

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: _____

ORDINANCE NO. _____ (2026)

An ordinance creating Cherokee Code Chapter 41 defining the different types of ownership of a possessory holding.

WHEREAS, the Tribe has long practiced and adopted the different types of joint ownership in a possessory holding such as tenancy by the entirety between enrolled spouses and tenancy in common between two or more owners of a possessory holding; and

WHEREAS, this practice has never been codified in the Cherokee Code; and

WHEREAS, it would be helpful for the public and for Tribal government agencies to amend the Cherokee Code to provide guidance and definition for the different types of joint ownership in a possessory holding; and

WHEREAS, the Tribal Lands Committee held its regularly scheduled meeting on May 13, 2026, and voted to submit this ordinance to Tribal Council to amend the Cherokee Code to provide guidance and definition for the different types of joint ownership in possessory holdings.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that the Cherokee Code is amended as follows:

Chapter 41 Types of Joint Ownership in Possessory Holdings

Article 1.

Definitions and General Provisions.

§ 41-1. Definitions.

For the purposes of this Chapter, the following definitions apply:

(1) Actual ouster. - An entry onto or possession of the possessory holding by a cotenant that is a clear, positive, and unequivocal act, equivalent to an open denial of another cotenant's rights or ownership in the possessory holding and putting the other cotenant out of seisin.

(2) Conveyance. - A transfer of ownership in a possessory holding by deed or devise or other instrument.

(3) Income. - Rents and profits from a possessory holding.

(4) Possessory holding. - An interest in Tribal land, granted by the Tribe to an individual enrolled member of the Tribe, a group of enrolled members, or a First Generation Descendant as defined by Cherokee Code Section 28-2, giving the authority to use and occupy a specific parcel or parcels of Tribal lands pursuant to Tribal ordinance and resolution, but maintaining, if applicable, legal ownership in trust by the federal

1 government for the benefit of the Tribe and reserving to the Tribe certain rights regarding
2 the parcel or parcels.

3 (5) Spouses. - Two individuals then legally married to each other.

4 (6) Cotenant. - A cotenant of a tenant in common.

5
6 Sections 41-2 through 41-10 are Reserved.

7
8 Article 2.

9 Tenancy by the Entirety.

10 § 41-11. Creation of tenancy by the entirety.

11 (a) Unless a contrary intention is expressed in the conveyance, a conveyance of possessory
12 holding, or any interest in a possessory holding, to spouses vests ownership of the possessory
13 holding in them as tenants by the entirety, provided that both individuals are enrolled members
14 of the Tribe, when the conveyance is to one of the following:

15 (1) A named individual "and wife."

16 (2) A named individual "and husband."

17 (3) A named individual "and spouse."

18 (4) Two named individuals, married to each other at the time of conveyance, whether or
19 not identified in the conveyance as being (i) husband and wife, (ii) spouses, or (iii)
20 married to each other.

21 (b) A conveyance by a grantor of possessory holding, or any interest in possessory holding, to the
22 grantor and their spouse vests the possessory holding in them as tenants by the entirety, unless
23 a contrary intention is expressed in the conveyance, provided that both individuals are enrolled
24 members of the Tribe.

25
26 § 41-12. Presumption of gift by spouse furnishing consideration.

27 Except for purposes of equitable distribution, when an individual furnishing the consideration for
28 possessory holding causes ownership to be placed in the name of the individual and the individual's
29 spouse, there is a presumption of a gift to the individual's spouse of an entirety interest, which is
30 rebuttable by clear, cogent, and convincing evidence.

31
32 § 41-13. Possession and control of entireties' possessory holding.

33 (a) Spouses shall have an equal right to the control, use, possession, and income from a possessory
34 holding held by them as tenants by the entirety.

35 (b) Neither spouse may sell, lease, mortgage, transfer, convey, sign, or in any manner encumber
36 any possessory holding held by them as tenants by the entirety without the written joinder of
37 the other spouse.

38
39 § 41-14. Termination of tenancy by the entirety other than upon death of a spouse; effects of
40 termination.

41 Events terminating a tenancy by the entirety other than the death of a spouse and the effects of
42 termination include the following:

43 (1) The voluntary sale and conveyance of a possessory holding held as tenants by the entirety
44 to a third party, including a foreclosure sale pursuant to a power of sale in a deed of trust.
45 Proceeds of the sale, including surplus funds generated from a foreclosure sale, are personal
46 property held by the spouses as tenants in common.

1 (2) The voluntary partition between the spouses executing a joint instrument conveying the
2 possessory holding held as tenants by the entirety to themselves as tenants in common or
3 in severalty.

4 (4) The conveyance from one spouse to the other spouse of his or her interest in the possessory
5 holding held as tenants by the entirety. The conveyance vests the possessory holding or
6 interest formerly held as tenants by the entirety in the other spouse.

7 (5) An absolute divorce of the spouses. An absolute divorce converts possessory holding held
8 as tenants by the entirety to a tenancy in common.

9
10 § 41-15. Termination of tenancy by the entirety upon death of a spouse.

11 (a) Except as provided in subsection (b) of this section, upon the death of a spouse, the possessory
12 holding held as tenants by the entirety belongs to the surviving spouse by right of purchase
13 under the original grant or devise and by virtue of survivorship. The deceased spouse has no
14 ownership interest in a possessory holding which is descendable or divisible.

15 (b) Where a slayer, as defined in N.C.G.S. 31A-3(3) as amended, and decedent hold a possessory
16 holding as tenants by the entirety, the possessory holding shall pass upon the death of the
17 decedent to the decedent's heirs or devisees.

18
19 Sections 41-16 through 41-20 are Reserved.

20
21 Article 2.
22 Joint Tenancy.

23
24 § 41-21. Creation of a joint tenancy with right of survivorship.

25 (a) A conveyance to two or more persons creates a joint tenancy with right of survivorship if the
26 instrument expresses an intent to create a joint tenancy with right of survivorship. The
27 following words in the instrument shall be deemed to express an intent to create a joint tenancy
28 with right of survivorship unless the instrument otherwise provides: "joint tenants with right
29 of survivorship," "JTROS", "joint tenants," "joint tenancy," "tenants in common with right of
30 survivorship," "joint with right of survivorship," "with right of survivorship."

31 (b) If the conveyance does not express the intent described in subsection (a) of this section, then
32 the conveyance creates a tenancy in common.

33 (c) Nothing in this Article prohibits joint tenants from entering into any agreement with regard to
34 the possessory holding held in joint tenancy, including, without limitation, an agreement that
35 notice must be given to other joint tenants before any joint tenant terminates the joint tenancy.

36
37 § 41-22. Determination of the interests of joint tenants in a joint tenancy with right of survivorship.

38 (a) The interests of joint tenants in a joint tenancy with right of survivorship shall be deemed to be
39 equal unless otherwise provided in the instrument of conveyance.

40 (b) This section shall apply to any conveyance of an interest in the possessory holding created at
41 any time that explicitly seeks to create an unequal ownership interest in a joint tenancy with
42 right of survivorship.

43
44 § 41-23. Termination of a joint tenancy with right of survivorship.

45 (a) Events terminating a joint tenancy with right of survivorship due to the collective action of all
46 joint tenants include the following:

1 (1) The conveyance to a third party by all of the joint tenants of all of their interests in the
2 possessory holding held in the joint tenancy, including a foreclosure sale pursuant to a
3 power of sale in a deed of trust.

4 (2) The execution of an instrument with a third party by all of the joint tenants that does
5 not convey all of their interests in the possessory holding held in the joint tenancy to
6 the third party, including a lease, executory contract of sale, option to purchase, or deed
7 of trust, and an intention to terminate expressly appears in the instrument.

8 (3) The execution of an instrument by all joint tenants for the purpose of expressing an
9 intent to terminate the joint tenancy.

10 (b) Events terminating a joint tenancy with right of survivorship due to the unilateral action of a
11 joint tenant include the following:

12 (1) The conveyance to a third party by a joint tenant of all of that joint tenant's interest in
13 the possessory holding held in the joint tenancy, including a foreclosure sale pursuant
14 to a power of sale in a deed of trust.

15 (2) The execution of an instrument with a third party by a joint tenant that does not convey
16 all of that joint tenant's interest to the third party, including a lease, executory contract
17 of sale, option to purchase, or deed of trust, and an intention to terminate expressly
18 appears in the instrument.

19 (3) The execution of an instrument by a joint tenant where the joint tenant is both the
20 grantor and the grantee if the intention to terminate expressly appears in the instrument.
21 A termination under this subdivision is effective only upon the recording at the Tribal
22 Realty Services Office, prior to the death of the joint tenant, of an instrument expressing
23 an intent to terminate the joint tenancy.

24 (c) When a termination occurs, a tenancy in common is created as follows:

25 (1) If a termination occurs under subdivision (1) of subsection (a) of this section because
26 of the conveyance of all of the joint tenants' interests to a third party, a tenancy in
27 common is created among the tenants as to any proceeds of sale or surplus funds
28 generated from a foreclosure sale.

29 (2) If a termination occurs because of the execution by all of the joint tenants of an
30 instrument described in subdivision (2) or (3) of subsection (a) of this section, a tenancy
31 in common is created among the tenants.

32 (3) If a termination occurs under subdivision (1) of subsection (b) of this section because
33 one of the joint tenants conveys all of that joint tenant's interest to a third party and
34 there are only two joint tenants, a tenancy in common is created between the third party
35 and the other joint tenant. If there are more than two joint tenants and one of the joint
36 tenants conveys all of that joint tenant's interests to a third party, a tenancy in common
37 is created among the third party and the remaining joint tenants, who continue as joint
38 tenants with right of survivorship as between or among themselves.

39
40 Sections 41-24 through 41-30 are Reserved.

41
42 Article 3.
43 Tenancy in Common.
44

45 § 41-31. Nature of tenancy in common, in general.

46 Tenancy in common ownership includes the following characteristics:

- (1) Two or more persons hold separate undivided interests in the possessory holding.
- (2) The interests of all cotenants in the possessory holding are deemed to be equal unless otherwise specified in the instrument of conveyance. Interests of cotenants in the possessory holding acquired by intestacy are as determined under Cherokee Code Chapter 28.
- (3) Cotenants hold by several and distinct ownership with each cotenant having a right to possession of the possessory holding.
- (4) Cotenants need not take ownership of a possessory holding from the same instrument or at the same time.
- (5) Cotenants do not have a right of survivorship.

§ 41-32. Creation of a tenancy in common.

(a) A tenancy in common is created by a conveyance that meets one of the following criteria:

- (1) The conveyance is to two or more grantees and expresses an intent that the grantees hold separate undivided interests in the possessory holding;
- (2) The conveyance is to one or more grantees and expresses an intent that the grantor and the grantee or grantees hold separate undivided interests in the possessory holding; or
- (3) The conveyance does not express an intent described in subdivision (1) or (2) of this subsection and, with nothing else appearing, does not under the circumstances create an ownership interest in the possessory holding other than a tenancy in common.

(b) The following words in the instrument shall be deemed to express an intent to create a tenancy in common unless the instrument provides otherwise: "equal portions," "equally divided," "share and share alike," "share equally," "their respective portions."

(c) An interest in the possessory holding held by cotenants who subsequently marry each other remains held by tenancy in common unless by separate instrument the spouses convey the interest to themselves to create a tenancy by the entirety or a joint tenancy with right of survivorship.

(d) A tenancy in common may be created by operation of law, including the following:

- (1) When two or more individuals take undivided interests in possessory holding upon intestate succession.
- (2) Upon termination of a joint tenancy with right of survivorship.
- (3) Upon termination of a tenancy by the entirety by voluntary sale or conveyance, voluntary partition, or divorce.

§ 41-32. Possession of possessory holdings held as cotenants.

(a) Each cotenant has a right to enter upon the possessory holding and to occupy and use it subject to the rights of all other cotenants.

(b) The possession of one cotenant is the possession of any other cotenant. Unless an actual ouster occurs, one cotenant cannot bring an action against another cotenant for taking possession of the possessory holding as to which each has a right of possession as a cotenant.

§ 41-33. Authority to bind another cotenant.

An act by a cotenant in relation to the possessory holding (i) cannot bind another cotenant with respect to a third party unless it was previously authorized or subsequently ratified by the other cotenant and (ii) is presumed to have been done by authority and for the benefit of the other cotenant.

1
2 § 41-34. Rents and profits from possessory holdings held as cotenants.

3 (a) Cotenants share proportionally in the rents and profits of the possessory holding received from
4 third parties according to their respective interests in the possessory holding.

5 (b) If a tenant in common has received more than that tenant in common's share of the rents and
6 profits from the possessory holding, a cotenant may bring an action for an accounting to
7 recover the cotenant's share of the rents and profits.

8
9 § 41-35. Reimbursement of a cotenant.

10 (a) A cotenant who makes necessary repairs to the possessory holding is entitled to contribution
11 from all other cotenants for those repairs unless one of the following applies:

12 (1) Exclusive possession. - The repairs were made by the cotenant during a period when
13 that cotenant had exclusive possession of the possessory holding.

14 (2) Income producing possessory holdings. - The cotenant is entitled to a credit for
15 necessary repairs made by that cotenant in an action for partition where the other
16 cotenant seeks an accounting of rents and profits from the possessory holding.

17 (b) A cotenant who makes improvements to the possessory holding is not entitled to contribution
18 from the other cotenant or a credit in an action where the other cotenant seeks an accounting
19 of rents and profits from the possessory holding for those improvements.

20 (c) A cotenant who pays taxes due or interest on an existing encumbrance of the possessory holding
21 is entitled to reimbursement from the other cotenant for the amount paid; except that no
22 entitlement to reimbursement exists for interest paid on an existing encumbrance for any period
23 during which the cotenant who paid interest is in exclusive possession of the possessory
24 holding.

25
26 § 41-36. Modification by agreement.

27 Nothing in this Article shall be deemed to prohibit cotenants from entering into an agreement with
28 respect to the possessory holding, including possession, sharing rents and profits, reimbursement
29 related to the possessory holding, and the authority of a cotenant to bind another cotenant.

30
31 § 41-37. Actual ouster; action to compel admission of ousted cotenant into possession.

32 A cotenant claiming ouster by another cotenant may bring an action, other than an action for
33 partition, seeking to compel the cotenant in possession to admit the ousted cotenant into
34 possession.

35
36 § 41-38. Alienation of a cotenant's undivided interest in the possessory holding.

37 (a) Each cotenant may convey, lease, mortgage, place a deed of trust on, or place a lien on that
38 cotenant's undivided interest in the possessory holding without the joinder of any other
39 cotenant.

40 (b) The grantee of a cotenant's interest in the possessory holding acquires only the interest of the
41 grantor and becomes a cotenant, even if the instrument of conveyance purports to convey the
42 whole possessory holding ownership interest.

43
44 § 41-39. Rights of creditors in possessory holdings held by tenancy in common.

1 (a) The interest of a cotenant in the possessory holdings may be sold pursuant to a proceeding for
2 satisfaction of a debt to a creditor under a power of sale in a mortgage or deed of trust against
3 that cotenant's interest in the possessory holding.

4 (b) A sale of an interest of a cotenant as described in subsection (a) of this section does not affect
5 another cotenant's interest in the possessory holding.

6
7 § 41-40. Termination of a tenancy in common.

8 Events terminating a tenancy in common include the following:

9 (1) Voluntary partition of the possessory holding among cotenants executing one or more
10 instruments conveying the possessory holding held as cotenants to themselves in separate
11 tracts.

12 (2) Conveyance of all interests in the possessory holding to one grantee.

13
14 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are
15 rescinded and this ordinance shall become effective when ratified by the Principal
16 Chief.

17
18 *Submitted by Lands Committee*