

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 556
Senate Judiciary Committee Substitute Adopted 6/19/24
Corrected Copy 6/20/24

Short Title: Tenancy in Com./E-Notary/SmallClaims Changes.

(Public)

Sponsors:

Referred to:

April 4, 2023

A BILL TO BE ENTITLED
AN ACT TO CODIFY THE LAW OF TENANCY IN COMMON IN THIS STATE, AS
RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION, TO MAKE
CHANGES TO NORTH CAROLINA'S NOTARY PUBLIC LAWS, AS REQUESTED BY
THE DEPARTMENT OF THE SECRETARY OF STATE, TO PROHIBIT COUNTIES
AND CITIES FROM ADOPTING CERTAIN ORDINANCES, RULES, AND
REGULATIONS THAT WOULD PROHIBIT LANDLORDS FROM REFUSING TO
RENT TO TENANTS BECAUSE A TENANT'S LAWFUL SOURCE OF INCOME TO
PAY RENT INCLUDES FUNDING FROM A FEDERAL HOUSING ASSISTANCE
PROGRAM, TO CLARIFY AUTHORIZED LITIGATION COSTS IN SUMMARY
EJECTMENT MATTERS, AND TO ESTABLISH THE SMALL CLAIM APPEAL
PERIOD BEGINNING WHEN A JUDGMENT IS RENDERED.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 41 of the General Statutes is amended by adding a new Article
to read:

"Article 7.

"Tenancy in Common.

"§ 41-80. Definitions; construction.

The following definitions apply in this Article:

- (1) Actual ouster. – An entry onto or possession of the property by a cotenant that is a clear, positive, and unequivocal act, equivalent to an open denial of another cotenant's rights or title in the property and putting the other cotenant out of seizin.
- (2) Constructive ouster. – A presumption of ouster when a tenant in common has sole possession of the property for 20 years and all of the following criteria are met:
 - a. There is no acknowledgement on the part of that tenant in common of the rights or title of the cotenant in the property.
 - b. There is no demand or claim by the cotenant for rents, profits, or possession.
 - c. The cotenant had no disability to act at the time the property's sole possession by the tenant in common commenced.
- (3) Conveyance. – A transfer of title to real property by deed, devise, or other means of transferring title.
- (4) Cotenant. – A cotenant of a tenant in common.



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(5) Property. – An interest in real property held as a whole by tenancy in common.

"§ 41-81. Nature of tenancy in common, in general.

Tenancy in common ownership includes the following characteristics:

(1) Two or more persons hold separate undivided interests in the property.

(2) The interests of all cotenants in the property are deemed to be equal unless otherwise specified in the instrument of conveyance. Interests of cotenants in the property acquired by intestacy are as determined under Chapter 29 of the General Statutes.

(3) Cotenants hold by several and distinct titles with each cotenant having a right to possession of the property.

(4) Cotenants need not take title from the same instrument or at the same time.

(5) Cotenants do not have a right of survivorship.

"§ 41-82. Creation of a tenancy in common.

(a) A tenancy in common is created by a conveyance that meets one of the following criteria:

(1) The conveyance is to two or more grantees and expresses an intent that the grantees hold separate undivided interests in the property.

(2) The conveyance is to one or more grantees and expresses an intent that the grantor and the grantee or grantees hold separate undivided interests in the property.

(3) The conveyance does not express an intent described in subdivision (1) or (2) of this subsection and, with nothing else appearing, does not under the circumstances create an estate in property other than a tenancy in common.

(b) The following words in the instrument shall be deemed to express an intent to create a tenancy in common unless the instrument provides otherwise: "equal portions," "equally divided," "share and share alike," "share equally," "their respective portions."

(c) An interest in property held by cotenants who subsequently marry each other remains held by tenancy in common unless by separate instrument the spouses convey the interest to themselves to create a tenancy by the entirety or a joint tenancy with right of survivorship.

(d) Unless otherwise provided in the instrument of conveyance, a tenancy in common interest conveyed to grantees married to each other shall be held as tenants by the entirety and the married grantees shall be treated as a single tenant in common, including where any of the following occur:

(1) The tenancy in common interest is conveyed to the married grantees and to one or more other grantees as tenants in common in the same instrument.

(2) A tenant in common's interest in the property is conveyed to the married grantees.

(e) A tenancy in common may be created by operation of law, including the following:

(1) When two or more individuals take undivided interests in real property upon intestate succession.

(2) Upon termination of a joint tenancy with right of survivorship as provided in G.S. 41-73.

(3) Upon termination of a tenancy by the entirety by voluntary sale or conveyance, voluntary partition, or divorce as provided in G.S. 41-63(1), (2), and (5).

"§ 41-83. Possession of property held as cotenants.

(a) Each cotenant has a right to enter upon the property and to occupy and use it subject to the rights of all other cotenants.

(b) The possession of one cotenant is the possession of any other cotenant. Unless an actual ouster occurs, one cotenant cannot bring an action against another cotenant for taking possession of property as to which each has a right of possession as a cotenant.

"§ 41-84. Authority to bind another cotenant.

An act by a cotenant in relation to the property (i) cannot bind another cotenant with respect to a third party unless it was previously authorized or subsequently ratified by the other cotenant and (ii) is presumed to have been done by authority and for the benefit of the other cotenant.

"§ 41-85. Rents and profits from property held as cotenants.

(a) Cotenants share proportionally in the rents and profits of the property received from third parties according to their respective interests in the property.

(b) If a tenant in common has received more than that tenant in common's share of the rents and profits from the property, a cotenant may bring an action for an accounting to recover the cotenant's share of the rents and profits.

"§ 41-86. Reimbursement of a cotenant.

(a) A cotenant who makes necessary repairs to the property is entitled to contribution from all other cotenants for those repairs unless one of the following applies:

(1) Exclusive possession. – The repairs were made by the cotenant during a period when that cotenant had exclusive possession of the property.

(2) Income producing property. – The cotenant is entitled to a credit for necessary repairs made by that cotenant in an action for partition where the other cotenant seeks an accounting of rents and profits from the property.

(b) A cotenant who makes improvements to the property is not entitled to contribution from the other cotenant or a credit in an action where the other cotenant seeks an accounting of rents and profits from the property for those improvements; except that, in an action for partition, the cotenant who made the improvements is entitled to contribution from the other cotenant in one of the following forms:

(1) The lesser of (i) the value added to the property as of the date of the commencement of the proceeding or (ii) the actual costs of the improvements, in accordance with G.S. 46A-27.

(2) The right to have the improved part of the property allocated to the cotenant who made the improvements if the allocation can be done without prejudice to the other cotenant.

(c) A cotenant who pays taxes due or interest on an existing encumbrance of the property is entitled to reimbursement from the other cotenant for the amount paid; except that no entitlement to reimbursement exists for interest paid on an existing encumbrance for any period during which the cotenant who paid interest is in exclusive possession of the property. Rights arising from payment by any cotenant of taxes, interest, and costs that are a lien upon the property are governed by G.S. 105-363.

"§ 41-87. Modification by agreement.

Nothing in this Article shall be deemed to prohibit cotenants from entering into an agreement with respect to the property, including possession, sharing rents and profits, reimbursement related to the property, and the authority of a cotenant to bind another cotenant.

"§ 41-88. Actual ouster; action to compel admission of ousted cotenant into possession.

A cotenant claiming ouster by another cotenant may bring an action, other than an action for partition, seeking to compel the cotenant in possession to admit the ousted cotenant into possession.

"§ 41-89. Adverse possession by a cotenant.

(a) A cotenant without color of title may acquire title to another cotenant's interest in the property by 20 years' adverse possession as provided by G.S. 1-40, subject to the following:

(1) Possession of the property by the cotenant is not considered adverse until there is an actual ouster or constructive ouster of the other cotenant.

(2) If a cotenant purports to convey the whole estate, all of the following apply:

a. The grantee receives only the grantor's interest.

- 1 b. The instrument of conveyance is not color of title as against the
2 grantor's cotenant.
- 3 c. Adverse possession by the grantee for 20 years is required to bar entry
4 of the grantor's cotenant.
- 5 (b) A cotenant with color of title may acquire title to the other cotenant's interest in the
6 property by seven years' adverse possession as provided by G.S. 1-38, subject to the following:
- 7 (1) Possession of the property by the cotenant is not considered adverse until there
8 is an actual ouster of the other cotenant.
- 9 (2) If a cotenant purports to convey the whole estate, all of the following apply:
- 10 a. The grantee receives only the grantor's interest.
- 11 b. The instrument of conveyance is not color of title against the grantor's
12 cotenant.
- 13 c. Seven years' adverse possession by the grantee under the deed will not
14 ripen into title to the whole estate.
- 15 (3) If a grantee receives a deed purporting to convey the whole estate in a judicial
16 proceeding to sell the interest of a cotenant, including a sale for partition, a
17 tax foreclosure, or a sale to pay debts, the deed is deemed color of title and the
18 grantee can acquire title as against all other cotenants by seven years' adverse
19 possession.
- 20 (c) A tenant in common claiming adverse possession must prove ouster or constructive
21 ouster by clear and convincing evidence.
- 22 **"§ 41-90. Alienation of a cotenant's undivided interest in the property.**
- 23 (a) Each cotenant may convey, lease, mortgage, place a deed of trust on, or place a lien
24 on that cotenant's undivided interest in the property without the joinder of any other cotenant.
- 25 (b) The grantee of a cotenant's interest in the property acquires only the interest of the
26 grantor and becomes a cotenant, even if the instrument of conveyance purports to convey the
27 whole estate.
- 28 **"§ 41-91. Obligations among cotenants; fiduciary relationship.**
- 29 (a) Cotenants occupy a relationship of trust and confidence to each other as to the
30 property that obligates them to put forth their best efforts to protect and secure the common
31 interest.
- 32 (b) Tenancy in common does not create a fiduciary relationship among the cotenants
33 unless a cotenant undertakes to act for the benefit of another cotenant or otherwise engages in
34 conduct creating a fiduciary relationship.
- 35 **"§ 41-92. Acquisition of title by one cotenant.**
- 36 (a) If a cotenant acquires title to the property upon a sale of the property to pay the debt
37 for which (i) that cotenant is partially liable or (ii) all of the cotenants are liable, the title inures
38 to the benefit of all of the cotenants.
- 39 (b) If a third party, acting in collusion with or as agent of one of the cotenants, acquires
40 title to property upon a sale of the property to pay the debt for which all of the cotenants are liable
41 and subsequently conveys the title to that cotenant, the title inures to the benefit of all of the
42 cotenants.
- 43 (c) If a third party, without collusion, acquires title to the property upon a sale of the
44 property to pay a debt for which all of the cotenants are liable and subsequently conveys that title
45 to one of the cotenants, that cotenant takes title to the property in that cotenant's own right, valid
46 as against the other cotenants.
- 47 (d) A cotenant who receives an interest in the property because of the death of an ancestor
48 holding an interest in the property may acquire the ancestor's interest in the property upon a sale
49 to pay the debt of the deceased ancestor secured by the ancestor's interest in the property.
- 50 (e) A cotenant may acquire title to another cotenant's interest in the property upon a sale
51 of the other cotenant's interest in the property to pay the debt of the other cotenant.

"§ 41-93. Rights of creditors in property held by tenancy in common.

(a) The interest of a cotenant in the property may be sold pursuant to a proceeding for satisfaction of a debt to a creditor, including the following:

(1) In an execution sale where the creditor has obtained a judgment lien against that cotenant.

(2) Under a power of sale in a mortgage or deed of trust against that cotenant's interest in the property.

(3) In a judicial sale where that cotenant's interest in the property is ordered to be sold.

(b) A sale of an interest of a cotenant as described in subsection (a) of this section does not affect another cotenant's interest in the property.

"§ 41-94. Action by a cotenant against a third party.

(a) A cotenant may recover possession of the property for the benefit of all of the cotenants from a third party claiming adversely to the cotenants.

(b) In an action against a third party for trespass, a cotenant may recover only that cotenant's proportional amount of the total damages recovered.

"§ 41-95. Termination of a tenancy in common.

Events terminating a tenancy in common include the following:

(1) Partition of the property under Chapter 46A of the General Statutes.

(2) Voluntary partition of the property among cotenants executing one or more instruments conveying the property held as cotenants to themselves in separate tracts.

(3) Conveyance of all interests in the property to one grantee.

(4) Acquisition by one cotenant of the ownership of the property by adverse possession.

"§ 41-96. Inapplicability of Article.

Except as otherwise explicitly provided, this Article does not apply to the following:

(1) Property in a general partnership covered by Chapter 59 of the General Statutes.

(2) An action for partition and its effect under Chapter 46A of the General Statutes.

(3) Tenancy in common in personal property.

"§ 41-97. Common law of tenancy in common; equitable principles.

The common law of tenancy in common and principles of equity supplement this Article, except to the extent that they conflict or are inconsistent with the provisions of this Article or the laws of this State."

SECTION 2.(a) G.S. 10B-25(n) reads as rewritten:

"(n) This section shall expire at 12:01 A.M. on ~~June 30, 2024~~; July 1, 2025; provided, however, all notarial acts made in accordance with this section and while this section is in effect shall remain effective and shall not need to be reaffirmed."

SECTION 2.(b) G.S. 10B-200(b) reads as rewritten:

"(b) This Article expires ~~June 30, 2024~~; June 30, 2025."

SECTION 2.(c) This section is effective when it becomes law.

SECTION 3. G.S. 10B-20(p) reads as rewritten:

"(p) ~~A~~ Except as provided herein, a notary shall maintain the confidentiality of a principal's documents and information at all times. A notary may disclose confidential information in response to any of the following:

(1) A valid subpoena.

(2) A court order.

(3) A warrant.

(4) A written request from the Department made in connection with an administrative, civil, or criminal investigation into the conduct of a notary pursuant to G.S. 10B-60 or the conduct of a licensee or third-party vendor pursuant to G.S. 10B-134.23(c).

(5) A written request from all principals to a specific notarial transaction.

(q) Any journal entries or communication technology recordings, as defined in Article 2 of this Chapter, created by a notary in the course of performing a notarial act are not public records under G.S. 132-1."

SECTION 4. G.S. 10B-134.9, as amended by S.L. 2023-57, reads as rewritten:

"§ 10B-134.9. (Effective July 1, 2024) Requirements and procedures for remote electronic notarial acts.

...

(d) In judicial actions or proceedings, any notary public ~~registered with~~ commissioned by the Secretary, whether or not registered as an electronic notary, may administer an oath or affirmation to a ~~witness-principal~~ that does not require remote electronic notarization of a record or a notarial certificate and seal when done in person, provided all of the following apply:

(1) The notary is physically located in this State at the time the oath or affirmation is administered to the remotely located ~~witness-principal~~.

...

(f) ~~Information-Except as herein provided by G.S. 10B-20(p), information~~ gained from a remotely located principal in the course of performing a remote electronic notarization shall be treated as confidential by the electronic notary."

SECTION 5.(a) G.S. 10B-134.1(4a), as amended by S.L. 2023-57, reads as rewritten:

"(4a) Geolocation. – Identification of the geographical location of a remotely located principal or device used by a remotely located principal through the use of global positioning systems or other digital information processed via the internet."

SECTION 5.(b) G.S. 10B-134.19, as amended by S.L. 2023-57, reads as rewritten:
"§ 10B-134.19. (Effective July 1, 2024) Platform licensure by Secretary.

...

(c) The application shall set forth at least all of the following:

...

(3) The proposed technology to address identity verification ~~and geolocation requirements~~ requirements, geolocation, and explanations regarding security governance and the designation of a chief security officer or its equivalent.

...

(e) The Secretary shall award a license only to applicants who are of good moral character and who provide a communication technology capable of all of the following:

(1) A manner of ensuring that the electronic record presented for remote electronic notarization is the same record electronically signed by the remotely located principal.

(2) Securely creating and storing, or transmitting securely to be securely stored, the communication technology recording, keeping confidential the questions asked as part of any identity proofing and the means and methods used to generate the credential analysis.

(3) A manner of ensuring that real-time communications are secure from unauthorized interception, access, or viewing.

(4) Reasonable security measures to prevent unauthorized access to all of the following:

a. The live transmission of the remote electronic notarial act.

- b. Any communication technology recording of the remote electronic notarial act.
- c. The verification methods and credentials used to verify the identity of the remotely located principal.
- d. The electronic documents presented for remote electronic notarization.
- (5) Geolocation of the remotely located principal when the remotely located principal is conducting the remote electronic notarization via a device capable of identifying the geographic location of the remotely located principal at the time of the remote electronic notarization.

...."

SECTION 6. If technology becomes available so that geolocation may be broadly utilized without a global positioning system to determine geographic location of remotely located principals to a remote electronic notarization, the Secretary shall amend permanent rules adopted pursuant to Chapter 10B of the General Statutes to include processes and requirements for the use of geolocation technology in remote electronic notarization in accordance with Part 4A of Article 2 of Chapter 10B of the General Statutes.

SECTION 7. G.S. 42-14.1 reads as rewritten:

"§ 42-14.1. ~~Rent control.~~Preemption of local regulations.

(a) No county or city as defined by G.S. 160A-1 may enact, maintain, or enforce any ordinance or resolution which regulates the amount of rent to be charged for privately owned, single-family or multiple unit residential or commercial rental property. ~~This section shall not be construed as prohibiting any county or city, or any authority created by a county or city for that purpose, from:~~

- (1) ~~Regulating in any way property belonging to that city, county, or authority;~~
- (2) ~~Entering into agreements with private persons which regulate the amount of rent charged for subsidized rental properties; or~~
- (3) ~~Enacting ordinances or resolutions restricting rent for properties assisted with Community Development Block Grant Funds.~~

(b) No county or city as defined by G.S. 160A-1 may enact, maintain, or enforce any ordinance or resolution which prohibits an owner, lessee, sublessee, assignee, managing agent, or other person having the right to lease, sublease, or rent a housing accommodation from refusing to lease or rent the housing accommodation to a person because the person's lawful source of income to pay rent includes funding from a federal housing assistance program.

(c) This section shall not be construed as prohibiting any county or city, or any authority created by a county or city for that purpose, from:

- (1) Regulating in any way property belonging to that city, county, or authority.
- (2) Entering into agreements with private persons which regulate the amount of rent charged for subsidized rental properties.
- (3) Enacting ordinances or resolutions restricting rent for properties assisted with Community Development Block Grant Funds.
- (4) Enacting ordinances or resolutions applicable to owners or operators that receive funding or financial incentives from the county or city."

SECTION 8. G.S. 42-46 reads as rewritten:

"§ 42-46. Authorized fees, costs, and expenses.

(a) Late Fee. – In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five calendar days or more ~~late~~ late, with the first day being the day after the rent was due. If the rent:

- (1) Is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater.

- (2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars (\$4.00) or five percent (5%) of the weekly rent, whichever is greater.
- (3) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and applicable to leases entered into on or after that date.

...
(i) Out-of-Pocket Expenses and Litigation Costs. – In addition to the late fees referenced in subsections (a) and (b) of this section and the administrative fees of a landlord referenced in subsections (e) through (g) of this section, a landlord also is permitted to charge and recover from a tenant the following actual out-of-pocket expenses:

- (1) Filing fees charged by the court.
- (2) Costs for service of process pursuant to G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure and G.S. 42-29.
- (3) ~~Reasonable~~ If the landlord is the prevailing party, reasonable attorneys' fees actually paid or owed, pursuant to a written lease, not to exceed fifteen percent (15%) of the amount owed by the tenant, or fifteen percent (15%) of the monthly rent stated in the lease if the eviction is based on a default other than the nonpayment of rent. In cases where a tenant appeals a summary ejectment to district court, a landlord is entitled to an award of all actual reasonable attorneys' fees paid or owed if a court determines that the tenant knew, or should have known, the appeal was frivolous, unreasonable, without foundation, or in bad faith or solely for the purpose of delay

...."

SECTION 9.(a) G.S. 7A-224 reads as rewritten:

"§ 7A-224. Rendition and entry of judgment.

Judgment in a small claim action is rendered in writing and signed by the ~~magistrate~~ magistrate, or is rendered electronically by the magistrate. The judgment so rendered is a judgment of the district court, and is recorded and indexed as are judgments of the district and superior court generally. Entry is made as soon as practicable after rendition."

SECTION 9.(b) G.S. 7A-228 reads as rewritten:

"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal.

(a) The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. The exercise of the authority of the chief district court judge in allowing magistrates to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given orally in open court upon announcement or after ~~entry of judgment~~ a judgment is rendered. If not announced in open court, written notice of appeal must be filed in the office of the clerk of superior court within 10 days after ~~entry of judgment~~ a judgment is rendered. The appeal must be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment. If the judgment was mailed to the parties, then the time computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6.

(b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after ~~entry of a judgment is rendered~~ a judgment is rendered pursuant to subsection (a), and by serving a copy of the notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10

1 days after ~~entry of a judgment is rendered~~ in a summary ejectment action, and within 20 days
2 after ~~entry of a judgment is rendered~~ in all other actions, shall result in the automatic dismissal
3 of the appeal. Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify
4 as an indigent for the appeal and is denied, that party shall have an additional five days to perfect
5 the appeal by paying the court costs. The failure to demand a trial by jury in district court by the
6 appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

7 (b1) A person desiring to appeal as an indigent shall, within 10 days of ~~entry of judgment~~
8 ~~by the magistrate, a magistrate rendering a judgment,~~ file an affidavit that ~~he or she~~ the person is
9 unable by reason of poverty to pay the costs of appeal. Within 20 days after ~~entry of judgment, a~~
10 judgment is rendered, a superior or district court judge, magistrate, or the clerk of the superior
11 court may authorize a person to appeal to district court as an indigent if the person is unable to
12 pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an
13 indigent if the person files the required affidavit and meets one or more of the criteria listed in
14 G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may
15 authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an
16 indigent if the person cannot pay the costs of appeal.

17 The district court may dismiss an appeal and require the person filing the appeal to pay the
18 court costs advanced if the allegations contained in the affidavit are determined to be untrue or
19 if the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal,
20 the court shall affirm the judgment of the magistrate.

21"

22 **SECTION 10.** Sections 3, 4, and 5 of this act become effective July 1, 2024. Section
23 9 of this act is effective October 1, 2024, and applies to judgments rendered on or after that date.
24 The amendments contained in Section 8 of this act are intended to be clarifying of the General
25 Assembly's intent under previous amendments to this statute. Except as otherwise provided, this
26 act is effective when it becomes law.