



# SENATE BILL 595: Changes to Real Property Statutes.

2019-2020 General Assembly

<b>Committee:</b>	House Rules, Calendar, and Operations of the House	<b>Date:</b>	June 15, 2020
<b>Introduced by:</b>	Sen. Daniel	<b>Prepared by:</b>	Bill Patterson Staff Attorney
<b>Analysis of:</b>	PCS to Second Edition S595-CSTG-52		

**OVERVIEW:** *The PCS to Senate Bill 595 would reorganize and modify the law governing tenancy by the entirety and joint tenancy, 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.

Section 1.(c) would enact new Article 5, in which:

- G.S. 41-55 would define the terms "conveyance," "income," and "spouses" as used in 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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Legislative Analysis  
Division  
919-733-2578

# Senate PCS 595

Page 2

- 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

# Senate PCS 595

Page 3

- 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 54 unless in conflict or inconsistent with Article 5 or the laws of this State.

## Section 3 – Technical Corrections

Section 3.(a) would amend Section 4.1 of S.L. 2018-80 to correct the applicability language for Section 2.2 of that act's amendments to G.S. 47-18.3. Specifically, the generic applicability provision in the act states that the act applies to "mortgages and deeds of trust" entered into before, on, or after the effective date, but G.S. 47-18.3 applies to all instruments filed with the registers of deeds, not just mortgages and deeds of trust.

Section 3.(b) would amend G.S. 47-17.1 to delete language that was added by S.L. 2018-80 that has, in practice, not worked, and to add a sentence clarifying 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.

**EFFECTIVE DATE:** Section 3 becomes effective August 1, 2020. The remainder of the act is effective when it becomes law.