

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 556
PROPOSED SENATE COMMITTEE SUBSTITUTE H556-PCS30503-TG-49

Short Title: Tenancy in Com./E-Notary/SmallClaims Changes. (Public)

Sponsors:

Referred to:

April 4, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO CODIFY THE LAW OF TENANCY IN COMMON IN THIS STATE, AS
3 RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION, TO MAKE
4 CHANGES TO NORTH CAROLINA'S NOTARY PUBLIC LAWS, AS REQUESTED BY
5 THE DEPARTMENT OF THE SECRETARY OF STATE, TO PROHIBIT COUNTIES
6 AND CITIES FROM ADOPTING CERTAIN ORDINANCES, RULES, AND
7 REGULATIONS THAT WOULD PROHIBIT LANDLORDS FROM REFUSING TO
8 RENT TO TENANTS BECAUSE A TENANT'S LAWFUL SOURCE OF INCOME TO
9 PAY RENT INCLUDES FUNDING FROM A FEDERAL HOUSING ASSISTANCE
10 PROGRAM, TO CLARIFY AUTHORIZED LITIGATION COSTS IN SUMMARY
11 EJECTMENT MATTERS, AND TO ESTABLISH THE SMALL CLAIM APPEAL
12 PERIOD BEGINNING WHEN A JUDGMENT IS RENDERED.

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** Chapter 41 of the General Statutes is amended by adding a new Article
15 to read:

16 "Article 7.

17 "Tenancy in Common.

18 "**§ 41-80. Definitions; construction.**

19 The following definitions apply in this Article:

- 20 (1) Actual ouster. – An entry onto or possession of the property by a cotenant that
21 is a clear, positive, and unequivocal act, equivalent to an open denial of
22 another cotenant's rights or title in the property and putting the other cotenant
23 out of seizin.
- 24 (2) Constructive ouster. – A presumption of ouster when a tenant in common has
25 sole possession of the property for 20 years and all of the following criteria
26 are met:
- 27 a. There is no acknowledgement on the part of that tenant in common of
28 the rights or title of the cotenant in the property.
- 29 b. There is no demand or claim by the cotenant for rents, profits, or
30 possession.
- 31 c. The cotenant had no disability to act at the time the property's sole
32 possession by the tenant in common commenced.
- 33 (3) Conveyance. – A transfer of title to real property by deed, devise, or other
34 means of transferring title.
- 35 (4) Cotenant. – A cotenant of a tenant in common.
- 36 (5) Property. – An interest in real property held as a whole by tenancy in common.



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"§ 41-81. Nature of tenancy in common, in general.

Tenancy in common ownership includes the following characteristics:

- (1) Two or more persons hold separate undivided interests in the property.
- (2) The interests of all cotenants in the property are deemed to be equal unless otherwise specified in the instrument of conveyance. Interests of cotenants in the property acquired by intestacy are as determined under Chapter 29 of the General Statutes.
- (3) Cotenants hold by several and distinct titles with each cotenant having a right to possession of the property.
- (4) Cotenants need not take title from the same instrument or at the same time.
- (5) Cotenants do not have a right of survivorship.

"§ 41-82. Creation of a tenancy in common.

(a) A tenancy in common is created by a conveyance that meets one of the following criteria:

- (1) The conveyance is to two or more grantees and expresses an intent that the grantees hold separate undivided interests in the property.
- (2) The conveyance is to one or more grantees and expresses an intent that the grantor and the grantee or grantees hold separate undivided interests in the property.
- (3) The conveyance does not express an intent described in subdivision (1) or (2) of this subsection and, with nothing else appearing, does not under the circumstances create an estate in property other than a tenancy in common.

(b) The following words in the instrument shall be deemed to express an intent to create a tenancy in common unless the instrument provides otherwise: "equal portions," "equally divided," "share and share alike," "share equally," "their respective portions."

(c) An interest in property held by cotenants who subsequently marry each other remains held by tenancy in common unless by separate instrument the spouses convey the interest to themselves to create a tenancy by the entirety or a joint tenancy with right of survivorship.

(d) Unless otherwise provided in the instrument of conveyance, a tenancy in common interest conveyed to grantees married to each other shall be held as tenants by the entirety and the married grantees shall be treated as a single tenant in common, including where any of the following occur:

- (1) The tenancy in common interest is conveyed to the married grantees and to one or more other grantees as tenants in common in the same instrument.
- (2) A tenant in common's interest in the property is conveyed to the married grantees.

(e) A tenancy in common may be created by operation of law, including the following:

- (1) When two or more individuals take undivided interests in real property upon intestate succession.
- (2) Upon termination of a joint tenancy with right of survivorship as provided in G.S. 41-73.
- (3) Upon termination of a tenancy by the entirety by voluntary sale or conveyance, voluntary partition, or divorce as provided in G.S. 41-63(1), (2), and (5).

"§ 41-83. Possession of property held as cotenants.

(a) Each cotenant has a right to enter upon the property and to occupy and use it subject to the rights of all other cotenants.

(b) The possession of one cotenant is the possession of any other cotenant. Unless an actual ouster occurs, one cotenant cannot bring an action against another cotenant for taking possession of property as to which each has a right of possession as a cotenant.

"§ 41-84. Authority to bind another cotenant.

1 An act by a cotenant in relation to the property (i) cannot bind another cotenant with respect
2 to a third party unless it was previously authorized or subsequently ratified by the other cotenant
3 and (ii) is presumed to have been done by authority and for the benefit of the other cotenant.

4 **"§ 41-85. Rents and profits from property held as cotenants.**

5 (a) Cotenants share proportionally in the rents and profits of the property received from
6 third parties according to their respective interests in the property.

7 (b) If a tenant in common has received more than that tenant in common's share of the
8 rents and profits from the property, a cotenant may bring an action for an accounting to recover
9 the cotenant's share of the rents and profits.

10 **"§ 41-86. Reimbursement of a cotenant.**

11 (a) A cotenant who makes necessary repairs to the property is entitled to contribution
12 from all other cotenants for those repairs unless one of the following applies:

13 (1) Exclusive possession. – The repairs were made by the cotenant during a period
14 when that cotenant had exclusive possession of the property.

15 (2) Income producing property. – The cotenant is entitled to a credit for necessary
16 repairs made by that cotenant in an action for partition where the other
17 cotenant seeks an accounting of rents and profits from the property.

18 (b) A cotenant who makes improvements to the property is not entitled to contribution
19 from the other cotenant or a credit in an action where the other cotenant seeks an accounting of
20 rents and profits from the property for those improvements; except that, in an action for partition,
21 the cotenant who made the improvements is entitled to contribution from the other cotenant in
22 one of the following forms:

23 (1) The lesser of (i) the value added to the property as of the date of the
24 commencement of the proceeding or (ii) the actual costs of the improvements,
25 in accordance with G.S. 46A-27.

26 (2) The right to have the improved part of the property allocated to the cotenant
27 who made the improvements if the allocation can be done without prejudice
28 to the other cotenant.

29 (c) A cotenant who pays taxes due or interest on an existing encumbrance of the property
30 is entitled to reimbursement from the other cotenant for the amount paid; except that no
31 entitlement to reimbursement exists for interest paid on an existing encumbrance for any period
32 during which the cotenant who paid interest is in exclusive possession of the property. Rights
33 arising from payment by any cotenant of taxes, interest, and costs that are a lien upon the property
34 are governed by G.S. 105-363.

35 **"§ 41-87. Modification by agreement.**

36 Nothing in this Article shall be deemed to prohibit cotenants from entering into an agreement
37 with respect to the property, including possession, sharing rents and profits, reimbursement
38 related to the property, and the authority of a cotenant to bind another cotenant.

39 **"§ 41-88. Actual ouster; action to compel admission of ousted cotenant into possession.**

40 A cotenant claiming ouster by another cotenant may bring an action, other than an action for
41 partition, seeking to compel the cotenant in possession to admit the ousted cotenant into
42 possession.

43 **"§ 41-89. Adverse possession by a cotenant.**

44 (a) A cotenant without color of title may acquire title to another cotenant's interest in the
45 property by 20 years' adverse possession as provided by G.S. 1-40, subject to the following:

46 (1) Possession of the property by the cotenant is not considered adverse until there
47 is an actual ouster or constructive ouster of the other cotenant.

48 (2) If a cotenant purports to convey the whole estate, all of the following apply:

49 a. The grantee receives only the grantor's interest.

50 b. The instrument of conveyance is not color of title as against the
51 grantor's cotenant.

- 1 c. Adverse possession by the grantee for 20 years is required to bar entry
2 of the grantor's cotenant.
- 3 (b) A cotenant with color of title may acquire title to the other cotenant's interest in the
4 property by seven years' adverse possession as provided by G.S. 1-38, subject to the following:
- 5 (1) Possession of the property by the cotenant is not considered adverse until there
6 is an actual ouster of the other cotenant.
- 7 (2) If a cotenant purports to convey the whole estate, all of the following apply:
- 8 a. The grantee receives only the grantor's interest.
9 b. The instrument of conveyance is not color of title against the grantor's
10 cotenant.
- 11 c. Seven years' adverse possession by the grantee under the deed will not
12 ripen into title to the whole estate.
- 13 (3) If a grantee receives a deed purporting to convey the whole estate in a judicial
14 proceeding to sell the interest of a cotenant, including a sale for partition, a
15 tax foreclosure, or a sale to pay debts, the deed is deemed color of title and the
16 grantee can acquire title as against all other cotenants by seven years' adverse
17 possession.
- 18 (c) A tenant in common claiming adverse possession must prove ouster or constructive
19 ouster by clear and convincing evidence.

20 **"§ 41-90. Alienation of a cotenant's undivided interest in the property.**

21 (a) Each cotenant may convey, lease, mortgage, place a deed of trust on, or place a lien
22 on that cotenant's undivided interest in the property without the joinder of any other cotenant.

23 (b) The grantee of a cotenant's interest in the property acquires only the interest of the
24 grantor and becomes a cotenant, even if the instrument of conveyance purports to convey the
25 whole estate.

26 **"§ 41-91. Obligations among cotenants; fiduciary relationship.**

27 (a) Cotenants occupy a relationship of trust and confidence to each other as to the
28 property that obligates them to put forth their best efforts to protect and secure the common
29 interest.

30 (b) Tenancy in common does not create a fiduciary relationship among the cotenants
31 unless a cotenant undertakes to act for the benefit of another cotenant or otherwise engages in
32 conduct creating a fiduciary relationship.

33 **"§ 41-92. Acquisition of title by one cotenant.**

34 (a) If a cotenant acquires title to the property upon a sale of the property to pay the debt
35 for which (i) that cotenant is partially liable or (ii) all of the cotenants are liable, the title inures
36 to the benefit of all of the cotenants.

37 (b) If a third party, acting in collusion with or as agent of one of the cotenants, acquires
38 title to property upon a sale of the property to pay the debt for which all of the cotenants are liable
39 and subsequently conveys the title to that cotenant, the title inures to the benefit of all of the
40 cotenants.

41 (c) If a third party, without collusion, acquires title to the property upon a sale of the
42 property to pay a debt for which all of the cotenants are liable and subsequently conveys that title
43 to one of the cotenants, that cotenant takes title to the property in that cotenant's own right, valid
44 as against the other cotenants.

45 (d) A cotenant who receives an interest in the property because of the death of an ancestor
46 holding an interest in the property may acquire the ancestor's interest in the property upon a sale
47 to pay the debt of the deceased ancestor secured by the ancestor's interest in the property.

48 (e) A cotenant may acquire title to another cotenant's interest in the property upon a sale
49 of the other cotenant's interest in the property to pay the debt of the other cotenant.

50 **"§ 41-93. Rights of creditors in property held by tenancy in common.**

1 (a) The interest of a cotenant in the property may be sold pursuant to a proceeding for
2 satisfaction of a debt to a creditor, including the following:

3 (1) In an execution sale where the creditor has obtained a judgment lien against
4 that cotenant.

5 (2) Under a power of sale in a mortgage or deed of trust against that cotenant's
6 interest in the property.

7 (3) In a judicial sale where that cotenant's interest in the property is ordered to be
8 sold.

9 (b) A sale of an interest of a cotenant as described in subsection (a) of this section does
10 not affect another cotenant's interest in the property.

11 **"§ 41-94. Action by a cotenant against a third party.**

12 (a) A cotenant may recover possession of the property for the benefit of all of the
13 cotenants from a third party claiming adversely to the cotenants.

14 (b) In an action against a third party for trespass, a cotenant may recover only that
15 cotenant's proportional amount of the total damages recovered.

16 **"§ 41-95. Termination of a tenancy in common.**

17 Events terminating a tenancy in common include the following:

18 (1) Partition of the property under Chapter 46A of the General Statutes.

19 (2) Voluntary partition of the property among cotenants executing one or more
20 instruments conveying the property held as cotenants to themselves in
21 separate tracts.

22 (3) Conveyance of all interests in the property to one grantee.

23 (4) Acquisition by one cotenant of the ownership of the property by adverse
24 possession.

25 **"§ 41-96. Inapplicability of Article.**

26 Except as otherwise explicitly provided, this Article does not apply to the following:

27 (1) Property in a general partnership covered by Chapter 59 of the General
28 Statutes.

29 (2) An action for partition and its effect under Chapter 46A of the General
30 Statutes.

31 (3) Tenancy in common in personal property.

32 **"§ 41-97. Common law of tenancy in common; equitable principles.**

33 The common law of tenancy in common and principles of equity supplement this Article,
34 except to the extent that they conflict or are inconsistent with the provisions of this Article or the
35 laws of this State."

36 **SECTION 2.(a)** G.S. 10B-25(n) reads as rewritten:

37 "(n) This section shall expire at 12:01 A.M. on ~~June 30, 2024~~; July 1, 2025; provided,
38 however, all notarial acts made in accordance with this section and while this section is in effect
39 shall remain effective and shall not need to be reaffirmed."

40 **SECTION 2.(b)** G.S. 10B-200(b) reads as rewritten:

41 "(b) This Article expires ~~June 30, 2024~~; June 30, 2025."

42 **SECTION 2.(c)** This section is effective when it becomes law.

43 **SECTION 3.** G.S. 10B-20(p) reads as rewritten:

44 "~~Except as provided herein, a notary shall maintain the confidentiality of a~~
45 principal's documents and information at all times. A notary may disclose confidential
46 information in response to any of the following:

47 (1) A valid subpoena.

48 (2) A court order.

49 (3) A warrant.

50 (4) A written request from the Department made in connection with an
51 administrative, civil, or criminal investigation into the conduct of a notary

1 pursuant to G.S. 10B-60 or the conduct of a licensee or third-party vendor

2 pursuant to G.S. 10B-134.23(c).

3 (5) A written request from all principals to a specific notarial transaction.

4 (q) Any journal entries or communication technology recordings, as defined in Article 2
5 of this Chapter, created by a notary in the course of performing a notarial act are not public
6 records under G.S. 132-1."

7 **SECTION 4.** G.S. 10B-134.9, as amended by S.L. 2023-57, reads as rewritten:

8 **"§ 10B-134.9. (Effective July 1, 2024) Requirements and procedures for remote electronic**
9 **notarial acts.**

10 ...

11 (d) In judicial actions or proceedings, any notary public ~~registered with~~ commissioned by
12 the Secretary, whether or not registered as an electronic notary, may administer an oath or
13 affirmation to a ~~witness-principal~~ principal that does not require remote electronic notarization of a record
14 or a notarial certificate and seal when done in person, provided all of the following apply:

15 (1) The notary is physically located in this State at the time the oath or affirmation
16 is administered to the remotely located ~~witness-principal~~ principal.

17 ...

18 (f) ~~Information~~ Except as herein provided by G.S. 10B-20(p), information gained from
19 a remotely located principal in the course of performing a remote electronic notarization shall be
20 treated as confidential by the electronic notary."

21 **SECTION 5.(a)** G.S. 10B-134.1(4a), as amended by S.L. 2023-57, reads as
22 rewritten:

23 "(4a) Geolocation. – Identification of the geographical location of a remotely
24 located principal or device used by a remotely located principal through the
25 use of global positioning systems or other digital information processed via
26 the internet."

27 **SECTION 5.(b)** G.S. 10B-134.19, as amended by S.L. 2023-57, reads as rewritten:

28 **"§ 10B-134.19. (Effective July 1, 2024) Platform licensure by Secretary.**

29 ...

30 (c) The application shall set forth at least all of the following:

31 ...

32 (3) The proposed technology to address identity verification ~~and geolocation~~
33 ~~requirements~~ requirements, geolocation, and explanations regarding security
34 governance and the designation of a chief security officer or its equivalent.

35 ...

36 (e) The Secretary shall award a license only to applicants who are of good moral character
37 and who provide a communication technology capable of all of the following:

38 (1) A manner of ensuring that the electronic record presented for remote
39 electronic notarization is the same record electronically signed by the
40 remotely located principal.

41 (2) Securely creating and storing, or transmitting securely to be securely stored,
42 the communication technology recording, keeping confidential the questions
43 asked as part of any identity proofing and the means and methods used to
44 generate the credential analysis.

45 (3) A manner of ensuring that real-time communications are secure from
46 unauthorized interception, access, or viewing.

47 (4) Reasonable security measures to prevent unauthorized access to all of the
48 following:

49 a. The live transmission of the remote electronic notarial act.

50 b. Any communication technology recording of the remote electronic
51 notarial act.

- 1 c. The verification methods and credentials used to verify the identity of
 2 the remotely located principal.
 3 d. The electronic documents presented for remote electronic notarization.
 4 (5) Geolocation of the remotely located ~~principal~~ principal when the remotely
 5 located principal is conducting the remote electronic notarization via a device
 6 capable of identifying the geographic location of the remotely located
 7 principal at the time of the remote electronic notarization.

8"

9 **SECTION 6.** If technology becomes available so that geolocation may be broadly
 10 utilized without a global positioning system to determine geographic location of remotely located
 11 principals to a remote electronic notarization, the Secretary shall amend permanent rules adopted
 12 pursuant to Chapter 10B of the General Statutes to include processes and requirements for the
 13 use of geolocation technology in remote electronic notarization in accordance with Part 4A of
 14 Article 2 of Chapter 10B of the General Statutes.

15 **SECTION 8.(a)** G.S. 7A-224 reads as rewritten:

16 **"§ 7A-224. Rendition and entry of judgment.**

17 Judgment in a small claim action is rendered in writing and signed by the ~~magistrate~~
 18 magistrate, or is rendered electronically by the magistrate. The judgment so rendered is a
 19 judgment of the district court, and is recorded and indexed as are judgments of the district and
 20 superior court generally. Entry is made as soon as practicable after rendition."

21 **SECTION 8.(b)** G.S. 7A-228 reads as rewritten:

22 **"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected;
 23 oral notice; dismissal.**

24 (a) The chief district court judge may authorize magistrates to hear motions to set aside
 25 an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a
 26 magistrate. The exercise of the authority of the chief district court judge in allowing magistrates
 27 to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to
 28 hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from
 29 a judgment or order entered by a magistrate and, if granted, to order a new trial before a
 30 magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party
 31 is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given
 32 orally in open court upon announcement or after ~~entry of judgment, a judgment is rendered.~~
 33 not announced in open court, written notice of appeal must be filed in the office of the clerk of
 34 superior court within 10 days after ~~entry of judgment, a judgment is rendered.~~ The appeal must
 35 be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open
 36 court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment.
 37 If the judgment was mailed to the parties, then the time computations for appeal of such judgment
 38 shall be pursuant to G.S. 1A-1, Rule 6.

39 (b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or
 40 (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after ~~entry~~
 41 ~~of a judgment is rendered~~ pursuant to subsection (a), and by serving a copy of the notice of appeal
 42 on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10
 43 days after ~~entry of a judgment is rendered~~ in a summary ejectment action, and within 20 days
 44 after ~~entry of a judgment is rendered~~ in all other actions, shall result in the automatic dismissal
 45 of the appeal. Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify
 46 as an indigent for the appeal and is denied, that party shall have an additional five days to perfect
 47 the appeal by paying the court costs. The failure to demand a trial by jury in district court by the
 48 appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

49 (b1) A person desiring to appeal as an indigent shall, within 10 days of ~~entry of judgment~~
 50 ~~by the magistrate, a magistrate rendering a judgment,~~ file an affidavit that ~~he or she~~ the person is
 51 unable by reason of poverty to pay the costs of appeal. Within 20 days after ~~entry of judgment, a~~

1 judgment is rendered, a superior or district court judge, magistrate, or the clerk of the superior
2 court may authorize a person to appeal to district court as an indigent if the person is unable to
3 pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an
4 indigent if the person files the required affidavit and meets one or more of the criteria listed in
5 G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may
6 authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an
7 indigent if the person cannot pay the costs of appeal.

8 The district court may dismiss an appeal and require the person filing the appeal to pay the
9 court costs advanced if the allegations contained in the affidavit are determined to be untrue or
10 if the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal,
11 the court shall affirm the judgment of the magistrate.

12"

13 **SECTION 9.** Sections 3, 4, and 5 of this act become effective July 1, 2024. Section
14 8 of this act is effective October 1, 2024, and applies to judgments rendered on or after that date.
15 The amendments contained in Section 7 of this act are intended to be clarifying of the General
16 Assembly's intent under previous amendments to this statute. Except as otherwise provided, this
17 act is effective when it becomes law.