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SENATE BILL DRS15304-MQ-57B

Short Title: Changes to Real Property Statutes. (Public)

Sponsors: Senator Daniel (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES AND TECHNICAL CORRECTIONS TO THE GENERAL
3 STATUTES CONCERNING REAL PROPERTY LAW, AS RECOMMENDED BY THE
4 NORTH CAROLINA BAR ASSOCIATION.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. RECODIFICATIONS AND CHANGES TO TENANCY BY THE ENTIRETY**

8 **SECTION 1.(a)** Chapter 41 of the General Statutes is amended by adding a new
9 Article 5, and G.S. 41-55 through G.S. 41-69 are reserved for that Article.

10 **SECTION 1.(b)** The following General Statutes are recodified in Article 5 of
11 Chapter 41 of the General Statutes, as created by subsection (a) of this section, as set forth in the
12 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)

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

26 "Article 5.

27 "Tenancy by the Entirety.

28 **"§ 41-55. Definitions.**

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

30 (1) Conveyance. – A transfer of title to real property by deed or devise or other
31 instrument transferring title to real property.

32 (2) Income. – Rents and profits from property held as tenants by the entirety.

33 (3) Spouses. – Two individuals then legally married to each other.

34 **"§ 41-56. Creation of tenancy by the entirety.**



* D R S 1 5 3 0 4 - M Q - 5 7 B *

1 (a) ~~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 ~~spouses~~ vests title in them as tenants by
 3 the entirety when the conveyance is ~~to~~ to one of the following:

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

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

6 (3) A named individual "and spouse."

7 (4) Two named persons, individuals, married to each other at the time of
 8 conveyance, whether or not identified in the conveyance as being (i) husband
 9 and wife, if at the time of conveyance they are legally married; unless a
 10 contrary intention is expressed in the conveyance. (ii) spouses, or (iii) married
 11 to each other.

12 (b) A conveyance by a grantor of real property, or any interest therein, by a husband to
 13 an individual and his or a wife to such husband and wife ~~her spouse~~ vests the ~~same~~ property in
 14 the husband and wife ~~grantees~~ as tenants by the ~~entirety~~ entirety, unless a contrary intention is
 15 expressed in the conveyance. The joinder of a spouse in a conveyance made by the grantor under
 16 this subsection is not necessary, but the conveyance is subject to the provisions of G.S. 52-10 or
 17 G.S. 52-11, except acknowledgement of the spouse of the grantor is not necessary.

18 (c) When ~~either a husband or a wife~~ an individual owns an undivided interest in real
 19 property as a tenant in common with some ~~person~~ individual or ~~persons~~ individuals other than
 20 his or her spouse and there occurs an actual partition of the property, a tenancy by the entirety
 21 may be created in the ~~husband or wife~~ individual who owned the undivided interest and his or her
 22 spouse ~~in the manner hereinafter provided:~~ as follows:

23 (1) In a division by cross-deed or deeds, between or among the tenants in common
 24 if the instrument contains both of the following:

25 a. provided that the ~~The~~ intent of the tenant in common to create a tenancy
 26 by the entirety with his or her spouse in this exchange of deeds ~~must~~
 27 ~~be is~~ clearly stated in the granting clause of the deed or deeds to ~~such~~
 28 the tenant in common and his or her spouse, spouse.

29 b. and further provided that the ~~The~~ deed or deeds to ~~such~~ the tenant in
 30 common and his or her spouse is signed by ~~such~~ the tenant in common
 31 and is acknowledged before a certifying officer in accordance with
 32 G.S. 52-10;

33 (2) In a judicial proceeding for ~~partition. In such proceeding, partition where~~ both
 34 spouses have the right to become parties to the proceeding and to have their
 35 pleadings state that the intent of the tenant in common is to create a tenancy
 36 by the entirety with his or her spouse. The order of partition shall provide that
 37 the real property assigned to ~~such~~ the tenant and his or her spouse shall be
 38 owned by them as tenants by the entirety.

39 (d) When ~~a husband and wife~~ spouses become co-owners of a mobile home, in the absence
 40 of ~~anything to the~~ a contrary intention appearing in the instrument of title, ~~they~~ the spouses
 41 become tenants by the entirety with all the incidents of an estate by the entirety in real property,
 42 including the right of survivorship in the case of death of ~~either~~ either spouse. For the ~~purpose~~
 43 purposes of this ~~section~~ subsection it ~~shall be~~ is immaterial whether the property at any particular
 44 time shall be classified for any purpose as either real or personal. ~~The provisions of~~ Nothing in
 45 this subsection (a) ~~shall not be deemed to~~ limit or prohibit any other type of ownership otherwise
 46 authorized by law. For the purposes of this section-subsection, the term "mobile home" means a
 47 portable manufactured housing unit designed for transportation on its own chassis and placement
 48 on a temporary or semipermanent foundation having a measurement of over 32 feet in length and
 49 over eight feet in width. As used in this ~~Article, subsection, the term~~ "mobile home" also means
 50 a double-wide mobile home which is two or more portable manufactured housing units designed
 51 for transportation on their own chassis, which connect on site for placement on a temporary or

1 semipermanent foundation having a measurement of over 32 feet in length and over eight feet in
2 width. ~~This section does not repeal or modify any provisions of the law relating to estate or~~
3 ~~inheritance taxes.~~

4 **"§ 41-57. Presumption of gift by spouse furnishing consideration.**

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

10 **"§ 41-58. Possession and control of entireties property.**

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

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

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

22 **"§ 41-59. Income derived from entireties property.**

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

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

27 **"§ 41-60. Liability of entireties property for debts of spouses.**

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

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

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

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

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

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

49 **"§ 41-61. Reimbursement for expenditures made on entireties property.**

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

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

7 **"§ 41-62. Insurance coverage and character of proceeds.**

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

13 **"§ 41-63. Termination of tenancy by the entirety other than upon death of a spouse; effects**
14 **of termination.**

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

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

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

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

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

30 b. An appropriation in a condemnation proceeding by the North Carolina
31 State Highway Commission.

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

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

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

47 **"§ 41-64. Termination of tenancy by the entirety upon death of a spouse.**

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

(b) Where ~~the slayer~~ a slayer, as defined in G.S. 31A-3(3), and decedent hold property as tenants by the entirety, ~~one-half~~ one-half of the property shall pass upon the death of the decedent to the decedent's estate, and ~~the other one-half~~ one-half shall be held by the slayer during ~~his or her~~ the slayer's life, subject to pass upon the slayer's death to the slain decedent's heirs or devisees as defined in G.S. 28A-1-1.

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

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

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

- (1) The ~~husband and wifespouses~~ remain married.
- (2) The ~~real~~property continues to be held in the trust or trusts as provided in subsection (a) of this section.
- (3) Both ~~husband and wifespouses~~ are current beneficiaries of the joint trust if the real property is conveyed to that trust or of each separate trust if the ~~real~~ property is conveyed in equal shares to their separate trusts.

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

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

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

- (1) The reference to the real property conveyed to or held in the trust shall be deemed to include the proceeds arising from the involuntary ~~conversion~~ transfer of title of the real property.
- (2) The ~~reference to a term~~ "joint trust" means a revocable or irrevocable trust of which both the husband and wife are the ~~settlers;~~settlers.
- (3) ~~and the reference to~~The term "separate trusts" means revocable or irrevocable trusts of which ~~the husband~~one spouse is the settlor of one trust and the ~~wife~~ other spouse is the settlor of the other trust.
- ~~(3)~~(4) The ~~husband and wifespouses~~ are "beneficiaries" of a trust if they are distributees or permissible distributees of the income or principal of the trust whether or not other ~~persons~~individuals are also current or future beneficiaries of the trust.

(f) Notice may be given in a statement in the conveyance of the tenancy by the entireties real property to the trust that the real property is held under this section and that, as of the date

1 of the conveyance, the requirements are met providing for the application of G.S. 41-60(a)(1)
2 protecting the real property from liability for the individual debts of either spouse.

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

6 **"§ 41-66. Common law of tenancy by the entirety; equitable principles.**

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

10
11 **PART II. CHANGES TO JOINT TENANCY**

12 **SECTION 2.(a)** Chapter 41 of the General Statutes is amended by creating a new
13 Article 6, and G.S. 41-70 through G.S. 41-79 are reserved for that Article.

14 **SECTION 2.(b)** The following General Statutes are recodified in Article 6 of
15 Chapter 41 of the General Statutes, as created by subsection (a) of this section, as set forth in the
16 table below:

<u>Former Citation</u>	<u>Recodified Citation</u>
17 Third sentence of G.S. 41-2(a)	Second sentence of G.S. 41-73(c)(3)
18 Fourth sentence of G.S. 41-2(a)	First sentence of G.S. 41-73(c)(3)
19 First sentence of G.S. 41-2(b)	G.S. 41-72(a)
20 Second sentence of G.S. 41-2(b)	G.S. 41-72(d)
21 Third sentence of G.S. 41-2(b)	G.S. 41-74
22 Fourth sentence of G.S. 41-2(b)	G.S. 41-72(b)
23 Fifth sentence of G.S. 41-2(b)	G.S. 41-72(c)

24
25 **SECTION 2.(c)** Article 6 of Chapter 41 of the General Statutes, as created by
26 subsection (a) of this section, and containing the sections recodified in subsection (b) of this
27 section, reads as rewritten:

28 "Article 6.

29 "Joint Tenancy.

30 **"§ 41-70. Definitions.**

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

- 32 (1) Conveyance. – A transfer of title to real or personal property by deed, devise,
33 assignment or other means of transferring title.
34 (2) Termination. – A severance of the right of survivorship resulting in the
35 creation of a tenancy in common as provided in this Article. The term is used
36 in the context of an estate with a joint tenancy with a right of survivorship.

37 **"§ 41-71. Creation of a joint tenancy with right of survivorship.**

38 (a) A conveyance to two or more persons creates a tenancy in common unless a joint
39 tenancy with right of survivorship is created as provided in subsection (b) of this section or a
40 tenancy by the entirety is created as provided by the law governing tenancy by the entireties.

41 (b) A conveyance to two or more persons creates a joint tenancy with right of
42 survivorship if the instrument expresses an intent to create a joint tenancy with right of
43 survivorship. The following words in the instrument shall be deemed to express an intent to create
44 a joint tenancy with right of survivorship unless the instrument otherwise provides: "joint tenants
45 with right of survivorship", "joint tenants", "joint tenancy", "tenants in common with right of
46 survivorship", "joint with right of survivorship", "with right of survivorship", "to them or to the
47 survivor of them", or words of similar import.

48 **"§ 41-72. Determination of the interests of joint tenants in a joint tenancy with right of**
49 **survivorship.**

1 (a) The interests of ~~the grantees holding property~~ joint tenants in a joint tenancy with right
2 of survivorship shall be deemed to be equal unless otherwise ~~specified~~ provided in the instrument
3 of conveyance.

4 (b) This ~~subsection~~ section shall apply to any conveyance of an interest in property
5 created at any time that explicitly ~~sought~~ seeks to create unequal ownership ~~interests~~ interest in
6 a joint tenancy with right of survivorship.

7 (c) Distributions made prior to ~~the enactment of this subsection~~ October 10, 2009, that
8 were made in equal amounts from a joint tenancy with ~~the~~ right of survivorship that sought to
9 create unequal ownership shares shall remain valid and shall not be subject to modification on
10 the basis of this ~~subsection~~ section.

11 (d) Any joint tenancy interest ~~held by a husband and wife, unless otherwise~~
12 ~~specified,~~ conveyed to individuals married to each other and to one or more other joint tenants in
13 the same instrument of conveyance shall be deemed to be held as by the married individuals in a
14 single tenancy by the entirety, which and the married individuals shall be treated as a single party
15 when determining interests in the joint tenancy with right of survivorship. tenant, unless otherwise
16 provided in the instrument.

17 **"§ 41-73. Termination of a joint tenancy with right of survivorship.**

18 (a) Events terminating a joint tenancy with right of survivorship due to the collective
19 action of all joint tenants include the following:

20 (1) The conveyance to a third party by all of the joint tenants of all of their
21 interests in the property held in the joint tenancy, including a foreclosure sale
22 pursuant to a power of sale in a deed of trust.

23 (2) The execution of an instrument with a third party by all of the joint tenants
24 that does not convey all of their interests in the property held in the joint
25 tenancy to the third party, including a lease, executory contract of sale, option
26 to purchase, or deed of trust, and an intention to terminate expressly appears
27 in the instrument.

28 (3) The execution of an instrument by all joint tenants for the purpose of
29 expressing an intent to terminate the joint tenancy as between or among
30 themselves.

31 (b) Events terminating a joint tenancy with right of survivorship due to the unilateral
32 action of a joint tenant include the following:

33 (1) The conveyance to a third party by a joint tenant of all of that joint tenant's
34 interest in the property held in the joint tenancy, including a foreclosure sale
35 pursuant to a power sale in a deed of trust.

36 (2) The execution of an instrument with a third party by a joint tenant that does
37 not convey all of that joint tenant's interest to the third party, including a lease,
38 executory contract of sale, option to purchase, or deed of trust, and an intention
39 to terminate expressly appears in the instrument.

40 (3) The execution of an instrument by a joint tenant where the joint tenant is both
41 the grantor and the grantee if the intention to terminate expressly appears in
42 the instrument. A termination under this subdivision shall be effective only
43 upon the recording, prior to the death of the joint tenant, of an instrument
44 expressing an intent to terminate in the office of the register of deeds in the
45 county or counties where the real property is situated.

46 (4) The filing by a joint tenant of a petition to partition.

47 (c) When a termination occurs, a tenancy in common is created as follows:

48 (1) If a termination occurs under subdivision (1) of subsection (a) of this section
49 because of the conveyance of all of the joint tenants' interests to a third party,
50 a tenancy in common is created among the tenants as to any proceeds of sale
51 or surplus funds generated from a foreclosure sale.

- 1 (2) If a termination occurs because of the execution by all of the joint tenants of
 2 an instrument described in subdivisions (2) or (3) of subsection (a) of this
 3 section, a tenancy in common is created among the tenants.
- 4 (3) ~~Upon conveyance to a third party by~~If a termination occurs under subdivision
 5 (a) of subsection (b) of this section because one of two the joint tenants holding
 6 ~~property in joint tenancy with right of survivorship, conveys all of that joint~~
 7 ~~tenant's interest to a third party and there are only two joint tenants, a tenancy~~
 8 in common is created between the third party and the remaining other joint
 9 ~~tenant. Upon conveyance~~If there are more than two joint tenants and one of
 10 the joint tenants conveys all of that joint tenant's interests to a third party by
 11 ~~less than all of three or more joint tenants holding property in joint tenancy~~
 12 ~~with right of survivorship, party, a tenancy in common is created among the~~
 13 third party and the remaining joint tenants, who remain joint tenants with right
 14 of survivorship as between or among themselves.
- 15 (4) If a termination occurs because of the execution by a joint tenant of an
 16 instrument described in subdivisions (2) or (3) of subsection (b) of this section
 17 or because of the filing of a petition by a joint tenant as provided in subsection
 18 (4) of subsection (b) of this section, and there are two joint tenants, a tenancy
 19 in common is created between the joint tenant causing the termination and the
 20 other joint tenant. If there are more than two joint tenants, a tenancy in
 21 common is created among the joint tenant causing the termination and the
 22 remaining joint tenants who continue as joint tenants with right of
 23 survivorship as between or among themselves.

24 (d) The following events do not result in a termination of joint tenancy with right of
 25 survivorship:

- 26 (1) The filing of a judgment against one joint tenant.
 27 (2) The filing of a bankruptcy petition by one joint tenant.
 28 (3) When married individuals holding an interest as tenants by the entirety in a
 29 joint tenancy with one or more other joint tenants divorce. Unless the divorced
 30 individuals agree otherwise, the divorced individuals shall be deemed to hold
 31 their existing interest equally as joint tenants.

32 (e) Nothing in this section shall limit the manner or effect of a termination ordered by a
 33 court of competent jurisdiction.

34 **"§ 41-74. Application of 120-hour survival requirement to joint tenancy with right of**
 35 **survivorship.**

36 ~~Joint~~The provisions of G.S. 28A-24-3 apply to joint tenancy interests among two or more
 37 joint tenants holding property in joint tenancy with right of survivorship are subject to the
 38 ~~provisions of G.S. 28A-24-3 upon the death of one or more of the joint tenants.~~

39 **"§ 41-75. Inapplicability of Article.**

40 This Article does not apply to any of the following:

- 41 (1) Executors or trustees in there representative capacity.
 42 (2) Partnerships governed by Chapter 59 of the General Statutes.
 43 (3) Business entities.
 44 (4) Accounts established under G.S. 42-2.1 or G.S. 42-2.2 to the extent
 45 inconsistent with the provisions of this Article.
 46 (5) Life estates.

47 **"§ 41-76. Common law of joint tenancy; equitable principles.**

48 The common law of joint tenancy with right of survivorship and principles of equity
 49 supplement this Article except to the extent it conflicts or is inconsistent with a provision of this
 50 Article or the laws of this State."

1 SECTION 2.(d) The remaining sentences of G.S. 41-2 not recodified under this
2 section are repealed.

3
4 **PART III. THE NOTICE OF SETTLEMENT ACT**

5 SECTION 3.(a) The General Statutes are amended by adding a new Chapter to read:

6 **"Chapter 47I.**

7 **"Notice of Settlement Act.**

8 **"§ 47I-1. Short title.**

9 This Chapter shall be known as the "Notice of Settlement Act."

10 **"§ 47I-2. Purpose.**

11 The purpose of this Chapter is to modernize the law governing the transfer of a legal or
12 equitable title to real property, or interests therein, by providing advance notice of transactions
13 and facilitating electronic closing of transactions, electronic recording of documents, and
14 disbursement of funds in connection with the settlement of real property transactions. The use of
15 this Chapter in a real estate transaction is optional, and failure to use the procedure authorized by
16 this Chapter shall not constitute grounds for any claim for relief at law or equity, unless an express
17 contract exists requiring its use. This Chapter creates an additional, nonexclusive procedure for
18 registering a property interest in real property through the use of a notice of settlement, and
19 establishing concurrently therewith priority in the property in a grantee of a conveyance or lease
20 under G.S. 47-18 or mortgagee under G.S. 47-20 and for any other priority purposes based on
21 registration in the public records from the time of filing of the notice of settlement.

22 **"§ 47I-3. Definitions.**

23 As used in this Chapter, unless the context requires otherwise, the following definitions
24 apply:

- 25 (1) Conveyance transaction. – A transaction involving a deed or lease from the
26 current owner of record to a grantee. The term includes any mortgage
27 financing to be secured by the real property at the settlement.
- 28 (2) Current owner of record. – The person who holds of record the legal or
29 equitable title to, or interest in, real property to be conveyed, leased, or
30 mortgaged under this Chapter and as identified in the notice of settlement.
- 31 (3) Deed. – Any instrument conveying a legal or equitable title to, or an interest
32 in, real property for a purpose other than to secure an obligation or
33 indebtedness. The term includes the legal or equitable title to, and any interest
34 in real property described in the instrument.
- 35 (4) Discoverable online. – A document, instrument or other entry which, at the
36 time of registration of the Deed, Lease, or Mortgage is the subject of a notice
37 of settlement, would be indexed and found online at the public Web sites
38 maintained by the applicable register of deeds for the county in which the
39 property is located, the Administrative Office of the Courts, the mechanics'
40 online lien agent registry pursuant to G.S. 44A-11.2(f)(7), and any other
41 offices, other than birth, death, and notary records, which would be a part of
42 the regular search of a title to property by a reasonable title examiner in this
43 State for purposes of conveyance, lease, and mortgage of real property.
- 44 (5) Grantee. – The person to whom a legal or equitable title to real property, or an
45 interest therein, including leasehold interest, shall be conveyed pursuant to a
46 settlement. The term includes a related assignee, including but not limited to
47 a principal on behalf of the ultimate purchaser, a parent entity for a
48 wholly-owned special purpose entity purchaser, existing or to be formed, or
49 their attorney; provided, however, that the assignee is designated in writing at
50 or prior to the settlement by assignment from the person contracting to
51 purchase the real property from the current owner of record. Priority of a

1 Grantee hereunder shall extend to those claiming by, through, or under them
2 pursuant to G.S. 47-18 and G.S. 47-20.

3 (6) Lease. – An agreement creating a leasehold interest in real property described
4 in that agreement or in a memorandum describing that agreement.

5 (7) Mortgage. – A mortgage, deed of trust, or other instrument conveying a legal
6 or equitable interest in real property for purposes of obtaining a security
7 interest therein as security for an underlying obligation or any ancillary
8 security instrument, as defined in G.S. 45-42.3(a), recorded therewith and
9 related thereto and that includes the legal or equitable interest in real property
10 described in the instrument.

11 (8) Mortgage transaction. – A settlement transaction involving a mortgage from
12 the current owner of record, encumbering the real property which is the
13 subject of the notice of settlement. The term may include (i) a refinancing of
14 an existing mortgage, (ii) a home equity loan, (iii) a line of credit, (iv) a
15 construction loan, or (v) other financing to be secured by a mortgage on the
16 real property. The term does not include a conveyance transaction as defined
17 in this section.

18 (9) Mortgagee. – The grantee, beneficiary, or secured party in the mortgage. The
19 term includes the trustee under a deed of trust on their behalf.

20 (10) Mortgagor. – The person executing a mortgage pursuant to a settlement.

21 (11) Notice agent. – One of the following:

22 a. An attorney licensed under Chapter 84 of the General Statutes who is
23 representing any of the following:

24 1. The current owner of record.

25 2. The grantee in a conveyance transaction.

26 3. The mortgagor in a mortgage transaction, by the current owner
27 of record or their assignee.

28 4. The title insurance company or agent insuring the real estate
29 title that is subject to the settlement.

30 b. The mortgagee for a mortgage transaction, duly authorized by the
31 current owner of record or their agent to register a notice of settlement
32 pursuant to this Chapter, where the mortgagee is handling the
33 settlement and closing of the transaction, regardless of how funds are
34 disbursed.

35 (12) Person. – Any individual, firm, corporation, governmental unit or subdivision,
36 or other legal entity that may hold a legal or equitable title to, or interest in,
37 real property under the laws of this State.

38 (13) Settlement. – The delivery of the instruments conveying a legal or equitable
39 title to, or interest in, real property to the grantee or mortgagee for valuable
40 consideration as agreed upon by the parties to the transaction.

41 (14) Transaction documents. – A deed, lease, or mortgage and any other documents
42 registered simultaneously with and as part of the settlement, or referenced in
43 the deed, lease, or mortgage and related to the settlement, including any
44 ancillary security instruments as provided in G.S. 45-42.3.

45 **"§ 47I-4. Instrument; designation; filing; index of notice of settlement.**

46 (a) The notice agent may register an instrument designated a 'Notice of Settlement' in the
47 office of the register of deeds of the county or counties in which the real property is situated with
48 reference to a settlement that the notice agent in good faith reasonably believes will occur within
49 60 days of the registration.

(b) A contract between the current owner of record and a grantee shall be conclusively deemed sufficient authority for the notice agent to register a notice of settlement, unless the contract specifically prohibits registration of a notice.

(c) The notice of settlement shall be (i) indexed in the indexes provided for real estate conveyances, (ii) registered as a real estate instrument, and (iii) indexed in the name of the current owner of record identified in the notice of settlement and in the names of the parties as identified in the notice of settlement.

(d) The applicable registration fee under G.S. 161-10 shall be paid at the time the notice of settlement is registered.

"§ 47I-5. Signature; content; acknowledgement.

The notice of settlement shall contain at least all of the following:

- (1) The name, street address, and telephone number of the notice agent registering the notice of settlement.
- (2) The current owner of record.
- (3) The grantee, if a conveyance transaction.
- (4) The mortgagee, if a mortgage transaction.
- (5) Sufficient information to identify the real property based on the public records.
- (6) The date the notice of settlement will expire, not to exceed 60 days from the date of registration. If no date is provided, the notice shall expire 60 days after registration.
- (7) Execution by the notice agent.
- (8) Acknowledgment of the execution by the notice agent as required by law for the registration of instruments.

"§ 47I-6. Forms.

The form of the notice of settlement shall be substantially as follows:

"NOTICE OF SETTLEMENT

Notice Agent: _____
 Street address: _____
 Telephone number: _____
 Current Owner(s) of Record: _____
 Street address: _____
 Telephone number: _____
 Grantee(s) (for conveyance transaction): _____
 Street address: _____
 Telephone number: _____
 Mortgagee (for mortgage transaction): _____
 Officer: _____
 Street address: _____
 Telephone number: _____

NOTICE is hereby given pursuant to Chapter 47I of the North Carolina General Statutes of a settlement affecting title to the following described real property of the current owner of record.

The undersigned is duly authorized by the current owner of record (and their client, if different) to record this Notice of Settlement, and is:

- a North Carolina licensed attorney representing the current owner of record, the grantee, the mortgagor, or the title insurance company or agent insuring the real estate title related to the settlement, OR
- the mortgagee for a mortgage transaction by the current owner of record.

The property subject to this Notice of Settlement is:

1 [INSERT SUFFICIENT INFORMATION REGARDING THE PROPERTY FOR IT TO BE
2 CLEARLY IDENTIFIED FROM THE PUBLIC RECORDS, SUCH AS LEGAL
3 DESCRIPTION, VESTING DOCUMENT REFERENCE, STREET ADDRESS AND/OR TAX
4 MAP REFERENCES]

5
6 This Notice of Settlement shall be effective from the time of, and for _____ days [INSERT
7 NUMBER OF DAYS, NOT TO EXCEED 60 DAYS], or if none stated, the term of this Notice
8 of Settlement shall be 60 days, following the day of registration of this Notice of Settlement in
9 the office of the register of deeds of the county in which the above real property is situated.

10
11
12 _____
13 Signature of Notice Agent

14 [NOTARIAL CERTIFICATE OF ACKNOWLEDGMENT IN COMPLIANCE WITH
15 NORTH CAROLINA LAW]"

16 **"§ 47I-7. Constructive notice; priority.**

17 (a) The registration of a notice of settlement shall be constructive notice of the anticipated
18 settlement and interest of the grantee or mortgagee affecting the real property identified in the
19 notice of settlement.

20 (b) Subject to the provisions of subsection (c) of this section, the registration of the notice
21 of settlement shall establish priority of title of the grantee or mortgagee under the deed, lease, or
22 mortgage from the time of registration of the notice of settlement as against subsequent
23 purchasers for value, lien creditors, and others claiming an interest in the real property identified
24 in the notice of settlement through any person who holds the legal or equitable title to, or interest
25 in, the real property and through chain of title of the current owner of record identified in the
26 notice of settlement. Priority shall be determined as if the deed or lease to the grantee or mortgage
27 to mortgagee had been registered at the time of the registration of the notice of settlement. A
28 deed, lease, or mortgage delivered pursuant to the settlement for which the notice of settlement
29 is duly registered in the county or counties where the real property is situated prior to expiration
30 of the notice of settlement shall continue the priority of the grantee or mortgagee in the subject
31 real property established by the notice of settlement and the priority of the grantee or mortgagee
32 under the duly registered deed, lease, or mortgage shall be a continuously perfected property
33 interest in the real property from the time of registration of the notice of settlement under this
34 Chapter, against subsequent purchasers for value, lien creditors, and other persons claiming an
35 interest in the real property through any person who holds of record the legal or equitable title to,
36 or interest in, the real property.

37 (c) A duly registered notice of settlement shall not affect the priority of any of the
38 following:

- 39 (1) The designation of a lien agent and the related notices to lien agent filed
40 pursuant to Article 2 of Chapter 44A of the General Statutes for the subject
41 real property and discoverable online at an internet Web site for that purpose
42 pursuant to G.S. 44A-1.2(f)(7) prior to registration of the deed, lease, or
43 mortgage.
- 44 (2) Potential claims for which no lien agent is required to be appointed under
45 G.S. 44-11.1(a).
- 46 (3) Valid conveyances, liens, or encumbrances, other than transaction documents,
47 upon the property duly registered with the register of deeds or filed with the
48 clerk in the county or counties in which the real property is located and
49 discoverable online at least five business days prior to registration of the deed,
50 lease, or mortgage pursuant to this Chapter.

1 (4) Any interest or claim regarding the real property by a claimant who is the
2 beneficiary of any valid conveyance, lien, or encumbrance in the public record
3 that attaches to the real property and is duly registered or filed in the public
4 records of the county or counties in which the real property is located as
5 required by law, and for which the claimant or their attorney has done all of
6 the following:

7 a. Delivered actual notice clearly identifying the recordation or filing
8 information in the county or counties of their legitimate conveyance,
9 lien, or encumbrance on the real property, the specific notice of
10 settlement, the property, and the current owner of record to the notice
11 agent at least five business days prior to the settlement.

12 b. Obtained an acceptance of delivery identifying their valid conveyance,
13 lien, or encumbrance, (i) identifying the notice of settlement by book
14 and page of registration in the county or counties and the real property
15 affected, (ii) signed by the claimant, including the name, address, and
16 telephone number of the claimant, (iii) signed by the notice agent, and
17 (iv) with notarial certificate regarding execution by each person
18 signing, at least one business day prior to the registration of the deed,
19 lease, or mortgage pursuant to the notice of settlement.

20 c. Has registered the signed acceptance of delivery with the register of
21 deeds of the county or counties in which the property is located at least
22 one business day prior to the registration of the deed, lease, or
23 mortgage pursuant to the notice of settlement.

24 Registration of a notice and acceptance of delivery shall be prima facie evidence that the
25 notice and acceptance of delivery was delivered to the notice agent. If the notice agent is not the
26 closing or settlement agent, upon request by the closing or settlement agent, the notice agent shall
27 provide any notices received pursuant to this subsection.

28 (d) Notwithstanding subsection (c) of this section, a closing attorney or settlement agent
29 shall have authority to pay any potential liens upon the real property that is the subject of the
30 notice of settlement or any liabilities of the current owner of record which may affect title and
31 that are actually known to the closing attorney or settlement agent, in order to protect a purchaser,
32 lessee, or mortgagee or comply with the terms of a contract of sale, lease, or mortgage.

33 (e) Nothing in this section shall be deemed to relieve the current owner of record,
34 mortgagor, or any other party of their personal liability for any legal or financial obligation.

35 (f) If the named grantee or mortgagee in the notice of settlement differs from the grantee
36 or mortgagee in the instrument registered pursuant to the settlement, the deed or mortgage
37 registered pursuant to the settlement may bear a legend that is in a form and substance
38 substantially as follows:

39 "This instrument was delivered at the settlement referred to in the Notice of Settlement by
40 _____ (Signatory of Notice of Settlement) recorded in Book _____, Page _____,
41 _____ County Registry, identifying the Grantee as [Name of Grantee] and Mortgagee
42 [Name of Mortgagee] (as applicable)."
43

44 (g) A statement signed by an attorney licensed under Chapter 84 of the General Statutes
45 may be submitted for registration with the deed, lease, or mortgage that the attorney had updated
46 the title examination for the real property on the applicable online registries for the public records
47 as of a specified date and time after registration of the notice of settlement and prior to its
48 expiration, identifying any further conveyances, liens, or encumbrances found online after
49 registration of the notice of settlement and before registration of the transaction documents. The
50 certification shall be prima facie evidence of the truth of the certification therein.
51

"§ 47I-8. Duration of notice; priority; number of filings; not renewable.

(a) The notice of settlement shall be effective as provided in G.S. 47I-7(a) from the time of registration and for the number of days stated in the notice of settlement, but no more than 60 days following the day of, registration of the notice of settlement pursuant to this Chapter. If the deed, lease, or mortgage delivered pursuant to a settlement for which the notice of settlement was registered has not been properly registered in the county or counties where the real property is situated prior to the expiration of the notice of settlement, the notice of settlement shall be void, and the priority of the grantee or mortgagee under the deed, lease, or mortgage registered subsequent to the expiration shall date from the time of registration of the deed, lease, or mortgage, and not from the time of the registration of the expired notice of settlement.

(b) Except as provided in subsection (c) of this section, registered notice of settlement may not be amended, extended, or renewed.

(c) For any particular transaction, an 'Additional Notice of Settlement' may be registered after the initial notice of settlement. The 'Additional Notice of Settlement' shall be as effective as a notice of settlement pursuant to G.S. 47I-4, but only from the date and time of its registration and subject to the terms of this Chapter as if the original notice of settlement had not been registered. An 'Additional Notice of Settlement' shall be registered and indexed as a "subsequent instrument" pursuant to the provisions of G.S. 161-14.1. Only one 'Additional Notice of Settlement' may be registered for any single notice of settlement.

"§ 47I-9. Early termination of notice of settlement.

The notice agent may terminate the notice of settlement by filing a notice of termination in a form substantially as follows:

"TERMINATION OF NOTICE OF SETTLEMENT

Current Owner(s) of Record: _____

Grantee(s) (for Conveyance Transaction): _____

Mortgagee(s) (for Mortgage Transaction): _____

Notice Agent: _____

NOTICE is hereby given pursuant to Chapter 47I of the North Carolina General Statutes that the Notice of Settlement filed by the undersigned _____ (date or recording information) is hereby terminated.

Signature of Notice Agent

[NOTARIAL CERTIFICATE OF ACKNOWLEDGMENT IN COMPLIANCE WITH NORTH CAROLINA LAW]"

A notice of termination shall be registered and indexed as a "subsequent instrument" pursuant to the provisions of G.S. 161-14.1.

"§ 47I-10. Severability.

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to that end, the provisions of this Chapter are severable."

SECTION 3.(b) G.S. 47-18 reads as rewritten:

"§ 47-18. Conveyances, contracts to convey, options and leases of land.

(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainer or lesser but from the time of registration thereof in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the

land in that county. Unless otherwise stated either on the registered instrument or on a separate registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the office of the register of deeds shall have priority based on the order of registration as determined by the time of registration, and (ii) if instruments are registered simultaneously, then the instruments shall be presumed to have priority as determined by:

- (1) The earliest document number set forth on the registered instrument.
- (2) The sequential book and page number set forth on the registered instrument if no document number is set forth on the registered instrument.

The presumption created by this subsection is rebuttable.

...

(c) Notwithstanding any provision in subsection (a) to the contrary, the priority of conveyances of land and leases is subject to the priority established under a notice of settlement registered in compliance with the provisions of Chapter 47I of the General Statutes."

SECTION 3.(c) G.S. 47-20 reads as rewritten:

"§ 47-20. Deeds of trust, mortgages, conditional sales contracts, assignments of leases and rents; effect of registration.

(a) No deed of trust or mortgage of real or personal property, or of a leasehold interest or other chattel real, or conditional sales contract of personal property in which the title is retained by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time of registration thereof as provided in this ~~Article~~Article, or according to priority established pursuant to compliance with the provisions of Chapter 47I of the General Statutes, provided however that any transaction subject to the provisions of the Uniform Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions of that act and not by this section. Unless otherwise stated either on the registered instrument or on a separate registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the office of the register of deeds shall have priority based on the order of registration as determined by the time of registration, and (ii) if instruments are registered simultaneously, then the instruments shall be presumed to have priority as determined by:

- (1) The earliest document number set forth on the registered instrument.
- (2) The sequential book and page number set forth on the registered instrument if no document number is set forth on the registered instrument.

The presumption created by this subsection is rebuttable.

...."

SECTION 3.(d) G.S. 161-14.1 reads as rewritten:

"§ 161-14.1. Recording subsequent entries as separate instruments.

(a) As used in this section, the following terms mean:

- (1) Original instrument. – The previously recorded instrument that is modified, amended, restated, supplemented, assigned, satisfied, terminated, revoked, or cancelled by a subsequent instrument.
- (2) Recording data. – The book and page number or document number that indicates where an instrument is recorded in the office of the register of deeds.
- (3) Subsequent instrument. – Any instrument presented for registration that indicates in its title or within the first two pages of its text that it is intended or purports to modify, amend, restate, supplement, assign, satisfy, terminate, revoke, or cancel a previously registered instrument. Examples of subsequent instruments include the following:
 - a. The appointment or designation of a substitute trustee in a deed of trust.
 - ...
 - t. An additional notice of settlement pursuant to G.S. 47I-8(c).

1 u. A termination of notice of settlement pursuant to G.S. 47I-9.

2 "

3 **SECTION 3.(e)** This Part is effective January 1, 2020, and applies to notices of
4 settlement registered on or after that date.

5
6 **PART IV. REAL PROPERTY TECHNICAL CORRECTIONS**

7 **SECTION 4.(a)** Section 4.1 of S.L. 2018-80 reads as rewritten:

8 "**SECTION 4.1.** Sections 1.2 and 1.3 of this act become effective October 1, 2018, and apply
9 to instruments presented for registration on or after that date. Section 3.1 of this act becomes
10 effective October 1, 2018. Section 2.1 of this act becomes effective when this act becomes law
11 and applies to deeds and deeds of trust presented for registration on or after that date. Section 2.2
12 of this act becomes effective when this act becomes law and applies to all instruments entered
13 into before, on, or after that date. The remainder of this act is effective when this act becomes
14 law and applies to mortgages and deeds of trust entered into before, on, or after that date."

15 **SECTION 4.(b)** G.S. 47-17.1 reads as rewritten:

16 "**§ 47-17.1. Documents registered or ordered to be registered in certain counties to**
17 **designate draftsman; exceptions.**

18 The register of deeds of any county in North Carolina shall not accept for registration, nor
19 shall any judge order registration pursuant to G.S. 47-14, of any deeds or deeds of trust, executed
20 after January 1, 1980, unless the first page of the deeds or deeds of trust bears an entry showing
21 the name of ~~either the person or law firm who drafted the instrument. This section shall not apply~~
22 ~~to other instruments presented for registration. For the purposes of this section, the register of~~
23 ~~deeds shall accept the written representation of the individual presenting the deed or deed of trust~~
24 ~~for registration, or any individual reasonably related to the transaction, including, but not limited~~
25 ~~to, any employee of a title insurance company or agency purporting to be involved with the~~
26 ~~transaction, that the individual or law firm listed on the first page is a validly licensed attorney~~
27 ~~or validly existing law firm in this State or another jurisdiction within the United States.~~the drafter
28 of the deed or deed of trust. The register of deeds shall not be required to verify or make inquiry
29 concerning the capacity or authority of the person or entity shown as the drafter on the
30 instrument."

31
32 **PART V. EFFECTIVE DATE.**

33 **SECTION 5.** This act is effective when it becomes law.