

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 792
Apr 16, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40377-MQ-110

Short Title: Changes to Joint Tenancy Statutes. (Public)

Sponsors: Representatives Zachary and Stevens (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO RECODIFY AND MAKE CHANGES TO THE GENERAL STATUTES
3 INVOLVING JOINT TENANCY.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** Chapter 41 of the General Statutes is amended by creating a new
6 Article, and G.S. 41-70 through G.S. 41-79 are reserved for that Article.

7 **SECTION 1.(b)** The following General Statutes are recodified in Article 5 of
8 Chapter 41 of the General Statutes, as created by subsection (a) of this section, as set forth in the
9 table below:

<u>Former Citation</u>	<u>Recodified Citation</u>
10 Third sentence of G.S. 41-2(a)	Second sentence of G.S. 41-73(c)(3)
11 Fourth sentence of G.S. 41-2(a)	First sentence of G.S. 41-73(c)(3)
12 First sentence of G.S. 41-2(b)	G.S. 41-72(a)
13 Second sentence of G.S. 41-2(b)	G.S. 41-72(d)
14 Third sentence of G.S. 41-2(b)	G.S. 41-74
15 Fourth sentence of G.S. 41-2(b)	G.S. 41-72(b)
16 Fifth sentence of G.S. 41-2(b)	G.S. 41-72(c)

17 **SECTION 1.(c)** Article 5 of Chapter 41 of the General Statutes, as created by
18 subsection (a) of this section, and containing the sections recodified in subsection (b) of this
19 section, reads as rewritten:
20

21 "Article 5.

22 "Joint Tenancy.

23 **"§ 41-70. Definitions.**

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

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

30 **"§ 41-71. Creation of a joint tenancy with right of survivorship.**

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

34 (b) A conveyance to two or more persons creates a joint tenancy with right of
35 survivorship if the instrument expresses an intent to create a joint tenancy with right of
36 survivorship. The following words in the instrument shall be deemed to express an intent to create



1 a joint tenancy with right of survivorship unless the instrument otherwise provides: "joint tenants
2 with right of survivorship," "joint tenants," "joint tenancy," "tenants in common with right of
3 survivorship," "joint with right of survivorship," and "with right of survivorship".

4 **"§ 41-72. Determination of the interests of joint tenants in a joint tenancy with right of**
5 **survivorship.**

6 (a) ~~The interests of the grantees holding property joint tenants in a joint tenancy with~~
7 ~~right of survivorship shall be deemed to be equal unless otherwise specified provided in the~~
8 ~~instrument of conveyance.~~

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

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

16 (d) ~~Any joint tenancy interest held by a husband and wife, unless otherwise specified,~~
17 ~~conveyed to individuals married to each other and to one or more other joint tenants in the same~~
18 ~~instrument of conveyance shall be deemed to be held as by the married individuals in a single~~
19 ~~tenancy by the entirety, which and the married individuals shall be treated as a single party when~~
20 ~~determining interests in the joint tenancy with right of survivorship tenant, unless otherwise~~
21 ~~provided in the instrument.~~

22 **"§ 41-73. Termination of a joint tenancy with right of survivorship.**

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

25 (1) The conveyance to a third party by all of the joint tenants of all of their
26 interests in the property held in the joint tenancy, including a foreclosure sale
27 pursuant to a power of sale in a deed of trust.

28 (2) The execution of an instrument by all of the joint tenants and another third
29 party or parties that does not convey all of their interests in the property held
30 in the joint tenancy to another party, including a lease, executory contract of
31 sale, option to purchase, or deed of trust, and an intention to terminate
32 expressly appears in the instrument.

33 (3) The execution of an instrument by all joint tenants for the purpose of
34 expressing an intent to terminate the joint tenancy as between or among
35 themselves.

36 (b) Events terminating a joint tenancy with right of survivorship due to the unilateral
37 action of a joint tenant include the following:

38 (1) The conveyance to a third party or parties by a joint tenant of all of that joint
39 tenant's interests in the property held in the joint tenancy, including a
40 foreclosure sale pursuant to a power sale in a deed of trust.

41 (2) The execution of an instrument with a third party by a joint tenant that does
42 not convey all of that joint tenant's interest to the third party, including a lease,
43 executory contract of sale, option to purchase, or deed of trust, and an intention
44 to terminate the joint tenancy with right of survivorship expressly appears in
45 the instrument.

46 (3) The execution of an instrument by a joint tenant where the joint tenant is both
47 the grantor and the grantee if the intention to terminate expressly appears in
48 the instrument. A termination under this subdivision shall be effective only
49 upon the recording, prior to the death of the joint tenant, of an instrument
50 expressing an intent to terminate in the office of the register of deeds in the
51 county or counties where the real property is situated.

- 1 (4) The filing by a joint tenant of a petition to partition.
- 2 (c) When a termination occurs, a tenancy in common is created as follows:
- 3 (1) If a termination occurs under subdivision (1) of subsection (a) of this section
4 because of the conveyance of all of the joint tenants' interests to a third party,
5 a tenancy in common is created among the tenants as to any proceeds of sale
6 or surplus funds generated from a foreclosure sale.
- 7 (2) If a termination occurs because of the execution by all of the joint tenants of
8 an instrument described in subdivisions (2) or (3) of subsection (a) of this
9 section, a tenancy in common is created among the tenants.
- 10 (3) ~~Upon conveyance to a third party by~~ If a termination occurs under subdivision
11 (1) of subsection (b) of this section because one of two the joint tenants
12 holding property in joint tenancy with right of survivorship, conveys all of
13 that joint tenant's interest to a third party and there are only two joint tenants,
14 a tenancy in common is created between the third party and the remaining
15 other joint tenant. Upon conveyance ~~If there are more than two joint tenants~~
16 and one of the joint tenants conveys all of that joint tenant's interests to a third
17 party by less than all of three or more joint tenants holding property in joint
18 tenancy with right of survivorship, party, a tenancy in common is created
19 among the third party and the remaining joint tenants, who remain joint
20 tenants with right of survivorship as between or among themselves.
- 21 (4) If a termination occurs because of the execution by a joint tenant of an
22 instrument described in subdivisions (2) or (3) of subsection (b) of this section
23 or because of the filing of a petition by a joint tenant as provided in subsection
24 (4) of subdivision (b) of this section, and there are two joint tenants, a tenancy
25 in common is created between the joint tenant causing the termination and the
26 other joint tenant. If there are more than two joint tenants, a tenancy in
27 common is created among the joint tenant causing the termination and the
28 remaining joint tenants who continue as joint tenants with right of
29 survivorship as between or among themselves.
- 30 (d) The following events do not result in a termination of joint tenancy with right of
31 survivorship:
- 32 (1) The filing of a judgment against one joint tenant.
- 33 (2) The filing of a bankruptcy petition by one joint tenant.
- 34 (3) When married individuals holding an interest as tenants by the entirety in a
35 joint tenancy with one or more other joint tenants divorce. Unless the divorced
36 individuals agree otherwise, the divorced individuals shall be deemed to hold
37 their existing interest equally as tenants in common.
- 38 (e) Nothing in this section shall limit the manner or effect of a termination ordered by a
39 court of competent jurisdiction.
- 40 **"§ 41-74. Application of 120-hour survival requirement to joint tenancy with right of**
41 **survivorship.**
- 42 ~~Joint~~ The provisions of G.S. 28A-24-3 apply to joint tenancy interests among two or more
43 joint tenants holding property in joint tenancy with right of survivorship are subject to the
44 provisions of G.S. 28A-24-3 upon the death of one or more of the joint tenants.
- 45 **"§ 41-75. Inapplicability of Article.**
- 46 This Article does not apply to any of the following:
- 47 (1) Executors or trustees in their representative capacity.
- 48 (2) Partnerships governed by Chapter 59 of the General Statutes.
- 49 (3) Business entities.
- 50 (4) Accounts established under G.S. 42-2.1 or G.S. 42-2.2 to the extent
51 inconsistent with the provisions of this Article.

1 (5) Life estates.

2 "**§ 41-76. Common law of joint tenancy; equitable principles.**

3 The common law of joint tenancy with right of survivorship and principles of equity
4 supplement this Article except to the extent it conflicts or is inconsistent with a provision of this
5 Article or the laws of this State."

6 **SECTION 2.** This act is effective when it becomes law.