

Article 6.

Joint Tenancy.

**§ 41-70. Definitions.**

For the purposes of this Article, the following definitions apply:

- (1) Conveyance. – A transfer of title to real or personal property by deed, devise, assignment, or other means of transferring title.
- (2) Termination. – A severance of the right of survivorship resulting in the creation of a tenancy in common as provided in this Article. The term is used in the context of an estate with a joint tenancy with a right of survivorship. (2020-50, s. 2(a), (c).)

**§ 41-71. Creation of a joint tenancy with right of survivorship.**

(a) A conveyance to two or more persons creates a tenancy in common unless a joint tenancy with right of survivorship is created as provided in subsection (b) of this section or a tenancy by the entirety is created as provided by the law governing tenancy by the entireties.

(b) A conveyance to two or more persons creates a joint tenancy with right of survivorship if the instrument expresses an intent to create a joint tenancy with right of survivorship. The following words in the instrument shall be deemed to express an intent to create a joint tenancy with right of survivorship unless the instrument otherwise provides: "joint tenants with right of survivorship," "joint tenants," "joint tenancy," "tenants in common with right of survivorship," "joint with right of survivorship," "with right of survivorship."

(c) Nothing in this Article prohibits joint tenants from entering into any agreement with regard to the property held in joint tenancy, including, without limitation, an agreement that notice must be given to other joint tenants before any joint tenant terminates the joint tenancy as provided in G.S. 41-73(b). (2020-50, s. 2(a), (c).)

**§ 41-72. Determination of the interests of joint tenants in a joint tenancy with right of survivorship.**

(a) The interests of joint tenants in a joint tenancy with right of survivorship shall be deemed to be equal unless otherwise provided in the instrument of conveyance.

(b) This section shall apply to any conveyance of an interest in property created at any time that explicitly seeks to create unequal ownership interest in a joint tenancy with right of survivorship.

(c) Distributions made prior to October 10, 2009, that were made in equal amounts from a joint tenancy with right of survivorship that sought to create unequal ownership shares shall remain valid and shall not be subject to modification on the basis of this section.

(d) Any joint tenancy interest conveyed to individuals married to each other and to one or more other joint tenants in the same instrument of conveyance shall be held by the married individuals in a tenancy by the entirety, and the married individuals shall be treated as a single joint tenant, unless otherwise provided in the instrument. (1784, c. 204, s. 6; R.C., c. 43, s. 2; Code, s. 1326; Rev., s. 1579; C.S., s. 1735; 1945, c. 635; 1989 (Reg. Sess., 1990), c. 891, s. 1; 1991, c. 606, s. 1; 2009-268, s. 1; 2010-96, s. 9; 2012-69, s. 2; 2013-204, s. 1.11; 2020-50, s. 2(a)-(c).)

**§ 41-73. Termination of a joint tenancy with right of survivorship.**

(a) Events terminating a joint tenancy with right of survivorship due to the collective action of all joint tenants include the following:

- (1) The conveyance to a third party by all of the joint tenants of all of their interests in the property held in the joint tenancy, including a foreclosure sale pursuant to a power of sale in a deed of trust.
  - (2) The execution of an instrument with a third party by all of the joint tenants that does not convey all of their interests in the property held in the joint tenancy to the third party, including a lease, executory contract of sale, option to purchase, or deed of trust, and an intention to terminate expressly appears in the instrument.
  - (3) The execution of an instrument by all joint tenants for the purpose of expressing an intent to terminate the joint tenancy.
- (b) Events terminating a joint tenancy with right of survivorship due to the unilateral action of a joint tenant include the following:
- (1) The conveyance to a third party by a joint tenant of all of that joint tenant's interest in the property held in the joint tenancy, including a foreclosure sale pursuant to a power of sale in a deed of trust.
  - (2) The execution of an instrument with a third party by a joint tenant that does not convey all of that joint tenant's interest to the third party, including a lease, executory contract of sale, option to purchase, or deed of trust, and an intention to terminate expressly appears in the instrument.
  - (3) The execution of an instrument by a joint tenant where the joint tenant is both the grantor and the grantee if the intention to terminate expressly appears in the instrument. A termination under this subdivision is effective only upon the recording, prior to the death of the joint tenant, of an instrument expressing an intent to terminate in the office of the register of deeds in the county or counties where the real property is situated.
  - (4) The filing by a joint tenant of a petition to partition.
- (c) When a termination occurs, a tenancy in common is created as follows:
- (1) If a termination occurs under subdivision (1) of subsection (a) of this section because of the conveyance of all of the joint tenants' interests to a third party, a tenancy in common is created among the tenants as to any proceeds of sale or surplus funds generated from a foreclosure sale.
  - (2) If a termination occurs because of the execution by all of the joint tenants of an instrument described in subdivision (2) or (3) of subsection (a) of this section, a tenancy in common is created among the tenants.
  - (3) If a termination occurs under subdivision (1) of subsection (b) of this section because one of the joint tenants conveys all of that joint tenant's interest to a third party and there are only two joint tenants, a tenancy in common is created between the third party and the other joint tenant. If there are more than two joint tenants and one of the joint tenants conveys all of that joint tenant's interests to a third party, a tenancy in common is created among the third party and the remaining joint tenants, who continue as joint tenants with right of survivorship as between or among themselves.
  - (4) If a termination occurs because of the execution by a joint tenant of an instrument described in subdivision (2) or (3) of subsection (b) of this section or because of the filing of a petition by a joint tenant as provided in subdivision (4) of subsection (b) of this section, and there are two joint tenants, a tenancy in

common is created between the joint tenant causing the termination and the other joint tenant. If there are more than two joint tenants, a tenancy in common is created among the joint tenant causing the termination and the remaining joint tenants, who continue as joint tenants with right of survivorship as between or among themselves.

(d) The following events do not result in a termination of joint tenancy with right of survivorship:

- (1) The filing of a judgment against one joint tenant.
- (2) The filing of a bankruptcy petition by one joint tenant.
- (3) When married individuals holding an interest as tenants by the entirety in a joint tenancy with one or more other joint tenants divorce. Unless the divorced individuals agree otherwise, the divorced individuals are deemed to hold their existing interest equally as tenants in common as to each other, but as joint tenants with right of survivorship as to remaining joint tenancy holders.

(e) Nothing in this section limits the manner or effect of a termination ordered by a court of competent jurisdiction. (1784, c. 204, s. 6; R.C., c. 43, s. 2; Code, s. 1326; Rev., s. 1579; C.S., s. 1735; 1945, c. 635; 1989 (Reg. Sess., 1990), c. 891, s. 1; 1991, c. 606, s. 1; 2009-268, s. 1; 2010-96, s. 9; 2012-69, s. 2; 2013-204, s. 1.11; 2020-50, s. 2(a)-(c); 2023-46, s. 8.)

#### **§ 41-74. Application of 120-hour survival requirement to joint tenancy with right of survivorship.**

The provisions of G.S. 28A-24-3 apply to joint tenancy interests among two or more joint tenants holding property in joint tenancy with right of survivorship upon the death of one or more of the joint tenants. (1784, c. 204, s. 6; R.C., c. 43, s. 2; Code, s. 1326; Rev., s. 1579; C.S., s. 1735; 1945, c. 635; 1989 (Reg. Sess., 1990), c. 891, s. 1; 1991, c. 606, s. 1; 2009-268, s. 1; 2010-96, s. 9; 2012-69, s. 2; 2013-204, s. 1.11; 2020-50, s. 2(a)-(c).)

#### **§ 41-75. Inapplicability of Article.**

This Article does not apply to any of the following:

- (1) Executors or trustees in their representative capacity.
- (2) Partnerships governed by Chapter 59 of the General Statutes.
- (3) Business entities.
- (4) Accounts established under G.S. 41-2.1 or G.S. 41-2.2 to the extent inconsistent with the provisions of this Article.
- (5) Life estates. (2020-50, s. 2(a), (c); 2021-91, s. 9.)

#### **§ 41-76. Common law of joint tenancy; equitable principles.**

The common law of joint tenancy with right of survivorship and principles of equity supplement this Article except to the extent it conflicts or is inconsistent with a provision of this Article or the laws of this State. (2020-50, s. 2(a), (c).)

#### **§ 41-77. Citation to prior statutes.**

A citation to a former statute recodified in Article 5 of Chapter 41 of the General Statutes, whether made before or after adoption of Article 5, shall be deemed to be a citation to the recodified statute, unless application of this rule of construction would substantially impair the rights of a party. (2020-50, s. 2(a), (c).)

**§ 41-78: Reserved for future codification purposes.**

**§ 41-79: Reserved for future codification purposes.**