
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 to:

7 (1) A joint trust as tenants 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 property or its proceeds
17 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 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; and

6 (4) Notice of the intention to continue to hold property
7 or its proceeds as tenants by the entirety is provided
8 by a deed of conveyance by the spouses or reciprocal
9 beneficiaries and filed or recorded in land court or
10 the bureau of conveyances, or both, as appropriate;
11 provided that the notice shall specifically refer to
12 this section and state that the property to be held by
13 the trust shall be immune from the claims of their
14 separate creditors.

15 (d) After the death of the first of the spouses or
16 reciprocal beneficiaries, all real property held in the trust
17 that was immune from the claims of their separate creditors
18 under subsection (b) immediately prior to the individual's death
19 shall continue to have the same immunity from the claims of the
20 decedent's separate creditors as would have existed if the
21 spouses or reciprocal beneficiaries continued to hold the



1 property conveyed in trust or its proceeds as tenants by the
2 entirety.

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

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

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

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



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

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

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

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

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



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2050.



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. 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 continues to be governed by the trust instrument. Allows spouses or reciprocal beneficiaries to waive the protection in favor of specific creditors. Effective 7/1/50.
(SD1)

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