



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB5282

Introduced 2/3/2010, by Rep. Michael G. Connelly

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/12-112  
765 ILCS 1005/1c

from Ch. 110, par. 12-112  
from Ch. 76, par. 1c

Amends the Code of Civil Procedure. Provides that any real property, or any beneficial interest in a land trust, or any interest in real property held in a revocable living trust created for estate planning purposes, held in tenancy by the entirety shall not be liable to be sold upon judgment (instead of any real property or any beneficial interest in a land trust, held in tenancy by the entirety shall not be liable to be sold upon judgment). Amends the Joint Tenancy Act. Provides that where the homestead is maintained in a revocable living trust created for estate planning purposes by both husband and wife, the husband and wife are the primary beneficiaries of the trust, and the terms of the trust specifically state that the interests of the beneficiaries to the homestead property are held as tenants by the entirety, the estate created is a tenancy by the entirety.

LRB096 16285 AJO 31543 b

1 AN ACT concerning real property.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by  
5 changing Section 12-112 as follows:

6 (735 ILCS 5/12-112) (from Ch. 110, par. 12-112)

7 Sec. 12-112. What liable to enforcement. All the lands,  
8 tenements, real estate, goods and chattels (except such as is  
9 by law declared to be exempt) of every person against whom any  
10 judgment has been or shall be hereafter entered in any court,  
11 for any debt, damages, costs, or other sum of money, shall be  
12 liable to be sold upon such judgment. Any real property, ~~or~~ any  
13 beneficial interest in a land trust, or any interest in real  
14 property held in a revocable inter vivos trust created for  
15 estate planning purposes, held in tenancy by the entirety shall  
16 not be liable to be sold upon judgment entered on or after  
17 October 1, 1990 against only one of the tenants, except if the  
18 property was transferred into tenancy by the entirety with the  
19 sole intent to avoid the payment of debts existing at the time  
20 of the transfer beyond the transferor's ability to pay those  
21 debts as they become due. However, any income from such  
22 property shall be subject to garnishment as provided in Part 7  
23 of this Article XII, whether judgment has been entered against

1 one or both of the tenants.

2 If the court authorizes the piercing of the ownership veil  
3 pursuant to Section 505 of the Illinois Marriage and  
4 Dissolution of Marriage Act or Section 15 of the Illinois  
5 Parentage Act of 1984, any assets determined to be those of the  
6 non-custodial parent, although not held in name of the  
7 non-custodial parent, shall be subject to attachment or other  
8 provisional remedy in accordance with the procedure prescribed  
9 by this Code. The court may not authorize attachment of  
10 property or any other provisional remedy under this paragraph  
11 unless it has obtained jurisdiction over the entity holding  
12 title to the property by proper service on that entity. With  
13 respect to assets which are real property, no order entered as  
14 described in this paragraph shall affect the rights of bona  
15 fide purchasers, mortgagees, judgment creditors, or other lien  
16 holders who acquire their interests in the property prior to  
17 the time a notice of lis pendens pursuant to this Code or a  
18 copy of the order is placed of record in the office of the  
19 recorder of deeds for the county in which the real property is  
20 located.

21 This amendatory Act of 1995 (P.A. 89-438) is declarative of  
22 existing law.

23 This amendatory Act of 1997 (P.A. 90-514) is intended as a  
24 clarification of existing law and not as a new enactment.

25 (Source: P.A. 89-88, eff. 6-30-95; 89-438, eff. 12-15-95;  
26 90-476, eff. 1-1-98; 90-514, eff. 8-22-97; 90-655, eff.

1 7-30-98.)

2 Section 10. The Joint Tenancy Act is amended by changing  
3 Section 1c as follows:

4 (765 ILCS 1005/1c) (from Ch. 76, par. 1c)

5 Sec. 1c. Whenever a devise, conveyance, assignment, or  
6 other transfer of property, including a beneficial interest in  
7 a land trust, maintained or intended for maintenance as a  
8 homestead by both husband and wife together during coverture  
9 shall be made and the instrument of devise, conveyance,  
10 assignment, or transfer expressly declares that the devise or  
11 conveyance is made to tenants by the entirety, or if the  
12 beneficial interest in a land trust is to be held as tenants by  
13 the entirety, the estate created shall be deemed to be in  
14 tenancy by the entirety. Where the homestead is maintained in a  
15 revocable inter vivos trust created for estate planning  
16 purposes by both husband and wife, the husband and wife are the  
17 primary beneficiaries of the trust so created, and the terms of  
18 that revocable inter vivos trust specifically state that the  
19 interests of the beneficiaries to the homestead property are to  
20 be held as tenants by the entirety, the estate created shall be  
21 deemed to be a tenancy by the entirety. Subject to the  
22 provisions of paragraph (d) of Section 2 and unless otherwise  
23 assented to in writing by both tenants by the entirety, the  
24 estate in tenancy by the entirety so created shall exist only

1 if, and as long as, the tenants are and remain married to each  
2 other, and upon the death of either such tenant the survivor  
3 shall retain the entire estate; provided that, upon a judgment  
4 of dissolution of marriage or of declaration of invalidity of  
5 marriage, the estate shall, by operation of law, become a  
6 tenancy in common until and unless the court directs otherwise;  
7 provided further that the estate shall, by operation of law,  
8 become a joint tenancy upon the creation and maintenance by  
9 both spouses together of other property as a homestead. A  
10 devise, conveyance, assignment, or other transfer to 2 grantees  
11 who are not in fact husband and wife that purports to create an  
12 estate by the entirety shall be construed as having created an  
13 estate in joint tenancy. An estate in tenancy by the entirety  
14 may be created notwithstanding the fact that a grantor is or  
15 the grantors are also named as a grantee or the grantees in a  
16 deed. No deed, contract for deed, mortgage, or lease of  
17 homestead property held in tenancy by the entirety shall be  
18 effective unless signed by both tenants. This Section shall not  
19 apply to nor operate to change the effect of any devise or  
20 conveyance.

21 This amendatory Act of 1995 is declarative of existing law.  
22 (Source: P.A. 92-136, eff. 1-1-02.)