

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 or revocable  
15 inter vivos trusts created for estate planning purposes, held  
16 in tenancy by the entirety shall not be liable to be sold upon  
17 judgment entered on or after October 1, 1990 against only one  
18 of the tenants, except if the property was transferred into  
19 tenancy by the entirety with the sole intent to avoid the  
20 payment of debts existing at the time of the transfer beyond  
21 the transferor's ability to pay those debts as they become due.  
22 However, any income from such property shall be subject to  
23 garnishment as provided in Part 7 of this Article XII, whether

1 judgment has been entered against 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 held in the  
15 name or names of a trustee or trustees of a revocable inter  
16 vivos trust or of revocable inter vivos trusts made by the  
17 settlers of such trust or trusts who are husband and wife, and  
18 the husband and wife are the primary beneficiaries of one or  
19 both of the trusts so created, and the deed or deeds conveying  
20 title to the homestead to the trustee or trustees of the trust  
21 or trusts specifically state that the interests of the husband  
22 and wife to the homestead property are to be held as tenants by  
23 the entirety, the estate created shall be deemed to be a  
24 tenancy by the entirety. Subject to the provisions of paragraph

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

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