



# SENATE BILL 595: Changes to Real Property Statutes.

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

2019-2020 General Assembly

<b>Committee:</b>	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	April 30, 2019
<b>Introduced by:</b>	Sen. Daniel	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	First Edition		Committee Co-Counsel

**OVERVIEW:** Senate Bill 595 would reorganize and modify the law governing tenancy by the entirety and joint tenancy, create a process for giving notice of real estate settlements that are expected to occur within 60 days of registration of the notice, and make technical corrections to requirements for identifying the drafter of an instrument of conveyance.

## CURRENT LAW AND BILL ANALYSIS:

### Section 1 – Tenancy by the Entirety

Section 1.(a) would enact a new Article 5 in Chapter 41 of the General Statutes entitled "Tenancy by the Entirety," comprising new sections G.S. 41-55 through G.S. 41-66. Article 5 would include existing tenancy by the entirety provisions being recodified in Section 1.(b), and new provisions codifying common law rules applicable to tenancy by the entirety.

In new Article 5, enacted by Section 1.(c):

- G.S. 41-55 would define the terms "conveyance," "income," and "spouses" for purposes of Article 5.
- G.S. 41-56 would recodify existing law, and would provide that the following conveyances would 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 would codify 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 would recodify existing law and cross-reference 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 would codify the decision of a bankruptcy court relating to income from property held by the entirety and would recodify existing law.

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- G.S. 41-60 would codify common law rules relating to liability of entireties property for debts of spouses.
- G.S. 41-61 would common law rules relating to reimbursement for expenditures made on entireties property.
- G.S. 41-62 would codify common law rules relating to insurance coverage for entireties property and character of proceeds therefrom.
- G.S. 41-63 would codify common law rules and recodify existing law relating to termination of tenancy by the entirety other than upon death of a spouse.
- G.S. 41-64 would codify common law rules and recodify existing law governing termination of tenancy by the entirety upon the death of a spouse.
- G.S. 41-65 would codify common law rules governing entireties property conveyed to trusts, and would provide 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, and permitting 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 would provide 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) would enact a new Article 6 in Chapter 41 of the General Statutes entitled "Joint Tenancy," comprising new sections G.S. 41-70 through 41-76. Article 6 would include existing joint tenancy provisions being recodified in Section 2.(b), as well as new provisions codifying common law rules applicable to joint tenancy.

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

- G.S. 41-70 would define the terms "conveyance" and "termination" for purposes of Article 6.
- G.S. 41-71 would provide that a joint tenancy is created when the creating instrument expressly provides for right of survivorship and would provide guidance for words sufficient to create a joint tenancy with right of survivorship.
- G.S. 41-72 would recodify existing law governing the determination of the interests of joint tenants in a joint tenancy with right of survivorship.
- G.S. 41-73 would set 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 would recodify 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 would provide that Article 6 does not apply to:
  - Executors or trustees in their representative capacity
  - Partnerships governed by Chapter 59 of the General Statutes
  - Business entities

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- 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 would provide that the common law of joint tenancy and principles of equity supplement Article 6 unless in conflict or inconsistent with Article 6 or the laws of this State.

## Section 3 – Notice of Settlement Act

Section 3.(a) of the bill would enact a new Chapter 47I entitled the "Notice of Settlement Act," setting forth a procedure by which a property interest in real property can be registered by filing a notice of settlement, which would establish priority in a grantee or mortgagee from the time of filing.

In new Chapter 47I:

- G.S. 47I-1 would name this Chapter the "Notice of Settlement Act."
- G.S. 47I-2 would contain a statement of the purpose of Chapter 47I.
- G.S. 47I-3 would define the terms as used in Chapter 47I. The term "notice agent" would be defined as one of the following:
  - An attorney licensed under Chapter 84 of the General Statutes who is representing any of the following: the current owner of record; the grantee in a conveyance transaction; the mortgagor in a mortgage transaction, by the current owner of record or their assignee; or the title insurance company or agent insuring the real estate title that is subject to the settlement.
  - The mortgagee for a mortgage transaction, duly authorized by the current owner of record or their agent to register a notice of settlement pursuant to this Chapter, where the mortgagee is handling the settlement and closing of the transaction, regardless of how funds are disbursed.
- G.S. 47I-4 would provide that a notice agent may register a notice of settlement with the register of deeds in the county in which the real property is situated for any settlement the notice agent believes in good faith will occur within 60 days of the registration.
- G.S. 47I-5 would specify the required contents of a notice of settlement.
- G.S. 47I-6 would provide a form to which a notice of settlement must substantially conform.
- G.S. 47I-7 would provide that registration of a notice of settlement is constructive notice of the anticipated settlement and interest of the grantee or mortgagee affecting the real property identified in the notice, and that registration would establish priority of title of the grantee or mortgagee from the time of registration as against others claiming an interest in the real property. The notice of settlement would not, however, affect the priority of:
  - Designation of a lien agent and related notices to the lien agent under Article 2 of Chapter 44A
  - Potential claims for which no lien agent is required to be appointed
  - Valid conveyances, liens, or encumbrances upon the property that are duly registered in the county where the property is located and discoverable online at least five business days prior to the registration of the deed, lease, or mortgage pursuant to Chapter 47I
  - Any interest or claim by a claimant who is the beneficiary of a valid conveyance, lien or encumbrance in the public record that attaches to the real property, for which actual notice

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identifying the recordation or filing information has been delivered to the notice agent at least five business days prior to the settlement, and as to which an acceptance of delivery signed by the notice agent has been registered with the register of deeds at least one business day prior to the registration of the deed, lease or mortgage pursuant to the notice of settlement.

- G.S. 47I-8 would provide that the notice of settlement is effective for the time stated in the notice, not to exceed 60 days from the date of registration and would provide for amendment of the notice of settlement.
- G.S. 47I-9 would provide the procedure for terminating a notice of settlement before the date stated in the notice.
- G.S. 47I-10 would contain a severability clause.

Section 3.(b) through 3.(d) would make conforming changes to other provisions of law relating to registration of conveyances of real property.

## **Section 4 – Technical Corrections**

Section 4 of the bill would amend the effective date of a 2018 Session Law that made a technical correction to G.S. 47-14.1, which prohibits a register of deeds from accepting for registration a deed or deed of trust that does not bear on its first page the name of the person or law firm that drafted the instrument.

Section 4 would also amend G.S. 47-14.1 to provide that the register of deeds is not required to verify or make inquiry concerning the capacity or authority of the person or entity shown as the drafter on the instrument.

**EFFECTIVE DATE:** This act is effective when it becomes law.