ST: Update Tenancy by the Entirety.

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING AMENDMENTS TO CLARIFY THAT TENANCY BY THE ENTIRETY IS PRESERVED IN THIS STATE IN LIGHT OF THE UNITED STATES SUPREME COURT DECISION IN OBERGEFELL V. HODGES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Any real property held by ~~a husband and wife~~two individuals married to each other as a tenancy by the entireties and conveyed to (i) a joint trust or (ii) in equal shares to two separate trusts; shall no longer be held by ~~the husband and wife~~them as tenants by the entirety and shall be disposed of by the terms of the trust or trusts, but, subject to the provisions of subsection (b) of this section, the real property shall have the same immunity from the claims of the separate creditors of ~~the husband and wife~~each spouse 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 shall apply as long as all of the following apply:

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

(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 wife~~spouses 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 the death of the first ~~of the husband and wife~~spouse to die, all 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~~both spouses continued to hold the property conveyed in trust as tenants by the entirety.

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

(e) For purposes of this section:

(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 of the real property.

(2) The reference to a "joint trust" means a revocable or irrevocable trust of which both ~~the husband and wife~~spouses are the settlors, and the reference to "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) The ~~husband and wife~~two spouses 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 are also current or future beneficiaries of the trust."

**[SECTION 4.]** G.S. 41-2.5. reads as rewritten:

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

(a) When ~~a husband and wife~~two individuals then married to each other become co-owners of a mobile home, in the absence of anything to the contrary appearing in the instrument

of title, they become tenants by the entirety with all the incidents of an estate by the entirety in real property, including the right of survivorship in the case of death of either.

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

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

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

**[SECTION 5.(a)]** This act is intended to reflect rights established by federal law that became effective on October 14, 2014, and thereafter.

**[SECTION 5.(b)] [**This act is effective when it becomes law and applies to conveyances made on or after October 14, 2014, provided that the grantors in the conveyance were legally married at the time of conveyance, and a contrary intent not to create a tenancy by the entirety is not expressed in the conveyance.] [This act is effective when it becomes law and applies to conveyances made on or after October 14, 2014.]