

Short Title: GSC Conveyances Between Spouses

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EFFECT THAT CONVEYANCES OF REAL PROPERTY
BETWEEN SPOUSES HAVE ON CERTAIN MARITAL PROPERTY RIGHTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 29-30 reads as rewritten:

"§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.

(a) Except as provided in this subsection, in lieu of the intestate share provided in G.S. 29-14 or G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who has petitioned for an elective share is entitled to take as the surviving spouse's intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture. The surviving spouse is not entitled to take a life estate in any of the following circumstances:

(1) The surviving spouse has waived the surviving spouse's rights by joining with the other spouse in a conveyance of the real estate.

(1a) The surviving spouse has waived the right to take a life estate in lieu of an intestate or elective share by an express written waiver.

(2) The surviving spouse has waived, released, or conveyed the surviving spouse's interest in the real estate in accordance with G.S. 52-10.

(2a) The surviving spouse conveyed the surviving spouse's interest in the real estate to the deceased spouse pursuant to G.S. 39-13.3 or G.S. 41-63(4) and waived or released the surviving spouse's right to take a life estate in the real estate in the instrument of conveyance.

(3) The surviving spouse was not required by law to join in a conveyance of the real estate in order to bar the elective life estate.

(3a) The surviving spouse has executed a written declaration permitting the deceased spouse to convey or encumber the real estate without the consent or joinder of the surviving spouse.

(3b) The real estate in which the deceased spouse had an interest was either apportioned to or sold to another person in a partition proceeding initiated before the deceased spouse's death.

(4) The surviving spouse is otherwise not legally entitled to the election provided in this section.

(b) The surviving spouse may elect to take a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if the dwelling house was owned by the deceased spouse at the time of the deceased spouse's death, together with the outbuildings, ~~improvements~~ improvements, and ~~easements thereunto belonging or appertaining~~ easements, and ~~lands~~ land upon which the dwelling house is situated and that is reasonably necessary to the its use and enjoyment thereof, as well as enjoyment. The surviving spouse may also elect to take a fee simple ownership in the household furnishings therein, of the dwelling house, despite the fact that a life estate ~~therein~~ in the dwelling house might exceed the fractional limitation provided for in subsection (a) of this section. If the value of a life estate in the dwelling house is less than the value of a life estate in one-third in value of all the real estate, the surviving spouse may elect to take a life estate in the dwelling and a life estate in such other real estate as to make the aggregate life estate of the surviving spouse equal to a life estate in one-third in value of all the real estate.

(c) The election provided for in subsection (a) of this section ~~shall be~~ is made by ~~the filing of a~~ petition in accordance with Article 2 of Chapter 28A of the General Statutes (i) with the

clerk of the superior court of the county in which the administration of the estate is pending or (ii) if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced, together with ~~the recording of a~~ notice indicating the county and file number of the clerk's filing with the register of deeds in every county where real property ~~to be~~ claimed under the filing is located. The election shall be made prior to the following applicable periods:

(1) In case of testacy, the shorter of (i) within 12 months of the date of death of the deceased spouse if letters testamentary are not issued within that period, or (ii) within one month after the expiration of the time limit for filing a claim for elective share if letters have been issued.

(2) In case of intestacy, the shorter of (i) within 12 months after the date of death of the deceased spouse if letters of administration are not issued within that period, or (ii) within one month after the expiration of the time limit for filing claims against the estate, if letters have been issued.

(3) Repealed by Session Laws 2011-344, s. 5, effective January 1, 2012.

(4) If litigation that affects the share of the surviving spouse in the estate is pending, including a pending petition for determination of an elective share, then within ~~such a~~ reasonable time ~~as may be~~ allowed by written order of the clerk of the superior court.

Nothing in this subsection extends the period of time for a surviving spouse to petition for an elective share under Article 1A of Chapter 30 of the General Statutes.

(c1) The petition described in subsection (c) of this section shall do all of the following:

(1) Be directed to the clerk with whom it is filed.

(2) State that the surviving spouse making the petition elects to take under this section rather than under ~~the provisions of~~ G.S. 29-14, 29-21, or 30-3.1, as applicable.

(3) Set forth the names of all heirs, devisees, personal ~~representatives~~ representatives, and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a) of this section.

(4) Request the allotment of the life estate provided for in subsection (a) of this section.

(c2) The petition described in subsection (c) of this section may be filed in ~~person, person~~ or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the petition may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the petition may be executed and filed by a guardian ad litem appointed by the clerk. The petition, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the petition shall be served upon each of the interested persons named in the petition, in accordance with G.S. 1A-1, Rule 4.

(d) In case of election to take a life estate in lieu of an intestate share or elective share, as provided in either G.S. 29-14, 29-21, or 30-3.1, the clerk of superior court, with whom the petition has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) of this section and make a final report of this action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after ~~the~~ their summoning and ~~appointment thereof, appointment,~~ shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse ~~shall have~~ has been

allotted and set aside a life estate. It shall be filed as a record of court and a certified copy ~~thereof~~
of it shall be filed and recorded in the office of the register of deeds of each county in which any
part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for
in this section, the rules of procedure relating to partition proceedings apply except insofar as the
rules would be inconsistent with ~~the provisions of~~ this section. A determination of the life estate
under this section may be appealed in accordance with G.S. 1-301.3.

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

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

(2) By a mortgage or deed of trust given by the deceased spouse to secure a loan,
the proceeds of which were used to pay all or a portion of the purchase price
of the encumbered real property, regardless of whether the secured party is the
seller of the real property or a third-party ~~lender~~ lender.

~~(2a) or by~~ (2a) By a conditional sales contract of personal property in which title is
retained by the vendor, made prior to or during the marriage.

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

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

(5) By a mortgage or deed of trust on property with respect to which the elective
life estate provided for in this section does not apply as provided in subsection
(a) of this section.

(h) If no election is made in the manner and within the time provided for in subsection (c) of this section, the surviving spouse ~~shall be~~ is conclusively deemed to have waived the surviving spouse's right to elect to take under ~~the provisions of~~ this section, and any interest ~~which that~~ the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section ~~shall terminate.~~ is terminated."

SECTION 1.(b) This section applies to conveyances executed before, on, or after the effective date of this act.

[Staff Note: At the September 2022 meeting, the Commission indicated its intent to recommend the changes in Section 1(a). This draft adds an applicability clause based on the preferred applicability of the NC Bar Association's Real Property Section representative at that meeting.]

SECTION 2.(a) G.S. 39-13.3 reads as rewritten:

"§ 39-13.3. Conveyances between husband and wife.

(a) A conveyance from a husband or wife to the other spouse of real property or any interest ~~therein~~ in real property owned by the grantor alone vests ~~such the~~ property or interest in the grantee. The conveyance does not waive or release any of the following rights or claims that the grantor may have acquired by marriage in the property conveyed:

(1) A right to an elective life estate under G.S. 29-30, unless the instrument of conveyance waives the right, as provided in G.S. 29-30(a)(2a).

(2) A right or claim to an equitable distribution with respect to the property under G.S. 50-20. A right or claim for equitable distribution shall not be waived or released in the instrument of conveyance.

(b) Recodified as G.S. 41-56(b) by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

(c) Recodified as G.S. 41-63(4) by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

(d) The joinder of the spouse of the grantor in any conveyance made by a husband or a wife 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.(b) G.S. 41-63 reads as rewritten:

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

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

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

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

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

- a. A sale pursuant to Article 15 of Chapter 35A of the General Statutes as to an incompetent spouse.
- b. An appropriation in a condemnation proceeding by the North Carolina State Highway Commission.

(4) The conveyance from one spouse to the other spouse of his or her interest in property held as tenants by the entirety. The conveyance vests the property or interest formerly held as tenants by the entirety in the other spouse. The joinder of a spouse in a conveyance made by the grantor pursuant to this subdivision is not necessary, but the conveyance is subject to the provisions of G.S. 52-10 or G.S. 52-10.1, except that an acknowledgment by the spouse of the grantor is not necessary. The conveyance does not waive or release any of the following rights or claims that the grantor may have acquired by marriage in the property conveyed:

a. A right to an elective life estate under G.S. 29-30, unless the instrument of conveyance waives the right, as provided in G.S. 29-30(a)(2a).

b. A right or claim to an equitable distribution with respect to the property under G.S. 50-20. A right or claim for equitable distribution shall not be waived or released in the instrument of conveyance.

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

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

SECTION 2.(c) Subdivisions (b)(1), (b)(3), and (b)(4) of G.S. 50-20 are recodified as subdivisions (b)(1b), (b)(1), and (b)(1a) of that section, respectively.

SECTION 2.(d) G.S. 50-20, as amended by subsection (c) of this section, reads as rewritten:

"§ 50-20. Distribution by court of marital and divisible property.

(a) Upon application of a party, the court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with ~~the provisions of~~ this section.

(b) For purposes of ~~this section:~~ section, the following definitions apply:

(1) ~~"Distributive award" means payments~~ Distributive award. – Payments that are payable either in a lump sum or over a period of time in fixed amounts, but ~~shall the term does not~~ include alimony payments or other similar payments for support and maintenance ~~which that~~ are treated as ordinary income to the recipient under the Internal Revenue Code.

(1a) ~~"Divisible property" means all~~ Divisible property. – All real and personal property as set forth below:

- a. All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value ~~which that~~ is the result of postseparation actions or activities of a spouse ~~shall not be~~ is not treated as divisible property.
- b. All property, property rights, or any portion thereof received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.
- c. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.

d. Passive increases and passive decreases in marital debt and financing charges and interest related to marital debt.

(1b) ~~"Marital property" means all~~ Marital property. – All real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with ~~subdivision (2) or (4) of this subsection~~. Marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property ~~which~~ that is separate property under ~~subdivision (2) of this subsection~~. It is presumed that all real property creating a tenancy by the entirety acquired after the date of marriage and before the date of separation is marital property. Either presumption may be rebutted by the greater weight of the evidence.

(2) ~~"Separate property" means all~~ Separate property – All real and personal property acquired by a spouse before marriage or acquired by a spouse by devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage ~~shall~~ be ~~is~~ considered separate property only if ~~such an~~ this intention is stated in the conveyance. Property acquired in exchange for separate property ~~shall remain~~ remains separate property regardless of whether the title is in the name of the husband or wife or both and ~~shall is not be considered to be~~ marital property unless a contrary intention is expressly stated in the conveyance. The increase

1 in value of separate property and the income derived from separate property
2 ~~shall be~~ is considered separate property. All professional licenses and business
3 licenses ~~which~~ that would terminate on transfer ~~shall be~~ are considered
4 separate property.

5 (c) There shall be an equal division by using net value of marital property and net value
6 of divisible property unless the court determines that an equal division is not equitable. If the
7 court determines that an equal division is not equitable, the court shall divide the marital property
8 and divisible property equitably. The court shall consider all of the following factors under this
9 subsection:

- 10 (1) The income, property, and liabilities of each party at the time the division of
11 property is to become effective.
- 12 (2) Any obligation for support arising out of a prior marriage.
- 13 (3) The duration of the marriage and the age and physical and mental health of
14 both parties.
- 15 (4) The need of a parent with custody of a child or children of the marriage to
16 occupy or own the marital residence and to use or own its household effects.
- 17 (5) The expectation of pension, retirement, or other deferred compensation rights
18 that are not marital property.
- 19 (6) Any equitable claim to, interest in, or direct or indirect contribution made to
20 the acquisition of ~~such~~ the marital property by the party not having title,
21 including joint efforts or expenditures and contributions and services, or lack
22 thereof, as a spouse, parent, wage ~~earner~~ earner, or homemaker.
- 23 (7) Any direct or indirect contribution made by one spouse to help educate or
24 develop the career potential of the other spouse.

- (8) Any direct contribution to an increase in value of separate property ~~which~~that occurs during the course of the marriage.
- (9) The liquid or nonliquid character of all marital property and divisible property.
- (10) The difficulty of evaluating any component asset or any interest in a business, ~~corporation~~corporation, or profession, and the economic desirability of retaining ~~such~~the asset or interest, intact and free from any claim or interference by the other party.
- (11) The tax consequences to each party, including those federal and State tax consequences that would have been incurred if the marital and divisible property had been sold or liquidated on the date of valuation. The trial court may, however, in its discretion, consider whether or when ~~such~~the tax consequences are reasonably likely to occur in determining the equitable value deemed appropriate for this factor.
- (11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, ~~devalue~~devalue, or convert the marital property or divisible property, or both, during the period after separation of the parties and before the time of distribution.
- (11b) In the event of the death of either party prior to the entry of any order for the distribution of property made pursuant to this subsection:
- a. Property passing to the surviving spouse by will or through intestacy due to the death of a spouse.
 - b. Property held as tenants by the entirety or as joint tenants with rights of survivorship passing to the surviving spouse due to the death of a spouse.

c. Property passing to the surviving spouse from life insurance, individual retirement accounts, pension or profit-sharing plans, any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary (excluding any benefits under the federal social security system), or any other retirement accounts or contracts, due to the death of a spouse.

d. The surviving spouse's right to claim an "elective share" pursuant to G.S. 30-3.1 through ~~G.S. 30-33~~, G.S. 30-31.2, unless otherwise waived.

(12) Any other factor ~~which that~~ the court finds ~~to be~~ just and proper.

(c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires no interest in the marital property and divisible property of his or her spouse from a former marriage until a final determination of equitable distribution is made in the marital property and divisible property of the spouse's former marriage.

(d) Before, ~~during during~~, or after marriage the parties may by written agreement, duly executed and acknowledged in accordance with ~~the provisions of~~ G.S. 52-10 and G.S. 52-10.1, or by a written agreement valid in the jurisdiction where executed, provide for distribution of the marital property or divisible property, or both, in a manner deemed by the parties to be equitable ~~and the equitable. The agreement shall be is~~ binding on the parties. However, as provided in G.S. 39-13.3(a)(2) and G.S. 41-63(4)b., the parties shall not provide for this distribution in an instrument of conveyance.

(e) Subject to the presumption of subsection (c) of this section that an equal division is equitable, it shall be presumed in every action that an in-kind distribution of marital or divisible property is equitable. This presumption may be rebutted by the greater weight of the evidence, or by evidence that the property is a closely held business entity or is otherwise not susceptible

of division in-kind. In any action in which the presumption is rebutted, the court in lieu of in-kind distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, ~~effectuate~~ effectuate, or supplement a distribution of marital or divisible property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(f) The court shall provide for an equitable distribution without regard to alimony for either party or support of the children of both parties. After the determination of an equitable distribution, the court, upon request of either party, shall consider whether an order for alimony or child support should be modified or vacated pursuant to G.S. 50-16.9 or G.S. 50-13.7.

(g) If the court orders the transfer of real or personal property or an interest ~~therein, in real or personal property~~, the court may also enter an order ~~which shall to~~ transfer title, as provided in G.S. 1A-1, ~~Rule 70~~ Rule 70, and G.S. 1-228.

(h) If either party claims that any real property is marital property or divisible property, that party may cause a notice of lis pendens to be recorded pursuant to Article 11 of Chapter 1 of the General Statutes. Any person whose conveyance or encumbrance is recorded or whose interest is obtained by descent, prior to the filing of the lis pendens, ~~shall take~~ takes the real property free of any claim resulting from the equitable distribution proceeding. The court may cancel the notice of lis pendens upon substitution of a bond with surety in an amount determined by the court to be sufficient provided the court finds that the claim of the spouse against property subject to the notice of lis pendens can be satisfied by money damages.

(i) Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to G.S. 1A-1, ~~Rule 65~~ Rule 65, and ~~Chapter 1, Article 37, Article 37 of Chapter 1 of the General Statutes~~, to prevent the disappearance, ~~waste~~ waste, or conversion of property alleged to be marital property, divisible property, or separate property of the party

1 seeking relief. The court, in lieu of granting an injunction, may require a bond or other assurance
2 of sufficient amount to protect the interest of the other spouse in the property. Upon application
3 by the owner of separate property ~~which~~ that was removed from the marital home or possession
4 of its owner by the other spouse, the court may enter an order for reasonable counsel fees and
5 costs of court incurred to regain its possession, but ~~such~~ the fees shall not exceed the fair market
6 value of the separate property at the time it was removed.

7 (i1) Unless good cause is shown that there should not be an interim distribution, the court
8 may, at any time after an action for equitable distribution has been filed and prior to the final
9 judgment of equitable distribution, enter ~~orders~~ an order declaring what is separate property and
10 may also enter ~~orders~~ an order dividing part of the marital property, divisible property or debt, or
11 marital debt between the parties. The partial distribution may provide for a distributive award
12 and may also provide for a distribution of marital property, marital debt, divisible property, or
13 divisible debt. Any ~~such~~ orders entered shall be taken into consideration at trial and shall be given
14 proper ~~credit~~ given ~~credit~~.

15 Hearings held pursuant to this subsection may be held at sessions arranged by the chief
16 district court judge pursuant to G.S. 7A-146 and, if held at ~~such~~ these sessions, ~~shall~~ are not be
17 subject to the reporting requirements of G.S. 7A-198.

18 (j) In any order for the distribution of property made pursuant to this section, the court
19 shall make written findings of fact that support the determination that the marital property and
20 divisible property has been equitably divided.

21 (k) The rights of the parties to an equitable distribution of marital property and divisible
22 property are a species of common ownership, the rights of the respective parties vesting at the
23 time of the parties' separation.

24 (l) The following applies regarding the death of a spouse:

(1) A claim for equitable distribution, whether an action is filed or not, survives the death of a spouse so long as the parties are living separate and apart at the time of death.

(2) ~~The provisions of~~ Article 19 of Chapter 28A of the General Statutes ~~shall be~~ is applicable to a claim for equitable distribution against the estate of the deceased spouse.

(3) Any claim for equitable distribution against the surviving spouse made by the estate of the deceased spouse ~~must~~ shall be filed with the district court within one year of the date of death of the deceased spouse or be forever barred."

SECTION 2.(e) G.S. 39.13.3(a)(1) and G.S. 41-63(4)a., as enacted by this section, apply to conveyances executed before, on, or after the effective date of this act. The remainder of this section applies to conveyances executed on or after the effective date of this act.

[Staff Note: At the September 2022 meeting, the Commission indicated its intent to continue discussion of the requested changes in subsections 2(a) and 2(b) regarding equitable distribution before recommending them. This draft adds an applicability clause for those changes based on the preferred applicability of the NC Bar Association's Family Law Section representative at the September meeting.]

Section 2(d) is added at the request of the Commission, in the event that the Commission recommends the changes requested by the Family Law Section. Specifically, the Commission requested that the cross-references be added to G.S. 50-20(d).]

SECTION 3. This act becomes effective October 1, 2023.

[Background Statutes:

§ 52-10. Contracts between husband and wife generally; releases.

(a) Contracts between husband and wife not inconsistent with public policy are valid, and any persons of full age about to be married and married persons may, with or without a valuable consideration, release and quitclaim such rights which they might respectively acquire or may have acquired by marriage in the property of each other; and such releases may be pleaded in bar of any action or proceeding for the recovery of the rights and estate so released. No contract or release between husband and wife made during their coverture shall be valid to affect or change any part of the real estate of either spouse, or the accruing income thereof for a longer time than three years next ensuing the making of such contract or release, unless it is in writing and is acknowledged by both parties before a certifying officer.

(a1) A contract between a husband and wife made, with or without a valuable consideration, during a period of separation to waive, release, or establish rights and obligations

1 to post separation support, alimony, or spousal support is valid and not inconsistent with public
2 policy. A provision waiving, releasing, or establishing rights and obligations to post separation
3 support, alimony, or spousal support shall remain valid following a period of reconciliation and
4 subsequent separation, if the contract satisfies all of the following requirements:

5 (1) The contract is in writing.

6 (2) The provision waiving the rights or obligations is clearly stated in the
7 contract.

8 (3) The contract was acknowledged by both parties before a certifying officer.

9 A release made pursuant to this subsection may be pleaded in bar of any action or proceeding
10 for the recovery of the rights released.

11 (b) Such certifying officer shall be a notary public, or a justice, judge, magistrate, clerk,
12 assistant clerk or deputy clerk of the General Court of Justice, or the equivalent or corresponding
13 officers of the state, territory or foreign country where the acknowledgment is made. Such officer
14 must not be a party to the contract.

15 (c) This section shall not apply to any judgment of the superior court or other State court
16 of competent jurisdiction, which, by reason of its being consented to by a husband and wife, or
17 their attorneys, may be construed to constitute a contract or release between such husband and
18 wife.

19
20 **§ 52-10.1. Separation agreements.**

21 Any married couple is hereby authorized to execute a separation agreement not inconsistent
22 with public policy which shall be legal, valid, and binding in all respects; provided, that the
23 separation agreement must be in writing and acknowledged by both parties before a certifying
24 officer as defined in G.S. 52-10(b). Such certifying officer must not be a party to the contract.
25 This section shall not apply to any judgment of the superior court or other State court of
26 competent jurisdiction, which, by reason of its being consented to by a husband and wife, or their
27 attorneys, may be construed to constitute a separation agreement between such husband and
28 wife.]