

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

April 2024

2023-2024 Officers

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LEGISLATIVE UPDATE

Scores of bills affecting real property were introduced in the 2024 Mississippi Legislature. Most of these bills have died. Here is a list of bills affecting real property that have become law or are not dead as of April 16, 2024.

Bills that have become law

SB 2519 enacts the Mississippi Foreign Land Ownership Act, which is intended to prohibit ownership of forest and agricultural land by non-resident aliens or business entities which are majority-owned by non-resident aliens. The Secretary of State and the Attorney General are tasked with enforcing the Act and are authorized to impose hefty fines and civil forfeiture actions for violations. The wording of the Act raises some interesting issues; for example, Section 6 of the Act provides that attorneys, title insurers and others shall not have a duty to make any investigation as to whether a party to a transaction involving “immovable property” is a foreign adversary, and no liability for failing to identify that a party to a transaction involving immovable property is a foreign adversary. “Immovable property” is the term used for real property under Louisiana law.

The term “immovable property” is not used anywhere else in the Act. Signed by Governor on April 15, becomes effective on July 1, 2004.

Bills still active

HB 325-This bill would enact a new statute providing that a right of first refusal to purchase real estate does not survive the death of the grantee unless the instrument creating the right is filed in the land records and unambiguously states that the right inures to the benefit of the heirs and assigns of the grantee. [Passed by House and Senate, due from Governor by 4/20]

HB 331-In 2022, the Mississippi Legislature amended Section 19-5-9 to require municipalities and counties to require building permits, whether or not the municipality or county had adopted building codes. HB 331 provides that municipalities and counties can opt out of this requirement by adopting a resolution within ninety days after the effective date of the act, which will be July 1, 2024. [Passed by House, amended and passed by Senate and sent to House for concurrence]

HB 846 amends Section 25-7-91 to allow chancery clerks to charge the same amount of filing fees for deeds for lands sold for taxes as other deeds, \$25 for the first five pages and \$1.00 for each additional page. [Passed by House and Senate, due from Governor by 4/20]

HB 1086-Mississippi currently has two sets of statutes addressing partition of real estate. Sections 11-21-3 to -45 are the general partition statutes that were first enacted in 1941. Sections 91-31-1 to -25, enacted in 2020, control when the land is “heir property,” as defined Section 91-31-3. HB 1086 would amend Section 91-31-5 to allow a plaintiff to proceed under the general partition provisions of Section 11-21-23 *et seq.* rather than Sections 91-31-1 *et seq.* even if the land is heir property. This bill also would give the court the authority to order any joint tenant to leave the land. [Passed by House, amended and passed by Senate, sent to House for concurrence]

HB 1271 amends the provisions of the Code requiring disclosure statements in the sale of residential property to provide that no real estate licensee shall be subject to discipline by the Real Estate Commission pertaining to information required to be disclosed by the seller. [Passed by House, amended and passed by Senate, House has concurred with Senate version]

HB 1343-The statute authorizing scriveners’ affidavits, Section 89-5-8, provides that the affiant must be licensed to practice law in Mississippi and that the attorney’s license must be active at the time the affidavit is given. HB 1343 would amend Section 89-5-8 to permit retired attorneys who are no longer licensed to practice law to give scriveners’ affidavits provided that the attorney was licensed and in good standing with the Bar at the time that the document that is the subject of the affidavit was recorded. [Passed by House and Senate, due from Governor by 4/17]

SB 2762 would enact a new statute addressing retainage in commercial construction contracts. It provides for a maximum amount of retainage and imposes interest on improperly held retainage. It also defines retainage in contracts for public construction. [Passed by Senate, amended and passed by House, Senate has concurred with House amendment, due from Governor by 4/20]

SB 2764 would require the Department of Revenue to issue a certificate of title for manufactured housing manufactured prior to July 1, 1999, pursuant to a filed affidavit of ownership. [Passed by Senate, amended and passed by House, Senate has declined to concur with House version, conferees named]

SB 2780-This bill would amend numerous statutes to consolidate authority over public trust tidelands in the Secretary of State, and requires that any entity that wants to use public trust tidelands, including governmental entities, must obtain a lease from the Secretary of State. [Passed by Senate, amended and passed by House, Senate has declined to concur with House version, conferees named]

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