

Updating Asset Protection and Tenancy by the Entirety

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Synopsis: This article updates Asset Protection and Tenancy by the Entirety by Fred Franke published in Volume 34, Issue 4 of the ACTEC Journal. This article will tread the same path as its predecessor by briefly discussing the history of tenancy by the entirety. Next, the article will discuss the law of tenancy by the entirety as it currently stands before discussing how the tenancy can be pierced by the federal tax lien in bankruptcy proceedings. The article concludes by discussing how tenancy by the entirety can be an excellent asset planning tool. The appendix contains an updated state by state summary of tenancy by the entirety.

I. History and Development of Tenancy by the Entirety

In his Commentaries, William Blackstone stated that estates “may be held in four different ways: in severalty, in joint-tenancy, in coparcenary, and in common.”¹

Tenancy in severalty was sole ownership and “the most common and usual way of holding an estate,” with “little or nothing peculiar to be remarked concerning it, since all estates are supposed to be of this sort, unless where they are expressly declared to be otherwise.”²

Blackstone wrote more about what we would today call concurrent estates.³ Blackstone gave first billing to the historic joint tenancy with right of survivorship.⁴ Next was the tenancy in coparcenary, which for the purposes of today’s discussion, all that needs to be said about that estate is that it has been subsumed by today’s

¹ 2 William Blackstone, COMMENTARIES 179 (Clarendon Press 1766).

² *Id.*

³ John V. Orth, *Tenancy by the Entirety: The Strange Career of the Common-Law Marital Estate*, 1997 B.Y.U. L. REV. 35, 36 (1997).

⁴ *Id.*

tenancy in common.⁵ Last was the tenancy in common, which Blackstone considered the default tenancy.⁶

For most of his life and writings, Blackstone wrote about only those three estates.⁷ It was not until the posthumously published Commentaries of 1783 that another estate entered the fray: tenancy by the entirety.⁸ It was only noted by a one sentence reference, inserted into a discussion about joint tenancy:

And therefore, if an estate in fee be given to a man and his wife, they are neither properly joint-tenants, nor tenants in common: for husband and wife being considered as one person in law, they cannot take the estate by moieties, but both are seised of the entirety, *per tout et non per my*; the consequence of which is, that neither the husband nor the wife can dispose of any part without the assent of the other, but the whole must remain to the survivor.⁹

This estate is now known as the tenancy by the entirety, and the entire body of law that eventually developed originated from this one sentence.¹⁰ This estate was originally never mentioned because Blackstone didn't think of it as an estate with a "plurality of tenants" given that the marital unit was "one person in law," so rather than viewing what became tenancy by the entirety as a concurrent estate, Blackstone saw it as a version of tenancy in severalty.¹¹

Blackstone's tenancy by the entirety, in which "neither the husband nor the wife can dispose of any part without the assent of the other," became an alienable

⁵ *Id.*, at 37.

⁶ *Id.*

⁷ *Id.*, at 38.

⁸ *Id.*

⁹ 2 William Blackstone, COMMENTARIES 182 (photo. Reprint 1978) (R. Burn ed., 1783).

¹⁰ Orth, *supra* note 3, at 38.

¹¹ *Id.*, at 39.

estate in the husband, subject only to the wife's contingent but indestructible right of survivorship.¹² The married woman had no choice in the matter because she had no cause of action against her husband.¹³ The woman would continue to have no choice in the matter as long as she remained unequal in the eyes of the law.¹⁴

Passage of the married women's property acts in the middle decades of the nineteenth century rattled the foundations of the tenancy by the entirety.¹⁵ In some states, courts took the position that once the rights of married women to hold property were recognized, there was no longer any need for tenancy by the entirety.¹⁶ In England, the estate's original home, after passage of the 1882 Married Women's Property Act husband and wife took as joint tenants, and in 1925 the estate was abolished.¹⁷

The tenancy by the entirety, similar as it is to joint tenancy with the right of survivorship, remained a concurrent estate with different qualities and was still male-dominated well into the twentieth century.¹⁸ The North Carolina Court of Appeals blankly stated in 1971 that "husband and wife do not 'share equally' in an estate by the entireties. The husband has the exclusive right during coverture to possession, control, and use of the land."¹⁹

¹² Orth, *supra* note 3, at 41.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Orth, *supra* note 3, at 41.

¹⁸ *Id.*, at 42–43.

¹⁹ *Dearman v. Bruns*, 181 S.E.2d 809, 811 (N.C. Ct. App. 1971).

With an utter slowness only known to the law, state legislatures in the late twentieth century began to equalize the rights of the married woman over property held in the tenancy by the entirety.²⁰ For example, North Carolina adopted the Tenancy by the Entirety Reform Act in 1982, which provided: “A husband and wife shall have an equal right to the control, use, possession, rents, income, and profits of real property held by them in tenancy by the entirety.”²¹

II. Tenancy by the Entirety Today

To summarize what we learned in law school, tenancy by the entirety is a form of co-ownership held by a married couple with the right of survivorship.²² The tenancy arises as a result of title acquired by a married couple jointly subsequent to their marriage.²³ The tenancy is created by deed or conveyance to the spousal unit, unless it is clear in the instrument that some other kind of tenancy is intended.²⁴ Traditionally, this estate could exist only between married persons,²⁵ but currently a few states allow persons in civil unions or domestic partnerships to hold property as tenants by the entirety.²⁶ A tenancy by the entirety is presumed even if the conveying document fails to mention that the couple is married.²⁷ When land is conveyed to spouses, absent contrary intent, they take by the entirety, and upon either’s death

²⁰ Orth, *supra* note 3, at 43.

²¹ N.C. Gen. Stat. § 39-13.6(a) (1983), now codified at N.C. Gen. Stat. § 41-58(a) (2021) using the neutered term “spouse” instead of “husband and wife.”

²² 1 Patrick K. Hetrick, et al., WEBSTER’S REAL ESTATE LAW IN NORTH CAROLINA § 7.04[1][a] (Matthew Bender, 6th ed.).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *See, e.g.*, Delaware (13 Del. Code § 214); District of Columbia (D.C. Code § 42-516(a)); Vermont (VT. Stat. Ann. tit 15 § 1204(e)).

²⁷ *Id.*

the other spouse takes the entire property by right of survivorship.²⁸ A tenancy by the entirety will not occur if the couple is not married at the time of the conveyance.²⁹ Neither will the estate arise if the couple eventually marries after the conveyance.³⁰

To create a tenancy by the entirety, the five unities must be present: time, title, interest, possession, and person.³¹ The unity of time requires that the couple must take possession at the same instant of time.³² The unity of title requires that the couple take interest from the same source.³³ The unity of interest requires that each member of the couple have the identical interest in the land involved.³⁴ The unity of possession means that the possession of one is the possession of the entire marriage entity.³⁵ The unity of person involves the common-law concept that after marriage a married couple is but one person, one legal entity.³⁶ The tenancy by the entirety cannot be created by descent or operation of law, but only through deed or will.³⁷

In a tenancy by the entirety, if either spouse individually transfers or encumbers the property, then the other spouse's right of survivorship would be extinguished.³⁸ Thus, the assent of each spouse is required to alienate or encumber the entirety property.³⁹ States still take one of two approaches to entireties property:

²⁸ Webster's, *supra* note 22, at § 7.04[1][b].

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Webster's, *supra* note 22, at § 7.04[1][b].

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Webster's, *supra* note 22, at § 7.15.

³⁹ *Id.*

(1) maintaining the “oneness” of the spousal unit so that neither spouse can act unilaterally; or (2) giving parity to the wife so that she also can alienate part of the tenancy during her lifetime.⁴⁰ The survivorship element is maintained in both approaches.⁴¹

Concerning creditors of the spouses, states are either “full bar” or “modified bar” jurisdictions.⁴² In full bar jurisdictions, a creditor of one spouse cannot attach an interest in the entirety property.⁴³ However, in a modified bar jurisdiction, a creditor of one spouse does enjoy some rights in the property, which must accommodate the non-debtor spouse’s interest.⁴⁴ Most states are full bar jurisdictions and require both spouses to act together to alienate the property.⁴⁵ Modified bar jurisdictions permit creditor attachment of a debtor spouse’s interest.⁴⁶ There are generally two types of modified bar jurisdictions. In some jurisdictions creditors of one spouse can only attach the contingent survivorship interest of the debtor spouse, subject to the non-debtor’s spouse’s right to lifetime enjoyment of the property and right of survivorship.⁴⁷ Other jurisdictions allow the creditors of only one spouse to require the debtor spouse’s right of survivorship and the right to one-half of the rents

⁴⁰ Fred Franke, ASSET PROTECTION AND TENANCY BY THE ENTIRETY, 34 ACTEC J. 210, 212 (2009).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* There are some limitations on this general rule which will be discussed in Section III, *infra*.

⁴⁴ *Id.*

⁴⁵ Franke, *supra* note 40 at 212.

⁴⁶ *Id.*

⁴⁷ *Hoffman v Newell*, 249 Ky. 270 (1933).

and profits from the property, subject to the non debtor spouse's right of possession and right of survivorship.⁴⁸

Title of the entirety property is in the husband and wife only as an entity and not in either of them alone.⁴⁹ Thus, if a creditor of one spouse procures a judgment against the spouse on their individual debt and another creditor procures a judgment against the other spouse on their individual debt, then the two spouses could nevertheless convey good title to a third person not subject to either of the judgments.⁵⁰ As a result, lenders and creditors will require spouses sign notes and obligations as co-makers, making them jointly liable.⁵¹

Jurisdictions recognizing tenancy by the entirety differ as to whether the tenancy may be established for holding personal property.⁵² Most jurisdictions permit personal property to be by held tenants by the entirety.⁵³

III. Piercing the Entireties Property: Federal Tax Liens

While in full-bar jurisdictions, a creditor of one tenant by the entirety cannot attach an interest upon entirety property, the United States Supreme Court has carved out an exception for federal tax liens under 26 U.S.C. § 6321.⁵⁴ In *United States v. Craft*, the Court held that the delinquent taxpayer owns an interest in

⁴⁸ *Morris v. Solebee*, 48 Ark. App. 123, 125 (Ark. Ct. App. 1995).

⁴⁹ Webster's, *supra* note 22, at § 7.16.

⁵⁰ *Id.*; see *infra* Section V.

⁵¹ *Id.*

⁵² Franke, *supra* note 40, at 213.

⁵³ *Id.*

⁵⁴ See *United States v. Craft*, 535 U.S. 274, 122 S. Ct. 1414 (2002).

“property” or has “rights to property” in entirety property, such that the IRS can levy upon that property pursuant to 26 U.S.C. § 6321.⁵⁵

Justice O’Connor, writing for a 6-3 majority, stated the issue as “whether a tenant by the entirety possess ‘property’ or ‘rights to property’ to which a federal tax lien may attach”⁵⁶ and “[w]hether the interests of respondent’s husband in the property he held as a tenant by the entirety constitutes ‘property and rights to property’ for the purposes of the federal tax lien statute, 26 U.S.C. § 6321, is ultimately a question of federal law.”⁵⁷

The Court stated that Mr. Craft owned many “sticks” in the bundle, and that the federal government could obtain a “lien” on those “sticks.”⁵⁸ For example, Mr. Craft possessed a right of survivorship stick, and according to the Court, this stick is “property” or “rights to property” as those terms are understood in 26 U.S.C. § 6321.⁵⁹ This does not mean the government has a lien on the entirety property, but merely a lien on the right of survivorship.⁶⁰ Thus, if Mr. Craft survived Mrs. Craft, still owning the property as tenants by the entirety, the IRS would have stepped into Mr. Craft’s shoes.⁶¹

There are other “sticks” that Mr. Craft possessed in the property, such as the right to profits from the land and the right to exclusion.⁶² If the property had been

⁵⁵ *Id.*

⁵⁶ *Id.*, at 276, 122 S. Ct. at 1419.

⁵⁷ *Id.*, at 278, 122 S. Ct. at 1420.

⁵⁸ Webster’s, *supra* note 22, at § 7.04[2].

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

leased, then the government's lien would have attached to any rental payments; however, in this case, the property owned by Mr. and Mrs. Craft as tenants by the entirety never produced any income, and therefore, there was nothing of value to which the tax lien could attach.⁶³ Mr. Craft possessed a right to exclude stick, but how do you value that? The government would have a lien on that stick but how could it be levied upon?

One of the more valuable "sticks" in Mr. Craft's bundle is the right to alienate his property.⁶⁴ The majority opinion does not discuss this stick much at all despite the majority's recognition of the limited nature of a tenant by the entirety's right to alienate.⁶⁵ The Court does state that "[n]either spouse may unilaterally alienate or encumber the property."⁶⁶ The majority also stated another truth of entirety property:

In determining whether respondent's husband possessed "property" or "rights to property" within the meaning of 26 U.S.C. § 6321, we look to the individual rights created by these state law rules. According to Michigan law, respondent's husband had, among other rights, the following rights with respect to the entirety property: the right to use the property, the right to exclude third parties from it, the right to a share of income produced from it, the right of survivorship, the right to become a tenant in common with equal shares upon divorce, the right to sell the property with the respondent's consent and to receive half the proceeds from such a sale, the right to place an encumbrance on the property with the respondent's consent, and the right to block respondent from selling or encumbering the property unilaterally.⁶⁷

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Craft*, 535 U.S. at 281, 122 S. Ct. at 1422.

⁶⁷ *Id.*, at 828, 122 S. Ct. at 1422.

However, holding that 26 U.S.C. § 6321 enables a “lien” to attach to Mr. Craft’s “right to alienate stick” results in exactly what the Court has stated cannot be done, unilaterally encumbering the property.⁶⁸

In dissent, Justice Thomas (joined by Justices Stevens and Scalia), pointed out that the IRS’ own manual states that property owned as tenants by the entirety is an asset of the taxpayer, but it is not subject to a federal tax lien via 26 U.S.C. § 6321.⁶⁹ Apparently, when a federal tax lien question is involved, the government always wins.

The Craft case presents an interesting question: how courts should value the interest of an individual who co-owns foreclosed property with a delinquent taxpayer?⁷⁰ When a married couple acquires entirety property, each party gets to use his or her property and the property of someone else (the co-owner) and each cotenant has the right to use and enjoy the entire property as if he or she were the sole owner; however, when one party sells, he or she sells property subject to the rights of someone else, which will presumably diminish its selling price.⁷¹

What happens when, as in Craft, one of the co-owners has a tax lien on the property? What amount would the government collect on the levy? The IRS takes the position that, “[a]s a general rule, the value of the taxpayer’s interest in entireties

⁶⁸ Webster’s, *supra* note 22, at § 7.04[2].

⁶⁹ *Craft*, 535 U.S. at 299–300 n.9, 122 S. Ct. at 1432–33 n.9 (Thomas, J. dissenting)

⁷⁰ Neal Nusholtz, Valuing the Use of the Entire Property in Section 7403 Tax Foreclosures, 87 *Prac. Tax Strategies* 76 (August 2011).

⁷¹ *Id.*

property will be deemed to be one-half.”⁷² Some courts have agreed with the IRS.⁷³ Other courts disagree and require that the value of the innocent spouses of right of survivorship be protected.⁷⁴ *Craft* did not address the valuation of each spouse’s individual interest in the property. According to valuation professionals, “when two people own property and one of them sells his or her undivided half interest, the selling party will suffer a percentage discount.”⁷⁵ For example, “a partial interest in timberland was devalued at 55% of the pro rata share of the selling price.”⁷⁶ Employing this 55% discount, a selling owner of an undivided half interest will net 22.5% of the selling price of the property.⁷⁷ Conversely, the remaining owner’s portion causing said 55% discount must be worth 77.5% of the selling price.⁷⁸ The reduction in value is caused by the fact that these tax levies do not extinguish the existing property rights of other owners.⁷⁹ These lingering property rights will reduce the value on sale of a partial interest in property because the new owner takes subject to them.⁸⁰

Congress has addressed the issue of dealing with the lingering rights of the remaining tenant. Under Section 7403 of the IRC, the IRS can sell property and

⁷² I.R.S. Notice 2003-60, 2003-2 C.B. 643.

⁷³ *Popky v. United States*, 419 F.3d 242, 245 (3d Cir. 2005) (The ruling in this case is based on protection afforded to tenants by the entirety under Pennsylvania law.); *United States v. Barr*, 617 F.3d 370, 373 (6th Cir. 2010) (The ruling in this case is based on the protection afford to tenants by the entirety under Michigan law.).

⁷⁴ *Pletz v. United States*, 221 F.3d 1114, 1117–18 (9th Cir. 2000) (using actuarial tables).

⁷⁵ Nusholtz, *supra* note 71, at 76.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Nusholtz, *supra* note 71, at 76.

extinguish the property rights of all owners.⁸¹ Section 7403 and Section 6331 are the two ways the IRS can sell the property of delinquent taxpayers.⁸² However, the non-delinquent owner must be compensated as well, which is not an easy venture.⁸³ With two equal owners, using the 55% discount mentioned earlier, the government would pay the non-delinquent owner 77.5% of the value of the property for their interest in the land.⁸⁴ Is that what happens in real life?

In 1983, the Supreme Court described how to value the continued use of property in *United States v. Rodgers*.⁸⁵ In *Rodgers*, a delinquent taxpayer husband died, owning a half interest in a Texas marital home.⁸⁶ The decedent's half of the community property was held by his estate, which was also a party to the case, along with his children who might have received his share, but for the tax lien.⁸⁷ The decedent's wife had remarried and continued to live in the home with her new husband.⁸⁸ If she had consented to a sale she would have received half the proceeds, but because she maintained the home as a residence, the Court said she had, under Texas law, a protected right to stay there and use the entire home.⁸⁹ Texas law had vested in "each spouse an interest akin to an undivided life estate and a remainder

⁸¹ 26 U.S.C. § 7403 (2018).

⁸² Nusholtz, *supra* note 71, at 76.

⁸³ *Id.*

⁸⁴ *Id.*, at 76–77.

⁸⁵ *United States v. Rodgers*, 461 U.S. 677, 103 S. Ct. 2132 (1983).

⁸⁶ *Id.*, at 687, 103 S. Ct. at 2139.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*, at 684, 103 S. Ct. at 2138.

interest.”⁹⁰ The Court calculated the dollar value of the undivided life estate and remainder interest for those two property interests as follows:

The exact method for the distribution required by § 7403 is not before us at this time. But we can get a rough idea of the practical consequences of the principles we have just set out. For example, if we assume, only for the sake of illustration, that a homestead estate is the exact economic equivalent of a life estate, and that the use of a standard statutory or commercial table and an 8% discount rate is appropriate in calculating the value of that estate, then three non-delinquent surviving or remaining spouses, aged 30, 50, and 70 years, each holding a homestead estate, would be entitled to approximately 97%, 89%, and 64%, respectively, of the proceeds of the sale of their homes as compensation for that estate. In addition, if we assume that each of these hypothetical non-delinquent spouses also has a protected half-interest in the underlying ownership rights to the property being sold, then their total compensation would be approximately 99%, 95%, and 82%, respectively, of the proceeds from such sale.⁹¹

Recent cases determine the value of the spouses’ interest in the entirety property in the manner described in *Rogers*.⁹² In *United States v. Cardaci*⁹³ the government brought an action seeking to force the sale of the marital home owned by the delinquent taxpayer and his wife as tenants by the entirety in New Jersey.⁹⁴ The court began its analysis by stating that under 26 U.S.C. §7403(c) it “may” decree a sale of the property and that the word “may” necessarily implies a degree of discretion based on the four non-exhaustive *Rogers* factors.⁹⁵

⁹⁰ *Id.*, at 686, 2138.

⁹¹ *Id.*, at 698–99, 103 S. Ct. at 2145.

⁹² *E.g.*, *United States v. Cardaci*, 856 F. 3d 267 (3d Cir. 2016); *In re Murray*, 900 F.3d. 53 (2d Cir. 2018).

⁹³ *Cardaci*, 856 F. 3d at 267.

⁹⁴ *Id.*, at 271.

⁹⁵ *Id.*, at 274.

First, a court should consider the extent to which the government's financial interests would be prejudiced if it were relegated to a forced sale of the partial interest actually liable for the delinquent taxes. Second, a court should consider whether the third party with a non-liable separate interest in the property would, in the normal course of events (leaving aside § 7403 and eminent domain proceedings, of course), have a legally recognized expectation that that separate property would not be subject to forced sale by the delinquent taxpayer or his or her creditors. Third, a court should consider the likely prejudice to the third party, both in personal dislocation costs and in practical undercompensation. Fourth, a court should consider the relative character and value of the non-liable and liable interests held in the property. Those factors come with the caution that, because they do not constitute an exhaustive list, they should not be used as a mechanical checklist to the exclusion of common sense and consideration of special circumstances. At the same time, however, the limited discretion accorded by § 7403 should be exercised rigorously and sparingly, keeping in mind the government's paramount interest in prompt and certain collection of delinquent taxes.⁹⁶

The Third Circuit remanded the case to the district court to determine whether it should exercise its discretion to order the sale of the marital home.⁹⁷ It is interesting that the court ruled that among the equitable factors the district court must consider was the equitable interest of the couple's son, his wife, and their three children who also lived in the home.⁹⁸ In the event that the court chose to exercise its power to order a sale of the property, the interest of the tax payer and his wife should be valued as follows:

Although *Popky's* simple 50/50 rule does not control, we cannot agree with the District Court's calculation of the Cardacis' respective interests in the marital home. In a

⁹⁶ *Id.* (cleaned up).

⁹⁷ *Id.*, at 280.

⁹⁸ *Id.*

tenancy by the entirety, each spouse has a concurrent interest in the present value of the property, in a life estate, and in a right of survivorship. But because both the probability of obtaining the property upon the death of one's spouse and the value of the life estate depend on life expectancy, any calculation of the cash value of those interests must of necessity be based on actuarial statistics. That is a logical rule. To give one admittedly extreme example, it stands to reason that a healthy twenty-six-year-old wife would have a greater interest in a life estate than would her ailing eighty-nine-year-old husband. While each spouse would have the same rights to the home, the measurable property value that they would be likely to receive from the property is not the same. Therefore, a method of calculation is needed that takes into account each spouse's concurrent interest in the present value and their varying interests in life estate and survivorship rights. See *Newman*, 359 A.2d at 477 ("The purchaser at an execution sale under a judgment entered against a tenant by the entirety acquires the right of survivorship of the debtor spouse as well as the interest of the latter in the life estate for the joint lives of husband and wife.").

A fair approach must therefore rely on joint-life actuarial tables to reflect the interests of both spouses. See *In re Pletz*, 221 F.3d 1114, 1117–18 (9th Cir. 2000) (following the Fifth Circuit in adopting a rule that calculates respective interests in marital property using joint-life actuarial tables). Such an approach accounts for differences in anticipated life expectancies and ensures that the concurrent interests of both spouses are correctly calculated, rather than valuing the non-liable spouse's interest as if she possessed an exclusive life estate. Furthermore, it avoids the dilemma created by the District Court's methodology, which resulted in a sum of the various interests that exceeded one hundred percent of the value of the property. *Cardaci*, 2014 WL 7524981, at *12 ("Mr. and Mrs. Cardaci own property interests that, combined, appear to be worth more than 100 percent of the property."). The use of joint-life actuarial tables should assist in calculating spouses' respective interests in a way that does justice to both the property owners and the government. And, if a non-liable spouse will be practically undercompensated after that method of calculation, that fact is an important

but separate consideration for the Court to take into account.⁹⁹

Valuing the equal right to use entirety property can be contrasted with an equal right to use cash, which is consumed or diminished by a cotenant's use.¹⁰⁰ In *Craft*, the Supreme Court held that cash from rent or sale of entirety property is split in half, even though the Court “express[ed] no view as to the proper valuation of respondent's husband's interest in the entirety property.”¹⁰¹

A recent application of *Craft* can be found in *In re Morgan*, out of the United States Bankruptcy Court for the Middle District of North Carolina.¹⁰² Before the Court was an objection to a debtor's claim for property exemptions filed by the Chapter 7 Trustee.¹⁰³ The dispute at issue was whether, and to what extent, the Debtor may exempt property held as a tenancy by the entirety when the IRS holds a valid tax lien against that property and is a priority and general unsecured claimant in the Debtor's bankruptcy case.¹⁰⁴ The Court held that under the reasoning set forth in *Craft*, the tax lien attached to the Debtor's entirety interest, despite the protections afforded by North Carolina law against non-joint creditors.¹⁰⁵ Therefore, under “applicable nonbankruptcy law,” the tenancy by the entirety interest held by the Debtor is not “exempt from process” by the IRS, nor from the claims of joint-creditors of both the Debtor and his non-filing spouse.¹⁰⁶

⁹⁹ *Id.*, at 278–79 (cleaned up).

¹⁰⁰ Nusholtz, *supra* note 71, at 77.

¹⁰¹ *Craft*, 535 U.S. at 289, 122 S. Ct. at 1426.

¹⁰² *In re Morgan*, No. 21-50455, 2021 WL 5498621 (Bankr. M.D.N.C. Nov. 4, 2021).

¹⁰³ *Id.*, at *1.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

The facts of this case are as follows: the Debtor filed for Chapter 7 bankruptcy on July 16, 2021 and in the debtor's schedule of assets, he listed an ownership interest in real property located in Winston-Salem valued at \$315,500.¹⁰⁷ The Debtor owned the property with his non-filing spouse as tenants by the entirety.¹⁰⁸ The debtor claimed the property as exempt given its status as a tenancy by the entirety.¹⁰⁹ The debtor had an \$18,000.00 priority unsecured claim owed to the IRS.¹¹⁰ The Trustee objected to the exemption, arguing that the property was not exempt from bankruptcy to the extent of the IRS debt.¹¹¹ The debtor contended that the property was not a part of his Bankruptcy estate at all.¹¹²

In beginning its analysis, the Court stated that “[t]he Fourth Circuit Court of Appeals, as well as this Court, have clearly held that the bankruptcy estate includes interests in entireties property even where only one spouse has filed.”¹¹³ The Court then summarized the Bankruptcy Code's provisions that allow the debtor to prevent the distribution of certain property by claiming it as exempt.¹¹⁴ Here, the debtor employed the § 522(b)(3)(B) exemptions, which exempts

[A]ny interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant *to the extent that such interest as a tenant by the entirety or joint*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*, at *2 (citing *In re Cordova*, 73 F.3d 38, 40 (4th Cir. 1996); *Chippenham Hosp., Inc., v. Bondurant*, 716 F.2d 1057, 1058 (4th Cir. 1983); *In re Knapp*, 285 B.R. 176, 179 (Bankr. M.D.N.C. 2002).

¹¹⁴ *Id.*

*tenant is exempt from process under applicable nonbankruptcy law.*¹¹⁵

Here, the “applicable non bankruptcy law” was North Carolina law, which as a full-bar jurisdiction exempts tenancy by the entireties interests from the claims of non-joint creditors: a full-bar jurisdiction. Under North Carolina law, “if one spouse files for bankruptcy, a trustee may sell property held as tenants by the entirety only if there are creditors in the case as to whom both spouses are indebted.”¹¹⁶ As a result, the Court stated that “[t]he Trustee’s Objection may be sustained, therefore, to the extent there are joint creditors of both the Debtor and his non-filing spouse.”¹¹⁷ There was in this case: a secured mortgagee.¹¹⁸

However, the Court said that its “analysis does not end there,” because applicable nonbankruptcy law also includes federal law.¹¹⁹ The Court then quotes from the Internal Revenue Code § 6321, which states “[i]f any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . shall be a lien in favor of the United States upon *all property and rights to such property*, whether real or personal, belonging to such person.”¹²⁰ The Court found its support that the tax lien attached to the debtor’s entireties interest from *Craft*, which it said, “concluded that a spouse’s entireties interest was subject to attachment of a statutory tax lien under 26 U.S.C. § 6321 for the spouse’s sole tax obligation” even though

¹¹⁵ *Id.*, at *3 (quoting 11 U.S.C. § 522(b)(3)(B)) (emphasis in original)

¹¹⁶ *Id.* (quoting *In re Knapp*, 285 B.R. 176, 179 (Bankr. M.D.N.C. 2002).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* (quoting 26 U.S.C. § 6321).

analogous Michigan law prevented non-joint creditors from executing on entireties property.¹²¹ Accordingly, “[a]pplicable federal tax law, as interpreted through *Craft*, thereby allows for statutory federal tax liens to attach to tenancy by entirety interests of a taxpayer for individual tax debt, regardless of state law limitations on debts held by non-joint creditors.”¹²² As a result, the Court held that the property was not exempt from process by the IRS under federal law.¹²³ The court did not address the question of how the debtor’s interest in the property should be valued.

Tax liens are not the only vehicle that can potentially pierce the entirety property. As pointed out in Franke’s original article on this subject, “Congress has unequivocally stated that criminal fines are to be treated in the same fashion as federal tax liabilities.”¹²⁴ In North Carolina property held as tenants by the entirety is treated as tenancy in common property in connection with the enforcement of a judgment under North Carolina’s RICO statutes.¹²⁵

IV. Piercing the Entireties Property: Fraudulent Transfer Into the Tenancy

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*, at *5.

¹²⁴ Franke, *supra* note 40, at 219 (originally citing *In re Hutchins*, 306 B.R. 82, 91 (Bankr. D. Vt. 2004) (drug trafficking); *United States v. Fleet*, 498 F.3d 1225 (11th Cir. Fla. 2007) (wire fraud, money laundering, etc.); *United States v. Godwin*, 446 F. Supp. 2d 425 (E.D.N.C. 2006) (embezzlement from federally insured bank). Franke stated in footnote 68 that “[i]n Maryland, by contrast, the court has refused to permit the sale of a truck used in drug trafficking when the vehicle was held [as] tenants by the entirety. This was under the state forfeiture statute and it was pre-*Craft*. *Maryland v. One 1984 Toyota Truck*, 533 A.2d 659 (Md. 1987).” *See also Conrad v. Schlossberg*, 555 B.R. 514, 517 (D. Md. 2016) (noting that, after *Craft*, federal courts should rely on federal law when construing the extent of liens created under federal law” (quoting *Hutchins*, 306 B.R. at 90)).

¹²⁵ N.C. Gen. Stat. § 75D-8(a)(1) (2021).

One commentator has noted, “Courts disagree as to whether a spouse’s conveyance of separate property to a tenancy by the entirety is protected from the claims of non-joint creditors where the conveyance is made to shield the property from those creditors.”¹²⁶ A Bankruptcy Court in Maryland “held that a spouse’s conveyance of separate property to a tenancy by the entirety is protected from the claims of non-joint creditors even where the conveyance is made to shield the property from those creditors.”¹²⁷ “Other authority holds that the rights and remedies of a husband or wife’s creditors may not be obliterated by the simple expedient of erecting a tenancy by the entirety in property that would otherwise be vulnerable to execution.”¹²⁸ “Accordingly, where property is titled as a tenancy by the entirety as part of a fraudulent scheme to avoid creditors, the property may be reached by nonjoint creditors.”¹²⁹ This appears to be the rule in a majority of jurisdictions.¹³⁰

In some instances, when one tenant of the entirety property commits a fraudulent transfer, by transferring property into a tenancy by the entirety, then the entirety property can be attached by a creditor. For example,

[a] 1997 amendment to the Illinois tenancy by the entireties statute¹³¹ was intended as a clarification of the existing statute, and thus operated retroactively to subject entireties property to the claims of one spouse’s creditors where the spouse transferred the property into the tenancy with the

¹²⁶ 41 C.J.S. *Husband and Wife* § 40.

¹²⁷ *Id.* (citing *In re Giles*, 222 B.R. 766 (Bankr. D. Md. 1998) (applying Maryland law)).

¹²⁸ *Id.* (citing *Roberts & Lloyd, Inc. v. Zyblut*, 691 A.2d 635 (D.C. 1997) and *Sawada v. Endo*, 57 Haw. 608, 561 P.2d 1291 (1977)).

¹²⁹ *Id.* (citing *Premier Property Management, Inc. v. Chavez*, 191 Ill. 2d 101, 245 Ill. Dec. 394, 728 N.E.2d 476 (2000); *Sweeney, Cohn, Stahl & Vaccaro v. Kane*, 6 A.D.3d 72, 773 N.Y.S.2d 420 (2d Dep’t 2004)).

¹³⁰ Martin J. Mahon, Annotation, *Validity and Effect of One Spouse’s Conveyance to Other Spouse of Interest in Property Held as Estate Held by the Entireties*. 18 A.L.R. 5th 280 (1994).

¹³¹ 735 Ill. Comp. Stat. 5/12-112 (1998).

sole intent of avoiding the payment of existing debts as they came due.¹³²

That statutory amendment, however, did not make the Illinois version of the Fraudulent Transfer Act applicable to transfers into tenancy by the entirety.¹³³

The Third Circuit, applying Pennsylvania law, recently held in *In re Titus*,¹³⁴ that when a spouse conveys individual property to a tenancy by the entirety in fraud of creditors, the creditor may nevertheless execute against the property so conveyed. Unlike in Illinois, this was accomplished under Pennsylvania's Fraudulent Transfer Act.¹³⁵

Additionally, if a debtor makes payments on a mortgage secured by entirety property while insolvent, the creditor can reach the amount of those payments. In *Wilson v. Todd*, a 1940 case out of the Indiana Supreme Court, a husband and wife owned two properties as tenants by the entirety.¹³⁶ The husband extorted \$12,000 from another man.¹³⁷ The husband then used \$774.38 of the stolen money to pay off a mortgage on one parcel and then used \$3,548.16 to pay off another mortgage on the other parcel.¹³⁸ The extorted individual obtained a \$12,000 judgment that had not been satisfied.¹³⁹ The wife had no knowledge of the fraudulent acts of her husband

¹³² John Tingley, et al., *Marital Property Law*, § 2.4 (Westlaw 2021).

¹³³ *Id.*

¹³⁴ *In re Titus*, 916 F.3d 293 (3d Cir. 2019)

¹³⁵ *Id.*

¹³⁶ *Wilson v. Todd*, 26 N.E.2d 1003, 1004 (Ind. 1940).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

at the time the acts were committed, but did have knowledge of them at the time of the commencement of the action.¹⁴⁰

The action by the extorted individual sought to set aside the prior mortgage liens; that there be an adjudication that said liens stand for the extorted man's use and benefit; and that those mortgages be foreclosed, the real estate sold, and the proceeds applied on the \$12,000.00 claim.¹⁴¹ The Indiana Supreme Court concluded that where the husband, without his wife's knowledge, used money fraudulently obtained to pay their joint debts secured by mortgages on their realty, and wife, after learning of the facts, failed to disavow her husband's acts, then both retained the benefits of the fraudulent behavior.¹⁴² The wife ratified her husband's acts and was estopped from denying knowledge or husband's authority to act for her concerning the defrauded party's right to subrogation to the mortgages.¹⁴³ Accordingly, the wife could not defeat the defrauded party's right to subrogation to the mortgages, even in absence of ratification or estoppel, since she had parted with nothing and would suffer no disadvantage through subrogation.¹⁴⁴ As a result, the Supreme Court instructed the trial court to enter judgment in favor of the defrauded party.¹⁴⁵

V. Transfers of Entirety Property to Avoid Creditor Claims

¹⁴⁰ *Id.*

¹⁴¹ *Todd*, 26 N.E.2d at 1004

¹⁴² *Id.*, at 1005.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*, at 1006.

Under state law in full bar jurisdictions, a debtor spouse can convey the entirety property to the non-debtor spouse or both spouses can transfer the property to a third-party without committing a fraudulent conveyance.¹⁴⁶ As a result, as Franke wisely said, “[m]arried individuals with exposure to liability should hold as much of their property as possible by the entirety” and “[o]nce liability against one spouse is triggered, the at-risk spouse may transfer the property to the non-debtor spouse.”¹⁴⁷

In *L&M Gas Co. v. Leggett*, a husband conveyed his interest in land owned as tenants by the entirety to his wife for no consideration.¹⁴⁸ At the time of the transfer, there was an outstanding judgment against the husband which constituted a lien on any real property owned by the husband.¹⁴⁹ The North Carolina Supreme Court upheld the trial court’s dismissal of the creditor’s complaint seeking to enforce a lien against the real property.¹⁵⁰ The court explained its ruling:

The nature of this estate forbids and prevents the sale or disposal of it or any part of it by the husband or wife without the assent of both; the whole must remain to the survivor. The husband cannot convey, incumber, or at all prejudice, such estate to any greater extent than if it rested in the wife exclusively in her own right. He has no such estate as he can dispose of to the prejudice of the wife's estate. The unity of the husband and wife as one person, and the ownership of the estate by that person, prevents the disposition of it otherwise than jointly.

¹⁴⁶ Franke, *supra* note 40, at 219 (citing Martin J. McMahon, Annotation, *Validity and Effect of One Spouse’s Conveyance to Other Spouse of Interest in Property Held as Estate by the Entireties*, 18 A.L.R. 23, § 8 (5th ed. 1994)).

¹⁴⁷ *Id.* (citing *Watterson v. Edgerly*, 388 A.2d 934 (Md. 1978)). For non-spousal transfer in case concerning an automobile tort and transfer of entirety property to the spouses’ children, see *Sawada v. Endo*, 561 P.2d 1291 (Haw. 1977).

¹⁴⁸ *L&M Gas Co. v. Leggett*, 161 S.E.2d 23, 24–25 (N.C. 1968).

¹⁴⁹ *Id.*, at 25–26.

¹⁵⁰ *Id.*, at 28.

As a consequence, neither the interest of the husband, nor that of the wife, can be sold under execution so as to pass away title during their joint lives or as against the survivor after the death of one of them. Indeed, it seems that the estate is not that of the husband or the wife; it belongs to that third person recognized by the law,—the husband And the wife. It requires the co-operation of both to dispose of it effectually.¹⁵¹

Although this is the rule in many jurisdictions, it is not the rule in all jurisdictions.¹⁵²

For example, in *Corbin v. Litke*, the court held that the transfer of entirety property by husband to his wife at a time when there was an action pending against him which resulted in a final judgement against him was a fraudulent transfer under New York law.¹⁵³

Bankruptcy law places an important limitation on a couple's ability to transfer entirety property within two years of the filing of a bankruptcy petition. A majority of federal circuits have held that a trustee can avoid a debtor's prepetition transfer of property, even though that property would have been exempt from the debtor's creditors if that property had been owned by the debtor when the petition was filed.¹⁵⁴

One of the leading cases in this area is *In re Wickstrom*.¹⁵⁵ In that case, the debtor and his spouse conveyed real property which they owned as tenants by the

¹⁵¹ *Id.*, at 26 (cleaned up).

¹⁵² Martin J. Mahon, Annotation, *Validity and Effect of One Spouse's Conveyance to Other Spouse of Interest in Property Held as Estate Held by the Entireties*, 18 A.L.R. 5th 230 (1994).

¹⁵³ *Corbin v. Litke*, 431 N.Y.S.2d 800 (N.Y. Spec. Term 1980).

¹⁵⁴ Alyssa Pompei, "No Harm, Still Foul": *Unharmed Creditors and Avoidance of a Debtor's Prepetition Transfer of Exemptible Property*, 89 ST. JOHN'S LAW REV. 967 (2015); J.H. Cooper, Annotation, *Adoption, Rejection, and Use of "No Harm, No Foul" Rule or "Diminution of Estate" Doctrine Associated with Bankruptcy Avoidance Proceedings*, 35 A.L.R. Fed. 3d Art. 5 (2018).

¹⁵⁵ *In re Wickstrom*, 113 B.R. 339 (W.D. Mich. 1990).

entirety to their parents and their son.¹⁵⁶ A few weeks before the transfer the debtor was informed that a collection action was about to be instituted against him.¹⁵⁷ The debtor filed for bankruptcy three months after the entireties property was transferred.¹⁵⁸ The court held that the trustee could avoid the transfer, even though the entireties properties would not have been part of the debtor's estate if he had retained ownership of the property at the time he filed his bankruptcy petition.¹⁵⁹ This is the majority view which, "includes the Fourth, Sixth, Ninth, Tenth Circuits and lower courts in the First, Second, and Eleventh Circuits. . . . The minority includes some lower courts in the First, Second, and Eleventh Circuits."¹⁶⁰

It is well settled that when a husband and wife voluntarily sell property owned as tenants by the entirety, the proceeds of the sale become personal property, held as tenants in common.¹⁶¹ What then constitutes a voluntary sale? Where the state appropriates land pursuant to a power of eminent domain, the transfer is involuntary, and the compensation paid by the state has the same status as the real property held by husband and wife by the entirety.¹⁶² However, in some states, a forced sale at a foreclosure is deemed to be "voluntary," and any surplus proceeds are held as tenants in common.¹⁶³ In other states, the surplus proceeds of a foreclosure

¹⁵⁶ *Id.*, at 341.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*, at 342.

¹⁵⁹ *Id.*, at 352.

¹⁶⁰ Dana Yankowitz, Comment, "*I Could Have Exempted It Anyway*": *Can a Trustee Avoid a Debtor's Prepetition Transfer of Exemptible Property?*, 23 EMORY BANKR. DEV. J. 217, 227 n.54 (2006).

¹⁶¹ *Shores v. Rabon*, 112 S.E.2d 556 (N.C. 1960).

¹⁶² *E.g., Highway Commission v. Myers*, 154 S.E.2d 87, 90 (N.C. 1967).

¹⁶³ Michael A. D.Sabatino, Annotation, *Proceeds or Derivatives of Real Property Held by Entirety*, 22 A.L.R. 4th 459 (1983).

sale retain their status as entirety property.¹⁶⁴ There is also a split of authority as to whether a sale by a bankruptcy court destroys the tenancy. In some jurisdictions the proceeds left over after a sale by the bankruptcy court retain their status as entirety property.¹⁶⁵ In other jurisdictions, such proceeds are deemed to held as tenants in common.¹⁶⁶

VI. Qualified Spousal Trust

Under the law of many states, the transfer of entirety property into a trust terminates the tenancy.¹⁶⁷ In recent years Delaware, Hawaii, Illinois, Indiana, Maryland, Missouri, North Carolina, Tennessee, Virginia, and Wyoming have enacted statutes which allow entirety property to be held in a qualified spousal trust.¹⁶⁸

VII. Tenancy by the Entireties as a Tool of Asset Protection

As explained earlier, in a tenancy by the entirety property, each spouse owns the entire property. As such, this form of ownership is seen as a way to protect the property from creditors of any individual spouse and to ensure the easy transition of the property to the surviving spouse upon the co-tenant's death.¹⁶⁹ The fact that each

¹⁶⁴ *Id.*

¹⁶⁵ *E.g., In re Ginn*, 186 B.R. 898 (D. Md. 1995).

¹⁶⁶ *E.g., In re Anderson*, 132 B.R. 657, 660 (Bankr. M.D. Fla. 1991).

¹⁶⁷ *In re Givans*, 623 B.R. 635 (Bankr. M.D. Fla. 2020) (concluding that the debtor and his wife forfeited the creditor-protection benefits of their TBE property when they transferred the property to their joint trust because the property stopped being TBE once it entered the trust and the unity of marriage was lost).

¹⁶⁸ Robert E. Kirkland, *Tenancy by the Entirety States and Qualified Spousal Trusts* (March 19, 2020), <https://www.actec.org/resources/tenancy-by-the-entirety-states-and-qualified-spousal-trusts/>.

¹⁶⁹ Samuel D. Hodge, Jr., *Everything You Wanted to Know about Owning Property in A Tenancy by the Entireties but Were too Afraid to Ask*, 49 Real Est. L.J. 6, 11 (Summer 2020).

spouse owns 100% of the asset makes it difficult for a creditor of just one owner to force a partition of the property to satisfy a debt.¹⁷⁰ As a result, creditors will generally ask both spouses to sign any loan documentation to ensure a joint obligation.¹⁷¹

Each state has its own rules about tenancy by the entirety property, which means that from the asset protection standpoint, it's important to understand each state's peculiar rules.¹⁷² Only about half of all states and the District of Columbia allow this type of ownership for property owned by married couples.¹⁷³ Jurisdictions that allow both real and personal property to be held as tenancy by the entireties include Alaska, Arkansas, Delaware, District of Columbia, Florida, Hawaii, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and Wyoming.¹⁷⁴ States that permit spouses to hold real estate but not personal property in this configuration include Illinois, Indiana, Kentucky, Michigan, New York, North Carolina, and Oregon.¹⁷⁵ Jurisdictions that do not recognize or have abolished tenancy by the entireties include Alabama, Arizona, California, Colorado, Connecticut, Georgia, Idaho, Iowa, Kansas, Louisiana, Maine, Minnesota, Montana, Nebraska, Nevada,

¹⁷⁰ *Id.*, at 14–15.

¹⁷¹ *Id.*, at 15.

¹⁷² Generally, the situs of the property controls the law to be applied regarding its status as entirety property. Restatement (Second) of Conflict of Laws § 222 (Am. L. Inst. 1971)

¹⁷³ Hodge, *supra* note 171, at 17.

¹⁷⁴ *Id.*, at 18.

¹⁷⁵ *Id.*

New Hampshire, New Mexico, North Dakota, Ohio, South Carolina, South Dakota, Texas Utah, Washington, West Virginia, and Wisconsin.¹⁷⁶

Tenancy by the entirety is a traditional form of property ownership. If the tenancy by the entirety is recognized in the state where the property is located, then it will be valid in other states, no matter where the owners of the property reside.¹⁷⁷ Couples wishing to rely on this form of property ownership should make sure they pay their federal taxes.¹⁷⁸ Couples in some states need to make sure that any mortgages on the entirety property are not allowed to go into default.¹⁷⁹ Couples should also recognize that the protections afforded by the tenancy expire upon the divorce or upon the death of one of the spouses.¹⁸⁰ If a couple is willing to accept these risks and limitations, then tenancy by the entirety is a good choice as an asset protection device.

¹⁷⁶ *Id.*

¹⁷⁷ *See supra* note 174.

¹⁷⁸ *See supra* Section III.

¹⁷⁹ *See supra* notes 142–56 and accompanying text.

¹⁸⁰ *See supra* Section II.

APPENDIX

Asset Protection Variations Among
Jurisdictions Recognizing Tenancy by the Entirety¹⁸¹

Alaska	Type of Bar: Modified.
	Effect of Judgment Creditor of One Spouse: Levy and sale permitted. Partition may be forced.
	Type of Property: Real and personal property. Alaska Stat. § 34.15.140 recognizes tenants by the entirety in real property. See <i>Faulk v. Est. of Haskins</i> , 714 P.2d 354 (Ala. 1986), recognizing tenants in the entirety in personal property.
	Comment: Alaska Stat. § 09.38.100(a) provides that a creditor of one spouse “may obtain a levy on and sale of the interest” of the debtor spouse. The creditor may force partition or severance of the non-debtor spouse’s interest. This is subject, however, to other exemptions such as the homestead exemption. Alaska Sta. §§ 09.38.100(a)-(b). Does not allow joint trusts to qualify for creditor protection.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Arkansas	Type of Bar: Modified.
	Effect of Judgment Creditor of One Spouse: Creditor may execute but may not defeat non-debtor spouse’s right of survivorship interest. Creditor gets one-half of rents and profits but cannot displace non-debtor spouse.
	Type of Property: Real and personal property. “[O]nce property, whether personal or real is placed in the names of persons who are husband and wife, without specifying the manner in which they take, there is a presumption that

¹⁸¹ The following table originated in Franke’s original article and has been updated and supplemented with contributions from Duncan E. Osborne, et al., *Asset Protection: Domestic and International Law and Tactics*, Thomson Reuters (2021) and Robert E. Kirkland, *Tenancy by the Entirety States and Qualified Spousal Trusts* (March 19, 2020), <https://www.actec.org/resources/tenancy-by-the-entirety-states-and-qualified-spousal-trusts/>.

	<p>they own the property as tenants by the entireties.” <i>Sieb’s Hatcheries, Inc. v. Lindley</i>, 111 F.Supp. 705, 716 (W.D. Ark. 1953). Ark. Code § 23-47-204 lists entireties as one of the accounts banks shall offer under the multiple party account rules.</p>
	<p>Comment: “Execution against a spouse’s interest in a tenancy by the entirety has long been permitted even though partition has not. [Earlier cases have] affirmed the principle that property owned as husband and wife as tenants by the entirety may be sold under execution to satisfy a judgment against the husband, subject to the wife’s right of survivorship ... [A] purchaser of the interest of one tenant by the entirety cannot oust the other tenant from possession, and can only claim one-half of the rents and profits. The remaining tenant is not only entitled to possession plus one-half of the rents and profits, but the right of survivorship is not destroyed or in anywise affected.” <i>Morris v. Solesbee</i>, 892 S.W.2d 281, 282 (Ark. Ct. App. 1995) (citations omitted). Does not allow joint trusts to qualify for creditor protection.</p>
	<p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p>
	<p>Are there any concerns about the use of tenancy by the entirety in a same sex marriage?</p>
	<p>Does a forced sale through bankruptcy or foreclosure terminate the tenancy?</p>
	<p>Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?</p>
	<p>Are there any laws which allow the creditor of one spouse to levy on entirety property?</p>
	<p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p>
Delaware	<p>Type of Bar: Full.</p>
	<p>Effect of Judgment Creditor of One Spouse: Not subject to attachment.</p>
	<p>Type of Property: Real and personal property. See <i>Rigby v. Rigby</i>, 88 A.2d 126 (Del. Ch. 1952), on cattle, and <i>Widder v. Leeds</i>, 317 A.2d 32 (Del. Ch. 1974), on partnership interest. “It has likewise been held that, in the absence of proof to the contrary, a joint bank account opened in the conjunctive form in the name of a husband and wife may create a tenancy by the entireties, and this status is not altered by the fact that either may withdraw the funds therefrom.” <i>Widder</i>, 317 A.2d at 35 (citations omitted).</p>
	<p>Comment: Delaware courts have stated, at various times, that a judgment against one spouse does not create a lien on entireties property under Delaware</p>

	<p>law: “It is settled in Delaware that a creditor of one spouse, such as Ms. Johnson, may not place a lien on real property held as tenants by the entirety. See <i>Steigler v. Insurance Co. of North America</i>, 384 A.2d 398 (1978) (“interest of neither [husband nor wife] can be sold, attached or liened ‘except by [their] joint act’”); <i>Citizens Savings Bank, Inc. for the Use of Govatos v. Astrin</i>, 61 A.2d 419 (1948)... so the creditors of one spouse cannot reach the interest the debtor holds in the estate.” <i>Johnson v. Smith</i>, No. Civ. A. 13585, 1994 WL 643131, *2 (Del. Ch. Oct. 31, 1994).</p> <p>In <i>Mitchell v. Wilmington Trust Co.</i>, 449 A.2d 1055 (Del. Ch. 1982), aff’d 461 A.2d 696 (Del. 1983), a husband obtained a mortgage from a bank by fraudulently bringing a woman to execute loan settlement documents that, in fact, was not his wife. The court held that the forgery failed to operate to bind the tenant by entirety property. Before the wife received notice of the forgery, the husband transferred the title to the wife as a marital settlement. The transfer was not held a fraudulent transfer because the wife lacked knowledge of the fraudulent transfer (being then unaware of the purported lien) and paid valid consideration (the release of her husband’s marital obligations). The court held that the bank acquired an inchoate lien in the property which became extinguished upon the husband’s transfer of the property to his wife without knowledge and for valid consideration. Given that no lien attaches in any event, there should have been no reason for the court to reach the fraudulent conveyance aspect of the case. In <i>Wilmington Savings Fund Society v. Kaczmarczyk</i>, No. Civ. A. 1769-N, 2007 WL 704937 (Del. Ch. March 1, 2007), the Chancery Court found that a post-judgment transfer by the debtor husband to his non-debtor wife violated the fraudulent conveyance act. As opposed to <i>Mitchell</i>, the <i>Kaczmarczyk</i> court held that the transfer, while purportedly made pursuant to the divorce discussions, did not include fair consideration because the parties reconciled. Arguably, neither case should have involved an examination of the fraudulent conveyance statute. These cases necessarily raise a cautionary note as to whether a lien attaches. Does not allow joint trusts to qualify for creditor protection. 12 Del. Code § 3334</p>
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?

District of Columbia	Type of Bar: Full.
	Effect of Judgment Creditor of One Spouse: Not subject to attachment.
	<p>Type of Property: Real and personal property. See <i>Morrison v. Potter</i>, 764 A.2d 234 (D.C. 2000), where a joint checking account was presumed to be held by tenants by the entirety despite the right, under the account agreement, of either spouse to withdraw: “[C]ourts have not interpreted the unilateral right of a spouse to withdraw funds as an alienation of the marital property. Instead, ‘[w]here a deposit is made payable to either spouse, agency or authority exists by implication ... Indeed, with respect to a joint bank account held by a husband and wife, each spouse acts as the other spouse’s agent, and both have properly consented to the other spouse’s withdrawals in advance, thus satisfying the non-alienation requirement of a tenancy by the entireties” (citations omitted).</p>
	<p>Comment: In <i>Est. of Wall</i>, 440 F.2d 215 (D.C. 1971), the husband died holding a tenant by the entirety interest in a fund. The husband’s creditors unsuccessfully sought the estate’s “interest” in the fund: “[T]he full complement of common law characteristics of co-tenancy by the entireties is preserved. A unilaterally indestructible right of survivorship, an inability of one spouse to alienate his interest, and, importantly for this case, a broad immunity from claims of separate creditors remain among its vital incidents.” <i>Id.</i> at 219. In <i>American Wholesale Corp. v. Aronstein</i>, 10 F.2d 991 (1926), the husband’s transfer of his interest in entireties property to his wife was held not to be a fraudulent conveyance because the entireties property was not subject to a lien by his judgment creditors.</p> <p>Spouses may agree to continue the incidents of entirety property after termination of the marriage, thus creating a unique exception to the general requirement that property can be held in entirety only between husbands and wives. D.C. Code Ann. § 16-910; <i>Travis v. Benson</i>, 360 A.2d 506, 509 (D.C. 1976).</p>
	Does not allow joint trusts to qualify for creditor protection.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?

	Are there any laws which allow the creditor of one spouse to levy on entirety property?:
Florida	Type of Bar: Full.
Florida continued	Effect of Judgment Creditor of One Spouse: No attachment.
	Type of Property: Real and personal property. See <i>Beal Bank, SSB v. Almand & Assoc.</i> , 780 So.2d 45 (Fla. 2001), announcing a presumption in favor of entireties of joint bank account unless the signature card specifically disclaims a tenancy by the entireties: “[A]s we have explained, the ability of one spouse to make an individual withdrawal from the account does not defeat the unity of possession so long as the account agreement contains a statement giving each spouse permission to act for the other.” This presumption, that jointly owned property held by a married couple is entireties, is rebuttable. <i>In re Hinton</i> , 378 B.R. 371 (Bankr. M.D. Fla. 2007).
	Comment: In <i>Passalino v. Protective Group Securities</i> , 886 So.2d 295 (Fla. 2004), husband and wife owned rental property as tenants by the entirety. They sold the property and the proceeds were held by their attorney intended as a deposit on another tenants by the entirety property. The fund retained its tenant by the entirety characteristics and was not subject to the judgment solely against the husband. In <i>Hunt v. Covington</i> , 200 So. 76 (Fla. 1941), the Florida Supreme Court described the attributes of tenant by the entirety: “It is not subject to execution for the debt of the husband. It is not subject to partition; it is not subject to devise by will; neither is it subject to the laws of descent and distribution.”
	It is questionable whether Florida allows a joint trust to qualify for tenancy by the entirety creditor protection, but there is no specific enabling statute. However, some courts have allowed creditors to reach entirety property if the married couple transfers the property into a joint revocable trust. Compare <i>In re Givans</i> , 623 B.R. 635 (Bankr. M.D. Fla. 2020) (court concluded that debtor and his wife forfeited the creditor-protection benefits of their TBE property when they transferred the property to their joint trust because the property stopped being TBE once it entered the trust and the unity of marriage was lost), with <i>In re Romagnoli</i> , 2021 WL 2762812 (Bankr. S.D. Fla. 2021) (court concluded that the creditor could not reach the assets of the joint trust because if the property was not in the trust, it would be TBE property not subject to the claims of the debtor’s creditors unless the creditors were joint creditors).
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
Are there any concerns about the use of tenancy by the entirety in a same sex marriage?	

	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Hawaii	Type of Bar: Full.
	Effect of Judgment Creditor of One Spouse: No attachment.
	Type of Property: Real and personal property. Haw. Rev. Stat. § 509-2 provides that land “or any other type of property” may be held tenants by the entirety. See <i>Traders Travel International, Inc. v. Howser</i> , 753 P.2d 244 (Haw. 1988), holding that the clear and unambiguous language of the signature card of “joint account” did not suggest entireties. That children were additional joint owners further rebutted any indication of entireties ownership.
	Comment: In <i>Sawada v. Endo</i> , 561 P.2d 1291 (Haw. 1977), the husband was a judgment debtor due to a motor tort award against him. He and his wife subsequently transferred tenant by the entirety property to their sons. The Hawaii Supreme Court found that no lien attached to husband’s interest because he had no separate property interest in the property. Thus, the estate was not subject to the husband’s sole debt.
	Does allow joint trusts to qualify for tenancy by the entirety creditor protection. Haw. Rev. Stat. § 509-2.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Illinois	Type of Bar: Modified.
	Effect of Judgment Creditor of One Spouse: No attachment to “homestead” entireties property.

	Type of Property: Homestead real property only; see comment below for further explanation.
	Comment: The tenancy was re-established in Illinois by statute and limited to homestead property. 765 ILCS § 1005/1c. By statute, 735 Ill. Comp. Stat. § 5/12-112, the debtor of one spouse cannot act against homestead entireties property. “Illinois stopped recognizing common law tenancy by the entirety in 1861 when married women’s law were first adopted. These laws recognized that women enjoyed rights independent of their husbands. In 1989, the Illinois General Assembly enacted a statute creating a tenancy by the entirety applicable only to ‘homestead property’ held by husbands and wives ‘during coverture.’” <i>E.J. McKernan co. v. Gregory</i> , 643 N.E.2d 1370, 1373 (Ill. App. 1994). Does allow joint trusts to qualify for tenancy by the entirety creditor protection. 765 ILCS 1005-1c (allowed for homestead only).
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Indiana	Type of Bar: Full.
Indiana continued	Effect of Judgment Creditor of One Spouse: No attachment. Type of Property: Real property and personal property “directly derived from real estate held by [tenants by the entirety], as crops produced by cultivation of lands owned by entireties or proceeds arising from sale of property (i.e., real estate) so held.” <i>Rhodes v. Indiana Nat’l Bank</i> , 544 N.E.2d 179, 180 (Ind. 1989) (holding that the personal property exception is very narrow so that rents are not subject to tenants by the entireties protection). The limitation to real property or to personal property directly derived from it produces fine distinctions. In <i>Diss v. Agri Business Int’l</i> , 670 N.E.2d 97 (Ind. 1996), the debtor husband transferred rental property to the wife and the transfer was set aside as a fraudulent conveyance because the rental income was not “personal property directly derived” from the realty. By statute, Ind. Code § 34-55-10-2(c)(5), entireties real estate is exempt from sale for the debt of one spouse. Comment: In <i>Myler v. Myler</i> , 210 N.E.2d 446 (Ind. App. 1965), the husband owed child support arrearage from his first marriage. The husband’s mother

	<p>subsequently transferred real estate to the husband and his second wife. The court held that the husband’s interest was not subject to his individual debts. There was no showing that he transferred his sole funds to acquire the property so no fraudulent conveyance was involved.</p> <p>Does allow joint trusts to qualify for tenancy by the entirety creditor protection. Ind. Code § 30-4-3-35.</p>
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Kentucky	Type of Bar: Modified.
	Effect of Judgment Creditor of One Spouse: Attachment only on the contingent survivorship interest.
	Type of Property: Real and personal property. “It is recognized in this state that a person may by depositing his own money in the names of himself and another create the equivalent of a tenancy in common or a tenancy by the entirety, depending upon his intent.” <i>Saylor v. Saylor</i> , 389 S.W.2d 904, 905 (Ky. 1965). <i>Saylor</i> held that the conjunctive “and” is presumed to create tenancy in common while the disjunctive “or” created a presumption of entireties.
	Comment: In <i>Hoffmann v. Newell</i> , 60 S.W.2d 607, 613 (Ky. 1932) the court permitted the sale of the husband’s contingent survivorship interest subject, however, to the wife’s right of life time enjoyment and her survivorship right: “We are of the opinion that, as the statute declares this contingent interest of the husband to be subject to sale for the judgment creditor’s debt, he takes the interest acquired upon its sale, subject only to the defeasance its very contingent nature demands, or its destruction through the wife’s survivorship of his judgment debtor.”
Kentucky continued	In <i>Peyton v. Young</i> , 659 S.W.2d 205 (Ky. 1983), a husband, but not the wife, mortgaged the entirety property. He subsequently transferred his interest to his wife. The court held that one-half interest carried with it the mortgage. He

	<p>subsequently murdered his wife then committed suicide. The court treated the deaths as simultaneous and permitted the mortgage to be satisfied out of his one-half interest. If she had indeed survived him, however, the debt would have effectively extinguished because the right of the survivorship is seen as a core element of tenants by the entirety.</p> <p>Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.</p> <p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p> <p>Are there any concerns about the use of tenancy by the entirety in a same sex marriage?</p> <p>Does a forced sale through bankruptcy or foreclosure terminate the tenancy?</p> <p>Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?</p> <p>Are there any laws which allow the creditor of one spouse to levy on entirety property?</p>
Maryland	Type of Bar: Full.
	<p>Effect of Judgment Creditor of One Spouse: No attachment.</p> <p>Type of Property: Real and personal property. <i>Bruce v. Dyer</i>, 524 A.2d 777 (Md. 1987), evidences that entireties are favored by the law. <i>See also Diamond v. Diamond</i>, 467 A.2d 510 (Md. 1983) (“It is well established that this Court recognizes that a tenancy by the entireties may be created in personal property.”)</p> <p>Comment: <i>Watterson v. Edgerly</i>, 388 A.2d 934 (Md. App. 1978) held that a creditor “has no standing to complain” when the debtor husband transferred all of his interest in a residence to his wife because it was held tenants by the entirety. In that case, the wife then provided that the residence go by Will to a spendthrift trust for husband’s benefit. The wife died 61 days after the transfer of the real estate to her. The intent to create entireties property, coupled with the four unities, causes the tenancy to be created. <i>Cruickshank-Wallace v. Co. Banking & Trust Co.</i>, 885 A.2d 403 (Md. App. 2005). <i>See, however, In re Pernia</i>, 165 B.R. 581 (Bankr. D. Md. 1994), where the Bankruptcy Court held that the account designation trumped intent. In that case, proceeds from the sale of entireties property was used to acquire U.S. Treasury EE Bonds. The bonds were titled as held husband “or” wife. Treasury regulations stated that holding the bonds as such made them subject to the order of either spouse. The court found that the EE Bonds were not entirety property under Maryland law: “Both husband and wife are essential</p>

<p>Maryland continued</p>	<p>parties to an effective transfer of property held as tenants by the entirety.” <i>Id.</i> at 582. The federal regulations governing the account holdings were found to preempt “all laws and court decisions” because of federal preemption. <i>Pernia</i> was wrongly decided to the extent it claims to make a general pronouncement of Maryland law. Indeed, in <i>In re Breslin</i>, 283 B.R. 834 (Bankr. D. Md. 2002), the court stated that the <i>Pernia</i> result was “only because” the federal regulations determined ownership and referred to <i>Brewer v. Bowersox</i>, 48 A. 1060 (Md. 1901), for the proposition that when an account is held disjunctively but only payable to the two spouses, but subject to the order of either, an entirety account is created. Entireties exists if the couple so intends and the unities coincide, regardless of the nature of the account. See <i>Cruickshank-Wallace</i>, 885 A.2d at 413, <i>Diamond</i>, 467 A.2d 510; <i>M. Lit, Inc. v. Berger</i>, 170 A.2d 303 (Md. 1961). There is also a presumption that property purchased from the proceeds of entirety property retains its character. <i>Tait v. Safe Deposit & Trust Co. of Baltimore</i>, 70 F.2d 79 (4th Cir. 1934) (interpreting Maryland law).</p> <p>Does allow trusts to qualify for tenancy by the entirety creditor protection. Md. Est. & Tr. Code § 14.5-5-511(b).</p> <p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p> <p>Are there any concerns about the use of tenancy by the entirety in a same sex marriage?</p> <p>Does a forced sale through bankruptcy or foreclosure terminate the tenancy?</p> <p>Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?</p> <p>Are there any laws which allow the creditor of one spouse to levy on entirety property?</p>
<p>Massachusetts</p>	<p>Type of Bar: Modified.</p>
	<p>Effect of Judgment Creditor of One Spouse: Lien attaches but no execution if principal residence, otherwise may sell debtor’s share.</p> <p>Type of Property: Real and personal property. After entirety property was condemned in <i>Ronan v. Ronan</i>, 159 N.E.2d 653 (Mass. 1959), the court held that the proceeds belonged to both the husband and wife. Under pre-1980 law, the husband was entitled to the income during their joint lives, and upon the death of either, the survivor was entitled to all of it.</p> <p>Comment: Before a statutory fix, Massachusetts held to the “husband was the one” rule under common law. Therefore, the husband’s creditors could take</p>

	<p>possession of the property as long as the husband debtor lived, subject to the wife’s right of survivorship. <i>Pray v. Stebbins</i>, 4 N.E. 824 (Mass. 1886); <i>Raptes v. Pappas</i>, 155 N.E. 787 (1927). The state reversed this rule by statute, Mass. Gen. Laws ch. 209, § 1, providing that both “shall be equally entitled to the rents, products, income or profits and to the control, management and possession of property held by them as tenants by the entirety.” The statute also provided that a debtor spouse’s interest was not subject to seizure or execution “so long as such property is the principal residence of the nondebtor spouse.” Other than property serving as the principal residence of the nondebtor spouse, creditors may execute and sell entireties property after adjusting for the non-debtor spouse’s interest. <i>Coraccio v. Lowell Five Cents Savings Bank</i>, 612 N.E.2d 650 (Mass. 1993); <i>In re Snyder</i>, 249 B.R. 40 (B.A.P. 1st Cir. 2000).</p> <p>Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.</p> <p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p> <p>Are there any concerns about the use of tenancy by the entirety in a same sex marriage?</p> <p>Does a forced sale through bankruptcy or foreclosure terminate the tenancy?</p> <p>Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?</p> <p>Are there any laws which allow the creditor of one spouse to levy on entirety property?</p>
Michigan	Type of Bar: Full
	<p>Effect of Judgment Creditor of One Spouse: No Attachment</p> <p>Type of Property: Real property and its proceeds as well as certain enumerated personal property.</p> <p>Comment: As with Massachusetts, Michigan was late in enacting a statute holding that both spouses “shall be equally entitled to the rents, products, income or profits, and to the control and management of real or personal property held by them as tenants by the entirety.” Mich. Comp. Laws § 557.71 (adopted in 1975). In <i>SNB Bank & Trust v. Kensey</i>, 378 N.W.2d 594 (Mich. 1985), the court held that rents from entirety property cannot be attached to satisfy the debts of one spouse’s creditors. In that case, the court held that the statute simply equalized the rights of both spouses to control the property and that the entireties property and its rents continued to be the property of the</p>

<p>Michigan continued</p>	<p>marital unit. Also by statute, certain jointly held debt instruments and stock certificates are exempt from attachment by one spouse’s creditors. Mich. Comp. Laws §§ 557.151, 600.6023a. These statutes, in effect, recognized entireties in those enumerated debt and stock accounts. <i>Zavradinos v. JTRB, Inc.</i>, 753 N.W.2d 60 (Mich. 2008); <i>DeYoung v. Mesler</i>, 130 N.W.2d 38 (Mich. 1964).</p> <p>Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.</p> <p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p> <p>Are there any concerns about the use of tenancy by the entirety in a same sex marriage?</p> <p>Does a forced sale through bankruptcy or foreclosure terminate the tenancy?</p> <p>Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?</p> <p>Are there any laws which allow the creditor of one spouse to levy on entirety property?</p>
<p>Mississippi</p>	<p>Type of Bar: Full.</p>
	<p>Effect of Judgment Creditor of One Spouse: No attachment.</p> <p>Type of Property: Real property.</p> <p>Comment: Mississippi recognizes entireties in real property: “An estate by entirety may exist only in a husband and wife and may not be terminated by the unilateral action of one of them because they take by the entireties and not by moieties. While the marriage exists, neither husband nor wife can sever this title so as to defeat or prejudice the right of survivorship in the other, and a conveyance executed by only one of them does not pass title.” <i>Ayers v. Petro</i>, 417 So.2d 912, 914 (Miss. 1982). Thus, in <i>Cuevas v. McCallum</i>, 191 So.2d 843 (Miss. 1966), a husband purportedly conveyed his interest in tenant by the entirety property to his girlfriend in an attempt to lower his asset profile anticipating a divorce. The Mississippi Supreme Court held the transaction void because neither spouse could unilaterally alienate tenant by the entirety property. There are no cases, however, that discuss the rights of creditors of one of the spouse and whether the lack of moieties precludes attachment or merely means that a creditor takes subject to the survivorship interest of the non-debtor spouse. See Note, Rodger A. Heaton, <i>Administration of Entireties Property in Bankruptcy</i>, 60 Ind. L.J. 305, 309 n.24 (1985). Given the descriptions of entireties in the Mississippi cases, however, there is no reason to doubt that it is a full bar jurisdiction.</p>

	Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Missouri	Type of Bar: Full.
Missouri continued	Effect of Judgment Creditor of One Spouse: No attachment.
	Type of Property: Real and personal property. “It has been held in Missouri for some time that where a husband and wife hold personal property as joint owners they are presumed to be tenants by the entirety. Each is presumed to have an undivided interest in the whole of the property.” <i>Hanebrink v. Tower Grove Bank & Trust Co.</i> , 321 S.W.2d 524, 527 (Mo. Ct. App. 1959); <i>see also Hallmark v. Stallings</i> , 648 S.W.2d 230 (Mo. Ct. App. 1983) (recognizing entireties ownership in livestock).
	Comment: In <i>Hanebrink v. Tower Grove Bank & Trust Co.</i> , 321 S.W.2d 524 (Mo. Ct. App. 1959), a bank paid a garnishment against the husband alone from a tenant by the entirety account. The court held the bank liable to wife for the amount paid: “It is also the law in this state that where a judgment and execution are against the husband alone such judgment cannot in any way affect property held by the husband and wife in the entirety.” <i>Id.</i> at 527. That either spouse can draw on an account does not defeat the entireties: “Neither does the fact that either Dr. Coleman or his wife could draw checks on the account destroy their relationship as tenants by the entirety in the balance left in the bank. The drawing of the checks was by mutual consent.” <i>State Bank of Poplar Bluff v. Coleman</i> , 240 S.W.2d 188, 191 (Mo. Ct. App. 1951).
	Does allow joint trusts to qualify for tenancy by the entirety creditor protection. Mo. Rev. Stat. § 456.950.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?:

	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
New Jersey	Type of Bar: Full for property transferred after 1988/Modified for property transferred before 1988.
	Effect of Judgment Creditor of One Spouse: Execution on judgment permitted subject to equity determination for property transferred prior to 1988. For property transferred after 1988 there is no attachment.
	Type of Property: Real and personal property by statute, N.J. Stat. Ann. § 46:3-17.2. (beginning April 6, 1988).
	Comment: On January 5, 1988 New Jersey adopted N.J. Stat. Ann. §§ 46.3-17.2 to .4. The statute became effective 90 days after its adoption and applies to all tenancies created on or after that date. N.J. Stat. Ann. § 46.3-17.4 provides that, “Neither spouse may sever, alienate, or otherwise affect their interest in the tenancy by the entirety during the marriage or upon separation without the written consent of the parties.” The appellate division of the Superior Court of New Jersey held that this statute changed the law of New Jersey such that, for tenancies created on or after April 6, 1988, a creditor of only one spouse cannot partition and sell entirety property. <i>Jimenez v. Jimenez</i> , 185 A3d 954, 958 (N.J. Super. Ct. App. Div. 2018). For tenancies created prior to April 6, 1988, the execution by the judgment creditor of one spouse acquires the survivorship interest of the debtor spouse and a tenant in common life interest without the automatic right of partition. <i>Newman v. Chase</i> , 359 A.2d 474 (N.J. 1976). In <i>Newman</i> , the court weighed the creditor’s interest against the “cost of dispossessing the family of its home.” <i>Id.</i> at 480. The court granted the creditor one-half the imputed net rental value of the house.
	Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?

New Jersey continued	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
New York	Type of Bar: Modified.
	Effect of Judgment Creditor of One Spouse: Attachment permitted and sale allowed subject to equity determination.
	Type of Property: Real property or co-op apartments only under statute, N.Y. Est. Powers & Trusts Law §§ 6-2.1, 6-2.2. In <i>Hawthorne v. Hawthorne</i> , 192 N.E.2d 20 (N.Y. 1963), the New York Court of Appeals held that fire insurance proceeds from entirety property was personal property not held by the entirety. The court in <i>Nat'l Bank & Trust Co. of Norwich v. Rickard</i> , 393 N.Y.S.2d 801 (N.Y. App. Div. 1977), reached a similar result, finding that excess foreclosure proceeds were personalty held as tenants in common rather than as entirety.
	Comment: A creditor may reach the debtor spouse's interest and, under certain circumstances, may sell the interest: "[U]nder the authorities, the sale of the husband's interest in the real property would convey a hybrid tenancy in common, with survivorship but no partition rights, to a third party stranger who then could have some conceivable right to use immediately an undivided one-half share of the property ... It is, of course, unquestioned that the creditor has legitimate considerations in its favor ... However, as a practical matter, its real interest is in asserting its lien in the event of a voluntary sale of the property, or in the husband's possibility of surviving the wife. The creditor's legitimate security interest is really protected by its judgment lien. This Court cannot visualize in this case any substantive value in immediate occupancy rights to anyone outside the close family." <i>Hammond v. Econo-Car of North Shore</i> , 336 N.Y.S.2d 493, 494-95 (N.Y. Sup. Ct. 1972) (citations omitted). "As a practical matter, if this were the marital residence, petitioner-wife's right to exclusively occupy the whole of the property unaffected by any attempted sale of her debtor-spouse's interest therein goes without questions." <i>BNY Financial Corp. v. Moran</i> , 584 N.Y.S.2d 261, 262 (N.Y. Sup. Ct. 1992) (staying collection activity on Hamptons vacation home to permit non-debtor spouse time to attempt private sale). In <i>In re Levehar</i> , 30 B.R. 976 (Bankr. E.D.N.Y. 1983), the Bankruptcy Court reviewed a proposed sale under Bankruptcy Code § 363 which permits such a sale if the Court finds the benefit to the estate outweighs the detriment of such sale to the co-owner. <i>Levehar</i> assumed that the co-owner non-debtor would be entitled to a share greater than 50% of the net proceeds based on her greater life expectancy, suggesting that

New York continued	<p>such a sale would not be appropriate. <i>Id.</i> at 981. Implicit in <i>Levehar</i>, of course, is that the balancing test of § 363 might yield a different result under other fact situations. <i>In re Persky</i>, 134 B.R. 81 (Bankr. E.D.N.Y. 1991), after deciding that under no circumstance can the undivided right to survivorship be severed by such a sale, held the power to sell free of the non-debtor spouse’s survivorship interest unenforceable. This case is not followed generally. <i>See Sapir v. Sartorius</i>, 230 B.R. 650 (Bankr. S.D.N.Y. 1999).</p> <p>Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.</p> <p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p> <p>Are there any concerns about the use of tenancy by the entirety in a same sex marriage?</p> <p>Does a forced sale through bankruptcy or foreclosure terminate the tenancy?</p> <p>Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?</p> <p>Are there any laws which allow the creditor of one spouse to levy on entirety property?</p>
North Carolina	Type of Bar: Full.
	<p>Effect of Judgment Creditor of One Spouse: No attachment.</p> <p>Type of Property: Real estate only. “Although North Carolina recognizes the right of husband and wife to hold real property as tenants by the entirety, it does not in general recognize the tenancy by the entirety in personal property. When husband and wife voluntarily sell and convey real property owned by them as tenants by the entirety, the proceeds of such are considered personal property ... held by husband and wife as tenants in common.” <i>In re Foreclosure of Deed of Trust Recorded at Book 911, at Page 512, Catawba Co. Registry</i>, 272 S.E.2d 893, 896 (N.C. Ct. App. 1980) (citations omitted).</p> <p>Comment: <i>Dealer Supply Co. v. Greene</i>, 422 S.E. 2d 350 (N.C. Ct. App. 1992), review denied 426 S.E.2d 704 (1993), involved a pre-divorce transfer by husband and wife to husband’s parents in exchange for a cash-out of the wife. “In North Carolina, it is well established that an individual creditor of either husband or wife has no right to levy upon property held by the couple as tenants by the entirety. It follows therefore that a ‘[h]usband and wife [can] by joint voluntary conveyance transfer the [entirety held] property to anyone of their choice, free of lien or claims of [one spouse’s] individual creditors.’ Further, as a debtor can only commit a fraudulent conveyance by disposing of</p>

	<p>property to which the creditor has a legal right to take in satisfaction of his claim, a husband’s conveyance of his interest in entirety held property cannot come within the prohibition against fraudulent conveyances.” <i>Id.</i> at 352 (citations omitted, alterations in original); <i>see also L&M Gas Co. v. Leggett</i>, 161 S.E.2d 23 (N.C. 1968). In <i>Martin v. Roberts</i>, 628 S.E.2d 812 (N.C. Ct. App. 2006), on the other hand, a transfer incident to divorce but made after the date of the divorce decree was held attachable because the entireties was severed by the time of the conveyance. N.C. Gen. Stat. § 39-13.6, enacted in the early 1980s, reversed the husband’s right to control the property during coverture.</p> <p>Does allow joint trusts to qualify for tenancy by the entirety creditor protection. N.C. Gen. Stat. § 39-13.7</p>
Ohio	Type of Bar: Modified.
Ohio continued	<p>Effect of Judgment Creditor of One Spouse: No attachment provided that the deed was created during a certain period.</p> <p>Type of Property: Real property only under deeds created after February 9, 1972 and before April 4, 1985 pursuant to the former Ohio Rev. Stat. § 5302.17.</p> <p>Comment: Prior to 1972, Ohio did not recognize entireties. By statute in 1972 it permitted husbands and wives to hold real estate as tenants by the entirety. Cases held that such tenancy precluded attachment by the creditor of one spouse: “[W]e unequivocally follow the majority of jurisdictions and hold that a judgment creditor of a married individual is precluded from enforcing that judgment by an action in foreclosure against real property that an individual debtor holds with his/her spouse in an estate by the entireties...” <i>Koster v. Boucheaux</i>, 463 N.E.2d 39, 47 (Ohio Ct. App. 1982). Likewise, in <i>Donvitov v. Criswell</i>, 439 N.E.2d 467 (Ohio Ct. App. 1982), a post-judgment transfer to the non-debtor spouse was not a fraudulent conveyance because the creditor had no attachable interest. As of 1984, a “survivorship tenancy” replaced tenants by the entirety which does not enjoy the entireties protection. <i>Central Benefits Mutual Insurance Co. v. Ris Administrators Agency</i>, 637 N.E.2d 291 (Ohio 1994). Although a co-tenant of a survivorship tenancy may not unilaterally defeat another’s right to the survivorship share, a judgment lien against one tenant converts the tenancy to tenancy in common. Ohio Rev. Stat. § 5302.20(c)(4). Tenancies by the entirety created while the 1972 statute was effective, however, shall be respected. Ohio Rev. Stat. § 5302.21.</p> <p>Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.</p> <p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p>

	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Oklahoma	Type of Bar: Modified.
	Effect of Judgment Creditor of One Spouse: Attachment permitted.
	Type of Property: Real and personal property. Okla. Stat. Ann. tit. 60, § 74.
	Comment: By statute, Oklahoma recognizes entireties. Okla. Stat. Ann. tit. 60, § 74. However, the statute provides: “Nothing herein contained shall prevent execution, levy and sale of the interest of the judgment debtor in such entireties and such sale shall constitute a severance.” A sale, not the attachment of a lien, severs the tenancy. Thus, if the debtor spouse dies prior to sale, the property passes to the survivor free of the debt. <i>Toma v. Toma</i> , 163 P.3d 540 (Okla. 2007). It appears that the Oklahoma version of entireties precludes voluntary transfer of an interest during coverture. See Note, Tom R. Russell, <i>Title 60, Section 74 of the Oklahoma Statutes: A Unique Form of Tenancy by the Entirety</i> , 58 Okla. L. Rev. 317 (2005).
	Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Oregon	Type of Bar: Modified.
	Effect of Judgment Creditor of One Spouse: Attachment subject to non-debtor’s right to possession and survivorship.

Oregon continued	<p>Type of Property: Real property only. <i>Panushka v. Panushka</i>, 349 P.2d 450 (Or. 1960), involved an executory contract on real property executed by husband and wife. The husband died before settlement and his interest went to his probate estate because the contract converted the holding to a right to the purchase price. The court refused to recognize entireties in personal property. But see <i>Bedortha v. Sunridge Land Co.</i>, 822 P.2d 694 (Or. 1991), for a cautionary note on the conversion of real estate to personal property upon an executing contract of sale.</p>
	<p>Comment: Tenancy by the entirety is seen as a tenancy in common with an indestructible right of survivorship. Therefore the interest that a judgment creditor takes is an interest that may be defeated if the non-debtor spouse survives the debtor. If the tenancy is terminated by divorce, however, the lien remains attached and the creditor may enforce its lien regardless of a divorce decree awarding the property to the non-debtor spouse. <i>Brownley v. Lincoln Co.</i>, 343 P.2d 529 (Or. 1959). A creditor of one has an interest in the rents and profits and partition is not permitted. <i>Stanley v. Mueller</i>, 350 P.2d 880 (Or. 1960). In <i>Wilde v. Mounts</i>, 769 P.2d 802 (Or. Ct. App. 1989), the couple deeded the property to a family member after a judgment lien attached due to the debt of the husband alone. The court held that this out conveyance terminated the wife's right of survivorship. Because the judgment lien attached to the husband's interest, and because the interest was an interest in the whole (subject to the wife's interest), the judgment lien thereupon attached to the whole. A later case, involving the allocation of a property damage award to the two co-tenants, held that each owns one-half of such proceeds in keeping with the view that entireties is a form of in common ownership. This ruling calls into questions the earlier holding in <i>Wilde</i>. <i>McCormick v. City of Portland</i>, 82 P.3d 1043 (Or. Ct. App. 2004).</p> <p>Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.</p>
	<p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p>
	<p>Are there any concerns about the use of tenancy by the entirety in a same sex marriage?</p>
	<p>Does a forced sale through bankruptcy or foreclosure terminate the tenancy?</p>
	<p>Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?</p>
	<p>Are there any laws which allow the creditor of one spouse to levy on entirety property?</p>
<p>Pennsylvania</p>	<p>Type of Bar: Full.</p>

	Effect of Judgment Creditor of One Spouse: No attachment.
Pennsylvania continued	Type of Property: Real and personal property. “The authorities thus cited would seem to show that either spouse presumptively has the power to act for both, as long as the marriage subsists, in matters of entireties, without specific authorization, provided that fruits or proceeds of such action inures to the benefit of both and the estate is not terminated. But neither may be such action destroy the true purpose of the estate by attempting to convert it or a part of it, in bad faith, into one in severalty.” <i>Madden v. Gosztonyi Savings & Trust Co.</i> , 200 A. 624, 630-631 (Pa. 1938) (discussing a joint bank account).
	Comment: In <i>Sterrett v. Sterrett</i> , 166 A.2d 1, 2 (Pa. 1960), the Supreme Court likened tenancy by the entirety property to a living tree “whose fruits they share together. To split the tree in two would be to kill it and then it would not be what it was before when either could enjoy its shelter, shade and fruit as much as the other.” It is not subject to the creditors of one spouse. There is some question as to whether an unenforceable lien attaches to the debtor spouse’s interest, subject to divestment. <i>See In re Hope</i> , 77 B.R. 470 (Bankr. E.D. Pa. 1987). In <i>C.I.T. Corp. v. Flint</i> , 5 A.2d 126 (Pa. 1939) a transfer by the debtor husband and non-debtor wife to a spendthrift trust for their benefit was found not to be a fraudulent conveyance because the creditor had no attachable interest in the property. The court’s holding was narrow; however, it only decided the issue of the fraudulent conveyance and not whether, or to what extent, a creditor could reach the debtor’s interests in the self-settled spendthrift trust. <i>Id.</i> at 129.
	Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Rhode Island	Type of Bar: Modified.
	Effect of Judgment Creditor of One Spouse: Attachment permitted but not sale.

	Type of Property: Real property. Applicability to personal property is uncertain, as there are no cases regarding personalty and entireties ownership.
	<p>Comment: In <i>Broomfield v. Brown</i>, 25 A.2d 354 (R.I. 1942), the Rhode Island Supreme Court held that the state’s married woman’s act merely permitted women to own property in any manner permitted by law, including as tenants by the entirety. Therefore, the judgment creditor of husband could not force the sale of the property. The courts, however, made a distinction between attachment and sale. It permitted the attachment to be recorded. <i>Knobb v. Security Ins. Co.</i>, 399 A.2d 1214 (R.I. 1979). In <i>Cull v. Vadnais</i>, 406 A.2d 1241 (R.I. 1979), the court held that the lien attaches but no levy and sale permitted. In <i>re Gibbons</i>, 459 A.2d 938 (R.I. 1983), the court held that once the lien attaches, a third party will not be free of the debt. The death of the debtor spouse before the non-debtor spouse, however, permits survivorship free of the lien. The Bankruptcy Court in <i>In re Furkes</i>, 65 B.R. 232, 236 (Bankr. D.R.I. 1986), explained that the lien attaches “to a contingent future expectancy interest, and that said interest may be sold by the attaching creditor, if anyone can be persuaded to buy it.”</p> <p>Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.</p>
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Tennessee	Type of Bar: Modified.
	Effect of Judgment Creditor of One Spouse: Lien attaches to debtor spouse’s survivorship interest.
	Type of Property: Real and personal property. Joint bank accounts subject to the order of either spouse may be entireties property. <i>Grahl v. Davis</i> , 971 S.W.2d 373 (Tenn. 1998); <i>Sloan v. Jones</i> , 241 S.W.2d 506 (Tenn. 1951) (relying on the reasoning in <i>Madden v. Gosztonyi Savings & Trust Co.</i> , 200 A. 624 (Pa. 1938)). However, once a husband or wife withdraws funds from a

Tennessee continued	joint bank account held as tenants by the entirety, the funds cease to be held by the entirety. <i>In re Estate of Fletcher</i> , 538 S.W.3d 444 (Tenn. 2017).
	Comment: The lien attaches to the survivorship interest only and it does not affect the present possessory interest. <i>In re Arango</i> , 992 F.2d 611 (6th Cir. 1993) (applying Tennessee law). In <i>Citizens v. Southern Nat'l Bank</i> , 640 F.2d 837 (6th Cir. 1981), the court found that the transfer of the tenants by the entirety property from the debtor spouse to the non-debtor spouse involved the transfer of the debtor spouse's survivorship interest. This interest, explained the court, has "substantial value to the recipient spouse" so prejudice to the creditor is inferred. <i>Id.</i> at 839. The court therefore remanded the fraudulent conveyance issue.
	Does allow joint trusts to qualify for tenancy by the entirety creditor protection. T.C.A. § 35-15.510.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
U.S Virgin Islands	Type of Bar: Full.
	Effect of Judgment Creditor of One Spouse: No levy and execution.
	Type of Property: Real property only. V.I. Code Ann. tit. 28 § 7.
	Comment: In <i>Masonry Products, Inc. v. Tees</i> , 280 F.Supp. 654 (D.V.I. 1968), the court applied the majority rule that a creditor of one spouse may not "reach" that spouse's interest in property held by the entireties during the joint lives of the spouses. Therefore, it passes free from the debt if the non-debtor spouse survives. The estate by the entireties was introduced by statute in 1957 with few interpretative cases so it cannot be determined if a lien attaches.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
Are there any concerns about the use of tenancy by the entirety in a same sex marriage?	

	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Vermont	Type of Bar: Full.
	Effect of Judgment Creditor of One Spouse: No attachment.
	Type of Property: Real and personal property. See <i>Beacon Milling Co. v. Larose</i> , 418 A.2d 32 (Vt. 1990), finding that a joint bank account could be held as entireties, notwithstanding the ability of either to unilaterally withdraw from the account.
	Comment: Entireties property is not subject to the debts of one spouse. <i>In re Pauquette</i> , 38 B.R. 170 (Bankr. Vt. 1984). In <i>Lowell v. Lowell</i> , 419 A.2d 321 (Vt. 1980), an ex-wife could not use part of the value of the husband's tenant by the entirety interest with his current wife to support an alimony claim because such property could not be available to cover his sole debts. See also <i>Rose v. Morrell</i> , 259 A.2d 8 (Vt. 1969). Under Vermont's civil union statute, entireties ownership is extended to parties of a civil union. Vt. Stat. Ann. tit. 15 § 1204(e).
	Does not allow joint trusts to qualify for tenancy by the entirety creditor protection.
	Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?
	Are there any concerns about the use of tenancy by the entirety in a same sex marriage?
	Does a forced sale through bankruptcy or foreclosure terminate the tenancy?
	Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?
	Are there any laws which allow the creditor of one spouse to levy on entirety property?
Virginia	Type of Bar: Full.
	Effect of Judgment Creditor of One Spouse: No attachment.

Virginia continued	<p>Type of Property: Real and personal property. In <i>Oliver v. Givens</i>, 129 S.E.2d 661 (Va. 1963), the court found that the sale proceeds of entirety property continue to be held by the entirety and therefore the debtor spouse transferring his interest in the proceeds to his spouse was not a fraudulent transfer. “This is so for the obvious reason that creditors are not prejudiced by a gift of property which is exempt from their claims.” <i>Id.</i> at 664.</p>
	<p>Comment: In <i>Rogers v. Rogers</i>, 512 S.E.2d 821 (Va. 1999), the Virginia Supreme Court held that tenancy by the entirety property could not be sold by a creditor who had two separate judgments (one against husband and one against wife). In that case, the judgments were separate but related. Judgment against the wife was entered because she participated with her husband in a scheme to hinder and delay the collection of the judgment against her husband. See also <i>Bunker v. Peyton</i>, 312 F.3d 145 (4th Cir. 2002), where the Court of Appeals in a consolidated bankruptcy case held that the separate creditors of husband and wife were not entitled to satisfy debts against the tenancy by the entirety property regardless of the generally commingling of their finances. Virginia has a statute that extends entirety protection to spouses holding property in revocable trusts under certain circumstances. Such property held in trust “shall have the same immunity from the claims of their separate creditors as it would had it remained a tenancy by the entirety, so long as (i) they remain husband and wife, (ii) it continues to be held in the trust or trusts, and (iii) it continues to be their property.” Va. Code Ann. § 55-20.2. The property had to be held, before the transfer into trust, as tenants by the entirety.</p> <p>Does allow joint trusts to qualify for tenancy by the entirety creditor protection. Va. Code § 55-20.2</p>
	<p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p>
	<p>Are there any concerns about the use of tenancy by the entirety in a same sex marriage?</p>
	<p>Does a forced sale through bankruptcy or foreclosure terminate the tenancy?</p>
	<p>Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?</p>
	<p>Are there any laws which allow the creditor of one spouse to levy on entirety property?</p>
Wyoming	Type of Bar: Full.
	Effect of Judgment Creditor of One Spouse: No attachment.

	<p>Type of Property: Real and personal property. Wyo. Stat. Ann. § 34-1-140. However, the “existence of a tenancy by the entirety will not be presumed by this court in the absence of an express intent to create the right of survivorship.” <i>In re Anselmi</i>, 52 B.R. 479, 487 (Bankr. D. Wyo. 1985).</p>
	<p>Comment: In <i>Colorado Nat’l Bank v. Miles</i>, 711 P.2d 390 (Wyo. 1985), the court held that one spouse alone cannot subject tenant by the entirety property to a mortgage. “Entirety in this connection means indivisibility. The estate is owned not by one but by both as an indivisible entity ...” <i>Ward Terry & Co. v. Hensen</i>, 297 P.2d 213, 215 (Wyo. 1956).</p> <p>Does allow joint trusts to qualify for tenancy by the entirety creditor protection. W.S. 4-10-402(c)-(e).</p>
	<p>Can a transfer into the tenancy by a spouse constitute a fraudulent transfer?</p>
	<p>Are there any concerns about the use of tenancy by the entirety in a same sex marriage?</p>
	<p>Does a forced sale through bankruptcy or foreclosure terminate the tenancy?</p>
	<p>Are transfers between spouses or from the spouses to third parties exempted from fraudulent transfer laws?</p>
	<p>Are there any laws which allow the creditor of one spouse to levy on entirety property?</p>