GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 217

Short Title:	Real Property-Tenancy in Common Changes.	(Public)
Sponsors:	Senators Galey, Daniel, and Overcash (Primary Sponsors).	
Referred to:	Rules and Operations of the Senate	

March 8, 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.

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.**

(a) The following definitions apply in this Article:

(1) Actual ouster. – An entry onto or possession of the property by a tenant in common that is a clear, positive, and unequivocal act, equivalent to an open denial of the cotenant's rights or title in the property and putting the 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. No acknowledgement on the part of that tenant in common of the rights or title of the cotenant in the property.

b. No demand or claim on the part of the cotenant for rents, profits, or possession.

c. The cotenant has no disability to act at the time the possession commenced.

(3) Conveyance. – A transfer of title to real property by deed, devise, or other means of transferring title.

(b) The following rules of construction apply in this Article, unless the context requires otherwise:

(1) References to "property" mean the real property held in a tenancy in common as a whole.

(2) References to "cotenant" mean the cotenant of a tenant in common, and references to the singular "cotenant" of a tenant in common mean the plural "cotenants" if there is more than one cotenant of a tenant 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 the tenants in common in the property may be equal or unequal percentages. The interests are deemed to be equal unless otherwise specified in the instrument of conveyance. The percentage of interests acquired by intestacy are determined under Chapter 29 of the General Statutes.

(3) The tenants in common hold by several and distinct titles with each tenant in common having a right to possession of the property.

(4) The tenants in common need not take from the same instrument or at the same time.

(5) The tenants in common 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 that expresses an intent that the grantees hold separate undivided interests in the property.

(2) The conveyance is to one or more grantees that 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 terms in an instrument of conveyance shall be deemed to express an intent to create a tenancy in common unless the instrument provides otherwise:

(1) Equal portions.

(2) Equally divided.

(3) Share and share alike.

(4) Share equally.

(5) Their respective portions.

(c) An interest in property held by tenants in common who subsequently marry each other remains held as 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 in a tenancy 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 by that tenant in common 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 tenants in common.**

(a) Each tenant in common has a right to enter upon the property and to occupy and use it subject to the rights of the cotenant.

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

"**§ 41-84. Authority of a tenant in common to bind cotenant.**

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

"**§ 41-85. Rents and profits from property held as tenants in common.**

(a) Tenants in common share proportionally in the rents and profits of the property received from third parties according to their 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 tenant in common.**

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

(1) Exclusive possession. – The tenant in common is not entitled to contribution from the cotenant for necessary repairs made during a period of exclusive possession.

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

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

(1) The lesser of the (i) value added to the property or (ii) 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 tenant in common if the allocation can be done without prejudice to the cotenant.

(c) A tenant in common who pays taxes due or interest on an existing encumbrance of the property is entitled to reimbursement from the cotenant for the amount paid; except that no entitlement to reimbursement exists for interest paid on an existing encumbrance for any period where the tenant in common is in exclusive possession of the property. Payment by any tenant in common of unpaid taxes, including any associated interest and costs, constituting a lien upon the property, is governed by G.S. 105-363.

"**§ 41-87. Modification by agreement.**

Nothing in this Article shall be deemed to prohibit tenants in common 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 tenant in common to bind a cotenant.

"**§ 41-88. Actual ouster; action for ejectment.**

A tenant in common claiming ouster by a cotenant may bring an action for ejectment, but not for partition, seeking to compel the cotenant in possession to admit the ousted tenant in common into possession.

"**§ 41-89. Adverse possession by a tenant in common.**

(a) A tenant in common without color of title may acquire title to the 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 is not considered adverse until there is an actual ouster or constructive ouster of the cotenant by the tenant in common.

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

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

b. The instrument of conveyance is not color of title as against the grantor's cotenant.

c. Adverse possession by the grantee for 20 years is required to bar entry of the grantor's cotenant.

(b) A tenant in common with color of title may acquire title to the cotenant's interest in the property by seven years' adverse possession as provided by G.S. 1-38, subject to the following:

(1) Possession of the property is not considered adverse until there is an actual ouster of the cotenant by the tenant in common.

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

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

b. The instrument of conveyance is not color of title against the grantor's cotenant.

c. Seven years' possession by the grantee under the deed will not ripen into title to the whole estate.

(3) If a grantee receives a deed purporting to convey the whole estate in a judicial proceeding to sell the interest of a tenant in common, including a sale for partition, a tax foreclosure, or a sale to pay debts, the deed is deemed color of title and the grantee can acquire title as against all tenants in common by seven years' adverse possession.

"**§ 41-90. Alienation of tenant in common's undivided interest in the property.**

(a) Each tenant in common may convey, lease, mortgage, place a deed of trust, or place a lien on property on that tenant in common's undivided interest in the property to a cotenant or a third party without the joinder of any other cotenant.

(b) The grantee of an interest in the property from a tenant in common acquires only the interest of the grantor and becomes a tenant in common with the cotenant, even if the instrument of conveyance purports to convey the whole estate.

"**§ 41-91. Obligations among tenants in common; fiduciary relationship.**

(a) Tenants in common occupy a relationship of trust and confidence to each other as to the property that obligates all the tenants in common to put forth their best efforts to protect and secure the common interest.

(b) Tenancy in common does not create a fiduciary relationship among the tenants in common unless a tenant in common undertakes to act for the benefit of a cotenant or otherwise engages in conduct creating a fiduciary relationship.

"**§ 41-92. Acquisition of title by one tenant in common.**

(a) If a tenant in common acquires title to the property upon a sale of the property to pay the debt for which (i) a tenant in common is partially liable as a cotenant or (ii) all of the tenants in common are liable, the title inures to the benefit of all of the tenants in common.

(b) If a third party, with collusion, acting as agent of one of the tenants in common, acquires title to property upon a sale of the property to pay the debt for which all of the tenants in common are liable and subsequently conveys that title to that tenant in common, the title inures to the benefit of all of the tenants in common.

(c) If a third party, without collusion, acquires title to the property upon a sale of the property to pay a debt for which all of the tenants in common are liable and subsequently conveys that title to one of the tenants in common, that tenant in common takes title to the property in that tenant in common's own right, valid as against the cotenants of that tenant in common.

(d) A tenant in common who receives an interest in the property because of the death of an ancestor holding an interest in the property may acquire the ancestor's interest in the property upon a sale to pay the debt of the deceased ancestor secured by the ancestor's interest in the property.

(e) A tenant in common may acquire title to a cotenant's interest in the property upon a sale of the cotenant's interest in the property to pay the debt of the cotenant.

"**§ 41-93. Rights of creditors in a tenancy in common property.**

(a) The interest of a tenant in common 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 the tenant in common.

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

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

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

"**§ 41-94. Action against third party by tenant in common.**

(a) A tenant in common may recover possession of the property for the benefit of all of the tenants in common as against a third party claiming adversely to the tenants in common.

(b) A tenant in common may recover only for that tenant in common's proportional part of the damages recovered in an action against a third party for trespass.

"**§ 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 tenants in common executing one or more instruments conveying the property held as tenants in common to themselves in separate tracts.

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

(4) Acquisition by one tenant in common 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. This act is effective when it becomes law.