

SECOND REGULAR SESSION

# SENATE BILL NO. 920

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Read 1st time February 8, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4935S.011

## AN ACT

To amend chapter 456, RSMo, by adding thereto one new section relating to the transfer of tenancy by the entirety property to a trust.

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

Section A. Chapter 456, RSMo, is amended by adding thereto one new section, to be known as section 456.002, to read as follows:

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

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

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

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

(4) "Transfer", any legal action that a husband and wife shall take or have taken to cause such tenancy by the entirety property to be subject to the terms of a trust agreement, whether by transferring such property to the trustees of the trust or by designating that such

22 property shall be subject to the trust agreement and by the trustees  
23 accepting the property so designated to be governed by the trust  
24 agreement. Such transfer to, or designation and acceptance by, the  
25 trustees of tenancy by the entireties property shall not be deemed to  
26 sever or cause to be severed the characteristics of tenancy by the  
27 entireties property which existed immediately prior to the transfer or  
28 designation and acceptance, including but not limited to the creditor  
29 protection characteristics of tenancy by the entireties;

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

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

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

40 (b) Is created while both husband and wife are living and both  
41 husband and wife are living at the time of the transfer of tenancy by  
42 the entireties property to the trustees of the trust;

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

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

48 (e) Provides that any tenancy by the entireties property after  
49 transfer to the trustees of the trust remains tenancy by the entireties  
50 property and any withdrawal of such property from the trust shall be  
51 deemed to be tenancy by the entireties property after such property  
52 has been withdrawn from the trust;

53 (f) Provides that both husband and wife are beneficiaries, but  
54 not necessarily the sole beneficiaries, of the trust; and

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

58 (7) "Trust estate", all of the assets of the trust, including but not

59 limited to any tenancy by the entirety property that is owned or held  
60 by the trustees of the trust and governed by the trust agreement;

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

64 2. If a husband and wife own real or personal property as  
65 tenants by the entirety and transfer such property to the trustees of a  
66 trust under a trust agreement, the tenancy by the entirety property  
67 transferred to the trust shall retain its characteristics as tenancy by  
68 the entirety property and shall remain tenancy by the entirety  
69 property, unless the trust agreement expressly provides otherwise.

70 3. With respect to any transfer of tenancy by the entirety  
71 property to the trustees of a trust, the trustees shall be deemed to have  
72 accepted and to hold such property in their joint capacity as a joint  
73 and integral husband and wife legal unit and not in their capacities as  
74 separate individuals. All such property transferred to the trustees shall  
75 be deemed to be seized in the trustees jointly as a whole and not  
76 individually, in the exact same manner as when such property was held  
77 by the husband and wife as tenants by the entirety, subject to the terms  
78 of the trust agreement.

79 4. After any tenancy by the entirety property has been  
80 transferred by a husband and wife to the trustees of a trust, the  
81 creditors of only husband or wife, but not both husband and wife, shall  
82 not be able to levy against such property in order to satisfy, in whole  
83 or in part, any judgment or decree rendered against such husband or  
84 wife, but shall not limit the creditors of both husband and wife. Such  
85 trust assets shall be protected from the creditors of either husband or  
86 wife, but not both husband and wife, in the same manner as when such  
87 property was held by the husband and wife as tenants by the entirety.

88 5. Nothing in this section shall prohibit or be construed to  
89 prohibit a husband and wife who transfer tenancy by the entirety  
90 property into a trust, before or after August 28, 2010, from creating a  
91 marital deduction trust or a credit shelter trust for estate tax planning  
92 purposes, nor from funding either or both of such trusts in their sole  
93 discretion at any time and from time to time without destroying or  
94 altering the characteristics of the tenancy by the entirety property  
95 after such property becomes part of the trust estate.

96           6. With respect to any tenancy by the entirety property  
97 transferred to the trustees of the trust, such property shall be deemed  
98 to be in the nature of quasi-community property, and upon the death  
99 of the first spouse to die, the surviving spouse shall be entitled to a  
100 stepped-up basis of such property equal to one hundred percent of the  
101 fair market value of the property at the date of death of the first spouse  
102 for estate tax and income tax purposes to the extent that such provision  
103 is not inconsistent with and does not conflict with applicable federal  
104 law.

105           7. Any real or personal property owned by either husband or  
106 wife individually that is transferred to the trust or designated by such  
107 person to be subject to the terms of the trust agreement and accepted  
108 by the trustees of the trust, unless explicitly designated by such person  
109 to the contrary, shall be deemed to have been first transferred to the  
110 husband and wife, as tenants by the entirety immediately prior to such  
111 transfer or designation, and such property shall be considered tenancy  
112 by the entirety property.

113           8. Nothing in this section shall prohibit or be construed to  
114 prohibit a trustee, from acquiring, selling, disposing of, or transferring  
115 any tenancy by the entirety property without the consent of the other  
116 trustee, unless the trust agreement expressly requires the consent of  
117 both trustees, provided no such acquisition, sale, disposition, or  
118 transfer of any tenancy by the entirety property shall sever or be  
119 deemed to have severed the nature or character of such property by  
120 reason of any express or implied agreement, conduct or course of  
121 dealing, or by operation of law.

122           9. The proceeds derived from the sale, transfer, or disposition of  
123 any tenancy by the entirety property within a trust and any property  
124 into which the proceeds are converted shall remain part of the trust  
125 estate as tenancy by the entirety property.

126           10. In the event that any transfer of tenancy by the entirety  
127 property to the trustees of the trust is held to be invalid by any court  
128 of proper jurisdiction while both trustees are living, or if the trust is  
129 dissolved by a court decree or by operation of law while both trustees  
130 are living, then immediately upon the occurrence of any such event, all  
131 of the tenancy by the entirety property held in the trust by the  
132 trustees shall automatically be deemed to be held by the husband and

133 wife, as tenants by the entirety, free and clear of the trust agreement,  
134 without any further action required on the part of the trustees or  
135 husband and wife, as individuals.

136       11. In the event of any full or partial revocation of the trust  
137 agreement with respect to any tenancy by the entirety property, such  
138 property to which such full or partial revocation applies shall  
139 automatically be deemed to be held by husband and wife, as tenants by  
140 the entirety, free and clear of the trust agreement, without any further  
141 action required on the part of the trustees or husband and wife, as  
142 individuals.

143       12. Nothing in this section shall be deemed to affect any tenancy  
144 by the entirety property which is transferred in any manner other  
145 than as described in this section or to a joint revocable trust  
146 established by a husband and wife that does not contain all of the  
147 provisions set forth in this section.

✓  
Bill

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