

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 1061
PROPOSED COMMITTEE SUBSTITUTE H1061-PCS30518-TS-18

Short Title: Preserve Tenancy by the Entirety.

(Public)

Sponsors:

Referred to:

May 11, 2016

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CONFORMING AMENDMENTS TO CLARIFY THAT TENANCY BY
3 THE ENTIRETY IS PRESERVED IN THIS STATE IN LIGHT OF THE UNITED STATES
4 SUPREME COURT DECISION IN *OBERGEFELL V. HODGES*, AS RECOMMENDED BY
5 THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CHANGES TO
6 MORTGAGE DEEDS OF TRUST LAWS.

7
8 **PART I. PRESERVE TENANCY BY THE ENTIRETY**

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 39-13.3 reads as rewritten:

11 "**§ 39-13.3. Conveyances between ~~husband and wife~~ spouses.**

12 (a) A conveyance from a ~~husband or wife to the other~~ married grantor to that individual's
13 spouse of real property or any interest therein owned by the grantor alone vests ~~such the~~ property
14 or interest in the grantee.

15 (b) A conveyance of real property, or any interest therein, by a ~~husband or a wife to such~~
16 ~~husband and wife~~ married grantor to that individual and the individual's spouse vests the ~~same~~
17 property in the ~~husband and wife~~ grantees as tenants by the entirety unless a contrary intention is
18 expressed in the conveyance.

19 (c) A conveyance from a ~~husband or a wife to the other~~ married individual to that
20 individual's spouse of real property, or any interest therein, held by ~~such husband and wife the~~
21 spouses as tenants by the entirety dissolves ~~such the~~ tenancy in the property or interest conveyed
22 and vests ~~such the~~ property or interest formerly held by the entirety in the grantee.

23 (d) The joinder of the spouse of the grantor in any conveyance made by a ~~husband or a~~
24 ~~wife~~ married grantor pursuant to the ~~foregoing provisions of~~ this section is not necessary.

25 (e) Any conveyance authorized by this section is subject to the provisions of G.S. 52-10 or
26 52-10.1, except that acknowledgment by the spouse of the grantor is not necessary."

27 **SECTION 2.** G.S. 39-13.6 reads as rewritten:

28 "**§ 39-13.6. Control of real property held in tenancy by the entirety.**

29 (a) ~~A husband and wife~~ Two individuals married to each other shall have an equal right to
30 the control, use, possession, rents, income, and profits of real property held by them in tenancy by
31 the entirety. Neither spouse may bargain, sell, lease, mortgage, transfer, convey or in any manner
32 encumber any property so held without the written joinder of the other spouse. This section shall
33 not be construed to require the spouse's joinder where a different provision is made under
34 G.S. 39-13, G.S. 39-13.3, G.S. 39-13.4, or G.S. 52-10.



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1 (b) ~~A~~ Unless a contrary intention is expressed in the conveyance, a conveyance of real
2 property, or any interest therein, to a husband and wife two individuals then married to each other
3 vests title in them as tenants by the entirety when the conveyance is to:

4 (1) A named ~~man~~ individual "and wife," or

5 (2) A named ~~woman~~ individual "and husband," or

6 (2a) A named individual "and spouse," or

7 (3) Two named persons, individuals, whether or not identified in the conveyance as
8 being (i) husband and wife, (ii) spouses, or (iii) married to each other, if at the
9 time of conveyance they are legally married; married to each other.

10 ~~unless a contrary intention is expressed in the conveyance.~~

11 (c) For income tax purposes, each spouse is considered to have received one-half (1/2) the
12 income or loss from property owned by the couple as tenants by the entirety."

13 **SECTION 3.** G.S. 39-13.7 reads as rewritten:

14 **"§ 39-13.7. Tenancy by the entireties trusts in real property.**

15 (a) Any real property held by ~~a husband and wife~~ two individuals married to each other as
16 a tenancy by the entireties and conveyed to (i) a joint trust or (ii) in equal shares to two separate
17 trusts; shall no longer be held by ~~the husband and wife~~ them as tenants by the entirety and shall be
18 disposed of by the terms of the trust or trusts, but, subject to the provisions of subsection (b) of
19 this section, the real property shall have the same immunity from the claims of the separate
20 creditors of ~~the husband and wife~~ each spouse as would exist if the spouses had continued to hold
21 the property as tenants by the entireties.

22 (b) The immunity from the claims of separate creditors provided by subsection (a) of this
23 section shall apply as long as all of the following apply:

24 (1) ~~The husband and wife~~ two individuals remain married; married to each other.

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

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

30 (c) After the death of the first ~~of the husband and wife~~ spouse to die, all property held in
31 trust that was immune from the claims of their separate creditors under subsection (a) of this
32 section immediately prior to the individual's death shall continue to have immunity from the
33 claims of the decedent's separate creditors as would have existed if ~~the husband and wife~~ both
34 spouses continued to hold the property conveyed in trust as tenants by the entirety.

35 (d) The trustee acting under the express provisions of a trust instrument or with the written
36 consent of both ~~the husband and wife~~ spouses may waive the immunity from the claims of
37 separate creditors provided under this section as to any specific creditor or any specifically
38 described property including all separate creditors of a ~~husband and wife~~ spouse or all former
39 tenancy by the entirety property conveyed to the trustee.

40 (e) For purposes of this section:

41 (1) The reference to the real property conveyed to or held in the trust shall be
42 deemed to include the proceeds arising from the involuntary conversion of the
43 real property.

44 (2) The reference to a "joint trust" means a revocable or irrevocable trust of which
45 both ~~the husband and wife~~ spouses are the settlors, and the reference to
46 "separate trusts" means revocable or irrevocable trusts of which ~~the husband~~
47 one spouse is the settlor of one trust and the ~~wife~~ other spouse is the settlor of
48 the other trust.

49 (3) ~~The husband and wife~~ two spouses are "beneficiaries" of a trust if they are
50 distributees or permissible distributees of the income or principal of the trust

1 whether or not other persons are also current or future beneficiaries of the
2 trust."

3 **SECTION 4.** G.S. 41-2 reads as rewritten:

4 "**§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership; unequal**
5 **ownership interests.**

6 ...

7 (b) The interests of the grantees holding property in joint tenancy with right of
8 survivorship shall be deemed to be equal unless otherwise specified in the conveyance. Any joint
9 tenancy interest held by ~~a husband and wife, two individuals then married to each other,~~ unless
10 otherwise specified, shall be deemed to be held by them as a single tenancy by the entirety, which
11 shall be treated as a single party when determining interests in the joint tenancy with right of
12 survivorship. Joint tenancy interests among two or more joint tenants holding property in joint
13 tenancy with right of survivorship are subject to the provisions of G.S. 28A-24-3 upon the death of
14 one or more of the joint tenants.

15 This subsection shall apply to any conveyance of an interest in property created at any time
16 that explicitly sought to create unequal ownership interests in a joint tenancy with right of
17 survivorship. Distributions made prior to the enactment of this subsection that were made in equal
18 amounts from a joint tenancy with the right of survivorship that sought to create unequal
19 ownership shares shall remain valid and shall not be subject to modification on the basis of this
20 subsection."

21 **SECTION 5.** G.S. 41-2.5 reads as rewritten:

22 "**§ 41-2.5. Tenancy by the entirety in mobile homes.**

23 (a) When ~~a husband and wife~~ two individuals then married to each other become
24 co-owners of a mobile home, in the absence of anything to the contrary appearing in the
25 instrument of title, they become tenants by the entirety with all the incidents of an estate by the
26 entirety in real property, including the right of survivorship in the case of death of either.

27 (b) For the purpose of this section it shall be immaterial whether the property at any
28 particular time shall be classified for any purpose as either real or personal. The provisions of
29 subsection (a) of this section shall not limit or prohibit any other type of ownership otherwise
30 authorized by law.

31 (c) For purposes of this section "mobile home" means a portable manufactured housing
32 unit designed for transportation on its own chassis and placement on a temporary or
33 semipermanent foundation having a measurement of over 32 feet in length and over eight feet in
34 width. As used in this ~~Article, section,~~ "mobile home" also means a double-wide mobile home
35 which is two or more portable manufactured housing units designed for transportation on their
36 own chassis, which connect on site for placement on a temporary or semipermanent foundation
37 having a measurement of over 32 feet in length and over eight feet in width.

38 (d) This section does not repeal or modify any provisions of the law relating to estate or
39 inheritance taxes."

40 **SECTION 6.(a)** This Part is intended to reflect rights established by federal law that
41 became effective in this State on October 10, 2014, by application of *General Synod of the United*
42 *Church of Christ v. Resinger*, 12 F.Supp.3d 790 (W.D. N.C., Oct. 10, 2014).

43 **SECTION 6.(b)** This Part is effective when it becomes law and applies to
44 conveyances made on or after October 10, 2014.

45 **PART II. MORTGAGE/DEED OF TRUST CHANGES**

46 **SECTION 7.** G.S. 39-13 reads as rewritten:

47 "**§ 39-13. Spouse need not join in purchase-money mortgage.**

48 ~~The purchaser of real estate who does not pay the whole of the purchase money at the time~~
49 ~~when he or she takes a deed for title may make a mortgage or deed of trust for securing the~~
50 ~~payment of such purchase money, or such part thereof as may remain unpaid, which~~ A mortgage
51 shall not be subject to the provisions of this section.

1 or deed of trust given by the purchaser of real property to secure a loan, the proceeds of which
2 were used to pay all or a portion of the purchase price of the encumbered real property, regardless
3 of whether the secured party is the seller of the real property or a third-party lender, shall be good
4 and effectual against his or her spouse as well as the purchaser, without requiring the spouse to
5 join in the execution of such mortgage or deed of trust."

6 **SECTION 8.** G.S. 29-30(g) reads as rewritten:

7 "(g) Neither the household furnishings in the dwelling house nor the life estates taken by
8 election under this section shall be subject to the payment of debts due from the estate of the
9 deceased spouse, except those debts secured by such property as follows:

10 (1) By a mortgage or deed of trust in which the surviving spouse has waived the
11 surviving spouse's rights by joining with the other spouse in the making ~~thereof;~~
12 ~~or thereof.~~

13 (2) By a mortgage or deed of trust given by the deceased spouse to secure a loan,
14 the proceeds of which were used to pay all or a portion of the purchase price of
15 the encumbered real property, regardless of whether the secured party is the
16 seller of the real property or a third-party lender, ~~By a purchase money mortgage~~
17 ~~or deed of trust,~~ or by a conditional sales contract of personal property in which
18 title is retained by the vendor, made prior to or during the ~~marriage; or~~ marriage.

19 (3) By a mortgage or deed of trust made prior to the ~~marriage; or~~ marriage.

20 (4) By a mortgage or deed of trust constituting a lien on the property at the time of
21 its acquisition by the deceased spouse either before or during the marriage."

22 **SECTION 9.** Except as otherwise provided, this act is effective when it becomes law,
23 and Sections 7 and 8 of this act apply to mortgages and deeds of trust entered into on or after that
24 date.