

Bill as Introduced

HB 1132 - AS INTRODUCED

2010 SESSION

10-2055

05/03

HOUSE BILL **1132**

AN ACT relative to the creation and severance of joint tenancy in real property.

SPONSORS: Rep. Shurtleff, Merr 10

COMMITTEE: Judiciary

ANALYSIS

This bill provides for various methods of creating and severing a joint tenancy in real property.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to the creation and severance of joint tenancy in real property.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Tenants in Common; Joint Tenancy; Severance. Amend RSA 477:18 to read as follows:
2 477:18 Tenants in Common; *Joint Tenancy; Severance.*

3 *I. Every conveyance or devise of real estate made to 2 or more persons shall be construed to*
4 *create an estate in common and not in joint tenancy, unless it shall be expressed therein that the*
5 *estate is to be holden by the grantees or devisees as joint tenants, or to them and the survivor of*
6 *them, or unless other words are used clearly expressing an intention to create a joint tenancy. The*
7 *addition, following the names of the grantees in the granting clause of a deed or devise, of the words*
8 *“as joint tenants with rights of survivorship” or “as tenants by the entirety” shall constitute a clear*
9 *expression of intention to create a joint tenancy.*

10 *II. A joint tenancy between or among 2 or more individuals may also be created by:*

11 *(a) A conveyance by one or more owners of real estate or an interest therein to*
12 *themselves, or to themselves and one or more others, expressing the intent that the real*
13 *estate or interest be held by the designated grantees “in joint tenancy,” “as joint tenants,”*
14 *“as joint tenants with rights of survivorship,” or with other words clearly expressing an*
15 *intention to create a joint tenancy; or*

16 *(b) A declaration, duly acknowledged and recorded, by 2 or more owners of real*
17 *estate or an interest therein, that they henceforth hold the real estate or interest “in joint*
18 *tenancy,” “as joint tenants,” “as joint tenants with rights of survivorship,” or with other*
19 *words clearly expressing an intention to create a joint tenancy.*

20 *III.(a) A joint tenancy between or among an individual and one or more others is*
21 *severed and is converted to a tenancy-in-common as to that individual as of the date and*
22 *time of the recording of:*

23 *(1) A conveyance by the individual of his or her entire interest or an*
24 *undivided fractional interest therein to a grantee who is not one of the other joint tenants;*

25 *(2) A duly acknowledged declaration by the individual, which may be*
26 *included in a deed or other instrument, that the joint tenancy is severed; or*

27 *(3) A foreclosure deed or sheriff's deed conveying the individual's interest to*
28 *a grantee who is not one of the other joint tenants.*

29 *(b) The severance under subparagraph (a) of an individual's joint tenancy shall*
30 *not sever the joint tenancy of 2 or more remaining joint tenants.*

31 *IV. The provisions of paragraphs II and III shall not preclude other methods of*
32 *creating or severing a joint tenancy.*

33 *2 Effective Date. This act shall take effect 60 days after its passage.*

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1132

BILL TITLE: relative to the creation and severance of joint tenancy in real property.

DATE: January 12, 2010

LOB ROOM: 208 **Time Public Hearing Called to Order:** 1:30 p.m.

Time Adjourned: 2:00 p.m.

(please circle if present)

Committee Members: Reps. D. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva, W. Smith and Mead.

Bill Sponsors: Rep. Shurtleff, Merr 10

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep Lucy Weber, introduces for Rep Steve Shurtleff

James Barney, Title Standards Committee of NH Bar - supports

Bill would eliminate a traditional way of establishing joint tenancy, which was to find a 'straw man' to whom the property would be transferred by a single person and subsequently transferred to the husband and wife to create a joint tenancy. Eliminates doubt in creating and severing joint tenancy.

The court has ruled that a divorce does not automatically sever a joint tenancy. It may become a tenancy in common (with no rights of survivorship), but that cannot be presumed.

Rep. Robert Rowe: Saves process of creating a 2nd deed.

Rep. David Nixon: Under Section III (a) (1), one joint tenant may unilaterally transfer his or her share to one or more other individuals, true? A: Yes.

Rep. Robert Rowe: (clarifies current law)

Respectfully submitted,



Philip Preston, Clerk

FROM: Rep. Philip Preston, Clerk
DATE: Public hearing January 12, 2010
SUBJECT: Meeting minutes on HB 1132, relative to the creation and severance of joint tenancy in real property.

HB 1132 relative to the creation and severance of joint tenancy in real property

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Rowe: Saves process of creating a 2nd deed.

Nixon: Under Section III (a) (1), one joint tenant may unilaterally transfer his or her share to one or more other individuals, true? A: Yes.

Rowe: (clarifies current law)

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1132

BILL TITLE: relative to the creation and severance of joint tenancy in real property.

DATE: February 2, 2010

LOB ROOM: 208

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) WITHDRAWN

Moved by Rep. Weber

Seconded by Rep. Richardson

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL Interim Study (Please circle one.)

Moved by Rep. O'Brien

Seconded by Rep. Nixon

Vote: 16-2 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 16-2

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1132

BILL TITLE: relative to the creation and severance of joint tenancy in real property.

DATE: February 3, 2010

LOB ROOM: 208

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Weber

Seconded by Rep. Richardson

Vote: XX (Please attach record of roll call vote.)

Withdrawn

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. O'Brien

Seconded by Rep. Nixon

Vote: 16/2 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

JUDICIARY

Bill #: 1132 Title: _____

PH Date: ____/____/____

Exec Session Date: 02 / 02 / 10Motion: ~~ITL~~ ITL

Amendment #: _____

MEMBER	YEAS	NAYS
Cote, David E, Chairman	Y	
Wall, Janet G, V Chairman	Y	
Potter, Frances D	Y	
Hackel, Paul L	Y	
Preston, Philip, Clerk	Y	
Richardson, Gary B		N
Weber, Lucy M		N
Browne, Brendon S <u>Read, Robin P</u>	Y	
Nixon, David L	Y	
Thompson, Robert B <i>abs</i>		
Watrous, Rick H	Y	
Rowe, Robert H	Y	
Elliott, Nancy J	Y	
DiFruscia, Anthony R	Y	
Mead, Robert D	Y	
O'Brien, William L	Y	
Hagan, Joseph M	Y	
Perkins, Lawrence B <i>abs</i>		
Silva, Peter L	Y	
Smith, William B	Y	
TOTAL VOTE:	16	2

Committee Report

CONSENT CALENDAR

February 16, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on JUDICIARY to which was referred

HB1132,

AN ACT relative to the creation and severance of joint tenancy
in real property. Having considered the same, report the same
with the following Resolution: RESOLVED, That it is
INEXPEDIENT TO LEGISLATE.

Rep. William L O'Brien

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB1132
Title:	relative to the creation and severance of joint tenancy in real property.
Date:	February 16, 2010
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The testimony during public hearing did not establish a compelling need to change the law on how joint tenancies are created and dissolved. Especially in light of the language of the bill that introduces discussions of foreclosure deeds or sheriff's deed severing joint tenancies there exists the danger of unintended consequences. More needs to be known about the foreclosure process and sheriff's deeds and how each should affect joint tenancies before we can recommend this legislation.

Vote 16-2.

Rep. William L O'Brien
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

JUDICIARY

HB1132, relative to the creation and severance of joint tenancy in real property. **INEXPEDIENT TO LEGISLATE.**

Rep. William L O'Brien for JUDICIARY. The testimony during public hearing did not establish a compelling need to change the law on how joint tenancies are created and dissolved. Especially in light of the language of the bill that introduces discussions of foreclosure deeds or sheriff's deed severing joint tenancies there exists the danger of unintended consequences. More needs to be known about the foreclosure process and sheriff's deeds and how each should affect joint tenancies before we can recommend this legislation. **Vote 16-2.**

Original: House Clerk

Cc: Committee Bill File

FROM: Rep. William L. O'Brien
DATE: February 9, 2010
SUBJECT: HB 1132, relative to the creation and severance of joint tenancy in real property.

MAJORITY REPORT

RECOMMENDATION: INEXPEDIENT TO LEGISLATE

VOTE: 16-2

The testimony during public hearing did not establish a compelling need to change the law on how joint tenancies are created and dissolved. Especially in light of the language of the bill that introduces discussions of foreclosure deeds or sheriff's deed severing joint tenancies there exists the danger of unintended consequences. More needs to be known about the foreclosure process and sheriff's deeds and how each should affect joint tenancies before we can recommend this legislation.