

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

(a) Any real property held by a husband and wife as a tenancy by the entireties and conveyed (i) to a joint trust or (ii) in equal shares to two separate trusts shall no longer be held by the husband and wife as tenants by the entirety and shall be disposed of by the terms of the trust or trusts, but, subject to the provisions of subsection (b) of this section, the real property shall have the same immunity from the claims of the separate creditors of the husband and wife as would exist if the spouses had continued to hold the property as tenants by the entireties.

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

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

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

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

(e) For purposes of this section:

- (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 conversion of the real property.
- (2) The reference to a "joint trust" means a revocable or irrevocable trust of which both the husband and wife are the settlors, and the reference to "separate trusts" means revocable or irrevocable trusts of which the husband is the settlor of one trust and the wife is the settlor of the other trust.
- (3) The husband and wife are "beneficiaries" of a trust if they are distributees or permissible distributees of the income or principal of the trust whether or not other persons are also current or future beneficiaries of the trust.

(f) Notice that the real property held in trust receives immunity from the claims of separate creditors may be given in a statement in the conveyance of the tenancy by the entireties 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 of subsection (b) of this section are met.

(g) A person entering into a transaction involving real property held in trust under this section may request confirmation from the trustee whether the requirements of this section providing immunity from the claims of separate creditors are met at the time of the transaction. (2014-115, s. 33(a); 2015-205, s. 5; 2019-178, s. 4(a), (b).)