

§ 41-65. Entireties property conveyed to trusts.

(a) Any real property held by spouses as tenants by the entirety and conveyed (i) to a joint trust or (ii) in equal shares to two separate trusts shall no longer be held by the spouses as tenants by the entirety and shall be disposed of by the terms of the trust or trusts. However, subject to subsection (b) of this section, the provisions of G.S. 41-60(a)(1) shall apply to the property held in trust as if the spouses had continued to hold the property as tenants by the entireties.

(b) The provisions of G.S. 41-60(a)(1) shall apply to the property held in trust as long as all of the following apply:

- (1) The spouses remain married.
- (2) The property continues to be held in the trust or trusts as provided in subsection (a) of this section.
- (3) Both spouses are current beneficiaries of the joint trust if the real property is conveyed to that trust or of each separate trust if the property is conveyed in equal shares to their separate trusts.

(c) If immediately preceding the death of the first spouse to die, the provisions of G.S. 41-60(a)(1) apply to the real property held in trust upon the death of a spouse, the provisions of G.S. 41-60(b)(2) shall apply to the property.

(d) The trustee acting under the express provisions of a trust instrument or with the written consent of both spouses may waive the application of G.S. 41-60(a)(1) as to any specific creditor or any specifically described property including all separate creditors of a spouse or all former tenancy by the entirety property conveyed to the trustee.

(e) For purposes of this section, all of the following apply:

- (1) The reference to the real property conveyed to or held in the trust shall be deemed to include the proceeds arising from the involuntary transfer of title of the real property.
- (2) The term "joint trust" means a revocable or irrevocable trust of which both the husband and wife are the settlors.
- (3) The term "separate trusts" means revocable or irrevocable trusts of which one spouse is the settlor of one trust and the other spouse is the settlor of the other trust.
- (4) The spouses are "beneficiaries" of a trust if they are distributees or permissible distributees of the income or principal of the trust whether or not other individuals are also current or future beneficiaries of the trust.

(f) Notice may be given in a statement in the conveyance of the tenancy by the entireties real property to the trust that the real property is held under this section and that, as of the date of the conveyance, the requirements are met providing for the application of G.S. 41-60(a)(1) protecting the real property from liability for the individual debts of either spouse.

(g) A person entering into a transaction involving real property held in trust under this section may request confirmation from the trustee whether the provisions of G.S. 41-60(a)(1) are met at the time of the transaction. (2014-115, s. 33(a); 2015-205, s. 5; 2019-178, s. 4(a)-(c); 2020-50, s. 1(a)-(c).)