

INDESTRUCTIBLE Survivorship or DESTRUCTIBLE Survivorship:

*Which Form of
Survivorship Is
Best for Your
Client?*

By Sam W. Irby



It is common for a client to ask a lawyer to prepare a deed

conveying real property to the client and his or her spouse in what the client calls “with right of survivorship.” If the lawyer asks the client what the client means by “with right of survivorship,” the client may often respond by saying, “When I die, I want my spouse to inherit automatically, without the need to probate.” Alabama lawyers should be aware that preparing a deed to two or more individuals with so-called “right of survivorship” is much more complex than the client may realize. It is important that the lawyer discuss the issues with his or her client and advise the client regarding the different types of survivorship recognized by Alabama law and the effect that the different types may have on the rights of the owners of the real property.

In March 1983, Robert P. Denniston published an excellent article in *The Alabama Lawyer*.¹ In his article, Mr. Denniston discussed the law in Alabama concerning the complex issues pertaining to indestructible and destructible survivorship of real property. The purpose of this article is to revisit some of the history of Alabama law pertaining to survivorship and to discuss the key issues in advising a client on what form of survivorship is best for the client to use in a deed.

What Is Survivorship?

Joint tenancy at common law was a form of ownership providing that a deed or conveyance to two or more people as joint tenants, if drafted properly, resulted in each joint tenant being seized of a share of the ownership of the property while at the same time each owning the whole. The joint tenants shared rights in the real property during their lives and upon the death of one of them, the interest of the deceased joint tenant terminated without the need to probate.²

The interest in the property of a deceased person ceases upon his or her death.³ When title is taken by two or more people as joint tenants with rights of survivorship, each joint tenant owns an undivided one-half interest for life while at the same time a contingent remainder in the whole, and the interest in the property of a deceased person ceases upon his or her death. The *Fretwell* court held that when title

is held as joint tenants with rights of survivorship, the surviving joint tenant becomes the absolute owner of the property upon the death of the co-tenant, because, by virtue of the deed, the survivor does not acquire title through the deceased.⁴ The property described in a deed to joint tenants with rights of survivorship will become the property of the survivor upon the death of one of the joint tenants.⁵

What Is Tenancy in Common?

Tenancy in common at common law was generally described as an ownership by two or more persons, in equal or unequal undivided shares, with each person having an equal right to present possession of the whole property.⁶ Tenants in common share a single

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unity of possession and if the single unity of possession does not exist, the estate is not a tenancy in common.⁷ Each tenant in common has a separate undivided interest with the other tenants in common.⁸ Tenants in common are not considered to own the entirety of a parcel; rather each tenant in common owns an undivided part of the parcel. Each tenant in common has the right to convey or encumber his or her interest without the consent or approval of the other tenants in common.⁹ Upon the death of one of the tenants in common, there is no right of survivorship in the surviving tenants in common. The interest of the deceased tenant in common descends to the beneficiaries under his or her will or by the laws of intestacy without affecting the ownership interests of the other tenants in common.

Early Alabama Case Law

At English common law, when a deed conveyed to two or more persons as joint tenants there was a presumption of joint tenancy with right of survivorship.¹⁰ To create a joint tenancy with right of survivorship, four unities of title had to be present, namely, the unities of time, title, interest and possession. Any event that destroyed one of these unities destroyed the joint tenancy.¹¹ All joint tenants must have taken title by the same instrument, at the same time, with the same share and all joint tenants would have the same undivided right of possession to the property.¹² If these four unities of title were present, a joint tenancy with right of survivorship and not tenancy in common was presumed, and it was not necessary to express intent to create survivorship.¹³ For example, at English common law, a deed from a grantor to a grantee reciting that the deed was intended to create a joint tenancy between them would not have the element of unity of time and, therefore, would not have created a joint tenancy with right of survivorship.

Under earlier Alabama case law, a joint tenancy could be destroyed by the conveyance of the interest of one of the joint tenants.¹⁴ Following the creation of a joint tenancy, any subsequent conveyance by one of the joint tenants would destroy the joint tenancy and a tenancy in common would result.¹⁵

The common law presumption of joint tenancy was abolished in Alabama. The original version of the law, now codified as *Ala. Code*, §35-4-7 provided that, when one joint tenant dies, his or her interest does not survive to the other joint tenants. In 1945, the statute was amended to provide that this statutory presumption favoring tenancies in common can be overcome by clear language in a deed that a right of survivorship is intended. For a discussion of the history of the law in Alabama pertaining to joint tenancies and tenancies in common, see Durant and the 1983 article by Robert P. Denniston.¹⁶

The courts in Alabama have ruled that unity of time is no longer required in order to create a joint tenancy.¹⁷ Therefore, a deed by a grantor to a grantee which clearly expresses an intention to create joint tenancy with right of survivorship in the grantor and grantee is now sufficient to create joint tenancy with right of survivorship. The *Germaine* court stated that *Ala. Code*, §35-4-7 requires the intent of survivorship to be expressed in the instrument of conveyance and eliminated the common law requirement of unity of time.

1983 Robert P. Denniston Article

In his 1983 *Alabama Lawyer* article, Robert Denniston discussed the issues and cases pertaining to “destructible” and “indestructible” survivorship. Mr. Denniston brought to the attention of the bar the cases of *Bernhard v. Bernhard*, *Nunn v. Keith* and *Durant v. Hamrick*.¹⁸

In the *Bernhard* case, a husband and wife took title to property as joint tenants with right of survivorship. The husband filed a bill seeking to have the property sold for division. The *Bernhard* court stated that the sole question to be decided was whether property held under a joint tenancy with right of survivorship may be sold for division at the insistence of one of the tenants over the objection of the other. The *Bernhard* court further stated that joint tenancies as known to the common law have been abolished by statute, but that if survivorship is clearly stated as an incident to the estate of tenancy in common, then a right of survivorship is allowed. The

Bernhard court ruled that the parties had intended to create a tenancy in common with right of survivorship, with each party owning an undivided one-half interest for life, plus the right in the survivor to own the entire interest by way of contingent remainder. The *Bernhard* court further ruled that there can be no sale for division over the objection of one tenant during their joint lives and that a division may be had only with the consent of all grantees.

In the *Nunn* case, a husband and wife conveyed real property to themselves and their grandson as joint tenants with right of survivorship. The wife died and the husband remarried. The husband and his new spouse conveyed a one-half undivided interest in the real property to themselves for their joint lives with the remainder to the survivor. The *Nunn* court stated that the question before it involved the determination of the type of estate was created by the 1949 deed. The *Nunn* court overruled *Bernhard* and stated that *Ala. Code*, §35-4-7 was intended to and did revive the common law joint tenancy in Alabama. The court explained that the statute required that an intent to create a right of survivorship must be clearly expressed and clarified that the statute eliminated the common law unity of time formerly required to create a joint tenancy. The *Nunn* court further ruled that joint tenancy is destructible by one co-tenant and therefore the deed conveying one-half undivided interest to the husband and his second wife destroyed the joint tenancy. Consequently, upon the death of the husband the second wife became the sole owner of one-half interest and a tenant in common with the grandson. Although *Nunn* overturned *Bernhard*, the overruling effect of *Nunn* was later held to be prospective only, and applicable only to deeds created after the decision in *Nunn*.¹⁹ This created what the courts call the “*Bernhard* window.” The *Bernhard* ruling continues to apply to deeds creating joint tenancies with right of survivorship executed between the date of the *Bernhard* decision (July 15, 1965) and the date of the *Nunn* decision (November 9, 1972). A deed created within the “*Bernhard* window” results in a joint tenancy that is indestructible.²⁰

In the *Durant* case, a husband and wife took title by deeds “as tenants in common and with equal rights and interest for the period or term that the said Grantees shall both survive and unto the survivor of the said Grantees, at death of the other...” Prior to the husband’s death, the wife deeded her interest to her son subject to a life estate. The argument was made that *Nunn* ruled that joint tenancies with right of survivorship have been revived if clearly stated in the deed, that a joint tenant could convey his or her interest and that

such a conveyance would destroy the joint tenancy and result in a tenancy in common between the owners.

Durant held that although *Nunn* was correct, it did not apply to the facts in *Durant* because the deed in *Durant* created a tenancy in common with survivorship. A tenancy in common with survivorship is a tenancy in common for life with a contingent remainder to the survivor. *Durant* also held that a tenancy in common with right of survivorship is not destructible by a co-tenant. The *Durant* court stated: “We are persuaded that Alabama should likewise recognize a form of concurrent property ownership as tenants in common which provides for survivorship. This form of concurrent ownership can be characterized as creating concurrent life estates with cross-contingent remainders in fee; or a tenancy in common for life with a contingent remainder in favor of the survivor.”

The result of these cases is that there are now two forms of survivorship in Alabama: joint tenancy with right of survivorship, which is destructible, and tenancy in common with right of survivorship, which is indestructible keeping in mind the “*Bernhard* window.”

Divorce, Sale for Division, Liens and Bankruptcy

In properly advising a client, the attorney should be aware of the cases pertaining to divorce, sale for division, liens against real property and bankruptcy.

■ Divorce

The Alabama courts have generally held that a divorce decree which is silent with respect to property held jointly with right of survivorship does not automatically destroy the existing survivorship provisions, but that if the parties submit themselves to the jurisdiction of the equity court for a divorce decree, then the court is empowered to supply the consent of the parties.²¹

In the case of *Porter v. Porter*,²² a husband and his first wife purchased a home under a 1963 deed as joint tenants with rights of survivorship. The husband and first wife were divorced pursuant to a 1976 divorce

The husband and his new spouse conveyed a one-half undivided interest in the real property to themselves for their joint lives with the remainder to the survivor.

decree that provided the first wife would have exclusive right to occupy the real property. The husband married a second wife and he remained married to the second wife until his death. The *Porter* court stated that the major distinction between a tenancy in common and a joint tenancy is that the interest held by tenants in common is divisible and descendible, whereas the interest held by joint tenants passes automatically to the last sur-

ivor. The second wife argued that because the divorce decree awarded the first wife exclusive occupancy of the real property, the first wife’s exclusive possession of the property destroyed the unity of possession. Consequently, because the unity of possession had been destroyed, the joint tenancy was also destroyed resulting in a tenancy in common. The *Porter* court held that a divorce decree which is silent with respect to property held jointly with right of survivorship does not automatically destroy the existing survivorship provisions.

In the cases of *Summerlin v. Bowden* and *Owens v. Owens*,²³ the courts, relying on *Bernhard*, held that the circuit court has the power to adjust the ownership of property held by joint tenants who are parties to a divorce action when the parties invoke the jurisdiction of the equity court. The *Summerlin* court stated “... there can be no compulsory partition in the absence of consent of the tenants, except in those cases where the tenants have invoked the jurisdiction of the equity court in a divorce proceeding with regard to the property in question.”

In the case of *Johnson v. Johnson*,²⁴ a question arose in a divorce action as to whether or not a husband and wife held title as joint tenants or tenants in common with right of survivorship. The *Johnson* court concluded that whether the husband and wife were joint tenants or tenants in common in the property was not dispositive. The *Johnson* court ruled that the parties had submitted themselves to the jurisdiction of the equity court for a divorce decree and when they did so had empowered the equity court to supply the consent of either party to a division of their property.²⁵

■ Sale for Division

The Alabama courts have held that a complaint for sale for division of land between joint owners or tenants in common is a matter of right.²⁶

In the case of *Granite Equipment Leasing Corporation v. Smith's Pride Foods, Inc.*,²⁷ a judgment debtor and his wife held title to real property as joint tenants with rights of survivorship. The question posed by the *Granite* court concerned the extent of execution available against the defendant's joint tenancy interest. The judgment debtor, relying on *Brown v. Andrews*,²⁸ contended that his interest in the joint tenancy was limited to a life estate. The *Brown* case, based on the *Bernhard* ruling, concluded that the two interests held by a joint tenant with right of survivorship are a life estate and a contingent remainder in the whole and that only the life estate is subject to execution. The *Granite* court discussed the *Nunn* case observing that *Nunn* had expressly overruled *Bernhard*. The *Granite* court concluded that since *Nunn* expressed the current law in Alabama, there is no longer any reason to limit the leviable interest of a joint tenant to a life estate and that execution may proceed against the interest of the judgment debtor.

■ Liens and Bankruptcy

The bankruptcy courts have recognized the history of the *Bernhard* and *Nunn* cases and have ruled that the nature of the interest in property is to be determined by non-bankruptcy state law.²⁹

In the bankruptcy case of *In re Livingston*,³⁰ the Livingstons took title by 1972 deed to real property "...for and during their joint lives, and upon the death of either of them, then to the survivor of them in fee simple, and to the heirs and assigns of such survivor." The *Livingston* court held that the 1972 deed to the Livingstons fell within the "*Bernhard* window" as a tenancy in common for life with cross-contingent remainders of survivorship and that such an interest was contemplated neither by Congress nor Alabama law as being embraced in the language in 11 U.S.C. §363(h). The *Livingston* court further held that the trustee could sell the debtor's complete interest, along with the non-debtor spouse's interest as a tenant in common, but that the trustee was not authorized by 11 U.S.C. §363(h) to force a sale of the non-debtor spouse's contingent remainder in survivorship. The *Livingston* court upheld the district court's ruling that a tenancy in common for life with a cross-contingent remainder

of survivorship was not included within the range of estates laid out in 11 U.S.C. §363(h).

In the case of *In re Spain*,³¹ the debtor husband and non-debtor wife acquired title to a parcel of real property by 1973 deed "...for and during their joint lives and upon the death of either of them, then to the survivor of them in fee simple, together with every contingent remainder and right of reversion." The *Spain* court held that the 1973 deed created a joint tenancy with a destructible right of survivorship, not a tenancy in common with indestructible rights of survivorship, and the trustee was not prohibited under 11 U.S.C. §363(h) from selling the property.

In the case of *In re Tibbetts*,³² the debtor husband and non-debtor wife had acquired real property by a 1965 deed which conveyed property to them "...as tenants in common, with equal interest for the period or term that said Grantees shall both survive, and unto the survivor of said Grantees at the death of the other..." The debtor husband and non-debtor wife were divorced and their 1989 divorce decree provided that the jointly owned home place would remain in the joint names of the parties, with right of survivorship, until the ex-wife remarried at which time the home place would be sold and the net proceeds equally divided between the parties. The *Tibbetts* court recognized the history

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of the *Bernhard* and *Nunn* cases and the *In re Spain* and *In re Livingston* cases and ruled that the 1989 judgment of divorce converted the indestructible tenancy in common into a destructible joint tenancy which falls within the scope of 11 U.S.C. §363(h).

Tut Wynne, a prominent bankruptcy lawyer practicing in the United States Bankruptcy Court of the Southern District of Alabama, Mobile Division, informs the writer that it is the practice for some attorneys representing debtors to argue the position that the value of the debtors' interest in property held by tenancy in common with right of survivorship is less than the "fair market value." The argument is made that the one-half interest in the property is actually non-existent due to the possibility that the debtor may predecease the owner of the other one-half interest. The argument is further made that the older the debtor, the less value is in the debtor's life estate.

Recent Alabama Legislation

The Alabama legislature recently enacted *Ala. Code*, §30-4-17 that provides in part:

“...(b) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:...

- (2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship transforming the interests of the former spouses into equal tenancies in common.”

This statute does not speak specifically to tenancy in common with right of survivorship or to any of the issues addressed in this article. Only time will tell how the Alabama courts will interpret the provisions of this statute.

Suggested Language in Deeds

The drafter should be careful in drafting any deed and make sure that there is no conflict or ambiguity in the language between the granting clause, habendum clause and any other clauses in the deed. When conflicts exist in a deed, the courts often look to the granting clause to control.³³ All clauses in the deed should be consistent.

Suggested Language For Joint Tenants with Right of Survivorship

The following is an example of the language that can be used in a deed granting to joint tenants with destructible survivorship.

■ Granting Clause:

GRANT, BARGAIN, SELL AND CONVEY unto said Grantees, as joint tenants, and upon the death of either of them, to the survivor of said Grantees, in fee simple, subject to the provisions

contained in this Warranty Deed, all that real property in the County of _____, State of Alabama, described as follows, to-wit:

■ Habendum Clause:

TO HAVE AND TO HOLD unto the said Grantees, during their joint lives, and upon the death of either of said Grantees, then to the survivor of said Grantees, and to the heirs and assigns of said survivor, in fee simple, FOREVER.

■ Warranty Clause:

And, except as to the above and taxes hereafter falling due, which are assumed by the Grantees, the Grantors, for the Grantors and for the heirs and assigns of the Grantors, COVENANT AND WARRANTY to and with the said Grantees, the survivor of said Grantees, and the heirs and assigns of said survivor, that the Grantors are seized of an indefeasible estate in fee simple in and to said real property, and have a good and lawful right to sell and convey the same; that the Grantors are in quiet and peaceable possession of said real property; and that said real property is free and clear of all liens and encumbrances of every kind and nature whatsoever; and the Grantors do WARRANTY AND WILL FOREVER DEFEND the title to said real property, and the possession of said real property, unto the said Grantees, the survivor of said Grantees, and the heirs and assigns of said survivor, against the lawful claims and demands of all persons whomsoever.

Suggested Language for Tenants in Common With Indestructible Survivorship

The following is an example of the language that can be used in a deed granting to tenants in common with indestructible survivorship.

■ Granting Clause:

GRANT, BARGAIN, SELL AND CONVEY unto the said Grantees, as tenants in common with equal interests during the period of their concurrent lives, and upon the death of either of said Grantees, the remainder to the survivor of

said Grantees, in fee simple, subject to the provisions contained in this Warranty Deed, all that real property in the County of _____, State of Alabama, described as follows, to-wit:

■ **Habendum Clause:**

TO HAVE AND TO HOLD unto the said Grantees during their concurrent lives, and upon the death of either of said Grantees, to the survivor of said Grantees, and to the heirs and assigns of said survivor, in fee simple, FOREVER.

■ **Warranty Clause:**

And, except as to the above and taxes hereafter falling due, which are assumed by the Grantees, the Grantors, for the Grantors and for the heirs and assigns of the Grantors, COVENANT AND WARRANT to and with the said Grantees, the survivor of said Grantees, and the heirs and assigns of said survivor, that the Grantors are seized of an indefeasible estate in fee simple in and to said real property, and have a good and lawful right to sell and convey the said real property; that the Grantors are in quiet and peaceable possession of said real property; and that said real property is free and clear of all liens and encumbrances of every kind and nature whatsoever; and the Grantors do WARRANT AND WILL FOREVER DEFEND the title to said real property, and the possession of said real property, unto the said Grantees, the survivor of said Grantees, and the heirs and assigns of said survivor, against the lawful claims and demands of all persons whomsoever.

Suggested Language for Tenants in Common Without Survivorship

The following is an example of the language that can be used in a deed granting to tenants in common without survivorship:

■ **Granting Clause:**

GRANT, BARGAIN, SELL AND CONVEY unto the said Grantees, subject to the provisions contained in this Warranty Deed, all that real property in the County of _____, State of Alabama, described as follows, to-wit:

■ **Habendum Clause:**

TO HAVE AND TO HOLD unto the said Grantees, and the heirs and assigns of said Grantees, in fee simple, FOREVER.

■ **Warranty Clause:**

And, except as to the above and taxes hereafter falling due, which are assumed by the Grantees, the Grantors, for the Grantors and for the heirs and assigns of the Grantors, COVENANT AND WARRANT to and with the said Grantees, and the heirs and assigns of said Grantees, that the Grantors are seized of an indefeasible estate in fee simple in and to said real property and have a good and lawful right to sell and convey the same; that the Grantors are in quiet and peaceable possession of said real property; and that said

real property is free and clear of all liens and encumbrances of every kind and nature whatsoever; and the Grantors do WARRANT AND WILL FOREVER DEFEND the title to said real property, and the possession of said real property, unto the said Grantees, and the heirs and assigns of said Grantees, against the lawful claims and demands of all persons whomsoever.

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Conclusions and Recommendations

The courts in Alabama recognize two different types of survivorship, namely, a tenancy in common with right of survivorship commonly referred to as indestructible survivorship and a joint tenancy with right of survivorship commonly referred to as destructible survivorship. Under both forms of survivorship, upon the death of any individual grantee the interest

will vest in the survivor or survivors. The client may think the drafting of the deed is very simple and it is convenient for a husband and wife to put both their names in the deed as so-called “joint tenants with rights of survivorship.” However, the drafter of a deed containing survivorship language needs to be aware that it is far more complex than it may first appear. This is a confusing area of Alabama law. As Mr. Denniston said in his 1983 article, “...in drafting conveyances we must exercise great care to express in language that is clear and unambiguous as possible the intention of the parties.”

A lawyer should discuss all of the issues addressed in this article with his or her client in order for the client to make an informed decision about what type of deed the client wants the lawyer to draft. Each situation is different and will depend on the facts and the relationship of the parties.

I thank Mr. Denniston for his excellent 1983 article in *The Alabama Lawyer* and Jesse P. Evans, III, author of the treatise “Alabama Property Rights and Remedies, 5th Edition” published by CLE Alabama. Both the 1983 article by Mr. Denniston and the treatise by Jesse Evans were an invaluable aide to me in my research and the drafting of this article. ▲

Endnotes

1. Robert P. Denniston, *Joint Tenancy and Tenancy in Common of Real Property—The Gulf Separating Them*, THE ALABAMA LAWYER, March 1983.
2. *Nunn v. Keith*, 268 So. 2d 792 (1972).
3. *Fretwell v. Fretwell*, 218 So. 2d 138 (Ala. 1969); *Bernhard v. Bernhard*, 177 So. 2d 565 (Ala. 1965).
4. *Fretwell*, 218 So. 2d.
5. *Id.*
6. *Kellum v. Williams*, 39 So. 2d 573 (Ala. 1949); *Van Meter v. Grice*, 380 So. 2d 274 (Ala. 1980).
7. *Van Meter*, 380 So.2d 274 (Ala. 1980); *Shepard v. Mt. Vernon Lumber Co.*, 68 So. 880 (Ala. 1915).
8. *Gore v. Gore*, 34 So. 2d 580 (Ala. 1948).
9. *Lee v. Lee*, 122 So. 2d 139 (Ala. 1960).
10. *Durant v. Hamrick*, 409 So. 2d 731 (Ala. 1981).
11. *Bernhard v. Bernhard*, 177 So. 2d 565 (Ala. 1965).
12. *Nunn v. Keith*, 268 So. 2d 792 (Ala. 1972).
13. 4 G. THOMPSON, COMMENTARIES ON MODERN LAW OF REAL PROPERTY Section 1775 (1979); 4 A. R. POWELL, THE LAW OF REAL PROPERTY Section 602 (Rohan ed. 1979).
14. *Nunn v. Keith*, 289 Ala. 518, 268 So. 2d 792 (Ala. 1972).
15. *Durant v. Hamrick*, 409 So. 2d 731 (Ala. 1981).
16. *Id.* Denniston, *supra* note 1.
17. *Germaine v. Delaine*, 318 So. 2d 681 (Ala. 1975); *Nunn*, 268 So. 2d.
18. *Bernhard v. Bernhard*, 177 So. 2d 565 (Ala. 1965); *Nunn*, 268 So. 2d; *Durant*, 409 So. 2d.
19. *Jackson v. Fillmore*, 367 So. 2d 948 (Ala. 1979); *Bringhurst v. Hardin*, 387 So. 2d 186 (Ala. 1980).
20. *Nettles v. Matthews*, 627 So. 2d 870 (Ala. 1993).
21. *Porter v. Porter*, 472 So. 2d 630 (Ala. 1985); *Johnson v. Johnson*, 446 So. 2d 622 (Ala. Civ. App. 1983); *Summerlin v. Bowden*, 240 So. 2d 356 (Ala. 1970).
22. *Porter*, 472 So. 2d.
23. *Summerlin*, 240 So. 2d; *Owens v. Owens*, 201 So. 2d 396 (1967).
24. *Johnson v. Johnson*, 446 So.2d 622 (Ala. 1983)
25. *Killingsworth v. Killingsworth*, 226 So. 2d 308 (Ala. 1969); *Owens*, 201 So. 2d.
26. *Paper v. Belk*, 162 So. 2d 465 (Ala. 1964); *Ragland v. Walker*, 387 So. 2d 184 (Ala. 1980); *Leonard v. Meadows*, 88 So. 2d 775 (Ala. 1956); *Meador v. Meador*, 53 So. 2d 546 (Ala. 1951).
27. *Granite Equip. Leasing Corp. v. Smith's Pride Foods, Inc.*, 431 F. Supp. 490 (N.D. Ala. 1977).
28. *Brown v. Andrews*, 257 So. 2d 356 (Ala. 1972).
29. *In re Livingston*, 804 F.2d 1219 (11th Cir. 1986).
30. *Id.*
31. *In re Spain*, 831 F.2d 236 (11th Cir. 1987).
32. *In re Tibbetts*, 186 B.R. 140 (Bankr. S.D.Ala. 1995).
33. *Priest v Ball*, 62 So. 3d 1013 (Ala. 2010).

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