

Article 5.

Tenancy by the Entirety.

**§ 41-55. Definitions.**

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

- (1) Conveyance. – A transfer of title to real property by deed or devise or other instrument transferring title to real property.
- (2) Income. – Rents and profits from property held as tenants by the entirety.
- (3) Spouses. – Two individuals then legally married to each other. (2020-50, s. 1(a), (c).)

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

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

- (1) A named man "and wife."
- (2) A named woman "and husband."
- (3) A named individual "and wife."
- (4) A named individual "and husband."
- (5) A named individual "and spouse."
- (6) Two named individuals, married to each other at the time of conveyance, whether or not identified in the conveyance as being (i) husband and wife, (ii) spouses, or (iii) married to each other.

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

(c) When an individual owns an undivided interest in real property as a tenant in common with some individual or individuals other than his or her spouse and there occurs an actual partition of the property, a tenancy by the entirety may be created in the individual who owned the undivided interest and his or her spouse as follows:

- (1) In a division by cross-deed or deeds between or among the tenants in common, if the instrument contains both of the following:
  - a. The intent of the tenant in common to create a tenancy by the entirety with his or her spouse in this exchange of deeds is clearly stated in the granting clause of the deed or deeds to the tenant in common and his or her spouse.
  - b. The deed or deeds to the tenant in common and his or her spouse is signed by the tenant in common and is acknowledged before a certifying officer in accordance with G.S. 52-10.
- (2) In a judicial proceeding for actual partition where both spouses have the right to become parties to the proceeding and to have their pleadings state that the intent of the tenant in common is to create a tenancy by the entirety with his or her spouse. The order of partition must provide that the real property

apportioned to the tenant in common and his or her spouse shall be owned by them as tenants by the entirety.

(d) When spouses become co-owners of a mobile home, in the absence of a contrary intention appearing in the instrument of title, the spouses become tenants by the entirety with all the incidents of an estate by the entirety in real property, including the right of survivorship in the case of death of either spouse. For the purposes of this subsection, it is immaterial whether the property at any particular time shall be classified for any purpose as either real or personal. Nothing in this subsection shall be deemed to limit or prohibit any other type of ownership otherwise authorized by law. For the purposes of this subsection, the term "mobile home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. As used in this subsection, the term "mobile home" also means a double-wide mobile home which is two or more portable manufactured housing units designed for transportation on their own chassis, which connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. (1957, c. 598, s. 1; 1965, c. 878, s. 3; 1969, c. 748, s. 1; 1977, c. 375, ss. 9, 11; 1981, c. 507, s. 1; 1981 (Reg. Sess., 1982), c. 1245, s. 1; 1983, c. 449, ss. 1, 2; 1999-337, s. 11; 2020-23, s. 13; 2020-50, ss. 1(a)-(c), 3.1.)

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

Except for purposes of equitable distribution as provided under G.S. 50-20 and G.S. 50-21, when an individual furnishing the consideration for real property causes title to be placed in the name of the individual and the individual's spouse, there is a presumption of a gift to the individual's spouse of an entirety interest, which is rebuttable by clear, cogent, and convincing evidence. (2020-50, s. 1(a), (c).)

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

(a) Spouses shall have an equal right to the control, use, possession, and income from property held by them as tenants by the entirety.

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

(c) The mortgage or sale of an interest in real property held by spouses as tenants by the entirety where one or both spouses is incompetent is governed by the provisions of Article 15 of Chapter 35A of the General Statutes. (1981 (Reg. Sess., 1982), c. 1245, s. 1; 1983, c. 449, ss. 1, 2; 2020-50, s. 1(a)-(c).)

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

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

(b) For income tax purposes, each spouse is considered to have received one-half the income or loss from property held by the spouses as tenants by the entirety. (1981 (Reg. Sess., 1982), c. 1245, s. 1; 1983, c. 449, ss. 1, 2; 2020-50, s. 1(a)-(c).)

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

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

- (1) The property may not be held liable for individual debts of either spouse and a judgment lien against one spouse alone does not attach to the property. The property may be conveyed by joint deed of both spouses to anyone of their choice free and clear of a judgment lien against either spouse.
- (2) The property is liable for obligations of both spouses and a judgment lien against both spouses upon a joint obligation attaches to the property which may be sold under execution to satisfy the judgment.

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

- (1) Upon divorce of the spouses, in which event the property is converted to a tenancy in common as provided in G.S. 41-63(5) and the judgment lien against the spouse will attach at that time to the undivided interest of the spouse.
- (2) Upon death of a spouse, in which event the surviving spouse acquires the entire legal title as provided in G.S. 41-64 and the judgment lien against the surviving spouse will attach at that time to the property. (2020-50, s. 1(a), (c).)

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

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

(b) When the tenancy by the entirety is converted to a tenancy in common by absolute divorce or otherwise, responsibility for expenditures for the property held as tenants in common is allocated as provided by the law governing tenants in common, unless otherwise directed in a court order such as in an equitable distribution proceeding. (2020-50, s. 1(a), (c).)

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

Where property held as tenants by the entirety is insured, unless the parties by contract have provided what disposition should be made of the insurance proceeds, the policy and insurance proceeds inure to the benefit of the entire estate even though the policy was issued in the name of only one spouse and paid for by that spouse, and the insurance proceeds become divisible personal property held by the spouses as tenants in common. (2020-50, s. 1(a), (c).)

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

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

- (1) The voluntary sale and conveyance of property held as tenants by the entirety to a third party, including a foreclosure sale pursuant to a power of sale in a deed of trust. Proceeds of the sale, including surplus funds generated from a foreclosure sale, are personal property held by the spouses as tenants in common.
- (2) The voluntary partition between the spouses executing a joint instrument conveying the property held as tenants by the entirety to themselves as tenants in common or in severalty.
- (3) The involuntary transfer of title of property held by spouses as tenants by the entirety. The proceeds resulting from the transfer are held by the spouses as tenants by the entirety. An involuntary transfer of title includes:
  - a. A sale pursuant to Article 15 of Chapter 35A of the General Statutes as to an incompetent spouse.
  - b. An appropriation in a condemnation proceeding by the North Carolina State Highway Commission.
- (4) The conveyance from one spouse to the other spouse of his or her interest in property held as tenants by the entirety. The conveyance vests the property or interest formerly held as tenants by the entirety in the other spouse. The joinder of a spouse in a conveyance made by the grantor pursuant to this subdivision is not necessary, but the conveyance is subject to the provisions of G.S. 52-10 or G.S. 52-10.1, except that an acknowledgment by the spouse of the grantor is not necessary.
- (5) An absolute divorce of the spouses. An absolute divorce converts property held as tenants by the entirety to a tenancy in common.
- (6) A judgment of forfeiture ordering divestment of an interest in tenancy by the entirety pursuant to Chapter 75D of the General Statutes. The effect of a judgment when one spouse is an innocent person as defined in G.S. 75D-5(i) is governed by G.S. 75D-8(a). (1957, c. 598, s. 1; 1965, c. 878, s. 3; 1977, c. 375, s. 9; 2020-50, s. 1(a)-(c).)

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

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

(b) Where a slayer, as defined in G.S. 31A-3(3), and decedent hold property as tenants by the entirety, one-half of the property shall pass upon the death of the decedent to the decedent's estate, and one-half shall be held by the slayer during the slayer's life, subject to pass upon the slayer's death to the slain decedent's heirs or devisees as defined in G.S. 28A-1-1. (1961, c. 210, s. 1; 1979, c. 572; 2020-50, s. 1(a)-(c).)

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

(a) Any real property held by spouses as tenants by the entirety and conveyed (i) to a joint trust or (ii) in equal shares to two separate trusts shall no longer be held by the spouses as tenants by the entirety and shall be disposed of by the terms of the trust or trusts. However, subject to

subsection (b) of this section, the provisions of G.S. 41-60(a)(1) shall apply to the property held in trust as if the spouses had continued to hold the property as tenants by the entirety.

(b) The provisions of G.S. 41-60(a)(1) shall apply to the property held in trust as long as all of the following apply:

- (1) The spouses remain married.
- (2) The property continues to be held in the trust or trusts as provided in subsection (a) of this section.
- (3) Both spouses are current beneficiaries of the joint trust if the real property is conveyed to that trust or of each separate trust if the property is conveyed in equal shares to their separate trusts.

(c) If immediately preceding the death of the first spouse to die, the provisions of G.S. 41-60(a)(1) apply to the real property held in trust upon the death of a spouse, the provisions of G.S. 41-60(b)(2) shall apply to the property.

(d) The trustee acting under the express provisions of a trust instrument or with the written consent of both spouses may waive the application of G.S. 41-60(a)(1) as to any specific creditor or any specifically described property including all separate creditors of a spouse or all former tenancy by the entirety property conveyed to the trustee.

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

- (1) The reference to the real property conveyed to or held in the trust shall be deemed to include the proceeds arising from the involuntary transfer of title of the real property.
- (2) The term "joint trust" means a revocable or irrevocable trust of which both the husband and wife are the settlors.
- (3) The term "separate trusts" means revocable or irrevocable trusts of which one spouse is the settlor of one trust and the other spouse is the settlor of the other trust.
- (4) The spouses are "beneficiaries" of a trust if they are distributees or permissible distributees of the income or principal of the trust whether or not other individuals are also current or future beneficiaries of the trust.

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

(g) A person entering into a transaction involving real property held in trust under this section may request confirmation from the trustee whether the provisions of G.S. 41-60(a)(1) are met at the time of the transaction. (2014-115, s. 33(a); 2015-205, s. 5; 2019-178, s. 4(a)-(c); 2020-50, s. 1(a)-(c).)

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

The common law of tenancy by the entirety and principles of equity supplement this Article except to the extent it conflicts or is inconsistent with a provision of this Article or the laws of this State. (2020-50, s. 1(a), (c).)

**§ 41-67:** Reserved for future codification purposes.

§ 41-68: Reserved for future codification purposes.

§ 41-69: Reserved for future codification purposes.