



Mississippi

Prepared by Lex Mundi member firm,
Butler Snow LLP

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DOING BUSINESS
IN MISSISSIPPI

A LEGAL GUIDE

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OVERVIEW OF LEGAL GUIDE

Mississippi created one of the first formal plans in the country designed to incentivize businesses to locate in the state, and continues to offer a top-of-the-scale environment for both new and existing businesses. We have written the following legal guide as one tool for any business that is already located here, but more particularly for businesses that are interested in pursuing Mississippi as a location of choice.

Whether companies are expanding operations in their existing locations, or seeking new locations for operations, Butler Snow attorneys specialize in helping to lead these efforts. Butler Snow regularly works with a cross-section of government agencies for permitting, legislation, tax and incentive negotiations, land acquisitions and other critical site selection issues. We frequently assist companies with restructurings, tax increment financing, New Markets Tax Credits, mergers, acquisitions and regulatory and administrative issues. In support of those efforts, we have developed extensive relationships at the local, state and national level with governmental, economic development, civic, legislative and environmental leaders.

Our attorneys are experienced in all types of tax and financing incentives offered by state and local government to encourage economic development. Members of our Economic Development Group have represented numerous manufacturing, processing, distribution, warehousing and other clients in site acquisition, governmental financing programs, other financing transactions and tax incentives. Whether the deal is large or small, we structure transactions to take advantage of numerous economic development incentives, including:

- Industrial development bonds (IDBs) both taxable and tax-exempt
- New Markets Tax Credits
- Sales, use and contractors' tax exemptions on construction costs
- Local ad valorem tax exemptions
- State income tax credits

The firm has longstanding relationships with local economic development professionals and local governmental officials (Boards of Aldermen, Boards of Supervisors, City Councils), as well as officials of the Mississippi Development Authority, the Mississippi Business Finance Corporation, the Mississippi Department of Revenue, the Mississippi Bond Commission and the Mississippi Attorney General's office.

We know economic development law in Mississippi, in large part because we helped draft much of it. We are proud of what we have done to improve the economic climate of our state, and we are eager to do more to help our existing and new businesses succeed.

OVERVIEW OF BUTLER SNOW LLP

THE FIRM

With more than 320 lawyers and with 17 offices across the United States and in London and Singapore, Butler Snow's practice areas include the full range of business law and litigation services. We offer the depth to represent a broad spectrum of international, national and regional clients in a variety of legal areas, including Business Services, Public Finance and Incentives, Government and Environmental, Tax, Pharmaceutical, Medical Device and Healthcare, Product Liability, Environmental, Intellectual Property, Commercial Litigation, Appellate and Written Advocacy, Investigations, General Litigation and Labor and Employment.

Our team approach allows us to utilize resources across the firm to match legal experience with client needs. As a result, clients benefit from our strategic counsel, efficient execution and innovative solutions to complex challenges.

Butler Snow has been recognized repeatedly for our teamwork and our clients' successes, across a variety of service areas. Recently, Law360 ranked the firm as "One of the Top Ten Busiest Product Liability Practices" in its *Law360 2009 Litigation Almanac*. Butler Snow was named in *Best's Review* as one of 69 law firms "Standing the Test of Time," the firm having been recommended for decades by the insurance companies we have represented. Also, the *National Law Journal* named Butler Snow to its Midsize Hot List, making the firm one of only 20 nationwide named for demonstrating creative, innovative strategies; developing practice areas; and recruiting and retaining top legal talent.

In an increasingly sophisticated business environment, clients need law firms that have the experience and depth to handle significant matters. Our attorneys offer diverse legal, business and governmental backgrounds, bringing vast experience and practical knowledge to each client they represent. Our practice areas are focused on specific legal disciplines, but we also have teams that are equipped to address the needs of particular industries, including healthcare, banking and finance, gaming, environmental, manufacturing, governmental, pharmaceutical, telecommunications and insurance.

We have represented clients in all 50 states and in the District of Columbia, as well as internationally in more than 40 countries, including Australia, Canada, the Peoples Republic of China, Colombia, Hong Kong, Kuwait, Mexico, Saudi Arabia, Singapore and the United Kingdom.

Chambers USA - America's Leading Lawyers for Business describes Butler Snow as having "enormous power and presence" with a team of attorneys who have achieved national prominence because of "sheer, unambiguous quality." According to Chambers, our clients refer to the firm as "well-known for being successful" and our

attorneys as “real deal-makers.” Chambers also noted the firm’s ability to deliver to the client “the whole package – intelligence, presence and trial experience.”

The attorneys of Butler Snow are ready to meet your legal needs - whether in multi-million-dollar appeals where vital interests are at stake or in more routine business and corporate matters. At Butler Snow, our clients’ interests are paramount, and we focus on exceeding expectations.

OUR PEOPLE

Butler Snow lawyers are recognized regionally, nationally and internationally for their expertise and contributions to the profession. Butler Snow’s core values are reflected by these honors and in the satisfaction of our clients.

Nine litigators are Fellows of the American College of Trial Lawyers, six are members of the American Board of Trial Advocates, six are recognized in the *International Who’s Who of Business Lawyers*, four are named in the *Who’s Who Among International Product Liability Lawyers*, and six are members of the Product Liability Advisory Council (PLAC). The firm’s trial lawyers have directed and served on the faculty of the IADC Defense Counsel Trial Academy, the ABA’s TIPS National Trial Academy and the National Advocacy Center for the United States Department of Justice. Butler Snow attorneys also hold leadership positions in the Business Law and Litigation Sections of the American Bar Association, and almost half are rated AV by Martindale-Hubbell.

One-half of all Butler Snow attorneys are listed in *The Best Lawyers in America*®, including 167 listings in 48 practice areas from litigation, alternative dispute resolution, bankruptcy and real estate, to intellectual property, corporate law practices, appellate law, and labor and employment.

Over 100 Butler Snow attorneys were named to Super Lawyers® and Rising Stars® 2015, an honor bestowed upon less than five percent of attorneys nationwide. Some of the practice areas included were Securities and Corporate Finance, Business Litigation, Employment and Labor and Appellate.

For more information on Butler Snow, please visit our website at www.butlersnow.com.

Table of Contents

	<u>Page</u>
I. INTRODUCTION	1
1. CULTURAL BACKGROUND	1
2. INVESTMENT CLIMATE AND RECENT SIGNIFICANT ECONOMIC EVENTS	2
II. MISSISSIPPI BUSINESS ENTITIES	4
1. CORPORATIONS.....	4
2. PARTNERSHIPS.....	7
3. LIMITED LIABILITY COMPANIES.	8
4. SOLE PROPRIETORSHIPS.....	11
5. JOINT VENTURES	11
6. NONPROFIT CORPORATIONS.....	11
III. MISSISSIPPI TRADE REGULATIONS	13
1. MISSISSIPPI CONSUMER PROTECTION LAWS.....	13
IV. MISSISSIPPI TAX LAWS	14
1. INCOME TAX OVERVIEW	14
2. PERSONAL INCOME TAX	14
3. CORPORATE INCOME TAX.....	14
4. PARTNERSHIP INCOME TAX	15
5. INSURANCE COMPANY PREMIUM TAX	15
6. SUBCHAPTER-S CORPORATIONS	16
7. CORPORATE FRANCHISE TAX	16
8. AD VALOREM TAX.....	17
9. SALES AND USE TAX	18
10. CONTRACTOR'S TAX	18
11. TAX INCENTIVES	19
V. MISSISSIPPI LABOR AND EMPLOYMENT LAWS	19
1. STATE LABOR LAWS	19
2. STATE DISCRIMINATION STATUTES.....	20
3. DRUG AND ALCOHOL TESTING.	20
4. OFF-DUTY CONDUCT.	21
5. COVENANTS NOT TO COMPETE.....	21

6.	WAGE AND HOUR LAWS.....	21
7.	CHILD LABOR.....	21
8.	WORKERS' COMPENSATION.....	22
9.	UNEMPLOYMENT INSURANCE.....	22
10.	RIGHT TO WORK ACT.....	22
VI.	MISSISSIPPI ENVIRONMENTAL LAWS	22
1.	MISSISSIPPI AIR AND WATER POLLUTION CONTROL LAW.....	22
2.	MISSISSIPPI SOLID WASTE DISPOSAL ACT.....	23
3.	UNDERGROUND STORAGE TANK ACT OF 1988.....	23
4.	RADIOACTIVE WASTE TRANSPORTATION ACT.....	23
5.	MISSISSIPPI SAFE DRINKING WATER ACT OF 1997.....	23
6.	MISSISSIPPI SURFACE COAL MINING AND RECLAMATION LAW.....	23
7.	MISSISSIPPI SURFACE MINING AND RECLAMATION LAW.....	23
8.	CHANNEL MAINTENANCE ACT.....	23
9.	COASTAL WETLANDS PROTECTION ACT.....	24
10.	MISSISSIPPI WATER RESOURCES LAW.....	24
11.	MISSISSIPPI SCENIC STREAMS STEWARDSHIP ACT.....	24
12.	MISSISSIPPI PRESCRIBED BURNING ACT.....	24
13.	MISSISSIPPI BROWNFIELDS VOLUNTARY CLEANUP AND REDEVELOPMENT ACT.....	24
14.	MISSISSIPPI INDIVIDUAL ONSITE WASTEWATER SYSTEMS LAW.....	24
15.	MISSISSIPPI OIL AND GAS DEVELOPMENT, PRODUCTION, AND DISTRIBUTION LAW.....	24
16.	MISSISSIPPI LENDER LIABILITY LAW.....	24
17.	PROTECTION OF CONFIDENTIAL INFORMATION.....	25
VII.	MISSISSIPPI INTELLECTUAL PROPERTY LAWS	25
1.	TRADEMARKS/SERVICE MARKS.....	25
2.	TRADE NAMES.....	26
3.	TRADE SECRETS.....	26
4.	RIGHTS OF PUBLICITY/PRIVACY.....	27
5.	UNFAIR COMPETITION/DECEPTIVE TRADE PRACTICES.....	27
6.	BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT.....	28

VII.	MISSISSIPPI COURT SYSTEM	28
1.	STATE TRIAL COURTS	28
2.	STATE APPELLATE COURTS	30
3.	STATE TAX COURT	31
IX.	FINANCING INVESTMENTS IN MISSISSIPPI	31
1.	TAX-EXEMPT FINANCING	31
2.	MISSISSIPPI COMMERCIAL BANKING	34
3.	MISSISSIPPI SECURITIES REGULATION.	34
4.	MISSISSIPPI USURY LAWS.	35
X.	MISSISSIPPI REAL ESTATE LAWS	36
1.	OWNERSHIP	36
2.	CONCURRENT OWNERSHIP	37
3.	SPOUSAL RIGHTS	37
4.	PURCHASE AND SALE OF PROPERTY	38
5.	FORECLOSURES	39
6.	EASEMENTS	40
7.	LEASES	40
8.	ZONING	41
9.	EMINENT DOMAIN	41
10.	MINERAL RIGHTS	41

I. INTRODUCTION

1. Cultural Background.

Mississippi has five distinct regions. The culture in these five regions varies greatly, which is one attribute that makes Mississippi so attractive. Within a day's driving time, one can enjoy the rich literary legacies of Oxford in the hills and stroll on the white sands of the beaches in Biloxi.

The coastal region is home to casinos and resorts that offer golf and charter fishing, as well as spas, 24-hour gaming, dining and live entertainment. The Coast is also home to the Stennis Space Center, one of NASA's leading facilities for technology development, and the Northrop Grumman shipyards in Pascagoula. Further north are the historic districts of Hattiesburg and Laurel, which showcase exquisite Victorian and turn-of-the-century mansions built by lumber barons. Located in Laurel is the Lauren Rogers Museum of Art, Mississippi's oldest and one of its finest art museums.

The Capital/River region stretches from Jackson to the historic towns that line the bluffs of the Mississippi River. Jackson is home to exceptional historical, art and natural science museums, boutique shopping, and restaurants representing virtually every culinary style. Other history-rich cities include Natchez, home to the nation's largest collection of antebellum mansions; Port Gibson, the town that General Grant deemed "too beautiful to burn"; and Vicksburg, where the tide of Civil War turned most emphatically in favor of a United States of America.

The Pines region is home to sacred Native American homelands and postcard-pretty historic towns. Columbus was the site of America's first Memorial Day observance, when a group of Civil War widows decorated the graves of both the Confederate and Union dead. To the West, the Natchez Trace Parkway towns of French Camp and Kosciusko still boast the frontier charm that has made them popular stops since the 1700s. The Mississippi Band of Choctaw Indians' reservation is located near Philadelphia, where one of the state's popular casino resorts attracts thousands of visitors each day. Each summer, Philadelphia also hosts the Neshoba County Fair, also known as "Mississippi's Giant House Party."

Even before the casinos sprang up out of the cotton fields, the Delta was already famous as the birthplace of the blues and as the repository of the richest farmland "this side of the Valley Nile." Cities like Greenville and Greenwood are known for hosting lively festivals celebrating the area's rich musical and cultural heritage. Clarksdale's Delta Blues Museum showcases the history and cultural influence of America's only original music. Beloved southern writer Willie Morris grew up in Yazoo City and immortalized his hometown in the book *My Dog Skip*. In nearby Cleveland, musical events and Broadway plays often grace the stages of the Bologna Performing Arts Center located on the campus of Delta State University. Acclaimed actor and Delta resident Morgan Freeman can often be found enjoying a meal at his own gourmet restaurant, Madidi, in Clarksdale.

The Hills region stretches across the northeastern quarter of Mississippi, from the edge of the Mississippi River Delta to the foothills of the Appalachian Mountains. Most of the more than 500 Civil War battles waged on Mississippi soil were fought in this area. Aspiring authors and lovers of literature are drawn to Oxford, home of the University of Mississippi (or Ole Miss, as it is affectionately known), hoping some of the magic that inspired William Faulkner or John Grisham, and dozens of others, still lingers. One of the world's most enduring cultural icons, Elvis Presley, was born in Tupelo, where a museum of his birthplace has become a busy tourist attraction.

2. Investment Climate and Recent Significant Economic Events.

In recent years, Mississippi has made significant strides in creating an environment that is conducive for the growth of existing businesses, and businesses seeking to locate new operations in the state. Examples include Nissan's \$1.5 billion capital investment and creation of over 5,000 direct jobs, and Toyota USA's announcement of manufacturing operations in the northern part of the state. An even more recent example, Twin Creeks Technologies, a venture-backed solar technology company, announced its decision to locate a solar panel manufacturing facility in Senatobia, Mississippi.

Many factors have contributed to the decisions of these and other companies to locate their businesses in Mississippi. These factors include ample state and local tax and other economic incentives; a quality workforce subject to balanced labor and employment laws; a central US location with direct access to the Mississippi River, Tennessee-Tombigbee River Waterway, and deepwater ports located on the Gulf of Mexico; a solid rail and highway transportation infrastructure; relatively low income and franchise taxation; and a balanced legal system vastly improved with the passage of major tort reform. Additional details about the business climate in Mississippi are provided below.

Economic Incentives

Tax-exempt financing programs in Mississippi offer eligible companies below-market borrowing costs and other economic development incentives. These financing programs are administered at two levels: state-wide through the Mississippi Business Finance Corporation (<http://www.msbusinessfinance.com/>) and the Mississippi Development Authority (<http://www.mississippi.org/>), and locally through cities, counties, regional planning and development districts, and economic development authorities.

The Mississippi Business Finance Corporation (MBFC) is a statewide financing source that allows eligible companies to obtain tax-exempt financing and other incentives. MBFC offers tax-exempt variable and fixed rate financing through several programs including the Small Enterprise Development Finance Program and the Industrial Development Revenue Bond Program. MBFC also offers a sale/use tax exemption for eligible projects financed through MBFC programs. Until December 31, 2011, for areas of Mississippi most affected by Hurricane Katrina, the federal Gulf

Opportunity Zone Act of 2005 offers significant investment incentives for new and existing businesses and industries.

The Mississippi Development Authority (MDA) administers the Community Development Block Grant Program (CDBG) to fund publicly owned infrastructure through both grants and loans. Funding from the CDBG program can be used by Mississippi municipalities and counties to assist with the construction, renovation or expansion of Mississippi businesses and industrial facilities.

Mississippi cities and counties may issue tax increment financing bonds to encourage economic development within designated areas by financing public infrastructure improvements for public or private development projects without the necessity of issuing general obligation bonds. Developers may utilize a special public improvement district to finance various public infrastructure improvements. These financings are repaid with tax assessments levied on real property within the district.

Favorable Labor and Employment Laws

Mississippi is a right-to-work state, with Mississippi statutory and constitutional law showing that the state supports the right of a person to work without regard to membership or non-membership in any labor union or labor organization. Mississippi is also an at-will employment state and, absent a contract to the contrary and subject to limited exceptions, the employer is free to terminate an employee's employment. In addition, employee non-compete clauses, though not favored, generally will be enforced in Mississippi if reasonable as to duration and as to geographic scope.

Corporate Income and Franchise Taxes

Mississippi imposes an income tax on the net income of corporations doing business in this state. The Mississippi taxable income of multi-state corporations doing business in Mississippi is generally calculated by multiplying an apportionment formula (consisting of one or more of property, payroll and sales factors) against the total net income of the corporation. Mississippi income tax rates are three percent (3%) of the first Five Thousand Dollars (\$5,000.00) of taxable income, four percent (4%) of the next Five Thousand Dollars (\$5,000.00) of taxable income, and five percent (5%) of all remaining taxable income. Several credits are available to reduce the Mississippi corporate income tax liability including the Jobs Tax Credit, the National or Regional Headquarters Tax Credit and the Research and Development Skills Tax Credit.

Mississippi imposes a franchise tax on the taxable capital value of most corporations doing business in Mississippi. Taxable capital is the greater of (i) the assessed value of the corporation's tangible property in Mississippi or (ii) the book value of its outstanding capital stock, paid-in capital, surplus, retained earnings, deferred taxes, contingent liabilities and true reserves. The Mississippi taxable capital of multi-state corporations doing business in Mississippi is generally calculated by multiplying an apportionment formula (consisting of the property and receipts factors) multiplied against the corporation's total taxable capital. The Mississippi corporate franchise tax

rate is Two and 50/100 Dollars (\$2.50) per One Thousand Dollars (\$1,000.00) of taxable capital. Mississippi offers a franchise tax exemption for corporations locating in growth and prosperity areas.

Fair Legal System

Mississippi enacted major tort law reform that has significantly enhanced the business climate. Among these reforms, the Mississippi Legislature adopted reasonable limits on both noneconomic and punitive damages and venue provisions more favorable to potential defendants. The above and other legislative reforms, combined with the Mississippi Supreme Court decision to return to traditional plaintiff joinder rules, have significantly decreased mass tort litigation in Mississippi and have provided a more positive legal environment for corporations doing business within the state.

In light of the above events, Mississippi has become more attractive to business development in the state. With more protection for business from lawsuit abuse and the advancement of the workforce with other significant projects, the future of Mississippi's business community is bright.

II. MISSISSIPPI BUSINESS ENTITIES

1. Corporations.

(a) **Introduction.** Patterned after the Model Business Corporation Act, the Mississippi Business Corporation Act (the "Corporation Act") was adopted in 1987, replacing the existing statutory framework governing business corporations. The Corporation Act is contained in Miss. Code Ann. § 79-4-1.01 *et seq.*

(b) **Formation.** A Mississippi corporation is formed by the filing of articles of incorporation with the Mississippi Secretary of State (the "Secretary of State"). Articles of incorporation must be signed by one or more incorporators and submitted with the applicable filing fee, which is currently Fifty Dollars (\$50.00). Unless a later effective date is specified in the articles of incorporation, corporate existence begins when the articles are filed. The Constitution of the State of Mississippi provides that a corporation must be organized and commence doing business within two (2) years from the filing date of the articles of incorporation.

(c) **Articles of Incorporation.** The articles of incorporation must include the following: the proper name of the corporation; the number of shares the corporation is authorized to issue and information as to any classes of stock, and any preferences, rights and limitations of such classes; the street address and name of the corporation's non-commercial registered agent or name of the corporation's commercial registered agent (the "Required § 79-35-5(a) Information"); and the name and address of each incorporator. The articles may contain the names and addresses of initial

directors, the purposes, management, and powers of the corporation, any provision allowed or required to be set forth in the bylaws, certain provisions limiting the directors' liability, and a provision requiring the corporation to indemnify the directors for certain obligations.

(d) **Name.** Mississippi requires that the name of a business corporation contain the word "Corporation," "Incorporated," "Company" or "Limited," or an abbreviation of one of these words. The name of a corporation must be distinguishable from the names of entities organized or qualified to do business in the State of Mississippi and must comply with other guidelines provided for under the Corporation Act.

(e) **Bylaws.** The bylaws of the corporation must be adopted by the incorporators or the board of directors. The bylaws may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with applicable law or the articles of incorporation. Generally, the bylaws may be amended by the board of directors or the shareholders, provided, however, the bylaws or articles of incorporation may provide that only the shareholders may amend the bylaws.

(f) **Shares.** Unless the power is reserved to the shareholders in the articles of incorporation, the board of directors has the authority to issue shares of the corporation for any consideration deemed adequate. The corporation must authorize one or more classes of shares that together have unlimited voting rights, as well as one or more classes of shares that together are entitled to receive the net assets of the corporation at dissolution. A corporation may acquire its own shares, and such shares that are acquired by the corporation constitute authorized but unissued shares.

(g) **Limited Liability.** A shareholder is not liable to the corporation or its creditors with respect to his shares except to pay the consideration for which the shares were authorized to be issued. Furthermore, a shareholder is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

(h) **Preemptive Rights.** The shareholders of a Mississippi corporation do not have a preemptive right to acquire the corporation's unissued shares unless the articles of incorporation expressly provide such right.

(i) **Shareholders.** Generally, shareholders act by resolutions approved by a majority vote at a meeting at which a quorum is present. Unless the articles of incorporation or the Corporation Act requires otherwise, a quorum is a majority of the votes entitled to be cast by the shareholders. Unless directors are elected by written consent, a Mississippi corporation is required to hold an annual meeting of the shareholders of the

corporation at the time and place stated in the bylaws. At the annual meeting, the shareholders elect the board of directors. Unless otherwise provided in the articles, directors are elected by a plurality of the vote at a meeting at which a quorum is present. For corporations incorporated before July 1, 2002, shareholders have a right to cumulate their votes for directors unless otherwise provided in the articles; for corporations incorporated on or after July 1, 2002, shareholders do not have a right to cumulate their votes for directors unless otherwise provided in the articles. A Mississippi corporation must hold a special shareholders' meeting if: (i) one is called by the board of directors or the person or persons authorized to do so by the articles or bylaws; or (ii) unless the articles of incorporation provide otherwise, shareholders having 10% or more of all votes entitled to be cast upon the issue proposed to be considered at the special meeting provide a written demand for the meeting. In lieu of an actual meeting (either annual or special), the shareholders may act by unanimous written consent.

(j) **Board of Directors.** Absent an agreement among all the shareholders as permitted by Miss. Code Ann. § 79-4-7.32, a corporation must have a board of directors, and the board must manage and direct the business and affairs of the corporation. If the articles of incorporation do not name the initial board of directors, the incorporator(s) will elect the initial board of directors. The board must consist of one or more individuals as specified in the corporation's articles or bylaws. The directors must be elected at the first annual shareholders' meeting and at each annual meeting held thereafter, unless the corporation has provided in its articles for staggered terms for its directors. Directors may act by resolution at a regular or special meeting of the directors where a quorum is present, or directors may act by unanimous written consent. Each director is charged by Mississippi law to discharge the duties of a director in good faith, and in a manner that the director reasonably believes to be in the best interests of the corporation.

(k) **Officers.** Every Mississippi corporation must have at least one officer charged with keeping minutes of the directors' and shareholders' meetings and maintaining and authenticating the records of the corporation. Corporations typically have a president, vice president, secretary and treasurer, and may have a chairman of the board, chief financial officer or other officers specified in the articles of incorporation or the bylaws. Mississippi law allows for one individual to simultaneously hold more than one office.

(l) **Authority of Shareholders, Directors and Officers.** The shareholders must vote on certain fundamental matters, such as amendments to the articles of incorporation (subject to certain exceptions), mergers and share exchanges (subject to certain exceptions), a sale, lease, exchange or other disposition of the assets of the corporation that would leave the corporation without a significant continuing business activity, and

dissolution. Generally, all other matters are within the authority of the board of directors, and the board of directors may delegate to certain officers the authority to perform actions within the ordinary course of business of the corporation.

(m) **Mergers.** A Mississippi corporation may merge with a Mississippi or foreign corporation or other eligible entity pursuant to a plan of merger. The plan of merger must be approved by the board of directors and, except in certain circumstances, recommended by the board for approval to the shareholders and actually approved by the shareholders. A foreign corporation or other entity may be a party to the merger only if the merger is permitted by the laws under which the corporation or other entity is governed, and in effecting the merger, the entity complies with such laws and with its articles of incorporation or organizational documents. The plan of merger must include the name of each entity, the name of the surviving entity, the terms and conditions of the merger, the manner of converting the shares of each merging corporation and interests of each other entity, and the organizational documents of the surviving entity. A merger is made effective by filing articles of merger with the Secretary of State.

(n) **Annual Reports.** A corporation organized in the State of Mississippi and all foreign corporations authorized to transact business in the State of Mississippi must file an annual report with the Secretary of State each year.

2. **General and Limited Liability Partnerships.**

(a) **General Partnership.** Mississippi general partnerships are governed by the Uniform Partnership Act, which is contained in Miss. Code Ann. § 79-13-101 *et seq.* (the “Partnership Act”). The Partnership Act defines a partnership as “an association of two (2) or more persons to carry on as co-owners a business for profit.” Mississippi does not require general partnerships to file or register with any governmental authority. To determine if a partnership has been formed, Mississippi law will look to (i) the intent of the parties, (ii) the control of the undertaking, and (iii) and profit sharing. Mississippi courts have found profit sharing to be the most important factor in determining whether a partnership has been formed.

(b) **Agency and Liability.** Generally, every partner is an agent of the partnership, and the act of a partner in carrying out the usual business of the partnership is binding on the partnership. Subject to certain exceptions, each partner of a general partnership is jointly and severally liable for all debts and obligations of the partnership.

(c) **Annual Reports.** A general partnership is not required to file an annual report with the Secretary of State.

(d) **Limited Liability Partnership.** A Mississippi general partnership may obtain limited liability for its partners by registering with the Secretary of State as a limited liability partnership. In order to receive such protection, the partnership must file a statement of qualification with the Secretary of State. A partner in a limited liability partnership is not liable for any debt or obligation of the partnership, whether arising in tort, contract or otherwise, solely by reason of being or acting as a partner. The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP" or "LLP."

3. **Limited Partnerships.**

(a) **Introduction.** The Mississippi Uniform Limited Partnership Act is contained in Miss. Code Ann. § 79-14-101 *et seq.* (the "Limited Partnership Act") and became effective July 1, 2015. Prior to the Limited Partnership Act, limited partnerships were governed by the Mississippi Limited Partnership Act. Unless the partners of a limited partnership otherwise elect and subject to certain exceptions, until January 1, 2017, the Limited Partnership Act only governs limited partnerships formed on or after July 1, 2015.

(b) **Formation.** To form a limited partnership, a certificate of limited partnership must be filed with the Secretary of State and must become effective, the limited partnership must have at least two partners, at least one person must have become a general partner, and at least one person must have become a limited partner. The certificate of limited partnership must state the name of the limited partnership (which must comply with § 79-14-114), the Required § 79-35-5(a) Information, the street and mailing addresses of the limited partnership's principal office, the street and mailing addresses of each general partner, and whether the limited partnership is a limited liability limited partnership.

(c) **Limited Partners.** Upon formation of a limited partnership, a person may become a limited partner by agreement of the initial partners. After formation, a person becomes a limited partner pursuant to the partnership agreement, as the result of a merger, by a vote or consent of all the partners, or pursuant to § 79-14-801(a)(4) or (5). A limited partner is not an agent of the limited partnership solely by reason of being a limited partner. The debts and obligations of a limited partnership are not the debts and obligations of a limited partner, and a limited partner is not personally liable for the debts and obligations of the partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the limited partnership.

(d) **General Partners.** Upon formation of a limited partnership, a person may become a general partner by agreement of the initial partners. After formation, a person becomes a general partner pursuant to the

partnership agreement, as the result of a merger, by a vote or consent of all the partners, or in connection with the dissociation of a general partner pursuant to § 79-14-801(a)(3)(B). Each general partner is the agent of the limited partnership. Each general partner has equal rights in the management and conduct of the limited partnership's activities and affairs. Subject to certain exceptions, general partners are liable jointly and severally for all debts and obligations of the limited partnership.

4. **Limited Liability Companies.**

(a) **Introduction.** The Revised Mississippi Limited Liability Company Act (the "LLC Act") became effective January 1, 2011, and replaced The Mississippi Limited Liability Company Act which was enacted in 1994. The LLC Act is contained in Miss. Code Ann. § 79-29-101 *et seq.*

(b) **Formation.** To form a Mississippi limited liability company, a certificate of formation must be filed with the Secretary of State. The certificate of formation must be signed and submitted with the applicable filing fee, currently Fifty Dollars (\$50.00). Unless a later effective date is specified in the certificate of formation, limited liability company ("LLC") existence begins when the certificate is filed.

(c) **Certificate of Formation.** The certificate of formation must set forth the name of the LLC, the required § 79-35-5(a) Information, and the date of dissolution of the LLC (if any). The certificate of formation may contain any other matters the members elect to include. All members must agree to any amendment of the certificate of formation.

(d) **Name.** The name of each LLC must contain the words "Limited Liability Company," "L.L.C.," or "LLC," and must be distinguishable from the name of any entity organized or registered in Mississippi. The name of an LLC may not contain the following words: "bank," "banker," "bankers," "banking," "trust company," "insurance," "trust," "corporation," "incorporated," "partnership," "limited partnership," or any words or abbreviations of similar meaning, and must comply with other guidelines provided for under the LLC Act.

(e) **Operating Agreement.** The members of the LLC may enter into an operating agreement to govern the affairs of the LLC, the conduct of the LLC's business, the relationship between the LLC's members, and the relationship between the LLC's members and the LLC. Generally, the operating agreement must be initially adopted by all of the members, and unless otherwise provided in the certificate of formation or the operating agreement, all members must agree to any amendment of the operating agreement.

(f) **Members.** Except to the extent that the operating agreement provides for management of an LLC by a manager or managers, management of an LLC is vested in its members. Generally, if an LLC has no manager, each member is an agent of the LLC for the purpose of conducting the business and affairs of the LLC. Unless otherwise provided by the certificate of formation or the operating agreement, if the LLC has managers, no member (acting as a member) is an agent of the LLC. Unless otherwise provided by the certificate of formation or the operating agreement, each member votes in proportion to that member's interest in the profits of the LLC. The certificate of formation or operating agreement may provide for classes of members and the relative rights, powers and duties (including voting rights) of the members.

(g) **Managers.** Management of an LLC is vested in managers only if so provided in the operating agreement or the certificate of formation. Generally, if an LLC has managers, every manager is an agent of the LLC. Managers are not required to be residents of Mississippi or members of the LLC. Unless otherwise provided in the certificate of formation or the operating agreement, managers are elected by the members.

(h) **Limited Liability.** A member is not liable, solely because he is a member, for any debt, obligation or liability of the LLC arising in contract, tort or otherwise.

(i) **Interest in the LLC.** A "Financial Interest" in an LLC is the right to share in the profits, losses, and distributions of the LLC. Financial interests may be owned by members and nonmembers of an LLC. Unless otherwise provided by an LLC's certificate of formation or operating agreement, Financial Interests are assignable. A "Governance Interest" is a member's rights as a member in the LLC other than the financial rights described above. Only members shall have governance rights or own governance interests in an LLC.

(j) **Assignment of Financial Interests.** An assignee of a Financial Interest may become a member and gain Governance Interest in the LLC pursuant to the certificate of formation or operating agreement, if all of the members consent, or if immediately following the assignment of the Financial Interest, the LLC would no longer have any members.

(k) **Mergers.** A Mississippi LLC may merge with a Mississippi or foreign entity pursuant to an agreement of merger. The agreement of merger must include the name of each entity, the name of the surviving entity, the terms and conditions of the merger, the manner of converting the interests of each entity into shares or other securities of the surviving entity, the organizational documents of the surviving entity, and any other provision required by the laws under which any party to the merger is organized or governed, or required by the organizational documents of any party.

(l) **Annual Reports.** Mississippi LLCs and foreign LLCs authorized to do business in Mississippi are required to file an annual report with the Secretary of State.

5. **Sole Proprietorships.** Mississippi does not recognize a sole proprietorship as a formal business entity and thus does not require any special filings other than any licensing requirements related to the specific kind of business or profession. The chief disadvantage of a sole proprietorship is that all of the assets of the individual owner are subject to claims of creditors of the business.

6. **Joint Ventures.** A joint venture is not a statutory entity but rather a relationship recognized under the common law. Mississippi courts have defined a joint venture as a single purpose partnership. Accordingly, a joint venture differs from a general partnership because it relates to a single transaction, while a partnership usually relates to a continuing business. A joint venture is typically of a shorter duration than a general partnership.

7. **Nonprofit Corporations.**

(a) **Formation.** To form a Mississippi nonprofit corporation, articles of incorporation must be filed with the Secretary of State. Articles of incorporation must be submitted with the applicable filing fee, which is currently Fifty Dollars (\$50.00). If the articles of incorporation do not name the initial board of directors, then the incorporator(s) will elect the initial board of directors. The Constitution of the State of Mississippi provides that a corporation must be organized and business is commenced within two (2) years from the date of the articles of incorporation.

(b) **Articles of Incorporation.** The articles of incorporation must include the following: the name of the corporation (which must comply with § 79-11-157); the period of duration (the duration may be perpetual); the Required § 79-35-5(a) Information; the name and address of each incorporator; if the corporation is incorporated on or after January 1, 2012, the corporation's primary nonprofit activity; and any other information the Secretary of State may reasonably require.

(c) **Membership.** A Mississippi nonprofit corporation is not required to have members. If a Mississippi nonprofit corporation has members, all members have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles of incorporation or bylaws provide otherwise. No member may transfer his or her membership unless the articles or bylaws authorize such a transfer. A member may resign at any time, but no member may be expelled or suspended except pursuant to a procedure that is fair and reasonable and carried out in good faith.

(d) **Members.** Generally, members act by resolutions approved by a majority of the vote at a meeting at which a quorum is present. Unless the articles, bylaws or the nonprofit act requires otherwise, a quorum is ten percent (10%) of the votes entitled to be cast by the members. A Mississippi nonprofit corporation must hold an annual meeting of the members of the corporation at the time and place stated in the bylaws. A nonprofit corporation must hold a special members' meeting if: (i) one is called by the board of directors; (ii) one is called by a person authorized to call a meeting by the articles or bylaws; or (iii) the holders of five percent or more of the voting power demand a meeting be held. Unless limited or prohibited by the articles or bylaws, in lieu of an actual meeting (either annual or special), the members may act by the written approval of members holding at least eighty percent (80%) of the voting power.

(e) **Directors.** A nonprofit corporation must have a board of directors, and the board must manage and direct the business and affairs of the corporation. The board must consist of one or more individuals as specified in the corporation's articles or bylaws, provided, however, if the nonprofit corporation is a charitable corporation and solicits contributions, the board must consist of not less than three directors pursuant to § 79-11-235. If the nonprofit corporation has members, the directors must be elected at the first annual members' meeting and at each annual meeting held thereafter, unless the articles or bylaws provide for some other method of election of directors or provide that some of the directors are appointed or designated. The articles or bylaws must specify the terms for directors and, except for designated or appointed directors, Mississippi law requires that such terms may exceed five (5) years. Directors may act by resolution at a regular or special meeting of the directors where a quorum is present, or directors may act by unanimous written consent.

(f) **Officers.** A nonprofit corporation has the officers set forth in its bylaws or appointed by the board pursuant to the bylaws.

(g) **Annual Reports.** A nonprofit corporation organized in the State of Mississippi is not required to file an annual report with the Secretary of State.

8. **Mississippi Entity Conversion.**

The Mississippi Entity Conversion and Domestication Act (the "Conversion Act") became effective January 1, 2015 and is contained in § 79-37-101 *et seq.* The Conversion Act permits Mississippi entities to convert to other forms of Mississippi entities, permits Mississippi entities to become foreign entities, and permits foreign entities to become Mississippi entities.

9. **Notes.**

As of the writing of this article, the Secretary of State is in the process of updating its online forms. Although the forms are mandatory, entities should consult the relevant statute before making any Secretary of State filings to ensure the required information is included and the appropriate actions are taken.

III. MISSISSIPPI TRADE REGULATIONS

1. **Mississippi Consumer Protection Laws.**

Miss. Code Ann. § 75-24-1 grants the authority to the Mississippi Attorney General to create the “Office of Consumer Protection,” which may bring actions in the name of the State against persons who have violated Mississippi’s consumer protection laws. District and County attorneys have a duty to assist the Attorney General’s office in prosecuting such matters. Section 75-24-5 sets forth a list of activities that are deemed to constitute unfair or deceptive trade practices. In addition, in interpreting what constitutes unfair or deceptive trade practices under Mississippi law, courts will look to the rules and standards enforced by the Federal Trade Commission and the federal courts.

Violations of the consumer protection laws can result in injunctive relief (Miss. Code Ann. § 75-24-9) – civil penalties not to exceed Ten Thousand Dollars (\$10,000.00), one-half of which must be paid to the Attorney General’s office (Miss. Code Ann. § 75-24-19), or criminal penalties, including fines ranging from One Thousand Dollars (\$1,000.00) to Five Thousand Dollars (\$5,000.00) (Miss. Code Ann. § 75-24-20).

Under Miss. Code Ann. § 75-24-25, there are restrictions on prices that may be lawfully charged for goods during a state of emergency. When the total value received during a twenty-four-hour period is Five Hundred Dollars (\$500.00) or more, the violation is punishable by confinement for a term of not less than one (1) year nor more than (5) years or a fine of not more than Five Thousand Dollars (\$5,000.00), or both. When the total value received during a twenty-four-hour period is less than Five Hundred Dollars (\$500.00), the violation is punishable by a fine of no more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not to exceed six (6) months, or both.

In addition to the above general consumer protection statutes, there are specific consumer protection laws that address issues ranging from pyramid schemes to franchise arrangements. See Miss. Code Ann. § 75-24-51 through Miss. Code Ann. § 75-24-63.

IV. MISSISSIPPI TAX LAWS

1. Income Tax Overview.

As a general proposition, the net income of every resident individual, business corporation, association, trust or estate is subject to Mississippi income tax. The net income earned in Mississippi by nonresidents is also subject to Mississippi income tax. All Mississippi taxes are administered by the Department of Revenue (“DOR”), and administrative and judicial review is available to taxpayers to protest DOR decisions. Generally, Mississippi follows federal rules and regulations in determining the income tax consequences of most transactions. Regulations adopted by the DOR provide additional guidance for determining Mississippi taxable income.

2. Personal Income Tax.

Personal income tax rates in the State of Mississippi are three percent (3%) on the first Five Thousand Dollars (\$5,000.00) of taxable income; four percent (4%) on the next Five Thousand Dollars (\$5,000.00) of taxable income and five percent (5%) on all taxable income in excess of Ten Thousand Dollars (\$10,000.00). The brackets are doubled for married taxpayers filing a joint return where both have Mississippi taxable income. In the case of nonresident individuals, income derived from employment, trade, business or other activities performed or carried on within the State of Mississippi is subject to taxation in Mississippi. This includes the sale or rental of real or tangible personal property located in Mississippi.

Persons subject to Mississippi income tax may either itemize their non-business deductions or claim the standard deduction in arriving at net income. Mississippi generally follows federal income tax law for purposes of determining itemized deductions. A nonresident is allowed deductions against Mississippi income to the extent the deductions are allowable and attributable to the Mississippi income.

Resident taxpayers are allowed a personal exemption, the amount of which depends on their filing status. Nonresidents and part-year residents are entitled to the same exemptions as residents; however, they must prorate these exemptions on the basis of net income from sources in the State of Mississippi.

3. Corporate Income Tax.

If the business activity of a corporation occurs only in Mississippi, the entire net income of the corporation is subject to Mississippi income tax. All income of multi-state corporations is allocated or apportioned depending upon where the production of income takes place and whether such income is classified as either business or nonbusiness. Business income consists of (1) income arising from activities or transactions in the ordinary course of a taxpayer’s trade or business (the “transactional test”); and (2) income from the acquisition, management and/or disposition of tangible or intangible property provided such acquisition, management and/or disposition

constitutes an integral part of the taxpayer's regular trade or business operations (the "functional test").¹

If business income of the corporation is derived in part from activity within Mississippi and in part from activity outside Mississippi, an applicable apportionment formula is generally used to determine that portion of business income that is subject to Mississippi income tax. The non-business income of a multi-state corporation is generally allocated to the state where the income is earned.

Special allocation and apportionment rules apply to multi-state mineral producers, contractors, airlines, motor carriers, utilities, retailers, wholesalers, service companies, lessors, pipeline companies and manufacturers.²

Mississippi income tax law contains an exclusion for gain from sale of equity interests in certain domestic corporations, limited partnerships (but not limited liability partnerships) or limited liability companies held for more than one year.³ Mississippi follows federal income tax law regarding corporate reorganizations to the extent they are consistent with Mississippi law.⁴

4. **Partnership Income Tax.**

Every partnership, domestic or foreign, deriving income from property owned within Mississippi or business conducted in Mississippi is required to file a Mississippi partnership income tax return for each applicable taxable year. The return is required to include the names, addresses and social security numbers or identification numbers of all partners.

A nonresident partner of a partnership owning property or doing business in Mississippi is subject to Mississippi income tax on his share of the partnership net income, whether distributed or not. If the partnership does business in Mississippi and in other states, it is required to use an apportionment formula to compute the amount of income (or loss) from sources within the Mississippi. Different types of apportionment formulas are applicable to taxpayers in different industries.

The partnership is liable for any Mississippi income tax owed but not paid by its partners. However, the partnership may withhold and remit to the Department of Revenue five percent (5%) of its net profit to avoid this entity level liability. This is deemed to be an estimated income tax payment of the partners and is available for refund if the actual Mississippi income tax liability of a partner is less than the amount withheld.

A partnership is allowed to file a composite return on behalf of its partners in certain circumstances. A composite return is a return in which a partnership pays the

¹ Miss. Code Ann. § 27-7-23.

² Miss. Admin. Code § 35.III.8.06.

³ Miss. Code Ann. § 27-7-9(f)(10).

⁴ Miss. Admin. Code § 35.III.8.02.

income tax due for some, or all, of its partners. The only partners who are eligible to be included in the composite return are nonresident partners without any activity in Mississippi other than that from the partnership.

5. **Insurance Company Premium Tax.**

A privilege tax is imposed on the gross amount of premiums received on insurance policies written in, or covering risks located in, Mississippi.⁵ The premium tax must be paid to the DOR on a quarterly basis at three percent (3%) of net direct premium receipts. Receipts received from policies issued to fund a deferred compensation plan qualified as tax exempt under Section 457 of the Internal Revenue Code are exempt from this tax in calculating the amount of the taxable premiums, no deduction is allowed for commissions or fees paid to the agent selling the policy.

A credit may be taken against the premium tax for any Mississippi income tax paid by the insurance company for the preceding calendar year.⁶ The purpose of this credit is to cause the insurance company's Mississippi tax liability to be the greater of the insurance company premium tax or the income tax.

A credit may also be taken against the premium tax if the insurance company invests in and maintains qualifying Mississippi investments.⁷ The amount of the credit increases as the percentage of the insurance company's investment in Mississippi increases. The maximum credit is fifty percent (50%) of the normal premium tax liability if at least twenty-five percent (25%) the insurance company's total assets are invested in qualifying Mississippi investments. Qualifying Mississippi investments include the following assets: certificates of deposit issued by, or cash on deposit with, financial institutions domiciled in Mississippi; bonds issued by political subdivisions of Mississippi; loans secured by deeds of trust on property located in Mississippi; real property located in Mississippi; policy loans to Mississippi residents; and stock, bonds or other debt of corporations domiciled in Mississippi.⁸

6. **Subchapter-S Corporations.**

Mississippi generally follows federal income tax law regarding the income taxation of subchapter S corporations. Any corporation that has made a valid election to be an S corporation under federal income tax law is an S corporation for Mississippi income tax purposes.

7. **Corporate Franchise Tax.**

The Mississippi Corporate Franchise Tax is an excise tax on the privilege of doing business in Mississippi in corporate form. The Mississippi corporate franchise tax is imposed on all corporations, associations, joint-stock companies and partnerships

⁵ Miss. Code Ann. § 27-15-103(1).

⁶ Miss. Code Ann. § 27-15-103(3).

⁷ Miss. Code Ann. § 27-15-129(1).

⁸ Miss. Code Ann. § 27-15-129(2).

treated as corporations for tax purposes.⁹ The amount of tax due is equal to Two and 50/100 Dollars (\$2.50) for each One Thousand Dollars (\$1,000.00) of the value of the taxable capital of the corporation.¹⁰

Taxable capital is measured by all outstanding stock, paid in capital, retained earnings and surplus of the corporate taxpayer.¹¹ Taxable capital also includes deferred taxes, deferred gains and deferred income, as well as contingent liabilities and all true reserves.¹² Taxable capital generally does not include reserves for bad debts, accumulated depreciation, debts or other obligations of the corporation.¹³ In addition, taxable capital of a parent corporation does not include the capital of its subsidiaries provided such parent corporation meets the statutory definition of a holding company.¹⁴ Organizations exempt from the corporate franchise tax include, among others, mutual savings banks, many non-profit organizations, and business and civic leagues.

Corporations doing business both within and without Mississippi must apportion taxable capital among or between states based upon a two-factor formula consisting of the real and tangible personal property ratio and the gross receipts ratio.¹⁵

8. **Ad Valorem Tax.**

An annual *ad valorem* or property tax is imposed on the “true value” of all taxable real and personal property situated in Mississippi, except property that is specifically exempted by statute.¹⁶ *Ad valorem* taxes are levied by the county, city and school district in which the property is located. True value for purposes of the property tax generally means the fair market value that a willing buyer would pay a willing seller.¹⁷

Once true value is determined for tax purposes (an annual determination), the relevant tax assessor applies an “assessment ratio” to determine assessed value. The tax assessor then multiplies this assessed value by the appropriate millage rate to compute taxes due.

The Mississippi Constitution includes five (5) classes of taxable property and establishes the assessment ratio for each class of property.¹⁸ Class I property (single family owner-occupied real property) is assessed at ten percent (10%) of true value, Class II (all other real property other than Class II or Class IV) at fifteen percent (15%) of true value, Class III (all personal property not included in Class IV or Class V) at

⁹ Miss. Code Ann. § 27-13-5.

¹⁰ *Id.*

¹¹ Miss. Code Ann. § 27-13-9(1).

¹² *Id.*

¹³ *Id.*

¹⁴ Miss. Code Ann. §§ 27-13-1 and 27-13-9(2).

¹⁵ Miss. Code Ann. § 27-13-13.

¹⁶ Miss. Code Ann. § 27-35-3.

¹⁷ Miss. Code Ann. § 27-35-50.

¹⁸ Section 112, *Mississippi Constitution of 1890*.

fifteen percent (15%) of true value, Class IV (property owned by public service corporations) and Class V (motor vehicles) at thirty percent (30%) of true value.¹⁹

Mississippi law establishes several partial and full exemptions to the *ad valorem* tax. Among the full exemptions are farm products, tools, livestock and timber.²⁰ Nonprofit organizations such as charities, churches, schools and hospitals may qualify for partial exemption.²¹ Certain government property may also be exempt.²²

9. **Sales and Use Tax.**

The Mississippi Sales Tax applies to transactions involving the retail sale or rental of tangible personal property.²³ The sales tax may also apply to revenue earned from the performance of certain enumerated taxable services.²⁴ The use tax is imposed on persons who use, store or consume tangible personal property within Mississippi.²⁵

The rates for the sales and use tax are the same but vary depending upon the type of property sold or used.²⁶ Rates range from seven percent (7%) for most tangible personal property to one percent (1%) for certain property used to generate electric power.²⁷ In addition, Mississippi Sales and Use Tax Rules exclude certain isolated or casual sales, except for sales of motor vehicles.²⁸

10. **Contractor's Tax.**

Mississippi generally imposes a tax at the rate of three and one-half percent (3.5%) on the total contract price (materials, machinery, equipment, labor, overhead, profit, etc.) charged by a contractor to construct, build or erect various types of real property improvements.²⁹ The "contractor's tax" does not apply to that portion of the contract price charged for "constructing, repairing or adding to property which retains its identity as personal property."

The tax is imposed on the prime contractor and can be included in the bid price paid by the project owner. If the contract is over Seventy-five Thousand Dollars (\$75,000.00), the contractor is required to pay the tax on the project to, or post a performance bond with, the DOR before construction commences. A contractor liable for tax may apply for and obtain a Material Purchase Certificate³⁰ from the DOR which

¹⁹ Miss. Code Ann. § 27-35-4.

²⁰ Miss. Code Ann. § 27-31-1.

²¹ Miss. Code Ann. § 27-31-1, *et seq.*

²² *Id.*

²³ Miss. Code Ann. § 27-65-17.

²⁴ Miss. Code Ann. § 27-65-23.

²⁵ Miss. Code Ann. § 27-67-5.

²⁶ Miss. Code Ann. § 27-67-5.

²⁷ Miss. Code Ann. § 27-65-17.

²⁸ *Harry D. Kantor & Son v. Stone*, 203 Miss. 260 (1948); Miss. Code Ann. § 27-65-201.

²⁹ Defined in Miss. Code Ann. § 27-65-21.

³⁰ Miss. Code Ann. § 27-65-3.

may entitle them to purchase materials and services for the project free of the retail sales tax.³¹

A business desiring to construct a new facility or expand an existing facility can avoid paying the three and one-half percent (3.5%) “contractor’s tax” on the component materials, machinery and equipment used in the construction process by financing the project with bonds issued by Mississippi Business Finance Corporation (“MBFC”). The project owner must use a part of the proceeds to purchase the component materials, machinery and equipment directly from the supplier, and not from the prime contractor, since purchases made or reimbursed out of MBFC bond proceeds by the project owner are exempt from sales and use tax.³² Removing these owner-direct purchases from the contract reduces the amount of the contract price remaining subject to the contractor’s tax to the labor, overhead, and profit components of the transaction. The component materials, machinery and equipment, when purchased by the project owner with proceeds from bonds, thus both avoid the contractor’s tax and are exempt from sales and use tax (the exemption does not apply to the contractor’s tax).

11. **Tax Incentives.**

Mississippi law provides for incentive tax credits against the state income tax aimed at general economic development. Among these are the Job Tax Credit, the Income Tax Credit for Ad Valorem Tax Paid on Inventory,³³ the National and Regional Headquarters Credit,³⁴ the Research and Development Skills Credit³⁵ and the Mississippi Bond Financing Corporation Debt Service Credit.³⁶ In addition, the Mississippi Broadband Technology Development Act³⁷ offers an income and franchise tax credit for telecommunications companies investing in infrastructure needed for broadband technologies in Mississippi, and the Mississippi Reforestation Credit³⁸ is available to owners of nonindustrial private land who engage in approved reforestation practices. There are also numerous types of *ad valorem* property tax exemptions and sales and use tax exemptions for various types of targeted new enterprises and expansions of or additions to existing enterprises.

V. MISSISSIPPI LABOR AND EMPLOYMENT LAWS

1. **State Labor Laws.** Although not codified, Mississippi remains an at-will employment state. This means, absent a contract to the contrary, the employer is free to terminate an employee’s employment for a good reason, a bad reason or no reason at all (*Southwood Door Co. v. Burton*, 847 So. 2d 833 (Miss. 2003)). The Mississippi Supreme Court has created an exception to the employment-at-will doctrine.

³¹ Miss. Code Ann. § 27-65-21.

³² Miss. Code Ann. § 57-10-255(2).

³³ Miss. Code Ann. § 27-7-22.5.

³⁴ Miss. Code Ann. § 57-73-21(5).

³⁵ Miss. Code Ann. § 57-73-21(6).

³⁶ Miss. Code Ann. § 27-7-22.3.

³⁷ Miss. Code Ann. § 57-87-1.

³⁸ Miss. Code Ann. § 27-7-22.15.

Discharged employees may bring a tort claim for wrongful termination when the employee is discharged for either refusing to participate in the employer's illegal acts or for reporting the employer's illegal acts to the employer or anyone else (*McArn v. Allied Bruce-Terminix Company, Inc.*, 626 So.2d 603 (Miss. 1993)).

The employment-at-will doctrine can be limited by the existence of a written contract governing the employment relationship (*Shaw v. Burchfield*, 481 So.2d 247 (Miss. 1985)). Employment documents such as employee handbooks, manuals or personnel policies may also constitute a written employment contract or an implied employment contract (*Hartell v. Packard Electric*, 626 So.2d 106, 110 (Miss. 1993)). Employers should include a clear and conspicuous disclaimer in any such document stating the document does not create a legal contract and that all employment is at-will (*Buchanan v. Ameristar Casino Vicksburg, Inc.*, 852 So. 2d 25 (Miss. 2003)).

2. **State Discrimination Statutes.**

Mississippi does not have any state statute prohibiting private employers from discriminating in employment, with the exception of discrimination on the basis of a person's military service. Mississippi law does prohibit discrimination in employment on the basis of a person's military service (Miss. Code Ann. § 33-1-15). Mississippi statute also mandates that employees required to leave their employment for reasons connected with serving in the military be restored to the same or similar position upon their return (Miss. Code Ann. § 33-1-19).

Mississippi prohibits discrimination in public employment, or by any employer benefiting from public funds (Miss. Code Ann. § 43-6-15). In public employment, it is unlawful to discriminate on the basis of race, sex, or religion (Miss. Code Ann. § 25-9-149). In addition, it is unlawful to discriminate in public employment against the blind, visually handicapped or otherwise physically handicapped unless the physical handicap considerably affects the requirements of the job (Miss. Code Ann. § 43-6-15).

3. **Drug and Alcohol Testing.**

Mississippi does have an alcohol and drug testing statute (Miss. Code Ann. § 71-7-1 *et seq*). The statute applies to all public employers and to private employers who choose to be covered, with an exception for private employers who are subject to federal law or federal regulation governing the administering of drug and alcohol tests. A private employer elects to be covered by the statute by publishing written notice to employees and applicants containing certain information required by the statute. The statute also requires employers utilizing a testing program under the Act to have a Medical Review Officer who is the sole person authorized to review the test results.

For private employers, opting coverage under the statute does not make the testing program *per se* legal; the law does limit successful claimants to reinstatement, lost compensation, court costs and attorney fees. The law also requires courts to draw certain presumptions in favor of employers who comply; namely, the presumption that

challenged test results are accurate and that the employer had reasonable cause to test an employee whose test sample is confirmed positive.

4. **Off-Duty Conduct.**

Mississippi law holds an employer cannot require an employee as a condition of employment to refrain from using tobacco products during non-working hours, as long as the employee complies with applicable policies regulating smoking on company premises during working hours (Miss. Code Ann. § 71-7-33).

5. **Covenants Not to Compete.**

Employee non-compete clauses, though not favored, generally will be enforced in Mississippi if the clause is reasonable (*Frierson v. Sheppard Bldg. Supply Co.*, 154 So.2d 151 (Miss. 1963)). When determining the reasonableness of a non-compete clause, courts look to duration of the restriction and geographic scope involved (*Redd Pest Control Co. v. Heatherly*, 157 So.2d 133 (Miss.1963)). The Court has refused to enforce a non-compete agreement when the employee was terminated in bad faith (*Empiregas, Inc. of Kosciusko v. Bain*, 599 So. 2d 971 (Miss. 1992)).

6. **Wage and Hour Laws.**

Aside from child labor laws, Mississippi does not have state law governing wages or hours in the private employment context.

Mississippi statute requires employers engaged in manufacturing with fifty (50) or more employees and every public service corporation, to make full payment to employees for services performed at least once every two weeks or twice during a calendar month (Miss. Code Ann. § 71-1-35). The payment must include all amounts due for services performed up to not more than ten (10) days previous to the time of payment (Miss. Code Ann. § 71-1-35).

7. **Child Labor.**

Mississippi statutory law provides no child under the age of fourteen (14) may be employed in any mill, cannery, workshop, factory or manufacturing establishment (Miss. Code Ann. § 71-1-19). The state also regulates child labor in accord with school attendance. No child between the ages of fourteen (14) and sixteen (16) may be employed in any mill, cannery, workshop, factory or manufacturing establishment unless that child has complied or is complying with Mississippi compulsory school attendance law (Miss. Code Ann. § 71-1-19). Employers must keep on file an affidavit from the child's parent or guardian, and a certificate of the superintendent or principal of the school of the district in which the child resides or in which they last attended school, stating the place and date of the child's birth, the child's last school attendance, the grade of study pursued, the name of the school, and the teacher in charge (Miss. Code Ann. § 71-1-19).

State statute also regulates the hours children are allowed to work. Children between the ages of fourteen (14) and sixteen (16) are permitted to work in any mill, cannery, workshop, factory or manufacturing establishment no more than eight (8) hours in one (1) day, and no more than forty-four (44) hours in any one (1) week (Miss. Code Ann. § 71-1-21). In addition, children between the ages of fourteen (14) and sixteen (16) cannot work in any such establishment between the hours of 7 p.m. and 6 a.m. (Miss. Code Ann. § 71-1-21). Fruit and vegetable canneries are exempt from Mississippi's child labor laws (Miss. Code Ann. § 71-1-31).

8. **Workers' Compensation.**

As in other states, Mississippi has a complex system of workers' compensation insurance, which provides payments to employees off work due to a work injury. The Workers' Compensation Act applies to all employers with five (5) or more employees (Miss. Code Ann. § 71-3-5). The Act provides employees the exclusive remedy for accidents arising out of and in the course of employment (Miss. Code Ann. § 71-3-9). It is worth noting that the Mississippi Supreme Court has consistently refused to recognize a cause of action for termination based upon retaliation for filing a workers' compensation claim (*Buchanan v. Ameristar Casino Vicksburg*, 852 So.2d 25 (Miss. 2003)).

9. **Unemployment Insurance.**

Mississippi does provide unemployment insurance (Miss. Code Ann. § 71-5-1 *et seq.*). The Mississippi Employment Security Commission administers the unemployment insurance program.

10. **Right to Work Act.**

Mississippi is a right to work state (Miss. Code Ann. § 71-1-47). In addition, Article 7, Section 198-A of the Mississippi Constitution as amended June 7, 1960, declares that the public policy of the state supports the right of a person to work without regard to membership or nonmembership in any labor union or labor organization.

VI. MISSISSIPPI ENVIRONMENTAL LAWS

1. **Mississippi Air and Water Pollution Control Law.**

The Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 through § 49-17-43, creates the Mississippi Commission on Environmental Quality. The Commission has supervision of administration and enforcement of the Mississippi Air and Water Pollution Control Law and the Mississippi Solid Waste Disposal Law (Miss. Code Ann. § 17-17-1 through § 17-17-67). The statutory authority granted to the Commissioner includes promulgating rules and regulations to prevent, control and abate pollution by setting air and water quality standards. The standards are set after conducting a public hearing and publishing due notice. The commission has authority to hold hearings, enter orders and assess penalties against alleged violators. In

addition to the creation of the Commission, the law creates a Permit Board. (Miss. Code Ann. § 49-17-28 and § 49-17-29). The Permit Board has authority to issue, reissue, modify, revoke or deny permits regarding air and water pollution as well as solid and hazardous waste.

2. **Mississippi Solid Waste Disposal Act.**

The Mississippi Solid Waste Disposal Act, Miss. Code Ann. § 17-17-1 through § 17-17-67, implements the responsibilities and restrictions in the disposal of solid waste. The Commission on Environmental Quality is charged with its enforcement.

3. **Underground Storage Tank Act of 1988.**

The Underground Storage Tank Act of 1988, Miss. Code Ann. § 49-17-401 through § 49-17-433, creates the Mississippi Groundwater Protection Trust Fund. This Act levies a tax on motor fuels, which is used to sustain the Trust Fund. The Trust Fund is used for investigation of contaminated sites, replacement of potable water and rehabilitation of contaminated sites.

4. **Radioactive Waste Transportation Act.**

The Radioactive Waste Transportation Act, Miss. Code Ann. § 45-14-51 through § 45-14-69, establishes that transportation of radioactive waste is a safety threat and that the cost of emergency response should be borne by the shippers. A permit and fee process is created to manage the transportation of radioactive waste.

5. **Mississippi Safe Drinking Water Act of 1997.**

The Mississippi Safe Drinking Water Act of 1997, Miss. Code Ann. § 41-26-1 *et seq.*, is Mississippi's version of the Federal Safe Drinking Water Act.

6. **Mississippi Surface Coal Mining and Reclamation Law.**

The Mississippi Surface Coal Mining and Reclamation Law, Miss. Code Ann. § 53-9-1 *et seq.*, is Mississippi's assumption of exclusive jurisdiction over regulation of surface coal mining and reclamation operations.

7. **Mississippi Surface Mining and Reclamation Law.**

The Mississippi Surface Mining and Reclamation Law, Miss. Code Ann. § 53-7-1 *et seq.*, establishes a regulatory system of uniform standards and permitting governing mining and reclamation of materials such as clay, sand, gravel, soil and the like.

8. **Channel Maintenance Act.**

The Channel Maintenance Act, Miss. Code Ann. § 49-26-1 *et seq.*, declares governmental responsibility for channel maintenance and the minimization of environmental impact.

9. **Coastal Wetlands Protection Act.**

The Coastal Wetlands Protection Act, Miss. Code Ann. § 49-27-1 *et seq.*, recognizes the importance of preserving coastal wetlands and creates a permit-based system of wetland use.

10. **Mississippi Water Resources Law.**

The Mississippi Water Resources Law, Miss. Code Ann. § 51-3-1 *et seq.*, establishes that the state will control and develop beneficial water use by effective and efficient management.

11. **Mississippi Scenic Streams Stewardship Act.**

The Mississippi Scenic Streams Stewardship Act, Miss. Code Ann. § 51-4-1 *et seq.*, attempts to maximize voluntary private conservation and maintain sense of stewardship between stream users and riparian landowners by way of a nonregulatory framework.

12. **Mississippi Prescribed Burning Act.**

The Mississippi Prescribed Burning Act, Miss. Code Ann. § 49-19-301 *et seq.*, authorizes and promotes the continued use of prescribed burning for ecological, silvicultural and wildlife management purposes.

13. **Mississippi Brownfields Voluntary Cleanup and Redevelopment Act.**

The Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, Miss. Code Ann. § 49-35-1 *et seq.*, provides incentives for voluntary cleanup of land which is perceived to be contaminated due to past activities.

14. **Mississippi Individual Onsite Wastewater Systems Law.**

The Mississippi Individual Onsite Wastewater Systems Law, Miss Code Ann. § 41-67-1 *et seq.*, established controls for implementing individual and community wastewater systems.

15. **Mississippi Oil and Gas Development, Production and Distribution Law.**

The Mississippi Oil and Gas Development, Production and Distribution Law, Miss. Code Ann. § 53-3-1 *et seq.*, establishes that the waste of oil and gas is unlawful as well as establishing a permit-based system of drilling and exploration.

16. **Mississippi Lender Liability Law.**

The Mississippi Lender Liability Law, Miss. Code Ann. § 49-17-42, indicates that lenders may not be held liable for pollution control or environmental protection law under specified conditions.

17. **Protection of Confidential Information.**

A person desiring to submit information to MDEQ, the Commission or the Permit Board may submit the information as "Business Confidential Information" in accordance with the provisions set forth in Miss. Code Ann. § 49-17-39.

VII. MISSISSIPPI INTELLECTUAL PROPERTY LAWS

1. **Trademarks/Service Marks.**

Mississippi's trademark statute (Miss. Code Ann. § 75-25-1 et seq.) is based on the International Trademark Association's Model State Trademark Bill and is largely consistent with the federal Trademark Act of 1946. Mississippi's statute also expressly preserves common law trademark rights. A person acquires common law rights to a mark by being the first to adopt and use a mark in a geographic region which attains special significance through its association with certain goods or services.

A mark may be registered by filing an application with the Mississippi Secretary of State. In order to be registered, a mark must currently be in use in the ordinary course of business in Mississippi. A person may not reserve a right to use a mark in the future and nonuse of a mark for two (2) consecutive years is prima facie evidence of abandonment. A mark duly registered is effective for five (5) years, and may be renewed for successive five-year periods by filing an application within six (6) months prior to the expiration of the current term. A mark and its registration are freely assignable with the goodwill of the business, or that part of the goodwill of the business that such mark represents.

The remedies for the infringement of a mark may include injunctive relief, profits derived by the infringer, actual damages incurred by the owner, destruction of any counterfeit/imitation goods and, in certain circumstances, treble damages.

The owner of a "famous" mark may have further protection under the anti-dilution provision of Mississippi's statute. A famous mark is one that is widely recognized by the general consuming public of the State or a geographic area within the State as a designation of source of the goods or services of the mark's owner and a non-exclusive list of factors that a court may consider in determining whether a mark is "famous." The standard for maintaining a cause of action for dilution is whether such subsequent use is after the mark has become famous and likely to cause dilution of the famous mark. An owner of a famous mark is entitled only to injunctive relief throughout the geographic area in which the mark is found to be famous prior to commencement of the subsequent, junior use. However, if the subsequent user willfully intended to cause dilution of the owner's mark, then the owner of the famous mark may be entitled to all other remedies, including monetary damages, under the statute, subject to the court's discretion and principles of equity. Mississippi's statute also provides that "fair use" of another's mark, as defined in the Act, will not be an actionable claim of dilution of a famous mark. In July 1, 2009, the statutory definition of "dilution" was amended to adopt

the concepts of "dilution by blurring" and "dilution by tarnishment" consistent with the Model State Trademark Bill and federal law.

2. **Trade Names.**

Mississippi has adopted the Fictitious Business Name Registration Act (Miss. Code Ann. § 75-93-1 *et seq.*), which allows any business entity, including any corporation, limited liability company, partnership or sole proprietorship, to register a fictitious name, assumed name or trade name used to conduct business in Mississippi with the Business Services Division of the Secretary of State's Office for a nominal fee.

The registration of a fictitious name in Mississippi is voluntary. Registration is for public notice only and does not give the registrant's exclusive rights to own or use the fictitious business name, nor does it affect trademark, service mark, trade name, or other name rights previously acquired by others in the same or a similar name. Registration under the statute does not preserve a fictitious business name against future use or registration by others. The issuance of a fictitious name registration will not constitute due organization or authority to transact business in Mississippi.

The registration period for a fictitious business name is five years, expiring on December 31 of the year in which the fifth anniversary of registration occurs. Renewal of a fictitious business name registration may be made on or between January 1 and December 31 of the expiration year.

Any fictitious business name registered in Mississippi may be assigned by filing a duly executed written instrument with the Secretary of State.

3. **Trade Secrets.**

Mississippi has adopted the Uniform Trade Secrets Act (Miss. Code Ann. § 75-26-1 *et seq.*). A trade secret is defined as any information, including a formula, pattern, compilation, program; device, method, technique or process that: (i) derives independent economic value, actual or potential, that is not generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The Mississippi Uniform Trade Secrets Act displaces conflicting tort, restitutionary and other laws of Mississippi providing civil remedies for misappropriation of a trade secret, but does not affect civil remedies that are not based on misappropriation of a trade secret and also does not affect contractual or criminal remedies.

The Mississippi Trade Secret Act provides injunctive relief to control both actual and threatened misappropriation of trade secrets. Actions for misappropriation must be brought within three years after the misappropriation is discovered or should have been discovered by the exercise of reasonable diligence. Damages may include both actual loss caused by the misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other method, damages may be measured by the imposition

of liability for a reasonable royalty for unauthorized use or disclosure of a trade secret. Exemplary damages may also be awarded in cases of willful and malicious misappropriation. Additionally, in cases of bad faith, attorney fees may be awarded to the prevailing party.

4. **Rights of Publicity/Privacy.**

Mississippi does not have a statute addressing the rights of publicity or privacy. Mississippi courts, however, recognize four distinct theories underlying a cause of action for invasion of privacy: (1) intentional intrusion on another's seclusion; (2) appropriation of another's identity for an unpermitted use; (3) public disclosure of private facts; and (4) presenting another to the public in a false light. (*Deaton v. Delta Democrat Publishing Co.*, 326 So. 2d 471 (Miss. 1976)).

Commercial misappropriation is recognized as one of the variants of the common law right of privacy. Often referred to as the right of publicity, this tort protects the commercial value of individual identity and prevents unjust enrichment. Public figures are protected against dilution of the value of their identity and all individuals are protected against false implications of endorsement. The test for misappropriation is whether the primary purpose of the publicity is to gain economic advantage for which the user should be expected to pay. Damages are recoverable for proprietary or pecuniary loss as well as for mental and emotional suffering. A claim for invasion of privacy will only lie in cases of substantial interference with seclusion or privacy.

5. **Unfair Competition/Deceptive Trade Practices.**

Mississippi has enacted statutes protecting consumers from certain unfair or deceptive business practices (Miss. Code Ann. § 75-24-1 et seq.). Those who violate certain provisions of these statutes are subject to the authority of the Attorney General who may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice. Any person who willfully and knowingly engages in unfair competition or deceptive trade practices may be subject to criminal and civil penalties. The following unfair methods competition or deceptive trade practices are statutorily prohibited:

- (i) passing off goods or services as those of another;
- (ii) misrepresentation of the source, sponsorship, approval or certification of good or services;
- (iii) misrepresentation of affiliation, connection or association with, or certification by another;
- (iv) misrepresentation of designations of geographic origin in connection with goods and services;
- (v) representing the goods or services as having sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

- (vi) representing the goods are original or new if they are reconditioned, reclaimed, used or second hand;
- (vii) representing the goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (viii) disparaging the goods, services or business of another by false or misleading representation of fact;
- (ix) advertising, goods or services with intent not to sell them as advertised;
- (x) advertising goods or services with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quality; and
- (xi) misrepresentations of fact concerning the reasons for, existence of, or amounts of price reductions.

6. **Bad Faith Assertions of Patent Infringement.**

Following in the footsteps of other states in recent years, Mississippi has enacted a law to counter abuses surrounding assertions of patent infringement (Miss. Code Ann. §§ 75-24-351 – 75-24-357). This statute prohibits communication stating that another is infringing or has infringed a patent and bears liability or owes compensation, if the communication (a) is one among many empty litigation threats, (b) falsely states that litigation has commenced, or (c) lacks a reasonable basis in fact or law. A victim of a bad faith assertion of patent infringement who prevails in an action is entitled to recover litigation costs and fees, including reasonable attorney’s fees. In addition, the court may award actual damages and treble damages. The statute also gives the Attorney General the power to conduct investigations and bring civil actions for violations. The statute took effect July 1, 2015 and is set to be repealed July 1, 2018.

VIII. MISSISSIPPI COURT SYSTEM

1. **State Trial Courts.**

Organization of the State Trial Court System. The state trial court system is comprised of courts of general jurisdiction and courts of limited jurisdiction. The courts of general jurisdiction are divided into the Circuit Court, dealing with matters of law, and the Chancery Court, overseeing matters in equity. The courts of limited jurisdiction are comprised of the Municipal Court, the Justice Court, and the County Court.

The Mississippi Circuit Court is divided into twenty-two (22) districts and is comprised of fifty-three (53) judges, each elected to serve a term of four (4) years. The Circuit Court has original jurisdiction in all actions when the amount in controversy exceeds Two Hundred Dollars (\$200.00) and all other matters arising under the Constitution and laws of Mississippi which are not exclusively cognizable in another court (Miss. Code Ann. § 9-7-81). Trials are heard with a 12-member jury and usually one or two alternate jurors. A judge may preside without a jury if the dispute is a

question of law rather than fact. The Circuit Court hears appeals from County, Justice and Municipal courts and from administrative boards and commissions such as the Workers' Compensation Commission and the Mississippi Department of Employment Security. Additionally, the Circuit Court has appellate jurisdiction as prescribed by law and jurisdiction over cases transferred by the Chancery Court and cases remanded to it by the Mississippi Supreme Court (Miss. Code Ann. § 9-7-83).

The Mississippi Chancery Court is divided into twenty (20) districts with forty-nine (49) Chancery Court justices elected to serve a term of four (4) years. The Chancery Court has jurisdiction over disputes in matters involving equity; domestic matters including adoptions, custody disputes and divorces; guardianships; sanity hearings; wills; and challenges to constitutionality of state laws. In counties which have no County Court, the Chancery Court has jurisdiction over juvenile matters as well. Trials are typically heard by a chancellor without a jury, although state law allows parties to request a jury in Chancery Court. The Chancery Court also has jurisdiction over matters transferred by the Circuit Court or remanded to it by the Mississippi Supreme Court (Miss. Code Ann. § 9-5-81).

The County Court is a court of limited jurisdiction. The County Court has jurisdiction concurrent with the Justice Court in all matters, civil and criminal of which the Justice Court has jurisdiction; and it has jurisdiction concurrent with the Circuit and Chancery Courts in all matters of law and equity wherein the amount of value of the controversy does not exceed, exclusive of costs and interest, the sum of Two Hundred Thousand Dollars (\$200,000.00) (Miss. Code Ann. § 9-9-21). The County Court also has exclusive jurisdiction over matters concerning eminent domain, the partition of personal property and actions of unlawful entry and detainer. *Id.* County Court judges may issue search warrants, set bond and preside over preliminary hearings. The County Court has thirty (30) judges and twenty-one (21) county courts, each of which is elected to serve a term of four (4) years.

The Justice Court is also a court of limited jurisdiction. The Justice Court has jurisdiction over all actions for the recovery of debts or damages or personal property, where the principal of the debt, the amount of the demand, or the value of the property sought to be recovered does not exceed Three Thousand Five Hundred Dollars (\$3,500.00) (Miss. Code Ann. § 9-11-9). The court also has jurisdiction to hear misdemeanors and felony preliminaries. Justice Court judges are the only Mississippi judges elected in partisan races. The number of Justice Court judges per county is based on population, and increases with population, with five (5) judges being the maximum number allowed per county (Miss. Code Ann. § 9-11-2). There are presently 82 Justice Courts with 197 judges. They serve four-year terms.

The Municipal Court is another court of limited jurisdiction. Municipal courts have jurisdiction over misdemeanor crimes, municipal ordinances and city traffic violations. Municipal judges may conduct initial appearances in which defendants are advised of the charges being filed, as well as bond hearings and preliminary hearings. Each municipality with a population of 10,000 or more must have a municipal judge and

prosecuting attorney appointed by the governing authorities of the municipality (Miss. Code Ann. § 21-23-3). There are 226 Municipal Courts. Most municipalities have one municipal judge, although a few jurisdictions have several. Most municipal judges are appointed by governing bodies of municipalities. Terms of office vary.

Personal Jurisdiction. In order to establish personal jurisdiction over a nonresident defendant, a plaintiff must satisfy both the laws of the State of Mississippi and the terms of the Fourteenth Amendment to the United States Constitution. First, the nonresident defendant must be amenable to jurisdiction under Mississippi's long-arm statute, Miss. Code Ann. § 13-3-57, which provides in relevant part that any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified to do business in Mississippi, shall be deemed "doing business" in Mississippi (and subject to the jurisdiction of Mississippi courts) under three scenarios: (1) if such person makes a contract with a resident of Mississippi to be performed in whole or in part by any party in Mississippi; (2) if such person commits a tort in whole or in part in Mississippi; or (3) if such person does business or performs any character of work or service in Mississippi. As noted above, the exercise of jurisdiction must also comport with the dictates of the Due Process Clause of the Fourteenth Amendment.

Venue. Regarding venue, generally a civil action may be filed in the defendant's county of residence; where a substantial alleged act or omission occurred; or where an event that caused the injury occurred. If pursuing a claim against a corporation, the county of its principal place of business is also appropriate. Cases against a manufacturer may also be commenced in the county where the plaintiff obtained the product. If for some reason, venue is not established through any of these methods, a plaintiff may then bring an action in the county of his/her residence or domicile. This option, while still available, is limited to circumstances where venue cannot be asserted under any of the other venue provisions (Miss. Code Ann. § 11-11-3). In cases involving multiple plaintiffs, each plaintiff must establish proper venue independently. Lastly, medical malpractice claims must *only* be filed in the county in which the alleged act or omission occurred.

2. **State Appellate Courts.**

The appellate court system is comprised of the Supreme Court and the Court of Appeals. The Court of Appeals has the power to determine or dispose of any proceeding assigned to it by the Supreme Court (Miss. Code Ann. § 9-4-3(1)). Decisions of the Court of Appeals are not subject to review by the Supreme Court, except by writ of certiorari. The Supreme Court may also order any case pending before the Court of Appeals to be transferred back to the Supreme Court (Miss Code Ann. § 9-4-3(2)). The Court of Appeals consists of ten judges, two from each court of appeals' districts (as defined in Miss. Code Ann. § 9-4-5(5)), each of which is elected for a term of eight (8) years (Miss Code Ann. § 9-4-5(1)).

The Supreme Court is the court of last resort in Mississippi. The Mississippi Supreme Court has appellate jurisdiction and has original jurisdiction in certain cases

concerning public utility rates (Miss. Code Ann. § 9-3-9). Appeals from the Circuit Courts and Chancery Court go directly to the Supreme Court which may then assign cases to the Court of Appeals. A case originating in the Justice or Municipal Court which has been appealed to the County Court and then to the Circuit Court, can be appealed to the Supreme Court only when a constitutional question is implicated. The Supreme Court retains appeals concerning cases involving the death penalty, utility rates, annexations, bond issues, election contests and cases involving statutes found to be unconstitutional by the lower courts (Miss. Code Ann. § 9-4-3(1)). The Supreme Court also retains cases involving attorney discipline, judicial performance, and certified questions from a federal court. The Supreme Court is comprised of nine justices, three from each Supreme Court District, each of which is elected for a term of eight (8) years. The longest continuously serving justice serves as Chief Justice (Miss. Code Ann. § 9-3-11).

3. **State Tax Court.**

Mississippi has no state tax court. Instead, a taxpayer may challenge an assessment of taxes, a denial of refund, or a denial of waiver of a tag penalty through an administrative appeals process within the State Department of Revenue, formerly the State Tax Commission (Miss. Code Ann. § 27-77-5). First, the taxpayer wishing to contest the action of the agency shall, within sixty (60) days from the date of the action, file an appeal in writing with the board of review requesting a hearing and a correction of the action. Following a hearing and decision by the board, a taxpayer wishing to contest the order shall, within sixty (60) days from the date of the order, file a written appeal to the Board of Tax Appeals. If unsuccessful in its administrative appeals, a taxpayer may file a petition in chancery court for judicial review within sixty (60) days from the date of the order of the Board of Tax Appeals.

The Commissioner of Revenue has the power to institute proceedings, actions and prosecutions against persons, officers or agents of corporations or others required to make returns of taxable property, for failure to comply with the tax law (Miss. Code Ann. § 27-3-33(1)). The Commissioner of Revenue has the power to bring suit in the Chancery Court of the residence of the taxpayer or, in the case of a nonresident, in the Chancery Court of the First Judicial District of Hinds County (Miss. Code Ann. § 27-3-33(2)).

IX. FINANCING INVESTMENTS IN MISSISSIPPI

1. **Tax-Exempt Financing.**

Tax-Exempt and taxable financing programs in Mississippi offer eligible companies the ability to take advantage of certain economic development incentives and/or below market borrowing costs. These financing programs are administered at two levels: statewide through the Mississippi Business Finance Corporation and locally through cities, counties, regional planning and development districts, and economic development authorities.

The Mississippi Business Finance Corporation (MBFC) is a body corporate and politic and instrumentality of the State of Mississippi organized pursuant to Miss. Code Ann. §57-10-167 (1972, as amended). MBFC serves as a statewide conduit financing entity that allows eligible companies to obtain tax-exempt and/or taxable financing and other state tax incentives through a sole source. Bonds issued through MBFC can have a variable or fixed-rate of interest. MBFC has a variety of programs through which it provides tax-exempt and/or taxable bonds, including the Industrial Development Revenue Bond Program (Tax-Exempt and Taxable) (see Miss. Code Ann. §57-10-201 *et seq.* and §57-10-401 *et seq.* (1972, as amended)), the Small Enterprise Development Finance Program (see Miss. Code Ann. §57-71-1 *et seq.* (1972, as amended)), and the MBFC Equipment Lease Program (see Miss. Code Ann. §57-10-201 *et seq.* and §57-10-401 *et seq.* (1972, as amended)). Eligible projects financed through MBFC can also avail themselves of various state tax incentives, including sales/use tax exemption, income tax credits on Mississippi corporate income taxes through the Rural Economic Development Assistance Program (i.e. RED Credits), and an ad valorem tax exemption for up to ten (10) years (subject to city/county approval); for many companies, these exemptions are the key determinant in utilizing financing through MBFC.

Local Government Issuers offer tax-exempt financing to eligible companies through Industrial Development Revenue Bonds (see Miss. Code Ann. §57-3-1 *et seq.* (1972, as amended) and Miss. Code Ann. §19-5-99 (1972, as amended)). Local Government Issuers may also grant certain ten-year ad valorem tax exemptions to eligible companies.

Pursuant to Miss. Code Ann. § 21-45-1 *et seq.*, Mississippi cities or counties may issue tax increment financing bonds to encourage economic development within designated areas by financing public infrastructure improvements for public or private development projects without the necessity of issuing general obligation bonds. Public infrastructure improvements such as roads, utilities and drainage improvements are eligible to be financed by tax increment financing bonds. Tax increment financing bonds may have a maximum term of thirty (30) years and are eligible for a tax-exempt interest rate for eligible public improvements and a taxable interest rate for other projects. Tax increment financing bonds are limited obligations of the issuing local government secured solely by the additional ad valorem taxes and/or sales taxes generated by the project described under the tax increment-financing plan for such bond issue.

Pursuant to Miss. Code Ann. § 19-31-35 *et seq.*, private developers in Mississippi may also take advantage of a significant economic incentive for the financing of basic project infrastructure through the creation of a public improvement district, commonly referred to as a "PID." Once established by a local government, a PID offers private developers the opportunity to have tax-exempt revenue bonds issued for the purpose of financing qualified infrastructure. Special assessments levied on the land and improvements within a PID serve as collateral for the bonds issued by the PID and are used to satisfy the debt service for the PID bonds. Interest rates, maturity and terms and conditions of any bonds issued by a PID will be based on the strength of the

private developer, the type of development and the specifications of the bond purchaser.

The New Markets Tax Credit (NMTC) Program was enacted by Congress in 2000 as part of the Community Renewal and Tax Relief Act of 2000 (P.L. 106-554, 113 Stat. 2763) in order to spur new or increased investments into operating businesses and real estate projects located in low-income communities. NMTCs are allocated by the Community Development Financial Institutions Fund (CDFI Fund), a bureau within the United States Department of the Treasury that runs the NMTC Program, under a competitive application process. There have been 912 allocation awards to date totaling \$43.5 billion in allocation authority.

The NMTC Program was designed to stimulate growth and development in low-income communities in rural and urban America. The NMTC Program does this by providing a credit against federal income taxes for investors who make Qualified Equity Investments (QEIs) into specially designated financial institutions called Community Development Entities (CDEs). CDEs are domestic corporations or partnerships that serve as an intermediary vehicle for the provision of loans, investments or financial counseling in low-income communities. The CDEs use the tax credits to raise QEIs made by investors to make Qualified Low-Income Community Investments (QLICs) in communities. QLICs include investments in businesses and real estate projects in low-income communities.

The NMTC Program attracts investment capital to low-income communities by permitting individual and corporate investors to receive a credit against their federal income taxes in exchange for making equity investments in qualifying projects. The tax credit is equal to 39% of the original investment amount and is claimed over a period of seven years (five percent for each of the first three years and six percent for each of the remaining four years). At least 85 percent of the QEI must in turn be used by the CDE to make investments in low-income communities. These tax credits create a substantial financial benefit for the investor as well as economic benefit for the low-income community due to the additional investment capital.

In addition, many states have developed programs that work similarly to the federal NMTC Program, but offer a reduction of state tax liability. The Mississippi Equity Investment (New Markets) Tax Credit Program was created as a “piggy back” credit to the federal NMTC Program. This state credit is a credit against income or insurance premium taxes in an amount equivalent to 24% of the QEI, and it is utilized over a three-year period (eight percent per year). The maximum amount of state credits that can be generated from a single project is \$2,400,000 or \$800,000 per year. Purchase prices vary depending on the current market, but generally speaking, borrowers can expect

(assuming a maximum project cost of \$10M) to generate an additional \$1.2M of subsidy.

The NMTC Program provides significant financial assistance in the form of below market debt and/or equity to qualifying businesses and developments located within certain qualified low-income census tracts. The firm offers clients guidance in complex legal and regulatory issues that may arise in these transactions. Butler Snow has represented tax credit investors, leveraged lenders, community development entities and developers in NMTC transactions. In addition, the firm has substantial expertise in transactions utilizing NMTCs in conjunction with other federal, state and local economic development incentives, including combining NMTC financing with tax-exempt bond financing.

2. **Mississippi Commercial Banking.**

Mississippi has one hundred (100) state-chartered and national banks that provide businesses in Mississippi with a full range of banking opportunities. These institutions range in size from small community banks to large regional banks. While most banks in Mississippi are community banks, twelve multi-state banks are headquartered in Mississippi, and at least nine regional banks headquartered outside of Mississippi have branch offices within the state. The larger banks in Mississippi are centered in Jackson, the state capitol, in Tupelo in northeast Mississippi, and on the Mississippi Gulf Coast.

Mississippi banks offer businesses a broad array of services, including financing alternatives such as working capital loans, real estate construction and term loans, Small Business Administration and U.S. Department of Agriculture loans, factoring and asset-based loans, and leveraged leasing transactions. Some Mississippi banks also offer tax-exempt financing, interest rate swaps, bankers' acceptance financing, private placement of debt and agency services. Additionally, many Mississippi banks offer relocation services in order to assist companies relocating to Mississippi. These services include personal banking services, home mortgage financing, community orientation programs, home-finding assistance, discount brokerage services and trust and financial planning. Although there are currently no international banks with offices located in Mississippi, several banks offer international banking services, including export and import financing and letter of credit and foreign currency transactions.

3. **Mississippi Securities Regulation.**

The Mississippi Securities Act of 2010 (Miss. Code Ann. §§ 75-71-101, *et seq.*, hereinafter the "Securities Act"), which was enacted during the 2009 legislative session with an effective date of January 1, 2010, regulates the offer and sale of securities in Mississippi. The Securities Act exists for the protection of investors and is based substantially on the Uniform Securities Act of 2002. The Mississippi Secretary of State is vested with the primary responsibility for enforcement of the Securities Act.

Miss. Code Ann. § 75-77-301 makes it unlawful to offer or sell a security in Mississippi unless the security is a federal covered security, the security, transaction or offer qualifies for an exemption from registration or the security is registered under the Securities Act. Securities can be registered with the Mississippi Secretary of State by qualification under Miss. Code Ann. § 75-71-304 or by coordination with the Securities Act of 1933. The Secretary of State also accepts SCOR filings.

The Securities Act recognizes a number of exempt securities and transactions. Miss. Code Ann. § 75-71-201 sets forth ten (10) categories of exempt securities, all of which are substantially identical to the exemptions found in section 201 of the Uniform Securities Act of 2002. Miss. Code Ann. § 75-71-202 sets forth twenty-three (23) transactional exemptions. The exemptions are substantially identical to the exemptions found in section 202 of the Uniform Securities Act of 2002. The Mississippi Secretary of State has also adopted certain transaction exemptions by rule, including two rules adopted in 2015 to permit crowdfunding offerings in conjunction with Rule 504 of Regulation D of The Securities Act of 1933 and the federal intrastate offering exemption.

Pursuant to § 75-71-401 and § 75-71-402, respectively, of the Securities Act, it is unlawful for any person to transact business in Mississippi as a broker-dealer or agent unless that person is registered with the Securities Division of the Secretary of State or is exempt from registration. Pursuant to § 75-71-403 and § 75-71-404, respectively, of the Securities Act, it is unlawful for any person to transact business in Mississippi as an investment adviser or investment adviser representative unless that person is registered with the Securities Division of the Secretary of State or is exempt from registration. In order to apply for registration, Securities Act Rules 5.01 and 5.02 require FINRA-registered broker-dealers and agents to submit certain information via the Central Registration Depository (CRD), including Form BD, certain financial information, and a non-refundable registration fee of Two Hundred Dollars (\$200.00) for broker-dealers and Fifty Dollars (\$50.00) for agents. In addition to the above-required items, non-FINRA members must also post a Thirty Thousand (\$30,000.00) surety bond. Investment advisers and investment adviser representatives have similar registration requirements pursuant to Securities Act Rules 6.05 and 6.13, respectively.

Miss Code Ann. § 75-71-501 sets forth Mississippi's antifraud provisions related to the offer and sale of securities. The provisions are similar, in substance, to the federal antifraud prohibitions and standards. The registration exemptions contained in Miss. Code Ann. §§ 75-71-201 and 75-71-202 do not limit the application of the antifraud provisions of the Securities Act.

4. **Mississippi Usury Laws.**

Closed-end credit. The legal rate of interest on all notes, accounts and contracts is eight percent (8%). The rate is calculated according to the actuarial method. Parties may enter into a written contract for additional finance charges as authorized by law. A borrower may contract to pay a finance charge for any loan or credit that would result in a yield not to exceed ten percent (10%) or five percent (5%)

per annum above the discount rate, excluding any surcharges, on 90-day commercial paper in effect at the Federal Reserve Bank. This rate is known as the "contract rate." Partnerships, joint ventures, religious societies, unincorporated associations, or domestic or foreign corporations may contract for a rate not to exceed fifteen percent (15%) or five percent (5%) per annum above the discount rate, excluding surcharges, on 90-day commercial paper and other lending transactions where the principal balance exceeds Two Thousand Five Hundred Dollars (\$2,500.00). In addition, any borrower may contract for and agree to pay, and any lender may contract for and receive any financial charge agreed to in writing by the parties, regardless of the security taken or the purpose of the extension of credit, when the original principal balance or any aggregated advances exceeds Two Thousand Dollars (\$2,000.00), including renewals or extensions. (See Miss. Code Ann. § 75-17-1.) Usury is not a crime under state law; limits on interest rates are enforceable only by civil remedies. Liability for usury violations falls upon the lender and not the borrower. *Watkins v. Mississippi Bar*, 589 So. 2d 660 (Miss. 1991).

Special Interest Rate Provisions. Special interest rate provisions apply to revolving charge agreements and credit cards (Miss. Code Ann. § 75-17-19); factory manufactured moveable homes (Miss. Code Ann. § 75-17-23); and small loan licensees (Miss. Code Ann. § 75-17-21).

Finance Charge. Finance charge is defined as any amount or rate paid or payable, directly or indirectly as an incident to or condition of an extension of credit, including, but not limited to, interest, fees, points, service charges, transaction charges, activity charges, carrying charges, time price differential, finders fee or any other cost or expense to the debtor related to making, arranging or negotiating an extension of credit. Miss. Code Ann. § 75-17-25.

X. MISSISSIPPI REAL ESTATE LAWS

1. Ownership.

Generally, any natural person or legal entity may hold title to real property in Mississippi, with the exception of nonresident aliens. Miss. Code Ann. § 89-1-23. According to Mississippi law, although resident aliens may own and dispose of land, nonresident aliens may not normally acquire or hold land except in limited circumstances. *Id.* In addition, nonresident aliens may own up to three hundred twenty (320) acres of land in Mississippi for industrial development and five (5) acres for residential purposes. *Id.*

Any legal business entity may own land in Mississippi, including corporations (Miss. Code Ann. § 79-4-3.02), partnerships (Miss. Code Ann. § 79-13-203) and limited liability companies (Miss. Code Ann. § 79-29-117). In connection with any sale exceeding One Hundred Thousand Dollars (\$100,000.00) involving a nonresident seller or entity not qualified to do business in Mississippi, five percent (5%) of the amount realized by the seller must be withheld by the seller and paid to the Mississippi Department of Revenue. Miss. Code Ann. § 27-7-308(1).

The power to purchase and sell property is an express power of corporations. Miss. Code Ann. § 79-4-3.02. Mississippi law provides that shareholder approval of the sale of assets is not necessary. Miss. Code Ann. § 79-4-12.01. However, a corporation's articles of incorporation may limit these express powers. *Id.*

Partnerships may also freely own land in the state, and the property of a partnership is held by the partners as tenants in partnership. Each partner has an equal right with his partners to possess specific partnership property for partnership purposes. Miss. Code Ann. § 79-13-401(g). A determination of whether specific real property is an asset of the partnership is a fact question and is based upon the parties' intent. *Crowe v. Smith*, 603 So. 2d 301, 305-06 (Miss. 1992).

An LLC may own property in Mississippi without limitation unless its certificate of formation prohibits such ownership. Miss. Code Ann. § 79-29-117(1).

2. **Concurrent Ownership.**

Concurrent ownership in Mississippi is similar to most other common law jurisdictions. According to Mississippi law, there is a preference for a tenancy in common in Mississippi. Miss. Code Ann. § 89-1-7. Otherwise, an instrument must clearly convey the intent of the parties to create any other type of estate. *Id.*

The procedure for creating concurrent ownership in Mississippi is also noteworthy. A straw man is not necessary to create a joint tenancy or a tenancy by the entirety. Because of the statutory preference for tenancy in common, the conveying language must explicitly state that a tenancy in common is not being created. *Id.*

Finally, the effect of divorce on a tenancy by the entirety is different than in many other states. When the parties to an estate of tenancy by the entirety divorce, the estate becomes a joint tenancy, not a tenancy in common, as in most other states. *Shepherd v. Shepherd*, 336 So. 2d 497, 499 (Miss. 1976).

3. **Spousal Rights.**

A spouse has many rights and responsibilities as to real estate and other property under Mississippi law. For example, Mississippi utilizes the right of renunciation to allow a surviving spouse to inherit property from the deceased spouse, regardless of the deceased spouse's will. Miss. Code Ann. § 91-5-25. Under this right, a surviving spouse may renounce the will and elect to receive one-half of the estate. *Id.* A spouse's right to property in the event of divorce exists in the agreed upon settlement or court decreed settlement. Miss. Code Ann. § 93-5-23.

Responsibilities of a spouse include aiding in the process of a mortgage's execution. A mortgage on homestead property requires the signature of the spouse of

the owner. Miss. Code Ann. § 89-1-29. Without the signature of the spouse, the mortgage is not valid and binding. *Id.*

4. **Purchase and Sale of Real Property.**

The manner in which real property is acquired in Mississippi is similar to other common law states. Purchase agreements customarily contain the following information: the buyer's identity and obligations; the seller's identity and type of deed; disclosure of any covenants, conditions or restrictions which bind the property; the purchase price and method of payment; a legal description of the property; any contingencies to the obligation to consummate the sale; stipulations for prorations; title evidence requirements; procedures for closing and transfer of the property; remedies if either party breaches the contract; and the terms in case of property damage or destruction prior to closing. All conveyances of real property must be in writing, signed and delivered by the transferor. Miss. Code Ann. § 89-1-3. A deed must be acknowledged and filed for record in the office of the Chancery Clerk of the county where the land is located. Miss. Code Ann. § 89-5-1. Real property may be conveyed by general warranty deed, special warranty deed or by a quitclaim deed. Miss. Code Ann. §§ 89-1-33, -35, -37. In Mississippi, there is no mortgage or transfer tax: The recording of a deed or deed of trust only requires the payment of nominal recording fees. Subject to certain exceptions enumerated in Miss. Code. Ann. § 89-5-24, any document or instrument presented to the clerk of the chancery court for recording shall meet the following requirements:

(a) Each document or instrument shall consist of one or more individual pages printed only on one (1) side. The document or instrument shall not consist of pages that are permanently bound or in a continuous form and shall not have any attachment stapled or otherwise affixed to any page except as necessary to comply with statutory requirements. However, the individual pages of a document or instrument may be stapled together for presentation for recording. A label that is firmly attached with a bar code or return address may be accepted for recording.

(b) All documents must be printed or typed in a font no smaller than ten (10) point in size. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, presented for recording contains type smaller than ten (10) point type, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the requirements of this section.

(c) Each document shall be of sufficient legibility to produce a clear reproduction. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, is not sufficiently legible to produce a clear reproduction, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the type size requirements of paragraph (b) and shall be recorded contemporaneously as additional pages of the document or instrument.

(d) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall be on white paper of not less than twenty-pound weight. All text within the document or instrument shall be of sufficient color and clarity to ensure that the text is readable when reproduced from the record.

(e) All signatures on a document or instrument shall be in black or blue ink and of sufficient color and clarity to ensure that the signatures are of sufficient legibility to produce a clear reproduction when the document or instrument is reproduced from the record. The corresponding name shall be typed, printed or stamped beneath the original signature. The typing or printing of a name or the application of an embossed or inked stamp shall not cover or otherwise materially interfere with any part of the document or instrument except where provided by law. Failure to print or type signatures as required in this paragraph does not invalidate the document or instrument.

(f) The first page of each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall have a top margin of at least three (3) inches of vertical space from left to right which shall be reserved for the recorder's use. All other margins on the document or instrument shall be a minimum of three-fourths (3/4) of one (1) inch. Nonessential information including, but not limited to, form numbers or customer notations may be placed in a margin other than the top margin. A document may be recorded if a minor portion of a seal or incidental writing extends into a margin. The recorder shall not incur any liability for failure to show a seal or information that extends beyond the margin of the permanent archival record.

Miss. Code Ann. § 89-5-24(1)(a)-(f).

The chancery clerk will record a document or instrument that does not substantially conform to the format standards upon payment of an additional recording fee of Ten Dollars (\$10.00) per document or instrument, and the failure to conform to the format standards does not affect the validity or enforceability of the document or instrument. *Id.* at § 89-5-24(4), -24(5).

A lender may acquire a lien on real property by virtue of a deed of trust or a mortgage. However, the deed of trust is the instrument customarily used in Mississippi. Both a deed of trust and mortgage are void as to all creditors and subsequent purchasers without notice unless they are acknowledged by a notary public or other authorized officer and recorded with the Chancery Clerk of the county where the land is located. Miss. Code Ann. § 89-5-3.

5. **Foreclosures.**

Mortgages and deeds of trust can be foreclosed judicially or non-judicially. While the lengthy judicial foreclosure process can be used, the nonjudicial power of sale foreclosure is the most common. Mississippi does not have a statutory redemption

period after foreclosure. Deficiency suits on installment obligations must be commenced within one (1) year of the date of the foreclosure. Miss. Code Ann. § 15-1-23.

6. **Easements.**

The creation of an easement according to Mississippi law is very similar to the laws of other states. The termination or abandonment of the easement occurs if the dominant owner does not use the easement for a period of time. *R & S Dev., Inc. v. Wilson*, 534 So. 2d 1008, 1010 (Miss. 1988). A presumption of abandonment exists if the dominant owner does or allows any action inconsistent with the easement. *Columbus & G.R. Co. v. Dunn*, 185 So. 583, 585 (Miss. 1939).

State law allows for the creation of some easements, including conservation and reforestation easements. Government entities and private, nonprofit, charitable or educational groups may hold conservation easements. Miss. Code Ann. § 89-19-3(2)(a)-(b). These easements are valid even if they do not comply with the normal requirements for an easement. Miss. Code Ann. § 89-19-9. A reforestation easement is “an easement on open agricultural land located in the project area that restricts the future use of the property to woodlands that is purchased from a landowner by the Corps of Engineers or other governmental entity for purposes specifically related to the project.” Miss. Code Ann. § 51-35-25(1)(c).

Implied easements occur when a person shows a continuous, apparent, permanent and necessary use for the property. *Delancey v. Mallette*, 912 So. 2d 483, 488 (Miss. Ct. App. 2005). In order for a use to be apparent, a person must demonstrate only that a reasonable inspection would discover the easement. *King v. Gale*, 166 So. 3d 589, 594 (Miss. Ct. App. 2015). An implied easement may also be established by evidence that access to the property is extremely convenient or necessary for the person to fully enjoy the property. *Fourth Davis Island Land Co. v. Parker*, 469 So. 2d 516, 521 (Miss. 1985).

7. **Leases.**

There are few differences between residential and commercial leases in Mississippi. State law requires leases with a term of more than one (1) year be written, signed and delivered; and there is an additional recording requirement to give notice to a third party. Miss. Code Ann. § 89-5-3. The Residential Landlord and Tenant Act determines all issues regarding residential leases, including issues related to payment, use, retention, return and lien status of security deposits. Miss. Code Ann. § 89-8-1 *et seq.*

A landlord has many rights to secure payment of rent. First, the landlord may place a lien on any agricultural products on the leased property. Miss. Code Ann. § 89-7-51. A landlord also has a lien on any of the lessee’s personal property, other than inventory, located on the leased property. *Id.*

Provisions for the termination of a lease are contained in the Residential Landlord and Tenant Act and require different degrees of notice for different types of leases. Miss. Code Ann. § 89-8-19. A tenant holding over after the expiration of the lease is liable for double the amount of rent normally due. Miss. Code Ann. § 89-7-25.

8. **Zoning.**

Counties and municipalities within the state have the authority to determine zoning in their area. These governing bodies may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. Miss. Code Ann. § 17-1-7. Regulations within a zone must be the same, but regulations from zone to zone may be different. *Id.*

Zoning ordinances must abide by a comprehensive plan, and their purpose must be to lessen congestion in the streets; to secure property and persons from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Miss. Code Ann. § 17-1-9. A local planning commission may direct the comprehensive plan to oversee the zoning of the county or municipality, and this commission may be local or regional. *Id.* at § 19-1-11.

When a state statute conflicts with a local ordinance or zoning regulation, the local ordinance or regulation governs if it imposes a higher standard. Miss. Code Ann. § 17-1-21. Otherwise, the state statute governs in any other instance. *Id.*

9. **Eminent Domain.**

Under Mississippi's eminent domain law, complaints are filed in the Circuit Court of the county where the land is located, as well as filing a lis pendens notice in the office of the Clerk of the Chancery Court. Miss. Code Ann. § 11-27-7. The defendants are then entitled to a hearing and must be given notice as to the fair market value of the property and be paid an amount of damages necessary to make the landowner whole. *Id.*

The State Highway Commission, counties, municipalities, boards of supervisors, Mississippi Wayport Authority and the Mississippi Major Economic Impact Authority have authority to exercise eminent domain for public purposes.

10. **Mineral Rights and Environmental Laws.**

Miss. Code Ann. § 53-1-5 authorizes the creation of, and grants powers to the State Oil and Gas Board. Miss. Code Ann. § 53-1-7 states that the supervisor of the board shall be responsible for the administration and enforcement of Mississippi statutes related to mineral rights. The board governs all drilling and production in the state. Mississippi law provides that any aggrieved citizens may appeal the board rulings in Chancery Court of Hinds County, Mississippi or to the chancery court off the county in

which all or a part of appellant's property affected by such rule is located. Miss. Code Ann. § 53-1-39. Violations of the related statutes carry a fine up to Ten Thousand Dollars (\$10,000.00) per day and possible imprisonment. Miss. Code Ann. § 53-1-47.

Mississippi law empowers the Mississippi Commission on Environmental Quality to exercise all duties and responsibilities related to the geological and mineral survey for Mississippi, as well as surface mining issues, including reclamation of land. Miss. Code Ann. § 53-7-19. Under the statutes, a permit, a reclamation plan and a performance bond are required in order to conduct surface mining. *Id.* at § 53-7-27. Any surface mining is prohibited on lands which are a part of a national park, a national monument, national historic landmark, any property listed on the national register of historic places, national forest, national wilderness area and etc. *Id.* at § 53-7-47. Furthermore, with the assistance of the Mississippi Commission on Wildlife, Fisheries, and Parks and the Mississippi Department of Marine Resources, some lands may be identified as unsuitable for all or certain types of surface mining. *Id.* at 53-7-49. Violations of these laws carry a penalty of fines ranging in the amount of Five Hundred Dollars (\$500.00) to Twenty-Five Thousand Dollars (\$25,000.00) in either civil or criminal fashion. *Id.* at § 53-7-59.

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