

HOUSE BILL NO. 1608

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DIEHL.

3885L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 451, RSMo, by adding thereto one new section relating to the conveyance of property by husband and wife by tenancy by the entirety.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 451, RSMo, is amended by adding thereto one new section, to be
2 known as section 451.310, to read as follows:

451.310. 1. For purposes of this section, the following terms shall mean:

2 (1) "Quasi-community property", with respect to any tenancy by the entireties
3 property transferred by a husband and wife to themselves as to the trustees of a trust, an
4 undivided one hundred percent interest in such property that the trustees shall be deemed
5 to own or hold in their joint capacity as a joint and integral husband and wife legal unit
6 which cannot be severed by either trustee without the consent of both trustees;

7 (2) "Tenancy by the entireties property", any real or personal property that is or
8 was immediately prior to being transferred to the trustees of the trust, owned or deemed
9 to have been owned by a husband and wife, as tenants by the entirety;

10 (3) "Tenants by the entirety", any real or personal property owned by a husband
11 and wife in their joint capacities as a joint and integral husband and wife legal unit and not
12 in their several capacities as separate individuals;

13 (4) "Transfer", any legal action that a husband and wife take or have taken to
14 cause such tenancy by the entireties property to be subject to the terms of a trust
15 agreement, whether by transferring such property to the trustees of the trust or by
16 designating that such property be subject to the trust agreement and by the trustees
17 accepting the property so designated to be governed by the trust agreement. Such transfer

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 to, or designation and acceptance by, the trustees of tenancy by the entirety property shall
19 not be deemed to sever or cause to be severed the characteristics of tenancy by the
20 entirety property which existed immediately prior to the transfer or designation and
21 acceptance including but not limited to the creditor protection characteristics of tenancy
22 by the entirety;

23 (5) "Trust", a joint revocable trust of a husband and wife created by the husband
24 and wife, in which the husband and wife are the initial sole trustees and beneficiaries (but
25 not necessarily the sole beneficiaries) of the trust under a trust agreement;

26 (6) "Trust agreement", the trust instrument under which a husband and wife have
27 established a trust for their benefit or for the benefit of husband and wife and other
28 persons, provided that the trust agreement:

29 (a) Names both husband and wife as the initial sole trustees of the trust;

30 (b) Is created while both husband and wife are living and both husband and wife
31 are living at the time of the transfer of tenancy by the entirety property to the trustees of
32 the trust;

33 (c) Is revocable in whole or in part during the joint lifetime of husband and wife,
34 provided that both husband and wife must act jointly to revoke the trust;

35 (d) Is subject to amendment or alteration during the joint lifetime of the husband
36 and wife upon their joint consent;

37 (e) Provides that any tenancy by the entirety property after transfer to the
38 trustees of the trust remains tenancy by the entirety property and any withdrawal of such
39 property from the trust shall be deemed to be tenancy by the entirety property after such
40 property has been withdrawn from the trust;

41 (f) Provides that both husband and wife are beneficiaries (but not necessarily the
42 sole beneficiaries) of the trust; and

43 (g) Neither husband nor wife shall have the right to exercise dominion or control
44 over trust assets during their joint lifetime to the exclusion of the other spouse without the
45 prior consent of such person;

46 (7) "Trust estate", all of the assets of the trust, including but not limited to any
47 tenancy by the entirety property that is owned or held by the trustees of the trust and
48 governed by the trust agreement;

49 (8) "Trustees", a husband and wife duly named and acting as the initial trustees
50 or co-trustees of a trust created by the husband and wife.

51 2. If a husband and wife own real or personal property as tenants by the entirety
52 and transfer such property to the trustees of a trust under a trust agreement, the tenancy
53 by the entirety property transferred to the trust shall retain its characteristics as tenancy

54 by the entirety property and shall remain tenancy by the entirety property, unless the
55 trust agreement expressly provides otherwise.

56 **3. With respect to any transfer of tenancy by the entirety property to the trustees**
57 **of a trust, the trustees shall be deemed to have accepted and to hold such property in their**
58 **joint capacity as a joint and integral husband and wife legal unit and not in their capacities**
59 **as separate individuals. All such property transferred to the trustees shall be deemed to**
60 **be seized in the trustees jointly as a whole and not individually, in the exact same manner**
61 **as when such property was held by the husband and wife as tenants by the entirety, subject**
62 **to the terms of the trust agreement.**

63 **4. After any tenancy by the entirety property has been transferred by a husband**
64 **and wife to the trustees of a trust, the creditors of only husband or wife (but not both**
65 **husband and wife) shall not be able to levy against such property in order to satisfy, in**
66 **whole or in part, any judgment or decree rendered against such husband or wife, but shall**
67 **not limit the creditors of both husband and wife. Such trust assets shall be protected from**
68 **the creditors of either husband or wife (but not both husband and wife) in the same**
69 **manner as when such property was held by the husband and wife as tenants by the**
70 **entirety.**

71 **5. Nothing in this section shall prohibit or be construed to prohibit a husband and**
72 **wife who transfer tenancy by the entirety property into a trust, before or after the**
73 **effective date of this section, from creating a marital deduction trust or a credit shelter**
74 **trust for estate tax planning purposes which takes effect on the death of the first spouse,**
75 **nor from funding either or both of such trusts in their sole discretion at any time and from**
76 **time to time without destroying or altering the characteristics of the tenancy by the**
77 **entireties property after such property becomes part of the trust estate.**

78 **6. With respect to any tenancy by the entirety property transferred to the trustees**
79 **of the trust, such property shall be deemed to be in the nature of quasi-community**
80 **property, and upon the death of the first spouse to die, the surviving spouse shall be**
81 **entitled to a stepped-up basis of such property equal to one hundred percent of the fair**
82 **market value of the property at the date of death of the first spouse for estate tax and**
83 **income tax purposes to the extent that such provision is not inconsistent with or does not**
84 **conflict with applicable federal law.**

85 **7. Any real or personal property owned by either husband or wife individually that**
86 **is transferred to the trust or designated by such person to be subject to the terms of the**
87 **trust agreement and accepted by the trustees of the trust, unless explicitly designated by**
88 **such person to the contrary, shall be deemed to have been first transferred to the husband**

89 and wife, as tenants by the entirety immediately prior to such transfer or designation, and
90 such property shall be considered tenancy by the entireties property.

91 **8. Nothing in this section shall prohibit or be construed to prohibit a trustee from**
92 **acquiring, selling, disposing of, or transferring any tenancy by the entireties property**
93 **without the consent of the other trustee unless the trust agreement expressly requires the**
94 **consent of both trustees, provided no such acquisition, sale, disposition, or transfer of any**
95 **tenancy by the entireties property shall sever or be deemed to have severed the nature or**
96 **character of such property by reason of any express or implied agreement, conduct, or**
97 **course of dealing or by operation of law.**

98 **9. The proceeds derived from the sale, transfer, or disposition of any tenancy by the**
99 **entireties property within a trust and any property into which the proceeds are converted**
100 **shall remain part of the trust estate as tenancy by the entireties property.**

101 **10. In the event that any transfer of tenancy by the entireties property to the**
102 **trustees of the trust is held to be invalid by any court of proper jurisdiction while both**
103 **trustees are living, or if the trust is dissolved by a court decree or by operation of law while**
104 **both trustees are living, then immediately upon the occurrence of any such event, all of the**
105 **tenancy by the entireties property held in the trust by the trustees shall automatically be**
106 **deemed to be held by the husband and wife, as tenants by the entirety, free and clear of the**
107 **trust agreement, without any further action required on the part of the trustees or husband**
108 **and wife, as individuals.**

109 **11. In the event of any full or partial revocation of the trust agreement with respect**
110 **to any tenancy by the entireties property, such property to which such full or partial**
111 **revocation applies shall automatically be deemed to be held by husband and wife, as**
112 **tenants by the entirety, free and clear of the trust agreement, without any further action**
113 **required on the part of the trustees or husband and wife, as individuals.**

114 **12. Nothing in this section shall be deemed to affect any tenancy by the entireties**
115 **property which, before or after the effective date of this section, is transferred in any**
116 **manner other than as described in this section or to a joint revocable trust established by**
117 **a husband and wife that does not contain all of the provisions set forth in this section.**

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