



GENERAL STATUTES COMMISSION

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MEMORANDUM

To: Senate Judiciary
From: General Statutes Commission
Re: SB 112 (GSC Conveyances Between Spouses)
Date: May 1, 2023

General Comments

This bill, recommended by the General Statutes Commission and requested by the Real Property Section and Family Law Section of the North Carolina Bar Association, would provide for the effect that conveyances of real property between spouses have on certain marital property rights. It would provide that a spouse who conveys real property to another spouse may waive the right to take an elective life estate in the real property in the instrument of conveyance. However, a spouse who conveys real property to another spouse would not be permitted to waive a right to equitable distribution in the real property in the instrument of conveyance. A right to equitable distribution in real property would only be waivable in a separate instrument.

In addition to publishing all its drafts online, the General Statutes Commission circulated a draft to the Administrative Office of the Courts, Conference of Clerks of Superior Court, Department of Justice, UNC School of Government, North Carolina Bar Association, North Carolina Advocates for Justice, North Carolina Justice Center, Legal Aid of North Carolina, and others.

Specific Comments

Section 1(a) amends G.S. 29-30 to make the following changes:

- In subsection (a), adds a new subdivision to provide that a surviving spouse is not entitled to take a life estate in real estate if the surviving spouse has conveyed his or her interest in the real estate to the other spouse and has expressly waived his or her right to take a life estate in the instrument of conveyance.
- In subsection (b), fixes punctuation, replaces legalese with plain English, makes stylistic changes for greater clarity, and splits up a sentence for greater clarity.
- In subsection (c), replaces legalese with plain English and removes unnecessary language.
- In subsection (c1), adds an internal cross-reference, makes a stylistic change for greater clarity, removes unnecessary language, and fixes punctuation.
- In subsection (c2), adds an internal cross-reference for greater clarity and fixes punctuation.
- In subsection (e), replaces legalese with plain English.
- In subsection (f), removes unnecessary language.
- In subsection (g), makes a word singular for greater consistency, replaces legalese with plain English, removes unnecessary language, and splits up a subdivision for greater clarity.
- In subsection (h), replaces legalese with plain English, removes unnecessary language, and fixes a relative pronoun.

Section 1(b) provides that Section 1 applies to conveyances executed before, on, or after the effective date of this act.

Section 2(a) amends G.S. 39-13.3 to make the following changes:

- In subsection (a):
 - Adds language to provide that a conveyance of real property from one spouse to another does not waive the conveying spouse's right to (i) an elective life estate in the property, unless the instrument of conveyance expressly waives that right or (ii) an equitable distribution of the property, as the right to equitable distribution cannot be waived in the instrument of conveyance.
 - Replaces legalese with plain English.
- In subsection (d), removes unnecessary language.
- In subsection (e), repeals the subsection to conform to the new language in subsection (a).

Section 2(b) amends G.S. 41-63 to make the following changes:

- In subdivision (4):
 - Adds language to provide that a conveyance of an interest in property held as tenants by the entirety from one spouse to the other does not waive the conveying spouse's right to (i) an elective life estate in the property, unless the instrument of conveyance expressly waives that right or (ii) an equitable distribution of the property, as the right to equitable distribution cannot be waived in the instrument of conveyance.
 - Repeals language to conform to the new language added.
- In subdivision (2) removes unnecessary language.

Section 2(c) recodifies certain definitions of G.S. 50-20(b) to achieve alphabetical order.

Section 2(d) amends G.S. 50-20, as amended by Section 2(c), to make the following changes:

- In subdivision (b)(2):
 - Adds language to conform to G.S. 39-13.3 and G.S. 41-63 in providing that the conveyance of property by gift from one spouse to another does not cause the property to become separate property that is no longer subject to equitable distribution unless this intent is expressly stated in writing, and, in the case of real property, in a written agreement separate from the instrument of conveyance. Conversely, property acquired in exchange for separate property remains separate property unless the intent for the property to become marital property is expressly stated in writing.
 - Modernizes the format of a list, replaces legalese with plain English, makes language gender-neutral, and fixes a relative pronoun.
- Elsewhere in subsection (b):
 - In the introductory language and throughout, modernizes the format of definitions.
 - In subdivision (1), replaces legalese with plain English and updates language for consistency with current federal tax law.
 - In subdivision (1a), fixes a relative pronoun and replaces legalese with plain English.

- In subdivision (1b), makes conforming changes to internal cross-references, makes changes to conform to amendments made to G.S. 50-20.1 in S.L. 2019-172, and fixes a relative pronoun.
- In subsection (a), removes unnecessary language.
- In subsection (c), replaces legalese with plain English, fixes punctuation, fixes relative pronouns, updates a cross-reference, and removes unnecessary language.
- In subsection (d), adds cross-references to G.S. 39-13.3 and G.S. 41.63 for greater clarity, fixes punctuation, removes unnecessary language, fixes the format of a citation, splits up a sentence for greater clarity, and replaces legalese with plain English.
- In subsection (e), fixes punctuation.
- In subsection (f), fixes the format of a citation.
- In subsection (g), replaces legalese with plain English, rewords for greater clarity, and fixes the format of a citation.
- In subsection (h), replaces legalese with plain English.
- In subsection (i), fixes the format of citations, fixes punctuation, fixes a relative pronoun, and replaces legalese with plain English.
- In subsection (i1), make two instances of a word singular for greater clarity, removes unnecessary language, makes stylistic changes for greater clarity, and replaces legalese with plain English.
- In subsection (l), adds lead-in language to introduce a list, removes unnecessary language, replaces legalese with plain English, and rewords a term for internal consistency.

Section 2(e) provides that the provisions of Section 2 pertaining to an elective life estate apply to conveyances executed before, on, or after the effective date of this act and that the remainder of Section 2 applies to conveyances executed on or after the effective date of this act.

Section 3 provides that this act becomes effective October 1, 2023.