

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 799

Short Title: Unequal Shares/ Joint Tenancy Survivorship. (Public)

Sponsors: Representatives Rhyne; and Faison.

Referred to: Judiciary II.

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT INTERESTS IN A JOINT TENANCY WITH A RIGHT OF
SURVIVORSHIP MAY BE HELD IN UNEQUAL SHARES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 41-2 reads as rewritten:

"§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership.

Except as otherwise provided herein, in all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant, but shall descend or be vested in the heirs, executors, or administrators, respectively, of the tenant so dying, in the same manner as estates held by tenancy in common: Provided, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, are vested in the surviving partner, in order to enable him to settle and adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the joint business; but as soon as the same is effected, the survivor shall account with, and pay, and deliver to the heirs, executors and administrators respectively of such deceased partner all such part, share, and sums of money as he may be entitled to by virtue of the original agreement, if any, or according to his share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their deceased partners. Nothing in this section prevents the creation of a joint tenancy with right of survivorship in real or personal property if the instrument creating the joint tenancy expressly provides for a right of survivorship, and no other document shall be necessary to establish said right of survivorship. Upon conveyance to a third party by less than all of three or more joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created among the third party and the remaining joint tenants, who remain joint tenants with right of survivorship as between themselves. Upon conveyance to a third party by one of two joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created between the third party and the remaining joint tenant. A conveyance of any interest in real property by a party to ~~himself and~~ one or more other parties, whether or not jointly with the grantor-party, as joint tenants with right of survivorship, creates in the parties that interest, if the instrument of conveyance expressly provides for a joint tenancy with right of survivorship. The interests of the grantees shall be deemed to be equal unless otherwise specified in the conveyance. Any joint tenancy interest held by a husband and wife, unless otherwise specified, shall be deemed to be held as a single tenancy by the entirety, which shall be treated as a single party when determining interests in the joint tenancy with right of survivorship. If joint tenancy interests among three or more joint tenants are held in unequal shares, upon the death of one joint tenant, the share of the deceased joint tenant shall be divided



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1 among the surviving joint tenants according to their respective pro rata interest and not equally,
2 unless the creating instrument provides otherwise."

3 **SECTION 2.** It is the intent of the General Assembly to recognize the validity of
4 joint tenancies with the right of survivorship held in unequal shares. As such, a conveyance of
5 any interest in property prior to the effective date of this act that explicitly sought to create
6 unequal ownership interests in a joint tenancy with right of survivorship shall be deemed to
7 have created unequal ownership interests in the amounts specified. It is not the intent of the
8 General Assembly to disturb past distributions from joint tenancies with the right of
9 survivorship. As such, distributions made prior to the effective date of this act that were made
10 in equal amounts from a joint tenancy with the right of survivorship that sought to create
11 unequal ownership shares shall remain valid and shall not be subject to modification on the
12 basis of this act.

13 **SECTION 3.** This act is effective when it becomes law.