



Distinctive Alabama Title Issues

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There are several title issues that are unique to Alabama. One of the most commonly seen of these issues is the true marital interest. Although the concept of a marital interest is not exclusive to Alabama, many states provide for a mere statutory homestead interest of the spouse. This type of homestead interest is typically a statutory exemption amount, should they fail to join the conveyance of a primary residence, and does not actually void the conveyance or convey a true fee simple title interest to the spouse of the mortgagor.

In Alabama, the marital interest is a 50% interest in the primary residence, despite the fact that the spouse may not appear on the vesting deeds. Further, under Ala. Code § 6-10-3, the conveyance of a homestead by the sole titleholder, without the agreement of the titleholder's spouse, would void the entire conveyance. To fall within this statute however, the property would need to be the actual residence of the parties. Unlike in Tennessee, where a grantee would take an interest encumbered by a value limitation, in Alabama an attempted conveyance of the homestead without the non-titled spouse's assent is void in its entirety. Therefore, the grantee in such a conveyance takes nothing. In practice, this means that every deed and mortgage must show the grantor's marital status or should explicitly note that the property is not the primary residence of the grantor if the spouse is not joining the conveyance. If there is only one grantor, then there must be a reference that the grantor is single, unmarried, or unremarried widow/widower.

Another uniquely Alabamian title issue is the existence of fire district liens. Alabama law allows for not only the creation of fire districts, but the ability of these fire districts to assess dues to homeowners directly. Unpaid dues can result in a fire district lien, which can subsequently be foreclosed by the fire district in a non-judicial manner.

Importantly, fire district liens have priority over mortgages. These fire district liens and their subsequent foreclosure are governed by Ala. Code § 11-48-1. The statute does not require actual notice to the mortgagee of the pending foreclosure, and does not require that the "foreclosure deed" reference the record title holder, making it difficult to locate the deed in a title search. In 2007, Alabama courts held that fire districts must take reasonable efforts in identifying and notifying the mortgagees. In Special Assets, LLC v. Chase Home Finance, LLC, 991 So.2d 668 (Al. 2007), the Supreme Court of Alabama held that the mortgagee has due process right to actual presale notice, rather than constructive notice through publication.

In practice, the fire district bills are typically sent to the property, not to the mortgagee. Therefore, while the mortgagees are now supposed to be provided actual notice of the pending foreclosure, mortgagees should nonetheless ensure that these fire district dues are paid on time so as to not risk being wiped out at foreclosure.