

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1147  
Second Edition Engrossed 5/2/89  
Judiciary III Senate Committee Substitute Adopted 6/4/90  
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Short Title: Clarify Survivorship Law.

(Public)

Sponsors:

Referred to:

April 10, 1989

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP MAY BE CREATED IF THE RIGHT OF SURVIVORSHIP IS EXPRESSLY PROVIDED FOR IN THE INSTRUMENT CREATING THE JOINT TENANCY.

The General Assembly of North Carolina enacts:

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

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

~~In~~ 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

1 partnership stock is usually settled between joint merchants and the representatives of  
2 their deceased partners. Nothing in this section prevents the creation of a joint tenancy  
3 with right of survivorship in real or personal property if the instrument creating the joint  
4 tenancy expressly provides for a right of survivorship, and no other document shall be  
5 necessary to establish said right of survivorship. Upon conveyance to a third party by  
6 less than all of three or more joint tenants holding property in joint tenancy with right of  
7 survivorship, a tenancy in common is created among the third party and the remaining  
8 joint tenants, who remain joint tenants with right of survivorship as between themselves.  
9 Upon conveyance to a third party by one of two joint tenants holding property in joint  
10 tenancy with right of survivorship, a tenancy in common is created between the third  
11 party and the remaining joint tenant."

12 Sec. 2. G.S. 41-2.2 is rewritten to read:

13 **"§ 41-2.2. Joint ownership of corporate stock and investment securities.**

14 (a) In addition to other forms of ownership, shares of corporate stock or  
15 investment securities may be owned by ~~a husband and wife~~ any parties as joint tenants  
16 with rights of survivorship, and not as tenants in common, in the manner provided in  
17 this section.

18 (b) (1) A joint tenancy in shares of corporate stock or investment  
19 securities as provided by this section shall exist when such shares or  
20 securities indicate that they are owned with the right of survivorship,  
21 or otherwise clearly indicate an intention that upon the death of  
22 either ~~spouse-party~~ the interest of the decedent shall pass to the  
23 surviving ~~spouse-party~~.

24 (2) Such a joint tenancy may also exist when a broker or custodian holds  
25 the shares or securities for the joint tenants and by book entry or  
26 otherwise indicates (i) that the shares or securities are owned with the  
27 right of survivorship, or (ii) otherwise clearly indicates that upon the  
28 death of either ~~spouse-party~~, the interest of the decedent shall pass to  
29 the surviving ~~spouse-party~~. Money in the hands of such broker or  
30 custodian derived from the sale of, or held for the purpose of, such  
31 shares or securities shall be treated in the same manner as such shares  
32 or securities.

33 (c) Upon the death of a joint tenant his interest shall pass to the surviving joint  
34 tenant. The interest of the deceased joint tenant, even though it has passed to the  
35 surviving joint tenant, remains liable for the debts of the decedent in the same manner as  
36 the personal property included in his estate, and recovery thereof shall be made from the  
37 surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

38 (d) Nothing herein contained shall be construed to repeal or modify any of the  
39 provisions of G.S. 105-2, 105-11, and 105-24, relating to the administration of the  
40 inheritance tax laws, or any other provisions of the law relating to inheritance taxes."

41 Sec. 3. Nothing in this act shall be construed to affect the validity of  
42 instruments that provide for a right of survivorship executed prior to the effective date  
43 of this act.

44 Sec. 4. This act shall become effective January 1, 1991.