

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 227  
Committee Substitute Favorable 4/19/17

Short Title: Preserve Tenancy by the Entirety.

(Public)

Sponsors:

Referred to:

March 2, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CONFORMING AMENDMENTS TO CLARIFY THAT TENANCY  
3 BY THE ENTIRETY IS PRESERVED IN THIS STATE IN LIGHT OF THE UNITED  
4 STATES SUPREME COURT DECISION IN *OBERGEFELL V. HODGES*, AS  
5 RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE  
6 OTHER TECHNICAL, CLARIFYING, AND OTHER SIMILAR AMENDMENTS TO  
7 THE LAWS RELATING TO PROPERTY CONVEYED BY ONE SPOUSE OR  
8 BETWEEN SPOUSES.

9 The General Assembly of North Carolina enacts:

10  
11 **PART I. PRESERVE TENANCY BY THE ENTIRETY**

12 **SECTION 1.1.** G.S. 39-13.3 reads as rewritten:

13 "**§ 39-13.3. Conveyances between ~~husband and wife~~ spouses.**

14 (a) A conveyance from a ~~husband or wife to the other~~ married grantor to that  
15 individual's spouse of real property or any interest therein owned by the grantor alone vests  
16 ~~such the~~ property or interest in the grantee.

17 (b) A conveyance of real property, or any interest therein, by a ~~husband or a wife to~~  
18 ~~such husband and wife~~ married grantor to that individual and the individual's spouse vests the  
19 ~~same property~~ in the ~~husband and wife~~ grantees as tenants by the entirety unless a contrary  
20 intention is expressed in the conveyance.

21 (c) A conveyance from a ~~husband or a wife to the other~~ married individual to that  
22 individual's spouse of real property, or any interest therein, held by ~~such husband and wife~~ the  
23 spouses as tenants by the entirety dissolves ~~such the~~ tenancy in the property or interest  
24 conveyed and vests ~~such the~~ property or interest formerly held by the entirety in the grantee.

25 (d) The joinder of the spouse of the grantor in any conveyance made by a ~~husband or a~~  
26 ~~wife~~ married grantor pursuant to the foregoing provisions of this section is not necessary.

27 (e) Any conveyance authorized by this section is subject to the provisions of G.S. 52-10  
28 or 52-10.1, except that acknowledgment by the spouse of the grantor is not necessary."

29 **SECTION 1.2.** G.S. 39-13.6 reads as rewritten:

30 "**§ 39-13.6. Control of real property held in tenancy by the entirety.**

31 (a) ~~A husband and wife~~ Two individuals married to each other shall have an equal right  
32 to the control, use, possession, rents, income, and profits of real property held by them in  
33 tenancy by the entirety. Neither spouse may bargain, sell, lease, mortgage, transfer, convey or  
34 in any manner encumber any property so held without the written joinder of the other spouse.  
35 This section shall not be construed to require the spouse's joinder where a different provision is  
36 made under G.S. 39-13, G.S. 39-13.3, G.S. 39-13.4, or G.S. 52-10.



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1 (b) ~~A~~ Unless a contrary intention is expressed in the conveyance, a conveyance of real  
2 property, or any interest therein, to a husband and wife two individuals then married to each  
3 other vests title in them as tenants by the entirety when the conveyance is to:

4 (1) A named ~~man~~ individual "and wife," or

5 (2) A named ~~woman~~ individual "and husband," or

6 (2a) A named individual "and spouse," or

7 (3) Two named ~~persons, individuals,~~ whether or not identified in the conveyance  
8 as being (i) husband and wife, (ii) spouses, or (iii) married to each other, if at  
9 the time of conveyance they are legally married; married to each other.

10 ~~unless a contrary intention is expressed in the conveyance.~~

11 (c) For income tax purposes, each spouse is considered to have received one-half (1/2)  
12 the income or loss from property owned by the couple as tenants by the entirety."

13 **SECTION 1.3.** G.S. 39-13.7 reads as rewritten:

14 **"§ 39-13.7. Tenancy by the entireties trusts in real property.**

15 (a) Any real property held by ~~a husband and wife two individuals married to each other~~  
16 as a tenancy by the entireties and conveyed to (i) a joint trust or (ii) in equal shares to two  
17 separate trusts; shall no longer be held by the husband and wife the grantors as tenants by the  
18 entirety and shall be disposed of by the terms of the trust or trusts, but, subject to the provisions  
19 of subsection (b) of this section, the real property shall have the same immunity from the  
20 claims of the separate creditors of the husband and wife each spouse as would exist if the  
21 spouses had continued to hold the property as tenants by the entireties.

22 (b) The immunity from the claims of separate creditors provided by subsection (a) of  
23 this section shall apply as long as all of the following apply:

24 (1) The ~~husband and wife two individuals remain married; married to each other.~~

25 (2) The real property continues to be held in the trust or trusts as provided in  
26 subsection (a) of this section.

27 (3) Both ~~husband and wife spouses~~ are current beneficiaries of the joint trust if  
28 the real property is conveyed to that trust or of each separate trust if the real  
29 property is conveyed in equal shares to their separate trusts.

30 (c) After the death of the first of ~~the husband and wife spouse~~ to die, all property held in  
31 trust that was immune from the claims of their separate creditors under subsection (a) of this  
32 section immediately prior to the individual's death shall continue to have immunity from the  
33 claims of the decedent's separate creditors as would have existed if the husband and wife both  
34 spouses continued to hold the property conveyed in trust as tenants by the entirety.

35 (d) The trustee acting under the express provisions of a trust instrument or with the  
36 written consent of both ~~the husband and wife spouses~~ may waive the immunity from the claims  
37 of separate creditors provided under this section as to any specific creditor or any specifically  
38 described property including all separate creditors of a husband and wife spouse or all former  
39 tenancy by the entirety property conveyed to the trustee.

40 (e) For purposes of this section:

41 (1) The reference to the real property conveyed to or held in the trust shall be  
42 deemed to include the proceeds arising from the involuntary conversion of  
43 the real property.

44 (2) The reference to a "joint trust" means a revocable or irrevocable trust of  
45 which both ~~the husband and wife spouses~~ are the settlors, and the reference  
46 to "separate trusts" means revocable or irrevocable trusts of which the  
47 husband one spouse is the settlor of one trust and the wife other spouse is the  
48 settlor of the other trust.

49 (3) The ~~husband and wife two spouses~~ are "beneficiaries" of a trust if they are  
50 distributees or permissible distributees of the income or principal of the trust

1                   whether or not other persons are also current or future beneficiaries of the  
2                   trust."

3                   **SECTION 1.4.** G.S. 41-2 reads as rewritten:

4       **"§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership; unequal**  
5       **ownership interests.**

6       ...

7       (b) The interests of the grantees holding property in joint tenancy with right of  
8       survivorship shall be deemed to be equal unless otherwise specified in the conveyance. Any  
9       joint tenancy interest held by ~~a husband and wife, two individuals then married to each other,~~  
10      unless otherwise specified, shall be deemed to be held by them as a single tenancy by the  
11      entirety, which shall be treated as a single party when determining interests in the joint tenancy  
12      with right of survivorship. Joint tenancy interests among two or more joint tenants holding  
13      property in joint tenancy with right of survivorship are subject to the provisions of  
14      G.S. 28A-24-3 upon the death of one or more of the joint tenants.

15      This subsection shall apply to any conveyance of an interest in property created at any time  
16      that explicitly sought to create unequal ownership interests in a joint tenancy with right of  
17      survivorship. Distributions made prior to the enactment of this subsection that were made in  
18      equal amounts from a joint tenancy with the right of survivorship that sought to create unequal  
19      ownership shares shall remain valid and shall not be subject to modification on the basis of this  
20      subsection."

21                  **SECTION 1.5.** G.S. 41-2.5 reads as rewritten:

22       **"§ 41-2.5. Tenancy by the entirety in mobile homes.**

23       (a) When ~~a husband and wife, two individuals then married to each other~~ become  
24       co-owners of a mobile home, in the absence of anything to the contrary appearing in the  
25       instrument of title, they become tenants by the entirety with all the incidents of an estate by the  
26       entirety in real property, including the right of survivorship in the case of death of either.

27       (b) For the purpose of this section it shall be immaterial whether the property at any  
28       particular time shall be classified for any purpose as either real or personal. The provisions of  
29       subsection (a) of this section shall not limit or prohibit any other type of ownership otherwise  
30       authorized by law.

31       (c) For purposes of this section "mobile home" means a portable manufactured housing  
32       unit designed for transportation on its own chassis and placement on a temporary or  
33       semipermanent foundation having a measurement of over 32 feet in length and over eight feet  
34       in width. As used in this ~~Article, section,~~ "mobile home" also means a double-wide mobile  
35       home which is two or more portable manufactured housing units designed for transportation on  
36       their own chassis, which connect on site for placement on a temporary or semipermanent  
37       foundation having a measurement of over 32 feet in length and over eight feet in width.

38       (d) This section does not repeal or modify any provisions of the law relating to estate or  
39       inheritance taxes."  
40

## 41 **PART II. OTHER AMENDMENTS TO THE LAWS ON CONVEYANCES OF REAL** 42 **PROPERTY BETWEEN SPOUSES AND CONVEYANCES BY SPOUSES TO OTHER** 43 **PARTIES**

44                  **SECTION 2.1.** G.S. 29-30 reads as rewritten:

45       **"§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share**  
46       **provided.**

47       (a) ~~In-Except as provided in this subsection, in~~ lieu of the intestate share provided in  
48       G.S. 29-14 or G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse  
49       of an intestate or the surviving spouse who has petitioned for an elective share shall be entitled  
50       to take as the surviving spouse's intestate share or elective share a life estate in one third in  
51       value of all the real estate of which the deceased spouse was seised and possessed of an estate

1 of inheritance at any time during ~~coverture, except that real estate as to which the surviving~~  
 2 ~~spouse;coverture.~~ The following exceptions apply if the surviving spouse:

- 3 (1) Has waived the surviving spouse's rights by joining with the other spouse in  
 4 a conveyance ~~thereof, or~~thereof.
- 5 (1a) Has waived the right to take a life estate in lieu of an intestate or elective  
 6 share by an express written waiver thereof.
- 7 (2) ~~Has released or quitclaimed~~ Has waived, released, or conveyed the surviving  
 8 spouse's interest therein in accordance with G.S. 52-10, or G.S. 52-10.
- 9 (3) Was not required by law to join in conveyance thereof in order to bar the  
 10 elective life ~~estate, or~~estate.
- 11 (3a) Has executed a written declaration permitting the deceased spouse to convey  
 12 or encumber the property without the consent or joinder of the surviving  
 13 spouse.
- 14 (4) Is otherwise not legally entitled to the election provided in this section.

15 ...

16 (c) The election provided for in subsection (a) shall be made by (i) the filing of a  
 17 petition in accordance with Article 2 of Chapter 28A of the General Statutes with the clerk of  
 18 the superior court of the county in which the administration of the estate is pending, ~~or,~~ or (ii)  
 19 no administration is pending, then with the clerk of the superior court of any county in which  
 20 the administration of the estate could be ~~commenced,~~ commenced, together with the recording  
 21 of a notice indicating the county and file number of the clerk's filing with the register of deeds  
 22 in every county where real property to be claimed under the filing is located. The election shall  
 23 be made prior to the shorter of the following applicable periods:

24 ...

25 (g) Neither the household furnishings in the dwelling house nor the life estates taken by  
 26 election under this section shall be subject to the payment of debts due from the estate of the  
 27 deceased spouse, except those debts secured by such property as follows:

- 28 (1) By a mortgage or deed of trust in which the surviving spouse has waived the  
 29 surviving spouse's rights by joining with the other spouse in the making  
 30 ~~thereof, or~~thereof.
- 31 (2) By a ~~purchase money~~ mortgage or deed of ~~trust,~~ trust given by the deceased  
 32 spouse to secure a loan, the proceeds of which were used to pay all or a  
 33 portion of the purchase price of the encumbered real property, regardless of  
 34 whether the secured party is the seller of the real property or a third-party  
 35 lender, or by a conditional sales contract of personal property in which title  
 36 is retained by the vendor, made prior to or during the ~~marriage; or~~marriage.
- 37 (3) By a mortgage or deed of trust made prior to the ~~marriage; or~~marriage.
- 38 (4) By a mortgage or deed of trust constituting a lien on the property at the time  
 39 of its acquisition by the deceased spouse either before or during the  
 40 marriage.
- 41 (5) By a mortgage or deed of trust on property with respect to which the elective  
 42 life estate provided for in this section does not apply as provided in  
 43 subsection (a) of this section.

44 ...."

45 **SECTION 2.2.** The title of Article 2 of Chapter 39 of the General Statutes reads as  
 46 rewritten:

"Article 2.

~~"Conveyances by Husband and Wife.~~Conveyances by Married Individuals."

**SECTION 2.3.** G.S. 39-7 reads as rewritten:

50 **"§ 39-7. Instruments affecting married ~~person's~~ individual's title; joinder of spouse;**  
 51 **exceptions.**

1 (a) In order to waive ~~the a spouse's~~ elective life estate ~~of either husband or wife~~ as  
2 provided for in G.S. 29-30, every ~~conveyance~~ conveyance, waiver, release, or other instrument  
3 affecting the estate, right or title of any married ~~person~~ individual in lands, tenements or  
4 hereditaments must be executed by ~~such husband or wife, the spouse,~~ and due proof or  
5 acknowledgment thereof must be made and certified as provided by law.

6 (b) A married ~~person~~ individual may bargain, sell, lease, mortgage, transfer and convey  
7 any of his or her separate real estate without joinder or other waiver by his or her spouse if ~~such~~  
8 the spouse is incompetent and a guardian or trustee has been appointed as provided by the laws  
9 of North Carolina, and if the appropriate instrument is executed by the married ~~person~~  
10 individual and the guardian or trustee of the incompetent spouse and is probated and registered  
11 in accordance with law, it shall convey all the estate and interest as therein intended of the  
12 married ~~person~~ individual in the land conveyed, free and exempt from the elective life estate as  
13 provided in G.S. 29-30 and all other interests of the incompetent spouse.

14 (c) Subsection (a) shall not be construed to require the spouse's joinder or other waiver  
15 of the elective life estate of ~~such the spouse~~ as provided for in G.S. 29-30 where a different  
16 provision is made or provided for in the General Statutes including, but not limited to,  
17 G.S. 39-13, 39-13.3, 39-13.4, 31A-1(d), and 52-10."

18 **SECTION 2.4.** G.S. 39-8 reads as rewritten:

19 **"§ 39-8. Acknowledgment at different times and places; before different officers; order**  
20 **immaterial.**

21 In all cases of deeds, or other instruments executed by ~~husband and wife~~ two individuals  
22 married to each other and requiring registration, the ~~probate proof or acknowledgment of such~~  
23 the instruments as to the husband one spouse and due proof or acknowledgment of the ~~wife~~  
24 other spouse may be taken before different officers authorized by law to ~~taken~~ take the probate  
25 of deeds, and at different times and places, whether either or both of said the officials reside in  
26 this State or ~~only one in this State and the other~~ in another state or country. And in taking the  
27 probate of ~~such the instruments~~ executed by ~~husband and wife, two individuals married to each~~  
28 other, it is immaterial whether the execution of the instrument was proven as to or  
29 acknowledged by ~~the husband one spouse~~ before or after due proof as to or acknowledgment of  
30 the wife other spouse."

31 **SECTION 2.5.** G.S. 39-9 reads as rewritten:

32 **"§ 39-9. Absence of wife's one spouse's acknowledgment does not affect deed as to**  
33 **husband the other spouse.**

34 When an instrument purports to be signed by ~~a husband and wife~~ two individuals married to  
35 each other, the instrument may be ordered ~~registered, registered~~ if the acknowledgment of ~~the~~  
36 ~~husband one spouse~~ is duly taken, but no such instrument shall be the act or deed of the ~~wife~~  
37 ~~other spouse~~ unless proven or acknowledged by ~~her that individual~~ according to law."

38 **SECTION 2.6.** G.S. 39-13 reads as rewritten:

39 **"§ 39-13. Spouse need not join in purchase-money mortgage.**

40 ~~The purchaser of real estate who does not pay the whole of the purchase money at the time~~  
41 ~~when he or she takes a deed for title may make a mortgage or deed of trust for securing the~~  
42 ~~payment of such purchase money, or such part thereof as may remain unpaid, which A~~  
43 ~~mortgage or deed of trust given by the purchaser of real property to secure a loan, the proceeds~~  
44 ~~of which were used to pay all or a portion of the purchase price of the encumbered real~~  
45 ~~property, regardless of whether the secured party is the seller of the real property or a~~  
46 ~~third-party lender, shall be good and effectual against his or her the purchaser's spouse as well~~  
47 ~~as the purchaser, without requiring the spouse to join in the execution of ~~such the~~ mortgage or~~  
48 ~~deed of trust."~~

49 **SECTION 2.7.** G.S. 39-13.2 reads as rewritten:

50 **"§ 39-13.2. Married ~~persons~~ individuals under 18 made competent as to certain**  
51 **transactions; certain transactions validated.**

1 (a) Any married ~~person~~individual under 18 years of age is authorized and empowered  
2 and shall have the same privileges as are conferred upon married ~~persons~~individuals 18 years  
3 of age or older ~~to do any of the following:~~

4 (1) Waive, release or renounce by deed or other written instrument any right or  
5 interest which he or she may have in the real or personal ~~property (tangible~~  
6 ~~or intangible) property, tangible or intangible, of the other spouse; or spouse.~~

7 (2) Jointly execute with his or her spouse, if ~~such~~the spouse is 18 years of age  
8 or older, any note, contract of insurance, deed, deed of trust, mortgage, lien  
9 of whatever nature or other instrument with respect to real or personal  
10 ~~property (tangible or intangible) property, tangible or intangible, held with~~  
11 ~~such~~the other spouse either as tenants by the entirety, joint tenants, tenants  
12 in common, or in any other manner.

13 (b) Any transaction ~~between a husband and wife~~ pursuant to this section between two  
14 individuals married to each other shall be subject to the provisions of G.S. 52-10 or 52-10.1  
15 whenever applicable.

16 ...."

17 **SECTION 2.8.** G.S. 39-13.4 reads as rewritten:

18 "**§ 39-13.4. Conveyances by ~~husband or wife~~ spouses under deed of ~~separation~~separation,**  
19 **separation agreement, or property settlement.**

20 Any conveyance of real property, or any interest therein, by ~~the husband or wife~~a spouse  
21 who ~~have~~ previously executed a valid and lawful deed of ~~separation~~separation,  
22 separation agreement, or property settlement that authorizes ~~said husband or wife~~the  
23 conveying spouse to convey real property or any interest therein without the consent and  
24 joinder of the other spouse and which deed of ~~separation~~separation, separation agreement, or  
25 property settlement, or a memorandum of the deed of ~~separation~~separation, separation  
26 agreement, or property settlement setting forth ~~such~~the authorization is recorded in the county  
27 where the land lies, shall be valid to pass such title as the conveying spouse may have to ~~his or~~  
28 ~~her~~the grantee and shall pass ~~such~~the title free and clear of all rights in ~~such~~the property and  
29 free and clear of ~~such~~the interest in property that the other spouse has, had, or might acquire  
30 solely as a result of the marriage, including any rights arising under G.S. 29-30, unless an  
31 instrument in writing canceling the deed of ~~separation~~separation, separation agreement, or  
32 property settlement or memorandum thereof and properly executed and acknowledged by ~~said~~  
33 ~~husband and wife~~both spouses is recorded in the office of ~~said~~the register of ~~deeds~~deeds of  
34 that county. The instrument ~~which~~that is registered under this section to authorize the  
35 conveyance of an interest in real property or the cancellation of the deed of ~~separation~~  
36 separation, separation agreement, or property settlement or memorandum thereof shall comply  
37 with the provisions of G.S. 52-10 or 52-10.1.

38 All conveyances of any interest in real property by a spouse who had previously executed a  
39 valid and lawful deed of separation, ~~or~~separation agreement, or property settlement, ~~which~~  
40 settlement that authorized the parties thereto to convey real property or any interest therein  
41 without the consent and joinder of the other, when ~~said~~the deed of separation, separation  
42 agreement, or property settlement, or a memorandum of the deed of separation, separation  
43 agreement, or property settlement, setting forth ~~such~~the authorization, had been previously  
44 recorded in the county where the property is located, and when ~~such~~the conveyances were  
45 executed before October 1, 1981, shall be valid to pass such title as the conveying spouse may  
46 have to ~~his or her~~the grantee, and shall pass ~~such~~the title to ~~him~~the grantee free and clear of  
47 the rights in ~~such~~the property and free and clear of ~~such~~the interest in ~~such~~the property that  
48 the other spouse has, had, or might acquire solely as a result of the marriage, including any  
49 rights arising under G.S. 29-30, unless an instrument in writing canceling the deed of  
50 separation, separation agreement, ~~or~~property settlement, or memorandum thereof, properly  
51 executed and acknowledged by ~~said husband and wife,~~both spouses, is recorded in the office

1 of ~~said~~ the register of deeds, deeds of that county. The instrument which is registered under this  
2 section to authorize the conveyance of an interest in real property or the cancellation of the  
3 deed of separation, separation agreement, property settlement, or memorandum thereof shall  
4 comply with G.S. 52-10 or 52-10.1."

5 **SECTION 2.9.** G.S. 39-13.5 reads as rewritten:

6 "**§ 39-13.5. Creation of tenancy by entirety in partition of real property.**

7 When ~~either a husband or a wife~~ a married individual owns an undivided interest in real  
8 property as a tenant in common with some person or persons other than his or her spouse and  
9 there occurs an actual partition of the property, a tenancy by the entirety may be created in the  
10 ~~husband or wife~~ married individual who owned the undivided interest and his or her spouse in  
11 ~~the manner hereinafter provided:~~ one of the following manners:

- 12 (1) In a division by cross-deed or deeds, between or among the tenants in  
13 common provided that the intent of the tenant in common to create a tenancy  
14 by the entirety with ~~his or her~~ the tenant's spouse in this exchange of deeds  
15 must be clearly stated in the granting clause of the deed or deeds to ~~such~~ the  
16 tenant and ~~his or her~~ the tenant's spouse, and further provided that the deed  
17 or deeds to ~~such~~ the tenant in common and ~~his or her~~ the tenant's spouse is  
18 signed by ~~such~~ the tenant in common and is acknowledged before a  
19 certifying officer in accordance with ~~G.S. 52-10;~~ G.S. 52-10.
- 20 (2) In a judicial proceeding for partition. In such a proceeding, both spouses  
21 have the right to become parties to the proceeding and to have their  
22 pleadings state that the intent of the tenant in common is to create a tenancy  
23 by the entirety with ~~his or her~~ the tenant's spouse. The order of partition shall  
24 provide that the real property assigned to ~~such~~ the tenant and ~~his or her~~ the  
25 tenant's spouse shall be owned by them as tenants by the entirety."

26 **SECTION 2.10.** G.S. 39-13.7, as amended by Section 1.3 of this act, is amended  
27 by adding two new subsections to read:

28 "(f) Notice that the real property held in trust receives immunity from the claims of  
29 separate creditors may be given in a statement in the conveyance of the tenancy by the  
30 entireties real property to the trust that the real property is held under this section and that as of  
31 the date of the conveyance, the requirements of subsection (b) of this section are met.

32 "(g) A person entering into a transaction involving real property held in trust under this  
33 section may request confirmation from the trustee whether the requirements of this section  
34 providing immunity from the claims of separate creditors are met at the time of the  
35 transaction."

36 **SECTION 2.11.** G.S. 41-10 reads as rewritten:

37 "**§ 41-10. Titles quieted.**

38 An action may be brought by any person against another who claims an estate or interest in  
39 real property adverse to ~~him~~ the person who brought the action for the purpose of determining  
40 ~~such~~ the adverse claims; and by any ~~man or woman~~ individual against ~~his or her wife or~~  
41 ~~husband~~ that individual's spouse or alleged ~~wife or husband~~ spouse who have not lived together  
42 as ~~man and wife~~ a married couple within the two years preceding, and who at the death of ~~such~~  
43 the plaintiff might have or claim to have an interest in ~~his or her~~ the plaintiff's estate, and a  
44 decree for the plaintiff shall debar all claims of the defendant in the property of the plaintiff  
45 then owned or afterwards acquired: Provided, that no such relief shall be granted against such  
46 ~~husband or wife~~ a spouse or alleged ~~wife or husband,~~ except in case spouse, unless the  
47 summons in ~~said~~ the action is personally served on ~~such~~ the defendant.

48 If the defendant in ~~such~~ the action ~~disclaim~~ disclaims in ~~his~~ the defendant's answer any  
49 interest or estate in the property, or ~~suffer~~ suffers judgment to be taken against ~~him~~ the  
50 defendant without answer, the plaintiff cannot recover costs. In any case in which judgment has  
51 been or ~~shall~~ will be docketed, whether ~~such~~ the judgment is in favor of or against the ~~person~~

1 individual bringing such the action, or is claimed by him, the individual, or affects real estate  
2 claimed by him, the individual, or whether such the judgment is in favor of or against the  
3 person-individual against whom such the action may be brought, or is claimed by him, that  
4 individual, or affects real estate claimed by him, that individual, the lien of said the judgment  
5 shall be such claim of an estate or interest in real estate as is contemplated by this section."

6 **SECTION 2.12.** G.S. 52-10 reads as rewritten:

7 **"§ 52-10. Contracts between ~~husband and wife~~ spouses generally; releases.**

8 (a) Contracts between ~~husband and wife~~ two individuals married to each other not  
9 inconsistent with public policy are valid, and any persons-individuals of full age about to be  
10 married and married persons-individuals may, with or without a valuable consideration, release  
11 and quitclaim such waive, release, or convey rights which they might respectively acquire or  
12 may have acquired by marriage in the property of each other; and such releases the waivers,  
13 releases, or conveyances may be pleaded in bar of any action or proceeding for the recovery of  
14 the rights and estate so released-waived, released, or conveyed. No contract or release-contract,  
15 waiver, release, or conveyance between husband and wife two individuals married to each  
16 other made during their coverture shall be valid to affect or change any part of the real estate of  
17 either spouse, or the accruing income thereof for a longer time than three years next ensuing the  
18 making of such contract or release, the contract, waiver, release, or conveyance, unless it is in  
19 writing and is acknowledged by both parties before a certifying officer.

20 (a1) A contract between ~~a husband and wife~~ two individuals married to each other made,  
21 with or without a valuable consideration, during a period of separation to waive, release, or  
22 establish rights and obligations to post separation support, alimony, or spousal support is valid  
23 and not inconsistent with public policy. A provision waiving, releasing, or establishing rights  
24 and obligations to post separation support, alimony, or spousal support shall remain valid  
25 following a period of reconciliation and subsequent separation, if the contract satisfies all of the  
26 following requirements:

27 (1) The contract is in writing.

28 (2) The provision waiving the rights or obligations is clearly stated in the  
29 contract.

30 (3) The contract was acknowledged by both parties before a certifying officer.

31 A release made pursuant to this subsection may be pleaded in bar of any action or proceeding  
32 for the recovery of the rights released.

33 ...

34 (c) This section shall not apply to any judgment of the superior court or other State  
35 court of competent jurisdiction, which, by reason of its being consented to by ~~a husband and~~  
36 ~~wife, two individuals married to each other,~~ or their attorneys, may be construed to constitute a  
37 contract or release between ~~such husband and wife~~ the two spouses."

38 **SECTION 2.13.** G.S. 52-10.1 reads as rewritten:

39 **"§ 52-10.1. Separation agreements.**

40 Any married couple is hereby authorized to execute a separation agreement not inconsistent  
41 with public policy which shall be legal, valid, and binding in all respects; provided, that the  
42 separation agreement must be in writing and acknowledged by both parties before a certifying  
43 officer as defined in G.S. 52-10(b). Such certifying officer must not be a party to the contract.  
44 This section shall not apply to any judgment of the superior court or other State court of  
45 competent jurisdiction, which, by reason of its being consented to by ~~a husband and wife, two~~  
46 ~~individuals married to each other,~~ or their attorneys, may be construed to constitute a separation  
47 agreement between ~~such husband and wife~~ the two spouses."

### 48 **PART III. EFFECTIVE DATE AND APPLICABILITY**



1           **SECTION 3.1.** This act is intended to reflect rights established by federal law that  
2 became effective in this State on October 10, 2014, by application of *General Synod of the*  
3 *United Church of Christ v. Resinger*, 12 F.Supp.3d 790 (W.D. N.C., Oct. 10, 2014).  
4           **SECTION 3.2.** This act is effective when it becomes law and applies to  
5 conveyances made on or after October 10, 2014.