NEWSLETTER OF THE REAL PROPERTY SECTION

OF THE MISSISSIPPI BAR

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2025-2026 Officers

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MISSISSIPPI LEGISLATION

HB 246-This bill amends Section 23-3-29 to provide that when sixteenth section land is sold for industrial purposes, the board of supervisors, the board of education and the Mississippi Development Authority can also sell the minerals under the land or enter into an agreement to perpetually refrain from using the surface to access any minerals in which the state has retained an interest. Any such written agreement shall be binding upon future governing authorities. This bill became effective on July 1, 2025.

HB 1200-This bill enacted the Real Property Owners Protection Act. The Act creates the crime of squatting on private property and allows the owner to expel a squatter from the owner's land by filing an affidavit with the local law enforcement agency. The law enforcement agency issues a citation to the person accused of squatting to vacate the premises or to show cause to the municipal or justice court within why the person is not a squatter. If the court determines that the person is a squatter, the owner can have law enforcement remove the squatter and his personal property from the land "immediately". This bill became effective on July 1, 2025.

Note: The bill states that a squatter shall not accrue any property rights. A squatter is defined as "a trespasser who remains on the property for a period of time." Is someone who takes possession of land under color of title a squatter? If so, does this statute in effect abolish the doctrine of adverse possession? Legislators have said that abolishing adverse possession was not their intent in passing this statute, and that this new statute will be amended if necessary to make that clear.

HB 1203-This bill creates a new statute that prohibits "camping" on public property that is not designated for camping. The statute permits local and state governments to use law enforcement to remove homeless people and their belongings from parks and other public property. This bill also amends Section 97-35-25 to make it a misdemeanor for any person to obstruct any public sidewalk or street. This bill became effective July 1, 2025.

Note: The law regarding what actions cities can take to address the presence of homeless people camping on public property without violating the United States Constitution was unclear for many years, in large part because of a decision by the Ninth Circuit Court of Appeals that removing homeless people from public areas without having sufficient alternative housing for them constituted cruel and unusual punishment prohibited by the Eighth Amendment. In *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024), the United States Supreme Court upheld the constitutionality of a municipal ordinance enacted by the City of Grants Pass, Oregon prohibiting "camping" by homeless people in city parks. Since that decision, many municipalities and states have enacted ordinances and statutes modeled on the ordinance approved by the Supreme Court in *Grants Pass*. HB 1203 is Mississippi's version.

HB 1611- Section 83-5-28 currently requires insurance companies to give thirty days' notice of cancellation of liability and fire insurance policies to named creditor loss payees. HB 1611 amends Section 83-5-28 to require insurance companies to give lender loss payees forty-five days' notice of cancellation of a fire insurance policy. This change becomes effective on July 1, 2026. Section 83-5-28 still permits insurance companies to cancel policies on ten days' notice to lender loss payees in case of non-payment of premiums.

SB 2328-This bill makes a number of pro-landlord changes to the eviction provisions of the Residential Landlord and Tenant Act, including requiring law enforcement to put the landlord into physical possession of the property. It also gives the owner of a recreational vehicle park the right to have a person who fails to pay his rent removed from the park by law enforcement. This bill became effective on April 10, 2025.

SB 2469-This bill establishes a committee to study the problem of "unmerchantable and uninsurable" titles resulting from tax sales, and to recommend solutions. This bill became effective on its date of passage, March 18, 2025. The committee dissolves on January 1, 2026. Look for legislation addressing tax sales in the 2026 legislative session.

LEASES WITH PUBLIC BODIES

Special rules exist for contracts, including leases, with public bodies in Mississippi. Two recent unpublished memorandum decisions by a federal district court involving a lease by the City of Jackson illustrate two of these rules, the rule that one board of a public entity cannot bind subsequent boards absent express statutory authority, and the "minutes rule."

On April 4, 2011, the City of Jackson, as tenant, entered into a lease with Retro Metro, LLC, as landlord, for office space in the Metro Center Mall. The term of the lease was twenty years. At a meeting on July 18, 2023, the Jackson City Council voted to terminate the lease, sent a notice of termination to the landlord, and ceased making lease payments. The landlord filed an action in the United States District Court for the Southern District of Mississippi seeking damages for, among many other claims, breach of contract.

One defense asserted by the City was that under Mississippi law, the governing body of a municipality or other governmental body cannot enter into any lease that would bind successor administrations, unless some statutory authority exists for the lease. In effect this rule limits leases with public bodies in most cases to one year. The City argued that because of this rule, the lease with Retro Metro was void. The District Court (Judge Lee) found that specific statutory authority for this particular lease existed under Miss. Code Ann. Section 31-8-1 *et seq. Retro Metro, LLC v. City of Jackson*, Civil Action No. 3:23-CV-592-TSL-MTP, 2024 WL 1977145 (May 3, 2024).

The City also filed a motion to dismiss based on the failure of the lease to comply with the "minutes rule." The "minutes rule" is that "public boards speak only through their minutes and that their acts are evidenced solely by entries on their minutes." In the context of leases with public bodies, the minute rule means that a lease with a public body is not valid unless the signed lease is attached to the board's minutes, or enough of the terms and conditions of the lease are contained in the minutes for the liabilities and obligations of the parties to be determined. In this case, the Jackson City Council passed a resolution that was recorded in the minutes providing that the mayor was authorized to execute a lease with Retro Metro for a term not to exceed 20 years and for a rental not to exceed $487,000. The executed lease was not recorded in the City's minutes. The District Court found that these minutes were not sufficient to identify the terms of the lease. The District Court therefore found that the lease was void and dismissed the landlord's breach of contract claim. *Retro Metro, LLC v. City of Jackson*, Civil Action No. 3:23-CV-592-TSL-MTP (August 29, 2024), available on Google Scholar.

There are exceptions to the rule about not binding subsequent boards. For example, economic development statutes allow a city or county to purchase land and lease it back to new industries for long terms so that the new industry gets a break on ad valorem taxes. The Mississippi Legislature also can authorize a public body to lease land for more than one year. For example, in the 2025 legislative session, the Legislature in S.B. 2519 authorized the University of Mississippi

via IHL to enter into leases of five parcels of land in Oxford for a period of forty-five years plus renewal options.

Retro Metro has appealed the District Court's decisions to the Fifth Circuit, so the District Court's decisions have limited if any precedential value at this time. But the District Court's decisions have good discussions of the Mississippi law underlying these two rules affecting leases with public bodies and are good reminders of these potential traps.

MISSISSIPPI CASES

If ordinance is appealed to Circuit Court, Circuit Court has
jurisdiction over actions challenging enforcement of ordinance

Mississippi Apartment Ass'n v. City of Jackson, 407 So. 3d 1061 (Miss. 2025)(*en banc*). On December 20, 2022, the City of Jackson adopted an ordinance regulating rental housing. The Mississippi Apartment Association and others ("MAA") on December 29, 2022, filed an appeal of the ordinance in the Circuit Court of Hinds County pursuant to Section 11-51-75 of the Mississippi Code. MAA did not request a stay of enforcement of the ordinance pending appeal under Mississippi Rule of Civil Procedure 62. On May 23, 2023, MAA filed in the Hinds County Chancery Court a complaint that asserted that the City's Planning Department had adopted confusing registration requirements that varied from the ordinance and violated the owners' constitutional rights. The complaint sought orders declaring the City's registration and enforcement of the new ordinance to be unenforceable, enjoining the City from requiring registration or enforcement of the ordinance, and ordering the City to disgorge and repay all fees that had been collected pursuant to the ordinance. The City filed a motion to dismiss the complaint in the Chancery Court for lack of jurisdiction because the sole remedy to appeal a municipality's decision is through a notice of appeal filed in circuit court under Section 11-51-75. MAA argued that while Section 11-51-75 was the exclusive means of appealing a city's adoption of an ordinance, Section 11-51-75 did not bar claims arising out of enforcement of the ordinance after its adoption. The Chancery Court granted the City's motion to dismiss. On appeal by MAA, the Mississippi Supreme Court, in a 5-4 decision, affirmed. Justice King, the author of the majority opinion, wrote in part, "…MAA's circuit court action and chancery court action arise out of a common nucleus of operative fact. The enforcement and implementation of the rental unit registration process flows directly from the adoption of the ordinance." Allowing a separate action in chancery court could lead to contradictory rulings. Circuit courts are courts of general jurisdiction while chancery courts are courts of special and limited jurisdiction. In this case, since the Circuit Court had exclusive jurisdiction over the appeal of the City's adoption of the ordinance, the Circuit Court has pendent jurisdiction over the related claims regarding the enforcement of the ordinance. Moreover, wrote Justice King, MAA was only entitled to an injunction in the Chancery Court if MAA had no adequate remedy at law. In this case a stay under Rule 62 was an adequate

remedy at law. The fact that MAA did not request a stay did not mean that an adequate remedy at law did not exist.

There were two vigorous dissents. Justice Coleman, joined by Justices Branning, Maxwell and Griffis, wrote that the Circuit Court's jurisdiction under Section 11-51-75 was limited to appellate jurisdiction on the record, that the Circuit Court did not have jurisdiction to grant the declaratory relief regarding enforcement of the ordinance that MAA was seeking, and that the Chancery Court was the proper court for the MAA to seek injunctive relief. Justice Maxwell, joined by Justices Coleman, Griffis and Branning, agreed with the majority that the Circuit Court had exclusive jurisdiction over any injunctive relief regarding the adoption of the ordinance, but wrote that the Chancery Court was the proper court for the MAA to file its complaint for injunctive relief regarding enforcement of the ordinance since the actions that were the subject of the complaint were based on the actions of the City after adoption of the ordinance.

Failure to add roads to county road registry did not prevent roads from becoming public

Newton County v. Deerfield Estates Subdivision Property Owners Ass'n, 385 So. 3d 765 (Miss. 2024). In 2001 the developer of Deerfield Estates subdivision in Newton County sent a letter to the Board of Supervisors stating that they had constructed two roads through the subdivision and requesting the Board to accept the roads as county roads. At a meeting on August 13, 2001, the Board voted to accept the roads as county roads. The vote was reflected in the Board's minutes. The roads were not entered into the county road registry as required by Miss. Code Ann. § 65-7-4. In 2010 the developer conveyed an easement to the county covering the roads. The easement recited that the Board had accepted the roads as public roads in 2001. In 2015 the homeowners' association approached the Board of Supervisors about making repairs to the roads. The county engineer inspected the roads and estimated that the cost of making repairs would exceed $100,000. At a December 2015 meeting, the supervisors voted to not accept the roads as county roads. The residents of Deerfield did not find out about the supervisors' vote to not accept the roads until a local newspaper published an article about the state of disrepair of the roads in 2019. In 2020 the homeowners' association filed a complaint in the Chancery Court of Newton County seeking a declaratory judgment that the roads were county roads. At trial the county argued that the homeowners' association was barred by laches or the statute of limitations and that the roads were private roads because the roads were never entered in the registry of county roads. The supervisors testified that they were not permitted to spend public money on roads not entered into the official registry. The parties stipulated that the county had never assessed the roads for taxes and had never done any maintenance on the roads. The testimony showed that the roads were used by the public and that the county had used the roads to maintain a dam. The Chancery Court entered a final judgment holding that the roads were public roads by reason of the Board's express dedication and acceptance in 2001 and ordered the county to include the roads in the county road registry. On appeal by the county, the Mississippi Supreme Court, in a unanimous decision by Justice Kitchens,

affirmed. The county argued that under the statutory procedure for having roads dedicated, the developer was required to show that acceptance of the roads was required by public interest or convenience, and that the Board's 2001 acceptance was void because the order did not include a statement regarding the public interest or convenience. The Supreme Court declined to find that the order was void because of the absence of this exact language in the order. The Supreme Court found that the county's failure to add the roads to the road registry did not obviate the county's express acceptance of the dedication. Finally, the Supreme Court wrote that the County could not invoke the statute of limitations or laches since the 2001 dedication and acceptance was controlling.

Note 1: Private roads can become public roads in three ways: through prescription, the statutory procedure in Section 65-7-57, and common-law dedication. Dedication occurs when a public authority accepts a landowner's donation of a right of way. The parties in this case stipulated that neither prescription nor statutory dedication had occurred, so the only issue was whether a common-law dedication had occurred.

Note 2: Dedication can be express or implied. In this case the Supreme Court found that express dedication had occurred since the Board adopted a resolution accepting the road. Justice Kitchens wrote that the facts would support a finding of implied dedication since the county failed to assess the land, the county provided culverts to new driveways abutting the roads, the county used the roads for dam maintenance, and the public made regular use of the roads.

Trustees with knowledge of ownership of land could not establish adverse possession

Smith v. Anderson, 397 So. 3d 899 (Miss. Ct. App. 2024). Sam Johnson owned land in Holmes County. Sam died in 1984. His will provided that his sister Ethel and her daughter Hellena would hold the land in trust as co-trustees for twenty years, then the title to the land would vest in Sam's heirs. Ethel as trustee leased the land to a tenant, while Ethel and her heirs collected the rent and paid the taxes. The heirs of Sam took no action to assert their title after the twenty-year term of the trust ended, and heirs of Ethel continued to collect the rents and pay the taxes. In 2016, the tenant inquired about purchasing the land. After discussions between the heirs of Ethel and the heirs of Sam, in which the heirs of Ethel sought to benefit from the sale, the heirs of Sam filed an action to confirm their title to the land in the Chancery Court of Holmes County. In their answer, the heirs of Ethel asserted that they had acquired title to the land by adverse possession because they had maintained the land, collected the rent and paid the taxes after the trust period expired. The heirs of Ethel argued that although no single individual of the group had met all of the conditions to establish adverse possession, they collectively had met all of the conditions. The heirs of Sam argued that each of the heirs of Ethel had to meet all of the conditions for adverse possession. The tenant submitted evidence that he had maintained the property and that he had never seen any of Ethel's heirs taking care of the land in any way. The Chancery Court found that none of the heirs

of Ethel had to meet all of the requirements to establish adverse possession, and that collectively they could not meet the requirements because Ethel and Hellena, as co-trustees under Sam's will, knew that they did not have any ownership interest. One cannot set out to adversely possess land without some claim of ownership (aka color of title). The Chancery Court therefore held that Sam's heirs were the owners of the land. On appeal by the heirs of Ethel, the Court of Appeals, in an opinion by Chief Justice Barnes, affirmed. The appellants could not establish a claim to ownership because Ethel and Hellena, as co-trustees, knew that they did not have ownership of the land and that Sam's will provided that Sam's heirs would own the land after the trust terminated. Chief Justice Barnes also wrote that collecting the rents and paying the taxes were not, by themselves, sufficient to establish adverse possession.

Note 1: The editor has not seen the argument before that a group of persons seeking to establish title by adverse possession can collectively meet the requirements for establishing adverse possession even though none of the individuals had met the requirements. The editor's reading of this opinion is that neither the Chancery Court nor the Court of Appeals expressly held that persons seeking to establish adverse possession could not do so collectively rather than individually, but only that in this case, the heirs of Ethel could not meet the requirements collectively or individually.

Note 2: The Chancery Court and the Court of Appeals relied on the fact that Ethel and Hellena had knowledge that Sam's heirs were the beneficiaries of the trust. An alternative rationale for the holding is that since Ethel and Hellena initially had rights in the land as trustees, the heirs of Ethel could never get title by adverse possession, since Ethel's rights in the land began as permissive rather than adverse.

Note 3: Chief Justice Barnes wrote in a footnote that while Ethel did not have the obligation to pay the property taxes on the land once the trust terminated, she did have the obligation as trustee to inform the tax assessor of the names of the persons responsible for paying the taxes going forward.

Note 4: Ethel's heirs impliedly argued that they were able to obtain title to the land in part because Sam's heirs did not assert their title to the land after the trust terminated and thus appeared to have abandoned the land. Chief Justice Barnes noted in a footnote that adverse possession does not depend on the acts of the record title holders, but on the acts of the party seeking adverse possession.

<u>Option without consideration can become binding when accepted before revocation</u>

Cook v. Vowell, 394 So. 3d 536 (Miss. Ct. App. 2024). Cook owned an interest in land in Choctaw County. On November 30, 2017, Cook conveyed one-half of his interest to Vowell. The deed included the following language: "The grantor further conveys unto the grantee the option to purchase the remaining one half of his interest at the end of three years for the sale price of

$41,566.60." Before the end of the three-year period Vowell contacted Cook verbally and by mail to exercise the option. Vowell testified that Cook "was not positive." Cook told Vowell that "he was not going to sell it, he didn't have to sell it and…he did not agree to that." In November 2020, Vowell sued Cook in the Chancery Court of Choctaw County for specific performance of the option. Cook moved to dismiss on the ground that the option was void due to lack of consideration. Vowell argued that he never would have bought only one-half of Cook's interest without Cook's agreement to convey the other one-half interest. Cook testified that he thought that the option meant that he only had to sell the other one-half interest if he wanted to do so. Testimony showed that Vowell contacted Cook to exercise the option before Cook took any action to revoke it. The Chancery Court did not make a determination about whether consideration existed for the option, but relied on a Mississippi Supreme Court case, *Holifield v. Veterans' Farm & Home Board*, 67 So. 2d 456 (Miss. 1953), that states in relevant part: "It is well settled that an option is not binding as a contract where there is no consideration, unless it is accepted within the time limit and before the offer is withdrawn." Cook's statement that he "was not positive" about honoring the option was not a sufficient revocation of the option. Based on the *Holifield* case, the Chancery Court found the option became binding on the parties when Vowell expressed his intent to exercise the option and granted Vowell specific performance. On appeal by Cook the Court of Appeals, in a decision by Chief Justice Barnes, affirmed. One of the requirements for a valid and enforceable option agreement is consideration. Vowell's testimony did not show separate consideration for the option, but Cook did not cite any authority that consideration separate from that stated in the 2017 deed was needed. Chief Justice Barnes wrote that it was not necessary to decide whether consideration existed for the option since, under the rule described in the *Holifield* case, even if consideration did not exist for the option at the time that Cook granted the option to Vowell in the deed, the option became binding once Vowell exercised the option before Cook revoked it.

> Note 1: Neither the Chancery Court nor the Court of Appeals ruled on whether sufficient consideration for the option existed under the 2017 deed.
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> Note 2: Presumably if Vowell had paid some separate consideration for the option at the time of the 2017 deed, Cook could not have revoked the option.

CASES OF INTEREST FROM OTHER STATES

The Mississippi courts have often followed Texas law regarding oil and gas law. The Texas Supreme Court recently has issued two significant decisions regarding oil and gas that may be followed by Mississippi courts.

In *Myers-Woodward, LLC v. Underground Services Markham, LLC,* 2025 WL 1415892 (May 16, 2025), the issue was whether the owner of the surface or the owner of the minerals owned the empty underground caverns created by salt mining. The Texas Supreme Court held that the empty space created by salt mining was not a mineral and was owned by the owner of the surface.

In *Cactus Water Services, LLC v. COG Operating, LLC,* No. 23-0676 (June 27, 2025), the issue was whether the owner of the surface or the oil and gas lessee owned the wastewater produced by the oil and gas operations. The Texas Supreme Court held that absent an agreement in the lease to the contrary, a conveyance of the right to produce oil and gas includes the right to use the water produced from the oil and gas operations.