

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 578
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09
Senate Judiciary II Committee Substitute Adopted 7/21/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H578-PCS80497-RC-62

Short Title: Partition Sales/Commrs., Sellers, Buyers.

(Public)

Sponsors:

Referred to:

March 16, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN
3 OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT
4 PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN
5 LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO
6 ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A
7 PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A
8 PARTITION SALE; TO REVISE THE STANDARD FOR DETERMINING WHAT
9 CONSTITUTES "SUBSTANTIAL INJURY" WITH REGARDS TO A PETITION FOR A
10 SALE OF THE PROPERTY; AND TO PROVIDE FOR MEDIATION OF PARTITION
11 DISPUTES.

12 The General Assembly of North Carolina enacts:

13 SECTION 1. G.S. 46-6 reads as rewritten:

14 "§ 46-6. Unknown or unlocatable parties; summons and summons, notice, and
15 representation.

16 (a) If, upon the filing of a petition for partition, it be made to appear to the court by
17 affidavit or otherwise that there are any persons interested in the premises whose names are
18 unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order
19 notices to be given to all such persons by a publication of the petition, or of the substance
20 thereof, with the order of the court thereon, in one or more newspapers to be designated in the
21 order. The notice by publication shall include a description of the property which includes the
22 street address, if any, or other common designation for the property, if any, and may include the
23 legal description of the property.

24 (b) ~~If Before or~~ after such general notice by publication if any person interested in the
25 premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some
26 disinterested person to represent the owner of any shares in the property to be divided, the
27 ownership of which is unknown or unlocatable and unrepresented."

28 SECTION 2. G.S. 46-22 reads as rewritten:

29 "§ 46-22. Sale in lieu of partition.



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1 (a) ~~The Subject to G.S. 46-22.1(b), the court shall order a sale of the property described~~
2 ~~in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual~~
3 ~~partition of the lands cannot be made without substantial injury to any of the interested parties.~~

4 (b) ~~"Substantial injury" means the fair market value of each share in an in-kind partition~~
5 ~~would be materially less than the share of each cotenant in the money equivalent that would be~~
6 ~~obtained from the sale of the whole, and if an in-kind division would result in material~~
7 ~~impairment of the cotenant's rights. In determining "substantial injury" the court shall consider~~
8 ~~the following:~~

9 (1) Whether the fair market value of each cotenant's share in an actual division
10 of the property would be materially less than the amount each cotenant
11 would receive from the sale of the whole.

12 (2) Whether a sale or an in-kind division would result in material impairment of
13 any cotenants' rights.

14 (b1) The court, in its discretion, shall consider the remedy of owelty where such remedy
15 can aid in making a partition in-kind occur without substantial injury to the parties.

16 (c) The court shall make specific finding of fact and conclusions of law specifically
17 find the facts supporting an order of sale of the property.

18 (d) The party seeking a sale of the property shall have the burden of proving substantial
19 injury under the provisions of this section."

20 **SECTION 3.** Article 2 of Chapter 46 of the General Statutes is amended by adding
21 a new section to read:

22 **"§ 46-22.1 Mediation.**

23 (a) Persons interested in the premises may agree at anytime to mediation of a partition.
24 A list of mediators certified by the Dispute Resolution Commission may be obtained from the
25 clerk or from the Commission through the Administrative Office of the Courts.

26 (b) When a partition sale is requested, the court or the clerk may order mediation before
27 considering whether to order a sale. The provisions of G.S. 7A-38.1 and G.S. 7A-38.3B shall
28 apply."

29 **SECTION 4.** G.S. 46-28 reads as rewritten:

30 **"§ 46-28. Sale procedure.**

31 (a) The procedure for a partition sale shall be the same as is provided in Article 29A of
32 Chapter 1 of the General Statutes. Statutes, except as provided herein.

33 (b) The commissioners shall certify to the court that at least 20 days prior to sale a copy
34 of the notice of sale was sent by first class mail to the last known address of all petitioners and
35 respondents who previously were served by personal delivery or by registered or certified mail.
36 The commissioners shall also certify to the court that at least ten days prior to any resale
37 pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last
38 known address of all parties to the partition proceeding who have filed a written request with
39 the court that they be given notice of any resale. An affidavit from the commissioners that
40 copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance
41 with this section shall satisfy the certification requirement and shall also be deemed prima facie
42 true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a
43 sale or subsequent resale was mailed notice as required by this section prior to the date of the
44 sale or subsequent resale, then that party shall not prevail under the provisions of
45 G.S. 46-28.1(a)(2)a. and b.

46 (c) Any cotenant who enters the high bid or offer at any sale of one hundred percent
47 (100%) of the undivided interests in any parcel of real property shall receive a credit for the
48 undivided interest the cotenant already owns therein and shall receive a corresponding
49 reduction in the amount of the total purchase price owed after deducting the costs and fees
50 associated with the sale and apportioning the costs and fees associated with the sale in
51 accordance with the orders of the court. The high bid or offer shall be for one hundred percent

(100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

SECTION 5. G.S. 46-28.1 reads as rewritten:

"§ 46-28.1. Petition for revocation of confirmation order.

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

- (1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.
- (2) In the case of any party to the partition proceeding:
 - a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or
 - b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or
 - c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

- (1) A lien remains unsatisfied on the property to be conveyed; and
- (2) The purchaser has not agreed in writing to assume the lien; and
- (3) The lien will not be satisfied out of the proceeds of the sale; and
- (4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of subsection (a)(2), this section, the court

1 may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and
2 order the return of any money or security to the purchaser tendered pursuant to the offer.

3 (d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section,
4 and when an independent appraisal of the property being sold has not been previously entered
5 into evidence in the action, and upon the request of any party, the court may order an
6 independent appraisal prepared by a real estate appraiser currently licensed by the North
7 Carolina Appraisal Board and prepared in accordance with the Uniform Standards of
8 Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or
9 more of the parties requesting the appraisal in such proportions as they may agree. Before
10 ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may
11 in its discretion require written evidence from the appraiser that the appraiser has been paid in
12 full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds
13 the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable
14 damage to the owners, the court may revoke the order confirming the sale, order the withdrawal
15 of the purchaser's high bid or offer, and order the return to such purchaser of any money or
16 security tendered by the purchaser pursuant to the high bid or offer.

17 (e) If the court revokes its order of confirmation under this section, the court shall order
18 a resale. The procedure for a resale is the same as is provided for an original public sale under
19 Article 29A of Chapter 1 of the General Statutes."

20 **SECTION 6.** This act becomes effective October 1, 2009, and applies to partition
21 actions filed on or after that date.