

## 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.
- (5) Property. – An interest in real property held as a whole by tenancy in common. (2024-47, s. 1.)

#### **§ 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. (2024-47, s. 1.)

#### **§ 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). (2024-47, s. 1.)

#### **§ 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. (2024-47, s. 1.)

#### **§ 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. (2024-47, s. 1.)

#### **§ 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. (2024-47, s. 1.)

#### **§ 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. (2024-47, s. 1.)

#### **§ 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. (2024-47, s. 1.)

#### **§ 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. (2024-47, s. 1.)

#### **§ 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.
  - 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 cotenant with color of title may acquire title to the other 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 by the cotenant is not considered adverse until there is an actual 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.
    - b. The instrument of conveyance is not color of title against the grantor's cotenant.
    - c. Seven years' adverse 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 cotenant, 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 other cotenants by seven years' adverse possession.
- (c) A tenant in common claiming adverse possession must prove ouster or constructive ouster by clear and convincing evidence. (2024-47, s. 1.)

**§ 41-90. Alienation of a cotenant's undivided interest in the property.**

- (a) Each cotenant may convey, lease, mortgage, place a deed of trust on, or place a lien on that cotenant's undivided interest in the property without the joinder of any other cotenant.
- (b) The grantee of a cotenant's interest in the property acquires only the interest of the grantor and becomes a cotenant, even if the instrument of conveyance purports to convey the whole estate. (2024-47, s. 1.)

**§ 41-91. Obligations among cotenants; fiduciary relationship.**

- (a) Cotenants occupy a relationship of trust and confidence to each other as to the property that obligates them 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 cotenants unless a cotenant undertakes to act for the benefit of another cotenant or otherwise engages in conduct creating a fiduciary relationship. (2024-47, s. 1.)

**§ 41-92. Acquisition of title by one cotenant.**

- (a) If a cotenant acquires title to the property upon a sale of the property to pay the debt for which (i) that cotenant is partially liable or (ii) all of the cotenants are liable, the title inures to the benefit of all of the cotenants.
- (b) If a third party, acting in collusion with or as agent of one of the cotenants, acquires title to property upon a sale of the property to pay the debt for which all of the cotenants are liable and subsequently conveys the title to that cotenant, the title inures to the benefit of all of the cotenants.
- (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 cotenants are liable and subsequently conveys that title to one of the cotenants, that cotenant takes title to the property in that cotenant's own right, valid as against the other cotenants.
- (d) A cotenant 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 cotenant may acquire title to another cotenant's interest in the property upon a sale of the other cotenant's interest in the property to pay the debt of the other cotenant. (2024-47, s. 1.)

**§ 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. (2024-47, s. 1.)

**§ 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. (2024-47, s. 1.)

**§ 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. (2024-47, s. 1.)

**§ 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. (2024-47, s. 1.)

**§ 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. (2024-47, s. 1.)