

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 800

Short Title: Chgs. to Real Prop. Statutes/Elective Share. (Public)

Sponsors: Representatives Stevens and Zachary (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, Rules, Calendar, and Operations of the House

April 18, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO RECODIFY AND MAKE CHANGES TO THE STATUTES REGARDING
3 TENANCY BY THE ENTIRETIES AND TO MAKE CHANGES REGARDING
4 ELECTIVE SHARE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** Chapter 41 of the General Statutes is amended by adding a new
7 Article, and G.S. 41-55 through G.S. 41-69 are reserved for that Article.

8 **SECTION 1.(b)** The following General Statutes are recodified in Article 5 of
9 Chapter 41 of the General Statutes, as created by subsection (a) of this section, as set forth in the
10 table below:

<u>Former Citation</u>	<u>Recodified Citation</u>
G.S. 31A-5	G.S. 41-64(b)
G.S. 39-13.3(b)	G.S. 41-56(b)
G.S. 39-13.3(c)	G.S. 41-63(4)
G.S. 39-13.5	G.S. 41-56(c)
G.S. 39-13.6(a)	G.S. 41-58
G.S. 39-13.6(b)	G.S. 41-56(a)
G.S. 39-13.6(c)	G.S. 41-59(b)
G.S. 39-13.7	G.S. 41-65
G.S. 41-2.5	G.S. 41-56(d)

11 **SECTION 1.(c)** Article 5 of Chapter 41 of the General Statutes, as created by
12 subsection (a) of this section, and containing the sections recodified in subsection (b) of this
13 section, reads as rewritten:
14

15 "Article 5.

16 "Tenancy by the Entirety.

17 **"§ 41-55. Definitions.**

18 For the purposes of this Article, the following definitions apply:

- 19 (1) Conveyance. – A transfer of title to real property by deed or devise or other
20 instrument transferring title to real property.
21 (2) Income. – Rents and profits from property held as tenants by the entirety.
22 (3) Spouses. – Two individuals then legally married to each other.

23 **"§ 41-56. Creation of tenancy by the entirety.**

24 (a) A-Unless a contrary intention is expressed in the conveyance, a conveyance of real
25 property, or any interest therein, to a husband and wife spouses vests title in them as tenants by
26 the entirety when the conveyance is to one of the following:
27



- 1 (1) A named ~~man~~individual "and wife," ~~or wife.~~
2 (2) A named ~~woman~~individual "and husband," ~~or husband.~~
3 (3) A named individual "and spouse."
4 (4) Two named persons, individuals, married to each other at the time of
5 conveyance, whether or not identified in the conveyance as being (i) husband
6 and wife, if at the time of conveyance they are legally married; (ii) spouses, or
7 (iii) married to each other.
8 unless a contrary intention is expressed in the conveyance.
- 9 (b) A conveyance by a grantor of real property, or any interest therein, ~~by a husband to~~
10 an individual and his or ~~a wife to such husband and wife her spouse~~ vests the ~~same property in~~
11 the husband and wife grantees as tenants by the ~~entirety~~entirety, unless a contrary intention is
12 expressed in the conveyance. The joinder of a spouse in a conveyance made by the grantor under
13 this subsection is not necessary, but the conveyance is subject to the provisions of G.S. 52-10 or
14 G.S. 52-11, except acknowledgement of the spouse of the grantor is not necessary.
- 15 (c) When ~~either a husband or a wife~~an individual owns an undivided interest in real
16 property as a tenant in common with some ~~person~~individual or ~~persons~~individuals other than
17 his or her spouse and there occurs an actual partition of the property, a tenancy by the entirety
18 may be created in the ~~husband or wife~~individual who owned the undivided interest and his or
19 her spouse ~~in the manner hereinafter provided:~~as follows:
- 20 (1) In a division by cross-deed or deeds, between or among the tenants in common
21 if the instrument contains both of the following:
- 22 a. provided that the ~~The~~ intent of the tenant in common to create a
23 tenancy by the entirety with his or her spouse in this exchange of deeds
24 ~~must be~~is clearly stated in the granting clause of the deed or deeds to
25 ~~such the~~the tenant in common and his or her ~~spouse, spouse.~~
26 b. and further provided that the ~~The~~ deed or deeds to ~~such the~~the tenant in
27 common and his or her spouse is signed by ~~such the~~the tenant in common
28 and is acknowledged before a certifying officer in accordance with
29 G.S. 52-10;
- 30 (2) In a judicial proceeding for ~~partition. In such proceeding, partition where~~ both
31 spouses have the right to become parties to the proceeding and to have their
32 pleadings state that the intent of the tenant in common is to create a tenancy
33 by the entirety with his or her spouse. The order of partition shall provide that
34 the real property assigned to ~~such the~~the tenant and his or her spouse shall be
35 owned by them as tenants by the entirety.
- 36 (d) When ~~a husband and wife~~spouses become co-owners of a mobile home, in the
37 absence of ~~anything to the~~a ~~contrary~~intention appearing in the instrument of title, ~~they the~~
38 spouses become tenants by the entirety with all the incidents of an estate by the entirety in real
39 property, including the right of survivorship in the case of ~~either~~either spouse. For the
40 ~~purpose~~purposes of this ~~section~~subsection it ~~shall be~~is immaterial whether the property at any
41 particular time shall be classified for any purpose as either real or personal. ~~The provisions of~~
42 Nothing in this subsection (a) shall not be deemed to limit or prohibit any other type of ownership
43 otherwise authorized by law. For the purposes of this section~~subsection~~, the term "mobile home"
44 means a portable manufactured housing unit designed for transportation on its own chassis and
45 placement on a temporary or semipermanent foundation having a measurement of over 32 feet
46 in length and over eight feet in width. As used in this ~~Article, subsection, the term~~ "mobile home"
47 also means a double-wide mobile home which is two or more portable manufactured housing
48 units designed for transportation on their own chassis, which connect on site for placement on a
49 temporary or semipermanent foundation having a measurement of over 32 feet in length and over
50 eight feet in width. ~~This section does not repeal or modify any provisions of the law relating to~~
51 ~~estate or inheritance taxes.~~

1 **"§ 41-57. Presumption of gift by spouse furnishing consideration.**

2 Except for purposes of equitable distribution as provided under G.S. 50-20 and G.S. 50-21,
3 when an individual furnishing the consideration for real property causes the title to be placed in
4 the name of the individual and the individual's spouse, there is a presumption of a gift to the
5 individual's spouse of an entirety interest, which is rebuttable by clear, cogent, and convincing
6 evidence.

7 **"§ 41-58. Possession and control of entireties property.**

8 (a) ~~A husband and wife~~ Spouses shall have an equal right to the control, use, possession,
9 rents, income, and profits of real and income from property held by them in tenancy as tenants
10 by the entirety.

11 (b) Neither spouse may bargain, sell, lease, mortgage, transfer, ~~convey~~ convey, sign, pay
12 out, or in any manner encumber any property ~~so~~ held by them as tenants by the entirety without
13 the written joinder of the other spouse. This section shall not be construed to require the spouse's
14 joinder where a different provision is made under G.S. 41-56(b), G.S. 41-63(4), G.S. 39-13,
15 G.S. 39-13.3, G.S. 39-13.4, or G.S. 52-10.

16 (c) The mortgage or sale of an interest in real property held by spouses as tenants by the
17 entirety where one or both spouses is incompetent is governed by the provisions of Article 15 of
18 Chapter 35A of the General Statutes.

19 **"§ 41-59. Income derived from entireties property.**

20 (a) Income derived from property held by spouses as tenants by the entirety becomes
21 personal property held by the spouses as tenants in common in equal shares.

22 (b) For income tax purposes, each spouse is considered to have received one-half (1/2)
23 the income or loss from property ~~owned~~ held by the ~~couple~~ spouses as tenants by the entirety.

24 **"§ 41-60. Liability of entireties property for debts of spouses.**

25 (a) With respect to property held by spouses as tenants by the entirety prior to its
26 termination, all of the following shall apply:

27 (1) The property may not be held liable for individual debts of either spouse and
28 a judgment lien against one spouse alone does not attach to the property. The
29 property may be conveyed by joint deed of both spouses to anyone of their
30 choice free and clear of a judgment lien against either spouse.

31 (2) The property is liable for obligations of both spouses and a judgment lien
32 against both spouses upon a joint obligation attaches to the property which
33 may be sold under execution to satisfy the judgment.

34 (b) Upon termination of the tenancy by the entirety and the conversion of the real property
35 held by the entirety to another form of estate, a judgment lien against one spouse during tenancy
36 by the entirety, if still active and unsatisfied, shall attach at that time to that spouse's interest in
37 the new estate. Conversions of tenancy by the entirety property to another form of an estate occur,
38 without limitation under either of the following circumstances:

39 (1) Upon divorce of the spouses, in which event the property is converted to a
40 tenancy in common as provided in G.S. 41-63(5) and the judgment lien
41 against the spouse will attach at that time to the undivided interest of the
42 spouse.

43 (2) Upon death of a spouse, in which event the surviving spouse acquires the
44 entire legal title as provided in G.S. 41-64 and the judgment lien against the
45 surviving spouse will attach at that time to the property.

46 **"§ 41-61. Reimbursement for expenditures made on entireties property.**

47 (a) Neither spouse holding property as tenants by the entirety is entitled to reimbursement
48 of expenditures made on the property, including payments on indebtedness encumbering the
49 property, while the tenancy by the entirety exists.

1 (b) When the tenancy by the entirety is converted to a tenancy in common by absolute
2 divorce or otherwise, responsibility for expenditures for the property held as tenants in common
3 is allocated as provided by the law governing tenants in common.

4 **"§ 41-62. Insurance coverage and character of proceeds.**

5 Where property held as tenants by the entirety is insured, unless the parties by contract have
6 provided what disposition should be made of the insurance proceeds, the policy and insurance
7 proceeds inure to the benefit of the entire estate even though the policy was issued in the name
8 of only one spouse and paid for by that spouse, and the insurance proceeds become divisible
9 personal property held by the spouses as tenants in common.

10 **"§ 41-63. Termination of tenancy by the entirety other than upon death of a spouse; effects**
11 **of termination.**

12 Events terminating a tenancy by the entirety other than the death of a spouse and the effects
13 of termination include the following:

14 (1) The voluntary sale and conveyance of property held as tenants by the entirety
15 to a third party, including a foreclosure sale pursuant to a power of sale in a
16 deed of trust. Proceeds of the sale, including surplus funds generated from a
17 foreclosure sale, are personal property held by the spouses as tenants in
18 common.

19 (2) The voluntary partition between the spouses executing a joint instrument
20 conveying the property held as tenants by the entirety to themselves as tenants
21 in common or in severalty.

22 (3) The involuntary transfer of title of property held by spouses as tenants by the
23 entirety. The proceeds resulting from the transfer are held by the spouses as
24 tenants by the entirety. An involuntary transfer of title includes:

25 a. A sale pursuant to Article 15 of Chapter 35A of the General Statutes
26 as to an incompetent spouse.

27 b. An appropriation in a condemnation proceeding by the North Carolina
28 State Highway Commission.

29 (4) ~~A~~ ~~The conveyance from a husband or a wife~~ ~~one spouse~~ to the other spouse
30 of real property, or any interest therein, his or her interest in property held by
31 such husband and wife as tenants by the entirety dissolves such tenancy in the
32 property or interest conveyed and entirety. The conveyance vests such the
33 property or interest formerly held by the as tenants by the entirety in the
34 grantee other spouse. The joinder of a spouse in a conveyance made by the
35 grantor pursuant to this subdivision is not necessary, but the conveyance is
36 subject to the provisions of G.S. 52-10 or G.S. 52-10.1, except that an
37 acknowledgment by the spouse of the grantor is not necessary.

38 (5) An absolute divorce of the spouses. An absolute divorce converts property
39 held as tenants by the entirety to a tenancy in common.

40 (6) A judgment of forfeiture ordering divestment of an interest in tenancy by the
41 entirety pursuant to Chapter 72D of the General Statutes. The effect of a
42 judgment when one spouse is an innocent person as defined in G.S. 75D-5(i)
43 is governed by G.S. 75D-8(a).

44 **"§ 41-64. Termination of tenancy by the entirety upon death of a spouse.**

45 (a) Except as provided in subsection (b) of this section, upon the death of a spouse,
46 property held as tenants by the entirety belongs to the surviving spouse by right of purchase under
47 the original grant or devise and by virtue of survivorship. The deceased spouse has no estate
48 which is descendable or divisible.

49 (b) ~~Where the slayer~~ a slayer, as defined in G.S. 31A-3(3), and decedent hold property as
50 tenants by the entirety, ~~one-half~~ ~~one-half~~ of the property shall pass upon the death of the decedent
51 to the decedent's estate, and ~~the other~~ ~~one-half~~ ~~one-half~~ shall be held by the slayer during his or

1 ~~her~~ the slayer's life, subject to pass upon the slayer's death to the slain decedent's heirs or devisees
2 as defined in G.S. 28A-1-1.

3 **"§ 41-65. Entireties property conveyed to trusts.**

4 (a) Any real property held ~~by a husband and wife spouses~~ as a tenancy tenants by the
5 ~~entireties-entirety~~ and conveyed ~~to~~ (i) to a joint trust or (ii) in equal shares to two separate trusts;
6 trusts shall no longer be held by the ~~husband and wife spouses~~ as tenants by the entirety and shall
7 be disposed of by the terms of the trust or ~~trusts, but, trusts.~~ trusts. However, subject to ~~the provisions~~
8 ~~of subsection (b) of this section, the real property provisions of G.S. 41-60(a)(1) shall have the~~
9 same immunity from the claims of the separate creditors of the husband and wife apply to the
10 property held in trust as would exist if the spouses had continued to hold the property as tenants
11 by the entireties.

12 (b) ~~The immunity from the claims of separate creditors provided by subsection (a) of this~~
13 ~~section-provisions of G.S. 41-60(a)(1) shall apply~~ to the property held in trust as long as all of
14 the following apply:

15 (1) ~~The husband and wife spouses~~ remain married.

16 (2) ~~The real property~~ continues to be held in the trust or trusts as provided in
17 subsection (a) of this section.

18 (3) Both ~~husband and wife spouses~~ are current beneficiaries of the joint trust if
19 the real property is conveyed to that trust or of each separate trust if the ~~real~~
20 property is conveyed in equal shares to their separate trusts.

21 (c) ~~After~~ If immediately preceding the death of the first ~~of the husband and wife spouse~~
22 to die, ~~all the provisions of G.S. 41-60(a)(1) apply to the real property held in trust that was~~
23 ~~immune from the claims of their separate creditors under subsection (a) of this section~~
24 ~~immediately prior to the individual's death shall continue to have immunity from the claims of~~
25 ~~the decedent's separate creditors as would have existed if the husband and wife continued to hold~~
26 ~~the property conveyed in trust as tenants by the entirety-upon the death of a spouse, the provisions~~
27 ~~of G.S. 41-60(b)(2) shall apply to the property.~~

28 (d) The trustee acting under the express provisions of a trust instrument or with the
29 written consent of both ~~the husband and wife spouses~~ may waive the ~~immunity from the claims~~
30 ~~of separate creditors provided under this section-application of G.S. 41-60(a)(1) as to any specific~~
31 ~~creditor or any specifically described property including all separate creditors of a husband and~~
32 ~~wife spouse or all former tenancy by the entirety property conveyed to the trustee.~~

33 (e) For purposes of this ~~section-section,~~ all of the following apply:

34 (1) The reference to the real property conveyed to or held in the trust shall be
35 deemed to include the proceeds arising from the involuntary ~~conversion~~
36 transfer of title of the real property.

37 (2) ~~The reference to a term "joint trust" means a revocable or irrevocable trust of~~
38 ~~which both the husband and wife are the settlors,~~ settlors.

39 ~~and the reference to~~ The term "separate trusts" means revocable or irrevocable
40 trusts of which the husband one spouse is the settlor of one trust and the wife
41 other spouse is the settlor of the other trust.

42 ~~(3)(4)~~ The husband and wife spouses are "beneficiaries" of a trust if they are
43 distributees or permissible distributees of the income or principal of the trust
44 whether or not other ~~persons~~ individuals are also current or future
45 beneficiaries of the trust.

46 (f) Notice may be given in a statement in the conveyance of the tenancy by the entireties
47 real property to the trust that the real property is held under this section and that, as of the date
48 of the conveyance, the requirements are met providing for the application of G.S. 41-60(a)(1)
49 protecting the real property from liability for the individual debts of either spouse.

1 (g) A person entering into a transaction involving real property held in trust under this
2 section may request confirmation from the trustee whether the provisions of G.S. 41-60(a)(1) are
3 met at the time of the transaction.

4 **"§ 41-66. Common law of tenancy by the entirety; equitable principles.**

5 The common law of tenancy by the entirety and principles of equity supplement this Article
6 except to the extent it conflicts or is inconsistent with a provision of this Article or the laws of
7 this State."

8 **SECTION 2.** G.S. 30-15 reads as rewritten:

9 **"§ 30-15. When spouse entitled to allowance.**

10 Every surviving spouse of an intestate or of a testator, whether or not the surviving
11 spouse has petitioned for an elective share, shall, unless the surviving spouse has forfeited the
12 surviving spouse's right thereto, as provided by law, be entitled, out of the personal property of
13 the deceased spouse, to an allowance of the value of sixty thousand dollars (\$60,000) for the
14 surviving spouse's support for one year after the death of the deceased spouse. The surviving
15 spouse may claim the allowance if, at the death of the decedent, either the decedent or the
16 surviving spouse was a resident of this State. Such allowance shall be exempt from any lien, by
17 judgment or execution, acquired against the property of the deceased spouse, and shall, in cases
18 of testacy, be charged against the share of the surviving spouse."

19 **SECTION 3.** Section 2 of this act is effective when it becomes law and applies to
20 estates of decedents dying on or after that date. The remainder of this act is effective when it
21 becomes law.