



HOUSE BILL 556: Real Property-Tenancy in Common Changes.

2023-2024 General Assembly

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| Committee: | Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate | Date: | June 11, 2024 |
| Introduced by: | Reps. Blackwell, Wheatley, White, Fontenot | Prepared by: | Bill Patterson |
| Analysis of: | PCS to First Edition H556-CSTG-49 | | Committee Co-Counsel |

OVERVIEW: *The Proposed Committee Substitute for House Bill 556 would codify existing common law rules governing concurrent ownership of real property as tenants in common, as recommended by the North Carolina Bar Association. The PCS rewrites the bill in its entirety.*

CURRENT LAW: The rights and obligations of persons concurrently owning property vary depending on whether the concurrent ownership is in the form of a tenancy by the entirety, a joint tenancy, or a tenancy in common. The current law governing the first two of these types of concurrent estates is set forth in Article 5 (Tenancy by the Entirety) and Article 6 (Joint Tenancy) of Chapter 41 of the General Statutes, which were enacted by Session Law 2020-50, comprising a codification of applicable common law rules and a recodification of applicable statutory provisions.

BILL ANALYSIS: Section 1 of the PCS would enact a new Article 7 of Chapter 41 of the General Statutes entitled "Tenancy in Common," which would codify common law rules applicable to tenancy in common.

New Article 7 would include the following provisions:

- G.S. 41-80 defines the following terms as used in Article 7: "actual ouster;" "constructive ouster;" "conveyance;" "cotenant;" and "property."
- G.S. 41-81 sets forth the following characteristics of a tenancy in common:
 - Each cotenant holds a separate undivided interest in the property.
 - Unless otherwise specified in the instrument of conveyance, all cotenants' interests are equal, and each cotenant has a right to possession of the property.
 - Cotenants can take title from different instruments or at different times and do not have a right of survivorship.
- G.S. 41-82 delineates the circumstances under which a tenancy in common is created by a conveyance.
- G.S. 41-83 provides that each cotenant has the right to occupy and use the property subject to the rights of the other cotenants.
- G.S. 41-84 provides that an act by one cotenant relating to the property is not binding on another cotenant with respect to a third-party unless it was authorized or ratified by the other cotenant, and that such an act is presumed to have been done by authority and for the benefit of the other cotenant.

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- G.S. 41-85 provides that cotenants share proportionally in rents and profits received from third parties based on their respective interests in the property, and that if a tenant in common receives more than that tenant in common's share of rents and profits, a cotenant can bring an action for an accounting to recover the cotenant's share.
- G.S. 41-86 prescribes conditions under which a cotenant is entitled to reimbursement by the other cotenants for repairs or improvements to the property, or for payment of taxes due or payment of interest on an existing encumbrance of the property.
- G.S. 41-87 provides that Article 7 does not prohibit cotenants from entering into agreements respecting the property, including possession, sharing of rents and profits, reimbursement, and authority of a cotenant to bind another cotenant.
- G.S. 41-88 provides that a cotenant ousted by another cotenant may bring an action, other than an action for partition, seeking to compel the cotenant in possession to admit the ousted cotenant into possession.
- G.S. 41-89 prescribes the manner in which one cotenant can acquire another cotenant's interest in the property by a claim of adverse possession and requires such claimant to prove ouster or constructive ouster by clear and convincing evidence.
- G.S. 41-90 provides that a cotenant can convey or encumber that cotenant's undivided interest in the property without joinder of any other cotenant, and that the grantee of a cotenant's interest acquires only the grantor's interest and becomes a cotenant, regardless of whether the instrument of conveyance purports to convey the whole estate.
- G.S. 41-91 provides that cotenants occupy a relationship of trust and confidence as to the property that obligates them to put forth their best efforts to protect and secure the common interest as to the property, and that a fiduciary relationship among the cotenants arises only by conduct of a cotenant sufficient to create such a relationship.
- G.S. 41-92 sets forth rules for determining whether acquisition of title to the property by one tenant upon a sale of the property to pay the debt of one or more of the cotenants inures to the benefit of all the cotenants.
- G.S. 41-93 provides that a cotenant's interest in the property may be sold to satisfy a debt owed by a creditor of that cotenant, and that such sale does not affect another cotenant's interest in the property.
- G.S. 41-94 provides that a cotenant can recover possession of the property for the benefit of all of the cotenants from a third party claiming adversely to the cotenants, and that in an action against a third party for trespass, a cotenant can recover only that cotenant's proportional amount of the total damages recovered.
- G.S. 41-95 provides that a tenancy in common is terminated by any of the following:
 - Partition of the property under Chapter 46A of the General Statutes.
 - Voluntary partition among cotenants conveying the property to themselves in separate tracts.
 - Conveyance of all interests to one grantee.
 - One cotenant's acquisition of title to the property by adverse possession.
- G.S. 41-96 provides that Article 7 does not apply to:
 - Property in a partnership subject to Chapter 59 of the General Statutes
 - An action for partition and its effect under Chapter 46A of the General Statutes.

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- A tenancy in common in personal property.
- G.S. 41-97 provides that Article 7 is supplemented by the common law of tenancy in common and principles of equity except to the extent they conflict or are inconsistent therewith.

EFFECTIVE DATE: This act would be effective when it becomes law.