

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

1

SENATE BILL 451

Short Title: Joint Survivorship Clarifications. (Public)

Sponsors: Senators Newton and Daniel (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 29, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REPLACE AND CLARIFY THE GENERAL STATUTES PERTAINING TO
3 THE CREATION AND SEVERANCE OF JOINT TENANCY WITH RIGHT OF
4 SURVIVORSHIP PERTAINING TO REAL PROPERTY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 41-2 is repealed.

7 **SECTION 2.** Article 1 of Chapter 41 of the General Statutes is amended by adding
8 a new section to read:

9 **"§ 41-2.3. Joint tenancy.**

10 (a) The following definitions apply in this section:

11 (1) Conveyance. – A transfer of title to real or personal property by deed,
12 devise, assignment, or other means of transferring title.

13 (2) Severance. – A termination of the right of survivorship resulting in the
14 creation of a tenancy in common, as provided in this section. This term is
15 used in the context of an estate with a joint tenancy with right of
16 survivorship.

17 (b) A conveyance to two or more persons creates a tenancy in common unless a joint
18 tenancy with right of survivorship is created as provided in subsection (c) of this section or a
19 tenancy by the entirety is created as provided by law.

20 (c) A conveyance to two or more persons creates a joint tenancy with right of
21 survivorship if the instrument expresses an intent to create a joint tenancy with right of
22 survivorship. The following words in the instrument shall be deemed to express an intent to
23 create a joint tenancy with right of survivorship unless the instrument otherwise provides: "joint
24 tenants with right of survivorship," "joint tenants," "joint tenancy," "tenants in common with
25 right of survivorship," "joint with right of survivorship," "with right of survivorship," "to them
26 or to the survivor of them," or words of similar import.

27 (d) The interests of joint tenants in a joint tenancy with right of survivorship shall be
28 deemed to be equal unless otherwise provided in the instrument of conveyance. This subsection
29 shall apply to any conveyance of an interest in property created at any time that explicitly seeks
30 to create unequal ownership interest in a joint tenancy with right of survivorship. Distributions
31 made prior to October 10, 2009, that were made in equal amounts from a joint tenancy with
32 right of survivorship that sought to create unequal ownership shares shall remain valid and shall
33 not be subject to modification on the basis of this subsection.

34 (e) A joint tenancy interest conveyed to individuals married to each other and to one or
35 more other joint tenants in the same instrument of conveyance shall be held by the married



1 individuals in a tenancy by the entirety, and the married individuals shall be treated as a single
2 joint tenant, unless otherwise provided in the instrument.

3 (f) A severance of joint tenancy with right of survivorship results when any of the
4 following occur:

5 (1) All joint tenants execute an instrument for the purpose of expressing an
6 intent to sever the joint tenancy as between or among themselves.

7 (2) A joint tenant executes an instrument where the joint tenant is the grantor
8 and the grantee, if the intention to sever expressly appears in the instrument.
9 A severance under this subdivision shall be effective only upon the
10 recording, prior to the death of the severing joint tenant, of the instrument
11 expressing an intent to sever in the office of the register of deeds in the
12 county where the real property is situated.

13 (3) A joint tenant executes an instrument with a third party that does not convey
14 all of that joint tenant's interest to the third party, including a lease,
15 executory contract of sale, option to purchase, mortgage or deed of trust, and
16 an intention to sever expressly appears in the instrument.

17 (4) A deed of trust or mortgage encumbering an interest in a joint tenancy is
18 foreclosed.

19 (5) A joint tenant files a petition to partition.

20 (6) A joint tenant conveys all of that joint tenant's interest to a third party.

21 (g) When a severance occurs, a tenancy in common is created as follows:

22 (1) If all joint tenants execute an instrument among themselves that results in
23 severance, a tenancy in common is created among the tenants.

24 (2) If a severance occurs under the circumstances described in subdivision (2),
25 (3), or (4) of subsection (e) of this section, a tenancy in common is created
26 between the severing tenant and the remaining joint tenant, but if there are
27 more than two joint tenants, a tenancy in common is created among the
28 severing joint tenant and the remaining joint tenants who continue as joint
29 tenants with right of survivorship as between themselves.

30 (3) When one of two joint tenants conveys all of that joint tenant's interest to a
31 third party, a tenancy in common is created between the third party and the
32 remaining joint tenant. If there are more than two joint tenants and one of the
33 joint tenants conveys all of that joint tenant's interest to a third party, a
34 tenancy in common is created among the third party and the remaining joint
35 tenants who continue as joint tenants with right of survivorship as between
36 or among themselves.

37 (h) The following occurrences do not result in severance of joint tenancy with right of
38 survivorship:

39 (1) Upon a filing of a judgment against one joint tenant.

40 (2) Upon a filing of a petition by one joint tenant in bankruptcy.

41 (3) When married individuals holding an interest as tenants by the entirety in a
42 joint tenancy with one or more other joint tenants divorce, unless the
43 divorced individuals agree otherwise, and in the absence of an agreement,
44 the divorced individuals shall be deemed to hold their existing interest as
45 joint tenants, each owning one-half of their prior interest.

46 (i) Nothing in this section shall limit the manner or effect of a severance ordered by a
47 court of competent jurisdiction.

48 (j) Joint tenancy interests among two or more joint tenants holding property in joint
49 tenancy with right of survivorship are subject to the provisions of G.S. 28A-24-3 upon the
50 death of one or more of the joint tenants.

51 (k) This section does not apply to any of the following:

- 1 (1) Executors or trustees in their representative capacity.
2 (2) Partnerships governed by Chapter 59 of the General Statutes.
3 (3) Business entities.
4 (4) Accounts established under G.S. 41-2.1 or G.S. 41-2.2 to the extent
5 inconsistent with the provisions of this section.
6 (5) Life estates."

7 **SECTION 3.** This act is effective when it becomes law. Nothing in this act shall be
8 deemed to invalidate estates created or severed prior to the effective date of this act.