

1 **Appendix A**

2
3 **§ 39-13.6. Control of real property held in tenancy by the entirety.**

4
5 (a) ~~A husband and wife~~ Two persons married to each other shall have an equal right to the
6 control, use, possession, rents, income, and profits of real property held by them in tenancy by the
7 entirety. Neither spouse may bargain, sell, lease, mortgage, transfer, convey or in any manner
8 encumber any property so held without the written joinder of the other spouse. This section shall
9 not be construed to require the spouse's joinder where a different provision is made under G.S. 39-
10 13, G.S. 39-13.3, G.S. 39-13.4, or G.S. 52-10.

11
12 (b) ~~Unless a contrary intention is expressed in the conveyance,~~ a conveyance of real
13 property, or any interest therein, to two persons then married to each other vests title in them as
14 tenants by the entirety when the conveyance is to:

15
16 (1) A named ~~man~~ person "and wife," or

17
18 (2) A named ~~woman~~ person "and husband,"

19
20 (3) Two named persons, whether or not identified in the conveyance as husband and
21 wife, if at the time of conveyance they are legally married to each other,

22
23 (4) A named person "and spouse," or

1 (5) Two named persons, whether or not identified in the conveyance as being
2 spouses or being married to each other, if at the time of conveyance they are
3 legally married to each other.

4
5 (c) For income tax purposes, each spouse is considered to have received one-half (1/2) the
6 income or loss from property owned by the couple as tenants by the entirety.

7
8 (d) Effective date. (or could be in some type of drafters' note?). Technical amendments to this
9 section are intended to reflect rights established by federal law that became effective on
10 October 14, 2014 and thereafter and are effective as of that date for conveyances of real
11 property legally situated in North Carolina as of that date or determined to be located in
12 North Carolina thereafter.

1 § 39-13.7. Tenancy by the entireties trusts in real property.

2
3 (a) Any real property held by a ~~husband and wife~~ two persons married to each other as a tenancy
4 by the entireties and conveyed to (i) a joint trust or (ii) in equal shares to two separate trusts; shall no
5 longer be held by ~~the husband and wife~~ them as tenants by the entirety and shall be disposed of by
6 the terms of the trust or trusts, but, subject to the provisions of subsection (b) of this section, the
7 real property shall have the same immunity from the claims of the separate creditors of ~~the husband~~
8 ~~and wife~~ each spouse as would exist if the spouses had continued to hold the property as tenants by
9 the entireties.

10
11 (b) The immunity from the claims of separate creditors provided by subsection (a) of this section
12 shall apply as long as all of the following apply:

13
14 (1) The ~~husband and wife~~ two persons remain married to each other.

15
16 (2) The real property continues to be held in the trust or trusts as provided in
17 subsection (a) of this section.

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

22
23 (c) After the death of the first ~~of the husband and wife~~ spouse to die, all property held in trust
24 that was immune from the claims of their separate creditors under subsection (a) of this section

1 immediately prior to the individual's death shall continue to have immunity from the claims of the
2 decedent's separate creditors as would have existed if ~~the husband and wife~~ both spouses continued
3 to hold the property conveyed in trust as tenants by the entirety.

4
5 (d) The trustee acting under the express provisions of a trust instrument or with the written
6 consent of both ~~the husband and wife~~ spouses may waive the immunity from the claims of separate
7 creditors provided under this section as to any specific creditor or any specifically described property
8 including all separate creditors of a ~~husband and wife~~ spouse or all former tenancy by the entirety
9 property conveyed to the trustee.

10
11 (e) For purposes of this section:

12
13 (1) The reference to the real property conveyed to or held in the trust shall be
14 deemed to include the proceeds arising from the involuntary conversion of the
15 real property.

16
17 (2) The reference to a "joint trust" means a revocable or irrevocable trust of which
18 both ~~the husband and wife~~ spouses are the settlors, and the reference to
19 "separate trusts" means revocable or irrevocable trusts of which ~~the husband~~ one
20 spouse is the settlor of one trust and the ~~wife~~ other spouse is the settlor of the
21 other trust.

22
23 (3) The ~~husband and wife~~ two spouses are "beneficiaries" of a trust if they are
24 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
4 *[additional provision regarding notice to be submitted; is unrelated to same-sex marriage]:*
5 *see below (draft from NC Bar Association Trusts and Estates Section, still under review)*

6
7 Add to subsection (e)

8 (4) Notice that real property receives the protections of this section may be given in the following
9 ways:

10 (a) A certification of trust pursuant to G.S. 36C-10-1013, which recites that the
11 requirements of G.S. 39-13.7(b) are met; or

12 (b) A statement in the conveyance that the real property is held in accordance with G.S.
13 39-13.7 and that the requirement of G.S. 39-13.7(b) are met.

14 (f) A person entering a transaction involving entireties property held in trust under this Section may
15 request confirmation from the trustee that the requirements of G.S. 39-13.7 are met at the time of
16 such transaction.

1
2 **§ 41-2.5. Tenancy by the entirety in mobile homes.**
3

4 (a) When a ~~husband and wife~~ two persons then married to each other become co-
5 owners of a mobile home, in the absence of anything to the contrary appearing in the instrument of
6 title, they become tenants by the entirety with all the incidents of an estate by the entirety in real
7 property, including the right of survivorship in the case of death of either.
8

9 (b) For the purpose of this section it shall be immaterial whether the property at any
10 particular time shall be classified for any purpose as either real or personal. The provisions of
11 subsection (a) shall not limit or prohibit any other type of ownership otherwise authorized by law.
12

13 (c) For purposes of this section "mobile home" means a portable manufactured housing
14 unit designed for transportation on its own chassis and placement on a temporary or semipermanent
15 foundation having a measurement of over 32 feet in length and over eight feet in width. As used in
16 this Article, "mobile home" also means a double-wide mobile home which is two or more portable
17 manufactured housing units designed for transportation on their own chassis, which connect on site
18 for placement on a temporary or semipermanent foundation having a measurement of over 32 feet
19 in length and over eight feet in width.
20

21 (d) This section does not repeal or modify any provisions of the law relating to estate or
22 inheritance taxes.
23
24