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ON DEPOSIT AND EARNING INTEREST: THE (ACHIEVABLE) FUTURE OF LAND BANKING IN ALABAMA

Sadly, many properties in Alabama have become unmarketable and, in turn, unusable because the properties are burdened by the piling on of various sorts of government-created liens (tax liens, weed liens, demolition liens, etc.) and/or have clouded titles. Over time, property owners lose interest in maintaining the property because the property becomes a never-ending money pit of liability rather than an asset. As neighborhoods accumulate more and more of these properties, instances of nuisances mutate into areas of blight.

In 2009, the Alabama Legislature adopted the Alabama Land Bank Authority Act ("the Act") in a noble attempt to put these properties back to use. *See* ALA. ACT. 2009-738, p. 2203. The Act, which was significantly amended in 2010, has been codified as Sections 24-9-1 through 24-9-9 of the *Code of Alabama* (1975). *See* ALA. ACT. 2010-727, p. 1827. Senator Linda Coleman from Birmingham was the champion for the creation of the Alabama Land Bank Authority ("Land Bank Authority") and the sponsor of the original bill and its amendment.

The purpose of the Act was to help "eliminate urban blight by working with property owners to clear back taxes and public liens." STAFF, *Birmingham Business Journal*, "State sets up authority to attack urban blight" (May 28, 2009). *See also* ALA. CODE § 24-9-2 (1975). To accomplish this purpose, the Land Bank Authority was created, and through the original Act and its amendment, the Legislature gave it the power to issue deeds in its own name, to engage in various real property transactions, to institute quiet title actions, and to do such other things that would be necessary "to carry out the powers and the purpose" of the Act. ALA. CODE § 24-9-5(i) (1975). Furthermore, the Land Bank Authority was authorized to acquire tax delinquent properties from the State in certain cases and, in turn, to dispose of the properties. *See* ALA. CODE §§ 24-9-6, 24-9-7 (1975). The types of property targeted by the Act are tax-delinquent property; "publicly owned property from local governments, including that which was acquired years earlier as a result of foreclosure proceedings of that property, or property that has become surplus;" voluntary donations; and private property needed "to complete an assemblage of property for redevelopment." ALA. CODE § 24-9-5(h) (1975). As for the tax delinquent properties, the Land Bank Authority can only purchase those properties that "have been sold to the state upon expiration of a five-year period from the date of the sale of the property for delinquent taxes." ALA. CODE § 24-9-6(a) (1975). Properties acquired by the Land Bank

Authority must either be conveyed 1.) to the municipality where the property is located, if applicable, 2.) to the county if the property is not within the corporate limits of the municipality, or 3.) to a purchaser who will "within two years from the date of the transfer deed, redevelop or sell or donate the property to another entity for redevelopment; otherwise, the property will revert to the authority." ALA. CODE § 24-9-6 (1975).

The real magic of the Land Bank Authority's purported powers, as opposed to those powers already held by local government, was what the Act authorized the Land Bank Authority to do with tax delinquent properties:

> When a tax delinquent property is acquired by the authority, ***the authority shall have the power to repeal and rescind all delinquent state, county, and city taxes, including school district taxes***, at the time it sells or otherwise disposes of such property; provided, however, that, with respect to school district taxes, the authority shall first obtain the consent of the board of education governing the school district in which the property is located. In determining whether or not to repeal and rescind delinquent taxes, the authority shall consider the public benefit to be gained by tax forgiveness with primary consideration given to purchasers who intend to build or rehabilitate low-income housing.

ALA. CODE § 24-9-7(a) (1975) (emphasis added). Shortly after the Act went into effect, Senator Coleman said, "Municipalities and counties can now work to rebuild communities because the barrier of clearing title to delinquent properties will be removed through the Land Bank Authority." STAFF, *Birmingham Business Journal*, "State sets up authority to attack urban blight" (May 28, 2009).

Ironically, the great strength of the Land Bank Authority has also been a bar to the program getting off the ground. Because the Land Bank Authority was authorized to easily strip liens from its banked properties without court involvement, there has always been a missing link of due process in the system. Without real due process, title companies have been reluctant to

insure title for land banked properties. Accordingly, the Legislature's great hope that the Act would put lien-burdened properties back to use has not been realized.

An equally important power given to the Land Bank Authority is the ability to institute quiet title actions. The original Act did not address whether the Land Bank Authority had the power to file an action to quiet title, but in the 2010 amendment to the Act, the Legislature specifically authorized the Land Bank Authority to institute actions to quiet title. *See* ALA. ACT. 2010-727, p. 1827 (codified in pertinent part as ALA. CODE § 24-9-5(i) (1975)).

> Statutes often give land banks the power to clear title to property they acquire. This is important because many properties that land banks acquire have substantial defects on their title. Properties acquired through previous tax foreclosures that are transferred from local governments to land banks often have clouded titles because of constitutionally inadequate notice proceedings. "A clear title is necessary to effectively redevelop foreclosures—it guarantees that a property is clear of all liens and certifies that a previous title holder cannot claim the property at a later date." ***Furthermore, "[tax foreclosed property] without clear title is undesirable to private buyers, who cannot obtain title insurance without [it]."***

PRATT, STUART, "A Proposal for Land Bank Regulation in North Carolina," 89 N.C. L. REV. 568, 591 (2011) (http://www.nclawreview.org/documents/89/2/pratt.pdf) (Citations omitted. Alterations in original. Emphasis added.). While the ability to clear title is critical to the success of land banking, a shortcoming of the Act is that it did not provide a simple, expedited, and affordable procedure for clearing title on land banked properties. Title companies have refused—rightfully so—to issue title insurance for land banked properties unless there has been an action to quiet title. However, the prosecution of an action to quiet title via traditional means is often not a realistic tool for properties that are the subject of the Act because court costs, attorney fees, publication fees, notice of *lis pendens* filing fees, and guardian *ad litem* fees can easily and quickly ***exceed the fair market value of the real property at issue***. Exacerbating the

need for a more efficient way of clearing titles in Alabama, is the prevalence of heir property, which is "land conveyed without a will from one generation to the next." ALABAMA APPLESEED, "Heir Property Project," http://www.alabamaappleseed.org/index.php?option=com_content&view=article&id=107&Itemid=95.

The present inability of the Land Bank Authority to provide clear titles for its inventoried properties in an economically feasible manner is the fundamental problem that gives rise to the need for new legislation. As soon as the next session of the Alabama Legislature, we hope that legislation will be introduced that will strengthen land banking in Alabama, enhance the Land Bank Authority's enumerated powers, authorize the creation of local land bank authorities, streamline the procedure to quiet title on land banked properties, and incorporate adequate due process into the lien stripping process. As municipal attorneys, we should support upcoming legislative efforts to promote land banking because it is consistent with our history of civic leadership and because it will serve broken neighborhoods in Alabama.

In the future, we should also consider supporting land banking and its related goals in other ways, including by creating a *pro bono* guardian *ad litem* pool to be established by the Alabama State Bar, by providing incentives for private property owners with clear title but excessive liens to donate their properties to the Land Bank Authority, by advocating the transfer of empty lots to neighboring homeowners who will maintain the properties and pay the *ad valorem* taxes on the same, and by promoting the creation of adopt-a-lot programs (see WOODSON, FRANK A., *Alabama Land Bank Authority Blog*, "Adopt-a-Lot," http://allandbank.blogspot.com/2011/03/dealing-with-empty-lot-next-door.html (posted Mar. 28, 2011, at 8:33 p.m.)). The key is to think creatively and outside-the-box. If there are things that we can dream to do to put blighted properties back to use, we should try to do them.