

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 845*

Short Title: Co-owners/Unequal Shares/Simultaneous Death. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

May 22, 2012

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE LAW GOVERNING CO-OWNERS WITH RIGHT OF SURVIVORSHIP UNDER THE SIMULTANEOUS DEATH ACT TO THE LAW GOVERNING THE HOLDING OF UNEQUAL SHARES IN A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-24-3 reads as rewritten:

"§ 28A-24-3. **Co-owners with right of survivorship; requirement of survival by 120 hours.**

~~Except as otherwise provided in this Article, (i) if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by at least 120 hours, one half of the property passes as if one had survived by at least 120 hours and one half as if the other had survived by at least 120 hours and (ii) if there are more than two co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of them survived the others by at least 120 hours, the property passes to the estates of each of the co-owners in the proportion that one bears to the whole number of co-owners.~~

Except as otherwise provided in this Article:

(1) If there are two or more co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of them survived the other or others by at least 120 hours, then, unless the governing instrument provides otherwise, each co-owner's pro rata interest in the property passes as if that co-owner had survived all other co-owners by at least 120 hours.

(2) If there are two or more co-owners with right of survivorship and it is established by clear and convincing evidence that at least one of them survived the other or others by at least 120 hours, then, unless the governing instrument provides otherwise, the pro rata interest or interests of the deceased owner or owners who are not established by clear and convincing evidence to have survived by at least 120 hours passes to (i) the remaining owner if only one or (ii) if more than one, then to those remaining owners according to the pro rata interest of each."

SECTION 2. G.S. 41-2(b) reads as rewritten:

"(b) The interests of the grantees holding property in joint tenancy with right of survivorship shall be deemed to be equal unless otherwise specified in the conveyance. Any joint tenancy interest held by a husband and wife, unless otherwise specified, shall be deemed



1 to be held as a single tenancy by the entirety, which shall be treated as a single party when
2 determining interests in the joint tenancy with right of survivorship. ~~If joint~~Joint tenancy
3 interests among ~~three-two~~ or more joint tenants holding property in joint tenancy with right of
4 survivorship are ~~held in unequal shares, upon the death of one joint tenant, the share of the~~
5 ~~deceased joint tenant shall be divided among the surviving joint tenants according to their~~
6 ~~respective pro rata interest and not equally, unless the creating instrument provides~~
7 ~~otherwise.~~subject to the provisions of G.S. 28A-24-3 upon the death of one or more of the joint
8 tenants.

9 This subsection shall apply to any conveyance of an interest in property created at any time
10 that explicitly sought to create unequal ownership interests in a joint tenancy with right of
11 survivorship. Distributions made prior to the enactment of this subsection that were made in
12 equal amounts from a joint tenancy with the right of survivorship that sought to create unequal
13 ownership shares shall remain valid and shall not be subject to modification on the basis of this
14 subsection."

15 **SECTION 3.** This act is effective when it becomes law.