

April 18, 2007

**H 1588. REAL PROPERTY PARTITION SALE.** Filed 4/18/07. *REQUIRING THE COURT IN A REAL ESTATE PARTITION CASE TO CONSIDER CERTAIN FACTORS PRIOR TO ORDERING THE SALE OF PROPERTY OWNED BY COTENANTS, AUTHORIZING NON-PETITIONING COTENANTS TO BUY OUT THE INTEREST OF PETITIONING COTENANTS, AND PROHIBITING THE ASSESSING OF ATTORNEYS' FEES AGAINST NON-PETITIONING COTENANTS.*

Amends GS 46-22 to list factors that the court must consider when determining whether there has been substantial injury (the court must find that a partition of land would substantially injure an interested party before ordering a sale of the property), including the use of the property for the livelihood of any cotenant, the existence of a homestead on the property, and the length of time each cotenant resided at or took care of the property. Also lists specific facts supporting an order of sale that the court may find. Enacts new GS 46-22.1 providing that if the court determines the property cannot be partitioned in-kind, the court must allow the non-petitioning cotenants to purchase the petitioner's interest in the property before ordering a sale of the property. Requires non-petitioning cotenants who want to purchase the petitioner's interest to notify the court no later than 10 days before trial. If more than one non-petitioning cotenant wants to buy the petitioner's share, each person is entitled to purchase an equal portion of the property. Establishes means for determining the price of the petitioner's interest and allows the petitioner to object to the determined value. After the value of the interest is determined, the non-petitioning cotenants purchasing the interest have 45 days to pay the set price to the court. Provides that the statute does not apply when there is a written agreement for tenants-in-common or joint tenants management. Enacts new GS 46-22.2 prohibiting a court from assessing attorneys' fees against a non-petitioning cotenant who contests the partition or sale of the property or who hires an attorney to represent the cotenant's interest. Makes conforming change to GS 6-21(7).

**Intro. by Allen.**

GS 6, 46