E. Ratchford	House Judiciary

2002

Adrian J. Johnson	Governor's Office
Jason Harper	Speaker's Office
Alisha L. Upchurch	Senate Office

2003

Alvin A. Lewis, Jr.	Governor's Office
Laurie M. Angerdina	Lt. Governor's Office
Mary Anne Taylor	Speaker's Office

2004

Program suspended due to budget decrease.

2005

Cory Steven Adair	House of Representatives
Jonathan K. Corley	House of Representatives
Kenneth E. Gawronski, Jr.	Secretary of State's Office
Parker G. Hughes	Senate Office
Elizabeth Ann McLain	Attorney General's Office
Kristen E. Walker	House of Representatives

2006

Clarence B. Garden	House of Representatives
Allison Joanne Miller	House of Representatives
Taylor Minus	Senate Office
Jason Adam Munford	Lt. Governor's Office
Shemika Brown	House of Representatives
Amelia Thomas	House of Representatives

Alabama District Legislative Interns

2006

Jeremy Bartlett	House of Representatives
Tanae Hampton	House of Representatives
Bobby Martin	House of Representatives
Larry Dean Pender, Jr.	House of Representatives
Joon Suh	House of Representatives

Law Clerk Externs

2014

Alex Chaney
Tim Parr

2015

James R. Brown
Jacinta N. Clark
Lane Morrison

Charlton Pope
Jase Sayre
Frank Truncali
Aaron Walters
Andrew Westcott

2016
Aaron Harrelson
Kristine Jones
Shalyn Smith

2017
Matt Morrison
Tucker North
Aubrey Wakeley

Alabama Legislative Interns

2007

Jaclyn Cosper	House of Representatives
Whitney Jones	House of Representatives
Whitney Maddox	House of Representatives
Jason Riggs	House of Representatives
Lindsey Singletary	House of Representatives
Scott Vickery	House of Representatives
Daniel Wiley	Senate Office

2008

Tijwana Alexander	House of Representatives
Kandra Bickley	House of Representatives
RaSarah Browder	House Committee
Rebecca Hodgen	House of Representatives
Cara Lucas	House of Representatives
Rebekah McClain	Senate Office
Kendell McKnight	House Committee
Larry Newton	House of Representatives
Brett Remkus	House of Representatives
Clif Richard	Speaker's Office
S'Aisa Robinson	House of Representatives
Amanda Spiegel	Senate Office
Taraha Stovall	Lt. Governor's Office
Bryan Weaver	House of Representatives

2009

Todd Adams	House of Representatives
Oscar Berry	Senate Committee
Lee Casey	House of Representatives
Brent Culver	Senate Office
Erick Harris	Speaker's Office
Maria Hunter	Senate Committee
Karl Lee	Senate Pro Tem Office
Rebecca McCracken	House of Representatives
Larry McCree	House of Representatives
Susie Minter	House of Representatives
David Nix	Senate Office
Adarius Tolbert	House of Representatives
Elizabeth Vodde	Senate Office
Toni Williams	House of Representatives

2010

Cori Blackburn	Senate Office
Julie Brasher	House of Representatives
Jeremy Donald	House Committee
Deborah Garrett	Senate Office
Tami Goff	House of Representatives
Dallas Jordan	House of Representatives
Kendra Key	Senate Committee
Mary Kidd	House of Representatives
Karl Lee	Senate Pro Tem Office
Jennifer Palmer	Lt. Governor's Office
Elizabeth Robinson	House Committee
Anna Russell	Speaker's Office
Brittany Tedford	House of Representatives
Al Teel	House of Representatives
Elizabeth Vodde	Senate Committee
Dante Whittaker	House of Representatives

2011

Katie Egan	House of Representatives
Phee Friend	House of Representatives
Bain Hanning	House of Representatives
Jerome Jackson	House of Representatives
Clay Loftin	Lt. Governor's Office
Andrew Mackey	Senate Committee
Dontrel Mosely	House of Representatives
Cole Muzio	House of Representatives
Morgan Stewart	Senate Committee
Erica Collins Thomas	House of Representatives
Walker Watson	House of Representatives
Raquel Whitehead	Senate Office
Mimi Williams	Senate Office
Trace Zarr, III	Senate Office

2012

Blair Boutwell	House of Representatives
Alex Cobb	House Minority Office
Gerald Cook	House of Representatives
Phee Friend	Senate Office
Ashley Hayes	House of Representatives

Sydney Holtzclaw	Speaker's Office
Kimberly Hunt	House of Representatives
Clay Loftin	House of Representatives
Dawynrico McCain	House Minority Office
Ali Morgan	House of Representatives
Regina Newsome	House of Representatives
David Pinkleton	Senate Office
Emily Roberson	Senate Office
Josh Ward	Governor's Office
Brad Watts	Senate Office
Ellie Wilson	Senate Office
Marshall Yates	Senate Office
Trace Zarr	Senate Office

2013

Hilaire Armstrong	Senate Office
David Ballard	House of Representatives
Caroline Blaylock	Governor's Office
John Bradley	Senate Office
Austin Dickinson	House of Representatives
Will Dismukes	House of Representatives
Liz Dowe	House of Representatives
Breanna Flintroy	House of Representatives
T.J. Gibson	House Minority Office
Eric Hall	House of Representatives
Tabitha Harnage	Senate Office
Jackson Horn	House of Representatives
Antron Johnson	House Minority Office
Desire Kafunda	House Minority Office
Grace Kennedy	Senate Office
Mitchell Kilpatrick	Senate Office
Jake Kistel	Senate Office
Giles Langford	House of Representatives
Samantha McFarland	Senate Office
John Phillips	House of Representatives
Hayden Pugh	House of Representatives
Nick Sciple	Senate Office
Will Sellers	Senate Office
Tara Sexton	House of Representatives
Jesse Skaggs	Senate Office
Drew Thrash	Legislative Fiscal Office

Callie Wallace	House Minority Office
Cortrell Whitfield	House of Representatives
D'Angelo Williams	Senate Office
Aldolphus Willis	Senate Office
Trace Zarr	Senate Office

2014

Erin Alexander	House of Representatives
Thomas Austin	House of Representatives
Sanjanetta Barnes	Senate
Jordan Bray	House of Representatives
Chardae Caine	Senate
Monique Caldwell	Senate
Victoria Campbell	House of Representatives
Michael Ciamarra	House of Representatives
Caleb Conner	Senate
Kaylin Gomez	Senate
LaResa Jackson	House of Representatives
Clint Justice	House of Representatives
Elizabeth Kolakoski	House of Representatives
Yin Lin	House of Representatives
Alex Mastin	Senate
A.J. McCloud	Senate
Kenyada Posey	Senate
Amanda Smith	House of Representatives
Jonathan Springer	House of Representatives
Charlie Taylor	Senate
Ashley Vickers	House of Representatives
Taylor Wade	Senate
Korey White	House of Representatives
Cheyenne Young	House of Representatives

2015

Yasmine Downs	House of Representatives
Jordan Giddens	Senate
Kekoria Greer	Senate
Rashad Grimes	Senate
Abby Hodge	House of Representatives
Tricia McMullan	House of Representatives
Brandon Merced	Senate
Jayne Ohlman	House of Representatives
Lane Pickett	Senate
Jack Sawyer	House of Representatives

2016

Stefanie Alexander	House of Representatives
Lindsey Collins	House of Representatives
Cameron Eldridge	Senate
Taylor Howard	Senate
Derrick McMeans	House of Representatives
Andrea Medders	House of Representatives
Brandon Merced	House of Representatives
Khadejah Moore	House of Representatives
Nichole Morris	Senate
Todd Ossanna	Senate
Morgan Perry	House of Representatives
Will Prewitt	Senate
Kendyll Rushing	Senate
Ruby Villalobos	House of Representatives
Leslie Wright	House of Representatives

2017

Candice Butts	Senate
Caleb Conner	Senate
Elizabeth Earwood	House of Representatives
Jasmine Frazier	House of Representatives
Malee Galloway	House of Representatives
Kennan Gawlowicz	Senate
Sapphira Glemaud	House of Representatives
Ethan Gregory	House of Representatives
Sarah Griffin	House of Representatives
Kyler Herron	House of Representatives
Sawyer Knowles	Senate

Beth Lee	Senate
Destiny Nash	House of Representatives
Pierce Oswalt	Senate
Gage Pregno	Senate
Ra Kysia Rogers	Senate
Meredith Smith	Legislative Fiscal Office
Drew Unseth	House of Representatives
Nypherria White	Senate
Sachini Wueschner	House of Representatives