The Beacon Article

Marriage, That Blessed Arrangement:
Statutory Changes to Waiving Marital Rights in Real Property

Hello once again, readers. It rarely happens in the real estate world, but we've recently had a rather significant change to statutory law that will directly affect our day-to-day practice. I've already gotten a significant number of questions about it, so I think the time is ripe for an article to discuss. Session Law 2025-25 (HB 40) became effective October 1, 2025, and with it came significant changes to three statutes you are no doubt familiar with: § 29-30; § 39-13.3; and § 41-63. All of these statutes reference the ability of spouses to convey their rights in property to one another.

Let's begin with § 29-30. Subsection (a) generally provides that, in lieu of an intestate share, a surviving spouse may elect to take a life estate in their deceased spouse's property. This is one of the bundle of inchoate marital rights obtained by a spouse, even if they are not on title. Nothing new there. Newly added § 29-30(a)(2a) now reads that the surviving spouse is not entitled to take a life estate if… "The surviving spouse has conveyed the surviving spouse's interest in the real estate to the other spouse pursuant to G.S. 39-13.3 or G.S. 41-63(4) and has expressly waived or released the surviving spouse's right to take a life estate in the instrument of conveyance [emphasis mine]." That seems pretty straightforward – the only way for a spouse to waive their right to an elective life estate in the deceased spouse's real property at death is if they explicitly do so in a deed to the other spouse as outlined in §§ 39-13.3 and 41-63(4). Let's take a closer look at those changes as well.

GS § 39-13.3 governs conveyances between husband and wife and, previously, stated that any conveyance of real property between spouses vests title in the grantee spouse alone. The changes in SL 2025-25 significantly restrict this right. New language has been added to §39-13.3 stating the following: "…The conveyance does not waive or release any of the following rights or claims that the grantor may have acquired by marriage in the property conveyed: (1) A right to an elective life estate under G.S. 29-30, unless the instrument of conveyance expressly waives the right, as provided in G.S. 29-30(a)(2a). [or] (2) A right or claim to an equitable distribution with respect to the property under G.S. 50-20. A right of claim for equitable distribution shall not be waived or released in the instrument of conveyance [emphasis mine]." That, my friends, is a significant change. Where previously all rights in the inchoate marital rights bundle could presumably be waived in a deed between spouses, now the right to an elective life estate must be explicitly stated as being waived, and the right to an equitable distribution of the property cannot be waived at all. Similar language appears in the revised § 41-63(4), which imposes the same new rules on waiver of rights in a situation where a tenancy by the entirety is terminated other than by the death of a spouse.

One more change I want to point out before we get into a discussion of how these rules affect us on a day-to-day basis: GS § 50-20 has also been altered in at least one way that is relevant to the discussion. § 50-20(b)(2), which provides the definition of "Separate Property" for the purposes of a distribution by the court of marital assets during divorce, has been narrowed to reflect the changes to §§ 39-13.3 and 41-63. The following new language was added: "Real property acquired by gift from the other spouse during the course of the marriage is considered separate property only if this intent is expressly stated in a written agreement separate from the conveyance in accordance with subsection (d) of this section. The act of conveying property from one spouse to the other does not in itself state this intent." Subsection (d) goes on to say, "As provided in G.S. 39-13.3(a)(2) and G.S. 41-63(4)b., the parties shall not provide for this distribution in an instrument of conveyance of real property.

That is a lot to digest. To simplify it as best I can, there are two big rights that are in play here that are part of the bundle of inchoate marital rights that are given even to a non-titled spouse: 1) the right to an elective life estate upon death of the spouse; and 2) the right to an equitable distribution of the property upon divorce. The big question now is, can they still be waived and how would we do that in a way such that the grantee spouse can convey or encumber the property without the joinder of the grantor spouse?

For the elective life estate, the changes still allow for it to be waived in a deed, but it must be done "explicitly". For now, we are taking that to mean that the body of the deed must explicitly reference G.S. 29-30 in order to waive this right. In many ways, this is merely a codification of what has long been a preference (if not an outright requirement) of most title insurers. Harbor City has long taken the position that it is preferable to reference in the body of the deed between spouses the statutes which grant the rights being waived, including G.S. 29-30. Now, that is an explicit statutory requirement. Previously, you may have been able to get a title insurer to insure a "naked" deed between spouses – that is, a deed from Husband to Wife without any reference to the rights being waived other than the general granting clause and warranty language of the standard deed forms. No more. In order to waive the elective life estate, you must have a statement in the deed between spouses that references G.S. 29-30.

Unfortunately, for an equitable distribution, our options are now considerably more limited. The new language from SL 2025-25 goes even further than for elective life estates and provides explicitly that the right to an equitable distribution under G.S. 50-20 may not be waived in a deed at all. The writing must be in some agreement other than a deed evidencing an intent to waive equitable distribution rights, even if that deed references a waiver of rights under G.S. 50-20. That leaves only a Free Trader Agreement, a Separation Agreement/Property Settlement Agreement, or an Order of Distribution from the court as the methods for waiver. Hopefully, this is raising alarms for you – if the right cannot be waived except by other documents, then how can we move forward with conveying or encumbering real property without the joinder of the spouse for this right? Fortunately, this only comes into play during pendency of a divorce action. As I understand it (and as most of my underwriters have now agreed), the lack of a waiver of G.S. 50-20 rights would not invalidate a deed or deed of trust executed only by one spouse unless they are actively in the process of divorce at the time of execution. We judge "actively in the process of divorce" as the filing of a lis pendens or complaint for divorce.

So, moving forward, what do you, as the practicing attorney, need to do and be on the lookout for in order to work around these statutory changes? First and foremost, you must come up with a good form of Deed that includes appropriate language to waive all marital interests and use that deed exclusively where one spouse is going to sign without the joinder of the other spouse. I suggest the following language, which is included in the new form of "Deed Between Spouses" that we will have available on our website:

> *This conveyance is made pursuant to N.C.G.S. 39-13.3(a), N.C.G.S. 41-56(b), N.C.G.S. 41-63(4), N.C.G.S. 52-10 and N.C.G.S. 52-10.1 in order to vest title to the within described property solely in the Grantee herein, free and clear of any right, title and interest of the Grantor herein. (For purposes of this provision, the "Grantor" shall mean any Grantor other than the individual Grantee spouse in whom title is to remain vested herein). This conveyance is made after fair and reasonable disclosure of the property and financial obligations, both real and personal, of each spouse to the other, as between Grantee and Grantee's spouse Grantor.*
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> *For this purpose and with regard to the property and any interests and rights described herein or related thereto, by execution of this deed, the Grantor hereby waives, releases and quitclaims forever unto the Grantee (1) any and all right to share in the estate of the Grantee*

upon the Grantee's death as provided in N.C.G.S. 29-14, or pursuant to a Last Will and Testament or codicil thereto of the Grantee, (2) all and every right to elect to take a life estate in said real estate pursuant to N.C.G.S. 29-30 upon the death of the Grantee, (3) all and every right to an elective share in the estate of the Grantee pursuant to N.C.G.S. 30-3.1 et seq, (4) any and all rights arising from application of the community property laws of any state, and (5) any and all other rights and interests in said real estate which the Grantor now has or may hereafter have or acquire arising out of or accruing to said Grantor by reason of past, current or future marital relationship with the Grantee.

One VERY IMPORTANT note: you will need to use this form of deed/language even if there is already a "naked" deed between spouses. Let's say that ten years ago, Wife signed away her interest to husband without referencing any statutes. Would it still be effective now? Unfortunately not. Section 48(e) of SL 2025-25 states, "SECTION 48.(e) G.S. 39-13.3(a)(1) and G.S. 41-63(4)a., as enacted by this section regarding an elective life estate, apply to conveyances executed before, on, or after the effective date of this act. The remainder of this section applies to conveyances executed on or after the effective date of this act." Yes, you're reading that right: the new rules apply retroactively to all prior deeds. So in the case above, you will have to have Wife sign a new deed to Husband waiving her rights.

Finally, you should be on the lookout for any lis pendens or potential divorce situation. The second you hear that a seller/borrower is in the process of divorce or is separated, that should set off red flags all over the place, and you should immediately investigate further. If a lis pendens or divorce action has been filed, even if the spouses already have a deed with appropriate statutory references, you will need a Free Trader, Separation Agreement or Court Order to allow only one spouse to sign a deed or deed of trust.

I understand that many of you will think these unfair or unnecessarily disruptive to our practice. It seems clear that these changes were driven by the family law section of the Bar, and I can see the underlying reasoning, even if it may be frustrating to real estate practitioners. Often, the family home is the most valuable asset a family owns. Under the previous statutory regime, where one spouse conveyed their rights in the marital home to another without compensation for some procedural reason, such as getting a new mortgage without both spouses signing, they could potentially lose out on the right to have that most valuable asset included in their equitable distribution upon divorce. It seems highly unlikely that was an intended effect of the law previously, and although it requires significant changes to the practice of real estate, these changes may, from that point of view, provide for a more equitable application of the law as it was originally intended.

Thank you once again for reading. I hope that The Beacon continues to be a useful and interesting tool for all of our readers. As always, I welcome your comments, suggestions or further discussion of this or any of my articles.

s/ BSS