

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019**

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**SENATE BILL 595**

Short Title: Changes to Real Property Statutes. (Public)

Sponsors: Senator Daniel (Primary Sponsor).

Referred to: Rules and Operations of the Senate

April 4, 2019

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CHANGES AND TECHNICAL CORRECTIONS TO THE GENERAL  
3 STATUTES CONCERNING REAL PROPERTY LAW, AS RECOMMENDED BY THE  
4 NORTH CAROLINA BAR ASSOCIATION.

5 The General Assembly of North Carolina enacts:

6  
7 **PART I. RECODIFICATIONS AND CHANGES TO TENANCY BY THE ENTIRETY**

8 **SECTION 1.(a)** Chapter 41 of the General Statutes is amended by adding a new  
9 Article 5, and G.S. 41-55 through G.S. 41-69 are reserved for that Article.

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

<u>Former Citation</u>	<u>Recodified Citation</u>
G.S. 31A-5	G.S. 41-64(b)
G.S. 39-13.3(b)	G.S. 41-56(b)
G.S. 39-13.3(c)	G.S. 41-63(4)
G.S. 39-13.5	G.S. 41-56(c)
G.S. 39-13.6(a)	G.S. 41-58
G.S. 39-13.6(b)	G.S. 41-56(a)
G.S. 39-13.6(c)	G.S. 41-59(b)
G.S. 39-13.7	G.S. 41-65
G.S. 41-2.5	G.S. 41-56(d)

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

26 "Article 5.

27 "Tenancy by the Entirety.

28 "**§ 41-55. Definitions.**

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

30 (1) Conveyance. – A transfer of title to real property by deed or devise or other  
31 instrument transferring title to real property.

32 (2) Income. – Rents and profits from property held as tenants by the entirety.

33 (3) Spouses. – Two individuals then legally married to each other.

34 "**§ 41-56. Creation of tenancy by the entirety.**



1 (a) ~~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 ~~spouses~~ vests title in them as tenants by  
3 the entirety when the conveyance is ~~to~~ to one of the following:

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

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

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

7 (4) Two named persons, individuals, married to each other at the time of  
8 conveyance, whether or not identified in the conveyance as being (i) husband  
9 and wife, if at the time of conveyance they are legally married; unless a  
10 contrary intention is expressed in the conveyance. (ii) spouses, or (iii) married  
11 to each other.

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

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

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

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

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

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

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

1 semipermanent foundation having a measurement of over 32 feet in length and over eight feet in  
2 width. ~~This section does not repeal or modify any provisions of the law relating to estate or~~  
3 ~~inheritance taxes.~~

4 **"§ 41-57. Presumption of gift by spouse furnishing consideration.**

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

10 **"§ 41-58. Possession and control of entireties property.**

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

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

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

22 **"§ 41-59. Income derived from entireties property.**

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

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

27 **"§ 41-60. Liability of entireties property for debts of spouses.**

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

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

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

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

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

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

49 **"§ 41-61. Reimbursement for expenditures made on entireties property.**

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

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

7 **"§ 41-62. Insurance coverage and character of proceeds.**

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

13 **"§ 41-63. Termination of tenancy by the entirety other than upon death of a spouse; effects**  
14 **of termination.**

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

17       (1) The voluntary sale and conveyance of property held as tenants by the entirety  
18 to a third party, including a foreclosure sale pursuant to a power of sale in a  
19 deed of trust. Proceeds of the sale, including surplus funds generated from a  
20 foreclosure sale, are personal property held by the spouses as tenants in  
21 common.

22       (2) The voluntary partition between the spouses executing a joint instrument  
23 conveying the property held as tenants by the entirety to themselves as tenants  
24 in common or in severalty.

25       (3) The involuntary transfer of title of property held by spouses as tenants by the  
26 entirety. The proceeds resulting from the transfer are held by the spouses as  
27 tenants by the entirety. An involuntary transfer of title includes:

28       a. A sale pursuant to Article 15 of Chapter 35A of the General Statutes  
29 as to an incompetent spouse.

30       b. An appropriation in a condemnation proceeding by the North Carolina  
31 State Highway Commission.

32       (4) ~~A~~The conveyance from ~~a husband or a wife~~ ~~one spouse~~ to the other spouse  
33 of ~~his or her interest in real property, or any interest therein,~~ property held by  
34 ~~such husband and wife~~ as tenants by the entirety ~~entirety.~~ ~~dissolves such~~  
35 ~~tenancy in the property or interest conveyed and~~The conveyance vests ~~such~~  
36 the property or interest formerly held ~~by the~~as tenants by the entirety in the  
37 ~~grantee~~ ~~other spouse.~~ The joinder of a spouse in a conveyance made by the  
38 grantor pursuant to this subdivision is not necessary, but the conveyance is  
39 subject to the provisions of G.S. 52-10 or G.S. 52-10.1, except that an  
40 acknowledgment by the spouse of the grantor is not necessary.

41       (5) An absolute divorce of the spouses. An absolute divorce converts property  
42 held as tenants by the entirety to a tenancy in common.

43       (6) A judgment of forfeiture ordering divestment of an interest in tenancy by the  
44 entirety pursuant to Chapter 72D of the General Statutes. The effect of a  
45 judgment when one spouse is an innocent person as defined in G.S. 75D-5(i)  
46 is governed by G.S. 75D-8(a).

47 **"§ 41-64. Termination of tenancy by the entirety upon death of a spouse.**

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

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

6 **"§ 41-65. Entireties property conveyed to trusts.**

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

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

18 (1) The ~~husband and wifespouses~~ remain married.

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

21 (3) Both ~~husband and wifespouses~~ are current beneficiaries of the joint trust if the  
22 real property is conveyed to that trust or of each separate trust if the ~~real~~  
23 property is conveyed in equal shares to their separate trusts.

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

31 (d) The trustee acting under the express provisions of a trust instrument or with the  
32 written consent of both ~~the husband and wifespouses~~ may waive the ~~immunity from the claims~~  
33 ~~of separate creditors provided under this section~~application of G.S. 41-60(a)(1) as to any specific  
34 creditor or any specifically described property including all separate creditors of a ~~husband and~~  
35 ~~wifespouse~~ or all former tenancy by the entirety property conveyed to the trustee.

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

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

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

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

45 (3)(4) The ~~husband and wifespouses~~ are "beneficiaries" of a trust if they are  
46 distributees or permissible distributees of the income or principal of the trust  
47 whether or not other ~~persons~~individuals are also current or future  
48 beneficiaries of the trust.

49 (f) Notice may be given in a statement in the conveyance of the tenancy by the entireties  
50 real property to the trust that the real property is held under this section and that, as of the date

1 of the conveyance, the requirements are met providing for the application of G.S. 41-60(a)(1)  
2 protecting the real property from liability for the individual debts of either spouse.

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

6 **"§ 41-66. Common law of tenancy by the entirety; equitable principles.**

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

10  
11 **PART II. CHANGES TO JOINT TENANCY**

12 **SECTION 2.(a)** Chapter 41 of the General Statutes is amended by creating a new  
13 Article 6, and G.S. 41-70 through G.S. 41-79 are reserved for that Article.

14 **SECTION 2.(b)** The following General Statutes are recodified in Article 6 of  
15 Chapter 41 of the General Statutes, as created by subsection (a) of this section, as set forth in the  
16 table below:

<u>Former Citation</u>	<u>Recodified Citation</u>
17 Third sentence of G.S. 41-2(a)	Second sentence of G.S. 41-73(c)(3)
18 Fourth sentence of G.S. 41-2(a)	First sentence of G.S. 41-73(c)(3)
19 First sentence of G.S. 41-2(b)	G.S. 41-72(a)
20 Second sentence of G.S. 41-2(b)	G.S. 41-72(d)
21 Third sentence of G.S. 41-2(b)	G.S. 41-74
22 Fourth sentence of G.S. 41-2(b)	G.S. 41-72(b)
23 Fifth sentence of G.S. 41-2(b)	G.S. 41-72(c)

24  
25 **SECTION 2.(c)** Article 6 of Chapter 41 of the General Statutes, as created by  
26 subsection (a) of this section, and containing the sections recodified in subsection (b) of this  
27 section, reads as rewritten:

28 "Article 6.

29 "Joint Tenancy.

30 **"§ 41-70. Definitions.**

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

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

37 **"§ 41-71. Creation of a joint tenancy with right of survivorship.**

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

41 (b) A conveyance to two or more persons creates a joint tenancy with right of  
42 survivorship if the instrument expresses an intent to create a joint tenancy with right of  
43 survivorship. The following words in the instrument shall be deemed to express an intent to create  
44 a joint tenancy with right of survivorship unless the instrument otherwise provides: "joint tenants  
45 with right of survivorship", "joint tenants", "joint tenancy", "tenants in common with right of  
46 survivorship", "joint with right of survivorship", "with right of survivorship", "to them or to the  
47 survivor of them", or words of similar import.

48 **"§ 41-72. Determination of the interests of joint tenants in a joint tenancy with right of**  
49 **survivorship.**

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

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

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

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

17 **"§ 41-73. Termination of a joint tenancy with right of survivorship.**

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

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

23           (2)     The execution of an instrument with a third party by all of the joint tenants  
24 that does not convey all of their interests in the property held in the joint  
25 tenancy to the third party, including a lease, executory contract of sale, option  
26 to purchase, or deed of trust, and an intention to terminate expressly appears  
27 in the instrument.

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

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

33           (1)     The conveyance to a third party by a joint tenant of all of that joint tenant's  
34 interest in the property held in the joint tenancy, including a foreclosure sale  
35 pursuant to a power sale in a deed of trust.

36           (2)     The execution of an instrument with a third party by a joint tenant that does  
37 not convey all of that joint tenant's interest to the third party, including a lease,  
38 executory contract of sale, option to purchase, or deed of trust, and an intention  
39 to terminate expressly appears in the instrument.

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

46           (4)     The filing by a joint tenant of a petition to partition.

47       (c)     When a termination occurs, a tenancy in common is created as follows:

48           (1)     If a termination occurs under subdivision (1) of subsection (a) of this section  
49 because of the conveyance of all of the joint tenants' interests to a third party,  
50 a tenancy in common is created among the tenants as to any proceeds of sale  
51 or surplus funds generated from a foreclosure sale.

- 1           (2)    If a termination occurs because of the execution by all of the joint tenants of  
 2           an instrument described in subdivisions (2) or (3) of subsection (a) of this  
 3           section, a tenancy in common is created among the tenants.
- 4           (3)    ~~Upon conveyance to a third party by~~If a termination occurs under subdivision  
 5           (a) of subsection (b) of this section because one of two the joint tenants holding  
 6           ~~property in joint tenancy with right of survivorship, conveys all of that joint~~  
 7           ~~tenant's interest to a third party and there are only two joint tenants, a tenancy~~  
 8           in common is created between the third party and the remaining other joint  
 9           ~~tenant. Upon conveyance~~If there are more than two joint tenants and one of  
 10           the joint tenants conveys all of that joint tenant's interests to a third party by  
 11           ~~less than all of three or more joint tenants holding property in joint tenancy~~  
 12           ~~with right of survivorship, party, a tenancy in common is created among the~~  
 13           third party and the remaining joint tenants, who remain joint tenants with right  
 14           of survivorship as between or among themselves.
- 15           (4)    If a termination occurs because of the execution by a joint tenant of an  
 16           instrument described in subdivisions (2) or (3) of subsection (b) of this section  
 17           or because of the filing of a petition by a joint tenant as provided in subsection  
 18           (4) of subsection (b) of this section, and there are two joint tenants, a tenancy  
 19           in common is created between the joint tenant causing the termination and the  
 20           other joint tenant. If there are more than two joint tenants, a tenancy in  
 21           common is created among the joint tenant causing the termination and the  
 22           remaining joint tenants who continue as joint tenants with right of  
 23           survivorship as between or among themselves.

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

- 26           (1)    The filing of a judgment against one joint tenant.  
 27           (2)    The filing of a bankruptcy petition by one joint tenant.  
 28           (3)    When married individuals holding an interest as tenants by the entirety in a  
 29           joint tenancy with one or more other joint tenants divorce. Unless the divorced  
 30           individuals agree otherwise, the divorced individuals shall be deemed to hold  
 31           their existing interest equally as joint tenants.

32           (e)    Nothing in this section shall limit the manner or effect of a termination ordered by a  
 33           court of competent jurisdiction.

34           **"§ 41-74. Application of 120-hour survival requirement to joint tenancy with right of**  
 35           **survivorship.**

36           ~~Joint~~The provisions of G.S. 28A-24-3 apply to joint tenancy interests among two or more  
 37           joint tenants holding property in joint tenancy with right of survivorship are subject to the  
 38           ~~provisions of G.S. 28A-24-3 upon the death of one or more of the joint tenants.~~

39           **"§ 41-75. Inapplicability of Article.**

40           This Article does not apply to any of the following:

- 41           (1)    Executors or trustees in there representative capacity.  
 42           (2)    Partnerships governed by Chapter 59 of the General Statutes.  
 43           (3)    Business entities.  
 44           (4)    Accounts established under G.S. 42-2.1 or G.S. 42-2.2 to the extent  
 45           inconsistent with the provisions of this Article.  
 46           (5)    Life estates.

47           **"§ 41-76. Common law of joint tenancy; equitable principles.**

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





1 Grantee hereunder shall extend to those claiming by, through, or under them  
2 pursuant to G.S. 47-18 and G.S. 47-20.

3 (6) Lease. – An agreement creating a leasehold interest in real property described  
4 in that agreement or in a memorandum describing that agreement.

5 (7) Mortgage. – A mortgage, deed of trust, or other instrument conveying a legal  
6 or equitable interest in real property for purposes of obtaining a security  
7 interest therein as security for an underlying obligation or any ancillary  
8 security instrument, as defined in G.S. 45-42.3(a), recorded therewith and  
9 related thereto and that includes the legal or equitable interest in real property  
10 described in the instrument.

11 (8) Mortgage transaction. – A settlement transaction involving a mortgage from  
12 the current owner of record, encumbering the real property which is the  
13 subject of the notice of settlement. The term may include (i) a refinancing of  
14 an existing mortgage, (ii) a home equity loan, (iii) a line of credit, (iv) a  
15 construction loan, or (v) other financing to be secured by a mortgage on the  
16 real property. The term does not include a conveyance transaction as defined  
17 in this section.

18 (9) Mortgagee. – The grantee, beneficiary, or secured party in the mortgage. The  
19 term includes the trustee under a deed of trust on their behalf.

20 (10) Mortgagor. – The person executing a mortgage pursuant to a settlement.

21 (11) Notice agent. – One of the following:

22 a. An attorney licensed under Chapter 84 of the General Statutes who is  
23 representing any of the following:

24 1. The current owner of record.

25 2. The grantee in a conveyance transaction.

26 3. The mortgagor in a mortgage transaction, by the current owner  
27 of record or their assignee.

28 4. The title insurance company or agent insuring the real estate  
29 title that is subject to the settlement.

30 b. The mortgagee for a mortgage transaction, duly authorized by the  
31 current owner of record or their agent to register a notice of settlement  
32 pursuant to this Chapter, where the mortgagee is handling the  
33 settlement and closing of the transaction, regardless of how funds are  
34 disbursed.

35 (12) Person. – Any individual, firm, corporation, governmental unit or subdivision,  
36 or other legal entity that may hold a legal or equitable title to, or interest in,  
37 real property under the laws of this State.

38 (13) Settlement. – The delivery of the instruments conveying a legal or equitable  
39 title to, or interest in, real property to the grantee or mortgagee for valuable  
40 consideration as agreed upon by the parties to the transaction.

41 (14) Transaction documents. – A deed, lease, or mortgage and any other documents  
42 registered simultaneously with and as part of the settlement, or referenced in  
43 the deed, lease, or mortgage and related to the settlement, including any  
44 ancillary security instruments as provided in G.S. 45-42.3.

45 **"§ 47I-4. Instrument; designation; filing; index of notice of settlement.**

46 (a) The notice agent may register an instrument designated a 'Notice of Settlement' in the  
47 office of the register of deeds of the county or counties in which the real property is situated with  
48 reference to a settlement that the notice agent in good faith reasonably believes will occur within  
49 60 days of the registration.

(b) A contract between the current owner of record and a grantee shall be conclusively deemed sufficient authority for the notice agent to register a notice of settlement, unless the contract specifically prohibits registration of a notice.

(c) The notice of settlement shall be (i) indexed in the indexes provided for real estate conveyances, (ii) registered as a real estate instrument, and (iii) indexed in the name of the current owner of record identified in the notice of settlement and in the names of the parties as identified in the notice of settlement.

(d) The applicable registration fee under G.S. 161-10 shall be paid at the time the notice of settlement is registered.

**"§ 47I-5. Signature; content; acknowledgement.**

The notice of settlement shall contain at least all of the following:

- (1) The name, street address, and telephone number of the notice agent registering the notice of settlement.
- (2) The current owner of record.
- (3) The grantee, if a conveyance transaction.
- (4) The mortgagee, if a mortgage transaction.
- (5) Sufficient information to identify the real property based on the public records.
- (6) The date the notice of settlement will expire, not to exceed 60 days from the date of registration. If no date is provided, the notice shall expire 60 days after registration.
- (7) Execution by the notice agent.
- (8) Acknowledgment of the execution by the notice agent as required by law for the registration of instruments.

**"§ 47I-6. Forms.**

The form of the notice of settlement shall be substantially as follows:

"NOTICE OF SETTLEMENT

Notice Agent: \_\_\_\_\_  
 Street address: \_\_\_\_\_  
 Telephone number: \_\_\_\_\_  
 Current Owner(s) of Record: \_\_\_\_\_  
 Street address: \_\_\_\_\_  
 Telephone number: \_\_\_\_\_  
 Grantee(s) (for conveyance transaction): \_\_\_\_\_  
 Street address: \_\_\_\_\_  
 Telephone number: \_\_\_\_\_  
 Mortgagee (for mortgage transaction): \_\_\_\_\_  
 Officer: \_\_\_\_\_  
 Street address: \_\_\_\_\_  
 Telephone number: \_\_\_\_\_

NOTICE is hereby given pursuant to Chapter 47I of the North Carolina General Statutes of a settlement affecting title to the following described real property of the current owner of record.

The undersigned is duly authorized by the current owner of record (and their client, if different) to record this Notice of Settlement, and is:

- a North Carolina licensed attorney representing the current owner of record, the grantee, the mortgagor, or the title insurance company or agent insuring the real estate title related to the settlement, OR
- the mortgagee for a mortgage transaction by the current owner of record.

The property subject to this Notice of Settlement is:

1 [INSERT SUFFICIENT INFORMATION REGARDING THE PROPERTY FOR IT TO BE  
2 CLEARLY IDENTIFIED FROM THE PUBLIC RECORDS, SUCH AS LEGAL  
3 DESCRIPTION, VESTING DOCUMENT REFERENCE, STREET ADDRESS AND/OR TAX  
4 MAP REFERENCES]

5  
6 This Notice of Settlement shall be effective from the time of, and for \_\_\_\_\_ days [INSERT  
7 NUMBER OF DAYS, NOT TO EXCEED 60 DAYS], or if none stated, the term of this Notice  
8 of Settlement shall be 60 days, following the day of registration of this Notice of Settlement in  
9 the office of the register of deeds of the county in which the above real property is situated.

10  
11  
12 Signature of Notice Agent

13  
14 [NOTARIAL CERTIFICATE OF ACKNOWLEDGMENT IN COMPLIANCE WITH  
15 NORTH CAROLINA LAW]"

16 **"§ 47I-7. Constructive notice; priority.**

17 (a) The registration of a notice of settlement shall be constructive notice of the anticipated  
18 settlement and interest of the grantee or mortgagee affecting the real property identified in the  
19 notice of settlement.

20 (b) Subject to the provisions of subsection (c) of this section, the registration of the notice  
21 of settlement shall establish priority of title of the grantee or mortgagee under the deed, lease, or  
22 mortgage from the time of registration of the notice of settlement as against subsequent  
23 purchasers for value, lien creditors, and others claiming an interest in the real property identified  
24 in the notice of settlement through any person who holds the legal or equitable title to, or interest  
25 in, the real property and through chain of title of the current owner of record identified in the  
26 notice of settlement. Priority shall be determined as if the deed or lease to the grantee or mortgage  
27 to mortgagee had been registered at the time of the registration of the notice of settlement. A  
28 deed, lease, or mortgage delivered pursuant to the settlement for which the notice of settlement  
29 is duly registered in the county or counties where the real property is situated prior to expiration  
30 of the notice of settlement shall continue the priority of the grantee or mortgagee in the subject  
31 real property established by the notice of settlement and the priority of the grantee or mortgagee  
32 under the duly registered deed, lease, or mortgage shall be a continuously perfected property  
33 interest in the real property from the time of registration of the notice of settlement under this  
34 Chapter, against subsequent purchasers for value, lien creditors, and other persons claiming an  
35 interest in the real property through any person who holds of record the legal or equitable title to,  
36 or interest in, the real property.

37 (c) A duly registered notice of settlement shall not affect the priority of any of the  
38 following:

- 39 (1) The designation of a lien agent and the related notices to lien agent filed  
40 pursuant to Article 2 of Chapter 44A of the General Statutes for the subject  
41 real property and discoverable online at an internet Web site for that purpose  
42 pursuant to G.S. 44A-1.2(f)(7) prior to registration of the deed, lease, or  
43 mortgage.
- 44 (2) Potential claims for which no lien agent is required to be appointed under  
45 G.S. 44-11.1(a).
- 46 (3) Valid conveyances, liens, or encumbrances, other than transaction documents,  
47 upon the property duly registered with the register of deeds or filed with the  
48 clerk in the county or counties in which the real property is located and  
49 discoverable online at least five business days prior to registration of the deed,  
50 lease, or mortgage pursuant to this Chapter.



**"§ 47I-8. Duration of notice; priority; number of filings; not renewable.**

(a) The notice of settlement shall be effective as provided in G.S. 47I-7(a) from the time of registration and for the number of days stated in the notice of settlement, but no more than 60 days following the day of, registration of the notice of settlement pursuant to this Chapter. If the deed, lease, or mortgage delivered pursuant to a settlement for which the notice of settlement was registered has not been properly registered in the county or counties where the real property is situated prior to the expiration of the notice of settlement, the notice of settlement shall be void, and the priority of the grantee or mortgagee under the deed, lease, or mortgage registered subsequent to the expiration shall date from the time of registration of the deed, lease, or mortgage, and not from the time of the registration of the expired notice of settlement.

(b) Except as provided in subsection (c) of this section, registered notice of settlement may not be amended, extended, or renewed.

(c) For any particular transaction, an 'Additional Notice of Settlement' may be registered after the initial notice of settlement. The 'Additional Notice of Settlement' shall be as effective as a notice of settlement pursuant to G.S. 47I-4, but only from the date and time of its registration and subject to the terms of this Chapter as if the original notice of settlement had not been registered. An 'Additional Notice of Settlement' shall be registered and indexed as a "subsequent instrument" pursuant to the provisions of G.S. 161-14.1. Only one 'Additional Notice of Settlement' may be registered for any single notice of settlement.

**"§ 47I-9. Early termination of notice of settlement.**

The notice agent may terminate the notice of settlement by filing a notice of termination in a form substantially as follows:

**"TERMINATION OF NOTICE OF SETTLEMENT**

Current Owner(s) of Record: \_\_\_\_\_

Grantee(s) (for Conveyance Transaction): \_\_\_\_\_

Mortgagee(s) (for Mortgage Transaction): \_\_\_\_\_

Notice Agent: \_\_\_\_\_

NOTICE is hereby given pursuant to Chapter 47I of the North Carolina General Statutes that the Notice of Settlement filed by the undersigned \_\_\_\_\_ (date or recording information) is hereby terminated.

\_\_\_\_\_  
Signature of Notice Agent

**[NOTARIAL CERTIFICATE OF ACKNOWLEDGMENT IN COMPLIANCE WITH NORTH CAROLINA LAW]**

A notice of termination shall be registered and indexed as a "subsequent instrument" pursuant to the provisions of G.S. 161-14.1.

**"§ 47I-10. Severability.**

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to that end, the provisions of this Chapter are severable."

**SECTION 3.(b)** G.S. 47-18 reads as rewritten:

**"§ 47-18. Conveyances, contracts to convey, options and leases of land.**

(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainer or lesser but from the time of registration thereof in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the

land in that county. Unless otherwise stated either on the registered instrument or on a separate registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the office of the register of deeds shall have priority based on the order of registration as determined by the time of registration, and (ii) if instruments are registered simultaneously, then the instruments shall be presumed to have priority as determined by:

- (1) The earliest document number set forth on the registered instrument.
- (2) The sequential book and page number set forth on the registered instrument if no document number is set forth on the registered instrument.

The presumption created by this subsection is rebuttable.

...

(c) Notwithstanding any provision in subsection (a) to the contrary, the priority of conveyances of land and leases is subject to the priority established under a notice of settlement registered in compliance with the provisions of Chapter 47I of the General Statutes."

**SECTION 3.(c)** G.S. 47-20 reads as rewritten:

**"§ 47-20. Deeds of trust, mortgages, conditional sales contracts, assignments of leases and rents; effect of registration.**

(a) No deed of trust or mortgage of real or personal property, or of a leasehold interest or other chattel real, or conditional sales contract of personal property in which the title is retained by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time of registration thereof as provided in this ~~Article~~Article, or according to priority established pursuant to compliance with the provisions of Chapter 47I of the General Statutes, provided however that any transaction subject to the provisions of the Uniform Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions of that act and not by this section. Unless otherwise stated either on the registered instrument or on a separate registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the office of the register of deeds shall have priority based on the order of registration as determined by the time of registration, and (ii) if instruments are registered simultaneously, then the instruments shall be presumed to have priority as determined by:

- (1) The earliest document number set forth on the registered instrument.
- (2) The sequential book and page number set forth on the registered instrument if no document number is set forth on the registered instrument.

The presumption created by this subsection is rebuttable.

...."

**SECTION 3.(d)** G.S. 161-14.1 reads as rewritten:

**"§ 161-14.1. Recording subsequent entries as separate instruments.**

(a) As used in this section, the following terms mean:

- (1) Original instrument. – The previously recorded instrument that is modified, amended, restated, supplemented, assigned, satisfied, terminated, revoked, or cancelled by a subsequent instrument.
- (2) Recording data. – The book and page number or document number that indicates where an instrument is recorded in the office of the register of deeds.
- (3) Subsequent instrument. – Any instrument presented for registration that indicates in its title or within the first two pages of its text that it is intended or purports to modify, amend, restate, supplement, assign, satisfy, terminate, revoke, or cancel a previously registered instrument. Examples of subsequent instruments include the following:

a. The appointment or designation of a substitute trustee in a deed of trust.

...

t. An additional notice of settlement pursuant to G.S. 47I-8(c).

1                   u.       A termination of notice of settlement pursuant to G.S. 47I-9.

2       ...."

3                   **SECTION 3.(e)** This Part is effective January 1, 2020, and applies to notices of  
4 settlement registered on or after that date.

5  
6 **PART IV. REAL PROPERTY TECHNICAL CORRECTIONS**

7                   **SECTION 4.(a)** Section 4.1 of S.L. 2018-80 reads as rewritten:

8                   "**SECTION 4.1.** Sections 1.2 and 1.3 of this act become effective October 1, 2018, and apply  
9 to instruments presented for registration on or after that date. Section 3.1 of this act becomes  
10 effective October 1, 2018. Section 2.1 of this act becomes effective when this act becomes law  
11 and applies to deeds and deeds of trust presented for registration on or after that date. Section 2.2  
12 of this act becomes effective when this act becomes law and applies to all instruments entered  
13 into before, on, or after that date. The remainder of this act is effective when this act becomes  
14 law and applies to mortgages and deeds of trust entered into before, on, or after that date."

15                   **SECTION 4.(b)** G.S. 47-17.1 reads as rewritten:

16 "**§ 47-17.1. Documents registered or ordered to be registered in certain counties to**  
17 **designate draftsman; exceptions.**

18                   The register of deeds of any county in North Carolina shall not accept for registration, nor  
19 shall any judge order registration pursuant to G.S. 47-14, of any deeds or deeds of trust, executed  
20 after January 1, 1980, unless the first page of the deeds or deeds of trust bears an entry showing  
21 the name of ~~either the person or law firm who drafted the instrument. This section shall not apply~~  
22 ~~to other instruments presented for registration. For the purposes of this section, the register of~~  
23 ~~deeds shall accept the written representation of the individual presenting the deed or deed of trust~~  
24 ~~for registration, or any individual reasonably related to the transaction, including, but not limited~~  
25 ~~to, any employee of a title insurance company or agency purporting to be involved with the~~  
26 ~~transaction, that the individual or law firm listed on the first page is a validly licensed attorney~~  
27 ~~or validly existing law firm in this State or another jurisdiction within the United States.~~the drafter  
28 of the deed or deed of trust. The register of deeds shall not be required to verify or make inquiry  
29 concerning the capacity or authority of the person or entity shown as the drafter on the  
30 instrument."

31  
32 **PART V. EFFECTIVE DATE.**

33                   **SECTION 5.** This act is effective when it becomes law.