



HOUSE BILL 227: Preserve Tenancy by the Entirety.

2017-2018 General Assembly

Committee:	House Judiciary I	Date:	April 18, 2017
Introduced by:	Reps. Davis, Jordan, Stevens	Prepared by:	Bill Patterson
Analysis of:	PCS to First Edition H227-CSMN-1		Committee Co-Counsel

OVERVIEW: House Bill 227 would make conforming changes to clarify that tenancy by the entirety is preserved in this State following Obergefell v. Hodges, 135 S.Ct. 2584 (2015), as recommended by the General Statutes Commission. Part I is also supported by the North Carolina Bar Association.

The Proposed Committee Substitute (PCS) adds Part II, as recommended by the North Carolina Bar Association, which makes additional corollary amendments to those in Part I for other real-estate-related sections of the General Statutes; Part II would also modernize terminology and references to procedures and make other technical and clarifying amendments in those sections.

BILL ANALYSIS:

Part I: See the Memorandum from the General Statutes Commission to the House Committee on Judiciary I, attached at the end of this summary.

Part II:

Section 2.1 would amend G.S. 29-30, which allows a surviving spouse to take a life estate in one-third of the value of the deceased spouse's real property instead of an intestate share or the elective share under G.S. 30-3.1. The amendments would (i) specifically recognize two additional forms used for one spouse to waive interests in the other's property; (ii) update terms (for example, "waived, released, or conveyed" rather than "released or quitclaimed"); (iii) require that if there is no estate administration, a notice of the surviving spouse's election be recorded in every county where affected real property is located; and (iv) clarify that the protection of life estates under this section against the deceased spouse's creditors does not extend to real property that is subject to a purchase money mortgage given by a lender, regardless of whether the lender is the seller or a third-party lender, and also that this protection against creditors does not apply to real property not included in the life estate.

Section 2.2 would make the title of Article 2 of Chapter 39 of the General Statutes gender neutral.

Section 2.3 would amend G.S. 39-7 to make stylistic updates (for example, referring to "individual" rather than "person" because "individual" is the term currently used in the General Statutes to refer to a human being, whereas "person" is used to refer to both individuals and entities such as corporations).

Section 2.4 would amend G.S. 39-8 to reduce legalese, make references gender neutral, and modernize terms (for example, "proof or acknowledgement" rather than "probate" with reference to notarizing or witnessing an instrument).

Section 2.5 would amend G.S. 39-9 to make the terminology gender neutral and to correct the punctuation.

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Section 2.6 would rewrite G.S. 39-13 for greater clarity. That section provides a purchase money mortgage or deed of trust is good against a spouse even if the spouse did not join in the execution of the instrument.

Section 2.7 would amend G.S. 39-13.2 to reduce legalese, update "person" to "individual", and make references to spouses gender neutral.

Section 2.8 would amend G.S. 39-13.4 to modernize terminology (for example, by referring to "deed of separation, separation agreement, or property settlement" rather than just "deed of separation"), make references gender neutral, and reduce legalese.

Section 2.9 would amend G.S. 39-13.5 by updating the style, making references gender neutral, and reducing legalese.

Section 2.10 would amend G.S. 39-13.7, which allows a married couple to transfer real property owned by them as tenants by the entirety to trust. As long as the conditions in G.S. 39-13.7 are met, the real property will continue to have tenancy by the entirety's protection against creditors of only one of the spouses until one spouse passes away. The amendment in Section 2.10 would add two new subsections to G.S. 39-13.7 to (i) allow a notice to be included in the conveyance to the trust that the real property qualifies as still protected against one spouse's individual creditors under G.S. 39-13.7, which will provide notice to the public, and (ii) provide a way for other persons at a later date to verify whether the real property remains protected.

Section 2.11 would amend G.S. 41-10 by making terminology gender neutral and by attempting to modernize the language and reduce legalese.

Section 2.12 would amend G.S. 52-10 to make terminology gender neutral and reduce legalese.

Section 2.13 would amend G.S. 52-10.1 to make terminology gender neutral and reduce legalese.

EFFECTIVE DATE: The act would be effective when it becomes law and would apply to conveyances made on or before October 10, 2014.¹

¹ This was the effective date of the final order in Bostic v. Schaefer, 760 F.3d 352 (4th Cir. 2014), the Fourth Circuit opinion that preceded Obergefell, but that essentially had the same holding.).