



HOUSE BILL 1061: Preserve Tenancy by the Entirety.

**This Bill Analysis
reflects the
contents of the bill
as it was presented
in committee.**

2016-2017 General Assembly

Committee: House Judiciary IV
Introduced by: Rep. Bryan
Analysis of: PCS to First Edition
H1061-CSTS-18

Date: June 8, 2016
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SUMMARY: *House Bill 1061 makes conforming changes to clarify that tenancy by the entirety is preserved in this State in light of Obergefell v. Hodges, as recommended by the General Statutes Commission.*

The Proposed Committee Substitute (PCS) adds Part II which amends two laws regarding purchase money mortgages or deeds of trust.

[As introduced, this bill was identical to S806, as introduced by Sen. Hartsell, which is currently in Senate Rules and Operations of the Senate.]

BILL ANALYSIS:

Part I: See the Memorandum from the General Statutes Commission to the House Committee on Judiciary IV in your packet.

Part II: Would amend two laws regarding purchase money mortgages or deeds of trust as follows:

- G.S. 39-13. Spouse need not join in purchase-money mortgage.
 - The current law states: "The purchaser of real estate who does not pay the whole of the purchase money at the time when he or she takes a deed for title may make a mortgage or deed of trust for securing the payment of such purchase money, or such part thereof as may remain unpaid, which shall be good and effectual against his or her spouse as well as the purchaser, without requiring the spouse to join in the execution of such mortgage or deed of trust."
 - **Section 7** of the PCS would state: "A mortgage or deed of trust given by the purchaser of real property 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, shall be good and effectual against his or her spouse as well as the purchaser, without requiring the spouse to join in the execution of such mortgage or deed of trust."
- G.S. 29-30(g), Article 8 of Chapter 29, Election to Take Life Interest in Lieu of Intestate Share.
 - The current law states: "(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

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Director



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- (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; or
 - (2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or
 - (3) By a mortgage or deed of trust made prior to the marriage; or
 - (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."
- **Section 8** of the PCS would amend subsection (2) of G.S. 29-30(g) above to state: "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, or by a condition sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage."

EFFECTIVE DATE: Part I of the PCS would become effective when it becomes law and applies to conveyances made on or after October 10, 2014. Part II of the PCS would become effective when it becomes law and applies to purchase money mortgages entered into on or after that date.