

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 799
Committee Substitute Favorable 4/28/09

Short Title: Unequal Shares/Joint Tenancy Survivorship.

(Public)

Sponsors:

Referred to:

March 26, 2009

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

4 The General Assembly of North Carolina enacts:

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

6 **"§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership.**

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



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1 tenant, the share of the deceased joint tenant shall be divided among the surviving joint tenants
2 according to their respective pro rata interest and not equally, unless the creating instrument
3 provides otherwise."

4 **SECTION 2.** This act is effective when it becomes law and shall apply to any
5 conveyance of an interest in property created prior to the effective date that explicitly sought to
6 create unequal ownership interests in a joint tenancy with right of survivorship; however,
7 distributions made prior to the effective date of this act that were made in equal amounts from a
8 joint tenancy with the right of survivorship that sought to create unequal ownership shares shall
9 remain valid and shall not be subject to modification on the basis of this act.