
A BILL FOR AN ACT

RELATING TO TRANSFER OF PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 509-2, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§509-2 Creation of joint tenancy, tenancy by the**
4 **entirety, and tenancy in common.** (a) Land, or any interest
5 therein, or any other type of property or property rights or
6 interests or interest therein, may be conveyed by a person to
7 oneself and another or others as joint tenants, or by a person
8 to oneself and one's spouse or reciprocal beneficiary, or by
9 spouses to themselves, or by reciprocal beneficiaries to
10 themselves, as tenants by the entirety, or by joint tenants to
11 themselves and another or others as joint tenants, or tenants in
12 common to themselves or to themselves and another or others as
13 joint tenants, or by tenants by the entirety to themselves or
14 themselves and another or others as joint tenants or as tenants
15 in common, or by one tenant by the entirety to the tenant's
16 spouse or reciprocal beneficiary of all of the tenant's interest
17 or interests, without the necessity of conveying through a third
18 party, and each such instrument shall be construed as validly



1 creating a joint tenancy, tenancy by the entirety, tenancy in
2 common, or single ownership, as the case may be, if the tenor of
3 the instrument manifestly indicates such intention.

4 (b) Conveyance of any real property located in the State
5 and held by spouses or reciprocal beneficiaries as tenants by
6 the entirety:

7 (1) To a joint trust as tenant in severalty for their
8 benefit and which is revocable and amendable by either
9 or both during their joint lifetime; or

10 (2) In equal shares as tenants in common to their
11 respective separate trusts, each of which is revocable
12 and amendable by the respective grantor, or any
13 accumulation of such conveyed property,

14 shall have the same immunity from the claims of their separate
15 creditors as would exist if the spouses or reciprocal
16 beneficiaries had continued to hold the real property or its
17 proceeds as tenants by the entirety.

18 (c) Subsection (b) shall apply as long as:

19 (1) The spouses remain married or reciprocal beneficiaries
20 remain in a registered reciprocal beneficiary
21 relationship;



- 1 (2) The real property continues to be held in the trust as
2 provided under subsection (b);
- 3 (3) Both spouses or reciprocal beneficiaries remain
4 beneficiaries of the trust and no waiver as provided
5 under subsection (g) has occurred;
- 6 (4) The first and last name of the spouse or reciprocal
7 beneficiary for their respective trusts, or the first
8 and last names of both spouses or reciprocal
9 beneficiaries for a joint trust, are included in the
10 name of the trust; and
- 11 (5) Notice of the intention to continue to hold the real
12 property or its proceeds as tenants by the entirety is
13 provided by a deed of conveyance by the spouses or
14 reciprocal beneficiaries and filed or recorded in land
15 court or the bureau of conveyances, or both, as
16 appropriate; provided that the notice shall
17 specifically refer to this section and state that the
18 real property to be held by the trust shall be immune
19 from the claims of their separate creditors.
- 20 (d) After the death of the first of the spouses or
21 reciprocal beneficiaries, all real property held in the trust
22 that was immune from the claims of their separate creditors



1 under subsection (b) immediately prior to the individual's death
2 shall continue to have the same immunity from the claims of the
3 decedent's separate creditors as would have existed if the
4 spouses or reciprocal beneficiaries continued to hold the real
5 property conveyed in trust or its proceeds as tenants by the
6 entirety.

7 (e) In the event that any transfer of real property held
8 in tenancy by the entirety to a trustee of a trust as provided
9 under subsection (b) is held invalid by any court of proper
10 jurisdiction, or if the trust is revoked or dissolved by a court
11 decree or operation of law, while both spouses or reciprocal
12 beneficiaries are living, then immediately upon the occurrence
13 of either event, all real property held in the trust shall
14 automatically be deemed to be held by both spouses or reciprocal
15 beneficiaries as tenants by the entirety.

16 (f) Upon entry of a decree granting divorce or annulment
17 between the spouses or the termination of the reciprocal
18 beneficiary relationship, the immunity from the claims of
19 separate creditors under subsection (b) shall immediately
20 terminate and the real property shall be treated as held in
21 tenancy in common.



1 (g) The immunity from the claims of separate creditors
2 under subsections (b) and (d) may be waived as to any creditor
3 or any specifically described trust property by:

4 (1) The express provisions of a trust instrument; and

5 (2) The written consent of both spouses or reciprocal
6 beneficiaries.

7 (h) Except as provided otherwise herein, in any dispute
8 relating to the immunity of trust property from the claims of a
9 separate creditor of a spouse or reciprocal beneficiary, the
10 spouses or reciprocal beneficiaries shall have the burden of
11 proving the immunity of the trust property from the creditor's
12 claims.

13 (i) After a conveyance of real property to a trust as
14 provided under subsection (b), the real property transferred
15 shall no longer be held by the spouses or reciprocal
16 beneficiaries as tenants by the entirety and the disposition of
17 the real property shall be controlled by the terms of the trust.

18 ~~[(b)]~~ (j) For the purposes of this chapter~~[- "Reciprocal"]~~
19 "reciprocal beneficiary" means an adult who is a party to a
20 registered reciprocal beneficiary relationship in accordance
21 with chapter 572C, and has a valid certificate of reciprocal
22 beneficiary relationship that has not been terminated."



1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2012.



Report Title:

Spouse or Reciprocal Beneficiary; Tenancy by the Entirety; Trust

Description:

Specifies that real property held in tenancy by the entirety shall continue to have the same immunity from the claims of separate creditors of spouses or reciprocal beneficiaries if conveyed into a joint or separate revocable trust, under certain circumstances. Requires adequate notice in the conveyance document to note tenants by the entirety protection continues after the real property is transferred to the trust. Clarifies that the real property will be governed by the trust instrument. Allows spouses or reciprocal beneficiaries to waive the protection in favor of specific creditors. Effective July 1, 2012. (HB2623 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

