



SENATE BILL 595: Changes to Real Property Statutes.

2019-2020 General Assembly

Committee:		Date:	October 13, 2020
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2020-50		

OVERVIEW: *S.L. 2020-50 recodifies and clarifies existing statutory provisions governing tenancy by the entireties and joint tenancy, and codifies principles governing these subjects currently set forth in case law. The act also makes technical corrections and resolves an engrossing conflict with another 2020 session law.*

The technical corrections in this act became effective on August 1, 2020. The remainder of this act became effective on June 30, 2020.

CURRENT LAW AND BILL ANALYSIS:

Section 1 – Tenancy by the Entirety

Section 1 of S.L. 2020-50 enacts Article 5 in Chapter 41 of the General Statutes entitled "Tenancy by the Entirety," comprising existing statutory provisions being recodified in Section 1.(b), and new provisions codifying common law rules applicable to tenancy by the entirety.

In new Article 5:

- G.S. 41-55 defines the terms "conveyance," "income," and "spouses" as used in Article 5.
- G.S. 41-56 recodifies existing law, and provides that the following conveyances create a tenancy by the entirety unless a contrary intent is expressed in the conveyance:
 - A named man "and wife"
 - A named woman "and husband"
 - A named individual "and wife."
 - A named individual "and husband."
 - A named individual "and spouse"
 - Two named individuals, married to each other at the time of conveyance, whether or not identified in the conveyance as being (i) husband and wife, (ii) spouses, or (iii) married to each other
- G.S. 41-57 codifies the common law rule that when a spouse furnishing consideration causes property to be conveyed to the other spouse, a presumption of gift arises, which is rebuttable by clear, cogent and convincing evidence.
- G.S. 41-58 recodifies existing law and cross-references a statute governing the mortgage and sale of real property held by spouses as tenants by the entirety where one of both spouses are incompetent, for the convenience of practitioners and judges.
- G.S. 41-59 codifies a bankruptcy court decision relating to income from property held by the entirety and recodifies existing law.

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- G.S. 41-60 codifies common law rules relating to liability of entireties property for debts of spouses.
- G.S. 41-61 codifies common law rules relating to reimbursement for expenditures made on entireties property.
- G.S. 41-62 codifies common law rules relating to insurance coverage for entireties property and character of proceeds therefrom.
- G.S. 41-63 codifies common law rules and recodifies existing law relating to termination of tenancy by the entirety other than upon death of a spouse.
- G.S. 41-64 codifies common law rules and recodifies existing law governing termination of tenancy by the entirety upon the death of a spouse.
- G.S. 41-65:
 - Codifies common law rules governing entireties property conveyed to trusts.
 - Provides that notice that the real property held in trust is immune from claims of separate creditors may be given in a statement in the conveyance of the entireties property to the trust that the property is held under this section, and that the requirements of this section were met as of the date of the conveyance.
 - Permits persons entering into transactions involving entireties property held in trust to seek confirmation from the trustee that this section's requirements are met at the time of the transaction.
- G.S. 41-66 provides that the common law of tenancy by the entirety and principles of equity supplement Article 5 unless in conflict or inconsistent with Article 5 or the laws of this State.

Section 2 – Joint Tenancy

Section 2.(a) enacts a new Article 6 in Chapter 41 of the General Statutes entitled "Joint Tenancy," comprising existing statutory provisions being recodified in Section 2.(b), and new provisions codifying common law rules applicable to joint tenancy.

In new Article 6, as enacted in Section 2.(c):

- G.S. 41-70 defines the terms "conveyance" and "termination" for purposes of Article 6.
- G.S. 41-71 provides that a joint tenancy is created when the creating instrument expressly provides for right of survivorship and provides guidance for words sufficient to create a joint tenancy with right of survivorship.
- G.S. 41-72 recodifies existing law governing the determination of the interests of joint tenants in a joint tenancy with right of survivorship.
- G.S. 41-73 sets forth conditions that will terminate a joint tenancy with right of survivorship due to collective action of all joint tenants and due to unilateral action of a joint tenant, and the conditions under which termination will result in the creation of a tenancy in common.
- G.S. 41-74 recodifies existing law clarifying that provisions of G.S. 28A-24-3 relating to the 120-hour survival requirement applies to joint tenancy interests.
- G.S. 41-75 provides that Article 6 does not apply to:
 - Executors or trustees in their representative capacity

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- Partnerships governed by Chapter 59 of the General Statutes
 - Business entities
 - Accounts established under G.S. 41-2.1 (Right of survivorship in bank deposits created by written agreement) or G.S. 42-2.2 (Joint ownership of securities) to the extent inconsistent with provisions of Article 6.
- G.S. 41-76 provides that the common law of joint tenancy and principles of equity supplement Article 6 unless they conflict with or are inconsistent with Article 6 or the laws of this State.

Section 3 – Technical Corrections

Section 3.(a) amends Section 4.1 of S.L. 2018-80 to provide that G.S. 47-18.3, as amended by Section 2.2 of that act, applies to all instruments under G.S. 47-18.3 executed before, on, or after August 1, 2020.

Section 3.(b) amends G.S. 47-17.1 to clarify that the register of deeds has no duty to verify or make inquiry about the capacity or the authority of the person or entity shown as the drafter on the face of a deed or deed of trust.

Section 3.1 – Correction of Engrossing Conflict

Section 3.1 resolves an engrossing conflict between changes to G.S. 41-56(c) made in Section 13 of S.L. 2020-23 and in Section 1.(c) of this bill.

EFFECTIVE DATE: Section 3 of the act became effective on August 1, 2020. The remainder of the act became effective on June 30, 2020.