ALABAMA LAW

(Regular Session, 1973)

Act No. 656 S. 237—Shelby

AN ACT

To provide for a system of self-indexing of all land transfer instruments recorded in probate offices in counties having a population of not less than 115,000 nor more than 150,000 persons according to the last or any subsequent Federal Decennial Census.

Be It Enacted by the Legislature of Alabama:

Section 1. Definitions: For the purposes of this Act the following definitions shall apply:

(a) A "land transfer instrument" is any instrument in writing purporting to create, transfer, release, surrender or encumber any interest in land, legal or equitable, or to give notice of any claim against land, or to limit the right to use, transfer or encumber land, except the following:

a will; and

a map or plat; and

a notice of any tax levied against land, or any assessment for public improvements made by the State of Alabama, by any county or municipality or other instrumentality of the State of Alabama, or by any instrumentality of any county or municipality; and

a notice of any judgment, tax assessment or other proceeding creating a general lien against all the land of a named person; and

a record of the administration of any testate or intestate estate; and

a record of any judicial proceeding; and

an affidavit; and

a zoning ordinance; and

a complete or partial satisfaction, release or assignment of a mortgage or other lien; and the record of any sale of land, or any interest therein, to satisfy a lien for taxes assessed against such land or interest or for an assessment for public improvements, when such sale, tax assessment or assessment for public improvements is made by the State of Alabama, by any county or municipality of the State of Alabama, or by

any instrumentality of any county or municipality of the State of Alabama; or a deed executed by any public official in ratification of such sale.

(b) A "source of title" is one of the following:

A recorded instrument or instruments by which a person executing a land transfer instrument has acquired the title or other interest purportedly created or transferred or by which a person acquired the title or other interest against which a land transfer instrument evidences a claim: or

A recorded instrument or instruments, other than a power of attorney, by which a person executing a land transfer instrument acquired the right to execute such instrument; or

A recorded Possession Page, Estate Page or Judicial Decree Page as hereinafter defined.

(c) A "Possession Page" is a sheet of paper of the same size and quality as other sheets contained in the deed books. Such a page shall be inserted in the deed books by the judge of probate at the request of a person presenting for record a land transfer instrument evidencing a claim against a title or interest acquired by another exclusively by adverse possession or prescription without any reliance upon any recorded source of title. The page shall be designated at the head, "Possession Page." The heading shall be followed by the name of the person claiming by adverse possession or prescription. It shall thereafter contain a description of the land claimed and a brief statement as to the extent of the claim. The Possession Page shall be indexed in the reverse name index to deeds as though the claimant were the grantee. It shall not be indexed in the direct name index to deeds. Only one Possession Page shall relate to the claim of any designated person against a given tract of land. No Possession Page shall be established unless there is endorsed thereon an affidavit by an attorney at law stating he has examined the record and, to his best knowledge and belief, there is no other previously recorded Possession Page, or other recorded source of title, purporting to give notice of title to the same land acquired by the same person described as the claimant in the newly created Possession Page.

(d) An "Estate Page" is a sheet of paper of the same size and quality as other sheets contained in the deed books. Such a page shall be inserted in the deed books by the judge of probate at the request of a person presenting for recording a land transfer instrument, evidencing a claim against a title or interest acquired by testate or intestate succession. The page shall be designated at the head, "Estate Page." The heading shall be followed by the name of the decedent. The Estate Page shall also show the county in which the estate

was probated and the file number of the proceeding. If the estate has not been probated, the Estate Page shall contain the notation "Estate Not Probated," in lieu of the entry provided for in the preceding sentence. The Estate Page shall be indexed in the direct name index of deeds as though the deceased were the grantor, but no grantee will be shown. It shall not be indexed in the reverse name index to deeds. Only one Estate Page shall be created for any estate. Where the estate is being probated, or has been probated, in the same county where the land affected by the land transfer instrument lies, the judge of probate shall note in the margin, adjacent to the name of the estate, at the entry showing the initial application for probate, in the index of probated estates, that an Estate Page has been created for the estate and is recorded in an indicated deed book at an indicated page. Where an estate has not been probated, or has been probated in another county, the probate judge shall enter in the index of probated estates the name of the deceased, followed by the entry, "Unprobated Estate," or "Probated in _____ County" (naming the county), as the case may be. He shall then note in the margin adjacent to the name of the estate in the index that an Estate Page has been created and is recorded in an indicated deed book at an indicated page.

(e) A "Judicial Decree Page" is a sheet of paper of the same size and quality as other sheets contained in the deed books. Such a page shall be inserted in the deed books by the judge of probate at the request of a person presenting for recording a land transfer instrument evidencing a claim against a title or interest acquired by virtue of a judicial decree, other than a proceeding to probate a testate or intestate estate. The page shall be designated at the head, "Judicial Decree Page." The heading shall be followed by the style of the action to which it pertains, followed by the file number of the action, the office in which the record is lodged, and the book and page in which the final decree has been recorded. The Judicial Decree Page shall be indexed in the direct and indirect name index to deeds as though all the parties were both grantors and grantees. Only one judicial decree page shall be created for any one action or proceeding. When such a page has been established the judge of probate shall note in the margin of the lis pendens filed to give notice of the action or proceeding the fact that a judicial decree page has been created and is recorded in an indicated book at an indicated page. A lis pendens may be filed at any time, either before or after a final judgment or decree and shall continue to give notice after a final judgment or decree has been rendered. The filing of a final judgment or decree ordering the execution of a land transfer instrument, or sufficient in itself to transfer an interest in land, shall not be notice of its contents until such lis pendens has been filed. Without exclud-

ing any other type of action or proceeding, an action for divorce or separation, in which the court is asked to adjudicate, or does adjudicate, the property rights of a husband and wife, falls within the terms of this section.

(f) A "first endorsement" is the endorsement, required by Section 2 of this Act to be placed on the face of or in the margin of any land transfer instrument indicating how the instrument shall be indexed on the source of title.

(g) A "second endorsement" is that part of the first endorsement to be recorded in the claims list in the margin of the record of a source of title. It contains a description of the instrument to be listed in the claims list and the location of such instrument, and, where required, the index location of the land.

(h) A "claims list" is the list, in the margin of the record of any source of title, containing all second endorsements, as herein defined, indexing claims against the source of title. If the margin of the record of the source of title is insufficient to contain any or all of the second endorsements, an additional sheet or sheets of paper may be attached to the record of the source of title by means of metal grommets; or, in lieu thereof, a new page, to be called "an endorsement sheet", may be inserted in some other place in the deed books. If an endorsement sheet is inserted it shall relate to one and only one source of title and shall carry at the head the statement that it is an endorsement sheet for a designated record, recorded in a designated book at a designated page. Whenever an endorsement sheet is established for any source of title that fact and the location of the endorsement sheet shall be endorsed in the margin or on the face of the source of title. Any sheet or sheets attached by grommets and any endorsement sheet shall be deemed a part of the margin of the original record.

(i) An "instrument to be indexed" or "instrument to be recorded" is any land transfer instrument presented for record.

(j) A "person" includes both the singular and the plural, a corporation, an estate, an executor, an administrator, a partnership and any other legal entity capable of conveying an interest in land.

(k) The "probate judge" is the probate judge for the county in which any land, title to which is affected by an instrument to be recorded or indexed under the terms of this Act, lies.

(l) "Agreements not to encumber" shall be treated, for purposes of recording and indexing, as though they are mortgages. For purposes of indexing the person agreeing not to encumber shall be treated as the mortgagor and the person to whom the promise is made as the mortgagee.

(m) The index location of any land gives the township, range, section and quarter-quarter section in which the land lies, or, in lieu thereof, gives a reference to the parcel number of the land according to a map or plat recorded in the office of the probate judge in which the land lies, identified by reference to the book and page where the map or plat is recorded.

Section 2. Endorsement on Instruments: After the effective date of this Act no probate judge in any county having a population of not less than 115,000 nor more than 150,000 persons, according to the last or any subsequent Federal Decennial Census, shall accept for recording any land transfer instrument which does not carry on its face or on the margin a first endorsement. The first endorsement shall be in substantially the following language: "Endorse in claims list on the source or sources of title, recorded in _____ (giving kind of book, number of book and page therein where the source of title is found) the following: '_____' (giving a brief description of the land transfer instrument upon which the first endorsement appears, such as deed, mortgage, lease, contract or similar instrument) recorded in _____ book number _____ at page _____." Where the land transfer instrument affects less than all the land described in the source of title or where the source of title is a testate or intestate estate or a judicial decree, the endorsement set out above shall be followed by the index location of the land affected. The probate judge may, in his discretion, permit abbreviations to be used in the endorsement, so long as such abbreviations are consistent and intelligible. The probate judge and his deputies are forbidden to make the first endorsement on the land transfer instrument or to fill in the entries showing the source of title other than a Possession, Estate or Judicial Decree page not already established; except that where two instruments are presented for recording, the first constituting both a claim against a pre-existing source of title and a source of title against which the second instrument is evidence of a claim, and the second is filed before the first has been assigned a book and page number for recording, the source of title entries in the endorsement on the second instrument shall be filled in by the probate judge or his deputy after the first instrument has been assigned a book and page number for recording. The probate judge or his deputy, when the instrument to be recorded has been assigned a book and page number for recording, shall complete the entries to be used in the second endorsement. When the first endorsement is completed, the second endorsement, consisting of the description of the instrument to be recorded and the location where it is recorded, and, when required, the index location of the land, shall be

copied in the claims list in the margin of the record of the source of title.

If the land transfer instrument evidences a claim against more than one source of title, all such sources shall be listed in the first endorsement and the second endorsement shall be entered in the claims list in the margin of the record of each such source of title.

If the source of title of the person against whom a claim is made, or of the grantor named in any other land transfer instrument, is an unrecorded instrument not immediately available for recording by the person seeking to record any land transfer instrument, such fact shall be set forth in the first endorsement, together with a recitation of the chain of title back to the last recorded source of title. In such case the second endorsement shall be entered in the margin of the record of the last recorded source of title. If the source of title of the grantor, or person against whom a claim is made, is an unrecorded instrument immediately available for recording by the person seeking to record the land transfer instrument, the judge of probate shall require the recording of the source of title as a prerequisite to the recording of the land transfer instrument.

When the source of title is an intestate or testate estate the first endorsement shall recite such fact and the book and page number where testate or intestate's source of title is recorded and the book and page number where the Estate Page is recorded. An Estate Page shall be established, if one is not already recorded, and the second endorsement shall be entered in the claims list on the Estate Page. When the source of title is a testate or intestate estate and the testator or intestate acquired his interest through another testate or intestate estate, the first endorsement shall recite the chain of title back to the last land transfer instrument recorded in the deed books. An Estate Page shall be established for each estate in the chain of title for which an Estate Page has not previously been established and the second endorsement shall be entered in the claims list on each Estate Page and in the margin of the last land transfer instrument recorded in the deed books.

When the only source of title is adverse possession or prescription the first endorsement shall recite such adverse possession or prescription and the book and page number where the Possession Page is recorded. A Possession Page shall be established, if one is not already recorded, and the second endorsement shall be entered in the claims list on the Possession Page.

When the source of title is a judicial decree, other than that contained in a proceeding to probate a testate or intestate estate, the first endorsement shall recite such fact and the

book and page number where the Judicial Decree Page is recorded. A Judicial Decree Page shall be established, if one is not already recorded, and the second endorsement shall be entered in the claims list on the Judicial Decree Page.

If a land transfer instrument executed prior to the effective date of this Act is presented for recording the probate judge may accept it for recording despite the fact that it does not bear on its face a first endorsement, if and only if there is endorsed on the instrument or attached thereto for recording an affidavit by an attorney at law stating that he has searched the record and, to his best knowledge and belief, there is no recorded source of the grantor's title or no recorded source of title of the person against whom the instrument represents notice of a claim. Upon recording an instrument under the terms of this paragraph the probate judge shall not be required to enter any second endorsement.

Section 3. Satisfactions, etc. of Mortgages: Where the satisfaction, release or assignment of any mortgage or other lien, or a power of attorney to execute such satisfaction, release or assignment, is not entered in full on the face of the record of tne mortgage or lien, but is recorded at some other place in the mortgage books or other series of land title records maintained in the probate judge's office, the probate judge shall enter in the margin of the record of the mortgage or lien a notation showing the book and page number where the satisfaction, release, assignment or power of attorney is recorded. Where a release or satisfaction affects only a part of the land subject to the release or satisfaction the index location of the land affected shall also be entered.

If the margin of a mortgage is insufficient to contain all required endorsements it may be enlarged in the same fashion as provided for the enlargement of margins of sources of title in Section 1 (h) of this Act.

Section 4. Prior Acts Not Repealed: Nothing contained in this Act shall repeal any existing statute providing for the recording and indexing of instruments creating or transferring any interest in land.

Section 5. Fees: For indexing any instrument in compliance with the provisions of this Act the probate judge shall, in addition to all other fees heretofore provided by law, be entitled to receive a fee of one dollar where only one second endorsement is required and one dollar plus twenty-five cents for each additional endorsement where more than one second endorsement is required. All fees collected under the terms of this section shall be deposited with the county treasurer, or other official having custody of the general funds of the county, and shall be held by him in a special fund. The probate judge shall be authorized, at his discretion, to draw war-

rants, payable out of this fund, to compensate any additional clerk or clerks employed in the probate office to carry out the indexing provided for by this Act, or to increase the compensation of any clerk already employed. Any sums remaining in this special fund at the end of the fiscal year shall be transferred to the general funds of the county. The probate judge is authorized to employ an additional clerk or clerks to carry out the indexing provided for in this Act; provided that, without authorization of the county commission or other county governing board, no compensation shall be paid to such clerk or clerks, other than sums drawn from the special fund above provided for.

Section 6. Counties Exempted: This Act shall apply only to counties having a population of not less than 115,000 nor more than 150,000 persons according to the last or any subsequent Decennial Federal Census.

Section 7. Effective Date: This Act shall take effect six months after its passage by the Legislature and its approval by the Governor or upon its otherwise becoming law.

Section 8. Standard Severability Clause: If for any reason, any section, paragraph, provision, clause or other part of this Act shall be held unconstitutional or invalid, the fact shall not invalidate any other section, paragraph, provision, clause or other part of this Act in and of itself constitutional and valid, and the remaining parts thereof shall be in force without regard to that so held unconstitutional or invalid; provided, further, that if any section, paragraph, provision, clause or other part shall be held unconstitutional or invalid when applied to a given set of facts, such action shall not invalidate such section, paragraph, clause or other part when applied to another and different set of facts.

Approved August 30, 1973.

Time: 4:45 P.M.

I hereby certify that the foregoing copy of an Act of the Legislature of Alabama has been compared with the enrolled Act and it is a true and correct copy thereof.

Given under my hand this 5th day of September, 1973.

McDOWELL LEE
Secretary of Senate