

**AN ACT TO AMEND THE LAWS GOVERNING JOINT TENANCY WITH
RIGHT OF SURVIVORSHIP TO ALLOW JOINT TENANTS TO OWN
UNEQUAL INTERESTS IN REAL PROPERTY**

G.S. § 41-2

Proposed by the North Carolina Bar Association Real Property Section

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Executive Summary:

At common law, joint tenancies with right of survivorship require unity of interest at time of conveyance and equal interests of the joint tenants. In modern estate planning, these are often not the intent of the parties, as expressed by the conveyances themselves. So in order to clarify the statutory override of the common law provisions, and to clarify application of G.S. 39-1.1 "intent of the parties", the proposed provisions would (1) clarify that the conveyance of *any interest* could be from the grantor to third parties, or from the grantor to him/herself and third parties, and (2) that these could be unequal interests if so stated.

Talking Points:

- Currently the statute requires interest in property held in a joint tenancy with right of survivorship to be equal interests (i.e. 2 people must each own a ½ undivided interest) when as tenants in common they could own unequal interests (i.e. 1/3 undivided interest and 2/3 undivided interest).
- Currently parties are trying to convey unequal interests allowed under common law and this revision would allow such conveyances to comply with the statute.

1 representatives of their deceased partners. Nothing in this section prevents the
2 creation of a joint tenancy with right of survivorship in real or personal property if
3 the instrument creating the joint tenancy expressly provides for a right of
4 survivorship, and no other document shall be necessary to establish said right of
5 survivorship. Upon conveyance to a third party by less than all of three or more
6 joint tenants holding property in joint tenancy with right of survivorship, a
7 tenancy in common is created among the third party and the remaining joint
8 tenants, who remain joint tenants with right of survivorship as between
9 themselves. Upon conveyance to a third party by one of two joint tenants holding
10 property in joint tenancy with right of survivorship, a tenancy in common is
11 created between the third party and the remaining joint tenant. A conveyance of
12 any interest in real property by a party to himself and one or more other parties,
13 whether or not jointly with the grantor-party, as joint tenants with right of
14 survivorship, creates in the parties that interest, if the instrument of conveyance
15 expressly provides for a joint tenancy with right of survivorship. The interests of
16 the grantees under any such conveyance may be held by them in equal or unequal
17 shares. Any interest held by a husband and wife, not otherwise specifying, shall
18 be deemed to be held as a single tenancy by the entirety interest in the percentage
19 stated. If joint tenancy interests among three or more joint tenants are held in
20 unequal shares, upon the death of one joint tenant, the share of the deceased joint
21 tenant shall be divided among the surviving joint tenants according to their
22 respective pro rata interests and not equally, unless the creating instrument
23 provides otherwise.

24 Effective date: All transactions before, on or after the effective date of enactment.