

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40384-MQ-101

Short Title: Chgs. to Real Prop. Statutes/Elective Share. (Public)

Sponsors: Representatives Stevens and Zachary (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO RECODIFY AND MAKE CHANGES TO THE STATUTES REGARDING  
3 TENANCY BY THE ENTIRETIES AND TO MAKE CHANGES REGARDING  
4 ELECTIVE SHARE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** Chapter 41 of the General Statutes is amended by adding a new  
7 Article, and G.S. 41-55 through G.S. 41-69 are reserved for that Article.

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

11	<u>Former Citation</u>	<u>Recodified Citation</u>
12	G.S. 31A-5	G.S. 41-64(b)
13	G.S. 39-13.3(b)	G.S. 41-56(b)
14	G.S. 39-13.3(c)	G.S. 41-63(4)
15	G.S. 39-13.5	G.S. 41-56(c)
16	G.S. 39-13.6(a)	G.S. 41-58
17	G.S. 39-13.6(b)	G.S. 41-56(a)
18	G.S. 39-13.6(c)	G.S. 41-59(b)
19	G.S. 39-13.7	G.S. 41-65
20	G.S. 41-2.5	G.S. 41-56(d)

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

24 "Article 5.

25 "Tenancy by the Entirety.

26 **"§ 41-55. Definitions.**

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

- 28 (1) Conveyance. – A transfer of title to real property by deed or devise or other  
29 instrument transferring title to real property.  
30 (2) Income. – Rents and profits from property held as tenants by the entirety.  
31 (3) Spouses. – Two individuals then legally married to each other.

32 **"§ 41-56. Creation of tenancy by the entirety.**

33 (a) A-Unless a contrary intention is expressed in the conveyance, a conveyance of real  
34 property, or any interest therein, to a husband and wife spouses vests title in them as tenants by  
35 the entirety when the conveyance is to one of the following:

- 36 (1) A named man individual "and wife," or wife."



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

2 (3) A named individual "and spouse."

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

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

8 (b) A conveyance by a grantor of real property, or any interest therein, ~~by a husband to~~  
9 ~~an individual and his or a wife to such husband and wife her spouse~~ vests the ~~same property in~~  
10 ~~the husband and wife grantees~~ as tenants by the ~~entirety entirety~~, unless a contrary intention is  
11 expressed in the conveyance. The joinder of a spouse in a conveyance made by the grantor under  
12 this subsection is not necessary, but the conveyance is subject to the provisions of G.S. 52-10 or  
13 G.S. 52-11, except acknowledgement of the spouse of the grantor is not necessary.

14 (c) When ~~either a husband or a wife~~ an individual owns an undivided interest in real  
15 property as a tenant in common with some ~~person individual or persons individuals~~ other than  
16 his or her spouse and there occurs an actual partition of the property, a tenancy by the entirety  
17 may be created in the ~~husband or wife individual~~ who owned the undivided interest and his or  
18 her spouse ~~in the manner hereinafter provided:~~ as follows:

19 (1) In a division by cross-deed or deeds, between or among the tenants in common  
20 if the instrument contains both of the following:

21 a. provided that the ~~The~~ intent of the tenant in common to create a  
22 tenancy by the entirety with his or her spouse in this exchange of deeds  
23 ~~must be~~ is clearly stated in the granting clause of the deed or deeds to  
24 ~~such the tenant in common and his or her spouse, spouse.~~

25 b. and further provided that the ~~The~~ deed or deeds to ~~such the~~ tenant in  
26 common and his or her spouse is signed by ~~such the~~ tenant in common  
27 and is acknowledged before a certifying officer in accordance with  
28 G.S. 52-10;

29 (2) In a judicial proceeding for ~~partition. In such proceeding, partition where~~ both  
30 spouses have the right to become parties to the proceeding and to have their  
31 pleadings state that the intent of the tenant in common is to create a tenancy  
32 by the entirety with his or her spouse. The order of partition shall provide that  
33 the real property assigned to ~~such the~~ tenant and his or her spouse shall be  
34 owned by them as tenants by the entirety.

35 (d) When ~~a husband and wife spouses~~ become co-owners of a mobile home, in the  
36 absence of ~~anything to the~~ a contrary intention appearing in the instrument of title, ~~they the~~  
37 spouses become tenants by the entirety with all the incidents of an estate by the entirety in real  
38 property, including the right of survivorship in the case of death of ~~either either~~ spouse. For the  
39 ~~purpose purposes~~ of this ~~section subsection~~ it shall be is immaterial whether the property at any  
40 particular time shall be classified for any purpose as either real or personal. ~~The provisions of~~  
41 Nothing in this subsection (a) shall not be deemed to limit or prohibit any other type of ownership  
42 otherwise authorized by law. For the purposes of this section subsection, the term "mobile home"  
43 means a portable manufactured housing unit designed for transportation on its own chassis and  
44 placement on a temporary or semipermanent foundation having a measurement of over 32 feet  
45 in length and over eight feet in width. As used in this Article, subsection, the term "mobile home"  
46 also means a double-wide mobile home which is two or more portable manufactured housing  
47 units designed for transportation on their own chassis, which connect on site for placement on a  
48 temporary or semipermanent foundation having a measurement of over 32 feet in length and over  
49 eight feet in width. This section does not repeal or modify any provisions of the law relating to  
50 estate or inheritance taxes.

51 **§ 41-57. Presumption of gift by spouse furnishing consideration.**

1 Except for purposes of equitable distribution as provided under G.S. 50-20 and G.S. 50-21,  
2 when an individual furnishing the consideration for real property causes the title to be placed in  
3 the name of the individual and the individual's spouse, there is a presumption of a gift to the  
4 individual's spouse of an entirety interest, which is rebuttable by clear, cogent, and convincing  
5 evidence.

6 **"§ 41-58. Possession and control of entireties property.**

7 (a) ~~A husband and wife~~ Spouses shall have an equal right to the control, use, possession,  
8 rents, income, and profits of real and income from property held by them in tenancy as tenants  
9 by the entirety.

10 (b) Neither spouse may bargain, sell, lease, mortgage, transfer, ~~convey~~ convey, sign, pay  
11 out, or in any manner encumber any property ~~so~~ held by them as tenants by the entirety without  
12 the written joinder of the other spouse. This section shall not be construed to require the spouse's  
13 joinder where a different provision is made under G.S. 41-56(b), G.S. 41-63(4), G.S. 39-13,  
14 G.S. 39-13.3, G.S. 39-13.4, or G.S. 52-10.

15 (c) The mortgage or sale of an interest in real property held by spouses as tenants by the  
16 entirety where one or both spouses is incompetent is governed by the provisions of Article 15 of  
17 Chapter 35A of the General Statutes.

18 **"§ 41-59. Income derived from entireties property.**

19 (a) Income derived from property held by spouses as tenants by the entirety becomes  
20 personal property held by the spouses as tenants in common in equal shares.

21 (b) For income tax purposes, each spouse is considered to have received one-half (~~1/2~~)  
22 the income or loss from property ~~owned~~ held by the ~~couple~~ spouses as tenants by the entirety.

23 **"§ 41-60. Liability of entireties property for debts of spouses.**

24 (a) With respect to property held by spouses as tenants by the entirety prior to its  
25 termination, all of the following shall apply:

26 (1) The property may not be held liable for individual debts of either spouse and  
27 a judgment lien against one spouse alone does not attach to the property. The  
28 property may be conveyed by joint deed of both spouses to anyone of their  
29 choice free and clear of a judgment lien against either spouse.

30 (2) The property is liable for obligations of both spouses and a judgment lien  
31 against both spouses upon a joint obligation attaches to the property which  
32 may be sold under execution to satisfy the judgment.

33 (b) Upon termination of the tenancy by the entirety and the conversion of the real property  
34 held by the entirety to another form of estate, a judgment lien against one spouse during tenancy  
35 by the entirety, if still active and unsatisfied, shall attach at that time to that spouse's interest in  
36 the new estate. Conversions of tenancy by the entirety property to another form of an estate occur,  
37 without limitation under either of the following circumstances:

38 (1) Upon divorce of the spouses, in which event the property is converted to a  
39 tenancy in common as provided in G.S. 41-63(5) and the judgment lien  
40 against the spouse will attach at that time to the undivided interest of the  
41 spouse.

42 (2) Upon death of a spouse, in which event the surviving spouse acquires the  
43 entire legal title as provided in G.S. 41-64 and the judgment lien against the  
44 surviving spouse will attach at that time to the property.

45 **"§ 41-61. Reimbursement for expenditures made on entireties property.**

46 (a) Neither spouse holding property as tenants by the entirety is entitled to reimbursement  
47 of expenditures made on the property, including payments on indebtedness encumbering the  
48 property, while the tenancy by the entirety exists.

49 (b) When the tenancy by the entirety is converted to a tenancy in common by absolute  
50 divorce or otherwise, responsibility for expenditures for the property held as tenants in common  
51 is allocated as provided by the law governing tenants in common.

1 **"§ 41-62. Insurance coverage and character of proceeds.**

2 Where property held as tenants by the entirety is insured, unless the parties by contract have  
3 provided what disposition should be made of the insurance proceeds, the policy and insurance  
4 proceeds inure to the benefit of the entire estate even though the policy was issued in the name  
5 of only one spouse and paid for by that spouse, and the insurance proceeds become divisible  
6 personal property held by the spouses as tenants in common.

7 **"§ 41-63. Termination of tenancy by the entirety other than upon death of a spouse; effects**  
8 **of termination.**

9 Events terminating a tenancy by the entirety other than the death of a spouse and the effects  
10 of termination include the following:

- 11 (1) The voluntary sale and conveyance of property held as tenants by the entirety  
12 to a third party, including a foreclosure sale pursuant to a power of sale in a  
13 deed of trust. Proceeds of the sale, including surplus funds generated from a  
14 foreclosure sale, are personal property held by the spouses as tenants in  
15 common.
- 16 (2) The voluntary partition between the spouses executing a joint instrument  
17 conveying the property held as tenants by the entirety to themselves as tenants  
18 in common or in severalty.
- 19 (3) The involuntary transfer of title of property held by spouses as tenants by the  
20 entirety. The proceeds resulting from the transfer are held by the spouses as  
21 tenants by the entirety. An involuntary transfer of title includes:
- 22 a. A sale pursuant to Article 15 of Chapter 35A of the General Statutes  
23 as to an incompetent spouse.
- 24 b. An appropriation in a condemnation proceeding by the North Carolina  
25 State Highway Commission.
- 26 (4) ~~A~~ ~~The~~ ~~conveyance~~ ~~from~~ ~~a~~ ~~husband~~ ~~or~~ ~~a~~ ~~wife~~ ~~one~~ ~~spouse~~ ~~to~~ ~~the~~ ~~other~~ ~~spouse~~  
27 of real property, or any interest therein, his or her interest in property held by  
28 such husband and wife as tenants by the entirety dissolves such tenancy in the  
29 property or interest conveyed and entirety. The conveyance vests such the  
30 property or interest formerly held by the as tenants by the entirety in the  
31 grantee other spouse. The joinder of a spouse in a conveyance made by the  
32 grantor pursuant to this subdivision is not necessary, but the conveyance is  
33 subject to the provisions of G.S. 52-10 or G.S. 52-10.1, except that an  
34 acknowledgment by the spouse of the grantor is not necessary.
- 35 (5) An absolute divorce of the spouses. An absolute divorce converts property  
36 held as tenants by the entirety to a tenancy in common.
- 37 (6) A judgment of forfeiture ordering divestment of an interest in tenancy by the  
38 entirety pursuant to Chapter 72D of the General Statutes. The effect of a  
39 judgment when one spouse is an innocent person as defined in G.S. 75D-5(i)  
40 is governed by G.S. 75D-8(a).

41 **"§ 41-64. Termination of tenancy by the entirety upon death of a spouse.**

42 (a) Except as provided in subsection (b) of this section, upon the death of a spouse,  
43 property held as tenants by the entirety belongs to the surviving spouse by right of purchase under  
44 the original grant or devise and by virtue of survivorship. The deceased spouse has no estate  
45 which is descendable or divisible.

46 (b) Where the slayer a slayer, as defined in G.S. 31A-3(3), and decedent hold property as  
47 tenants by the entirety, one half one-half of the property shall pass upon the death of the decedent  
48 to the decedent's estate, and the other one half one-half shall be held by the slayer during his or  
49 her the slayer's life, subject to pass upon the slayer's death to the slain decedent's heirs or devisees  
50 as defined in G.S. 28A-1-1.

51 **"§ 41-65. Entireties property conveyed to trusts.**

1 (a) Any real property held ~~by a husband and wife spouses~~ as a ~~tenancy tenants~~ by the  
2 ~~entireties entirety~~ and conveyed ~~to~~ (i) to a joint trust or (ii) in equal shares to two separate ~~trusts;~~  
3 ~~trusts~~ shall no longer be held by the ~~husband and wife spouses~~ as tenants by the entirety and shall  
4 be disposed of by the terms of the trust or ~~trusts, but, trusts.~~ However, ~~subject to the provisions~~  
5 ~~of subsection (b) of this section, the real property provisions of G.S. 41-60(a)(1) shall have the~~  
6 ~~same immunity from the claims of the separate creditors of the husband and wife apply to the~~  
7 ~~property held in trust as would exist~~ if the spouses had continued to hold the property as tenants  
8 by the entireties.

9 (b) The ~~immunity from the claims of separate creditors provided by subsection (a) of this~~  
10 ~~section provisions of G.S. 41-60(a)(1) shall apply to the property held in trust as long as all of~~  
11 the following apply:

12 (1) The ~~husband and wife spouses~~ remain married.

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

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

18 (c) ~~After~~ If immediately preceding the death of the first of the husband and wife spouse  
19 to die, all the provisions of G.S. 41-60(a)(1) apply to the real property held in trust that was  
20 immune from the claims of their separate creditors under subsection (a) of this section  
21 immediately prior to the individual's death shall continue to have immunity from the claims of  
22 the decedent's separate creditors as would have existed if the husband and wife continued to hold  
23 the property conveyed in trust as tenants by the entirety upon the death of a spouse, the provisions  
24 of G.S. 41-60(b)(2) shall apply to the property.

25 (d) The trustee acting under the express provisions of a trust instrument or with the  
26 written consent of both the ~~husband and wife spouses~~ may waive the ~~immunity from the claims~~  
27 ~~of separate creditors provided under this section~~ application of G.S. 41-60(a)(1) as to any specific  
28 creditor or any specifically described property including all separate creditors of a ~~husband and~~  
29 ~~wife spouse~~ or all former tenancy by the entirety property conveyed to the trustee.

30 (e) For purposes of this ~~section;~~ section, all of the following apply:

31 (1) The reference to the real property conveyed to or held in the trust shall be  
32 deemed to include the proceeds arising from the involuntary ~~conversion~~  
33 transfer of title of the real property.

34 (2) ~~The reference to a term~~ "joint trust" means a revocable or irrevocable trust of  
35 which both the husband and wife are the ~~settlers,~~ settlers.

36 (3) ~~and the reference to~~ The term "separate trusts" means revocable or irrevocable  
37 trusts of which ~~the husband one spouse~~ is the settlor of one trust and the ~~wife~~  
38 ~~other spouse~~ is the settlor of the other trust.

39 (3)(4) ~~The husband and wife spouses~~ are "beneficiaries" of a trust if they are  
40 distributees or permissible distributees of the income or principal of the trust  
41 whether or not other ~~persons~~ individuals are also current or future  
42 beneficiaries of the trust.

43 (f) Notice may be given in a statement in the conveyance of the tenancy by the entireties  
44 real property to the trust that the real property is held under this section and that, as of the date  
45 of the conveyance, the requirements are met providing for the application of G.S. 41-60(a)(1)  
46 protecting the real property from liability for the individual debts of either spouse.

47 (g) A person entering into a transaction involving real property held in trust under this  
48 section may request confirmation from the trustee whether the provisions of G.S. 41-60(a)(1) are  
49 met at the time of the transaction.

50 **"§ 41-66. Common law of tenancy by the entirety; equitable principles.**

1        The common law of tenancy by the entirety and principles of equity supplement this Article  
2 except to the extent it conflicts or is inconsistent with a provision of this Article or the laws of  
3 this State."

4        **SECTION 2.** G.S. 30-15 reads as rewritten:

5        "**§ 30-15. When spouse entitled to allowance.**

6        Every surviving spouse of an intestate or of a testator, whether or not the surviving  
7 spouse has petitioned for an elective share, shall, unless the surviving spouse has forfeited the  
8 surviving spouse's right thereto, as provided by law, be entitled, out of the personal property of  
9 the deceased spouse, to an allowance of the value of sixty thousand dollars (\$60,000) for the  
10 surviving spouse's support for one year after the death of the deceased spouse. The surviving  
11 spouse may claim the allowance if, at the death of the decedent, either the decedent or the  
12 surviving spouse was a resident of this State. Such allowance shall be exempt from any lien, by  
13 judgment or execution, acquired against the property of the deceased spouse, and shall, in cases  
14 of testacy, be charged against the share of the surviving spouse."

15        **SECTION 3.** Section 2 of this act is effective when it becomes law and applies to  
16 estates of decedents dying on or after that date. The remainder of this act is effective when it  
17 becomes law.