2008

PARTITION SALES STUDY COMMITTEE

MINUTES



Partition Sales Study Committee

2008 INTERIM SESSION

REPRESENTATIVE ANGELA R. BRYANT CO-CHAIR

SENATOR ROBERT ATWATER CO-CHAIR

COMMITTEE ASSISTANTS
KARON HARDY
CAROL RESAR

North Carolina General Assembly Partition Sales Study Committee (2007)

UnExpired Positions Only

SL2008-181 sec. 42.1

Pro Tem's Appointments

Sen. Robert C. Atwater Co-Chair North Carolina Senate 300 N. Salisbury Street, Room 312A Raleigh, NC 27603-5925 (919) 715-3036

Rep. Angela R. Bryant

Co-Chair North Carolina House of Representatives 300 N. Salisbury Street, Room 542 Raleigh, NC 27603-5925 (919) 733-5878

Committee Assistant

Speaker's Appointments

Committee Assistant

Carol Resar (919) 715-3036

Sen. Charles Woodrow Albertson

North Carolina Senate 300 N. Salisbury Street, Room 525 Raleigh, NC 27603-5925 (919) 733-5705

Member

Karon Hardy (919) 733-5878

Rep. Lucy T. Allen North Carolina House of Representatives 300 N. Salisbury Street, Room 419B Raleigh, NC 27603-5925

(919) 733-5860

Sen. Philip Edward Berger North Carolina Senate 16 W. Jones Street, Room 1026 Raleigh, NC 27601-2808

(919) 733-5708

Member

Rep. Henry M. Michaux Jr. North Carolina House of Representatives

16 W. Jones Street, Room 1227 Raleigh, NC 27601-1096

(919) 715-2528

Sen. Edward Walter Jones North Carolina Senate

300 N. Salisbury Street, Room 623

Raleigh, NC 27603-5925

(919) 715-3032

Member Rep. Timothy Lee Spear

North Carolina House of Representatives 300 N. Salisbury Street, Room 402

Raleigh, NC 27603-5925

(919) 715-3024

Sen. David F. Weinstein North Carolina Senate 16 W. Jones Street, Room 2108

(919) 733-5651

Raleigh, NC 27601-2808

Member

Rep. Paul B. Stam

North Carolina House of Representatives 300 N. Salisbury Street, Room 613

Raleigh, NC 27603-5925

(919) 733-2962

Mr. David H. Harris Jr. 2530 Meridian Parkway Suite 300

Durham, NC 27702 (919) 806-4220

Public Member

Hon. F. Gordon Battle 377 Carolina Meadows Villa Chapel Hill, NC 27517

(919) 942-7152

Public Member

Member

Member

Member

Member

Partition Sales Study Committee (2007)

UnExpired Positions Only

Hon. Richard E. Hunter Jr. Warren County Clerk of Superior Court 109 South Main Street Warrenton, NC 27589 (252) 257-3261 Public Member

Ms. Phyliss Craig-Taylor Charlotte School of Law 2145 Suttle Avenue Charlotte, NC 28208 (704) 971-9390 **Public Member**

Mr. Gregory C. Malhoit - **RESIGNED** 123 Forrest Road Raleigh, NC 27605 **Public Member**

Hon. James C. Stanford
Orange County Clerk of Superior Court
106 Fast Margaret Lane

106 East Margaret Lane Hillsborough, NC 27278 (919) 644-4700 ext. 2 Public Member

Ms. Pamela Thombs Legal Aid of NC 300 South Third Street, Suite A Smithfield, NC 27577 (919) 934-5027 **Public Member**

Mr. Steve Woodson NC Farm Bureau Federation 5301 Glenwood Avenue Raleigh, NC 27612 (919) 782-1705 **Public Member**

Governor's Appointments

Other's Appointments

Staff to Committee

Steve Rose Brad Krehely Research Division (919) 733-2578 Ryan Blackledge Bill Drafting Division (919) 733-6660 Contact

ATTENDANCE

PARTITION SALES STUDY COMMITTEE

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STAFF														
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Joint Study Committee on Partition Sales

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PART XLII. STUDY THE IMPACT OF PARTITION SALES OF REAL PROPERTY ON THE ECONOMIC USE AND LOSS OF HEIR PROPERTY AND FARMLAND BY HEIRS IN NORTH CAROLINA (H.B. 1527 – Bryant, Farmer-Butterfield, Allen, Harrison)

SECTION 42.1. There is created the Partition Sales Study Committee to address the issue of the impact of the partition sale procedures on the economic use and loss of heir property and farmland by heirs in North Carolina.

SECTION 42.2. The Committee shall be comprised of 18 members as follows:

- (1) Nine members appointed by the Speaker of the House of Representatives as follows:
 - (a) Five members of the House of Representatives.
 - (b) A Clerk of Superior Court.
 - (c) Three members of the public with an expertise or stakeholder interest in the issue.
- (2) Nine members appointed by the President Pro Tempore of the Senate as follows:
 - (a) Five members of the Senate.
 - (b) A Clerk of Superior Court.
 - (c) Three members of the public with an expertise or stakeholder interest in the issue.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair of the Committee. A quorum of the Committee shall be a majority of its members. The Committee shall meet upon the joint call of the cochairs.

SECTION 42.3. The Committee shall study the laws and procedures concerning partition sales in North Carolina and how these laws affect landowners in the State, examining both the effectiveness and equity of the current law and exploring potential alternatives. Specifically, the Committee shall:

- (1) Review information about partition sales and examine current trends in partition sales in the State, especially related to sales initiated by strangers in interest to heirs or related cotenants.
- (2) Analyze research and information from North Carolina and other states and jurisdictions regarding the effect of partition laws on desired land retention and economic development.
- (3) Analyze information concerning the comparative frequency of partition sales vs. partition-in-kind in North Carolina.
- (4) Identify and assess alternative partition sales laws from other states.
- (5) Explore how best to balance competing interests of the tenants in common in the partition sales context.
- (6) Identify and consult with academics who have studied partition sales nationally to determine their recommendations concerning best practices in partition proceedings.

PARTITION SALES STUDY COMMITTEE PAGE 2 S.L. 2008-181, Sec. 42.1

- (7) Identify current barriers to the adoption of best practices recommendations and to alternative laws adopted by other states and potential options to address these barriers.
- (8) Prepare a report with a statement of the issues and a summary of the research including the Committee's recommendations concerning any needed improvements and draft legislation to address any inequities presented by partition sales in North Carolina.

SECTION 42.4. Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Committee to aid in its work. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Committee, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 42.5. The Committee shall submit a final report of the results of its study, including any legislative recommendations, to the 2009 General Assembly no later than March 1, 2009. The Committee shall terminate on March 1, 2009, or upon the filing of its final report, whichever occurs first.



NORTH CAROLINA GENERAL ASSEMBLY COMMITTEE MEETING NOTICE

LEGISLATIVE BUILDING RALEIGH NC 27601

November 13, 2008

MEMORANDUM

TO:

Members of the Partition Sales Study Committee

FROM:

Rep. Angela R. Bryant, Co-Chair

Sen. Robert Atwater, Co-Chair

SUBJECT:

Meeting Notice

The Partition Sales Study Committee will meet on the following date:

DAY:

Monday

DATE:

December 1, 2008

TIME:

2:00 pm

LOCATION: Room 421, Legislative Office Building

REMINDER TO NON-LEGISLATIVE MEMBERS: Parking for non-legislative members of the Committee is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available behind the Museum of History Building located on Jones Street in front of State Archives. The cost for visitor parking is \$1.00 per hour or \$8.00 per day and is reimbursed with a parking receipt that is submitted with your travel reimbursement form.

If you have any questions concerning this meeting or if you cannot attend, please contact Karon Hardy, Committee Assistant, at (919) 733-5878 or email bryantla@ncleg.net.

Posted: November 14, 2008					
cc:	Committee Record	X			
	Interested Parties	x			



AGENDA PARTITION SALES STUDY COMMITTEE

Senator Robert C. Atwater, Co-Chair

Representative Angela Bryant, Co-Chair

Monday, December 1, 2008 2:00 pm Room 421, Legislative Office Building

- 1. Welcome and Introductions
- 2. Review of Committee Authorization

 Ryan Blackledge and Brad Krehely, Committee Co-Counsels
- 3. Current Partition Sales Procedure

 The Honorable Richard E. Hunter, Warren County Clerk of Superior Court
- 4. Effects of the Partition Sales Procedure
 Faith Rivers, Associate Professor of Law, Elon University School of Law
- **Succession Planning and Preservation of Family Farms** *Andrew Branan, Executive Director, The North Carolina Farm Transition Network*
- 6. Committee Discussion
- 7. Adjourn

MINUTES

PARTITION SALES STUDY COMMITTEE

December 1, 2008
Room 421, Legislative Office Building
Representative Angela R. Bryant, Co-Chair, Presiding
Senator Bob Atwater, Co-Chair

The Partition Sales Study Committee met on Thursday, December 1, 2008 at 2:00pm in Room 421 of the Legislative Office Building.

Co-Chair Angela R. Bryant opened the meeting at 2:00. She welcomed the guests, the staff and the Sergeant-at-Arms: John Brandon and Judy Turner. The Committee members and Public members introduced themselves. Co-Chair Bryant introduced the Committee Assistants, Karon Hardy and Sherry Pearson. The following Committee Members were present: Representatives Angela R. Bryant, Co-Chair, Lucy Allen, Mickey Michaux, Timothy L. Spear, Paul B. Stam, Senators Bob Atwater, Co-Chair, Philip E. Berger, Edward W. Jones. Public Members in attendance consisted of: Hon. F. Gordon Battle, Ms. Phyliss Craig-Taylor, Hon. James C. Stanford, Mr. Steve Woodson, Mr. David H. Harris, Jr., and Hon. Richard E. Hunter, Jr. The original Visitor Registration Sheet is attached to these minutes as (*Attachment 1*).

The meeting opened with Brad Krehely, Committee Co-Counsel, reviewing the Committee Authorization. He covered in detail Section 42.3 of S.L. 2008-181 and suggested that the Committee take a look at Section 42.3, items 1-8.

Honorable Richard E. Hunter, Jr., Warren County Clerk of Superior Court

Mr. Hunter reviewed the current Partition Sales procedures and gave examples of divisions and sales. Property is looked at and determined if it can be divided in an equitable way. He also addressed questions from the members. Co-Chair directed everyone to the General Statutes as a reference. Warren County rarely has any sales. (Attachment 2 & 3).

Honorable James C. Stanford, Orange County Clerk of Superior Court

Mr. Stanford addressed questions from the members as a follow-up to Mr. Hunter's presentation as well as discussed the sales procedures in Orange County. Orange County has more sales than Warren County. (Attachment 3).

Ms. Faith Rivers, Associate Professor of Law, Elon University's School of Law

Ms. Rivers did a Power Point presentation (Attachment 4). She spoke about the history of heirs' property and joint ownership and the challenges that poor landowners face from partition procedures, especially in South Carolina where she worked on reform of these procedures. She also expounded on the buy-out provision in Alabama and the

constitutional challenge to it. She also addressed questions from the Committee during her presentation.

Mr. Andrew Branan, Executive Director, The North Carolina Farm Transition Network

Mr. Branan passed around a book for everyone to view on Planning the Future of Your Farm. He gave examples of land loss prevention measures that were taken in various counties. The Workbook on Farm Transfer Decisions. (Attachment 5) focused on helping the family figure out what they want, figuring out what they have and assessing what they will do with the farm, and planning for the extent of their wealth. Mr. Branan specializes in preventative family planning and spoke about what needs to be done with an aging population of landowners. The North Carolina Farm Transition Network, Inc. (NCFTN) specializes in the following areas:

- 1. Education and Resource Development
- 2. Professional Education: Lawyers, Accountants, etc.
- 3. Who will farm the land if no one in the family will farm it.

Rep. Bryant directed the Committee to the Partition Cases list by County as a reference (See Attachment 6). She also asked Mr. Pete Powell if it is possible to get any information about the actual number of sales looking at a breakdown or statistics to know how many actual partition sales are ordered.

Mr. Powell stated that it was not possible without going to each county pulling individual files. However, they could supply a survey.

COMMITTEE DISCUSSION

Co-Chair Bryant opened the floor up for Committee discussion.

Rep. Michaux asked for more information & clarification about what happens in the case of unknown heirs. Senator Berger asked for staff to provide information on prior proposed changes to partition procedures that have been introduced in prior sessions. Rep. Bryant suggested looking further at the actual application of the substantial injury test and a first right of refusal by joint owners who would like to keep the land.

Rep. Spear suggested looking at extending the 60 day time period for the filing of the Commissioner's report.

Rep. Stam suggested extending the time period to respond to a complaint.

Ms. Craig-Taylor requested that Staff provide a comparison of statutes from other states.

Ms. Mariah West, Associate Legal Counsel of the Administrative Office of the Courts, offered to work with Mr. Powell on a summary of the procedure for dealing with unknown heirs and known heirs, both locatable and unlocatable.

Mr. Tom Steele, from Real Property Section of NC Bar Association, stated that he is willing to volunteer and work with the Committee on feedback, suggestions and recommendations.

Savi Horne, Executive Director of Landloss Prevention, would like to assist the Committee with any information that is needed.

MEETING ADJOURNED

Co-Chair Bryant thanked everyone for coming and being so involved. She stated that the next meetings are scheduled for December 10th at 1:00pm and January 9th at 10:00am. With there being nothing the further the meeting was adjourned.

Respectfully Submitted:

Representative Angela R. Bryant

Karon Hardy, Committee Assistant

House Pages

JT. STUDY-PARTITION SOLES	Dog los
Name Of Committee:	Date December
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House Set-	At-Arms
1. Name: JOHN BRANDON 2. Name: JUDY TURNER	
2. Name: JUDY / URNER	
3. Name:	
4. Name:	

VISITOR REGISTRATION SHEET

Partition Sales Study Committee

December 1, 2008

Name of Committee

· Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

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SAVI HORNE	LAND LOSS Prevention Proj
Dannette Sharpley	Black Family Land Trust
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Richard Hunter

Partition Sales Study Committee

December 1, 2008

The partition process begins when a cotenant files with the Clerk of Superior Court where the property is located either a Petition for Partition by Sale or a Petition for Partition by Division. Petitions are for sale of entire tract of land, a sale of the timber on the land and then a division of the land, or a petition to divide the land among the tenants in common. The General Statutes favor a division in kind rather than a sale if the division can be made without substantial injury to any of the interested parties. In the rural areas of North Carolina, such as Warren County where there are large areas of open land, most of the cotenants desire to hold their property in severalty rather than have a sale of the entire tract of land and divide the sales proceeds. The actual division of the land is generally more expensive because of the cost of paying commissioners to divide the land and the surveyor costs required for perimeter surveys and the drawing of division lines within the tract for the interested parties. The Petition filed contains a description of the property, the names of the parties and their percentage interest in the property. All parties must be served with a copy of the Petition. Parties have ten (10) days to reply to the Petition. If a party request that the property be divided rather than sold, the Clerk must hold a hearing to determine if the property should be sold or can be fairly divided.

Chapter 46.

Partition.

Article 1.

Partition of Real Property.

§ 46-1. Partition is a special proceeding.

Partition under this Chapter shall be by special proceeding, and the procedure shall be the same in all respects as prescribed by law in special proceedings, except as modified herein. (1868-9, c. 122, s. 33; Code, s. 1923; Rev., s. 2485; C.S., s. 3213.)

§ 46-2. Venue in partition.

The proceeding for partition, actual or by sale, must be instituted in the county where the land or some part thereof lies. If the land to be partitioned consists of one tract lying in more than one county, or consists of several tracts lying in different counties, proceedings may be instituted in either of the counties in which a part of the land is situated, and the court of such county wherein the proceedings for partition are first brought shall have jurisdiction to proceed to a final disposition of said proceedings, to the same extent as if all of said land was situate in the county where the proceedings were instituted. (1868-9, c. 122, s. 7; Code, s. 1898; Rev., s. 2486; C.S., s. 3214; Ex. Sess. 1924, c. 62, s. 1.)

§ 46-3. Petition by cotenant or personal representative of cotenant.

One or more persons claiming real estate as joint tenants or tenants in common or the personal representative of a decedent joint tenant, or tenant in common, when sale of such decedent's real property to make assets is alleged and shown as required by G.S. 28A-17-3, may have partition by petition to the superior court. (1868-9, c. 122, s. 1; Code, s. 1892; Rev., s. 2487; C.S., s. 3215; 1963, c. 291, s. 2; 1985, c. 689, s. 16.)

§ 46-3.1. Court's authority to make orders pending final determination of proceeding.

Pending final determination of the proceeding, on application of any of the parties in a proceeding to partition land, the court may make such orders as it considers to be in the best interest of the parties, including but not limited to orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, and to include the appointment of receivers pursuant to G.S. 1-502(6). (1981, c. 584, s. 1.)

§ 46-4. Surface and minerals in separate owners; partitions distinct.

When the title to the mineral interests in any land has become separated from the surface in ownership, the tenants in common or joint tenants of such mineral interests may have partition of the same, distinct from the surface, and without joining as parties the owner or owners of the surface; and the tenants in common or joint tenants of the surface may have partition of the same, in manner provided by law, distinct from the

mineral interest and without joining as parties the owner or owners of the mineral interest. In all instances where the mineral interests and surface interest have thus become separated in ownership, the owner or owners of the mineral interests shall not be compelled to join in a partition of the surface interests, nor shall the owner or owners of the surface interest be compelled to join in a partition of the mineral interest, nor shall the rights of either owner be prejudiced by a partition of the other interests. (1905, c. 90; Rev., s. 2488; C.S., s. 3216.)

§ 46-5. Petition by judgment creditor of cotenant; assignment of homestead.

When any person owns a judgment duly docketed in the superior court of a county wherein the judgment debtor owns an undivided interest in fee in land as a tenant in common, or joint tenant, and the judgment creditor desires to lay off the homestead of the judgment debtor in the land and sell the excess, if any, to satisfy his judgment, the judgment creditor may institute before the clerk of the court of the county wherein the land lies a special proceeding for partition of the land between the tenants in common, making the judgment debtor, the other tenants in common and all other interested persons parties to the proceeding by summons. The proceeding shall then be in all other respects conducted as other special proceedings for the partition of land between tenants in common. Upon the actual partition of the land the judgment creditor may sue out execution on his judgment, as allowed by law, and have the homestead of the judgment debtor allotted to him and sell the excess, as in other cases where the homestead is allotted under execution. The remedy provided for in this section shall not deprive the judgment creditor of any other remedy in law or in equity which he may have for the enforcement of his judgment lien. (1905, c. 429; Rev., s. 2489; C.S., s. 3217.)

§ 46-6. Unknown parties; summons and representation.

If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. If after such general notice by publication any person interested in the premises and entitled to notice fails to appear, the court shall in its discretion appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented. (1887, c. 284; Rev., s. 2490; C.S., s. 3218.)

§ 46-7. Commissioners appointed.

The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in more than one county, then the court may appoint such additional commissioners as it may deem necessary from counties where the land lies other than the

county where the proceedings are instituted. (1868-9, c. 122, s. 1; Code, s. 1892; Rev., s. 2487; C.S., s. 3219; Ex. Sess. 1924, c. 62, s. 2.)

§ 46-7.1. Compensation of commissioners.

The clerk of the superior court shall fix the compensation of commissioners for the partition or division of lands according to the provisions of G.S. 1-408. (1949, c. 975; 1953, c. 48.)

§ 46-8. Oath of commissioners.

The commissioners shall be sworn by a magistrate, the sheriff or any deputy sheriff of the county, or any other person authorized to administer oaths, to do justice among the tenants in common in respect to such partition, according to their best skill and ability. (1868-9, c. 122, s. 2; Code, s. 1893; Rev., s. 2492; C.S., s. 3220; 1945, c. 472; 1971, c. 1185, s. 8.)

§ 46-9. Delay or neglect of commissioner penalized.

If, after accepting the trust, any of the commissioners unreasonably delay or neglect to execute the same, every such delinquent commissioner shall be liable for contempt and may be removed, and shall be further liable to a penalty of fifty dollars (\$50.00), to be recovered by the petitioner. (1868-9, c. 122, s. 10; Code, s. 1901; Rev., s. 2498; C.S., s. 3221.)

§ 46-10. Commissioners to meet and make partition; equalizing shares.

The commissioners, who shall be summoned by the sheriff, must meet on the premises and partition the same among the tenants in common, or joint tenants, according to their respective rights and interests therein, by dividing the land into equal shares in point of value as nearly as possible, and for this purpose they are empowered to subdivide the more valuable tracts as they may deem best, and to charge the more valuable dividends with such sums of money as they may think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition. (1868-9, c. 122, s. 3; Code, s. 1894; 1887, c. 284, s. 2; Rev., s. 2491; C.S., s. 3222; 1995, c. 379, s. 14(b).)

§ 46-11. Owelty to bear interest.

The sums of money due from the more valuable dividends shall bear interest until paid. (1868-9, c. 122, s. 8; Code, s. 1899; Rev., s. 2496; C.S., s. 3223.)

§ 46-12. Owelty from infant's share due at majority.

When a minor to whom a more valuable dividend shall fall is charged with the payment of any sum, the money shall not be payable until such minor arrives at the age of 18 years, but the general guardian, if there be one, must pay such sum whenever assets shall come into his hands, and in case the general guardian has assets which he did not so apply, he shall pay out of his own proper estate any interest that may have accrued in

consequence of such failure. (1868- 9, c. 122, s. 9; Code, s. 1900; Rev., s. 2497; C.S., s. 3224; 1971, c. 1231, s. 1.)

§ 46-13. Partition where shareowners unknown or title disputed; allotment of shares in common.

If there are any of the tenants in common, or joint tenants, whose names are not known or whose title is in dispute, the share or shares of such persons shall be set off together as one parcel. If, in any partition proceeding, two or more appear as defendants claiming the same share of the premises to be divided, or if any part of the share claimed by the petitioner is disputed by any defendant or defendants, it shall not be necessary to decide on their respective claims before the court shall order the partition or sale to be made, but the partition or sale shall be made, and the controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding. If two or more tenants in common, or joint tenants, by petition or answer, request it, the commissioners may, by order of the court, allot their several shares to them in common, as one parcel, provided such division shall not be injurious or detrimental to any cotenant or joint tenant. (1868- 9, c. 122, s. 3; Code, s. 1894; 1887, c. 284, ss. 2, 4; Rev., ss. 2491, 2511; C.S., s. 3225; 1937, c. 98.)

§ 46-14. Judgments in partition of remainders binding on parties thereto.

Where land is conveyed by deed, or devised by will, upon contingent remainder, executory devise, or other limitation, any judgment of partition rendered in an action or special proceeding in the superior court authorizing a division or partition of said lands, and to which the life tenant or tenants, and all other persons then in being, or not in being, take such land as if the contingency had then happened, are parties, and those unborn being duly represented by guardian ad litem, such judgment of partition authorizing division or partition of said lands among the respective tenants and remaindermen or executory devisees, will be valid and binding upon all parties thereto and upon all other persons not then in being. (1933, c. 215, s. 1; 1959, c. 1274, s. 1.)

§ 46-15. Repealed by Session Laws 1959, c. 879, s. 14.

§ 46-16. Partial partition; balance sold or left in common.

In all proceedings under this Chapter actual partition may be made of a part of the land sought to be partitioned and a sale of the remainder; or a part only of any land held by tenants in common, or joint tenants, may be partitioned and the remainder held in cotenancy. (1887, c. 214, s. 1; Rev., s. 2506; C.S., s. 3227.)

§ 46-17. Report of commissioners; contents; filing.

The commissioners, within a reasonable time, not exceeding 60 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to

each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in his discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property. (1868-9, c. 122, s. 5; Code, s. 1896; Rev., s. 2494; C.S., s. 3228; 1949, c. 16.)

§ 46-17.1. Dedication of streets.

Upon motion of any party or the commissioners appointed to make division, the clerk may authorize the commissioners to propose and report the dedication of such portions of the land as are necessary as a means of access to any share, or is otherwise advisable for public or private highways, streets or alleys, and such proposal shall be acted upon by the clerk as a part of the report and, if approved, shall constitute a dedication. No interest of a minor or other person under disability shall be affected thereby until such dedication is approved by a judge of the superior court. (1969, c. 45.)

§ 46-18. Map embodying survey to accompany report.

The commissioners are authorized to employ the county surveyor or, in his absence or if he be connected with the parties, some other surveyor, who shall make out a map of the premises showing the quantity, courses and distances of each share, which map shall accompany and form a part of the report of the commissioners. (1868-9, c. 122, s. 4; Code, s. 1895; Rev., s. 2493; C.S., s. 3229.)

§ 46-19. Confirmation and impeachment of report.

- (a) If no exception to the report of the commissioners is filed within 10 days, the same shall be confirmed. Any party after confirmation may impeach the proceedings and decrees for mistake, fraud or collusion by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby.
- (b) If an exception to the report of commissioners is filed, the clerk shall do one of the following:
 - (1) Confirm the report;
 - (2) Recommit the report for correction or further consideration;
 - (3) Vacate the report and direct a reappraisal by the same commissioners; or
 - (4) Vacate the report, discharge the commissioners, and appoint new commissioners to view the premises and make a partition of them.
- (c) Appeal from the clerk to superior court of an order of confirmation of the report of commissioners is governed by G.S. 1-301.2 except that the judge may take only the actions specified in subsection (b) of this section and may not adjudge a partition of the land different from that made by the commissioners. (1868-9, c. 122, s. 5; Code, s. 1896; Rev., s. 2494; C.S., s. 3230; 1947, c. 484, s. 2; 1999-216, s. 11.)

§ 46-20. Report and confirmation enrolled and registered; effect; probate.

Such report, when confirmed, together with the decree of confirmation, shall be enrolled and certified to the register of deeds and registered in the office of the county where such real estate is situated, and shall be binding among and between the claimants, their heirs and assigns. It shall not be necessary for the clerk of court to probate the certified papers required to be registered by this section. (1868-9, c. 122, s. 6; Code, s. 1897; Rev., s. 2495; C.S., s. 3231; 1965, c. 804.)

§ 46-21. Clerk to docket owelty charges; no release of land and no lien.

In case owelty of partition is charged in favor of certain parts of said land and against certain other parts, the clerk shall enter on the judgment docket the said owelty charges in like manner as judgments are entered on said docket, persons to whom parts are allotted in favor of which owelty is charged being marked plaintiffs on the judgment docket, and persons to whom parts are allotted against which owelty is charged being marked defendants on said docket; said entry on said docket shall contain the title of the special proceeding in which the land was partitioned, and shall refer to the book and page in which the said special proceeding is recorded; when said owelty charges are paid said entry upon the judgment docket shall be marked satisfied in like manner as judgments are cancelled and marked satisfied; and the clerk shall be entitled to the same fees for entering such judgment of owelty as he is entitled to for docketing other judgments: Provided, that the docketing of said owelty charges as hereinbefore set out shall not have the effect of releasing the land from the owelty charged in said special proceeding: Provided, any judgment docketed under this section shall not be a lien on any property whatever, except that upon which said owelty is made a specific charge. (1911, c. 9, s. 1; C.S., s. 3232.)

Article 2.

Partition Sales of Real Property.

§ 46-22. Sale in lieu of partition.

- (a) The court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested parties.
- (b) "Substantial injury" means the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if an in-kind division would result in material impairment of the cotenant's rights.
- (c) The court shall specifically find the facts supporting an order of sale of the property.
- (d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section. (1868-9, c. 122, ss. 13, 31; Code, ss. 1904, 1921; Rev., s. 2512; C.S., s. 3233; 1985, c. 626, s. 1.)

§ 46-23. Remainder or reversion sold for partition; outstanding life estate.

The existence of a life estate in any land shall not be a bar to a sale for partition of the remainder or reversion thereof, and for the purposes of partition the tenants in common or joint tenants shall be deemed seized and possessed as if no life estate existed. But this shall not interfere with the possession of the life tenant during the existence of his estate. (1887, c. 214, s. 2; Rev., s. 2508; C.S., s. 3234.)

§ 46-24. Life tenant as party; valuation of life estate.

In all proceedings for partition of land whereon there is a life estate, the life tenant may join in the proceeding and on a sale the interest on the value of the share of the life tenant shall be received and paid to such life tenant annually; or in lieu of such annual interest, the value of such share during the probable life of such life tenant shall be ascertained and paid out of the proceeds to such life tenant absolutely. (1887, c. 214, s. 3; Rev., s. 2509; C.S., s. 3235.)

§ 46-25. Sale of standing timber on partition; valuation of life estate.

When two or more persons own, as tenants in common, joint tenants or copartners, a tract of land, either in possession, or in remainder or reversion, subject to a life estate, or where one or more persons own a remainder or reversionary interest in a tract of land, subject to a life estate, then in any such case in which there is standing timber upon any such land, a sale of said timber trees, separate from the land, may be had upon the petition of one or more of said owners, or the life tenant, for partition among the owners thereof, including the life tenant, upon such terms as the court may order, and under like proceedings as are now prescribed by law for the sale of land for partition: Provided, that when the land is subject to a life estate, the life tenant shall be made a party to the proceedings, and shall be entitled to receive his or her portion of the net proceeds of

sales, to be ascertained under the mortality tables established by law: Provided further, that prior to a judgment allowing a life tenant to sell the timber there must be a finding that the cutting is in keeping with good husbandry and that no substantial injury will be done to the remainder interest. (1895, c. 187; Rev., s. 2510; C.S., s. 3236; 1949, c. 34; 1975, c. 476, s. 1; 1997-133, s. 3.)

§ 46-26. Sale of mineral interests on partition.

In case of the partition of mineral interests, in all instances where it is made to appear to the court that it would be for the best interests of the tenants in common, or joint tenants, of such interests to have the same sold, or if actual partition of the same cannot be had without injury to some or all of such tenants (in common), then it is lawful for and the duty of the court to order a sale of such mineral interests and a division of the proceeds as the interests of the parties may appear. (1905, c. 90, s. 2; Rev., s. 2507; C.S., s. 3237.)

§ 46-27. Sale of land required for public use on cotenant's petition.

When the lands of joint tenants or tenants in common are required for public purposes, one or more of such tenants, or their guardian for them, may file a petition verified by oath, in the superior court of the county where the lands or any part of them lie, setting forth therein that the lands are required for public purposes, and that their interests would be promoted by a sale thereof. Whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of such lands, or so much thereof as may be necessary. The expenses, fees and costs of this proceeding shall be paid in the discretion of the court. Mediator fees and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B. (1868-9, c. 122, s. 16; Code, s. 1907; Rev., s. 2518; C.S., s. 3238; 1949, c. 719, s. 2; 2005-67, s. 4.)

§ 46-28. Sale procedure.

- (a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General Statutes.
- (b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S.

46-28.1(a)(2)a. and b. (1868-9, c. 122, ss. 13, 31; Code, ss. 1904, 1921; Rev., s. 2512; C.S., s. 3239; 1949, c. 719, s. 2; 1985, c. 626, s. 2; 1987, c. 282, s. 7.)

§ 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:
 - 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 a., b., or c. of subsection (a)(2), 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.
- (e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes. (1977, c. 833, s. 1; 1985, c. 626, ss. 3-7; 2001-271, s. 19.)

§ 46-28.2. When bidder may purchase.

After the order of confirmation becomes final and effective, the successful bidder may immediately purchase the property. (1977, c. 833, s. 3; 1985, c. 626, s. 8.)

§ 46-29. Repealed by Session Laws 1949, c. 719, s. 2.

§ 46-30. Deed to purchaser; effect of deed.

The deed of the officer or person designated to make such sale shall convey to the purchaser such title and estate in the property as the tenants in common, or joint tenants, and all other parties to the proceeding had therein. (1868-9, c. 122, ss. 13, 31; Code, ss. 1904, 1921; Rev. s. 2512; C.S., s. 3241; 1949, c. 719, s. 2.)

§ 46-31. Clerk not to appoint self, assistant or deputy to sell real property.

No clerk of the superior court shall appoint himself or his assistant or deputy to make sale of any property in any proceeding before him. (1868-9, c. 122, s. 15; Code, s. 1906; 1899, c. 161; Rev., s. 2513; C.S., s. 3242; 1949, c. 719, s. 2.)

§ 46-32. Repealed by Session Laws 1949, c. 719, s. 2.

§ 46-33. Shares in proceeds to cotenants secured.

At the time that the order of confirmation becomes final, the court shall secure to each tenant in common, or joint tenant, his ratable share in severalty of the proceeds of sale. (1868-9, c. 122, s. 31; Code, s. 1921; Rev., s. 2513; C.S., s. 3244; 1977, c. 833, s. 2.)

§ 46-34. Shares to persons unknown or not sui juris secured.

When a sale is made under this Chapter, and any party to the proceedings be an infant, non compos mentis, imprisoned, or beyond the limits of the State, or when the name of any tenant in common is not known, it is the duty of the court to decree the share of such party, in the proceeds of sale, to be so invested or settled that the same may be secured to such party or his real representative. (1868-9, c. 122, s. 17; Code, s. 1908; 1887, c. 284, s. 3; Rev., s. 2516; C.S., s. 3245.)

Article 4.

Partition of Personal Property.

§ 46-42. Personal property may be partitioned; commissioners appointed.

When any persons entitled as tenants in common, or joint tenants, of personal property desire to have a division of the same, they, or either of them, may file a petition in the superior court for that purpose; and the court, if it think the petitioners entitled to relief, shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within 20 days after notice of their appointment to divide such property as nearly equally as possible among the tenants in common, or joint tenants. (1868-9, c. 122, s. 27; Code, s. 1917; Rev., s. 2504; C.S., s. 3253.)

§ 46-43. Report of commissioners.

The commissioners shall report their proceedings under the hands of any two of them, and shall file their report in the office of the clerk of the superior court within five days after the partition was made. (1868-9, c. 122, s. 28; Code, s. 1918; Rev., s. 2505; C.S., s. 3254.)

§ 46-43.1. Confirmation; impeachment.

If no exception to the report of the commissioners making partition is filed within 10 days the report shall be confirmed. Any party, after confirmation, shall be allowed to impeach the proceeding for mistake, fraud or collusion, by petition in the cause, but innocent purchasers for full value and without notice shall not be affected thereby. (1953, c. 24.)

§ 46-44. Sale of personal property on partition.

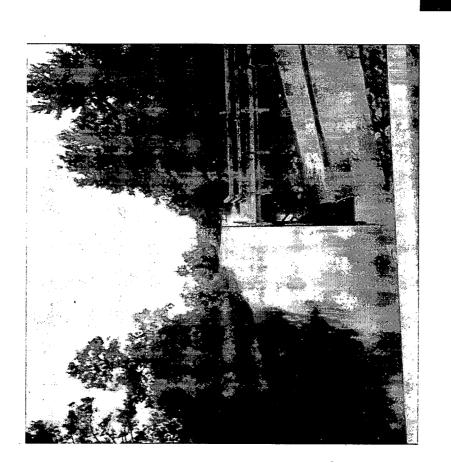
If a division of personal property owned by any persons as tenants in common, or joint tenants, cannot be had without injury to some of the parties interested, and a sale thereof is deemed necessary, the court shall order a sale to be made as provided in Article 29A of Chapter 1 of the General Statutes. (1868-9, c. 122, s. 29; Code, s. 1919; Rev., s. 2519; C.S., s. 3255; 1949, c. 719, s. 2.)

§§ 46-45 through 46-46. Repealed by Session Laws 1949, c. 719, s. 2.

Inequity In Equity

The Tragedy of
Tenancy in Common
for Heirs' Property
Owners Facing
Partition

Prof. Faith Rivers James Elon University School of Law



Land Loss

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- Acquisition of Land
- Land-Legacy

Associated Press // USDA

- Violence
- Comparative Rates of Farm

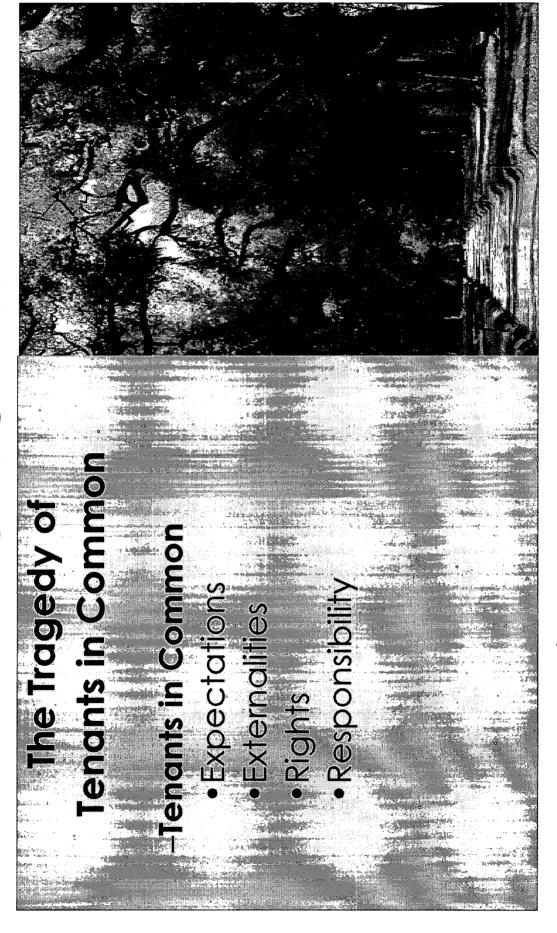
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HEIRS' PROPERTY



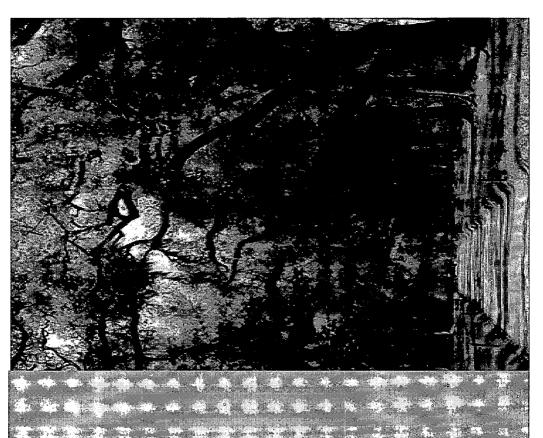
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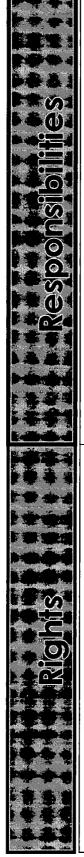
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 - Mortgage Financi

Family Discord

- "Poor Man's Trust"Hostility of Litigation
- **Bourt Managed Process**



Disadvantaged Bundle of Rights



- Shared Rights
- Possession
- Use
- Individual Rights
- Transfer
- Denied Rights
- Exclude co-owners

- Shared Responibilities
- Possession
- Use
- Upkeep
- Maintenance
- Taxes
- **Profits**
- Waste
- Remedies
- Contribution
- Accounting
- Partition

Legal & Legislative Reform

Reform Proposals

-Substantial Injury Test

*"The court shall order a sale of the property...only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested parties." S.G. 46-22

-Components

- Fair Market Value
- Material Impairment of Cotenant's Rights

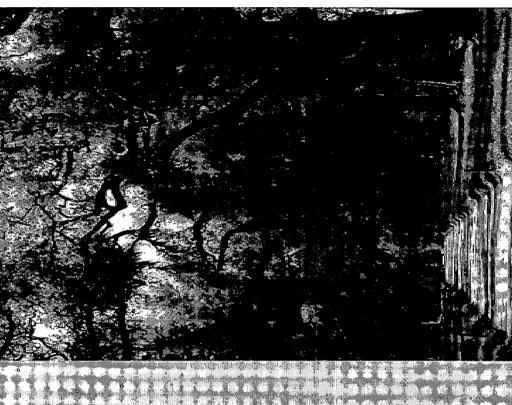


Legal & Legislative Reform

Substantial Injury Test

-Rights Impaired

Fair Market Value Part versus Whole



VARYING CONCURRENT INTERESTS

- Unities
- Possession
- Undivided whole
- Others: Interest, Title, Time
- **Alienability**
- Transfer Transforms
- Death → Survivorship
- Not devisable
- Not Inheritable
- Partition

Unities

- Possession
- Undivided <u>share</u> of the whole
- **Alienability**
- Transfers during life
- Death
- Devisable
- Inheritable
- Partition

VALUATION AT PARTITION



- **Unity of Possession**
- Undivided <u>share</u> of the whole
- Fractional Interest
- IRS Discount
- Private Sale→Discount
- Allotment
- Right of First Refusal
- Partition
- Consolidated Value
- Procedural Fairness

Unity of Possession

- Undivided whole
- Right of Survivorship
 -NO IRS Discount
- Private Sale→No Discount
- Partition
- -Consolidated Value
- -Procedural Fairness

Legal & Legislative Reform

Substantial Injury Test

-Responsibilities

- Externolities
- -Upkeep, Maintenance, Taxes
- Expectations
- -Sentimental Attachment
- -Homestead



Legal & Legislative Reform

-Sale Options

- Private
- Alloiment
- Buyout | First Refusal

-Partition Procedural Fairness

- Disinterested Commissioners
- Appraisals
- •Sale Procedures v. Real Estate Practices
 - -Pertition in Kind Options
 - Owelly
- -Time Allocations
- Mediation Options
- -Access to Counsel
- Loser Pays

Legal & Legislative Reform

ummary of Core Principles

- Rights
- -Responsibilities
- -Fair Valuation.
- -Sale Options
- -Procedural Fairness
- -Access to Counsel



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Planning the Future

Plaining the Futtuire of Your Farm

Attachment 5

A Workbook on Farm Transfer Decisions

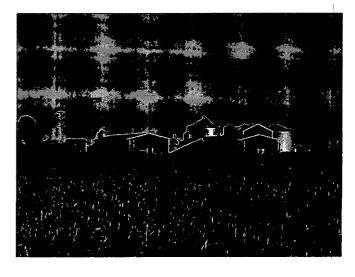
Farm Business Edition

Produced by The North Carolina Farm Transition, Network, Inc.

Acknowledgments:

The North Carolina Farm Transition Network, Inc. expresses its appreciation for the support of its advisors, funders, Board of Directors, and other organizations that helped produce this workbook and workshop series, including:

Ted Feitshans, Guido van der Hoeven, Jesse Richardson, Alex White, Leon Geyer, Gary Bullen, Dr. Geoff Benson, Dr. David Kohl, Rick Hamilton, the USDA Risk Management Agency Raleigh Region, NCFTN Board Members Scott Marlow, Steve Woodson, Gerry Cohn, Rusty Painter, Ed Jones, Jim Cummings, Robin Kohanowich, Billy Guillet, John Vollmer, Mike Morton, Maximillian Merrill, the staff of the North Carolina Farm Bureau Federation, North Carolina Department of Agriculture and Consumer Services, North Carolina Cooperative Extension, Virginia Cooperative Extension, the Southern Region Risk Management Education Center, Wisconsin Center for Dairy Profitability, Iowa State University Extension and Beginning Farmer Center, the North Carolina Tobacco Trust Fund, the Golden LEAF Foundation, Inc., the North Carolina Rural Center, and all the farmers, landowners and their family members who attended our workshops and invited us onto their farms.



The North Carolina Farm Transition Network, Inc. (NCFTN) is a private 501(c)(3) that collaborates with other organizations to develop educational programs and resources that support landowner decisions to keep land in agriculture or forestry.

The materials in this resource workbook are for educational purposes only. While workshop presentations and the materials in this workbook deal with issues of a legal nature, none should be

relied upon as legal advice.

RMA) was made possible with funding from the Golden LEAF Foundation.

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NORTH CAROLINA GENERAL ASSEMBLY **COMMITTEE MEETING NOTICE**

LEGISLATIVE BUILDING RALEIGH NC 27601

December 15, 2008

MEMORANDUM

TO:

Members of the Partition Sales Study Committee

FROM:

Sen. Robert Atwater, Co-Chair

Rep. Angela R. Bryant, Co-Chair

SUBJECT:

Meeting Notice

The Partition Sales Study Committee will meet on the following date:

DAY:

Friday

DATE:

January 9, 2009

TIME:

10:00 AM

LOCATION: Room 421, Legislative Office Building

REMINDER TO NON-LEGISLATIVE MEMBERS: Parking for non-legislative members of the Committee is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available behind the Museum of History Building located on Jones Street in front of State Archives. The cost for visitor parking is \$1.00 per hour or \$8.00 per day and is reimbursed with a parking receipt that is submitted with your travel reimbursement form.

If you have any questions concerning this meeting or if you cannot attend, please contact Carol Resar, Committee Assistant, at (919) 715-3036 or email atwaterla@ncleg.net.

Posted: December 15, 2008 Committee Record cc: **Interested Parties**



AGENDA PARTITION SALES STUDY COMMITTEE

Senator Robert C. Atwater, Co-Chair

Representative Angela Bryant, Co-Chair

Friday, January 9, 2009 10:00 am Room 421, Legislative Office Building

- 1. Welcome and Introductions
- 2. Brief Overview of NC Partition Sales Statutes

 Ryan Blackledge, Committee Co-Counsel
- 3. Review of Partition Sales Statutes in Other States

 John Pollock, Enforcement Director, Central Alabama Fair Housing Center
- 4. Review of Possible Modifications to NC Partition Statutes

 Anita Earls, Co-founder and Director of the Southern Coalition for Social Justice
 Mark Dorosin, Senior Attorney, UNC Center for Civil Rights
 Savonala Horne, Executive Director of the Land Loss Prevention Project
- 5. Data on Partition Sales and Review of Unknown Heirs

Mariah West, Associate Legal Counsel, Administrative Office of the Courts

- **6.** A Perspective from the Real Property Section of the NC Bar Association *Tom Steele, Attorney-At-Law*
- 7. Prior Partition Sales Legislation and South Carolina Allotment Process

 Ryan Blackledge, Committee Co-Counsel
- 8. Committee Discussion
- 9. Adjourn

MINUTES JOINT STUDY COMMITTEE ON PARTITION SALES

Friday, January 9, 2009 10:00 AM Room 421 Legislative Office Building

The Joint Study Committee on Partition Sales met on Friday, January 9, 2009 at 10:00 am in Room 421 of the Legislative Office Building. Representatives Angela Bryant, Co-Chair, Lucy Allen, Mickey Michaux, Tim Spear and Paul Stam, Senators Atwater, Co-Chair, Charlie Albertson, and Ed Jones, and public members Phyliss Craig-Taylor, Pamela Thombs, Steve Woodson, David Harris, The Honorable Gordon Battle, and The Honorable Richard Hunter attended. Senator Bob Atwater presided.

Senator Atwater introduced the Committee Staff, the Committee Assistants, the House and Senate Sergeants-At-Arms staff, and asked the Committee members to introduce themselves. Senator Atwater then asked for a motion to approve the minutes. After Rep. Spears made a correction, the minutes were approved. Co-Chair Bryant then told the Committee that this meeting was intended to provide additional information and follow up on issues raised at the last meeting. The next meeting would be held to discuss and review Committee recommendations and review the contents of a possible Committee Report.

Senator Atwater then asked Committee Co-Counsel, Ryan Blackledge, to give a brief overview of the partition sales procedures found in the North Carolina General Statutes (see Attachment #1).

Next, Senator Atwater asked Mr. John Pollock, Enforcement Director with the Central Alabama Fair Housing Center, to give a presentation on why legal changes are needed to the North Carolina partition laws. First, Mr. Pollock gave a review of a table analyzing the partition statutes from all 50 states (see Attachment #2). Then, Mr. Pollock presented and discussed the following recommendations for modifying North Carolina's partition statute (see Attachment #3):

- Require the Court to consider non-economic value of property in weighing sale.
- Allow a buyout option for partition sale opponents if division is not possible.
 - Ensure that owners receive notice of the action (Notice by Publication).
 - Establish sale procedures.
 - Disallow the assessment of attorney's fees against parties that contest the sale.

After Mr. Pollock's presentation, a discussion was held with some questions and comments made by Committee members.

Senator Atwater next called on Savonala Horne, Executive Director of the Land Loss Prevention Project. Ms. Horne introduced Anita Earls, Co-founder and Director of the Southern Coalition for Social Justice and Mr. Mark Dorosin, Senior Attorney with the UNC Center for Civil Rights. After Ms. Horne gave a brief history of the Land Loss Prevention Project, she asked Ms. Earls to present two case studies of the sale of heirs' property in Orange County, North Carolina (see Attachment #4).

After her presentation, Ms. Earls submitted the following recommendations for changes to North Carolina's partition law (see Attachment #5):

- Require consideration of specific factors in determining whether partition in kind or sale of the land will be ordered.
- Establish a statutory procedure for co-tenants who oppose a sale to buy-out other co-tenants that includes a court-obtained neutral appraisal.
- Eliminate opportunities for conflicts of interest.
- Increase the time to respond to a petition.

After Ms. Earls' presentation and a lengthy discussion by Committee members, Senator Atwater asked Mr. Mark Dorosin to present his recommendations (see Attachment #6). These recommendations included:

- Give parties opposed to partition the right to purchase the petitioner's fractional interest ("buyout option").
- Strengthen existing statutory provisions against potential conflicts of interest.
- Prohibit the assessment of attorney's fees against parties opposed to partition.

A brief discussion followed Mr. Dorosin's presentation and Mr. David Harris stated that he saw common threads running through the recommendations made by the speakers. These common threads were:

- 1) There appears to be more problems in rural counties where there are fewer attorneys than in the Triangle or Triad areas.
- 2) Actions are filed as soon as the property becomes more valuable and instead of being divided, the property goes right to sale.
- 3) The person seeking the sale of the property is not an heir.

Mr. Dorosin responded that the first two comments were correct but he believed the third comment was not correct.

Ms. Horne then concluded the discussion of possible modifications to the North Carolina partition statutes by stating that the recommendations of Land Loss Prevention Project were very similar to those recommendations already discussed and were included in her handout (see Attachment #7).

Senator Atwater then asked Mr. Tom Steele, attorney-at-law, to give a perspective from the Real Property Section of the North Carolina Bar Association. He told the Committee

that it is the opinion of the NC Bar that the procedure for partition sales works well and presented the reasons against modifying the current partition sales statute (see Attachment #8). He concluded by stating that the proposed changes would add more problems, delays and expense to the current partition sales process and unnecessarily burden family members. Mr. David Harris asked Mr. Steele if the NC Bar would be opposed to increasing the number of days to respond to a petition for partition from 10 to 30 and Mr. Steele replied that the Bar had no formal response but he speculated the Bar would be OK with that change.

Next, Senator Atwater asked Ms. Mariah West, Associate Legal Counsel for the Administrative Office of the Courts (AOC), to present data collected by the AOC. Ms. West stated that the AOC had no position on the current partition law and the data contained in the handout (see Attachment #9) was to offer additional information to the Committee for its discussion.

Ms. West then spoke briefly to the issue of unknown heirs. She stated that the statutes of interest that addressed unknown heirs were G.S. 46-6 and 46-34 (see Attachment #10). She added that the Clerk of Court can usually appoint a Guardian Ad Litem when necessary.

After a brief discussion about the Guardian Ad Litem issue and how Ms. West's data was collected, Senator Atwater asked Ryan Blackledge, Committee Co-Counsel, to review prior partition sales legislation and South Carolina allotment process.

Mr. Blackledge told the Committee that regarding prior legislation, during the 2005 and 2007 Legislative Sessions, the ideas of changing the substantial injury test, adding the buyout option, and removing the attorney's fees provision were considered.

With regards to the South Carolina allotment process, Mr. Blackledge told the Committee that the Court could order a partition in-kind, by allotment, or by sale. The allotment is similar to the buyout option except South Carolina had the added test of the best interest of all parties concerned. Mr. Blackledge added that there may be a constitutional issue with the buyout option. Alabama's Supreme Court looked at the issue of procedural due process. Other states have the buyout option, but Mr. Blackledge did not know if constitutional issues had been raised in those states. In response, Mr. Pollock stated that Alabama had an issue with the equal protection clause and that came before the Alabama Supreme Court 23 years ago.

Next, Senator Atwater asked Representative Stam to begin the Committee discussion by presenting his proposed legislation (see Attachment #11). Representative Stam stated that this proposed legislation had already been recommended in the earlier discussions and would increase the time to respond to a summons from 10 days to 30 days. Representative Stam then told the Committee that most of the other recommendations discussed were interesting and philosophically important but would have the effect of devaluing the property of people who own property by tenants in common by 30-50%.

He offered copies of two petitions for partition cases that he handled (see Attachment #12 and Attachment #13). A brief discussion followed Representative Stam's presentation of these two cases.

Representative Bryant then told the Committee members and any outside stakeholders to submit any recommendations to the Committee Counsels as soon as possible, so they may be sent out to everyone for review. Recommendations will be considered at the next meeting, which is scheduled for Monday, January 26 at 3:00 pm.

There being no further business, the meeting was adjourned at 12:30 pm.

Senator Bob Atwater, Co-Chair

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attachment #1

Overview of North Carolina Partition Procedure

Ryan Blackledge, Committee Co-Counsel

Partition may occur when one or more persons out of a group of co-owners decide that they don't want to be a co-owner anymore. Co-ownership occurs when two or more persons own the same land together. How much of the land that someone owns is called their "ownership interest." That ownership interest may be large or small.

If the other members of the group (a) aren't interested in "buying out" the person who wants out or (b) don't want to divide the land based on ownership interests, then the person who wants their interest taken out of co-ownership files a partition action in court.

When filing the petition for partition in court, the person who wants "out" of shared ownership names all parties who have an interest. Sometimes, the person doesn't know all the names of the persons who may have an interest. If there are known unknown parties, then notice of the petition must be given by publication in a newspaper.

Partition in Kind

The superior court names three disinterested commissioners to divide and apportion the land. The commissioners swear an oath to do justice among the co-owners when dividing the property and the commissioners are entitled to compensation for their work. A report is due in court no more than 60 days after the commissioners are appointed. A commissioner who unreasonably delays or neglects his job shall be liable for contempt and a \$50 penalty.

If the land cannot be divided completely equally, the commissioners may order "owelty," which is a payment from an owner who gets a better piece of the land to an owner who gets a lesser piece of land. The value of the land will depend on factors such as terrain, the presence of buildings, and proximity to roads.

If some of the owners wish to remain owners together, the commissioners may allot their shares in the property to them in common.

If no one objects to the report within ten days of the commissioners' filing, then the report is confirmed. If someone objects to the report, the clerk of court may (i) confirm it, (ii) send it back for corrections, (iii) order a new appraisal by the commissioners, (iv) order new commissioners and start over. If anyone disagrees with the clerk, they may appeal to a judge.

Partition By Sale

Actual division of the property is the preferred method of division under the law. Sometimes, property cannot be divided well without "substantial injury" to any of the owners. "Substantial injury" means that the fair market value of a physical piece of the land would be materially less than the money equivalent of an owner's interest in the

Partition Sales Study Committee North Carolina General Assembly property sold as one whole. Whoever favors a sale over a partition in kind must prove to the court that "substantial injury" will occur in order for the court to order a sale.

The general rules for a partition sale are the same as for any judicial sale, as described in G.S. §1-339.1 et seq. A judge or clerk may order a public sale or a private sale. If either type is ordered, the specially appointed commissioner for the sale must notify all petitioners and respondents of the sale 20 days prior to the sale.

For a *public sale*, a notice of the sale must be published to give details such as the time, place, and manner of the public auction along with a description of the property. This notice must be posted at the court for 20 days before the sale and must appear in a newspaper once a week for two weeks. At public auction, the property goes to the highest bidder. Upset bids are allowed after the close of the public auction, so long as those bids are 5% larger (at least \$750) than the previous winning bid. The public sale is not consummated until 15 days after the court confirms the sale.

A court may order a *private sale*. Private sales are also subject to upset bids and must be confirmed by the court.

After the sale is complete, the court distributes the proceeds of the sale to the owners on the basis of the owners' ownership interest.

attachment #2



Central Alabama Fair Housing Center

1817 West Second Street Montgomery, AL 36106 (334) 263-4663 [voice] (334) 263-4664 [facsimile] fairhousing@cafhc.org [email]

December 24, 2008

To the Members of the North Carolina Partition Sales Study Committee:

I am pleased to submit the attached table analyzing the partition statutes from all 50 states. I originally developed this table in 2006 while at the Southern Poverty Law Center in Alabama, and it has been updated periodically, with a substantial update in September 2007.

Originally, the purpose of this research was to determine whether the deficiencies in Alabama's partition statute could be corrected so as to make the partition sales process more equitable. The research revealed that a number of states and state courts have devised ways to provide substantive or procedural protection for those landowners who do not wish to be forcibly dispossessed of their interests and who value their land for more than its economic worth. The ideas generated from this research ultimately led to the proposal by the American Bar Association's Property Preservation Task Force to the National Conference of Commissioners on Uniform State Laws (NCCUSL) for a Uniform Partition Law.

I hope the Committee finds this information useful, and should there be any questions, please do not hesitate to contact me at (334) 263-4663.

Sincerely, John Pollock

Summary of All State Partition Sale Statutes, By John Pollock

NOTE: this research is only current through September 2007.

Statute	Conditions for Sale	Sale Procedure/	Allow Constructive	Buyout of Petitioner or	Allow Attorney's fees
		Challenges to Sale	Ouster?	Right of First Refusal?	and/or Costs?
<u>Alabama:</u>	2 justifications for sale:	Sold by commissioners	Unclear. The court has	Not anymore. Code of Ala.	Yes, if attorney's actions
Code of	 Partition in probate court. 	or by probate judge	said that "[t]here must be	§ 35-6-100 et seq.	are for "benefit of all".
Ala. §	Commissioners find "just	using executor process.	clear and unequivocal	originally allowed just the	Code of Ala. § 34-3-60,
35-6-1 et	and equal partition can't be	Code of Ala. § 35-6-	evidence of ouster, apart	partition opponent to buy	Carver v. Foster, 2005
sed.	made" or sale will "better	62. Must be 30-day	from customary usage of	out petitioner's share, but	Ala. LEXIS 202 at *9
	promote interests of all the	delay before hearing,	the land and retention of	the statute was declared	(Ala. 2005). Opposition
	cotenants". Code of Ala. §	and all parties must	income, which is made	unconstitutional (violated	to sale (invoking § 35-6-
	35-6-57.	have 10 days' notice of	known to the cotenant."	state and federal Equal	100) does not mean
	 Sale action in probate 	hearing. Can nullify	Hollis v. Post, 487 So. 2d	Protection clause). Jolly v.	partition sale is not for
	court, which determines	sale if "unfairly	872, 874 (Ala. 1986). This	Knopf, 463 So. 2d 150, 153	the "benefit of all", but
	land can't be "equitably	conducted" or if land	statement was repeated in	(Ala. 1985). Now, if both	fees should not just be
	divided or partitioned".	sells for too little. Code	Horne v. Ward, 585 So. 2d	sides exercise buyout right,	straight percentage of
	Code of Ala. § 35-6-58.	of Ala. § 43-2-461.	877, 878 (Ala. 1991).	whole property put up for	parcel value. Id. at *12,
	Focus is mostly on	These procedures only	However, the court also	private sale. Williams v.	20. Fees can be paid to
	physical susceptibility of	apply to a public sale.	seems to say in Hollis that	McIntyre, 632 So. 2d 446,	respondent's counsel in
	land to partition.	Ladewig v. Estate of	this statement is only	449 (Ala. 1993); Cupps v.	some cases. Jernigan v.
	Steadman v. Uptown	Arnold, 694 So. 2d 25	applicable where absent	Pruitt, 694 So. 2d 1346,	Jernigan, 678 So.2d
	Motors, Inc., 842 So. 2d	(Ala. Civ. App. 1997).	cotenants have taken steps	1353 (Ala. Civ. App.	1169, 1172 (Ala. Civ.
	684, 688 (Ala. Civ. App.	Court can choose	to demonstrate interest in	1996). However, petitioner	App. 1996).
	2002). Depressed value of	public or private sale.	property (such as trying to	must still prove first land	
	property, inability to buy	Irons v. LeSueur, 487	sell it). 478 So. 2d at 875.	can't be partitioned.	Costs are deducted from
	are irrelevant. Morrison v.	So. 2d 1352, 1358	See also Rutledge v. Bank	McGee v. McGee, 495 So.	the sale proceeds. Code
	Morrison, 17 So. 109 (Ala.	(Ala. 1986).	of Heflin, 442 So. 2d 1, 2-3	2d 1081 (Ala. 1986).	of Ala. § 35-6-63.
	1894).		(Ala. 1983).		
		Successful bidder pays	•		•
		into court sale price			
		minus value of their			
		existing interest.			
		Cupps v. Pruitt, 694			
		So. 2d 1346, 1350			
		(Ala. Civ. App. 1996);			
		Few v. Few, 681 So. 2d			
		142, 143 (Ala. Civ.			
		App. 1995).			

50-State partition statutes table, authored by John Pollock Original drafting date: 7/06. Updated periodically, with substantial update in 9/07. Last modified: 12/08. Page 1 of 59

Statute	Conditions for Sale	Sale Procedure/	Allow Constructive	Buyout of Petitioner or	Allow Attorney's fees
		Challenges to Sale	Ouster?	Right of First Refusal?	and/or Costs?
<u>Alaska:</u>	Can sell if petitioner proves	Sold at public auction	Unknown. Only 1 case	No, as the statute does not	Unclear. Alaska R. Civ.
Alaska	to court that partition can't	using same process as	dealing w/AP and	mention it and there is no	Proc. 82 requires fees for
Stat. §	happen without "great	sale of real property in	cotenants, but it's off-topic	mention of it in the case	"prevailing party" in any
09.45.26	prejudice to the parties".	execution. Alaska Stat.	(deals with conveyances).	law.	civil action. But unclear
0 et seq.	Alaska Stat. §§ 09.45.290,	\$ 09.45.420.	Snook v. Bowers, 12 P.3d		if partition action creates
	09.45.330. Prejudice is		771 (Ak. 2000).		a "prevailing party".
	measured in economic terms,	Can challenge			
	i.e. where the partitioned	"substantial			Costs are paid
	parcels would be of	irregularities" in sale			proportionate to shares.
	materially less economic	process. Alaska Stat. §			Alaska Stat. § 09.45.620.
	value than the value of the	09.35.180. Mere)
	whole. Ashley v. Baker, 867	inadequacy of sale			
	P.2d 792, 796 (Ak. 1994).	price is insufficient for			
		challenge; must be			
		"grossly inadequate"			
		(roughly 40% or less of			
		fair market value, or			
		price that "shocks the			
		conscience"). Hayes v.			
		Alaska USA Fed.			
		Credit Union, 767 P.2d			
	,	1158, 1160 (Ak. 1989).			
		Court (or court-			
		appointed master) can			
		set minimum bid			
		("upset price") for			
		court-executed sale.			
		Hayes, 767 P.2d at			
		1160, 1163; Alaska			
		Stat. § 09.35.180.			

50-State partition statutes table, authored by John Pollock Original drafting date: 7/06. Updated periodically, with substantial update in 9/07. Last modified: 12/08. Page 2 of 59

Statute	Conditions for Sale	Sale Procedure/	Allow Constructive	Buyout of Petitioner or	Allow Attorney's fees
		Challenges to Sale	Ouster?	Right of First Retusal?	and/or Costs?
<u>Arizona:</u>	Can sell if commission or	Court appoints	No. But actual notice not	No, and court can't create	No. McReady, 810 P.2d
A.R.S.	court determines partition is	commissioner to handle	required if cotenant "claims	this option on its own.	at 627. But costs are
§§ 12-	not fair/equitable or will	the sale. A.R.S. § 12-	more than his due". Morga	McReady v. McReady, 810	allocated proportionately.
1211 et	depreciate value, or sale is	1218. Sale procedures	v. Friedlander, 680 P.2d	P.2d 624, 626 (Ariz. Ct.	A.R.S. § 12-1225.
seq.	more beneficial to any party.	follow sale by	1267 (Ariz. Ct. App. 1984).	App. 1991).	÷
	A.R.S. § 12-1218.	execution. A.R.S. § 12-			
		1223(B).			
		Any party can object to			
		commissioner's report			
		and seek a hearing of			
		the objection. Report is			
		rejected if "erroneous			
		in a material respect, or	-		
		unequal and unjust."			
		A.R.S. § 12-1219.			
,		New commissioners			
,		appointed if original			
		report rejected. Id.	,		

Statute	Conditions for Sale	Sale Procedure/	Allow Constructive	Buyout of Petitioner or	Allow Attorney's fees	
	The state of the s	Challenges to Sale	Ouster?	Right of First Refusal?	and/or Costs?	
Arkansas	 Sale ok if no partition w/o 	Commissioner orders	No. "[C]olor of title and	No, as the statute does not	Yes, state requires	
A.C.A. §	"great prejudice to the	sale, or court can	payment of taxes alone are	mention it and there is no	attorney's fees paid to	
-09-81	owners", A.C.A. § 18-60-	determine it can	insufficient to ripen into	mention of it in the case	petitioner's attorney for	
401 et	420, which is not defined	conduct sale without	ownership by adverse	law.	all sale actions that are	
	in case law.	their help. A.C.A. §	possession", so cotenant		"of common benefit to all	
	 No partition if tenancy in 	18-60-424. Nothing	must engage in "notorious		parties", but the fee	
	entirety and homestead of	specified about	acts of an unequivocal		cannot exceed \$40,000.	
	one divorced spouse,	challenges to sale, but	character that notice may be		A.C.A. § 18-60-419. The	
	A.C.A. § 18-60-401, but	commissioner's report	presumed." Barr v. Eason,		fact that the proceedings	
	divorce now ends tenancy	has to specify why it	728 S.W.2d 183, 187 (Ark.		are adversarial does not	
	in entirety. Padgett v.	believed there was	1987).		preclude the collection of	
	Haston, 651 S.W.2d 460,	"great prejudice" for in-			attorney's fees. Johnston	
	464 (Ark. 1983).	kind partition. McGee		•	v. Smith, 454 S.W.2d	
	 Can't partition widow's 	v. Russell, 4 S.W. 284,			649, 651 (Ark. 1970).	
	homestead during her	285 (1886).			,	
	life. Gibson v. Gibson,				Costs are deducted from	
	572 S.W.2d 148 (Ark.	Sale price can be			the sale proceeds. A.C.A.	
	1978); Ark. Const. Art. 9,	challenged if it is so			§ 18-60-423.	
	\$ 6.	inadequate "as to shock				
	 If property is 10+ acres 	the conscience or				•
	and petitioner bought	amount to evidence of				
	share as "stranger to title"	fraud." Mulkey v.				
	(not fourth degree of	White, 242 S.W.2d 836				
	consanguinity) and owns	(Ark. 1951).			,	
	less than 50%, no			·		
	partition until 3 years				•	
	after purchase. A.C.A. §			•		
	18-60-404.					

Sale proper if court determines that sale complaint. Cal Code Civ Dimmick. 374 P.24 824, mention it and there is no complaint. Cal Code Civ Dimmick. 374 P.24 824, mention if and there is no mention of it in the case of property. Cal Code Civ Proc. § 872.820, property can be sold at measured by either physical impossibility of determines which is more partition or "pure conomic" loss of value. Proc. § 873.520. 873.530. Buttle Creek Island Ranch Court can set minimum bid. "Crim, 186 Cal. Rptr. 2al Code Civ Proc. § 873.520. 873.530. Buttle Creek Island Ranch Court can set minimum bid. "Crim, 186 Cal. Rptr. at 23-25. and set the sale price and set the sale price are conduct an agree, the sale price are conducted." Proc. § 873.910. And fact that whole are conducted and state sale price are conducted and state fact and set the sale price. The conduct an agree the sale price to conduct an agree the conduct an agree the conduct an agree the conduct an agree the sale price. Buttle Creek Give Proc. § 873.910. And a fact that whole agree the conduct and as agree and agree the conduct and as agree and agree the conduct and agree the conduct and agree the conduct and agree the sale and court as set parcel together has not mean land disc sale, and court as set parcel does not mean land fact that whole agree the conduct and agree the c	Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
would be "more equitable" that sale complaint. Cal Code Civ would be "more equitable" than division of property, and all or part of property, cal Code property, and all or part of property, cal Code property, and all or part of property, cal Code property, and all or part of property, cal Code civ proc. § 872.820, property can be sold at private or public sale (court partition or "pure conomic" loss of value. Proc. § 873.830, proc. § 873.910. Proc. § 873.910, proc. § 873.920, proc. § 873.920, proc. § 973.920, proc. § 973.730, proc. § 974.04 Code. Cod	<u>California</u>	Sale proper if court	File lis pendens along with	No. Dimmick v.	No, as the statute does not	Yes, allows fees paid to
equitable" than division of property, Cal Code or property, and all or part of proverty, and all or part of proverty, and all or part of property, and all or part of proverty, and all or part of proverty, and all or part of proverty, and all or part of proverty and all or part of proverty, and all or part of proverty, and call code Civ partition or "pure perficial. Cal Code Civ Proc § 873.510. If call Code Civ Proc § 873.510. If call Code Civ Proc § 873.510. If conduct an agree, the court may agree, the court can age the property statute requiring "great appropriation of the sale price. Nonetheless, forced sales accordingly. Cal Code Civ. And fact that whole pared lose not mean land aside sale, and court can set parcel conduct an sale parcel does not mean land aside improper notice or disproportionate sale price. Cal Code Civ. Proc § stand fact that whole pared lose not mean land aside if improper notice or disproportionate sale price. Cal Code Civ. Proc § 873.730. 873.730. Court is authorized to just sell part of the property and partition the rest if it is sone equilable. Code Civ. Proc & S77.830.	Cal Code	determines that sale	complaint. Cal Code Civ	Dimmick, 374 P.2d 824,	mention it and there is no	attorney "for the common
of property, Cal Code Crv. Proc. § 872.820, measured by either physical impossibility of determines which is more partition or 'pure conomic' loss of value. Bartison or 'pure conomic' loss of value. Bartison or 'pure conomic' loss of value. Bartison or 'pure Court can set minimum bid. Cal Code Civ Proc. § 873.530. Bartison or 'pure Court is anthorized an agree, the court may agree, the sale price Anonetheless, forced sales are "strongly disfavored", Id, and fact that whole parcel does not mean land aside fi improper notice or cannot be equitably cal. Ch. App. 1982). Court is authorized to just sell part of the property and partition the rest if it's none equitable. Code Civ Proc & 873.730.	CIV Proc §	would be "more	Proc § 872.250. Court	826 (Cal. 1962).	mention of it in the case	benefit." Cal Code Civ
Civ. Proc., 8 872 820, measured by either property, and all or part of property, call Code property can be sold at measured by either private or public sale (court partition or "pure property and partition of the property partitioned. Butte Creek Along parcel does not mean land cannot be equitibly call the property partitioned. Butte Oreek and partition the rest if it is none equitable.	8/2.010 et	equitable" than division	appoints referee to sell		law.	Proc § 874.010. The fact
property can be sold at private or public sale (court	sed.	of property, Cal Code	property, and all or part of			that the partition action is
determines which is more determines which is more beneficial. 2at Code Civ Proc § 873.50. Court can set minimum bid. Cal Code Civ Proc § 873.510. Tal Code Civ Proc § 873.610. If both-parties agree, the court may appoint an agreed-upon referee to conduct an appoint an agreed-upon appoint an agreed-upon appoint an agreed-upon referee to conduct an appraisal of the property and set the sale price accordingly. Cal. Code Civ. Anyone can move to set and set the sale price. Anyone can move to set aside aside, and court can set aside aside, and court can set aside aside if improper notice or disproportionate sale price. Cal Code Civ Proc § § 873.730.		Civ. Proc. § 872.820,	property can be sold at			disputed does not
determines which is more beneficial). Cal Code Civ Proc §§ 873.520, 873.530. Cul Court can set minimum bid. Cal Code Civ Proc § 873.610. If both parties agree, the court may appoint an agreed-upon referee to conduct an ceferee to conduct an appoint an agreed-upon referee to conduct an appoint an agreed-upon referee to conduct an appoint an agreed-upon referee to conduct an ceferee to conduct an appoint an agreed-upon referee to conduct an ceferee to conduct an appoint an agreed-upon referee to conduct an ceferee to conduct an appoint an agreed-upon referee to conduct an ceferee to cond		measured by either	private or public sale (court			preclude the collection of
beneficial). Cal Code Civ Proc §§ 873.520, 873.530. Cal Code Civ Proc § 873.610. Inimum bid. Cal Code Civ Proc § 873.720, 873.730. Anyone can move to set aside sale, and court can set aside sale, and court can set disproportionate sale price. Cal Code Civ Proc § 873.720, 873.730.		physical impossibility of	determines which is more			attorney's fees, provided
e. Proc §§ 873.520, 873.530. Court can set minimum bid. Cal Code Civ Proc § 873.610. If both parties a gree, the court may appoint an agreed-upon referee to conduct an k, appraisal of the property 5. and set the sale price es accordingly. Cal. Code Civ. d'', Proc. § 873.910. Anyone can move to set aside sale, and court can set and aside sale, and court can set disproportionate sale price. Cal Code Civ. Proc §§ 136 873.720, 873.730.		partition or "pure	beneficial). Cal Code Civ			that the court finds that
Court can set minimum bid. Cal Code Civ Proc § 873.610. If both parties a gree, the court may appoint an agreed-upon referee to conduct an appoint and set the sale price accordingly. Cal. Code Civ. d", Proc. § 873.910. Anyone can move to set aside sale, and court can set and aside asle, and court can set and disproportionate sale price. Cal Code Civ Proc §§ 873.720, 873.730. Interport of the property of th		economic" loss of value.	Proc §§ 873.520, 873.530.			the action is nonetheless
Cal Code Civ Proc § 873.610. If both parties agree, the court may appoint an agreed-upon referee to conduct an k, appraisal of the property s and set the sale price accordingly. Cal. Code Civ. d", Proc. § 873.910. Anyone can move to set aside sale, and court can set and estimproper notice or disproportionate sale price. K Cal Code Civ Proc §§ 873.720, 873.730.		Butte Creek Island Ranch	Court can set minimum bid.			for the "common"
agree, the court may appoint an agreed-upon referee to conduct an appoint an agreed-upon referee to conduct an appraisal of the property 5. and set the sale price a accordingly. Cal. Code Civ. d", Proc. § 873.910. Anyone can move to set aside sale, and court can set aside sale, and court can set aside si fimproper notice or disproportionate sale price. K. Cal Code Civ Proc. § § 136 873.720, 873.730.		v. Crim, 186 Cal. Rptr.	Cal Code Civ Proc §			benefit". Randell v.
agree, the court may appoint an agreed-upon referee to conduct an referee to conduct an appraisal of the property 3. and set the sale price es accordingly. Cal. Code Civ. 4, Proc. § 873.910. d, Proc. § 873.910. d aside sale, and court can set and aside sale, and court can set aside sale, and cour		252, 255 (Cal. Ct. App.	873.610. If both parties			Randell, 50 P.2d 806, 809
appoint an agreed-upon referee to conduct an appraisal of the property 5. and set the sale price accordingly. Cal. Code Civ. d", Proc. § 873.910. e. Anyone can move to set aside sale, and court can set und aside sale, and court can set disproportionate sale price. k. Cal Code Civ Proc § § 136 873.720, 873.730.		1982). This replaced an	agree, the court may			(Cal. 1935). Respondent
referee to conduct an appraisal of the property 5. and set the sale price es accordingly. Cal. Code Civ. d", Proc. § 873.910. e Anyone can move to set ual aside sale, and court can set aside sale, and court can set disproportionate sale price. k Cal Code Civ Proc §§ 136 873.720, 873.730. ust ust		earlier version of the	appoint an agreed-upon			may be entitled to
6. appraisal of the property 5. and set the sale price es accordingly. Cal. Code Civ. d", Proc. § 873.910. e Anyone can move to set ual aside sale, and court can set aside sale, and court can set disproportionate sale price. k Cal Code Civ Proc §§ 136 873.720, 873.730. ust ust		statute requiring "great	referee to conduct an			attorney's fees as well.
and set the sale price es accordingly. Cal. Code Civ. d.', Proc. § 873.910. e Anyone can move to set ual aside sale, and court can set aside if improper notice or disproportionate sale price. k Cal Code Civ Proc §§ 873.720, 873.730. ust ust		prejudice". Butte Creek,	appraisal of the property			Riley v. Turpin, 349 P.2d
es accordingly. Cal. Code Civ. d.', Proc. § 873.910. e Anyone can move to set ual aside sale, and court can set md aside if improper notice or disproportionate sale price. K Cal Code Civ Proc § § 136 873.720, 873.730. ust 1		186 Cal. Rptr. at 254-55.	and set the sale price			63, 65 (Cal. 1960).
d", Proc. § 873.910. e Anyone can move to set aside sale, and court can set aside if improper notice or disproportionate sale price. k Cal Code Civ Proc §§ 136 873.720, 873.730.		Nonetheless, forced sales	accordingly. Cal. Code Civ.			
Anyone can move to set ual aside sale, and court can set aside if improper notice or disproportionate sale price. **Cal Code Civ Proc §§ 136 873.720, 873.730. ust 1		are "strongly disfavored",	Proc. § 873.910.			Costs of the partition
e Anyone can move to set ual aside sale, and court can set aside if improper notice or disproportionate sale price. k Cal Code Civ Proc §§ 136 873.720, 873.730. ust 1		Id., and fact that whole				action and sale are
aside sale, and court can set aside if improper notice or disproportionate sale price. K Cal Code Civ Proc §§ 136 873.720, 873.730. ust 1		parcel together has more	Anyone can move to set			deducted from the
disproportionate sale price. K Cal Code Civ Proc §§ 136 873.720, 873.730. ust		value than each individual	aside sale, and court can set			proceeds. Cal Code Civ
disproportionate sale price. k Cal Code Civ Proc §§ 136 873.720, 873.730. lust 1		parcel does not mean land	aside if improper notice or			Proc § 873.820. Parties
Cal Code Civ Proc §§ 136 873.720, 873.730. 11 12 13 13 13 13 13 13		cannot be equitably	disproportionate sale price.			also have to pay for
136 873.720, 873.730.		partitioned. Butte Creek	Cal Code Civ Proc §§			referee, surveyor, and
ust 1		Island Ranch v. Crim, 136	873.720, 873.730.			reasonable cost of title
ust 1		Cal. App. 3d 360, 367 n1				report. Cal Code Civ
Court is authorized to just sell part of the property and partition the rest if it's more equitable. Cal		(Cal. Ct. App. 1982).				Proc § 874.010.
Sell part of the property and partition the rest if it's more equitable. Cal						
and partition the rest if it's more equitable. Cal		Court is authorized to just				
it's more equitable. Cal		and partition the rest if				
Code Civ Proc 8 872 830		it's more equitable. Cal				
		Code Civ Proc § 872.830.				

50-State partition statutes table, authored by John Pollock Original drafting date: 7/06. Updated periodically, with substantial update in 9/07. Last modified: 12/08. Page 5 of 59

Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Sale ok if commissioners	Court "directs the sale",	No. Atchison, T. & S. F.	No, and court does not	Yes, court can order
find no partition without	which is done at public		have equitable power to	payment of attorney's
"manifest prejudice to the	auction. C.R.S. 38-28-107.	Springs Land &	order such a remedy, at	fees out of the proceeds
rights of any interested	The person actually	Improvement Co., 659	least not when in-kind	of the sale or in some
party", C.R.S. 38-28-107,	conducting the sale reports	P.2d 702, 703 (Colo. Ct.	partition is possible and/or	other fashion, but does
which is not mere strained	back to the court. C.R.S.	App. 1982).	the opponent is not living	not say whether such
	38-28-108. The report of		on property. Young Props,	fees are mandatory or
economic prejudice or	the sale must be confirmed		87 P.3d at 239.	not. C.R.S. 38-28-109.
impracticability. Young	by the court before it has			Unclear whether
.3d	any effect. C.R.S. 38-28-			respondent's attorney
235, 238 (Colo. Ct. App.	108. Notice procedures			can ever recoup fees.
2003). Courts originally	follow sale by execution			
prohibited partition after	procedure. C.R.S. 38-28-			Costs are deducted from
divorce, Harrod v. Harrod,	107.			the sale proceeds. C.R.S.
526 P.2d 666 (Colo. Ct.				38-28-109.
App. 1974), but <i>Harrod</i>				
was overturned. Wilson v.				
Prentiss, 2006 Colo. Ct.				
App. LEXIS 692 (Colo. Ct.				
Courts consider land unique				
and money "an inadequate				
substitute." Young Props. v.				
Wolflick, 87 P.3d 235, 237				
Benson v. Nelson, 725 P.2d				

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Statute	Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's fees
		Challenges to Sale	Ouster?	Right of First Refusal?	and/or Costs?
Connecticut	Sale OK when it "better	Court can hire realtor to	No. Ruick v. Twarkins,	Sort of. If one party's	No, b/c not in statute and
Conn. Gen.	promotes the interests of	ensure property will be	367 A.2d 1380, 1384	interest is "minimal", a	not allowed "unless
Stat. § 52-	the owners". Selling the	sold at fair value, Mitchell	(Conn. 1976)	court can order "equitable	there is a contractual or
495 et seq.	property when a cotenant	v. Silverstein, 2000 Conn.		distribution of such	statutory exception."
	is strongly opposed	Super. LEXIS 988 at *4-5		property, with payment to	Lee v. Palumbo, 2001
. —	requires the case for sale to	(Conn. Super. 2000), can		owners of such minimal	Conn. Super. LEXIS
,	be a "strong one". Wilson	choose between public and		interest". Conn. Gen. Stat.	2534 at *1 (Conn. Sup.
	v. Peck, 1872 Conn.	private sale, Giulietti v.		§ 52-500. See also	Ct. 2001). If court
	LEXIS 11 (Conn. 1872).	Giulietti, 784 A.2d 905,		Mayberry v. Mayberry,	awards fees via inherent
	Lengthy tenure on the land	936 (Conn. App. Ct.		2005 Conn. Super. LEXIS	power because of
	and actual/exclusive	2001), and can reject the		2636 (Conn. Sup. Ct.	respondent's bad faith,
	possession go against	sale if it feels the price was		2005) (equitable power);	can't be deducted from
	allowing a sale. Delfino v.	inadequate. Fernandes v.		Ingersol v. Hickory, 2005	respondent's sale
	Vealencis, 436 A.2d 27, 33	Rodriguez, 761 A.2d 1283,		Conn. Super. LEXIS 2552	proceeds. Lee v.
	(Conn. 1980). However,	1290 (Conn. 2000). Court		(Conn. Super. Ct. 2005)	Palumbo, 2001 Conn.
	mere fact that majority of	has option of appointing		(using amended portion of	Super. LEXIS 2734 at
	owners prefer partition	commissioners. Conn.		§ 52-500(a) regarding	*1-2 (Conn. Sup. Ct.
	doesn't preclude finding	Gen. Stat. § 52-502(b).		minimal interests). The	2001).
	that sale better promotes	Court can also order a		CT Supreme Court	
	interest. Lyon v. Wilcox,	private sale, and can reject		decision in Fernandes	Costs deducted from sale
	119 A. 361 (Conn. 1923).	sale if sale price is		prohibiting such a transfer	proceeds. Conn. Gen.
		inadequate. Giulietti et al.		was issued prior to § 52-	Stat. § 52-502.
		v. Giulietti et al., 784 A.2d		500(a) being amended to	
		905 (Ct. App. Ct. 2001).		explicitly allow such a	
				transfer. At least one court	
				has examined whether a	
				partition sale, as opposed	
				to a buyout, would impose	
				a hardship (such as being	
				forced to move off the	
				property) on one party.	
				Mayberry.	

Statute	Conditions for Sale	Sale Procedure/	Allow Constructive	Buyout of Petitioner or	Allow Attorney's fees
		Challenges to Sale	Ouster?	Right of First Refusal?	and/or Costs?
<u>Delaware</u>	Sale appropriate if	Court orders hearing	Unclear. Need to prove	No, because the statute	Probably not, since there
25 Del. C.	commissioners or court	scheduled at least 20 days	intent, AP in fact, and	does not mention it.	is no mention of it in the
§ 701 et	determines that partition	after filing of petition. 25	notice or knowledge of		statute or in case law.
seq.	would be "detrimental to	Del. C. § 721. Court has	other cotenants. In re		
	interests of the parties". 25	option of appointing	164 West Main St., 1979		Court costs deducted
	Del. C. § 729. The term is	commissioners, 25 Del. C.	Del. Ch. LEXIS		from sale price. 25 Del.
	not explained in the case	§ 724, who then appraise	444 (Del. Ch. 1979)		C. §§ 733, 735.
	law.	the property. 25 Del. C. §	(finding AP from		
		724.	control/supervision over		
			property, payment of		
		Court retains power to	taxes/repairs, collecting		
		confirm or deny sale. 25	of rents without		
		Del. C. § 726; In re Real	accounting, and partial		
		Estate of Brown, 135 A.2d	financing of original		
		613 (Del. 1957). Appeals	acquisition of property)		
		to any partition decree			
		must be made within three			
		months of the date of the			
		decree. 25 Del. C. § 750.			

Statute	Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's fees
		Challenges to Sale	Ouster?	Right of First Refusal?	and/or Costs?
Florida	 Sale ok if court agrees 	Court orders land to be	No. Cook v. Rochford,	No, because the statute	Yes, all parties pay share
Fla. Stat.	with commissioners	sold. Fla. Stat. § 64.071.	60 So. 2d 531, 534 (Fla.	does not mention it.	of attorney's fees, but
§ 64.011.	that partition cannot be	Parties can challenge	1952).	,	both petitioner and
et sed.	done "without prejudice	grossly inadequate sale			respondent can recover
	to the owners". Fla.	price or irregularities in			attorney's fees. Fla. Stat.
	Stat. § 64.071. Family	sale process. Marrouche v.			§ 64.081; Deshommes v.
	relationships and	Homasey, 532 So. 2d 92,			Bazin, 421 So. 2d 806,
	financial status of	94 (Fla. Dist. Ct. App.			807 (Fla. Dist. Ct. App.
	parties irrelevant to	1988).			1982). If the petition for
	right to partition, but				partition is denied, no one
	may be relevant to	The court must confirm any			receives attorney's fees.
	whether to grant private	sale before a conveyance is			Harmon v. Harmon, 453
	or public sale. Keyes v.	granted. Fla. Stat. § 64.071.			So. 2d 77 (Fla. Dist. Ct.
	Rymer Realty Corp.,				App.1984).
	219 So. 2d 711, 712	Like many states, court can			
	(Fla. Dist. Ct. App.	order sale on credit for all			All parties pay court
	1969)	or part of the property, and			costs. Fla. Stat. § 64.081.
	 Partition can be totally 	remaining part is			
	denied if it would result	mortgaged. Fla. Stat. §			
	in "manifest injustice."	64.071.			
	Condrey v. Condrey, 92				
	So. 2d 423, 427 (Fla.				
	1957) (opponents				
	elderly, ill, and living	,			
	on property co-owned				
	with petitioner son; no				
	partition).				

Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?	
Georgia	 If acting pursuant to 	If proceeding at law,	No. "There may be no	Yes, O.C.G.A. § 44-6-	No, if the proceeding is	
0.C.G.A. §	equitable power	petitioner must give 20	adverse possession	166.1(d) allows "parties in	in law. Walker v.	
44-6-140 et	(O.C.G.A. § 44-6-	days' notice of intent to file	against a cotenant until	interest" (defined as non-	Walker, 467 S.E.2d 583,	
sed.	140), can deny	petition action. O.C.G.A. §	the adverse possessor	petitioners) up to 90 days	584 (Ga. 1996). <u>Yes,</u> if	
	partition altogether if	44-6-162 (unclear,	effects an actual ouster,	to pay appraised value of	the proceeding is	
	interests of any	however, if this notice	retains exclusive	the petitioner's share and	conducted in equity and	
	cotenant might not be	provision applies when	possession after demand,	buy them out. However,	the suit was done "for the	
	protected. O.C.G.A. §	person directly requests	or gives his cotenant	each party in interest is	protection or increase of	
	44-6-141. Equitable	sale pursuant to O.C.G.A.	express notice of adverse	only permitted to buy out	common property" (i.e.	
	actions only available	§ 44-6-166.1). Court then	possession." Ward v.	the percentage of the	for the benefit of all	
	when remedy at law is	appoints 3 commissioners	Morgan, 2006 Fulton	petitioner's share equal to	cotenants). Id.	
	insufficient or "special	to make appraisals, and	County D. Rep. 1350 at	that party in interest's		
	reason" to act in	averages appraisal amounts	*5 (Ga. 2006).	percentage of all the party-	Costs can be deducted.	•
	equity. Gifford v.	for purposes of buyout		in-interest land, unless that	O.C.G.A. § 44-6-168.	
	Courson, 165 S.E.2d	option. O.C.G.A. § 44-6-	,	party in interest gets		
	133, 135 (Ga. 1968).	166.1. 3 commissioners		affirmative permission		
		also used to conduct the		from another party in		
	If acting at law	sale. O.C.G.A. § 44-6-167.		interest to buy out their		
	(O.C.G.A. § 44-6-	Court has the power to		proportionate share of the		
	166.1), sale ok if a)	reject sale if sale price is		petitioner. Thus if even		
	partition impossible	grossly inadequate (i.e.,		one party in interest can't		
	due to improvements,	amounts to fraud) or sale		be located or refuses to		
	b) premises valuable	was procedurally irregular.		cooperate, the entire buyout		
	for mining purposes or			apparently fails.		
	division will lower	555, 554 (Ga. 1915).			•	
	arvision will lower			Petitioners are allowed to		
	value of whole			become parties in interest		
	property. Court can			and vice versa within the		
	deny statutory partition			15-day period, and if there		
	altogether if			are no petitioners left at the		
	"extraordinary case not			end of the 15 days, the		
	covered" by other code			action is dropped and the		
	and "manifest that the			petitioners who withdrew		
	interest of each party			are liable for costs.		
	will not be fully			O.C.G.A. § 44-6-166.1(d).		
	protected." O.C.G.A.					

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\$ 44-6-170.

Statute	Conditions for Sale	Sale Procedure/	Allow Constructive	Buyout of Petitioner or	Allow Attorney's fees
		Challenges to Sale	Ouster?	Right of First Refusal?	and/or Costs?
Hawaii	Sale permissible if no	Court has nower to annoint	Not really. Court pays lip	No. Statute says court can	Yes, the court can impose
HRS §	partition possible without	commissioners if it wishes	service to constructive	set aside a portion of the	attorney's fees for either
668-1 <i>et</i>	"great prejudice to the	HRS 8 668-13. All sales	ouster, but standard is so	land from partition "to any	side's attorney, based on
sed.	owners". HRS § 668-1.	are public sales. HRS §	high it's effectively	particular party or parties	the benefits derived to all
	Court is authorized to	668-14. Court can reject	actual ouster. Mormone	who by prior occupation or	parties. HRS § 668-17.
	inst a part of the property	sale if sale price is	050 51 (II)	Improvement or otherwise	
	just a pair of the property,	inadequate, and inadequacy	930-31 (Haw. 1997).	may be equitably entitled	Costs are paid by the
	and can set apair particular	does not have to rise to		unereto [and] as a	petitioner at first, but
	there's seeming the seeming of the seeming the seeming seeming the	level of fraud, as court has		condition of any such	atter partition or sale all
	they re equitably entitled to	duty to obtain highest bid.		particular allotment to	parties pay their
	II. HKS § 668-7.	Sugarman v. Kapu, 85 P.3d		require payment by the	proportionate share. Id.
	,	644 650 652 (Haw 2004)		parties of any value of the	
	Equitable considerations	Court did not abuse		portion set apart to them in	
	[for setting off pieces to	discretion in recognition		excess of their	
	certain parties] include the	Lidding of confirmation		proportionate interest in the	
	"lay of the land, contiguity,	boaring at continuation		value of the whole	
	value, location, availability	nearming upon real ning mat		property". HRS § 668-7.	
	and occupation [of the	bid much higher at hearing		However, this statute has	
,	property]." Hawaiian Com.	than final hid at anction)		been interpreted just to	
	& Sugar Co. v. Waikapu			allow a person to recapture	
	Sugar Co., 9 Haw. 417		,	the value of improvements	
	(Haw. 1894). See also			made to the property.	
	Chuck v. Gomes, 532 P.2d			Campbell v. DePonte, 559	
	657, 662 (Haw. 1975)			P.2d 739, 742 (Haw. 1977).	
	(Richardson, J., dissenting)				
	("[T]here are interests other				
	than financial expediency				
	which I recognize as				
	essential to our Hawaiian	,			
	way of life. Foremost is the	-			1.00
	individual's right to retain				
	ancestral land in order to				
	perpetuate the concept of			-	
	the family homestead.")				

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	Se es.
Allow Attorney's fees and/or Costs?	Maybe, court can impose "reasonable counsel fees" for either petitioner or respondent's attorney for partition; doesn't say whether it can for sale. Idaho Code § 6-545. Costs are shared by the parties. Idaho Code § 6-545. The parties of share cost for producing abstract of title. Idaho Code § 6-547.
Allow Attorne and/or Costs?	Maybe, court can impo "reasonable counsel fe for either petitioner or respondent's attorney partition; doesn't say whether it can for sale Idaho Code § 6-545. Costs are shared by th parties. Idaho Code § 545. Court can requir parties to share cost fo producing abstract of title. Idaho Code § 6- 547.
Allo and/	Mayl "reas for energy partiil whet Idahu partiil partiil productiile. S47.
Buyout of Petitioner or Right of First Refusal?	Mo, because none is mentioned in the statute.
uctive	No. Tremayne v. Taylor, 621 P.2d 408, 409 (Ida. 1980).
Allow Constructive Ouster?	2d 408,
Allow Co Ouster?	No. Tre 621 P.2c 1980).
	lis e § 6- hblic ion are eferces irt. y to code o Code ures. r for Idaho mzie v. da.
ure/ to Sale	Petitioner has to file <i>lis</i> pendens. Idaho Code § 6- 504. Sales are by public auction. Idaho Code § 6- 524. Sale and partition are conducted by three referees appointed by the court. Idaho Code § 6-512. Court can use owelty to even portions. Idaho Code § 6-541. Notice for sale follows sale by execution procedures. Idaho Code § 6-524. Court may reject the sale if it does not follow the decree of the court or for reasons of fairness. Idaho Code § 6-515; <i>McKenzie v. Miller</i> , 206 P. 505 (Ida. 1922).
Sale Procedure / Challenges to Sale	Petitioner has pendens. Idal 504. Sales an auction. Idah 524. Sale and conducted by appointed by appointed by Idaho Code § 6-541. Notice for sal by execution Idaho Code § 104 Court may rejut does not foldecree of the reasons of fair Code § 6-515 Miller, 206 P. 1922).
Sale	Petitioner pendens. 504. Sale auction. 524. Sale conducted appointed Idaho Co Court can even port \$ 6-541. Notice fo by execut Idaho Co Court mait does no decree of reasons o Code \$ 6-Miller, 20 1922).
	o Code sed on sed on large of the sed on large of the lar
Conditions for Sale	Sale ok if partition impossible w/o "great prejudice". Id., Idaho Code & 6-512, which is based on economics. Andrews v. Grover, 168 P.2d 821 (Ida. 1946). Court can grant partial partition, and can trace partition, and can trace partition if complete partition is "impracticable or highly inconvenient." Idaho Code & 6-509; Richardson v. Ruddy, 77 P. 972 (Ida. 1904).
itions f	Sale ok if partition impossible w/o "gree prejudice". Id., Idah § 6-512, which is bas economics. Andrews Grover, 168 P.2d 82 1946). Court can grant partipartition, and can trapartition, and can traparcel back to origin cotenants to help wit division if complete partition is "impraction highly inconvenie Idaho Code § 6-509; Richardson v. Ruddy 972 (Ida. 1904).
Cond	Sale ok impossi prejudio 8-6-512 econom Grover. 1946). Court c partitio partitio partitio or high! Idaho C Richard 972 (Id
Statute	<u>Idaho</u> Idaho Code § 6-501 <i>et</i> seq.
S	N N N N N N N N N N N N N N N N N N N

Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Illinois 735 ILCS	Sale allowed if partition cannot occur without	Court has power to appoint	No. Mercer v. Wayman, 137 N.E.2d 815, 818 (III.	No, because the statute does not mention it.	Yes, court can allow reasonable fees for
5/17-101	"manifest prejudice to the	commissioner and surveyor 735 H CS 5/17-	App. Ct. 1956).		petitioner's attorney if
et seg.	owners". 735 ILCS 5/17-	106.			done for common benefit.
	102.	Court determines value of			/35 ILCS 5/1/-125; Lane
	Court has power to sell just	property to be sold, and			811, 812 (III, App. Ct.
	part of the property. 735	sale price can't be for less			1974). If one of the
	ILCS 5/17-105.	than 2/3 of the total			parties makes a "good
	;	valuation of the property,			and substantial defense"
	While statute says that party	unless court determines it			to the petition, they can
	entitled to homestead in all				recover their costs from
	or part of premises can have	and revalues premises. 735			the petitioner and not
	the homestead portion put	ILCS 5/1 /-105. Court			have to pay portion of
	aside, /35 ILCS 5/17-112,	should set aside sale if			petitioner's costs/fees.
	the homestead statute was	price is very low. <i>Revzen</i>			/35 ILCS 5/17-125.
	amended in 1965 such that	v. Brown, 1 / N.E.2d 1011,			Ţ.
	cotenants and joint tenants	1012 (III. App. 1938).			Court costs are
	cannot assert homestead	Court has general power to			apportioned to all parties
	against each other. 735	disapprove the sale. 735			proportionately, 735
	ILCS 5/12-901; Chapman v.	ILCS 5/17-118.			ILCS 5/17-125, with
	Richey, 399 NE.2d 1277,				exception of "good and
	1278 (III. 1980)	Court has broad discretion			substantial defense"
		to continue bidding			exception mentioned
		following the initial			above.
		auction or reset the fixed			
		value. 735 ILCS 5/17-118;			
		Coats v. Coats, 234 N.E.2d			
		86 (III. App. 1968).			
		Objections to sale can be			
		raised prior to confirmation			
		of sale by court, and			
		following confirmation of			
		the sale, appeal can be			
		made based on 'reasons of			
		fraud or other gross			

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Statute	Statute Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's fees
		Challenges to Sale	Ouster?	Right of First Refusal?	and/or Costs?
		misfeasance." Id.			
	•				

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Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Indiana Burns Ind	Court can sell all or part of property if partition cannot	Although Burns Ind. Code	No. Hare v. Chisman,	No, because statute does	Yes, court can award
Code Ann.	occur "without damage to	Ann. § 32-17-4-6 says the	(Ind. 1951).	equitable power to so	petitioner. Burns Ind.
\$ 32-17-4-		commissioners to		order. Janik v. Janik, 474	Code Ann. § 32-17-4-21.
l et seq.	Code Ann. § 32-17-4-4. If	determine partition	,	N.E.2d 1054, 1057 (Ind.	However, despite statute
	part can be set off for	feasibility, the court		Ct. App. 1985).	saying that fees "shall be
	partition without harm, that	doesn't have to. Buck ν .			awarded", it is not
	should be done. Lucas v.	Grube, 833 N.E.2d 110,			mandatory. Bell v.
····	Peters, 45 Ind. 313, 318	116 (Ind. Ct. App. 2005).			Shaffer, 56 N.E. 217, 221
	(Ilid. 1873).	Court can appoint real		,	(Ind. 1900).
	•	estate agent as			Furthermore, 11
		commissioner. Cohen v.		,	respondent opposes
		Meyer, 701 N.E.2d 1253,			partition action by hiring
		1255 (Ind. App. Ct. 1998).			counsel, petitioner not
		Court must appoint		•	entitled to fees. Usborne
		commissioner to handle			v. Eslinger, 58 N.E. 439,
		sale. Burns Ind. Code			444 (Ind. 1900).
		Ann. § 32-17-4-14.			
		ildien to block of most but I			Court can appoint to the
•		Land can be sold at public			among parties as it sees
		sale (2/3 of appraised			fit. Burns Ind. Code
		value) or private sale (full			Ann. § 32-17-4-21.
	,	appraised value). Burns			
		Ind. Code Ann. § 32-17-4-			
		12. No notice of sale			
		required if land value is			
		less than \$1,000. Id.			
			•		
		Appraisal conducted in			
		same manner as land sold			
		on execution. Burns Ind.			
		Code Ann. § 32-17-4-12.			
		Each party has right to			
		select a disinterested			
		appraiser within three			
-		days' notice from the			

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	sheriff. Burns Ind. Code			
	Ann. § 34-55-4-3. Sheriff			
•	selects appraiser for any			
	party that fails to do so or		_	
	in cases where appraisals			
	from parties differ, and the			
	"appraisement of any two			
	(2) of them shall be			
	considered the cash			
	value." Burns Ind. Code			-
	Ann.§ 34-55-4-3.			
	Court confirmation of			
	commissioner's report is			
	necessary for effectuation			
	of sale. Burns Ind. Code			
	Ann. § 32-17-4-12.			
	Commissioners for			
	partition must be			
	disinterested, but			
	commissioners for sale do			,
	not have to be. Burns Ind.			
	Code Ann. §§ 32-4-5-6,			
	32-4-5-15; Cohen v.			
	Mever, 701 N.E.2d 1253.			
	1256 (Ind. App. Ct. 1998).			
		Tr		

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			Allow Constructive	Buyout of Petitioner or	Allow Attorney's
		Challenges to Sale	Ouster?	Right of First Refusal?	fees and/or Costs?
	Default action is sale unless	Court can order filing of	Yes, continuous and	No, because it is not	Yes, petitioner's
	party can show that in-kind	title abstract Iowa R Civ	uninterrupted possession,	mentioned by the statute.	attorney required to
CIV. P.	partition is equitable and	P 1 1204 has to appoint 3	payment of taxes, and		get fee. Iowa R. Civ.
-	practicable. Iowa R. Civ. P.	sale referees and 3	significant changes to		P. 1.1225.
seq.	.1201. Court has power to sell	annaisers and can order	land (enclosing premises		
	just a portion. Id.	uppiniscis, una cui oraci	by fence, cultivating		Costs (including
		R Civ P 1 1210	land), constitute		appraisers, referees,
			circumstantial evidence		etc) paid first by
		Court must approve sales,	of constructive ouster.		petitioner but then
		but can approve private	Shives v. Niewoehner,		paid by all parties
•		sale even when sale price is	191 N.W.2d 633, 635-6		proportionate to
		less than appraised price.	(Iowa 1971); Lynch v.		interests (out of sale
		Iowa R. Civ. P. 1.1222.	Lynch, 34 N.W.2d 485,		proceeds). If any
		Ride can be cat seids and	490 (Iowa 1948).		dispute on particular
		the public bidding			issue, costs taxed
		Simple Signal Sin			against losing party
		reopened to promote most			agamst rosmig party.
		advantageous sale. Varnell			10wa N. CIV. I.
		v. Lee, 14 N.W.2d 708, 712			1.1224, 1.1226.
		(lowa 1944).			
		Parties can object to sale			
		prior to approval by court.			
		Iowa R. Civ. P. 1.1222.			
		Unclear whether the court			-
	-	may approve public sale at			
	•	less than appraised price.			

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Statute	Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
K.S.A. § 60-1003	Sale permissible if partition not possible without "manifest injury, or is for any reason impracticable". K.S.A. § 60-1003(c)(2). The court may refuse all partition proceedings if it finds that partition "would result in extraordinary hardship or oppression." K.S.A. § 60-1003(d). Court has the power to set off just a part of the property to one party and sell the rest, but it is not obligated to do so. Johnson v. Burns, 159 P.2d 812 (Kan. 1945).	Judge appoints 3 commissioners, who appraise the property. K.S.A. § 60-1003. No sale for less than 2/3 valuation. Id. All parties can file exceptions to any portion of commissioners' report, including appraisal value. Court can modify, approve, or disapprove commissioners' report based on justice and equity. K.S.A. § 60-1003(3). Sale procedures follow sale by execution rules. K.S.A.	No. Schwab v. Wyss, 12 P.2d 719, 721 (Kan. 1932).	No ability of respondent to buy out petitioner, because the statute does not mention it. Any party may purchase the property (or a "separate tract") at the appraised value determined by the commissioners. However, if multiple parties elect to do this for same property, then court orders sale and uses sale by execution procedures. K.S.A. § 60-1003(c)(4).	Yes, court is allowed (but apparently not required) to deduct attorney's fees from sale proceeds. K.S.A. § 60-1003. Hall v. Hamilton, 667 P.2d 350, 357 (Kan. 1983). Court costs also deducted from proceeds. Id.
		g ou-1003(c)(4).			

Allow Attorney's fees and/or Costs?	Unclear. KRS § 453.060 has an attorney fee schedule for successful civil action parties, but it's only \$2.50 for actions filed in district court (\$5.00 for circuit court). KRS § 389A.030 refers to "net proceeds" of sale, so costs probably deducted.
Buyout of Petitioner or Right of First Refusal?	No, because the statute doesn't mention it.
Allow Constructive Ouster?	No. Wood v. Wingfield, 816 S.W.2d 899, 903 (Ky. 1991).
Sale Procedure / Challenges to Sale	Must refer sale to master commissioner or appoint commissioner for public sale. KRS § 389A.030. Inadequate price not relevant; only fraud. Burchfield v. Asher, 300 S.W. 331, 333 (Ky. Ct. App. 1927). Bill would amend KRS 389A.030 to require sales to be for 2/3 of appraised value. 2006 Bill Text KY H.B. 723. If partition in kind requested and approved by court, three commissioners appointed to equitably divide land. KRS § 389A.030(3); KRS § 389A.030(3); KRS §
Conditions for Sale	Cotenant can bring request for sale (as opposed to partition). KRS § 389A.030. Court can order partial sale. <i>Id.</i> Court presumes indivisibility of land, but sale not appropriate if land divisible without impairment of value and any party seeks partition in kind rather than sale. <i>Id.</i> ; Talbott v. Campbell, 67 S.W. 53 (Ky. 1902). Party objecting to sale entitled to have their portion set aside if it won't materially impair remainder's value. <i>Hines v. Carr</i> , 176 S.W.2d 99, 100 (Ky. Ct. App. 1943).
Statute	KRS § 389A.030.

Allow Attorney's fees and/or Costs?	Yes, the court must allow an attorney's fee, but only if the partition action is uncontested, and no party represented by an attorney has to pay any portion of that fee. La. C.C.P. Art. 4613.	
Buyout of Petitioner or All Right of First Refusal? fee	nt a life	
Allow Constructive B	geson v. 1, 96 So. 2d 481, 1957).	
Sale Procedure / Challenges to Sale	Only public auction is authorized by La. C.C.P. Art. 811 appears to allow private sale. However, private sale. However, private sale cannot be ordered by court; parties must agree to it prior to the time of the public sale. Hebert's Holdings, L.L.C. v. Mouton, 709 So. 2d 983, 985 (La. App. 2 Cir. 1998); Welch v. Zucco, 665 So. 2d 697 (La. App. 3 Cir. 1995). Notice procedures for sale are those used for judicial sales at execution. La. C.C.P. Art. 4607. If sale of property to third party excluded by previous agreement, auction conducted among coowners. La. C.C. Art. 811 Commentary (b). No requirement that court set minimum bid in licitation sale, even in cases where the property has been appraised. Ainsworth v. Ainsworth, 860 So. 2d 104 (La. App. 2003). But court can set minimum bid based on	"the fact of unequal
Conditions for Sale	Partition not allowed at all when use of property "is indispensable for the enjoyment of another thing owned by one or more of the co-owners." La. C.C. Art. 808. This covers situation where parcel is needed to enhance use of other parcels. <i>Vuskovich v. Thorne</i> , 498 So. 2d 1072, 1076 (La. 1986). Sale ("licitation") allowed when property "indivisible by nature or cannot conveniently be divided." La. C.C.P. Art. 4606. This means diminution in value or "inconvenience" of any party. <i>Marsh Cattle Farms v. Vining</i> , 707 So. 2d 111 (La. Ct. App. 1998).	
Statute	Louisiana La. C.C. Art. 807 et seq.; La. C.C.P. Art. 4601 et seq.; La. R.S. 9:1113	i

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ring power between	or no competitive	g." Tuttle v. Tuttle, . 2d 175 (La. 1985).	cases, a fair price	be given to the	for the thing of	he is dispossessed."	S 9:3178.	tition sale of	inity property, court	minimum bid price	er terms/conditions	ic or private sale.	3. 9:2801; Tuttle v.	462 So. 2d at 175.	n by licitation at	sale is only to be	or community	y if allocation,	nent by lots, or a	sale cannot be	olished. La. R.S.		dicial partition may	inded if value of	sceived by co-owner	in 3/4 of fair market	f the share. La. C.C.	4.
gaining power between parties or the likelihood	ittle or no competitive	ding." Tuttle v. Tuttle, So. 2d 175 (La. 1985).	all cases, a fair price	uld be given to the	ner for the thing of	ch he is dispossessed."	A-RS 9:3178.	partition sale of	umunity property, court	set minimum bid price	other terms/conditions	ublic or private sale.	R.S. 9:2801; Tuttle v.	!le, 462 So. 2d at 175.	ition by licitation at	lic sale is only to be	e for community	perty if allocation,	gnment by lots, or a	ate sale cannot be	omplished. La. R.S.	301.	rajudicial partition may	escinded if value of	e received by co-owner	than 3/4 of fair market	te of the share. La. C.C.	814.
bargaining power between the parties or the likelihood	of little or no competitive	bidding." <i>Tuttle v. Tuttle</i> , 462 So. 2d 175 (La. 1985).	'In all cases, a fair price	should be given to the	owner for the thing of	which he is dispossessed."	LSA-RS 9:3178.	For partition sale of	community property, court	can set minimum bid price	and other terms/conditions	of public or private sale.	La. R.S. 9:2801; Tuttle v.	Tuttle, 462 So. 2d at 175.	Partition by licitation at	oublic sale is only to be	done for community	property if allocation,	assignment by lots, or a	private sale cannot be	accomplished, La. R.S.	9:2801.	Extrajudicial partition may	be rescinded if value of	share received by co-owner	ess than 3/4 of fair market	value of the share. La. C.C.	Art. 814.
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Allow Attorney's	Unclear. The statute has no mention of fees, but the Superior Court ordered reasonable fees to be paid to the petitioner in one case. Palanza v. Lufkin, 2002 Me. Super. LEXIS 36 at *7 (Me. Super. 2002) The statute addresses recovery of costs for partition, but not sale.		
Buyout of Petitioner or	Right of First Refusal? Possibly. A court acting in equity can order the petitioner to sell to any opponents. Libby, 430 A.2d at 39-40. This is especially appropriate if the respondent lives on the property. Id. at 40. The court can also order the respondent to sell their interest to the petitioner. Palanza v. Lufkin, 2002 Me. Super. Lexis 36 (Me. Super. 2002).	The court can also order a party with a lesser share to sell out to a party with a greater share. 14 M.R.S. § 6515; Ackerman v. Hojnowski, 804 A.2d 412, 417 (Me. 2002); Dyer v. Lowell, 30 Me. 217 (Me. 1849). The buyout option is a discretionary power of the court. Scheetz v. Hartman, 572 A.2d 140 (Me. 1990).	The purchasing party has to prove it can afford to pay what's owed to the other side. Libby v. Lorrain, 430 A.2d 37 (Me. 1981).
Allow Constructive	No. Hudson v. Coe, 8 A. 249, 252 (Me. 1887).		
Sale Procedure/	Challenges to Sale The procedures specified by statute (appointing commissioners, etc), do not apply to sale actions in equity. Libby, 430 A.2d at 39.		
Conditions for Sale	There is no statutory sale provision whatsoever; sale is only possible pursuant to the Superior Court's equitable jurisdiction laid out in 14 M.R.S. § 6051. Libby v. Lorrain, 430 A.2d 37, 39 (Me. 1981). Sale is possible where physical division is impractical or would "materially injure the rights of the parties". Id. at 39.		
Statute	Maine 14 M.R.S. § 6501 et seq.		

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Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
Maryland	Sale is annicontiate where	200	No Home	No or the statute males an	Ver The tetter
Time Linia	ours is appropriate with	Sale procedures in Title	NO. Hogan V.	100, as the statute makes no	res. The statute
Md. Keal	partition cannot occur "without	14 Chanter 300 Md	McMahon, 80 A. 695,	mention of it.	makes no mention of
Property	loss or injury to the parties	14, Chapter 300, 1910.	697 (Md. App. Ct.		fees, but the fee is
Code Ann. §	interested". Md. Real Property	Kule 12-401. The Sale can	1911).		probably nermissible
14-107. Md	Code Ann 8 14-107: Boyd y	only be set aside if the sale			if the proposeding one
D.:10.17.401	Dand 201 A 24 140 140 0464	price is so grossly		:	n the proceedings are
Kule 12-401.	Boya, 301 A.2d 146, 149 (IVIG.	inadequate as to "shock			uncontested (i.e. no
	Ct. Spec. App. 1976).	the conscience" of the			attorney is hired).
		court Loute v. Dunglar			Barry v. Carroll, 123
	Must be more than "sacaticities,"	430 4 24 100 112 (MA)			A. 453, 454 (Md. Ct.
	iviust de illore than possibility	430 A.2d 109, 112 (Md.			A 1022)
-	that tract can be partitioned	Ct. Spec. App. 1981). The			App. 1923).
	without loss or injury to the	sale can also be			,
	interested parties. Boyd v. Boyd,	invalidated on the grounds			Costs of the
	361 A.2d 146, 151 (Md. Ct.	of misconduct, fraud, or			commissioners can be
	Spec. App. 1976).	unfairness on the part of			deducted from sale
	•	trustees 1d			proceeds as per Md.
					Rule 12-401, but
	-	Court, not commissioners,			there is no mention of
		decides whether division			other costs.
		is proper. Boyd v. Boyd,	,		
		361 A.2d 146, 150 (Md.			
		Ct. Spec. App. 1976).			

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Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Massachusetts ALM GL ch. 241, § 1 et seq.	Land can be sold when can't be "divided advantageously." ALM GL ch. 241, § 31. "[T]he advantage or disadvantage generally must be pecuniary." Heald v. Kennard, 63 N.E. 4 (Mass. 1902). However, "[a] particular piece of real estate cannot be replaced by any sum of money, however large; and one who wants a particular estate for a specific use, if deprived of his rights, cannot be said to receive an exact equivalent or complete indemnity by the payment of a sum of money." Lynch v. Union Inst. for Savings, 34 N.E. 364, 364-365 (Mass. 1893).	Sale can be either public or private (private if it would promote interests of all parties), and if private sale sought, must specify minimum sale price. ALM GL ch. 241, §§ 6, 31. Petitioner must file notice with registry of deeds. ALM GL ch. 241, § 7.	Yes: "{A}fter the sole possession and appropriation of profits have been continued with the knowledge of the cotenants for a long series of years, a presumption [of ouster] does begin to arise against them." Nickerson v. Nickerson, 126 N.E. 834, 836 (Mass. 1920). Can also occur if long, exclusive, and uninterrupted possession by one without possession or claim for profits by another. Id.	No ability of respondent to buy out petitioner, because the statute does not mention it. If either part of the land can't be divided without "great inconvenience to the owners", or part of land of greater value than share of any party, or whole parcel can't be divided without "such inconvenience", court can set off part or whole parcel to one party if that party pays other owners to make set-aside "just and equal". ALM GL ch. 241, § 14.	Yes, all attorneys in the case are entitled to be compensated from the sale proceeds. ALM GL ch. 241, § 22. Costs are also deducted from the sale proceeds. ALM GL ch. 241, § 22.
	indivisibility rests with the court, not with either party. <i>Id.</i> Sale only ok after exploring <u>all</u> options, including "set off of whole parcels to the parties, physical division of one or more of the parcels, adjustment by voluntary payment of money by one of the parties, sale of one or more of the parcels and assignment of the proceeds, and any reasonable combination of those options." <i>Delta Materials Corp. v. Bagdon</i> , 599 N.E.2d 250, 255 (Mass. App. 1992);				

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Statute	Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or Allow Attorney's	Allow Attorney's	_
		Challenges to Sale	Ouster?	Right of First Refusal?	fees and/or Costs?	
	ALM GL ch. 241, § 31. "The					_
	difficulty and complexity of a					
	just and equitable division do					
	not alone justify resort to a					
	sale." Id.					

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Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Michigan MCLS § 600.3301 et seq.	Michigan MCLS § be done without "great prejudice 600.3301 et to the owners". MCLS § 600.3332. This is mostly based on the character of the property itself. Swan v Ispas, 37 N.W.2d 704 (Mich. 1949). The court can sell just a portion of the property if it can be done without great prejudice. Id; MCLS § 600.3332.	Land is sold at public auction, and the court can affix a minimum bid. MCLS § 600.3332. Court reluctant to use owelty to partition the lands, and prefers sale. Burns v. Ambler, 5 N.W.2d 451 (Mich. 1942).	No. Horbes v. Ahearn, 120 N.W.2d 215, 216 (Mich. 1963).	No, because the statute does not mention it.	Yes, attorney's fees can be assessed from the funds from the sale. Nott v. Gundick, 184 N.W. 864, 865 (Mich. 1921).
	600.3332.		•		

Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
Sale allowed if nartition can't	Sale can be either mublic or	Vac: if one cotement	No ability of recoondant to	Ves statute does not
occur without "great prejudice to	private Minn Stat 8	occurries the property	the ability of tespolident to	mention feet but
the owners." Minn. Stat. 8	558.17. If it's a private	exclusively for a lengthy	the statute does not	court has discretion to
558.14. Court can sell just part	sale, court must appoint	period of time as if it is	mention it.	award attorney's fees.
of the property. Id.	two appraisers and	their own and other party		although it shouldn't
	property cannot be sold for	knows this, it might	If either the property has "a	do so when
If in-kind partition would	less than appraised value.	constitute adverse	mill or other tenement"	proceedings are
diminish value but sale is equally	Id. Public auction notice	possession (provided	that can't be divided	adversarial and/or not
untenable, court can order in-	procedures must follow	there is no evidence this	without damage to owners,	beneficial to
kind partition with owelty to	sale by execution	is "permissive"	or if any part of property is	opponents (i.e., when
balance it out. Anderson v.	procedures. Id.	occupation). Adams v.	greater than any party's	opponents have to
Anderson, 560 N.W.2d 729, 731		Johnson, 136 N.W.2d 78	share but can't be divided	fight to get fair sale
(Minn. App. Ct. 1997).	Defective notice does not	(Minn. 1965).	without damage, whole or	price). Kuller v.
	render a sale of the land		part of premises can be set	Kuller, 109 N.W.2d
When deciding whether to order	invalid. Patterson v.		off to any party if they pay	561, 563 (Minn.
sale of the property in whole or	Lowe, 17 N.W. 2d 710,		other parties amount to	1961).
in part, courts look at: (1) the	712-13 (Minn. 1945).		make partition equal.	•
parties' situations, the parties'			Minn. Stat. § 558.12.	Costs of the action are
respective financial abilities, the				deducted from the
location and character of the				sale proceeds. Minn.
property, and the size and utility				Stat. § 558.16.
of the respective shares if the				
court makes a partition in kind.				
Swogger v. Taylor, 68 N.W. 2d				
376 (1955). A court generally				
has broad equitable remedial				
powers that go beyond what is				
specifically spelled out in the	·			
statute. Id. A court can order				
owelty to even the shares if				
division is ordered. Hoerr v.				
Hoerr et al., 165 N.W. 472			٠	
(Minn. 1917).				· .

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Statute	Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
		Challenges to Sale	Ousrer	Right of First Refusal?	fees and/or Costs?
Mississippi	Sale ok if it would "better	Court can appoint a master	No. Cheeks v.	No, the statute doesn't	Yes, Miss. Code Ann.
Miss. Code	promote the interest of all	to conduct the sale. Miss.	Herrington, 523 So. 2d	mention it and the court	§ 11-21-31 explicitly
Ann. § 11-	parties" or if equal division	Code Ann. §§ 11-21-11,	1033, 1036 (Miss. 1988).	lacks the equitable power	allows attorney's fees
21-3 et seq.	cannot be made. Miss. Code	11-21-13		to order such a remedy.	for the petitioner.
	Ann. §§ 11-21-11, 11-21-27.	-		Murphree v. Cook, 822 So.	However, this fee
	Must be "substantial reason"		٠	2d 1092, 1098-99 (Miss.	should not be
	for court to choose partition by			Ct. App. 2002).	assessed if the
	sale, and party seeking sale				respondent is
	must show why division is			Bill would have amended	obligated to hire an
	impracticable before sale can			Miss. Code Ann. §§ 11-21-	attorney to fight the
	be ordered. Shaw v. Shaw, 603			11 and 11-21-27 to give	proceedings. Dailey
-	So. 2d 287, 291 (Miss. 1992).			family members and co-	v. Houston, 151 So.
				owners of property right of	2d 919, 927 (Miss.
	Defense of hardship not			first refusal in the sale, but	i963). The
	available; there is "absolute and			it died in committee. 2006	respondent's attorney
	unconditional right to partition,			Bill Text MS H.B. 1466.	cannot collect under
	"however inconvenient it may				this statute. Potts v.
	be to make it." Daughtrey v.				<i>Gray</i> , 1882 Miss.
	Daughtrey, 474 So. 2d 598, 601				LEXIS 9 (Miss.
	(Miss. 1985). However,				1882).
	widow/widower's property				
	cannot be partitioned during				Costs are taxed from
	life if it is homestead, unless				sale proceeds. Miss.
	they remarry or consent. Miss.				Code Ann. § 11-21-
	Code Ann. § 91-1-23.				=
	Court has considered				
	sentimental value. Overstreet				
	v. Overstreet, 692 So. 2d 88, 91				
	(Miss. 1997). Court can sell				
	just part of the land, Miss. Code				
	Ann. § 11-21-11, but can't				
	exclude part of property from				
	division, even if it has				
	sentimental value. Mobley v.				
	(MODIE), 02/ 00: 24 /14, /10		i de la casa de la cas		

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p. 2002).			
(Miss. Ct. App. 2002).			
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Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Missouri	Sale permissible if partition	Court can appoint 3	Yes, if one cotenant uses	No, because the statute	Yes, court required to
528.030	cannot be done without "great	commissioners.	property exclusively,	does not mention it and the	provide fees to
R.S.Mo et	prejudice to the parties in	Commissioners' report can	makes improvements,	court lacks the equitable	petitioner for work
sed.	interest". 528.030 R.S.Mo.	be set aside for good cause.	collecting rents, and	power to order such a	beneficial to all
		Genetti v. Kesterson, 775	ignoring any rights of	remedy. Buchanan v.	parties. 528.530
		S.W.2d 536, 537 (Mo. Ct.	cotenants. No positive	Mitchell, 785 S.W.2d 317,	R.S.Mo.; Buchanan v.
		App. 1989). Whether the	notice required.	319 (Mo. Ct. App. 1990).	Mitchell, 873 S.W.2d
·		commissioners have done	Replogle v. Replogle, 350		945, 947 (Mo. Ct
		their duty is determined by	S.W.2d 735, 738 (Mo.		.App. 1994). Def's
		equality of division. Id.	1961)		attorney can't get
		528.200 R.S.Mo; 528.550			fees. Parks v. Rapp,
		R.S.Mo. If they determine			907 S.W.2d 286, 293
		land can't be partitioned,			(Mo. Ct. App. 1995).
*****		they report to judge, who			
		must agree and order a			Costs are assessed to
		public sale. 528.250			all the parties.
·		R.S.Mo.; 528.340 R.S.Mo			528.460 R.S.Mo.
		Cannot be private sale.			
		Bruce v. George, 982			
		S.W.2d 823, 825 (Mo. Ct.		,	
		App. 1998). Sale follows			
		execution procedures.			
		528.370 R.S.Mo.			
		Once sale made, trial court			
		can set aside the sale if			
		price "shocks the			
		conscience of the court".			
		Sangamon Associates v.			
		Carpenter, 165 S.W.3d			
		141, 143 (Mo. 2005).			
		Inadequacy of price			
		insufficient unless "so			
-		gross as to raise the			
		presumption of fraud."			
		Borchers v. Borchers, 179			

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Ao. 1944).		
. 2d 8, 12 (Mo. 1944).		
S.W.	,	

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Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Montana	Right to partition is not absolute;	Petitioner must file lis	No. Y A Bar Livestock	No, because the statute	Yes, attorney fees
Mont.	"partition may be denied where	pendens in addition to	Co. v. Harkness, 887	does not mention it.	expended by either
Code	it would be against public policy	partition/sale complaint.	P.2d 1211, 1214 (Mont.		side for the "common
Anno., §	or legal or equitable principles	Mont. Code Anno. § 70-	1994).		benefit" can be
70-29-101	" Jarrett v. Jarrett, 659 P.2d	29-109. Court must settle			recovered. Mont.
et seg.	839, 840 (Mont. 1983).	all title issues before			Code Anno., § 70-29-
		ordering sale. Mont. Code			218.
	Sale allowed if partition cannot	Anno., § 70-29-203.			
	be made without "great prejudice	All sales are public sales.			Costs are calculated
	to the owners". Mont. Code	Mont. Code Anno., § 70-			in the same way. Id.
	Anno., §§ 70-29-101, 70-29-202.	29-301. Notice follows	į		Parties pay the
		sale by execution		-	referees according to
	Court can order partial partition.	procedures. Mont. Code			their respective
	Mont. Code Anno., § 70-29-204.	Anno., § 70-29-301. Court			interests. Mont. Code
		can appoint as many as			Ann. §§ 70-29-218,
	Court has option of tracing	three referees to divide the			70-29-219.
	parcel back to original cotenants	property "in accordance		•	
	to help with division if complete	with the interests of the			
	partition is "impracticable or	parties." Mont. Code Ann.			
	highly inconvenient." Mont.	§ 70-29201(1); Miller v.			-
	Code Anno., § 70-29-204.	Snavely, 2004 Mont. Dist.			
	•	LEXIS 2735 at *6 (11 th			
		Jud. Dist. Ct. Mo. 2004).			
		Court can confirm, change,			
		modify or set aside			
		referees' report, or award			
		owelty to equalize petition.			
		<i>Id.</i> at *35.			
		;			
		Court has discretion to			
		refuse confirmation of sale			
		and/or reopen bidding.			
		Continental Oil Co. v.			
		McNair Realty Co., 353			
		P.2d 100, 106 (Mont.			

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Statute	Conditions for Sale	Sale Procedure/	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
,		Challenges to Sale	Ouster?	Right of First Refusal?	fees and/or Costs?
Nebraska	Sale permissible if partition	Court must appoint 3	Yes, ouster presumed if	No, because the statute	Yes, the court must
R.R.S.	cannot occur without "great	referees. R.R.S. Neb. §	one tenant makes	does not mention it.	award a reasonable
Neb. § 25-	prejudice to the owners", R.R.S.	25-2181. The referees and	substantial improvements		fee unless the
2170 et	Neb. § 25-2181, which is defined	court have a duty to sell for	beyond ordinary use,		proceedings are
sed.	as whether value of each divided	the highest possible price,	takes all rents/profits,		adversarial (i.e., the
	piece is "materially less" than	Siekert v. Soester, 13	pays all taxes, makes it		respondent resists the
	person's equivalent share in the	N.W.2d 139, 140-41 (Neb.	their home and openly		partition action by
	whole. Trowbridge v. Donner,	1944), and court has duty	claims the whole for		hiring an attorney).
	40 N.W. 2d 655, 660 (Neb.	to review "great prejudice"	statute of limitations		R.R.S. Neb. § 25-
	1950) Also, character of land	conclusion of referees.	period. Unick v. St.		21,108; Cary v.
	and size of interests might create	Trowbride, 40 N.W.2d at	Joseph Loan & Trust Co,		Armbrust, 70 N.W.2d
	presumption against division. Id.	.099	21 N.W.2d 752, 755		427, 431 (Neb. 1955).
			(Neb. 1946).		Only the petitioner
	Court has power to partition just	Notice procedures for sale			recovers fees if they
	a portion and sell the remainder.	are same as land sold on			get what they asked
,	R.R.S. Neb. § 25-21,103.	execution. R.R.S. Neb. §			for in the complaint.
	. *	25-2185.			R.R.S. Neb. § 25-
					21;108
					Costs are taxed from
100				1	the sale proceeds. Id.

Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Nevada	Sale permissible if partition	Petitioner must record lis	Unclear, as there does	No hecause the statute	Ves any narty
Nev. Rev.	cannot occur without "great	pendens. Nev. Rev. Stat.	not seem to be case law	does not mention it.	expending costs for
Stat. Ann. §	prejudice to the owners", which	Ann. § 39.040.	on the subject.		the common
39.010 et	apparently means it is		1		benefit can recover
seq.	"impracticable" or "highly	Sale can be by private or			those costs. Nev.
	inconvenient". Nev. Rev. Stat.	public sale. Nev. Rev.			Rev. Stat. Ann §
	Ann. §§ 39.010, 39.120. Court	Stat. Ann. § 39.270.			39.170.
	has option of tracing parcel back				
	to original cotenants to help with	The district court cannot	•		
	division if complete partition is	make the partition itself;			
	wimpracticable or highly	rather, the court confirms			
-	inconvenient." Id.	the order of the referees			
		appointed to carry out the			
	Court is empowered to consider	partition order. Dondero v.			
	needs of all owners in refusing	Van Sickle, 11 Nev. 389			
	sale, such as allowing them to	(Nev. 1876).			-
	maintain their businesses on the				
	property, and it may be ok to	Court can use owelty when			
	consider sentimental value of	dividing or selling			
	property. Kent v. Kent, 835 P.2d	property. Kent v. Kent, 835			
	8, 10 (Nev. 1992).	P.2d 8 (Nev. 1992).		377	

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Statute	Conditions for Sale	Sale Procedure/	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
		Challenges to Sale	Ouster?	Right of First Refusal?	fees and/or Costs?
New	Sale permissible if partition	No sale procedures are	Maybe. Constructive	No, because the statute	Yes, counsel fees are
Hampshire	cannot occur without great	specified in the statute.	notice is required in	does not mention it.	allowed, but neither
RSA 547-	prejudice or inconvenience. RSA		place of actual notice,		the statute nor the
C:1 et seq.	547-C:25.	In dividing proceeds of	but it's unclear what acts	RSA 547-C:22 states that	case law explains in
		sale, court can look at	amount to actual notice.	the court has the power to	what circumstances.
		parties' contributions to	Riverwood Commercial	assign all or part of the	Guay v. Brotherhood
		acquisition/maintenance of	Properties v. Cole, 639	property to one party, but	Bldg. Ass'n, 177 A.
		property, improvements	A.2d 714, 715 (N.H.	the state supreme court has	409, 413 (N.H. 1935).
	٠	made, length of ownership	1994).	held that neither side can	
		and nature of parties' use.		be forced to give up their	
		Pedersen v. Brook, 851		interest. Barney v. Leeds,	
		A.2d 627, 630 (N.H.		54 N.H. 128 (N.H. 1874).	
		2004).			

Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
New Jersey N.J. Stat. § 2A:56-2 et	Sale allowed if partition cannot occur "without great prejudice to the owners", which can be	No sale procedures are specified.	Probably not. Heck v. Cannon, 95 A.2d 23, 25 (N.J. Sup. Ct. Ch. Div.	No, because the statute does not mention it.	Unclear, as the statute and case law do not address it.
seq.	affected by physical character of		1953).		Cotations described
	interest. N.J. Stat. § 2A:56-2;				from the sale
	Swartz v. Becker, 587 A.2d 1295, 1298 (N.1. Super, 1991)				proceeds. N.J. Stat. §
	The court has the power to				
	partition just a part of the				
	property in order to avoid great			,	
	prejudice, N.J. Stat. § 2A:56-3,				
	and can extract several cotenants				
	who wish to remain in common	•			
	from the larger group. N.J. Stat.				
	§ 2A:56-4. Also, partition may				
	not be appropriate at all in some				
	circumstances. Newman v.				
	Chase, 359 A.2d 474 (N.J.				
	1976); Bauer v. Migliaccio, 561				
	A.2d 674 (N.J. Super. 1989).				

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Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
New Mexico	Sale allowed if commissioners determined that partition cannot	Court must appoint 3 commissioners. N.M. Stat.	No. Madrid v. Rodriguez (In re Estate of Duran),	No, because the statute does not mention it.	Yes, court has power to award reasonable
N.M. Stat. Ann. § 42-	occur without "manifest prejudice to the owners". N.M.	Ann. § 42-5-6. Commissioners then	66 P.3d 326, 333 (N.M. 2003).		attorney's fee, apparently to either
5-1 et seq.	Stat. Ann. § 42-5-7.	appraise cash value of			side. N.M. Stat. Ann. 8 42-5-8
	"Partition by its very nature,				; ; ;
	because it requires the court to	42-5-7.			Costs are apportioned
	balance the individual interests and circumstances of each party,	The property can be sold at			among all cotenants.
	can be none other than an	public or private sale. Id.			
	equitable remedy. A strictly	If private sale, has to be			-
	legal remedy that applied rigid	sold at full appraised			
	formulae for dividing property	value. If value is less than			
	would be unworkable." Sims v.	\$10,000, court authorizes			
	Sims, 930 P.2d 153 (N.M. 1996)	public sale to highest			
		bidder. If more than			
		\$10,000 and public sale,			
		has to sell for 2/3 of			
		appraised value. Id.			

Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
New York	A cotenant is not entitled to	Partitioning handled by 3	No. Perkins v. Volpe,	No, because the statute	No, because there is
NY CLS	partition if the other owner holds	commissioners, and sales	146 A.D.2d 617 (N.Y.	does not mention it.	no statutory authority
RPAPL §	the property adversely to the	are by public sale. NY	App. Div. 1989).		to do so. Fleming v
901 et seq.	cotenant. Hulse v. Hulse, 1889	CLS RPAP § 915.			Lundy, 156 A.D.2d
	N.Y. Misc. LEXIS 2603 (N.Y.	Sale occurs if			965 (N.Y. App. Div.
	Spec. App. 1889)	commissioners make			1989).
		determination that partition			
	Sale allowed if impossible to	isn't feasible and court			Costs are deducted
	partition "without great prejudice	agrees via interlocutory			from the sale
	to the owners". NY CLS	judgment.			proceeds. NY CLS
	RPAPL §§ 901, 921. This is	Commissioners' report			RPAPL §§ 961, 981.
	based on an economic valuation,	must go beyond stating			However, court has
	and fact that land after partition	mere opinion and provide			power to assess costs
	could no longer be used for its	facts. Tucker v Tucker, 19			of trial itself against
	past uses is not sufficient	Wend 226 (N.Y.S. 1838).			just one party. NY
	prejudice to justify sale.				CLS RPAPL § 981.
	Partrick v. Preiser, 73 Misc. 2d	Sale price cannot be			
	639, 640-41 (N.Y.S.2d 1972).	challenged for mere			
	Fact that land is uniquely shaped	inadequacy of price; there			
	in itself not enough to justify	must be price so grossly		-	
	sale, since court can use owelty	inadequate as to suggest			
	and size of tracts apportioned,	fraud. Prior v Prior, 41			
	and animosity of cotenants also	Hun 613 (N.Y.S. 1886),			,
	not relevant. Id. Amount that	Empire State Development			
	value of property is diminished	Co. v Lambert, 219			
	by partition must be significant.	N.Y.S.2d 100 (N.Y.S.			
	Smith v Smith, 10 Paige Ch. 470	1961).		•	
	(N.Y.S. 1843). Court can weigh				
	desire of parties in deciding	Sales procedures can be			
	whether to divide or sell. Hunt v.	challenged. Empire State			
	Hunt, 13 A.D.3d 1041 (N.Y.	(sale inappropriately			
	App. 2004).	conducted where referee			
		discouraged bidding by			
	Court can grant partial partition.	limiting title passed to			
	NY CLS RPAPL § 916.	purchaser).			

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Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
North Carolina N.C. Gen. Stat. § 46-1 et seq.	Sale allowed if partition results in "substantial injury" to any of the parties, which is defined in statute as both a) material reduction in value of land, and b) material impairment of the cotenant's rights by dividing. N.C. Gen. Stat. § 46-22; Brown v. Boger, 139 S.E.2d 577, 583 (N.C. 1965). Party seeking sale has burden of proving substantial injury. N.C. Gen. Stat. § 46-22. Court can partition just part of the land, N.C. Gen. Stat. § 46-16, and can use its equitable power flexibly to ensure justice. Allen v. Allen, 139 S.E.2d 585 (N.C. 1965)	Sale procedure is specified in Chapter 1 Article 29A, and include that notice of sale must go out 20 days to all petitioners and respondents previously served. N.C. Gen. Stat. § 46-28. Court must appoint three disinterested commissioners. Dunn v. Dunn, 245 S.E.2d 580, (N.C. App. 1978). Parties can challenge sale for inadequate price that will cause irreparable damage to a party. N.C. Gen. Stat. § 46-28.1.	Yes. Ouster presumed if tenant in sole possession for 20 years with no demand for rents, profits or possession. Wachovia Bank of N.C. v. Weeks, 2002 N.C. App. LEXIS 1732 at *11 (N.C. App. 2002).	No, because the statute does not mention it. Bills would have required petitioner to sell interest to opponents, at price determined on agreement or by court's appraisers. But bills appear to have died. 2005 Bill Text NC H.B. 1309; 2005 Bill Text NC S.B. 963.	Yes, under N.C. Gen. Stat. § 6-21(7). In the absence of statutory authority to do so, attorney fees would not be allowed. Ragan v. Ragan, 119 S.E. 882, 884 (N.C. 1923)

Statute	Conditions for Sale	Sale Procedure/ Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
North Dakota N.D. Cent. Code, § 32- 16-01 et	Sale allowed if partition cannot be had without "great prejudice to the owners", N.D. Cent. Code, § 32-16-12, which occurs where "the value of the share in each	Petitioner must file lis pendens. N.D. Cent. Code, § 32-16-04.	No. Handy v. Handy, 207 N.W.2d 245, 247 (N.D. 1973).	No, because the statute does not mention it.	Yes, court can grant attorneys fees to either side. N.D. Cent. Code, § 32-16-45. The fact that the
bəs	case would be materially less than his share of the money equivalent that could probably be obtained from the whole." Schnell v. Schnell, 346 N.W.2d 713, 716-17 (N.D. 1984).	auction to highest bidder, and notice procedures for sale must be those of sale by execution. N.D. Cent. Code, § 32-16-24.			process is adversarial does not change this. Schmidt v. Wittinger, 687 N.W.2d 479, 482-83 (N.D. 2004)
	Partial partition/sale allowed if full partition is "impracticable or highly inconvenient". N.D. Cent. Code, § 32-16-09.				Costs are apportioned to all the parties. N.D. Cent. Code, §§ 32-16-17, 32-16-17.
	Court can consider sentimental attachment, but it's subordinate to financial value. However, court must consider needs of both owners, not just petitioner, and should consider financial				
	ability of both sides to buy land at sale. Schnell v. Schnell, 346 N.W.2d 713, 716-17 (N.D. 1984)				

Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Ohio	Sale permitted where	If no party or multiple	No Gill v Fletcher 78	No ability of respondent to	Yes, court must award
ORC Ann.	commissioners determine that	parties attempt to buy	N.E. 433, 436 (Ohio	buy out petitioner, because	attorneys fees to
5307.01 et	partition cannot occur without	property at appraised	1906).	the statute does not	petitioner and can
seq.	"manifest injury to its value".	value, court orders public		mention it.	award fees to any
ì	Ohio Rev. Code Ann. § 5307.09.	sale. Ohio Rev. Code Ann.			party that acts for the
		§ 5307.11.		If only one party wants to	common benefit.
	Fact that land is very difficult to			buy property at appraised	ORC Ann. 5307.25;
	divide doesn't preclude partition;	Sale follows execution		value prior to sale being	Foureman v.
	must be the case that there is no	procedures, except no		ordered, it can do so once it	Foureman, 80 N.E.2d
	way to avoid manifest injury to	requirement of appraisal		pays other parties for their	266 (Ohio Ct. App.
	value of property. McGill v.	and property can't be sold		shares. Ohio Rev. Code	1947). This appears
	Roush, 621 N.E.2d 865 (Ohio Ct.	for less than 2/3 of value		Ann. § 5307.09; Sword v.	to be true even when
	App. 1993).	determined by		Sword, 620 N.E.2d 199	the partition action is
		commissioners. ORC		Ohio Ct. App. 1993).	opposed. Edwards v.
•		Ann. 5307.12, 2329.20.		Ordinarily, 1/3 payment is	Whims, 2 Ohio N.P.
				made each year for 3 years.	(n.s.) 464 (Ohio
		To get reappraisal of		Ohio Rev. Code Ann. §	Common Pleas 1904).
		property, must be evidence		5307.10, id. at 169.	
		of irregularity by		However, court can force	Costs are taxed to all
		commissioners in valuing		parties to pay for the	the parties. ORC
		property. Sword v. Sword,		entirety in cash, if situation	Ann. 5307.25.
		620 N.E.2d 199 (Ohio		requires it. Sword, 620	
		App. 1993).		N.E.2d at 199.	-
				If more than one party tries	
			,	to buy property, then	
				public sale is the answer.	
				Rankin v. Rankin, 174	
				N.E.2d 631, 633 (Ohio Ct.	
				App. 1960).	

Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Oklahoma 12 Okl. St. § 1501.1 et	Sale allowed if partition cannot be made without "manifest injury". 12 Okl. St. § 1509. The court has	Court appoints three commissioners to determine if equitable	No. Tatum v. Jones, 491 P.2d 283, 285 (Okla. 1971).	No ability of respondent to buy out petitioner, because the statute does not	Yes, attorney's fees are paid proportionally to each
seq.	the equitable power to deny	partition is possible. Okl.		mention it.	party's interests. 12
	avoid an "oppressive result", and	ot. g 1000.		A party can offer to buy	Oki. 3t. § 13113.
	it does not necessarily require an	A party can offer to buy		property at appraised	Costs are shared
,	Workman, 260 P.2d 1081, 1083	property at appraised value, but court doesn't		value, but court doesn't have to allow it. 12 Okl.	amongst the parties.
	(Okla. 1953). Court can also	have to allow it. 12 Okl.		St. § 1512; Herron Trust v.	
	consider purchasing power of	St. § 1512; Herron Trust v.		Swarts, 361 P.2d 280	
•	both parties. Id. While fact that	Swarts, 361 P.2d 280		(Okla. 1961).	
*	partition may result in hardship to	(Okla. 1961). If more than			
	a cotenant ordinarily doesn't	one party wants to buy,			
	constitute basis for denial, "these	public sale for at least 2/3			
	rules are not entirely without	of appraised value. 12			
	exception and we are not so	Okl. St. §§ 1513, 1517.			
	rigidly tied to the precedent of the				
	past that we cannot adapt	Sale procedures are those			-
	ourselves to changing	of sale by execution. 12			
	circumstances and modern	Okl. St. § 1513.			
	commercial needs." Wolfe v.				
	Stanford, 64 P.2d 335, 338 (Okla.	Court can void sale if			
	1937).	inadequate price. 12 Okl.			
		St. § 1516; McManus v.			
		Hull, 376 P.2d 586, 588			
		(Okla. 1962).			

Statute	Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
				ingili of this include:	ices and/of Costs:
Oregon	Sale allowed where partition	Court can (but does not	No. Nedry v. Morgan,	Yes, court can order sale of	Yes, attorney fees
ORS §	cannot occur without "great	have to) appoint referees.	584 P.2d 1381, 1384	petitioner's share if both	must be granted if
105.205 et	prejudice to the owner", ORS §§	ORS § 105.245.	(Ore. 1978).	in-kind partition and public	they were performed
seq.	105.205, 105.245, which means			auction cause "great	for the common
	value of each share is less than	Sales are done by public		prejudice". Court can	benefit. ORS §
	portion of total sale. Ferguson v.	auction, and follow sale by		allow party to borrow	105.405.
	Ferris, 882 P.2d 1119 (Ore. Ct.	execution procedures.		money against property for	
	App. 1994). However, partition	ORS § 105.280.		purchase. ORS § 105.210;	Costs are deducted
	not "absolute right", and court can	,		Fike v. Sharer, 571 P.2d	from the sale
	order other equitable relief. Craig			1252 (Ore. 1977); Maupin	proceeds. ORS §§
	v. Maher, 74 P.2d 396, 398 (Ore.			v. Opie, 964 P.2d 1117,	105.285, 105.405.
	1937). Despite referring to "the			1124 (Ore. Ct. App. 1998)	
	owner", which could mean just			(only respondents can	
	the petitioner, courts look at all			exercise option).	
	owners. See e.g. Hurst v. Hall,			Opponent must be willing	
	574 P.2d 311 (Ore. 1978).			to pay substantially more	
				for petitioner's share than	•
	Court considers financial			open market value.	
	interests, and sentimental			Maupin, 964 P.2d at 1124.	
	attachment to lesser degree. Fike			Fact that one party's house	
	v. Sharer, 571 P.2d 1252 (Ore.			is on the property is some	
	1977).			evidence of prejudice if	
				sale ordered. United Bank	
	Court can sell just a portion of the			of Denver v. Gardos, 722	
	property. ORS § 105.205.			P.2d 1261 (Ore. Ct. App.	
		•		1986).	

50-State partition statutes table, authored by John Pollock Original drafting date: 7/06. Updated periodically, with substantial update in 9/07. Last modified: 12/08. Page 45 of 59

Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Pennsylvania Pa. R.C.P. No. 1551 et seq.	Sale allowed if partition not possible "without prejudice to or spoiling the whole". Pa. R.C.P. No. 1563.	Court holds conference to determine whether partition or sale is appropriate. Pa. R.C.P.	No. Hover v. Hills, 117 A. 346, 348 (Pa. 1922).	Cannot buy out petitioner's interest, since statute does not mention it.	Yes, court can award attorneys fees as the court deems appropriate. Pa.
		No. 1558.		A defendant-party owing a majority share who objects	R.C.P. No. 1574. However, attorney
		Commissioner can		to any private or public	fees are not awarded
		recommend unequal division of property, but		sale are entitled to have the whole property awarded to	if the action is
	:	owner of more valuable		them at a price determined	services rendered are
		portion must pay other stakeholders difference in		by the court, once the court	adverse to other
		value. If any party objects		division is not possible.	188 A. 328, 366 (Pa.
		to such division, land is		Pa. R.C.P. No. 1563.	1936).
		sold at private sale			2000
		v. Sherman, 902 A.2d			the sale price. <i>Id</i> .
		1276 (Pa. Super. 2006).			Compensation of
		16 1.			appraisers, master's
		It sale appropriate, private			fee and compensation
		R.C.P. No. 1563, unless it			of experts authorized by court are taxed as
		can't be confirmed. Pa.			part of costs. Pa.
		R.C.P. No. 1568. Sale can			R.C.P. No. 1574.
		be either in parts or whole,			
		and parts/whole must be sold for value previously			
		determined by court. Pa.			
		R.C.P. No. 1567.			
		If nrivate sale not			
		confirmed, public sale			
		then takes place. Pa.	-		
		R.C.P. No. 1568. Court			
,					
	1900	inadequate price. Pa.			

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	R.C.P. No. 1572.			
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ey's osts?	ees can I to any d for enefit.	873 873	are per the ion.	s §§ 34- 22. rpreted torney 1,2d		
Allow Attorney's fees and/or Costs?	Yes, counsel fees can be apportioned to any party that acted for the common benefit.	(R.I. 1954).	from the sale proceeds, and are apportioned as per the court's discretion.	K.I. Gen. Laws §§ 34 15-18, 34-15-22. "Costs" is interpreted as including attorney fees. Moore v. Ballard, 914 A.2d 487 (R.I. 2007).		
Buyout of Petitioner or Right of First Refusal?	No, because the statute does not mention it.					
Allow Constructive Ouster?	No. Providence v. Devine, 192 A. 212, 214 (R.I. 1937).					
Sale Procedure / Challenges to Sale	Sale is by public auction or "private contract" (and if the latter, can't be for less than court's estimated value of land). R.I. Gen	Laws § 34-15-16.				
Conditions for Sale	Whether land is divided or sold is left entirely to court's discretion. R.I. Gen. Laws § 34-15-16. However, the court has discretion to order a sale only when it is not	practicable to make division by metes and bounds. <i>Lannon v. Lannon</i> , 99 A. 819 (R.I. 1917). Moreover. "Ithe compulsory sale	of one's property without his consent is an extreme exercise of power warranted only in clear cases." Id.	Court has power to set off any particular party's share from the partition action, R.I. Gen. Laws § 34-15-15, or just sell one portion of the property. R.I. Gen. Laws § 34-15-16.	An early case said that the court can look at the financial status of the parties and their ability to purchase the property. <i>Lannon</i> , 99 A. at 820. However, "hardship or substantial loss or injury to some or all of the parties does not affect the right to partition." <i>De Bartolo v. Di Battista</i> , 367 A.2d 701, 703 (R.I. 1976). Moreover, a	person's disability or age is not relevant to court's determination of whether to grant partition. Matricia v. Matricia, 378 A.2d 1388, 1391 (R.1. 1977)
Statute	Rhode Island R.I. Gen. Laws § 34- 15-1 et	sea.				

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Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
South Carolina S.C. Code	Sale permissible if partition cannot be "fairly and impartially made and without injury to any of	No sale procedures are specified in the statute.	Yes, although the court states that such situations are "rare" and "extreme".	Yes, the legislature added a buyout provision in 2006 that is only available to the	Yes, court can award attorneys fees for any party. S.C. Code
Ann. § 15-61-10	the parties in interest". S.C. Code Ann. § 15-61-50. This actually	Disparate testimony of co- owners of property as to		partition opponents and that is similar to the	Ann. § 15-61-110.
et seg.	means proving partition is not "practicable or expedient".	the value of the subject property may require	1953).	provision found unconstitutional in	Costs of appraisers for buyout of
	Zimmerman v. Marsh, 618 S.E.2d 898, 900-901 (S.C. 2005).	partition by public sale. Pruitt v. Pruitt, 380		Alabama. S.C. Code Ann. § 15-61-25. Unclear	petitioner's interest taxed as costs to those
	Court can consider sentimental	S.E.2d 862 (S.C. Ct. App. 1989)		whether it's buyout of	buying petitioner's
	ownership, but financial interests of parties is primary consideration.			of first refusal on entire parcel.	Ann. § 15-61-25.
•	<i>Id.</i> at 901.				
	Court can allot part of property to			If parties can't reach agreement on sale price,	
	one party and divide/sell the rest. S.C. Code. § 15-61-50.	,	-	value of interests to be sold determined by "one or	
				more competent real estate	
				shall approve", appointed	
		. ,		for that purpose by the court. S.C. Code Ann. 8	
				15-61-25. If petitioners	
				object to determined value, they can petition court	
				within 10 days for	
	-			evidentiary hearing. 1d.	

Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
South Dakota S.D. Codified Laws \$ 21-45-1 et seq.	Sale allowed if partition cannot be made without "great prejudice to the owners". S.D. Codified Laws §§ 21-45-1, 21-45-28. While monetary considerations are important, it is not paramount, and court must also consider sentimental value of land, family's longstanding connection to it, and noneconomic uses of land. Eli v. Eli, 557 N.W.2d 405, 409-411 (S.D. 1997). Court can partition/sell just a portion of the property. S.D. Codified Laws § 21-45-1.	Petitioner must file lis pendens. S.D. Codified Laws § 21-45-7. Sales are at public auction, and follow notice procedures for sales by execution. S.D. Codified Laws § 21-45-30. If higher bid comes after close of sale, it might reopen sale process. S.D. Codified Laws § 21-45-44. Court can only overturn sale if it is not done "in conformity with the law". S.D. Codified Laws § 21-45-44.	No. Iverson v. Iverson, 213 N.W.2d 708, 711 (S.D. 1973).	No, because the statute does not mention it.	Yes, reasonable fees by either party generated for the common benefit can be recovered. S.D. Codified Laws § 21-45-24. Expenses of referees, including surveyor and his assistants, must be ascertained and allowed by court and apportioned among parties. SDCL § 21-45-21.
	,				

Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Property sold when it cannot be divided or when "nremises are of	No relevant procedures	Yes. Heirs of Marr v.	No, because the statute	Yes, court can allow
such description that it would be		501 (Tenn. 1860)		but cannot award
manifestly for the advantage of				fees merely for one
the parties" that it be sold. Tenn.				side and not the
Code Ann. § 29-27-201. This in				other. Tenn. Code
turn is defined purely as whether				Ann. § 29-27-121;
the land is worth more whole				Montgomery v.
than in pieces. Crawford v.				Hoskins, 432 S.W.2d
Crawford, 2002 Tenn. App.				654, 655 (Tenn.
LEXIS 814 at *10 (Tenn. App.				1968).
2002).				
Partition statute not				
unconstitutional on grounds it				
force owner to sell his property at				
less than its market value.				
Medley v. Medley, 454 S.W.2d	,			
142 (Tenn. Ct. App. 1969).				
If a partition in kind results in				
parcels of value equal to the				
whole, one joint tenant cannot				-
force a sale. Moyers v. Moyers			_	
871 S.W.2d 161 (Tenn. Ct. App.				
1993).				

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Statute	Conditions for Sale	Sale Procedure / Challenges to Sale	Allow Constructive Ouster?	Buyout of Petitioner or Right of First Refusal?	Allow Attorney's fees and/or Costs?
Texas	Sale allowed if partition cannot	Sale can be public or	No. Republic Production	No, because the statute	Unclear. Court
Tex. Prop.	be fair and equitable. Tex. R.	private sale. Tex. R. Civ.	Co. v. Lee, 121 S.W.2d	does not mention it.	allows attorney's
Code §	Civ. P. 770.	Р. 770.	973, 977 (Tex. 1938).		fees in suit to
23.001 <i>et</i>					partition property,
seq.; Tex.	Land cannot be partitioned	Realty sold under order of			but doesn't say
R. Civ. P.	during the lifetime of a widow or	court in partition suit must		•	anything about sale.
756 et seq.	widower. Tex. Const. Art. XVI,	be sold at its fair market			Burgess v. Easley,
	§ 52.	value. Grimm v. Beck, 237			893 S.W.2d 87, 91
	-	S.W.2d 1017, 1018 (Tex.			(Tex. App. Dallas
		App. Ft. Worth 1951).			1994).
-					
		Sale procedures are those		,	Costs are taxed and
		of sale by execution. Tex.			collected from sale
		R. Civ. P. 770.			proceeds. Tex. Prop.
			-	· · · · · · · · · · · · · · · · · · ·	Code § 23.005.

Statute	Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
		Chanciges to Bare	Ousiei .	Night of Filst Actusat:	iees aliu/oi Costs:
Utah	Sale possible if partition not	Petitioner must file lis	No. Sweeney Land Co. v.	No, because the statute	Yes, either party can
Utah Code	possible without "great prejudice	pendens. Utah Code Ann.	Kimball, 786 P.2d 760,	does not mention it.	recover fees spent for
Ann. § 78-	to the owners". Utah Code Ann.	§ 78-39-4. Sales must be	762 (Utah 1990).		the common benefit.
39-1 et seq.	§ 78-39-1, § 78-39-12.	at public auction and notice			Utah Code Ann. §
		for sale must be as per		٠	78-39-45:
-	Burden of demonstrating "great	manner of real property at			`
	prejudice" borne by party urging	execution. Utah Code			Costs can be
	sale. Arthur v. Chournos, 574	Ann. § 78-39-24. It's			recovered by any
	P.2d 723 (Utah 1978).	possible to buy on credit.	,		party as well. Id.
		Utah Code Ann. § 78-39-		•	
	"The ownership of real property	25.	,		-
	has always been highly valued by				
	courts of equity No less here	Court has equitable power		•	
	should parties be divested of	to set minimum sales price.			
	their ownership of lands to which	Gillmor v. Gillmor, 657			
	they have strong attachment	P.2d 736, 742 (Utah 1982).			
	unless there is no other				
	reasonable alternative." Clawson	Notice procedures for sale			
	v. Silver, 26 P.3d 209 (Utah	are those for sale by			-
	2001).	execution. Utah Code			
		Ann. § 78-39-24.			

Statute	Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
			Cusica :	wight of this weinsai.	ices and/or Costs:
Vermont	Sale permissible when property	Commissioners handle the	No. Sabins v. McAllister,	No ability of respondent to	Unknown. Statute
12 V.S.A.	cannot be divided without "great	sale. 12 V.S.A. § 5176.	76 A.2d 106, 108-09 (Vt.	buy out petitioner, because	and case law don't
§ 5161 et	inconvenience to the parties		1950).	the statute does not	say either way.
seq.	interested". 12 V.S.A. § 5174;	Even if sale price is grossly		mention it.	Strong v. Hobb, 1848
	This is primarily a financial test.	inadequate, no challenge to			Vt. LEXIS 17 (Vt.
	Blanchard v. Cross, 123 A. 382	sale unless there is		Court can assign one	1848), says that "all
	(Vt. 1924).	evidence of fraud. Carver		party's interest to another	costs" are taxable,
	,	v. Spence, 32 A. 493, 494		party, even if both parties	but unclear if
	Court can sell just a portion of	(Vt. 1895).		are interested in being	attorney's fees count.
	the property. 12 V.S.A. § 5174.			assigned interests. 12	,
				V.S.A. § 5174; Wilk v.	If party doesn't pay
			•	Wilk, 795 A.2d 1191, 1193	their share of costs,
				(Vt. 2001). Wilk notes how	their share of estate
				this can keep certain	can be sold at public
				properties within the family	auction! 12 V.S.A. §
				and can protect family	5182.
٠				farms, and the court	
				acknowledges the	
				difference in position	
				between those who want to	
				force a sale and those who	
				do not.	

Statute	Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
		Challenges to Sale	Ouster?	Right of First Refusal?	fees and/or Costs?
Virginia	Sale appropriate if partition	No relevant procedures	No. Hyson v. Dodge, 96	No ability of respondent to	Unclear. The
Va. Code	"cannot be conveniently made".	specified in statute.	S.E.2d 792, 795 (Va.	buy out petitioner, because	Virginia Supreme
Ann. §	Court can sell just part of the	However, court determines	1957).	the statute does not	Court has said court
8.01-81 et	property. Va. Code Ann. § 8.01-	whether sale will be public		mention it.	can allow fees when
seq.	83.	or private based on which			work done for
		proceeding will bring "the		If partition cannot be	common benefit,
	Fact that land is more valuable	best price obtainable."		conveniently made, court	Hodges v.
	sold as a whole rather than	Austin v. Dobbins, 252	;	can assign whole property	Bradshaw's Adm'r,
	partitioned is not, by itself,	S.E.2d 588 (1979).		to one party that is willing	118 S.E. 326, 335
	sufficient evidence that partition			to pay for it. Va. Code	(Va. 1923), but it
	cannot be conveniently made.			Ann. § 8.01-83. Whether	hasn't been applied
-	Sensabaugh v. Sensabaugh, 349			to do this is at the	to partition.
	S.E.2d 141 (Va. 1986).			discretion of court.	
				Shotwell v. Shotwell, 119	Costs are also
		,		S.E.2d 251 (Va. 1961)	unclear.
				(refusing allocation where	
				both parties requested it).	

Washington Rev. Code Wash. (ARCW) § 7.52.010 et Sale is appropriate if partition would result in nonconforming lots that violate the county's zoning requirements. Friend v. Friend. 964 P.2d 1219 (Wash.		Challenges to Sale All sales are at public auction, and follow procedures for sale by execution. Rev. Code Wash. (ARCW) § 7.52.270.	Ouster? No. Shull v. Shepherd, 387 P.2d 767, 768 (Wash. 1963).	Right of First Refusal? No, because the statute does not mention it.	fees and/or Costs? Yes, court can allow
- CI		All sales are at public auction, and follow procedures for sale by execution. Rev. Code Wash. (ARCW) § 7.52.270.	No. Shull v. Shepherd, 387 P.2d 767, 768 (Wash. 1963).	No, because the statute does not mention it.	Yes, court can allow
		auction, and follow procedures for sale by execution. Rev. Code Wash. (ARCW) § 7.52.270.	387 P.2d 767, 768 (Wash. 1963).	does not mention it.	
	. 50	procedures for sale by execution. Rev. Code Wash. (ARCW) § 7.52.270.	(Wash. 1963).		attorneys fees in
		execution. Rev. Code Wash. (ARCW) § 7.52.270.			their discretion.
.010 et	·	Wash. (ARCW) § 7.52.270.			unless proceedings
		7.52.270.			adversarial. Rev.
Sale is appropriate if p would result in noncor lots that violate the co zoning requirements. Friend. 964 P.2d 1215 Ct. App. 1998)	partition				Code Wash.
would result in noncor lots that violate the corzoning requirements. Friend. 964 P.2d 1215 Ct. App. 1998)	onforming				(ARCW) § 7.52.480;
lots that violate the corzoning requirements. Friend. 964 P.2d 1219 Ct. App. 1998))				Hamilton v.
zoning requirements. Friend. 964 P.2d 1219 Ct. App. 1998)	ounty's				Huggins, 855 P.2d
Friend. 964 P.2d 1219 Ct. App. 1998)	. Friend v.				1216, 1221 (Wash.
Ct. App. 1998)	19 (Wash.				Ct. App. 1993)
	•				•
					Court can allow
Partition proceeding is an	is an				costs. Id.
equitable one, in which the court	ich the court				
has great flexibility in					
fashioning relief for the parties.	the parties.				
Cummings v. Anderson, 614	on, 614				
P.2d 1283, 1288 (Wash. 1980).	ish. 1980).				

50-State partition statutes table, authored by John Pollock Original drafting date: 7/06. Updated periodically, with substantial update in 9/07. Last modified: 12/08. Page 56 of 59

	Conditions for Sale	Sale Procedure/	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
		Challenges to Sale	Ouster?	Right of First Refusal?	fees and/or Costs?
West	Sale only allowed if a) partition	Court does not need to	No. Jarrett v. Osborne,	No ability of respondent to	Yes, court can award
Virginia	can't be conveniently made, b)	appoint commissioners to	101 S.E. 162, 166-67 (W.	buy out petitioner, because	fees as part of
W. Va.	sale will benefit one of the	handle sale. W. Va. Code	Va. 1919).	the statute does not	"costs", except when
Code § 37-	owners, and c) no party will be	§ 37-4-3.		mention it.	process is adversarial
47-1 et seq.	prejudiced. W. Va. Code § 37-4-				(i.e., opponents have
	3. "Convenient" means	A party can challenge		If partition cannot be	hired their own
-	"practicable and just". Garlow v.	appraisal done by court-		conveniently made, court	attorneys). Woods v.
	Murphy, 163 S.E. 436 (W. Va.	appointed commissioner by		can assign whole property	McClain, 166 S.E.
	1932). Land has non-monetary	presenting evidence. W.		to one party that is willing	279, 280 (W. Va.
	value; economic considerations	Va. Code § 37-4-3.		to pay for it. W. Va. Code	1932).
	not paramount and court must			§ 37-4-3. This is not an	
	consider longstanding ownership			option if the property can	Costs are deducted
	and sentimental attachment. Ark			be divided. Hale v.	from the sale
	Land. Co. V. Harper, 599 S.E.2d.			Thacker, 12 S.E.2d 524	proceeds. W. Va.
	754, 759-760 (W. Va. 2004).			(Va. 1940). This is a	Code § 37-4-1.
	Division is preferable because it			discretionary power of the	:
	leaves cotenants holding the			court. State v. Hill, 550	
	same estates as before and			S.E.2d 62 (W. Va. 2001).	
	doesn't force sale on unwilling			,	,
	cotenants. Id.				
-					
	Court can sell portion of				
	property. W. Va. Code § 37-4-3.				,

Statute	Conditions for Sale	Sale Procedure/	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
		Challenges to Sale	Ouster?	Right of First Refusal?	fees and/or Costs?
Wisconsin	Sale allowable if partition cannot	Sales are done at public	Yes, "Continuous and	No, because the statute	Yes, fees ok from
Wis. Stat. §	be made without "prejudice to	auction. Wis. Stat. §	exclusive possession by	does not mention it.	sale proceeds if for
842.02 et	the owners". Wis. Stat. § 842.17.	842.17. Notice process for	one cotenant may		common benefit; if
sed.	The term "prejudice to the	sale is same for sales of	work an ouster and	,	adversarial, fees are
	owners" refers to pecuniary loss,	property on execution.	constitute adverse		not appropriate.
	Idema vs. Comstock, 110 N.W.	Wis. Stat. § 842.18.	possession." Peters v.		Wis. Stat. § 842.21;
	786, 787 (Wis. 1907), i.e., that		Kell, 106 N.W.2d 407,		Port v. Elson, 321
	the value of each owner's share		412 (Wis. 1960).		N.W.2d 363 (Wis.
	will be materially less than his or				Ct. App. 1982)
	her probable share of purchase				(unpublished).
	money in case premises are sold.				
	Marshall & Ilsley Bank v. De				
	Wolf, 67 N.W.2d 380, 382-3				
	(Wis. 1954). This must be a				
	"serious loss". White v.				
	Tillotson, 42 N.W.2d 283, 285				
	(Wis. 1950)				

Statute	Conditions for Sale	Sale Procedure /	Allow Constructive	Buyout of Petitioner or	Allow Attorney's
		Challenges to Sale	Ouster?	Right of First Refusal?	fees and/or Costs?
Wyoming	Sale permissible if	Court must appoint 3	No. Osborn v. Warner,	No ability of respondent to	Yes, any attorney
Wyo. Stat.	commissioners find that land	commissioners, who do	694 P.2d 730, 733 (Wyo.	buy out petitioner, because	doing work for
§ 1-32-101	cannot be divided without	appraisal. Wyo. Stat. §§ 1-	1985).	the statute does not	common benefit can
et seg.	manifest injury to its value, and	32-104, 1-32-109.		mention it. And the	be compensated.
	court agrees with commissioners.			petitioner does not have to	Wyo. Stat. § 1-32-
	Wyo. Stat. § 1-32-109.	If no party (or, presumably,		accept an offer to buy their	122.
		multiple adverse parties)		share, even if the offer	٠
		try to buy at appraised		exceeds the assessed value.	
		value, then there is public		Field v. Leiter, 90 P. 378,	
		auction, and must be sold,		391 (Wy. 1907).	
		using procedures for sale			
		by execution, for at least		Any party can buy at	
		2/3 of value determined by		appraised value and pay	
		commissioners (appraisal		over 3-year period. Wyo.	
		not necessary). Wyo. Stat.		Stat. § 1-32-110.	
		\$\$ 1-32-111, 1-32-112.			

John Pollock Presentation to Partition Sales Study Committee Room 421, Legislative Building – Raleigh, NC Friday, January 9, 2009 -- 10:00 a.m.

Why Are Legal Changes Needed to the North Carolina Partition Laws?

- Numerous studies have shown tenancy-in-common ownership (also called "heirs' property") to be the most common form of concurrent land ownership in the country. This form of ownership occurs largely as a result of the failure to write wills devising the property, which is caused by both lack of resources and a distrust of the legal system by many low-income landowners. A 2005 USDA study of one representative county revealed that 40% of property owned by African-Americans in that county was heirs' property, and another study found 2,300 tracts of heirs' property in two South Carolina counties alone.
- Land held as tenancy in common is particularly vulnerable to forced sale, owing to the increasing number of owners over the generations and the fact that any one owner is legally empowered to bring a forced sale action at any time. The phenomenon of speculator buy-in to heirs' property as a way of forcing sales gained national recognition as a result of a 2001 story by the Associated Press entitled "Torn From the Land". The AP series noted that according to the USDA Agricultural Census, farmland ownership by African Americans dropped from 15 million acres to 1.1 million acres over the course of the 20th century. In its 2006 solicitation of public comment on heirs' property, the USDA attributed some of this loss to forced sales.
- The North Carolina partition statute may contribute to the loss of land:
 - O A court can order a sale (rather than division) of the property if <u>any</u> of the parties to the partition action would be "substantially injured" by a division, which is defined only in terms of whether division will result in a reduction of the financial value of the property. Since the value of the divided pieces is frequently found to be less than the property as a whole, the owner seeking sale does not have a heavy burden demonstrating "substantial injury" in order to force a sale, even where division may be practical. Additionally, this definition excludes consideration of noneconomic factors (such as longstanding ownership or sentimental value) and treats land as fungible by viewing it primarily through an economic lens. Moreover, it potentially places the interest of one cotenant above those of the rest, as it permits a sale if "any" of the cotenants is injured.
 - o There is no legal mechanism for opponents to a partition sale to buy out the interests of the petitioner and terminate the action;

- o The statute does not require the use of readily available sources (such as the Internet) in trying to find owners. As a result, some owners may not learn about the action unless they read the legal notices section of newspaper;
- o There is no requirement in the statute that the property sell for fair value, or that the property is appraised (unlike timber sales);
- Property owners who contest the sale may nonetheless have their share of the sale proceeds reduced by the fees of the petitioner's attorney.

Recommendations for Modifying North Carolina's Partition Statute

The recommendations below are drawn from statutory and common law in other jurisdictions, and are independent and severable from each other.

- 1) Require the Court to Consider Noneconomic Value of Property in Weighing Sale:
 - o In weighing whether the property can be divided, the court should be required to examine not only financial factors, but also evidence of longstanding ownership by any of the owners that favor division, sentimental or ancestral attachment to the property, the property's historical value or importance to the community, the use to which the property is being put (especially if it is being used as a homestead that would be lost via forced sale), and the degree to which some owners have kept up the property. No factor (including the "reduction in material value" factor) should be determinative.
 - O The statute should be amended to allow consideration as to whether the cotenants as a group would be harmed by division, not whether a single cotenant will be harmed;⁹
 - The court should only order a sale if one of the parties has requested it.¹⁰
- 2) Buyout Option for Partition Sale Opponents if Division is Not Possible: 11 Allowing forced sale opponents to buy out the petitioner's interest in the property meets the needs of all parties involved in a partition action: the petitioner is able to liquidate his or her interest in the property (which is the historical justification for permitting a judicial solution as extreme as a forced sale), while partition opponents are able to retain their interest in the property. Purchase of just the petitioner's interest is a more realistic option than a "right of first refusal" to purchase the entire parcel, as many landowners do not have enough liquid assets to afford such a purchase and cannot draw on the equity they have in the property due to its fractionated nature. 12
- 3) Ensuring that Owners Receive Notice of the Action (Notice by Publication):

- O Prior to allowing service by publication (whether for in-state or out-of-state owners), the courts should require the petitioner to state in the affidavit precisely what steps were taken to try to locate all the owners¹³ and demonstrate that they drew upon "readily available" sources of information (such as Internet sources);¹⁴
- O The notice in the paper should include the street address of the property (if it has one), and not just the legal description;¹⁵
- o In addition to running an ad in the local paper, the petitioner should post a sign on the property and record a notice of the pendancy of the action. 16

4) Establish Sale Procedures:

- O The commissioners appointed to handle the sale are already required in North Carolina to be "disinterested", 17 but courts in some jurisdictions have held that the attorney for one of the parties could still be "disinterested" in some circumstances. 18 To avoid this risk, the statute should expressly define certain individuals as "interested", including attorneys for any of the parties and any judges or court officers. It should also establish that the judge, the appointed commissioners, and any appraisers who submit appraisals used during the sale process cannot purchase the property in any of the forced sale processes, in order to avoid any appearance of impropriety. 19
- O Court-ordered sales should be conducted as a true "public sale" and not as a "public sale by auction". This necessitates the hiring of a real estate broker who attempts to sell the property for at least its fully appraised value. In addition, the "adequate bid" protections and appraisal provisions currently provided for timber sales in N.C. Gen. Stat. § 1-339.28(e) and § 1-339.13A(a), respectively, should be extended to forced sales of real property.
- O A current owner who is the successful purchaser at the sale should only have to pay into the court the sale price less the value of the interest that they currently own.²³
- The court should allow parties to purchase the property on credit, with at least 1/3 of the purchase money being paid down at the time the sale is approved and the rest being secured by a mortgage on the property.²⁴
- 5) Disallow the Assessment of Attorney's Fees Against Parties that Contest the Sale:
 North Carolina law leaves the issue of attorney's fees to the discretion of the court.
 In other jurisdictions, fees are allowed if the action is considered to be for the "benefit of all", and courts in other jurisdictions have held at times that even opponents to forced sales are "benefited" by the sale (due to receiving money for their share).

 The solution is to disallow the taxing of attorney's fees against the sale proceeds of any owner who registers their opposition to the partition sale.

 26

¹ See e.g. Evelyn Lewis, Struggling With Quicksand: The Ins And Outs Of Cotenant Possession Value Liability And A Call For Default Rule Reform, 1994 Wis. L. rev. 331, 398 n204 (1994) (describing how tenancy-in-common ownership rose over course of 20th century to become the type of ownership for roughly 60% of property); Roger A. Cunningham et al., The Law of Property 5.2, at 188 (2d ed. 1993).

² Phyllis Craig-Taylor, Through a Colored Looking Glass: A View of Judicial Partition, Family Land Loss, and Rule Setting, 78 Wash. U. L. Q. 737, 740 (2000).

³ See 72 Fed. Reg. 6,1190 (Jan 10, 2007).

⁴ Blanding Holman IV, Time to Move Forward on Heirs' Property, 18 S. Carolina Lawyer 18 (2006).

⁵ http://www.theauthenticvoice.org/Torn_From_The_LandIII.html.

⁶ 2 Fed. Reg. 6,1190 (Jan 10, 2007).

⁷ N.C. Gen. Stat. § 46-22(b) reads as follows: "Substantial injury' means the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if an in-kind division would result in material impairment of the cotenant's rights." The "material impairment" portion of this definition is apparently linked to the "value of share substantially less" provision, such that there is no way to prove "substantial injury" without focusing on the monetary value of the interests at issue. See *e.g. Whatley v. Whatley*, 484 S.E.2d 420, 421 (N.C. App. 1997) ("The party seeking a partition by sale must show substantial injustice or material impairment of his rights or position such that the value of his share of the real property would be materially less on actual partition than if the land was sold and the tenants were paid according to their respective shares.")

⁸ Sources: Young Props. v. Wolflick, 87 P.3d 235, 237 (Colo. Ct. App. 2003); Benson v. Nelson, 725 P.2d 71, 72 (Colo. Ct. App. 1986) (noting that money is an "inadequate substitute" for land); Delfino v. Vealencis, 436 A.2d 27, 33 (Conn. 1980) (Lengthy tenure on the land and actual/exclusive possession cut against allowing a sale); Condrey v. Condrey, 92 So. 2d 423, 427 (Fla. 1957) (denying partition where opponents elderly, ill, and living on property co-owned with petitioner son); Chuck v. Gomes, 532 P.2d 657, 662 (Haw. 1975) (Richardson, J., dissenting) ("[T]here are interests other than financial expediency which I recognize as essential to our Hawaiian way of life. Foremost is the individual's right to retain ancestral land in order to perpetuate the concept of the family homestead"); Lynch v. Union Inst. for Savings, 34 N.E. 364, 364-365 (Mass. 1893) ("[a] particular piece of real estate cannot be replaced by any sum of money, however large; and one who wants a particular estate for a specific use, if deprived of his rights, cannot be said to receive an exact equivalent or complete indemnity by the payment of a sum of money"); Overstreet v. Overstreet, 692 So. 2d 88, 91 (Miss. 1997) (examining sentimental value of property in weighing division vs sale); Kent v. Kent, 835 P.2d 8, 10 (Nev. 1992) (permissible for court to consider sentimental value); Schnell v. Schnell, 346 N.W.2d 713, 716-17 (N.D. 1984) (allowing consideration of sentimental value, as well as financial ability of both sides to buy property at sale); Fike v. Sharer, 571 P.2d 1252 (Ore. 1977) (consideration of sentimental value); Zimmerman v. Marsh, 618 S.E.2d 898, 900-901 (S.C. 2005) (considering both sentimental attachment and length of ownership); Eli v. Eli, 557 N.W.2d 405, 409-411 (S.D. 1997) (considering sentimental value of land, family's longstanding connection to it, and noneconomic uses of land); Ark Land. Co. V. Harper, 599 S.E.2d. 754, 759-760 (W. Va. 2004) (land has non-monetary value; economic considerations not paramount and court must consider longstanding ownership and sentimental attachment)

⁹ Sources: many, but a few examples include: Alaska Stat. §§ 09.45.290 (requiring division to cause "great prejudice to the parties"; Conn. Gen. Stat. § 52-500 (sale must "better promote the interests of the owners"); 25 Del. C. § 729 (sale permissible where division would be "detrimental to the interests of the parties"); MCLS § 600.3332 (sale permitted where division would cause "great prejudice to the owners").

¹⁰ Some advocates working directly with heirs' property owners in other states have seen cases where a court *sua sponte* decides that sale is the proper course of action in a partition proceeding, even though none of the parties have sought a sale. These cases are not reported.

¹¹ It is important that this option <u>only</u> exists if the land <u>cannot</u> be partitioned in kind, as partition-in-kind among all the owners goes further towards clearing the title to the entire property than does the buyout option.

¹² Source: Code of Ala. § 35-6-100 et seq (requiring petitioner to sell interest to nonpetitioners upon demand); S.C. Code Ann. § 15-61-25 (same); O.C.G.A. § 44-6-166.1(d) (court must give "parties in interest" right to purchase shares of petitioner); La. R.S. 9:1113 (nonpetitioners have right to buy out petitioner if petitioner owns 15% or less of the property); ORS § 105.210 (petitioner's share can be ordered sold if division and auction would cause "great prejudice"; statute clarified by Fike v. Sharer, 571 P.2d 1252 (Ore. 1977) and Maupin v. Opie, 964 P.2d 1117, 1124 (Ore. Ct. App. 1998), such that only respondents can exercise option);

¹³ Currently, N.C. Gen. Stat. § 1A-1, Rule 4(j1) requires the party using notice by publication to describe in an affidavit "the circumstances warranting the use of service by publication". The suggested provision clarifies that the affiant must describe exactly what steps were taken by the petitioner.

¹⁴ Source: Code of Ala. § 35-6-44 (requiring affidavit requesting notice by publication to specify steps taken by affiant to locate unknown heirs); *In re General Adjudication of All Rights to Use Water in the Gila River*, 830 P.2d 442, (Ariz. 1992) (requiring efforts going beyond "mere pretense" and utilizing "readily available sources"); *In Re Thompkins*, 875 N.E.2d 582, 587 (Ohio 2007) (also requiring use of "readily available sources" and giving examples of "consulting a city directory, examining government records, or making inquiries of possible acquaintances of the person sought"); *Jackson Constr. Co. v. Marrs*, 100 P.3d 1211 (Utah 2004) (requiring consultation of "readily available sources" and noting that "[a] plaintiff who focuses on only one or two sources, while turning a blind eye to the existence of other available sources, falls short of this standard. In a case such as this, involving out-of-state defendants, a plaintiff might attempt to locate the defendants by checking telephone directories and public records, contacting former neighbors, or engaging in other actions suggested by the particular circumstances of the case. Advances in technology, such as the Internet, have made even nationwide searches for known individuals relatively quick and inexpensive."); *Gates v. State*, 176 P.3d 1178, 1183 (N.M. App. 2008) (finding lack of due process because landowner's contact information was "readily available on a number of Internet websites that can be easily accessed by utilizing free search engines and databases").

¹⁵ Source: Cal. Code Civ. Proc. § 701.540(a).

¹⁶ Source: Minn. Stat. § 558.02 (requiring recoding of notice of pendancy of action); 735 ILCS 5/2-206 (same). N.C. Gen. Stat. § 1-339.17(a)(1) requires posting of a sign for sales actions, but not at the initiation of the partition action.

¹⁷ N.C. Gen. Stat. § 46-7.

¹⁸ See *e.g. Cohen v. Meyer*, 701 N.E.2d 1253, 1256 (Ind. App. Ct. 1998) (finding it unimportant that commissioners handling the sale be "disinterested").

¹⁹ N.C. Gen. Stat. § 1-339.13A(b) bars appraisers in timber sales actions from submitting bids.

While the term "public sale" is used in some state statutes, its meaning (and differentiation from "public auction") is often unclear. In North Carolina, "public sale" and "public auction" appear to be synonymous, as N.C. Gen. Stat. § 1-339.13(a) states that "Whenever a public sale is ordered, the order of sale shall ... [d]irect that the property be sold at public auction to the highest bidder."

²¹ Source: *Mitchell v. Silverstein*, 2000 Conn. Super. LEXIS 988 at *4-5 (Conn. Super. 2000) (Court can hire realtor to ensure property will be sold at fair value in particular case because "a sale by auction would be impractical and would likely not result in obtaining the fair market value of the properties.").

²² While N.C. Gen. Stat. § 46-28.1(c) does state that a party to a partition sale action can challenge a sale price on the grounds that it is "inadequate and inequitable and will result in irreparable damage to the owners of the real property", this sets a much higher challenge bar than that set for timber sales in N.C. Gen. Stat. § 1-339.28(e) ("No

public sale of timber sold by sealed bid shall be confirmed until the court determines that the highest bid is an adequate price for the timber sold and that sale to the highest bidder is in the best interest of the person or estate for whom the timber is being sold").

The need for this provision comes from the experience of practitioners, who have learned that courts sometimes require the winning bidder to pay the entire value of the property into the court. For indigent property owners who may own a substantial portion of the property, this requirement essentially nullifies their ability to purchase the property, as they are not able to obtain a loan for the full amount due to the fractionated nature of the property.

²⁴ Sources: numerous, as nearly half of the state statute have such a provision, but some include Fla. Stat. § 64.071 ("For good cause the court may order the sale made on reasonable credit for part or all of the purchase money, but at least one-third of the purchase money shall be paid down unless all parties consent to credit otherwise. The purchase money not paid down shall be secured by a mortgage on the land and such other security as the court directs"); Code of Ala. § 43-2-450 ("such sale may be had on such credit as the court may direct, not exceeding two years").

²⁵ See e.g. Carver v. Foster, 928 So. 2d 1017, 1023 (Ala. 2005); Johnston v. Smith, 454 S.W.2d 649, 651 (Ark. 1970).

²⁶ Sources: 735 ILCS 5/17-125 (no assessment of fees if nonpetitioner makes ""good and substantial defense" to action); La. C.C.P. Art. 4613 (permitting attorney's fees only for uncontested actions); Osborne v. Eslinger, 58 N.E. 439, 444 (Ind. 1900) (hiring counsel precludes assessment of fees against nonpeittioner); Dailey v. Houston, 151 So. 2d 919, 927 (Miss. 1963) (same); 6 S.E. 279, 280 (W. Va. 1932) (same); Kuller v. Kuller, 109 N.W.2d 561, 563 (Minn. 1961) (court should not award fees where proceedings are adversarial or not beneficial to all parties); Novy v. Novy, 188 A. 328, 366 (Pa. 1936) (same).

allochment #4

Fair Housing and Heirs' Property in Orange County, North Carolina



Southern Coalling for Social Justine

111/14/2008

I. Executive Summary

Currently there are 475 parcels of heirs' property in Orange County. From January 2003 to October 2008, there were 51 partition cases involving the sale of heirs' property. The number of partition actions and estate sales has increased in the past two years. More widespread education about alternative ownership structures would greatly benefit Orange County residents and assist them with maintaining their land as a wealth-building asset. It appears that in many cases property held as heirs' property is owned by African-American families who initially obtained the property following the Civil War, but further research is necessary to determine if there are racial disparities in the incidence or distribution of heirs' property in Orange County. The following findings, conclusions and recommendations are based on research using Orange County tax records, files from the Orange County clerk of court's office, interviews with residents and with real estate attorneys.

II. Introduction

Heirs' Property is a term used to describe property which has been passed down through generations of family members by intestacy, rather than through a will. The descendants who inherit the property become tenants in common, each taking an undivided interest in the land. As the property passes to each new generation the interests become increasingly fractionalized, resulting in a large number of people who each have an ownership interest in the same piece of land. Because of the number of heirs owning fractionalized interests in the property, and the fact that tenants in common may transfer their interest at any time; families owning heirs' property are vulnerable to losing it to developers or more affluent owners. The loss of heirs' property commonly occurs through partition sales, bankruptcy proceedings, creditors' judgments, tax sales, foreclosures, and adverse possession. In the South, land loss among low-income and African American families is a significant problem. According to the Land Loss Prevention Project, of the 15 million acres of land acquired by African Americans after Emancipation, only about 2 million acres remain owned by their descendants. Much of this loss has been attributed to the above-listed problems associated with heirs' property.

Loss of land may also contribute to the racial wealth gap. Nationally, the average African-American family has about 60 percent of the income as the average white family. But the disparity of wealth is much greater. The average African-American family has only 18 percent of the wealth of the average white family. In Orange County, it is clear that there is an income gap. In the 2007 American Community Survey, the Census Bureau reported that the median

¹ See, Edward Wolff, Top Heavy, The Increasing Inequality of Wealth in America and What Can Be Done About It (date), see also, http://multinationalmonitor.org/mm2003/03may/may03interviewswolff.html.

household income for white households in Orange County was \$61,582, while the median household income for African-American households was \$26,498. We have not yet found data on family wealth by race for Orange County. The most commonly used source of information on family wealth is the Federal Reserve Board's Survey of Consumer Finances, which reports national data. The following table from the Federal Reserve Board's 2004 survey shows that, in general, families in the south have the least wealth, and that non-white or Hispanic families have significantly less wealth than white families. Without evidence to the contrary, it is likely that this national pattern is true for Orange County as well. The Survey of Consumer Finances confirms that equity in a private residence is by far the largest, percentage-wise, non-financial asset that families own, accounting for 50.3% of non-financial assets for all families in 2004. Equity in non-residential property is the third largest category, at 9%, behind business equity at 25.9%. Non-financial assets were 64.3% of all assets. Thus, the loss of land as an asset is a significant blow to a family's wealth.

In an effort to address the problems associated with heirs' property and its impact on the African-American community, the Southern Coalition for Social Justice (SCSJ), together with the Orange County Office of Human Rights and Relations, has conducted a preliminary study regarding heirs' property located in Orange County. In order to determine the occurrence of heirs' property in Orange County, the SCSJ contacted Mr. Michael Burton, of the Orange County Land Records Office. Mr. Burton provided the SCSJ with a list of the parcels of heirs' property located in Orange County. This data, along with information gathered from the Register of Deeds Office, were used to develop the following findings.

III. Characteristics of Heirs' Property in Orange County

a. Number of Heirs' Property Listings and Location

The data provided by the Orange County Land Records Office shows that there are a total of 475 parcels of heirs' property located in Orange County. The list further breaks down the distribution of heirs' property in Orange County by Township. There are 7 Townships in Orange County. Little River Township has 28 parcels of heirs' property; Cedar Grove Township has 49 parcels of heirs' property; Cheeks Township has 94 parcels of heirs' property; Hillsborough Township has 97 parcels of heirs' property; Eno Township has 28 parcels of heirs' property; Bingham Township has 41 parcels of heirs' property; and Chapel Hill Township has 138 parcels of heirs' property.

Township	Number of Listings
Little River (1)	28
Cedar Grove (2)	49
Cheeks (3)	94
Hillsborough (4)	97
Eno (5)	28
Bingham (6)	41
Chapel Hill (7)	138
Total	475

	Percentage
Township	Occurrence
Little River (1)	5.89%
Cedar Grove (2)	10.32%
Cheeks (3)	19.79%
Hillsborough (4)	20.42%
Eno (5)	5.89%
Bingham (6)	8.63%
Chapel Hill (7)	29.05%
Total	100.00%

The Township of Chapel Hill has the most listings of heirs' property (29.05% of the total listings); followed by the Townships of Hillsborough (20.42%) and Cheeks (19.79%). The Townships of Little River and Eno have the least number of heirs' property listings; both Townships contain 5.89% of the total heirs' property listings in Orange County. The greater occurrence of heirs' property in Chapel Hill, Hillsborough, and Cheeks may be explained, in part, by the fact that these Townships have higher populations than the remaining four Townships. Data retrieved from Orange County's Comprehensive Plan and the 2000 U.S. Census Bureau show that the Township of Chapel Hill has the highest population (76,578), followed by Hillsborough (11,639), Cheeks (7,064), Bingham (6,181), Eno (6,092), Cedar Grove (4,930), and Little River (3,047). However, after taking into account the population of each Township, the data indicates that the Townships of Cheeks, Cedar Grove, and Little River have a higher rate of heirs' property per capita. Compare, Cheeks (1.33%), Cedar Grove (.99%), and Little River (.92%); and Chapel Hill (.18%), Hillsborough (.81%), Bingham (.66%), and Eno (.46%).

Township	Population*
Little River (1)	3,047
Cedar Grove (2)	4,930
Cheeks (3)	7,064
Hillsborough (4)	11,639
Eno (5)	6,092
Bingham (6)	6,181
Chapel Hill (7)	76,578

^{*}See Table B2e of Orange County's Comprehensive Plan, available at:

 $http://www.co.orange.nc.us/planning/PDFs/comprehensive/cpupdate_KeyDocuments/County\%20Profile\%20Element\%20Sept07/Microsoft\%20Word\%20-$

^{%20}SecB2 Population DraftCPE SEPT07.pdf

Township	Percentage Per Capita*	
Little River (1)	0.92%	
Cedar Grove (2)	0.99%	
Cheeks (3)	1.33%	
Hillsborough (4)	0.81%	
Eno (5)	0.46%	
Bingham (6)	0.66%	
Chapel Hill (7)	0.18%	
*using data from C	*using data from Orange County	
Comprehensive Plan		

b. Size of Heirs' Property Listings

Total Acreage

The majority of heirs' property located in Orange County is less than 10 acres of land per parcel. Of the total 475 listings, 217 parcels (45.68%) are less than 1 acre; and 176 parcels (37.05%) are more than 1 acre but less than 10 acres. Taken together, the number of listings with less than 10 acres of land represents 83.23% of the total listings. Of the total 475 listings of heirs' property in Orange County, the average acreage is 9.370710461; and the median acreage is 1.13176.

Number of Total Acres (Total Acres)	Number of Listings
Less than 1 acre	217
1 acre but less than 10 acres	176
10 acres but less than 20 acres	31
20 acres but less than 30 acres	11
30 acres but less than 40 acres	8
40 acres but less than 50 acres	7
50 acres but less than 60 acres	4
60 acres but less than 70 acres	3
70 acres but less than 80 acres	0
80 acres but less than 90 acres	9
90 acres but less than 100 acres	1
100 acres	8
Total	475
Average Acreage	9.370710461
Median Acreage	1.13176

	Percentage
Total Acreage	Occurrence
Less than 1 acre	45.68%
1 acre but less than 10 acres	37.05%
10 acres but less than 50 acres	12.00%
50 acres or greater	5.26%
Total	100.00%

Because the parcels of heirs' property located in Orange County are listed in terms of acres, it is necessary to convert the total land area of Orange County into acres in order to determine how much of the land located in Orange County can be classified as heirs' property. There are a total of 399.84 square miles that make up Orange County. There are 640 acres per one (1) square mile. The total number of acres in Orange County was calculated by multiplying the total square miles (399.84) by the number of acres per square mile (640). In total, there are approximately 255,897.6 acres of land in Orange County. In total, there are approximately 5,623 acres of heirs' property in Orange County. Thus, heirs' property represents roughly 2% of Orange County's total acreage.

The Orange County Land Records Office provided three sets of data that relate to the overall acreage of each parcel of heirs' property listed. These data sets include: (1) Calculated Acres; (2) Total Acres; and (3) Size. At the suggestion of Mr. Burton, SCSJ looked at the "Size" data, as it was purported to be the most accurate reflection of the actual size of each parcel. We also looked at the data for property that is taxed by square footage, rather than acreage, for those listings which were not included in the "Size" data. "Size" data represents the taxable size by deed or recorded survey; some of the properties that are not taxed by acreage, and thus, do not appear in the "Size" data, are taxed by square footage. Of the 475 listings, 186 are taxed by lot, 9 are taxed by square footage, and 280 are taxed by acreage.

Property Taxed by Square Footage

Of the 9 listings taxed by square footage, 4 parcels are less than ten thousand square feet; 2 parcels are between ten-thousand and twenty-thousand square feet; 1 parcel is between twenty-thousand and thirty-thousand square feet; 1 parcel is between forty-thousand and fifty-thousand square feet; and 1 parcel is between sixty-thousand and seventy-thousand square feet. The average square footage for these listings is 18,779.56 sq. ft. The median square footage for these listings is 10,038 sq. ft.

Taxed by Sq. Footage	Number of Listings
Less than 10k sq. ft.	4
10k sq. ft. but less than 20k sq. ft.	2
20k sq. ft. but less than 30k sq. ft.	1
30k sq. ft. but less than 40k sq. ft.	0
40k sq. ft. but less than 50k sq. ft.	1
50k sq. ft. but less than 60k sq. ft.	0
60k sq. ft. but less than 70k sq. ft.	1
Total	9
Average Sq. Footage	18,779.56
Median Sq. Footage	10,038

Property Taxed by Acreage

Of the 280 listings taxed by acreage, 39 parcels are less than 1 acre; 154 parcels are more than 1 acre but less than 10 acres; 37 parcels are more than 10 acres but less than 20 acres; 12 parcels are more than 20 acres but less than 30 acres; 6 parcels are more than 30 acres but less than 40 acres; 3 parcels are more than 40 acres but less than 50 acres; 5 parcels are more than 50 acres but less than 60 acres; 5 parcels are more than 60 acres but less than 70 acres; 2 parcels are more than 70 acres but less than 80 acres; 6 parcels are more than 80 acres but less than 90 acres; 3 parcels are more than 90 acres but less than 100 acres; and 8 parcels are 100 acres or greater. The average acreage for these listings is 9.42668. The median acreage, however, is 1 acre. The smallest parcel listed was 0.01 acre and the largest listed was 197.14 acres.

Taxed by Acreage	Number of Listings
Less than 1 acre	39
1 acre but less than 10 acres	154
10 acres but less than 20 acres	37
20 acres but less than 30 acres	12
30 acres but less than 40 acres	6
40 acres but less than 50 acres	3
50 acres but less than 60 acres	5
60 acres but less than 70 acres	5
70 acres but less than 80 acres	2
80 acres but less than 90 acres	6
90 acres but less than 100 acres	3
100 acres or greater	8
Total	280
Average Acreage	9.42668
Median Acreage	1

It is apparent from this initial data that heirs' property occurs regardless of the total size or acreage of the property. However, it is clear that heirs' property occurs more frequently where the property at issue is less than 10 acres in overall size. This may be due to the fact that there are more people, in general, who own less than 10 acres of property than those people who own 10 acres or more. However, there are other factors which may contribute to this trend that are unknown at this time and which need to be further examined.

c. Value of Heirs' Property

The total tax value of each property listing was determined by adding the land value to the building value, if a building is on the property. The majority of parcels of heirs' property in Orange County have a tax value less than \$50,000. Of the total 475 listings, 53.05% have a total tax value of less than \$50,000; and 23.58% have a total tax value greater than \$50,000 but less than \$100,000. The average tax value of all of the listings was \$73,411.59. The median tax value was \$44,840.80. Of the 475 total listings, 252 listings had a tax value less than \$50,000; 112 listings had a tax value between \$50,000 and \$100,000; 46 listings had a tax value between \$100,000 and \$150,000; 33 listings had a tax value between \$150,000 and \$200,000; 10 listings had a tax value between \$200,000 and \$250,000; 9 listings had a tax value between \$250,000 and \$300,000; 4 listings had a tax value between \$350,000 and \$350,000; 6 listings had a tax value between \$350,000 and \$400,000; and 3 listings had a tax value greater than \$500,000. The greatest value listed was \$1,970,216; the small value listed was zero (0).

Total Tax Value (Land + Buildings)	Number of Listings
Less than to \$50k	252
Greater than \$50k and less than \$100k	112
Greater than \$100k and less than \$150k	46
Greater than \$150k and less than \$200k	33
Greater than \$200k and less than \$250k	10
Greater than \$250k and less than \$300k	9
Greater than \$300k and less than \$350k	4
Greater than \$350k and less than \$400k	6
Greater than \$400k and less than \$450k	0
Greater than \$450k and less than \$500k	0
Greater than \$500k	3
Total	475
Average Tax Value	\$73,411.59
Median Tax Value	\$44,840.80

d. The Heirs

The data provided by the Orange County Land Records Office includes the name of the decedent whose heirs now own the property. Many of the listings do not contain the name(s) of the heirs with an interest in the property, but the list does identify 257 heirs or persons paying taxes on the property. We have begun attempting to contact some of the known heirs in order to interview them, but due to time constraints, we have been unable to interview any of the heirs at this time. Despite that we only have 257 known heirs at this time; it should not be difficult to identify the unknown heirs, although it will be tedious and time-consuming. The data includes the address of the person paying taxes on the property for each listing; this can be used to identify and contact the unknown heirs.

e. Households

According to the U.S. Census Bureau's 2006 American Community Survey, there are a total of forty-eight thousand five-hundred twenty-two (48,522) occupied housing units in Orange County. Of these, twenty-nine thousand one-hundred ten (29,110) are owner-occupied; and nineteen thousand four-hundred and twelve (19,412) are renter-occupied.

f. Location of Heirs' Property Parcels

Using the Google Earth GIS program, SCSJ mapped every parcel for which we had a street address, in an attempt to determine the geographic distribution of heirs' property in the county. Unfortunately, there were approximately 230 parcels that we could not map. Thus, the maps we have so far over-emphasize the more urban areas of the county where street addresses are available for parcels. Nevertheless, with more than half the county's heirs' property parcels mapped, the usefulness of this tool is apparent. We mapped the parcels using the county's Parcel Identification Number (PIN) for that parcel as the label. The maps in Appendix 1 to this report demonstrate how this mapping of heirs' property parcels can be useful in determining the extent of the problem. With additional time, we could obtain coordinates for the parcels without addresses and complete a fuller map.

IV. Extent of Partition Sales in Orange County

In order to quantify the extent to which the loss of heir's property is affecting families in Orange County, records dealing with the partition or selling of heirs' property were examined from the years 2003-2008, totaling approximately 600 case files. The number of such actions has increased in the past two years. The partition records are found in the Special Proceedings files. In addition to petitions to partition land, there were also estate proceedings that involved the sale of heirs' property. These did not involve the partitioning of land, but could still result in the loss

of family property. During this time period, from January 2003 to October 2008, there were a total of 51 partition and/or estate sales cases. The primary documents within the file that we reviewed included the Petition, and the amended version if one existed, the Reports of Sale, the Confirmation of the Report of Sale, and the court's final Order, if one existed. Some files were more extensive than others in that they contained a copy of the deed to the land in question.

a. Findings/Outcomes

Difficulties of Contacting Heirs

One major difficulty we encountered in attempting to interview the heirs was that, even where the heirs were identified, the contact information for those heirs was unavailable or incorrect. The list did not provide the phone numbers of the person paying property taxes, but it did provide an address. Based on this address, we utilized an internet directory to obtain the phone numbers of the person paying property taxes. We did eventually obtain accurate contact information for some of the heirs; however, none were available when called initially and when we were able to leave a message, none of our calls were returned.

The first step towards ensuring the protection of heirs' property is to determine the particular needs and concerns of the heirs holding property in Orange County. Attempting to contact the heirs individually by telephone and interview them regarding their respective interests has proven to be an ineffective method of identifying concerns that property owners may have.

Estate Proceedings

The files from 2007 and 2008 contained the most Petitions for Possession and Control of Land. Most of these petitions were filed by the Administrator or Executrix of the estate. These cases primarily dealt with the estate of someone who was in debt at the time of their death, with or without a will, and their land needed to be sold to create assets to help pay off that debt. In one case, the Petitioner was paying out of her own pocket. In 2007, the number of Petitions to Partition was about equal with the Petitions to Control Land, but in 2008 there were more Petitions for Control of Land than there were Petitions for Partition. Only a couple cases involved a minor child and required the appointment of a Guardian ad Litem. In those cases where the land was sold, and there were leftover assets, the minor's share was held in a bank until they reached age eighteen. Interestingly, the time between the death of the landowner and the Administrator qualifying to act on behalf of their estate could range from a couple months to almost a year. This may be an indication of some families not being able to save their land in time. Almost every case that ended with land being sold involved the attorney for the Petitioner also serving as the Commissioner for the sale. There was one case where the Petitioner was also an attorney and performed the Commissioner duties.

Property Details

Almost all of the partition records dealt with land that is in Chapel Hill, Hillsborough, and Cheeks and/or Cedar Grove Townships. For Cheeks and Cedar Grove, it is worth mentioning that usually the township was only named was when there was no exact address for the property. Even when there was no exact address listed, a Parcel Identification Number (PIN) was usually included. The only main exceptions I found were in 2008 when the property was listed as a lot containing a residence or described as a "certain tract or parcel of land" using coordinates and landmarks. One of the larger pieces of land involved in a partition action measured over 85 acres.

Attorney and Court Fees

As stated above, the attorney for the Petitioner was almost always the Commissioner. The Commissioner's fee was usually listed in the file, but that was not the case for the attorneys' fees. When they were listed, the attorneys fees' usually came out of the proceeds from the sale of the land, if it occurred, much like the Commissioner's fee. Some attorneys provided a complete breakdown of all the costs involved in the Petition action. Indeed, in one 2004 file, the attorney detailed the costs down to the film developing necessary to show pictures of the property being sold. There were a few attorneys' names who appeared frequently as representatives for the Petitioner. These were John D. Loftin, Samuel Coleman, and Douglas Hargrave. The Respondent rarely had an attorney.

Partition In-Kind versus Partition Sales

Since most Petitioners asserted that it was not possible to partition the land without substantial injury, they requested it be sold. There was one case where the Petitioner did feel the land could be divided, but it involved tenants-in-common living in the four residences on the land in question. That case was dismissed.

b. Attorney Interview

On October 29, 2008, we conducted a telephone interview with an attorney who has handled heirs' property cases in Orange County. We enquired about his experience in practice dealing with heirs' property issues and his general impression of the issue. Generally he was aware that many heirs' property cases often involve African-American families who initially received the property after the Civil War. Although the land was originally used primarily for farming, he felt that the more recent trend has been for newer generations of family members to seek a sale, rather than hold onto the land. He noted that in Orange County property values and development have dramatically increased since the 1990's, making a sale more profitable. The reverse-side of this is that, as property values rise, so do property taxes. He stated that much of the land around Chapel Hill and Hillsborough used to be owned by African-Americans, but that the recent increase in property taxes has contributed dramatically to the loss of this land.

We asked what could be done to combat the problems associated with heirs' property, and he replied that he was "not certain it's a problem; per se." He felt that there was no reason to believe that heirs holding property as tenants in common do not receive a fair value for the land when sold in a partition sale. He posited that the real problem was that heirs who receive money from sales of their property do not know how best to manage and invest it. He suggested that the heirs who sell their land could benefit from financial counseling to assist with money-management after the land has been sold.

c. Public Meeting Presentation

We presented an early version of this report's findings to a meeting of the Orange County Commission for Women. At that presentation, it was clear that some members had personal experience with the issue of heirs' property, but that in general, people did not have general knowledge about the consequences of property owners dying without a will and leaving property to heirs as tenants in common. Orange county residents are not aware of the prevalence of heirs' property in the county and its implications for being able to maintain family land as a valuable asset.

V. Conclusions

From this review of the incidence of heirs' property in Orange County and the experience with partition sales and estate sales of such land over the past five years, it is clear that there are many more parcels held as heirs' property than anyone would have expected. At the same time, the number of partition sales has been fairly low in the past but has been rapidly increasing in the past two years.

The occurrence of heirs' property is not unique to specific regions of the county. However, it is also clear that Chapel Hill, Cheeks, and Hillsborough Townships all experience much greater occurrences of heirs' property than do Little River, Cedar Grove, Eno, and Bingham Townships. This may be due in part to the fact that these three townships have the highest populations. However, when one takes into account the population of each township it becomes clear that Cheeks, Cedar Grove, and Little River have a higher rate of heirs' property issues per capita.

Furthermore, it is also obvious that heirs' property occurs no matter the total size/acreage of the property (the smallest listing was 0.01 acre and the largest listing was 197.14 acres). However, it is clear that it more frequently involves property that is less than 10 acres in overall size. This, however, may be due in part to the fact that, in general, there are more people that own less than 10 acres of property than those that own 10 acres or more.

While we were unable to contact individual landowners, discussions with Orange County residents indicated that generally people are not aware of the need for estate planning, and do not realize how owning land as tenants in common can create risks of the land being sold by one family member. There is a general lack of knowledge about partition sales and how they can be

avoided. In addition, further research and outreach needs to be done to determine whether minority landowners, in particular, appreciate how they may be able to protect their family's land by alternative ownership structures such as LLC's, that provide all family members with the incentive to contribute to the maintenance of the land and benefit all from the asset it thereby creates for them.

VI. Recommendations

From this preliminary study, it is clear that Orange County has a great opportunity to address the issue of heirs' property at a relatively early stage before it becomes a more serious problem. We have the following recommendations:

1. Community Outreach and Education

- a. Contact and interview families that own heirs' property in Orange County by hosting workshops for residents that provide them with information about heirs' property and partition actions, and provide them resources to make informed decisions about how they can best protect their land. Because each family's circumstances are different, the issues associated with heirs' property may not be identical for every family. Therefore, it is important that diligent efforts be made to contact the heirs so that their unique issues and concerns can be identified and addressed.
- b. Create outreach materials concerning heirs' property issues and ways to address them, tailored to Orange County residents, and make these materials widely available to residents.
- c. Provide information about resources for families to obtain assistance with resolving conflicts without resorting to partition sales. Mediation services are often a valuable resource to heirs in conflict over how to use their land or facing a possible partition sale.

2. Further Research

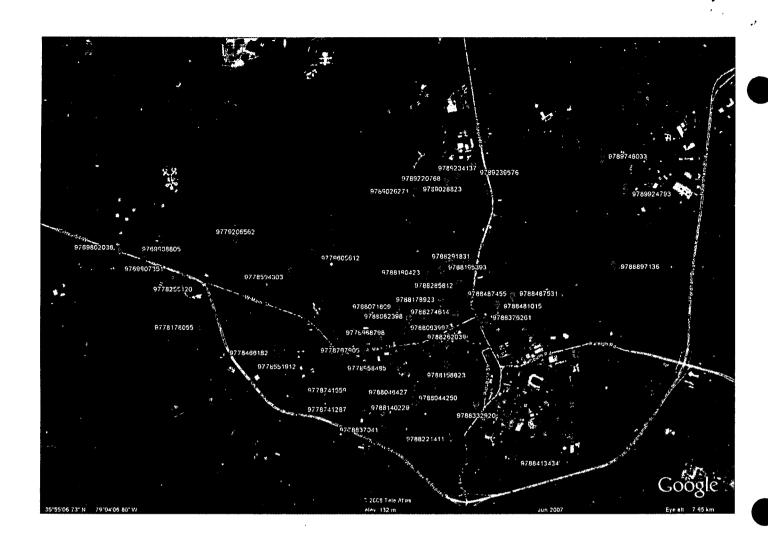
a. Obtaining fuller data about the exact location of each of the 475 parcels of heirs' property in the County and supplementing the mapping of these parcels would be of assistance to planners as well as advocates in identifying where these parcels are concentrated and how to best reach heirs' property owners.

b. Additional research should be done to determine whether, as anecdotal evidence suggests, heirs' property disproportionately impacts African-American residents of the county and whether it contributes to the racial wealth gap in the county. Appendix 2 contains reports from research conducted by the USDA in 2005 and by the Alabama Agricultural Experiment Station in 2007. While both of these involve areas that are more rural than Orange County, it is clear from our preliminary study that heirs' property is extensive in Orange County and thus deserves greater attention.

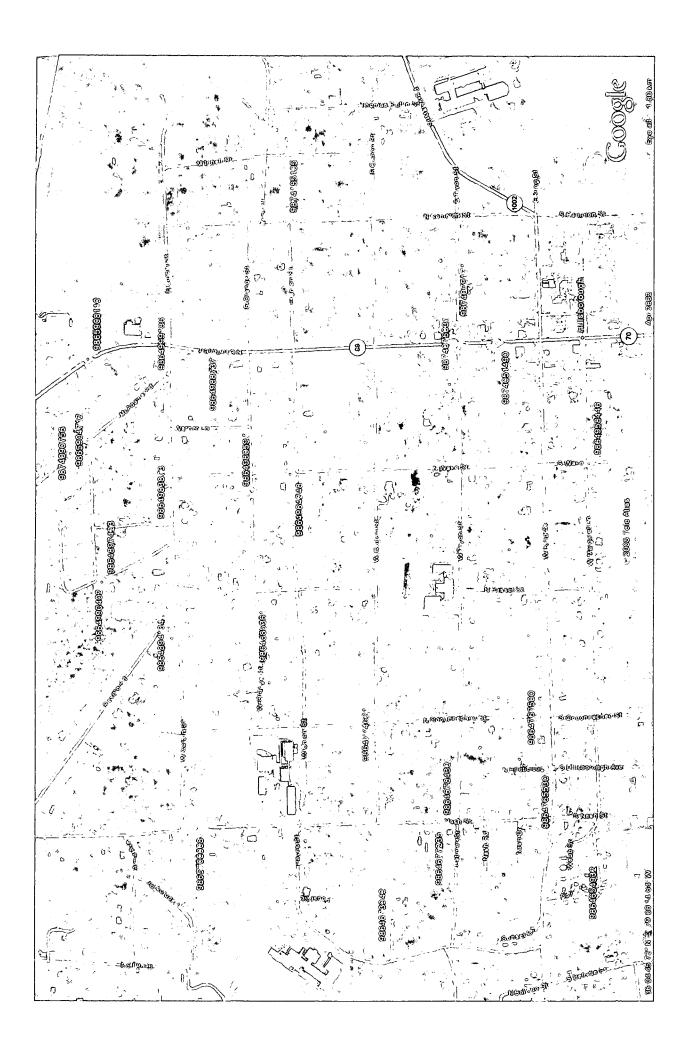
Appendix 1 – Maps

Showing Heirs' Property Parcels With Street Addresses

- 1. Orange County
- 2. Chapel Hill
- 3. Hillsboro
- 4. Selected blocks in Hillsboro
- 5. Cheeks Township









Appendix 2

Research in Other States

- 1. Report of Research by USDA in 2005: see Department of Agriculture, Rural Business-Cooperative Service, Rural Utility Service, "Heir Property", 72 Fed. Reg. 1190 (January 10, 2007), available at: http://bulk.resource.org/gpo.gov/register/2007/2007 01190.pdf
- 2. Alabama Agricultural Experiment Station, "Heir Property: Legal and Cultural Dimensions of Collective Ownership", Bulletin 667, May 2007, available at: http://www.ag.auburn.edu/aaes/communications/bulletins/bull-667.pdf

attachment #5

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Summary of Presentation by Anita S. Earls
North Carolina General Assembly Partition Sales Study Committee

January 9, 2009 Raleigh, North Carolina

A. Context

Nationally, estimates are that African-American land ownership has decreased from as much as 19 million acres in 1910 to 1.5 million acres in 1997. While there is no single explanation for this fact, it is certain that partition sales of land owned as heirs' property is one way in which land is transferred from African-American families to non-minority owners.

It is also true that nationally the average African-American family has about 60 percent of the income of an average white family and only 18 percent of the wealth of the average white family. Thus, there is a significant gap in the level of wealth between white and black families that goes well beyond the gap in family incomes. Because land ownership, including equity in a home, is a major component of non-financial assets for families, the loss of land can be a major contribution to the racial wealth gap that exists in this country.

B. Research on Heirs' Property in Orange County

At the request of the Orange County Office of Human Rights and Relations, the Southern Coalition for Social Justice investigated the extent to which land in that county is owned as heirs' property. Our primarily purpose was to learn whether there is a potential risk of land loss because of the ownership structure and whether such land loss would impact home ownership by minority families in the county. In a preliminary survey of register of deeds records and special proceedings files from January 2003 to October, 2008, we found:

- 1. Currently there are 475 parcels of heiars' property in Orange County.
- 2. Most of the parcels are less than ten acres in size, but eight are over 100 acres and another ten are between 80 and 100 acres in size.
- 3. The more rural areas of the county have, per capita, more heirs' property, but there are parcels held as heirs' property throughout the county.
- 4. The median tax value of heirs' property parcels is \$44,840; the average tax value is \$73,411. Over half of the parcels have tax values of less than \$50,000 and most parcels have tax values of less than \$100,000.
- 5. There are two main ways that families lose heirs' property through a sale: when the property is sold to pay debts of an co-tenant after their death and when one co-tenant seeks partition.
- 6. Examining over 600 special proceedings files, we found 51 cases in which parties sought to sell heirs' property, either in the administration of a decedent's estate or through a partition action.
- 7. The number of proceedings dealing with either partition sales or sales of heirs' property to satisfy the debts of an estate filed in 2007 and through October, 2008 was significantly higher than in prior years (24 of the 51 cases).
- 8. Where the file indicated that a commissioner was appointed, the Petitioner's attorney was almost always the commissioner. In one case the Petitioner, an attorney representing himself, was also the commissioner for the sale.



C. Two Case Studies of Partition Actions – New Hanover County

Sidberry Family, File No. 03 SP 0726

Two of 19 Sidberry heirs filed a partition action relating to property that had been in their family since 1871. The property consisted of 8.8 acres in Wilmington, New Hanover County near Market Street. It was described as "virtually undeveloped land in an area that has been developed for both commercial and residential purposes" in the pleadings. A 1911 will devised the property to the Sidberry and the Wallace children. However, the Wallace children have not been heard of since 1911. Nevertheless, through the partition action the property was sold for \$495,000 and \$254,652.47 was placed in a trust account with the clerk of court for the unknown heirs of the Wallace children. Before the remaining funds were distributed among the Sidberry heirs, who have been taking care of the property for the last 90 years, \$21,546 was given to the attorneys, \$3,000 to the commissioner, and \$49,500 for real estate commission. The Sidberrys originally sought to clarify that one of them could place a trailer on the property. Today they believe they have been dispossessed of their rightful inheritance and have retained counsel to seek to recover the amount placed in trust for the unknown heirs.

Freeman Beach, LLC v. Freeman Heirs, File No. 08 SP 1038

In dispute are approximately 180 acres of undeveloped waterfront property at the northern end of Carolina Beach. The original owner of the land was a man named Alexander Freeman. He is remembered today as a notable free black man during slavery times and an incredibly brilliant entrepreneur-agriculturist. Unlike many of his era, Alexander Freeman created a Will in 1854. Alexander's Will left the 185 acres he owned to his son, Robert Bruce Freeman. Upon Alexander's death, which is believed to be sometime around the beginning or during the Civil War, between 1860-1865, Robert Bruce Freeman became the owner in fee simple at the approximate age of 24.

During his life, Robert Bruce Freeman took two wives, Catherine Ann Davis and Lena Swain. In total, he fathered possibly 19 or 20 children between the two marriages. When Robert later died intestate in 1902, the property was divided between all of his children and his second wife.

In the 20th century, Freeman Beach was well-known as the beach, across from Seabreeze, where African-Americans could enjoy the ocean front. Present-day Freeman family members have many memories of their ancestors fishing from the beach and enjoying the natural beauty of the area. The City of Carolina Beach has converted 143 acres of the ocean-front beach to a park known as Freeman Park.

The partition action is filed by a developer, who claims to own approximately 72% interest in the land through what appears to have been a judgment on a defaulted loan in the 1940's by some of Robert Freeman's heirs, and through very recent purchases of other heirs' interests. The remaining family members are looking for a way to preserve something of their heritage and keep some portion of the land undeveloped.

The clerk appointed a guardian selected by the Petitioner, to represent the unknown heirs as well as known heirs, of Robert Bruce Freeman.

D. Recommendations

Based on our experience, we recommend that the Partition Sales Study Commission make the following crucial changes to North Carolina's Partition Law.

1. Require consideration of specific factors in determining whether partition in kind or sale of the land will be ordered.

Case law holds that tenants in common are entitled to actual partition so that they might enjoy their share. See, e.g., Kayann Properties, Inc. v. Cox, 268 N.C. 14, 149 S.E.2d 553 (1966). Moreover, partition in kind is to be favored over sale. Phillips v. Phillips, 37 N.C. App. 388, 246 S.E.2d 41, cert. denied, 295 N.C. 647, 248 S.E.2d 252 (1978). However, because N.C. Gen. Stat. §46-22 defines "substantial injury" solely in terms of the fair market value of each share, the practice is to ignore other injuries that might obtain from the sale. Land has always been considered unique, and the law has recognized non-economic ties to a specific piece of property as inherent to the rights of ownership. Parcels of land are not fungible, even if they have the same fair market value. Non-economic factors should be specified in the statute, including, but not limited to:

- Historical and cultural value of the land to the co-tenants
- Use of the property to sustain the livelihood of any co-tenant
- Whether there is a family homestead on the property
- Whether any co-tenant visited, invested in, cared for or contributed to the upkeep of the property.
- 2. Establish a statutory procedure for co-tenants who oppose a sale to buy-out other co-tenants that includes a court-obtained neutral appraisal.

Family members may be able to obtain sufficient funds to buy-out the petitioning party, but not be able to retain the land if there is a partition sale. In addition, a neutral party should obtain the appraisal to determine the buy-out price.

3. Eliminate opportunities for conflicts of interest.

The statute should specify that the petitioner's attorney should not be the commissioner for a sale, and the petitioner should not be allowed to choose a guardian for unknown heirs before the respondents have had an opportunity to appear in the case.

4. Increase the time to respond to a petition.

Respondents should have 30 days after service to respond to a Petition for Partition.

attachment #6



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

THE CENTER FOR CIVIL RIGHTS

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January 9, 2009

RECOMMENDATIONS TO THE PARTITION SALES STUDY COMMITTEE

Mark Dorosin Senior Attorney UNC Center for Civil Rights

As the Partition Sales Study Committee reviews the statutes governing partition sales in North Carolina and considers possible revisions to those statutes, the following substantive and procedural changes are proposed for the Committee's consideration:

1. Give Parties Opposed to Partition the Right to Purchase the Petitioner's Factional Interest ("Buyout Option")

Under current law, if the court determines that the property should be sold (rather than partitioned in kind), the entire property is offered at auction. In order to maintain their ownership interests, parties opposed to the partition must bid on the property as a whole, which is often impossible for low-wealth landowners or owners whose equity value in the land is limited by the fractional ownership of the tenancy in common.

A buyout option allows parties opposed to partition to purchase only the fractional portion of the petitioner's interest, and thereby retain their respective interests in the land, while also allowing the petitioner to realize the direct economic benefit of the fractional interest owned. This revision specifically addresses situations in which petitioners (including speculators or other strangers in interest) initiate the partition process with the intent of securing title to the entire property and dispossessing existing co-tenants.

2. Strengthen Existing Statutory Provisions Against Potential Conflicts of Interest

The North Carolina partition statutes provide that commissioners appointed by the court will oversee the partition process, and N.C.G.S. § 46-7 specifically states that commissioners be "disinterested." In many instances however, particularly in smaller and more rural communities, the petitioner's attorney also is appointed as the commissioner, and in some cases collects both attorney's fees and commissioner's fees.

While a dual appointment may not in and of itself constitute a conflict of interest, it contradicts both the language and intent of the existing statute and increases the appearance of conflict. Given the recognition of potential conflicts reflected in the current

statutory language, the fundamental property rights at issue in these matters, and the historical and emotional legacy often tied to heirs property, the statute should be amended to expressly state that legal counsel of any party in a partition action are ineligible to also serve a commissioner. Additionally, the statute also should enumerate certain classes of persons who should be prohibited from purchasing the property if it is sold, including the commissioners, legal counsel of any party, or appraisers retained during the partition process.

3. Prohibit the Assessment of Attorney's Fees Against Parties Opposed to Partition

Attorney's fees are frequently awarded in partition cases. These fees (as well as other costs associated with the action) are deducted from the proceeds of sale of the land before co-tenants are paid their proportional share. As such, parties opposed to the partition sale and who become dispossessed of their interest as a result of the partition sale are forced to subsidize the costs of their own loss. This injury is compounded by the fact that these properties often sell at below market values.

In light of these substantial inequities, the award of attorney's fees against the interests of any party that opposes partition should be eliminated.

allochment #7

Land Loss Prevention Project

411 West Chapel Hill Street, Suite 1104, Durham, NC 27701 * Mailing Address: P.O. Box 179, Durham, NC 27702 Office: 919-682-5969 / 800-672-5839 *Fax: 919-688-5596

Savonala Horne
Executive Director, Land Loss Prevention Project
Presentation to Partition Sales Study Committee
Room 421, Legislative Building – Raleigh, NC
Friday, January 9, 2009 -- 10:00 a.m.

RECOMMENDATIONS FOR MODIFYING NORTH CAROLINA'S PARTITION STATUTE

Enhance Notice Requirements

Institute requirements to enhance the probability that all individuals with an ownership interest in property receive notice by 1) requiring plaintiffs in partition actions to enumerate the efforts made to find the owners utilizing readily available sources and technology, including the Internet and 2) when service by publication is used, mandating the inclusion in the notice of both the property's street address as well as its legal description.

Given the fractionated nature of heirs' property, particularly as successive generations pass, it is both challenging and necessary to ensure that all cotenants are made aware of partition proceedings which could affect their interest in the property.

Provide Buyout Option for Partition Sale Opponents and a Neutral Appraisal

Allow partition opponents to buy out the petitioner's interest when a partition in kind is not possible.

Allowing a buyout balances the equities among all parties involved in the partition action: the petitioner is able to receive compensation in exchange for his/her interest in the property while the partition opponents are able to retain ownership.

The court should obtain a neutral appraisal of the property.

Prior to any ordered sale including that through a buyout, the court should obtain a neutral appraisal of the property and parties should be allowed to submit their own appraisals for consideration.

Enumerate Factors for Evaluating Actual Partition (Partition in Kind) vs. Partition Sale

Require the following factors to be taken into consideration when weighing the choice between actual partition and partition by sale:

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- (1) use of the property for the livelihood of any cotenant;
- (2) noneconomic uses and value of the property to the cotenants;
- (3) existence of a homestead on the property;
- (4) length of any familial retention of the property and the interest and ability of any cotenant to continue the retention;
- (5) length of time and the extent to which each cotenant resided at, took care of, or contributed to the upkeep of the property; and
- (6) extent to which each cotenant visited, spent time with, or provided care or companionship to the owners or residents of the property, and the extent and nature of any long-term relationship that existed between each cotenant and the owners or residents of the property.

Currently, the court can decline to divide the property if any of the parties to the partition action would be "substantially injured" by a division, which is defined in terms of whether any cotenant will experience a reduction in fair market value of their share of the property. See N.C. Gen. Stat. § 46-22. Looking at factors beyond market value would be consistent with the equitable nature of a partition proceeding. Henson v. Henson, 236 N.C. 429, 72 S.E.2d 873 (1952) (type of proceeding).

Provide Guidance on Assessment of Attorney's Fees

Sale opponents should be affirmatively shielded from the assessment of attorney's fees when a forced sale occurs.

Currently, the issue of the assessment and apportionment of reasonable attorney's fees is left to the court's discretion. See N.C. Gen. Stat. § 6-21(7). Affirmatively shielding partition sale opponents from the assessment of attorney's fees when a forced sale occurs would be a balanced approach, which recognizes that such dispossession is not a benefit for which one should pay.



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To: The Joint Legislative Partition Sales of Real Property Study Committee

From: Kim Crouch, Real Property Section of the North Carolina Bar Association David Ferrell, North Carolina Land Title Association

Re: Comments on Partition Sales of Real Property

Date: January 6, 2009

The current partition sales system has stood the test of time and should not be altered to favor any individual or group over another. It is an equitable and expeditious method for co-owners of property to resolve differences without expensive, protracted, adversarial litigation. This is true because partition is an absolute right without regard to percentage of ownership.

All parties are adequately protected by the current law because they may either institute or defend a partition action and all are entitled to participate in any public sale. Co-owners already have the right to offer privately to purchase other co-owners' interests or to purchase at public sale. The interests of any owner who is not joined in the proceeding are not affected by the proceeding.

Below are some additional reasons against modifying the current partition sales statute:

- Based on existing law, the partition proceeding gives preference to an
 actual division of the land so long as it can be done without causing
 substantial injury to any of the parties. If such a division cannot be
 accomplished, then and only then is a sale allowed.
- The current law regarding partition proceedings provides a fair and relatively inexpensive method for resolving these disputes.
- Modification of the present statute in a manner similar to that proposed by H1309 and S963 in the 2005 legislative session or to H1527 and H1588 in the 2007 legislative session would add a significant amount of unnecessary time and inefficiency to the process and prevent parties from exercising their rights.
- Modification to the statute along the lines proposed in the 2005 and 2007 legislative sessions would create significant additional costs to the parties such as: delays while appraisers are selected and testifying against each other in evidentiary hearings; additional attorneys' fees, appraisal fees, and loss of leisure or work time by parties being required to appear at court proceedings.

- Modification to the statute along the lines proposed in the 2005 and 2007 legislative sessions would convert a simple process into a complex process.
- Current law favors a public sale if an actual partition cannot be had. Public sales should be encouraged since public sales and a free market tend to be the ultimate arbiter of fair market value. Although, under current law, the Clerk may order a private sale, this only happens upon proof that the price is fair to all parties unless the parties all consent and even then the process is subject to upset bid. Fairness demands that every co-owner have an equal opportunity to buy or to sell and receive fair market value. This is always an option because any party may submit an upset bid.

In summary, the changes recently proposed would add more problems, delays and expense to the current partition proceeding process and unnecessarily burden family members. This issue is of great significance to property owners in North Carolina and we thank you for your time and attention to this matter.

attachment #9

(UNVERIFIED DATA) NC CIVIL CASE PROCESSING SYSTEM (VCAP) CASES ANALYSIS OF CASES WITH A PARTITIONS ISSUES

STATEWIDE (ALL COUNTIES)

!		FY2005/2006 F	 FY2006/2007 I	 FY2007/2008
1			CASES	CASES
	FILED	+ 118	 151 ۱ ^۰	 169
•	CS-CLOSED STATUS	1 81	81	21
•	DN-DENIED	01	11	01
	GW-GRANTED IN WHOLE OR PART	881	1111	- ,
	RE-RECORDED	21		331
FAFR:	DISPOSED	•	148	
	END ENDING	121		
•	FILED	575		
•	CS-CLOSED STATUS	71	· · ·	81
•	DN-DENIED	51	21	11
₩ .	GW-GRANTED IN WHOLE OR PART	•	185	2021
	ID-INVOLUNTARY DISMISSAL	8		26
PART:	PE-PENDING ORDER	0	0	1
PART:	RE-RECORDED	40	51	391
PART:	ST-STAYED (SYSTEM ENTERED)	1	0	01
PART:	VD-VOLUNTARY DISMISSAL/SETTLEMENT	132	155	155
PART:	WM-ABANDONED WITHDRAWN OR MOOT	3	91	14
PART:	DISPOSED	431	475	519
PART:	END ENDING	1,354	1,4391	1,477
REOS:	FILED	156	161!	163
REOS:	CS-CLOSED STATUS	4	6	21
REOS:	GW-GRANTED IN WHOLE OR PART	6	4	71
REOS:	RE-RECORDED	142	153	147
REOS:	WM-ABANDONED WITHDRAWN OR MOOT	0	0	2
REOS:	DISPOSED	152	163	158
REOS:	END ENDING	291	27	321

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Chapter 46.

Partition.

Article 1.

Partition of Real Property.

§ 46-1. Partition is a special proceeding.

Partition under this Chapter shall be by special proceeding, and the procedure shall be the same in all respects as prescribed by law in special proceedings, except as modified herein. (1868-9, c. 122, s. 33; Code, s. 1923; Rev., s. 2485; C.S., s. 3213.)

§ 46-2. Venue in partition.

The proceeding for partition, actual or by sale, must be instituted in the county where the land or some part thereof lies. If the land to be partitioned consists of one tract lying in more than one county, or consists of several tracts lying in different counties, proceedings may be instituted in either of the counties in which a part of the land is situated, and the court of such county wherein the proceedings for partition are first brought shall have jurisdiction to proceed to a final disposition of said proceedings, to the same extent as if all of said land was situate in the county where the proceedings were instituted. (1868-9, c. 122, s. 7; Code, s. 1898; Rev., s. 2486; C.S., s. 3214; Ex. Sess. 1924, c. 62, s. 1.)

§ 46-3. Petition by cotenant or personal representative of cotenant.

One or more persons claiming real estate as joint tenants or tenants in common or the personal representative of a decedent joint tenant, or tenant in common, when sale of such decedent's real property to make assets is alleged and shown as required by G.S. 28A-17-3, may have partition by petition to the superior court. (1868-9, c. 122, s. 1; Code, s. 1892; Rev., s. 2487; C.S., s. 3215; 1963, c. 291, s. 2; 1985, c. 689, s. 16.)

§ 46-3.1. Court's authority to make orders pending final determination of proceeding.

Pending final determination of the proceeding, on application of any of the parties in a proceeding to partition land, the court may make such orders as it considers to be in the best interest of the parties, including but not limited to orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, and to include the appointment of receivers pursuant to G.S. 1-502(6). (1981, c. 584, s. 1.)

§ 46-4. Surface and minerals in separate owners; partitions distinct.

When the title to the mineral interests in any land has become separated from the surface in ownership, the tenants in common or joint tenants of such mineral interests may have partition of the same, distinct from the surface, and without joining as parties the owner or owners of the surface; and the tenants in common or joint tenants of the surface may have partition of the same, in manner provided by law, distinct from the

mineral interest and without joining as parties the owner or owners of the mineral interest. In all instances where the mineral interests and surface interest have thus become separated in ownership, the owner or owners of the mineral interests shall not be compelled to join in a partition of the surface interests, nor shall the owner or owners of the surface interest be compelled to join in a partition of the mineral interest, nor shall the rights of either owner be prejudiced by a partition of the other interests. (1905, c. 90; Rev., s. 2488; C.S., s. 3216.)

§ 46-5. Petition by judgment creditor of cotenant; assignment of homestead.

When any person owns a judgment duly docketed in the superior court of a county wherein the judgment debtor owns an undivided interest in fee in land as a tenant in common, or joint tenant, and the judgment creditor desires to lay off the homestead of the judgment debtor in the land and sell the excess, if any, to satisfy his judgment, the judgment creditor may institute before the clerk of the court of the county wherein the land lies a special proceeding for partition of the land between the tenants in common, making the judgment debtor, the other tenants in common and all other interested persons parties to the proceeding by summons. The proceeding shall then be in all other respects conducted as other special proceedings for the partition of land between tenants in common. Upon the actual partition of the land the judgment creditor may sue out execution on his judgment, as allowed by law, and have the homestead of the judgment debtor allotted to him and sell the excess, as in other cases where the homestead is allotted under execution. The remedy provided for in this section shall not deprive the judgment creditor of any other remedy in law or in equity which he may have for the enforcement of his judgment lien. (1905, c. 429; Rev., s. 2489; C.S., s. 3217.)

§ 46-6. Unknown parties; summons and representation.

If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. If after such general notice by publication any person interested in the premises and entitled to notice fails to appear, the court shall in its discretion appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented. (1887, c. 284; Rev., s. 2490; C.S., s. 3218.)

§ 46-7. Commissioners appointed.

The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in more than one county, then the court may appoint such additional commissioners as it may deem necessary from counties where the land lies other than the

county where the proceedings are instituted. (1868-9, c. 122, s. 1; Code, s. 1892; Rev., s. 2487; C.S., s. 3219; Ex. Sess. 1924, c. 62, s. 2.)

§ 46-7.1. Compensation of commissioners.

The clerk of the superior court shall fix the compensation of commissioners for the partition or division of lands according to the provisions of G.S. 1-408. (1949, c. 975; 1953, c. 48.)

§ 46-8. Oath of commissioners.

The commissioners shall be sworn by a magistrate, the sheriff or any deputy sheriff of the county, or any other person authorized to administer oaths, to do justice among the tenants in common in respect to such partition, according to their best skill and ability. (1868-9, c. 122, s. 2; Code, s. 1893; Rev., s. 2492; C.S., s. 3220; 1945, c. 472; 1971, c. 1185, s. 8.)

§ 46-9. Delay or neglect of commissioner penalized.

If, after accepting the trust, any of the commissioners unreasonably delay or neglect to execute the same, every such delinquent commissioner shall be liable for contempt and may be removed, and shall be further liable to a penalty of fifty dollars (\$50.00), to be recovered by the petitioner. (1868-9, c. 122, s. 10; Code, s. 1901; Rev., s. 2498; C.S., s. 3221.)

§ 46-10. Commissioners to meet and make partition; equalizing shares.

The commissioners, who shall be summoned by the sheriff, must meet on the premises and partition the same among the tenants in common, or joint tenants, according to their respective rights and interests therein, by dividing the land into equal shares in point of value as nearly as possible, and for this purpose they are empowered to subdivide the more valuable tracts as they may deem best, and to charge the more valuable dividends with such sums of money as they may think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition. (1868-9, c. 122, s. 3; Code, s. 1894; 1887, c. 284, s. 2; Rev., s. 2491; C.S., s. 3222; 1995, c. 379, s. 14(b).)

§ 46-11. Owelty to bear interest.

The sums of money due from the more valuable dividends shall bear interest until paid. (1868-9, c. 122, s. 8; Code, s. 1899; Rev., s. 2496; C.S., s. 3223.)

§ 46-12. Owelty from infant's share due at majority.

When a minor to whom a more valuable dividend shall fall is charged with the payment of any sum, the money shall not be payable until such minor arrives at the age of 18 years, but the general guardian, if there be one, must pay such sum whenever assets shall come into his hands, and in case the general guardian has assets which he did not so apply, he shall pay out of his own proper estate any interest that may have accrued in

consequence of such failure. (1868-9, c. 122, s. 9; Code, s. 1900; Rev., s. 2497; C.S., s. 3224; 1971, c. 1231, s. 1.)

§ 46-13. Partition where shareowners unknown or title disputed; allotment of shares in common.

If there are any of the tenants in common, or joint tenants, whose names are not known or whose title is in dispute, the share or shares of such persons shall be set off together as one parcel. If, in any partition proceeding, two or more appear as defendants claiming the same share of the premises to be divided, or if any part of the share claimed by the petitioner is disputed by any defendant or defendants, it shall not be necessary to decide on their respective claims before the court shall order the partition or sale to be made, but the partition or sale shall be made, and the controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding. If two or more tenants in common, or joint tenants, by petition or answer, request it, the commissioners may, by order of the court, allot their several shares to them in common, as one parcel, provided such division shall not be injurious or detrimental to any cotenant or joint tenant. (1868- 9, c. 122, s. 3; Code, s. 1894; 1887, c. 284, ss. 2, 4; Rev., ss. 2491, 2511; C.S., s. 3225; 1937, c. 98.)

§ 46-14. Judgments in partition of remainders binding on parties thereto.

Where land is conveyed by deed, or devised by will, upon contingent remainder, executory devise, or other limitation, any judgment of partition rendered in an action or special proceeding in the superior court authorizing a division or partition of said lands, and to which the life tenant or tenants, and all other persons then in being, or not in being, take such land as if the contingency had then happened, are parties, and those unborn being duly represented by guardian ad litem, such judgment of partition authorizing division or partition of said lands among the respective tenants and remaindermen or executory devisees, will be valid and binding upon all parties thereto and upon all other persons not then in being. (1933, c. 215, s. 1; 1959, c. 1274, s. 1.)

§ 46-15. Repealed by Session Laws 1959, c. 879, s. 14.

§ 46-16. Partial partition; balance sold or left in common.

In all proceedings under this Chapter actual partition may be made of a part of the land sought to be partitioned and a sale of the remainder; or a part only of any land held by tenants in common, or joint tenants, may be partitioned and the remainder held in cotenancy. (1887, c. 214, s. 1; Rev., s. 2506; C.S., s. 3227.)

§ 46-17. Report of commissioners; contents; filing.

The commissioners, within a reasonable time, not exceeding 60 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to

each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in his discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property. (1868-9, c. 122, s. 5; Code, s. 1896; Rev., s. 2494; C.S., s. 3228; 1949, c. 16.)

§ 46-17.1. Dedication of streets.

Upon motion of any party or the commissioners appointed to make division, the clerk may authorize the commissioners to propose and report the dedication of such portions of the land as are necessary as a means of access to any share, or is otherwise advisable for public or private highways, streets or alleys, and such proposal shall be acted upon by the clerk as a part of the report and, if approved, shall constitute a dedication. No interest of a minor or other person under disability shall be affected thereby until such dedication is approved by a judge of the superior court. (1969, c. 45.)

§ 46-18. Map embodying survey to accompany report.

The commissioners are authorized to employ the county surveyor or, in his absence or if he be connected with the parties, some other surveyor, who shall make out a map of the premises showing the quantity, courses and distances of each share, which map shall accompany and form a part of the report of the commissioners. (1868-9, c. 122, s. 4; Code, s. 1895; Rev., s. 2493; C.S., s. 3229.)

§ 46-19. Confirmation and impeachment of report.

- (a) If no exception to the report of the commissioners is filed within 10 days, the same shall be confirmed. Any party after confirmation may impeach the proceedings and decrees for mistake, fraud or collusion by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby.
- (b) If an exception to the report of commissioners is filed, the clerk shall do one of the following:
 - (1) Confirm the report;
 - (2) Recommit the report for correction or further consideration;
 - (3) Vacate the report and direct a reappraisal by the same commissioners; or
 - (4) Vacate the report, discharge the commissioners, and appoint new commissioners to view the premises and make a partition of them.
- (c) Appeal from the clerk to superior court of an order of confirmation of the report of commissioners is governed by G.S. 1-301.2 except that the judge may take only the actions specified in subsection (b) of this section and may not adjudge a partition of the land different from that made by the commissioners. (1868-9, c. 122, s. 5; Code, s. 1896; Rev., s. 2494; C.S., s. 3230; 1947, c. 484, s. 2; 1999-216, s. 11.)

§ 46-20. Report and confirmation enrolled and registered; effect; probate.

Such report, when confirmed, together with the decree of confirmation, shall be enrolled and certified to the register of deeds and registered in the office of the county where such real estate is situated, and shall be binding among and between the claimants, their heirs and assigns. It shall not be necessary for the clerk of court to probate the certified papers required to be registered by this section. (1868-9, c. 122, s. 6; Code, s. 1897; Rev., s. 2495; C.S., s. 3231; 1965, c. 804.)

§ 46-21. Clerk to docket owelty charges; no release of land and no lien.

In case owelty of partition is charged in favor of certain parts of said land and against certain other parts, the clerk shall enter on the judgment docket the said owelty charges in like manner as judgments are entered on said docket, persons to whom parts are allotted in favor of which owelty is charged being marked plaintiffs on the judgment docket, and persons to whom parts are allotted against which owelty is charged being marked defendants on said docket; said entry on said docket shall contain the title of the special proceeding in which the land was partitioned, and shall refer to the book and page in which the said special proceeding is recorded; when said owelty charges are paid said entry upon the judgment docket shall be marked satisfied in like manner as judgments are cancelled and marked satisfied; and the clerk shall be entitled to the same fees for entering such judgment of owelty as he is entitled to for docketing other judgments: Provided, that the docketing of said owelty charges as hereinbefore set out shall not have the effect of releasing the land from the owelty charged in said special proceeding: Provided, any judgment docketed under this section shall not be a lien on any property whatever, except that upon which said owelty is made a specific charge. (1911, c. 9, s. 1; C.S., s. 3232.)

Article 2.

Partition Sales of Real Property.

§ 46-22. Sale in lieu of partition.

- (a) The court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested parties.
- (b) "Substantial injury" means the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if an in-kind division would result in material impairment of the cotenant's rights.
- (c) The court shall specifically find the facts supporting an order of sale of the property.
- (d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section. (1868-9, c. 122, ss. 13, 31; Code, ss. 1904, 1921; Rev., s. 2512; C.S., s. 3233; 1985, c. 626, s. 1.)

§ 46-23. Remainder or reversion sold for partition; outstanding life estate.

The existence of a life estate in any land shall not be a bar to a sale for partition of the remainder or reversion thereof, and for the purposes of partition the tenants in common or joint tenants shall be deemed seized and possessed as if no life estate existed. But this shall not interfere with the possession of the life tenant during the existence of his estate. (1887, c. 214, s. 2; Rev., s. 2508; C.S., s. 3234.)

§ 46-24. Life tenant as party; valuation of life estate.

In all proceedings for partition of land whereon there is a life estate, the life tenant may join in the proceeding and on a sale the interest on the value of the share of the life tenant shall be received and paid to such life tenant annually; or in lieu of such annual interest, the value of such share during the probable life of such life tenant shall be ascertained and paid out of the proceeds to such life tenant absolutely. (1887, c. 214, s. 3; Rev., s. 2509; C.S., s. 3235.)

§ 46-25. Sale of standing timber on partition; valuation of life estate.

When two or more persons own, as tenants in common, joint tenants or copartners, a tract of land, either in possession, or in remainder or reversion, subject to a life estate, or where one or more persons own a remainder or reversionary interest in a tract of land, subject to a life estate, then in any such case in which there is standing timber upon any such land, a sale of said timber trees, separate from the land, may be had upon the petition of one or more of said owners, or the life tenant, for partition among the owners thereof, including the life tenant, upon such terms as the court may order, and under like proceedings as are now prescribed by law for the sale of land for partition: Provided, that when the land is subject to a life estate, the life tenant shall be made a party to the proceedings, and shall be entitled to receive his or her portion of the net proceeds of

sales, to be ascertained under the mortality tables established by law: Provided further, that prior to a judgment allowing a life tenant to sell the timber there must be a finding that the cutting is in keeping with good husbandry and that no substantial injury will be done to the remainder interest. (1895, c. 187; Rev., s. 2510; C.S., s. 3236; 1949, c. 34; 1975, c. 476, s. 1; 1997-133, s. 3.)

§ 46-26. Sale of mineral interests on partition.

In case of the partition of mineral interests, in all instances where it is made to appear to the court that it would be for the best interests of the tenants in common, or joint tenants, of such interests to have the same sold, or if actual partition of the same cannot be had without injury to some or all of such tenants (in common), then it is lawful for and the duty of the court to order a sale of such mineral interests and a division of the proceeds as the interests of the parties may appear. (1905, c. 90, s. 2; Rev., s. 2507; C.S., s. 3237.)

§ 46-27. Sale of land required for public use on cotenant's petition.

When the lands of joint tenants or tenants in common are required for public purposes, one or more of such tenants, or their guardian for them, may file a petition verified by oath, in the superior court of the county where the lands or any part of them lie, setting forth therein that the lands are required for public purposes, and that their interests would be promoted by a sale thereof. Whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of such lands, or so much thereof as may be necessary. The expenses, fees and costs of this proceeding shall be paid in the discretion of the court. Mediator fees and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B. (1868-9, c. 122, s. 16; Code, s. 1907; Rev., s. 2518; C.S., s. 3238; 1949, c. 719, s. 2; 2005-67, s. 4.)

§ 46-28. Sale procedure.

- (a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General Statutes.
- (b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S.

46-28.1(a)(2)a. and b. (1868-9, c. 122, ss. 13, 31; Code, ss. 1904, 1921; Rev., s. 2512; C.S., s. 3239; 1949, c. 719, s. 2; 1985, c. 626, s. 2; 1987, c. 282, s. 7.)

§ 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:
 - 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 a., b., or c. of subsection (a)(2), 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.
- (e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes. (1977, c. 833, s. 1; 1985, c. 626, ss. 3-7; 2001-271, s. 19.)

§ 46-28.2. When bidder may purchase.

After the order of confirmation becomes final and effective, the successful bidder may immediately purchase the property. (1977, c. 833, s. 3; 1985, c. 626, s. 8.)

§ 46-29. Repealed by Session Laws 1949, c. 719, s. 2.

§ 46-30. Deed to purchaser; effect of deed.

The deed of the officer or person designated to make such sale shall convey to the purchaser such title and estate in the property as the tenants in common, or joint tenants, and all other parties to the proceeding had therein. (1868-9, c. 122, ss. 13, 31; Code, ss. 1904, 1921; Rev. s. 2512; C.S., s. 3241; 1949, c. 719, s. 2.)

§ 46-31. Clerk not to appoint self, assistant or deputy to sell real property.

No clerk of the superior court shall appoint himself or his assistant or deputy to make sale of any property in any proceeding before him. (1868-9, c. 122, s. 15; Code, s. 1906; 1899, c. 161; Rev., s. 2513; C.S., s. 3242; 1949, c. 719, s. 2.)

§ 46-32. Repealed by Session Laws 1949, c. 719, s. 2.

§ 46-33. Shares in proceeds to cotenants secured.

At the time that the order of confirmation becomes final, the court shall secure to each tenant in common, or joint tenant, his ratable share in severalty of the proceeds of sale. (1868-9, c. 122, s. 31; Code, s. 1921; Rev., s. 2513; C.S., s. 3244; 1977, c. 833, s. 2.)

§ 46-34. Shares to persons unknown or not sui juris secured.

When a sale is made under this Chapter, and any party to the proceedings be an infant, non compos mentis, imprisoned, or beyond the limits of the State, or when the name of any tenant in common is not known, it is the duty of the court to decree the share of such party, in the proceeds of sale, to be so invested or settled that the same may be secured to such party or his real representative. (1868-9, c. 122, s. 17; Code, s. 1908; 1887, c. 284, s. 3; Rev., s. 2516; C.S., s. 3245.)

Article 4.

Partition of Personal Property.

§ 46-42. Personal property may be partitioned; commissioners appointed.

When any persons entitled as tenants in common, or joint tenants, of personal property desire to have a division of the same, they, or either of them, may file a petition in the superior court for that purpose; and the court, if it think the petitioners entitled to relief, shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within 20 days after notice of their appointment to divide such property as nearly equally as possible among the tenants in common, or joint tenants. (1868-9, c. 122, s. 27; Code, s. 1917; Rev., s. 2504; C.S., s. 3253.)

§ 46-43. Report of commissioners.

The commissioners shall report their proceedings under the hands of any two of them, and shall file their report in the office of the clerk of the superior court within five days after the partition was made. (1868-9, c. 122, s. 28; Code, s. 1918; Rev., s. 2505; C.S., s. 3254.)

§ 46-43.1. Confirmation; impeachment.

If no exception to the report of the commissioners making partition is filed within 10 days the report shall be confirmed. Any party, after confirmation, shall be allowed to impeach the proceeding for mistake, fraud or collusion, by petition in the cause, but innocent purchasers for full value and without notice shall not be affected thereby. (1953, c. 24.)

§ 46-44. Sale of personal property on partition.

If a division of personal property owned by any persons as tenants in common, or joint tenants, cannot be had without injury to some of the parties interested, and a sale thereof is deemed necessary, the court shall order a sale to be made as provided in Article 29A of Chapter 1 of the General Statutes. (1868-9, c. 122, s. 29; Code, s. 1919; Rev., s. 2519; C.S., s. 3255; 1949, c. 719, s. 2.)

§§ 46-45 through 46-46. Repealed by Session Laws 1949, c. 719, s. 2.

attachment #11

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2009

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BILL DRAFT 2009-RNz-1 [v.3] (01/06)

D

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION) 1/7/2009 3:43:16 PM

Short Title:	Response to Summons in Partitions Cases.	(Public)
Sponsors:	Representative Stam.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PERIOD TO RESPOND TO A SUMMONS IN A PARTITION CASE FROM 10 DAYS TO 30 DAYS, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-394 reads as rewritten:

"§ 1-394. Contested special proceedings; commencement; summons.

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION 2. Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"§ 46-2.1 Summons.

In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394."

SECTION 3. This act becomes effective October 1, 2009, and applies to partition proceedings filed on or after that date.

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attackment #12

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION BEFORE THE CLERK

WAKE COUNTY

MARY N. KING, widow; JAMES A.

KING, III and wife, JOY KING,
ELIZABETH ZIEGLER OSBORNE,
a free trader; CHARLES D. KING
and wife, REBECCA KING;
WILLIAM MacNIDER TROTT and
wife, JEAN L. TROTT; ELIZABETH
NORRIS OETTINGER,
DAVID CRANDALL HARMON, and
wife CAROL HARMON;

Petitioners,

PETITION FOR PARTITION BY PRIVATE SALE OF REAL ESTATE

EDWARD MILTON BROUGHTON, and wife SUSAN BROUGHTON; JOHN NORRIS BROUGHTON, and wife DEBORAH BROUGHTON RAYMOND W. CATLETTE, Jr., unmarried; DORIS R. COLES, widow; EMMA HARMON CROMARTIE, and husband RICHARD L. CROMARTIE; WILLA MCKIMMON DICKENS, and husband WILLIAM DICKENS; JULIA MCMILLAN FALLON, and husband DENIS G. FALLON; JOHN C. HARMON, III, and wife CYNTHIA D. HARMON; BARBARA M. HAYO, Trustee; DR. GARLAND C. KING, and wife JANICE KING;) JULIE KING LEE and husband THOMAS LEE; CAROL STREET MCMILLAN LEWIS, and husband STEVEN C. LEWIS, unmarried; ARTHUR MCKIMMON, II, widower; A. ALEXANDER MCMILLAN, JR., unmarried; ALEXANDRA MCMILLAN MORDECAI, unmarried NANCY MARSHALL MANN, and husband JAMES H. MANN; AMANDA MCMILLAN MELTON, unmarried; SUE MARSHALL METTS, widow; VIRGINIA HULL MCKIMMON NOELKE, and husband WALTER NOELKE; AVERY G. NORRIS, JR., and wife SHARON NORRIS: DONALD O. NORRIS, and wife CONNIE NORRIS; ELIZABETH M. NORRIS, widowed; FLORA C. NORRIS, unmarried; PETER RAYMOND NORRIS, and wife MARTHA H. NORRIS; RICHARD L. NORRIS, and wife BONNIE NORRIS; "HAPPY" LOGAN GEARY OETTINGER, widow;

MARGARET LOGAN OETTINGER, unmarried; LAURA ANN BROUGHTON RUSSELL, and husband SAMUEL REID RUSSELL, III; MARY ALLEN OETTINGER WESTRA,

LEONARD EDWARD WHEELER, JR, and wife

and husband GARY WESTRA;

ELEANOR M. WHEELER;)
JANE S. COLES)
WILLIAM HENRY WEED CRAWFORD, III)
and wife JUDITH COPELAND CRAWFORD)
NANCY CRAWFORD GRAY and husband)
WAYNE GRAY, WALTER B. CRAWFORD unmarried)
CAROL STEPHENSON CRAWFORD MARSHBURN)
and husband ROBERT MARSHBURN)
MATT NORRIS CRAWFORD and wife)
DEBORAH HUDSON CRAWFORD)
)
Respondents.)

Petitioners, complaining of the Respondents, allege and say:

- 1. Petitioners are all tenants in common with Respondents to land located in White Oak Township, Town of Apex, Wake County, North Carolina as will appear more fully hereafter. All petitioners and respondents are of full age and capacity and intermarried as set forth in the caption, except as stated hereafter.
- 2. This petition is brought pursuant to G.S. 46-1 eq seq. and G.S. 46-22 et seq. for a partition by private sale of real property.
- 3. The parties are tenants in common (and spouses of tenants in common) to land in the Town of Apex, White Oak Township, Wake County, described as follows:

3.67 acres, more or less as shown on a map entitled, "Apex First Development, LLC and Jessie A. Norris, Heirs" by BBM Associates dated January 21, 2006 and bounded on the northeast by Apex First Development, LLC (Old Mill Drive) and Portrait Homes Old Mill Village, LLC, on the northwest by Laura Duncan Road, on the southwest by Cary Oil Company and Doris S. Denning Heirs, Center Park Subdivision and Ronald Crabtree; bounded on the southeast by Center Heights Subdivision and A.F. Betts Heirs. And described as follows:

BEGINNING at a point where the southern right-of-way of Old Mill Drive intersects the eastern right-of-way Laura Duncan Road; thence with the right-of-way of Old Mill Drive the following courses and distances: South 64 degrees 09 minutes 12 seconds East 128.39 feet to a point; thence a curve to the right with a chord bearing of South 52 degrees 34 minutes 19 seconds East and chord distance of 188.72 feet; thence continuing a curve to the right with a chord bearing South 43 degrees 38 minutes 20 seconds East and a chord distance of 43.44 feet; thence South 40 degrees 59 minutes 25 seconds East 236.26 feet to a point; thence South 40 degrees 59 minutes 25 seconds East 5.14 feet to a point; thence leaving said right-of-way South 40 degrees 49 minutes 40 seconds East 452.19 feet to a iron stake; thence with the line of Tract D South 23 degrees 21 minutes 30 seconds West 67.82 feet to a point; thence North 66 degrees 38 minutes 27 seconds East 55.00 feet to the southeastern corner for Tract D; thence in a southeast direction approximately 15 feet to a point which is the northern corner of Center Heights Subdivision (Book of Maps 1996, Page 685, Wake County Registry); thence with Center Heights Subdivision South 22 degrees 15 minutes 31 seconds West 155.75 feet to an existing iron pipe, a corner of Lots 3 and 4; thence along the line of Ronald L. Crabtree (Book 6103, Page 861, Wake County Registry) North 40 degrees 52 minutes 27 seconds West 564.80 feet to a point; thence with the line of Center Park Subdivision (Book of Maps 1995, Page 774, Wake County Registry) North 22 degrees 05 minutes 22 seconds East 100.34 feet to a point which is a northeast corner of Cary Oil Company and Doris S. Denning Heirs; thence with their line North 40 degrees 49 minutes 40 seconds West 568.23 feet; thence North 45 degrees 25 minutes 21 seconds West 129.04 feet; thence North 50 degrees 58

minutes 00 seconds West 36.87 feet to a point; thence North 57 degrees 23 minutes 29 seconds West 41.45 feet to a point; then with the eastern right-of-way of Laura Duncan Road; thence with said right-of-way North 25 degrees 14 minutes 13 seconds East 42.37 feet to the point and place of BEGINNING, containing 3.38 acres, more or less.

b. Tracts A containing 0.200 acres and D containing 0.1087 acres on said map are part of the lands described and are to be dedicated to the Town of Apex as public road rights-of-way.

A railroad easement traversing the property from Jesse Allen Norris to the Cape Fear & Northern Railroad is recorded in Book 147, Page 669, Wake County Registry and was abandoned by Declaration of CSX Transportation, Inc recorded in Book 6697 page 443, Wake County Registry. A 30' easement for Public Service of North Carolina (gas) is within the area of the abandoned railroad easement. See Book of Maps 1987, Page 1049 for the northeastern line of the described property.

4. That the interest of the parties in the subject property as well as their marital status and address are as follows:

	NAME OF HEIR	INTEREST	SPOUSE	<u>ADDRESS</u>
A.	Carol Street McMillan Lewis	3096 453600	Steven C. Lewis	3304 Barnstable Court Raleigh, NC 27612 919 881-0318 carol@stonagency.net
B.	Julia McMillan Fallon	3096 453600	Denis G. Fallon	3310 Gordon Drive Blacksburg, VA 25060 540 951-3888 jfal@adelphia.net
C.	Amanda McMillan Melton	3096 453600	(unmarried)	601 Citrus Court Ponte Verdra Beach FL 32082 904 280-7847 amelton1234@yahoo.com
D.	Alexandra McMillan Mordecai	3096 453600	Samuel F. Mordecai, Jr.	3005 Glen Burnie Dr. Raleigh, NC 27607 919 787-9241 919 801-2041 fourmordecais@nc.rr.com
E.	A. Alexander McMillan, Jr.	3096 453600	(unmarried)	159 Lake Ellen Drive Chapel Hill, NC 27514 919 673-0626 amci42572@aol.com
F.	Claudius Augustus Street, Jr.	15480 453600	Mary Jane English Street	192 Westridge Road Advance, NC 27006 336 998-8416 336 231-8256

				800 489-0492 Fax: 336 998-7221 gusstreet@yadtel.net
G.	Mary Norris King	38880 453600	(unmarried)	1409 Hathaway Road Raleigh, NC 27608
Н.	James A. King II	<u>6480</u> 453600	Joy King	3408 Huckabay Circle Raleigh, NC 27612 249-1002
I.	Dr. Garland C. King	6480 453600	Janice King	723 Murphy Highway Franklin, NC 28734
J.	Julie King Lee	<u>6480</u> 453600	Thomas Lee	1106 Carey Road Kinston, NC 28504
K	Charles D. King	64 <u>80</u> 453600	Rebecca King	2525 York Road Raleigh, NC 27608 249-1003
L.	John C. Harmon, III	10320 453600	Cynthia D. Harmon	9 Devonshire Dr. Albany, NY 12205 518-869-5709 charmon1@nycap.rr.com
М.	Elizabeth Harmon Osborne, a free trader	10320 453600	Separation from Michael Osborne 1410 Grappenhall Apex, NC 27502	5448 Apex Peakway #340 Apex, NC 27502 (w) 387-4450 (h) 372-1824 bezig51@nc.rr.com
N.	David Crandall Harmon	10320 453600	Carol Harmon	12831 Climbing Ivy Dr. Germantown, MD 20874 david.c.Harmon@verizon.net (w) 202-395-6831 (h) 301-972-1417
O.	Emma Harmon Cromartie	<u>30960</u> 453600	Richard L. Cromartie	155 Ocean Lake Dr. Apt. 509 Key Biscayne, FL 33149 305-361-1844
P	Elizabeth M. Norris	<u>13452</u> 453600	(widowed)	4714 Ludwell Branch Ct. Raleigh, NC 27612 tel# 787-2616 fax# 786-0648

Q.	Laura Ann Broughton Russell	<u>4484</u> 453600	Samuel Reid Russell, III	3408 Churchhill Rd Raleigh, NC tel# 787-1319 broughtonrussell@aol.com
R.	Edward Milton Broughton	4484 453600	Susan Broughton	12 Partridge Run West Windsor, NJ 08550 tel# 609-275-2988
S.	John Norris Broughton	<u>4484</u> 453600	Deborah Broughton	609 Lange Court Libertyville, IL 60048 tel#847-816-0616
T.	Barbara M. Hayo	<u>28320</u> 453600	Trustee	319 Lafitte Rd. Summerland Key, FL 33042 tel# 305-872-9150 fax#305-296-4634 bhayo@historictours.com
U.	Avery G. Norris, Jr.	10452 453600	Sharon Norris	2507 Younts Road Indian Trail, NC 29482 tel# 704-882-9428
V.	Donald O. Norris	10452 453600	Connie Norris	4103 Smokey Pines Court, Ft. Pierce, FL 34951 (h) 772-464-3411 (o/f) 772-461-9645
W.	Richard L. Norris	10452 453600	Bonnie Norris	4615 Secret River Trace Port Orange, FL 32119 tel# 386-761-5102
Χ.	Peter Raymond Norris	<u>56160</u> 453600	Martha H. Norris	2816 Ridgemore Rd. N.W., Atlanta GA 30318 tel# 404-355-8901 marthahnorris@mindspring.com
Y.	Flora C. Norris	33696 453600	(unmarried)	513 E. Whitaker Mill Rd Room 153A Station 2 Raleigh, NC 27608-2348
Z.	Raymond W. Catlette, Jr.	14040 453600	(unmarried)	PO Box 8672 Incline Village, NV 89452 tel# 775-772-2229 rwcat@yahoo.com
AA.	Leonard Edward Wheeler, Jr.	8424 453600	Eleanor M. Wheeler	521 Seminole Ave. Eustis, FL 32726 tel#352-483-9555 hotflash521@aol.com

BB.	Doris R. Coles	<u>6300</u> 453600	(widow)	4625 Cloverfield Farm PO Box 72 Keswick, VA 22947 tel# 434-293-7022
CC.	Sue Marshall Metts	837 <u>0</u> 453600	(widow)	423 Sylvan Lane Wilmington, NC 28409 910-452-2451
DD.	Nancy Marshall Mann	8370 453600	James H. Mann	3705 Reston Court Wilmington, NC 28403 910-799-1154
EE.	Arthur McKimmon, II	<u>4590</u> 453600	(widower)	Apt. 8302 Magnola Glen 5215 Creedmoor Road Raleigh, NC 27612
FF.	William MacNider Trott	4590 453600	Jean L. Trott	3348 Alleghany Drive Raleigh, NC 27609 tel#782-0583 Atty bus. address: 3101 Glenwood Ave Raleigh, NC 27612 tel#782-6860 fax#782-6753 wmt@yhm.com
GG.	Kate McKimmon Howell	4590 453600	(widow)	1305 Diehl Street Raleigh, NC
НН.	Willa McKimmon Dickens	2295 453600	William Dickens	129 Church Street Enfield NC 27823 tel#919-807-7217 fax#807-7169
II.	Virginia Hull McKimmon Noelke	<u>2295</u> 453600	Walter Noelke	2501 W. Avenue J. San Angelo, TX 76901 325-949-2680
JJ.	"Happy" Logan Geary Oettinger	10320 453600	(widow)	Stoneybrook Assisted Living, Apt. 102 4650 S. West Hollyhock Circle Corvallis, Oregon 97333 Tel:425-269-4224 POA: Reu Elizabeth Oettinger
KK.	Margaret Logan Oettinger	<u>6880</u> 453600	unmarried	9920 NE 119 St. Kirkland, WA 98034-4244 Tel: 425-820-1974

				m_oettinger@yahoo.com
LL.	Rev. Elizabeth "Liz" Norris Oettinger	<u>6880</u> 453600	unmarried	3323 SW Chintimini Ave. Corvallis, OR 97333 elizabethoettinger@msn.com Tel: 541-670-6400
MM.	Mary Allen Oettinger Westra	<u>6880</u> 453600	Gary Westra	212 Windsong Road, Wilmington, NC 28411. mowestra@yahoo.com Tel: 910-681-1400
NN.	Jane S. Coles	6300 453600	(widow)	Frances Coles Sebring (daughter & POA) Tel: 434-971-8800 (o) 434-971-4764 (fax) dacolz@earthlink.net
00.	William "Bill" Henry Weed Crawford, III	3672 453600	Judith Copeland Crawford	200 James Mill Lane Williamsburg, VA 23185 Tel: 757-565-1170 kilduck@widomaker.com
PP.	Nancy Crawford Gray	3672 453600	Wayne Gray	1202 Anne Street Henderson, NC 27536 Tel: 252-492-5675 unitedwayvance@vance.net
QQ.	Walter B. Crawford	3672 453600	unmarried	3607 Harrison Road Kinston, NC 28504 Tel: 252-527-0547 crawfow2@aol.com
RR.	Carol Stephenson Crawford Marshburn	3672 453600	Robert Marshburn	11509 N. Monticello Dr. Knoxville, TN 37034 (865) 966-1254 (865) 567-4037 (854) 539-8628 (wk) forgetwhat@aol.com
SS.	Matt Norris Crawford	<u>3672</u> 453600	Deborah Hudson Crawford	122 Discovery Lane Williamsburg, VA 23185 Tel: 757-220-0052 kingsman0@aol.com

On information and belief the title of the parties to the land described in paragraph 3 was acquired as follows. The same was owned by Jesse Allen Norris who was born December 10, 1831 and died on November 24, 1916 and whose will is probated of record in Will Book H, Page 318, Clerk of Superior Court of Wake County (Estate File # 2923). (His first spouse was

Amelie (Amy) Ann Adams Norris (married July 10, 1856 and died 1871, His second spouse was Ellen Coffield, The will names beneficiaries as follows:

- A. Maude Norris, who died September 18, 1971 with no spouse or children, as shown in Estate File 71-E-502 (Wake County). Her will does not devise real property. Her heirs are therefore her collateral relatives as set out below.
- B. Maybelle Norris, who died in Wake County prior to 1975, with no spouse or children or will and therefore, on information and belief, her heirs are therefore her collateral relatives as set out below. She was declared incompetent (File # 5917) before her death.
- C. The children of Elizabeth Norris Montgomery, also known as "Lizzie", who predeceased her father, Jesse A. Norris, leaving the following children.
 - 1. Julia Lilly Montgomery Street (married to C. Augustus Street who died in 1969), who was born January 19, 1898 and died September 1993 in Forsyth County (her nickname was WuWu and she was named North Carolina Historian of the year in 1993)). Her only heir were.
 - a. Her only daughter, Carol Montgomery Street McMillan, died August 24, 2002 in Wake County. She was married to Archibold A. McMillan who pre-deceased her on December 17, 1986 in Wake County. Her heirs/beneficiaries are her 5 children by will:
 - 1. <u>Carol Street McMillan Lewis</u>, married to <u>Steven C. Lewis</u>, 3304 Barnstable Court, Raleigh, NC 27612, Tel #919-881-0318, Email: <u>caroll@stoneagency.net</u>.
 - 2. <u>Julia McMillan Fallon</u>, married to <u>Denis G. Fallon</u>, 3310 Gordon Drive, Blacksburg, VA 25060, Tel #540-951-3888, email: <u>jfal@adelphia.net</u>.
 - 3. <u>Amanda McMillan Melton</u>, unmarried, 601 Citrus Court, Ponte Vedra Beach, FL 32082, Tel #904-280-7847, email: amelton1234@yahoo.com
 - 4. Mrs. Alexandra McMillan Mordecai married to Samuel F. Mordecai, Jr., 3005 Glen Burnie Drive, Raleigh, NC 27607. Phone: 787-9241 and 801-2041. Email: fourmordecais@nc.rr.com
 - 5. <u>A. Alexander McMillan, Jr.</u>, unmarried, 159 Lake Ellen Drive, Chapel Hill, NC 27514, Tel #919-673-0626, Email: amcmi42572@aol.com
 - b. <u>Claudius Augustus Street, Jr.</u> (spouse is <u>Mary Jane English Street</u>) 192 Westridge Road, Advance, NC 27006 phone: 336-998-8416, 336-231-8256, 1-800-489-0492, fax: 336-998-7221 email: gusstreet@yadtel.net

2. Amy Allen Montgomery Oettinger, died at San Marino, CA in 1977. She was predeceased by her husband, <u>Leon Oettinger</u>. Their only surviving child was Dr. Leon Oettinger, Jr., MD who died at Duarte, California on April 22, 1983. His widow is "Happy" <u>Logan Geary Oettinger</u>, Stoneybrook Assisted Living Apt. 102, 4650 S. West Hollyhock Circle, Corvellis, Oregon 97333.

Their daughters are:

- a. <u>Margaret Logan Oettinger</u>, unmarried, Tel: 425-820-1974; 9920 NE 119th Street, Kirkland, WA 98034-4244; email: <u>m_oettinger@yahoo.com</u>
- b. <u>Rev. Elizabeth Norris Oettinger</u>, unmarried, 3323 SW Chintimini Ave. Corvallis, OR 97333.
- c. <u>Mary Allen Oettinger Westra</u>, spouse: <u>Gary Westra</u>, 212 Windsong Road, Wilmington, NC 28411. Email: <u>mowestra@yahoo.com</u>.
- 3. Samuel Bays Montgomery, (a 1928 Army Equestrian Olympian) who died 1929, at Walter Reed Hospital leaving no spouse or children as per the 1974 inventory of J.A. Norris Estate and, on information and belief, his heirs are the collateral relatives set out above.
- D. Garland C. Norris, who died September 30, 1980, See estate file 80-E-1153, leaving his spouse Mary Boldridge Norris (87-E-1196 and whose interest also descended to her children), (the following children):
 - 1. Frances Hill Norris, deceased, Forsyth County, 94-E-305, no children.

 According to her will her property was devised to Mary Norris King and her four children.
 - 2. Mary Norris King, 1409 Hathaway Road, Raleigh, NC 27608 (plaintiff).
 - a. <u>James A. King II</u>, (plaintiff), & spouse <u>Joy</u>.3408 Huckabay Circle, Raleigh, NC 27612.
 - b. <u>Dr. Garland C. King</u>, & spouse <u>Janice</u>.723 Murphy Highway, Franklin, NC 28734.
 - c. <u>Julie King Lee</u>, & spouse <u>Thomas</u>.1106 Carey Road, Kinston, NC 28504.
 - d. <u>Charles D. King</u>, 2525 York Road, Raleigh, NC 27608, Tel #249-1003 (Spouse, <u>Rebecca</u>) (plaintiff).
- E. Stella Nox Harmon, who died on May 19, 1956, see Wake Estate File 15388, who had the following spouse and children:
 - 1. Rev. John C. Harmon, who is now deceased born 3/27/1876, died 3/15/1971 in Durham, N.C.

- 2. John C. Harmon, Jr., was born December 13, 1905 and died at Morehead City, N.C., March 27, 1995, leaving:
 - a. Spouse, Lucille Crandall Harmon who died September 5, 2001 at Colonie, New York, and their joint children are:
 - b. <u>Elizabeth Harmon Ziegler Osborne</u>, a free trader by separation agreement with, spouse is <u>Michael Osborne</u>, 5448 Apex Peakway #340, Apex, N.C. 27502, tel: (w)387-4450 (h), 372-1824 <u>bezig51@nc.rr.com</u>.
 - c. <u>John C. Harmon, III</u>, spouse is <u>Cynthia D. Harmon</u>, 9 Devonshire Dr., Albany NY 12205, tel: 518-869-5709, <u>charmon1@nycap.rr.com</u>.
 - d. <u>David Crandall Harmon</u>, spouse is <u>Carol Harmon</u>, 12831 Climbing Ivy Dr., Germantown, MD 20874, <u>david.c.Harmon@verizon.net</u>
- 3. Emma Harmon Cromartie, spouse is Richard L. Cromartie, 155 Ocean Lane Drive, Apt. 509, Key Biscayne, FL 33149 tel: 305-361-1844
- F. Walter Lee Norris, who was born April 23, 1864 and died July 12, 1949 at Ft. Pierce, Florida leaving a spouse, Ada Lee Rollins who died June 16, 1956 at Fort Pierce, Fl and the following children:
 - 1. Julian R. Norris, who died at Fort Pierce, FL on April 8, 1979, with no probate estate and no children. On information and belief, his spouse was Emma Davis Norris who predeceased him.
 - 2. Harold Adams Norris, died April 8, 1980, Ft. Pierce, FL, (no probate estate) never married and no children.
 - 3. Charlotte Norris Enns died in 1988 or 1989, Ft. Pierce, FL, no children, no probate estate.
 - 4. Jesse Allen Norris (who was born January 10, 1906 and died on January 31, 1982), see estate file 82-E-156, who devised his property to his wife, Mary McIver Johnson Norris, who died on March 30, 1988, in Wake County (88-E-593) who devised her real estate:
 - a. One half to Dr. Jesse Allen Norris, Jr. (President of Louisburg College), who was born January 27, 1937 and died in 2004, see estate file #88-E-593. His widow is Elizabeth McLamb Norris, of 4714 Ludwell Branch Court, Raleigh, NC 27612/Tel #787-2616 and 786-0648 (fax) The will of Jesse Allen Norris, Jr. 2004, named Elizabeth M. Norris as the sole beneficiary.
 - b. One half to grandchildren, (children of Ann Norris Broughton who had died January 21, 1970)

- 1. <u>Laura Ann Broughton Russell</u>, 3408 Churchill Road, Raleigh, NC, 27606Tel #787-1319, email:
 - broughtonrussell@aol.com (whose spouse is <u>Samuel</u> <u>Reid Russell</u>, <u>III</u>)
- 2. <u>Edward Milton Broughton</u>, currently of 12 Partridge Run, West Windsor, NJ 08550. His spouse is <u>Susan</u>. Tel #609-275-2988
- 3. <u>John Norris Broughton</u>, currently of 609 Lange Court, Libertyville, IL 60048, Tel #847-816-0616 (whose spouse is Deborah).
- 5. Rachel Norris Mayers, who died October 7, 2003(predeceased by her husband Herbert William Drayton Mayers) (03 CP 1379-WH) in Ft. Pierce, FL (St. Lucie County) leaving residuary estate to "The Rachel Norris Mayers Revocable Trust" (dated September 24, 2002) The <u>Trustee</u> is <u>Barbara M. Hayo</u>, 319 Lafitte Rd., Summerland Key, FL 33042, phone: 305-872-9150; bhayo @ historictours.com
- 6. Avery Gladstone Norris, Sr., who died, May 14, 1972, in Ft. Pierce, (no probate estate) FL, leaving a spouse, Catherine Odum Norris. She died around 1985 at Ft. Pierce leaving no estate and three children of both of them:
 - a. <u>Avery G. Norris, Jr.</u>, (spouse, <u>Sharon</u>) 2507 Younts Road Indian Trail, North Carolina, 29482, 704-882-9428.
 - b. <u>Donald O. Norris</u>, of Ft. Pierce, a barber, spouse is <u>Connie</u>, (h) 772-464-3411, (o and fax) 772-461-9645, 4103 Smokey Pines Court, Ft. Pierce FL 34951.
 - c. <u>Richard L. Norris</u>, of (spouse is <u>Bonnie</u>) 4615 Secret River Trace, Port Orange, FL 32119/386-761-5102
- 7. Winston Lee Norris, who died before 1944 without children.
- 8. Russell Norris predeceased his father, without children.
- G. Jesse Raymond Norris, (who married Dora Fowler Norris who died in about 1987 or 1988 at Atlanta, Georgia) who died February 7,1968 in Wake County. Their only son and heir was:
 - 1. <u>Peter Raymond Norris</u> and spouse, <u>Martha H. Norris</u>, 2816 Ridgemore Road, N.W., Atlanta, GA 30318, 404-355-8901 <u>marthahnorris@mindspring.com</u>
- H. Herbert E. Norris, A state senator and the DA of Wake County, who died February 21, 1923) (His spouse was Mary Emma Burns of Pittsboro) leaving the following child as his only heir.

- 1. Herbert B. Norris, who is deceased, see Estate File 94-E-1707/86-E-962, who had the following children:
 - a. <u>Flora C. Norris</u>, (born May 23, 1923) currently of 513 E. Whitaker Mill Road, Room 153A, Station 2, Raleigh, NC 27608-2348. / Her Power of Attorney is Randy Worth.
 - b. Emma Burns Norris Catlette (born September 21, 1911 and died about 2001 in Wake County), (Estate handled by Randy Worth) she left a child: (her husband, Raymond W. Catlette, Sr. having predeceased her in 1983) as her only heir.
 - 1. Raymond W. Catlette, Jr., unmarried, P. O. Box 8672, Incline Village, NV 89452. (rwcat@yahoo.com) (775-772-2229)
 - 2. Another daughter, Anne Whitaker Catlette Foster died January 25-26, 1970 leaving a spouse, Karl Foster, but no children.
 - c. Elizabeth Edmunds Norris, unmarried, who died April 16, 2004 in Wake County (04-E-1002) whose will left her share to Flora C.

 Norris
 - d. Mary Ransom Norris Wheeler, (born October 3, 1920 and who died on February 8, 1997) devising by Article IV of her will ½ to her sister, Elizabeth Edmunds Norris and ½ to her son: (98-E-463).
 - 1. <u>Leonard Edward Wheeler</u>, Jr. 521 Seminole Avenue, Eustis, Florida 32726. (<u>1wheeler45@aol.com</u>) (spouse is <u>Eleanor M. Wheeler</u>, <u>hotflash521@aol.com</u>, 352-483-9555.
 - e. Another daughter, Sarah W. Norris, who died in Wake County in 1997 leaving no spouse, will or child.
- I. Cornelia Alice Norris (her husband was Matthew Tyson Norris) (born August 27, 1857 daughter of Jesse A. Norris from a prior marriage), died testate in 1935, Will Book M, Page 212, Estate File #4651 (archives) estate #8490, leaving the following children as beneficiaries under her will, V.12: "To my four daughters and their heirs"
 - 1. Mary Norris Coles (born in 1878 and married Henry A. Coles of Atlanta, GA who died in 1929 in New Orleans) She predeceased (in about 1930 in Atlanta) her mother leaving the following child:
 - a. Peyton Skipwith Coles (who was born in 1901 died July 22, 1957) Will Book X-218 (file 16023) leaving as his beneficiaries (his first cousins):
 - 1. Roberts Coles died 1999 in Albemarle County, VA leaving a wife and 5 children. On information and belief he died testate leaving by will (Book 94 page 16, Albemarle County and exemplified copies recorded in Wake County) all to the marital share and the Family Trust. Since the Family Trust was fully funded his interest in this property goes directly to:

- a. <u>Doris R. Coles</u>, widow, 4625 Cloverfield Farm, P.O. Box 72, Keswick, VA 22947, Tel #434-293-7022.
- 2. George M. Coles, Sr., who died in 1974 in Charlottesville, VA, leaving by will (Book 20 page 424 Albermarle County and exemplified copies recorded in Wake County) to his spouse Jane S. Coles, Age 91. As additional information Frances Coles Sebring is her power of attorney and daughter. (o) 434-971-8800/(fax) 434-971-4764, email: dacolz@earthlink.net
- 2. Ethel Norris ("Ockie") Marshall, who died on January 14, 1974, estate file #74-E-49, leaving by her will (in which she refers to herself as a widow) to:
 - a. Ethel Norris Marshall Stephenson (later known as Ethel Norris S. Magruder) who died in testate around 1996 at New Hanover County. Her children and only heirs are:
 - 1. <u>Sue Marshall Metts</u>, 423 Sylvan Lane, Wilmington, NC 28409, widow.
 - 2. <u>Nancy Marshall Mann</u>, 3705 Reston Court, Wilmington, NC 28403 (Her spouse is James Mann)
 - 3. Willa Norris McKimmon, who died June 30, 1977, estate file #77-E-807, leaving children (her spouse, James McKimmon, III, having predeceased her in 1928).
 - a. Arthur McKimmon, II, widower Apt. 8302 Magnola Glen, 5215 Creedmoor Road, Raleigh, NC 27612
 - b. Cornelia Norris McKimmon Trott, died on 1994, Estate file #94-E-2805 (Wake County), leaving as beneficiary under her will one child:
 - 1. <u>William MacNider Trott</u>, 3348 Alleghany Drive, Raleigh, NC 27609, Tel #782-0583, Attorney, business address: 3101 Glenwood Ave., Raleigh, NC 27612, Tel #782-6860/fax #782-6753, email: wmt@yhm.com Spouse is <u>Jean L. Trott</u>.
 - c. <u>Kate McKimmon Howell</u>, 1305 Diehl Street, Raleigh, NC (widow)
 - d. Henry Hull McKimmon who died testate in Edgecomb County, 1992 (date) leaving a spouse, two children and a will:
 - 1. Spouse: Ida Smith McKimmon, who died 1995 at Edgecomb County leaving the same two children:
 - 2. <u>Willa McKimmon Dickens</u>, 129 Church Street, Enfield, NC 27823 (tel 919-807-7217/fax 807-7169)(spouse is <u>William</u> Dickens)

- 3. <u>Virginia Hull McKimmon Noelke</u>, 2501 West Avenue J.San Angelo, TX 76901 (College professor head of U.S. Stamp Commission) (Her spouse is <u>Walter Noelke</u>.)
- 4. Ruby Norris Crawford Primrose, (first husband was Jacob Crawford, second husband was Jesse Primrose) was born in 1888 and died January 8, 1978. Her will was not offered for probate but is recorded in Vance County 78-E-12 and names her five grandchildren as heirs. Her only son, W.C. Crawford, predeceased her in August 1968. The following five grandchildren are as listed in her Will:
 - a. William "Bill" Henry Weed Crawford, III, 200 James Mill Lane, Williamsburg, VA 23285, Tel: 757-565-1170, kilduck@widomaker.com (His spouse is Judith Copeland Crawford)
 - b. Nancy Crawford Gray, 1202 Anne Street, Henderson, NC 27536, Tel: 252-492-5675, unitedwayvance@vance.net (her spouse is Wayne Gray)
 - c. Walter B. Crawford, 3607 Harrison Road, Kinston, NC 28504, Tel: 252-527-0547, crawfow2@aol.com (unmarried)
 - d. Carol Stephenson Crawford Marshburn, 11509 Monticello Drive, Knoxville, TN 37922, Tel: 865-966-1254, forgetwhat@aol.com (her spouse is Robert Marshburn)
 - e. Matt Norris Crawford, 122 Discovery Lane, Williamsburg, VA 23185, Tel: 757-220-0052, kingsman0@aol.com (his spouse is Deborah Hudson Crawford)
- 5. There were other children of Jesse Allen Norris who were not named in his will as beneficiaries but for the historical record:

Mary Florence Norris – born June 15, 1861 and died 1862.

Martha Louise Norris – born December 10, 1862

Elizabeth Blanche Norris – born June 30, 1865

Julian Jeptha Norris – born August 29, 1867 and died 1868.

- 6. The Petitioners desire to hold their interest in severalty but the nature and size of same is such that a division cannot be made without substantial injury to the interests of the parties. The value of the share of each party in case of a partition is materially less than the share of each in the money equivalent that can be obtained from the sale of the whole.
- 7. That the property has not been listed for taxes by Wake County and the discovered tax on the property which has remained unpaid should be paid from the proceeds of sale.

NOW, THEREFORE, the Petitioners pray for the following relief:

1. That the Clerk appoint Paul Stam as Commissioner to conduct a private sale of the subject property pursuant to the provisions of Article 29A part 3 of Chapter 1 of the General Statutes,

said sale to be subject to confirmation and, when the confirmation becomes final pursuant to G.S. 46-28.1, to make a deed to the purchaser, and after paying the expenses of sale, to distribute the proceeds to the tenants in common as their interests are shown in paragraph 4 of the petition.

- 2. That before making distribution, the Commissioner, as part of the costs of sale, list the property for taxation with the Town of Apex and Wake County and from the proceeds of sale pay the <u>ad valorem</u> taxes through 2006.
- 3. That the Clerk tax as part of the costs of this action a reasonable attorney's fee to petitioner's attorney for the time, effort and skill required to bring this action.
- 4. That the Clerk order a survey of the said property pursuant to N.C.G.S. 1-408.1, with the costs to be taxed as part of the costs of this action, and to authorize the Commissioner to direct the surveyor to prepare a division of the property into one or more parcels for purpose of sale and to consent to a recombination map with adjoining properties if a sale is approved, in the event that the Commissioner, in his discretion, determines that the highest price may be procured by that method.

STAM, FORDHAM & DANCHI, P.A.

By: Paul Stam

Attorney for Petitioners P.O. Box 1600 Apex, NC 27502

Tel: (919) 362-8873 Fax: (919) 387-7329

Email: paulstam@bellsouth.net

Document/King/PetitionforPartition

allochment#13

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION BEFORE THE CLERK

WAKE COUNTY

BEVERLYN JONES BROOKER)	
Petitioner)))	PETITION FOR PARTITION BY
v.)	SALE OF REAL ESTATE
PRODEV VIII, LLC)	
Respondents.))	

Petitioner alleges and says:

- 1. Exhibit A shows the name, address, marital status and the undivided interest of each Petitioner.
- 2. Exhibit B shows the name, address, marital status and the undivided interest of each Respondent.
- 3. The parties are tenants in common (or spouses of tenants in common) to the following described tract or parcels of land in Holly Springs Township, Wake County, North Carolina:

14.22 net acres with a PIN # 0659-60-6508 on the north side of Bass Lake Road consisting of all of Tract 1, containing 25.157 acres, more or less as shown on that survey entitled "Boundary Survey for Eddie Lee Faulk" recorded in Book of Maps 1992, Page 181, with a property address of 0 Bass Lake Road, Holly Springs, NC and PIN # 0659-60-6508.

Less and except the lands conveyed to SSL Limited Partnership by deed recorded in Deed Book 5506, Page 66, and shown on a survey entitled "Recombination Map for Eddie Lee Faulk and SSL Limited Partnership" recorded in Book of Maps 1993, Page 190.

4. Each tenant in common owns an undivided interest in the property as follows:

NAME	INTEREST
Beverlyn Jones Brooker	3.24%
ProDev VIII, LLC	96.16%

5. The Petitioner desires to hold her interest in severalty but the nature of the property is such that it cannot be physically divided without material damage to the interest of each party. The property consists of undeveloped land but petitioner's pro rata share will not encompass one developable lot.

6. On November 19, 2007 ProDev VIII, LLC executed deeds of trust recorded in Deed Book 12841, Page 427 and Deed Book 12841, Page 453, Wake County Registry, to First Mount Vernon Industrial Loan Association, as Noteholder, and Dale E. Duncan and Kathleen Neary, as Trustee.

On November 19, 2007 ProDev VIII, LLC executed a deed of trust recorded in Deed Book 12841, Page 461, Wake County Registry, to PENSCO Trust Company Custodian of Southfield Partners, LLC Solo (K) Plan FBO David A. Cook, PENSCO A/C #10EK1, PENSCO Trust Company Custodian of Southfield Partners, LLC Solo (K) Plan FBO David A. Cook, PENSCO A/C #10EK2, and David A. Cook, as Beneficiaries, and Kilpatrick & Gudeman, as Trustee.

On November 19, 2007 ProDev VIII, LLC executed a deed of trust recorded in Deed Book 12841, Page 470, Wake County Registry, to Southfield Partners, LLC, as Beneficiary, and Kilpatrick Gudeman, as Trustee.

On January 20, 2008 ProDev VIII, LLC executed a deed of trust recorded in Deed Book 12930, Page 860, Wake County Registry, to Eddie Lee Faulk, as Beneficiary, and Affinity Title Corporation, as Trustee.

Each deed of trust constitutes a lien on the interest of Pro Dev VIII, LLC land and should be paid and satisfied solely from the share of Pro Dev VIII, LLC.

WHEREFORE, Petitioners pray for the following relief:

- 1. That the Court appoint Paul Stam as Commissioner, who shall conduct a private sale of subject property pursuant to the provisions of G.S. 46-28 and G.S. 1-339.33 et. seq. with said sale to be subject to the confirmation by the Court and, when confirmation becomes final pursuant to G.S. 46-28.1, to make a deed to the purchasers thereof and, after paying expenses of the sale to distribute the net proceeds to the tenants in common pursuant to G.S. 46-33.
- 2. That the debts secured by the lien of the Deeds of Trust described in Paragraph 6 shall be paid solely from the share of ProDev VIII, LLC.
- 3. Such other and further relief as to the Court may seem just and proper.

Paul Stam, Attorney for Petitioner STAM, FORDHAM & DANCHI, P.A. P.O. Box 1600

Apex, NC 27502 Tel: 919-362-8873

Fax: 919-387-7329

VISITOR REGISTRATION SHEET

Joint Partition Sales Study Committee

January 9, 2009

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cady Thomas	LK ASI'N of REALTING
Savi Horne	LAND Loss Preventier Project
John Pollock	Central A/46 Gma Fair Housing Center Southern Coalition to Social Justice 115 Market 81. Ste. 470
Anita Earls	115 Market 8t. Ste. 470 Durham, NK 27713
Clath () Janey	Land Loss Prevention Project
MARKLOROSIN	UNC Conter for Ciwillights CB 3382 UNC Conter for Ciwillights CB 3382
Sarah Krishnavan	UNC Centre for civil Rts
Jennifer Marsh	UNC Centa For CIVIL Rights "
Jon Steele	Wishort Nords Henvinger & PIHMEN PA PO Drawey 1998 Burlington NC 27216-1988
Rem Ground	Lic Bar Assn
Tammy Moldovan	Vandeventer Black UP

VISITOR REGISTRATION SHEET

Joint Partition Sales Study Committee

January 9, 2009

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barry L. Williams	Conservation Trust for North Carolina 1028 Washington St., Releigh, NC 27605
TE Towell	AOC
Mariah West	AOC
Burlini N.D. Sauls Jr.	ADC A Farmer - Having to Poy to much Estate 10212 Forcian Rd Ruheight N.C. 27603
Eddie Hardy	Edka Transport
Berlinda Durant	Land Loss Prevention Project, Hill St, #1



NORTH CAROLINA GENERAL ASSEMBLY COMMITTEE MEETING NOTICE

LEGISLATIVE BUILDING RALEIGH NC 27601

January 9, 2009

MEMORANDUM

TO:

Members of the Partition Sales Study Committee

FROM:

Rep. Angela R. Bryant, Co-Chair

Sen. Bob Atwater, Co-Chair

SUBJECT:

Meeting Notice

The Partition Sales Study Committee will meet on the following date:

DAY:

Monday

DATE:

January 26, 2009

TIME:

3:00pm

LOCATION: Room 421, Legislative Office Building

REMINDER TO NON-LEGISLATIVE MEMBERS: Parking for non-legislative members of the Committee is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available behind the Museum of History Building located on Jones Street in front of State Archives. The cost for visitor parking is \$1.00 per hour or \$8.00 per day and is reimbursed with a parking receipt that is submitted with your travel reimbursement form.

If you have any questions concerning this meeting or if you cannot attend, please contact Karon Hardy, Committee Assistant, at (919) 733-5878 or email bryantla@ncleg.net or Carol Resar, Committee Clerk, at (919) 715-3036 or email atwaterla@ncleg.net.

Poste	ed: January 9, 2009	
cc:	Committee Record	_ · x
	Interested Parties	X



PARTITION SALES STUDY COMMITTEE

Senator Robert C. Atwater, Co-Chair

Representative Angela Bryant, Co-Chair

Monday, January 26, 2009 3:00 pm Room 421, Legislative Office Building

- 1. Welcome and Introductions
- **2.** Consideration of Proposals for the Committee's Final Report Ryan Blackledge, Brad Krehely, and Steve Rose, Committee Co-Counsels
- 3. Committee Discussion
- 4 Adjourn

MINUTES

PARTITION SALES STUDY COMMITTEE

January 26, 2009
Room 421, Legislative Office Building
Representative Angela R. Bryant, Co-Chair, Presiding
Senator Bob Atwater, Co-Chair

The Partition Sales Study Committee met on Monday, January 26, 2009, in Room 421 of the Legislative Office Building.

Co-Chair Angela R. Bryant opened the meeting and welcomed the guests, the staff and Sergeant-at-Arms Frank Prevo and Judy Turner. Co-Chair Bryant introduced the Committee Assistants, Karon Hardy and the Research Staff. Members were present with the exception of Representatives Timothy L. Spear, Senators Charles Albertson, and Philip E. Berger. All Public Members were present with the exception of Hon. F. Gordon Battle, and Hon. James C. Stanford. The original Visitor Registration Sheet is attached to these minutes (Attachment 1).

DISCUSSION OF REPORT

Co-Chair Bryant directed the Members to the Draft Report, which entails 10 proposals. (Attachment 2, Page 9).

The first proposal was a recommendation that Rep. Spear made which was to Extend the Deadline for the Filing of Commissioner's Report from 60 to 90 days. (Attachment 2).

Co-Chair Bryant asked the Committee if there was any discussion on the item. A motion was made by Sen. Weinstein to adopt this item. The motion carried unanimously.

Mr. Brad Krehely, Committee Co-Counsel, introduced the second proposal which was submitted by Rep. Stam, to Extend the Deadline for Answering a Summons. The deadline was to be increased from 10 days to 30 days. (Attachment 2).

A motion was made by Mr. David Harris, and seconded by Sen. Jones.

The motion carried unanimously.

Ryan Blackledge, Committee Co-Counsel, Bill Drafting Division, introduced the third item, Credit for Co-Owner Interest When Purchasing Property. He referenced page 10, line 33. This would put this practice in the statute. (Attachment 2, Page 10, Line 15).

Pete Powell, Administrative Office of the Courts, requested that this process be made clear and to make sure there was no confusion about the wording of this language together with the language of G.S. Sec. 46.16. (Attachment 2, Page 10, Line 33).

Rep. Stam concurred with Mr. Powell's suggestion.

This matter was set aside to get more complete wording and bring it back.

Mr. Krehely, went over the next issue which was the **Notice Provisions**.

Mr. Davis Harris asked the question regarding why the word "may" was used instead of "shall"? (See Attachment 2, Page 11, Subsection (a), line 4).

Mr. Krehely replied it may not be in every case that they may not be able to locate a party or the party is unknown.

Rep. Allen discussed her draft amendment that she had submitted and had discussed with Mr. Krehely, regarding posting a sign. She talked about the difficulty of listing all of the people on a sign, so maybe to list some source of contact would be a solution. (See Attachment 2, G.S. 46.6, Page 11, Line 24 - 30, Subsection (b) (2).

Rep. Stam suggested that unknown heirs should not be dealt with in Chapter 46, but in general provisions regarding unknown heirs. He said an affidavit needed to be filed showing what due diligence was at the end before giving confirmation. He suggested that it be left to the discretion of the courts.

Rep. Bryant stated that the existing Section 46.6, Unknown Parties, is in the partition statutes and has always been a significant enough issue with partitions to have that section just to address the issue of unknown parties. Co-Chair Bryant suggested that it is important to look at the language in attachment 2, 46.6, line 4, if it is decided upon to go forth with it.

Rep. Stam commented on lines 31 - 36 regarding **Recording a Notice**. He stated that when titles are checked, they check register of deeds, judgments, and special proceedings. There is no need to record the petition in the register of deeds because in any title search it will turn up in the index of special proceedings. Lastly, he suggested that a vote be taken whether to include this section at all, flag it and come back to it. (See Attachment 2, Page 11, Line 31-36).

Rep. Bryant explained that the **Posting a Sign** provision only applies in the case of unknown or unlocatable heirs. Within 10 days of the Clerk ordering them to be noticed by publication or substitute means, then a sign will be placed on the property in that instance only. So if they know everybody there is no sign.

Rep. Bryant suggested that in most instances at least the name of the action should be listed. We could ask the staff to help to limit that wording.

Mr. Steele commented he would like to list all the names in the caption hoping someone will see it because it will be more likely to get out to all the family.

Rep. Bryant asked for a motion from the committee.

Rep. Michaux suggested holding this to change the language.

Rep. Stam asked, "Do you intend to apply for all land actions or this would be especially just for partitions"?

Co-Chair Bryant's recommendation is to stay with the principle in the existing statute which 46-6 addresses "unknown parties in partition actions". She suggested to stay there, based on the scope of the committee's work her recommendation is to tract 46.6.

Rep. Stam moved to set it to the side temporarily until new language is prepared.

Mr. Krehely presented item 7, Attorneys Representing Parties Cannot Be Commissioners. (See Attachment 2, Page 12, Line 1).

Co-Chair Bryant solicited committee discussion on this item.

Rep. Stam opposed and gave an example of when he, one other attorney, and a Guardian Ad Litem were appointed and all three of them were appointed by a Clerk as Co-Commissioners to represent 90% of the people. This was for a sale.

Rep. Stam amended his comment and stated that he had never seen attorneys appointed like this, but he could think of cases where you might want it by "consent" and have the two Attorneys and a surveyor be the three Commissioners. So the language could read "except by consent of the parties": He made the motion to interject "except by consent of the parties."

Rep. Bryant offered to take his motion after further discussion.

Rep. Michaux asked if it is clear that the Superior Court has to appoint the person or does the Clerk appoint the person.

Mr. Powell stated that there is a statute that says except where expressly provided, where one says "Judge" and one says "Clerk", then use of the term Clerk means Judge or Clerk.

Rep. Stam was recognized for a motion.

Rep. Stam made a motion to amend Page 12, line 11 to read for "except by consent of the parties" to be added at the end of the sentence. (See Attachment 2, Page 12, Line 11).

Mr. Hunter, "I don't know any clerk in North Carolina that will appoint one of the attorneys as a commissioner. Maybe they consent, I just don't think its done, unless their truly interested parties in the proceedings, we try to get people completely out of the loop.

Ms. Craig-Taylor asked a question about who is giving consent if it is just the client of the person who happens to be representing one side, what happens to the other side if the other side is not represented?

Co-Chair Bryant stated there are two recommendations for this change – one set included with consent of the parties and one did not. So it was decided to leave it out to make it clear to address the concern that attorneys were not to be a Commissioner in a division under the existing stature. She agreed that she could see Rep. Stam's point that there are occasions where it may be what the parties would desire for good practical results.

Rep. Stam moved to amend by adding at the end the phrase, "except by the consent of the parties". (See Attachment 2, Page 12, Line 11).

The motion carried and these provisions were adopted as amended.

Mr. Krehely stated that this section amends GS 46-31.1. Ineligible Sellers and Purchasers. (See Attachment 2, Page 12, Line 13-25).

Rep. Stam spoke in opposition of the provision.

Tom Steele's, Real Property Section of NCBA, stated that his company would be in opposition because of the reason Rep. Stam stated.

Ms. Pamela Thombs had a question about when does the zealous advocacy end. Is there not a conflict of interest if the petitioner is a purchaser and the petitioners' attorney is the commissioner and how is that handled?

Rep. Stam replied to the question.

Mr. Hunter commented further on this.

Ms. Craig Taylor commented further about the appearance of impropriety.

Co-Chair Bryant asked if there was a motion.

Rep. Allen stated that she did not understand how any attorney who represented any party could be considered a disinterested Commissioner.

Co-Chair Bryant clarified that the language specifies "disinterested Commissioner" in the case of division only and not in case of sale. The statute is created with two sections – "sale" and "division".

Rep. Stam moved to delete lines 14-25 and the word "seller" in line 13. (See Attachment 2, Page 12, Line 13-25).

Ryan would like to request to make the change to leave line 12 as it exist in the stature

Co-Chair Bryant stated that this motion died for the lack of a second. She asked if there was another motion. The motion died for lack of a second and asked if there was another motion.

Rep. Micheaux moved approval.

Mr. Harris second the motion.

Rep.Stam moved to amend deleting lines 24-25 and explained the reason.

Co-Chair Bryant stated the motion to amend Rep. Micheaux's motion for approval to delete lines 24 -25.

She called for a second. The motion died for lack of a second. Motion carried.

Rep. Bryant called staff up to present the next item, Ineligible Sellers and Purchasers. (See Attachment 2, Subsection (b), Page 12, Line 26).

Mr. Krehely presented Ineligible Sellers and Purchasers, section 46:31.1, and stated that this section is new.

Co-Chair Bryant asked for questions or comments by the Committee.

Mr. Hunter asked for clarification on "related partition proceeding".

Mr. Krehely stated that it was intended to address anything that was part of these partition proceedings and anything else that happened earlier in the process.

Co-Chair Bryant recognized Mr. Steele for comments.

Mr. Steele suggested that the Committee think carefully about limiting the universe of interested of the buyers because that doesn't help the any property value; however, he would agree that an attorney that would be involved in the proceedings as a Commissioner or an advocate for a client should not even think about trying to be a purchaser or allow their staff person to do that.

Rep. Stam referred to line 28, to move to amend to take out "unless they have an ownership interest in the land". If they are acting in these capacities they should not be purchasers. He further stated that they could avoid that by just not acting as the attorney or appraiser. (See Attachment 2, Page 12, Subsection (b), Line 28).

Rep. Stam stated that he had two motions. He made a motion to delete – "unless they have an ownership interest in the land". (See Attachment 2, Page 12, Subsection (b), Line 26).

The Committee voted unanimously to pass that motion.

Rep. Stam's second motion was to delete lines 32-33. (See Attachment 2, Page 12).

Co-Chair Bryant stated that the motion died for lack of a second and asked if there was another motion.

Mr. Harris made a motion to move to adopt as amended.

Motion was seconded by Ms. Craig-Taylor.

Co-Chair Bryant asked for discussion.

Sen. Jones raised a question about people who do not have a lot of money and go ahead and get an attorney and say I will give you an acre of my land to take care of fees; do you become a party to this?

Co-Chair Bryant directed this to the lawyers in the room. She stated that transaction would need to happen after everything else was finished.

Co-Chair Bryant asked for a vote on the motion to adopt Section 46.31.1, Section x (b), line 28, and deleting the line that states, "Unless they have an ownership interest in the land". The Committee voted and the motion carried unanimously.

Mr. Blackledge presented item 9, Require Appraisal Before Sale Confirmed by Court.

There was a general request to make sure the appraisal was fair. Another suggestion given by Rep. Stam: Currently G.S. 46-28.1 provides that if any party is upset with the outcome they can challenge it before the courts confirm the sale. The suggestion is if the price is inadequate they would have to prove it to the court. This would create a "(d1)" section. (See Attachment 2, Section, x, Page 12, Line 39 & Attachment 3, Page 1, Line 19, Page 2 line 15)

Co-Chair Bryant explained the two proposals which would be after the sales.

Co-Chair Bryant replied, "we're substituting "Appraisal Before Sale Confirmed By The Court For Require Appraisal Before Sale Confirmed By The Court. (See Attachment 2, G.S. 46-28, Section x, Page 13, Line 11-14).

Mr. Woodson recommended that the independent appraisal prior to confirming the sale be in the discretion of the court.

Ms. Craig-Taylor made a motion to not make it discretionary. Her recommendation is to amend the proposal to strike "may in its discretion" and substitute "shall".

The motion was seconded by Mr. Harris.

Rep. Stam stated that according to the amendment, the court "shall" do an independent appraisal. Because of the margin of error between appraisals, the court should have the discretion to order an independent appraisal to avoid extra expense to the parties and the battle of the appraisals.

Mr. Steele agreed with Rep. Stam that it should be discretionary. He assumed that it would become a part of the court file which may have the potential of chilling the bidding in cases where the appraisal is lower than it is supposed to be. He is concerned about this becoming public information.

Ms. Craig-Taylor asked a question in reference to an example that Rep. Stam gave. She asserted that if there is an appraisal at \$200,000 and one at \$190,000.00, that small of a margin would not meet the standard in equity, burden to show that there is irreparable damage, a pretty high standard to meet.

Rep. Stam urged to let the Clerk decide if an independent appraisal is needed then the Clerk has power to do it and charge everybody for it.

Ms. Craig-Taylor stated that depending on the Clerk you want to give the discretion to be able to make the decision as to whether or not the evidence regarding price and value satisfies the standard of being irreparable damage in an equitable action. She stated that she had practiced and tried to establish irreparable harm and suffered a pretty high amount of evidence to do so, and she could not prevail by showing any small amount of harm that may occur.

Rep. Bryant asked for further discussion on Ms. Craig-Taylor's motion, to make it a mandatory independent appraisal.

Sen. Atwater asked as a matter of experience, does this often occur, G.S. 46-28.1 (2) (c) or are there frivolous petitions made in this area or a lot of serious ones? (See Attachment 3, Page 1 Line 2c).

Mr. Hunter responded by saying it is the exception and not the rule.

Co-Chair Bryant asked for further discussion on this motion. The motion carried.

Co-Chair Bryant asked for a motion on the provision, 46-28.1 as amended with the changes also on line 12 which would remain as in the original statute. (See Attachment 3, Page 1, Line 12).

Rep. Michaux moved the adoption of GS 46-28.1. (See Attachment 3, Page 1).

The motion was carried unanimously.

Rep. Bryant directed the Committee back to **Notice Provisions**. (See Attachment 2, Page 10 & 11, Line 4, Section a). There were changes that needed to be made in section (a) that tracked the original statute, which says that if upon filing of a petition, it be made to appear to the court that there are persons interested with ownership interest whose names are unknown - we want to say: ownership interest, "the court shall order notices to be given by publication, etc. So we wanted to track that rather than saying "the petitioner may". The other concern was regarding: the list of items: street address, legal description, acreage if available or ascertainable. Some items may not be ascertainable. The third item was Rep. Allen's concern – that a lot of names may not fit on the sign. So there may need to be provisions that a listing of the parties can be determined by Clerk and that the sign should be affixed by the Sheriff or the Sheriff's designee not the Clerk.

Rep. Stam stated there was no reference to lines 31-36. He stated that he did not hear why this was put into the register of deeds. (See Attachment 2, Page 11, Line 31-36).

Co-Chair Bryant asked the Committee if it was interested in proceeding with this provision with these changes, and have the staff make the changes and circulate it to the Committee for approval?

Sen. Jones made that motion.

Mr. Harris seconded the motion.

Rep. Stam voted against this for 2 reasons:

- 1. To take this up in a general provision, and
- 2. You can't recommend attorneys to the Clerks.

Mr. Pete Powell referenced G.S. 46-6 and stated that if you have a provision where the Clerk is posting property signs as opposed to the Sheriff he would suggest it be the Sheriff. He also raised the concern of having different rules for different proceedings.

Co-Chair Bryant took a vote on the motion, and the motion passed unanimously.

Rep. Allen stated that she is in general favor of the report and the legislation with some tweaking of the report.

Mr. Blackledge requested to take another look at the item 5, "Credit For Co-Owner Interest When Purchasing Property". He had some updated language for clarification. (See Attachment 3, Page 2, Line 42). This is alternative suggested language that was given. He solicited additional information.

Mr. Steele asked if this was crediting the value or the price.

Mr. Blackledge replied that it is the credit for the value as determined by the price.

Rep. Stam made a motion to put this in the statute.

The motion was seconded and carried unanimously.

Mr. Blackledge introduced item 10, "Buyout Provision" (See Attachment 2, Page 13, Line 16 & Attachment 4). While working through the timeline a logical problem that he discovered is, if the Buyout option occurs prior to the sale, then you have 2 options: either the buyout occurs or the action is dismissed. If the action is dismissed, then one never gets to the sale.

Co-Chair Bryant asked the Committee if it had any questions.

Rep. Stam expounded on the timeline, the explanation of the draft "Buyout Option". He explained that this whole process has been stretched out to about a year. It is a non-problem, and the Committee would be putting a monkey-wrench into the only court procedures in North Carolina that actually work well. (See Attachment 4).

Co-Chair Bryant asked a question about the Buyout provisions. Would the Commissioners be involved in this?

Mr. Blackledge believes that the Commissioners file the report with the Court and then the court confirms it or sends it back. The committee clarified that the Clerk would decide that it can be divided or order a sale. The Commissioners would not be involved in the decision to the dividing or ordering a sale.

Co-Chair Bryant asked was there any other comments on this provision. If the Buyout did not happen, then the public or private sale would proceed in the normal course of business.

Mr. Steele opposed the provision; he felt that it would create unfairness.

Mr. Woodson asked the staff a question, "is this fairly comparable to the provision in Georgia?

Mr. Blackledge responded that it was fairly close.

Mr. Woodson stated that he was in favor of this provision.

Ms. Horne gave reasons why the Landloss Prevention Project felt that the Buyout Provision is a good option. It will balance the equity in these transactions, although the timeline needs to be adjusted.

Ms. Craig-Taylor said from her research there appears to be tension when a petitioner who wants out of the tenancy-in-common property. This allows that person to get out without having to sacrifice the land of others who may want the sale.

Mr. Blackledge still had a concern about the provision. How to get back to the sale when on the Buyout track? What would the Committee like to do if there is no one left on the Petitioner's side? (See Attachment 2, Page 13, Line 30).

Mr. Harris said to dismiss it.

Mr. Steele requested that the Committee spend more time on this and study it further even though he opposed it.

Co-Chair Bryant asked the staff, "What is the process to review this matter further?"

Mr. Krehely stated that a general recommendation outside of a bill can be done or something in the form of a bill can be done.

Mr. Rose stated that Mr. Krehely's suggestion would be one recommendation. He stated that this is a social and technical issue.

Rep. Stam suggested not adopting this provision and trying to get something better.

Mr. Harris moved to adopt the provision.

Rep. Stam called for a division by show of hands. The motion carried.

Mr. Blackledge introduced item 12, "No Attorneys Fees Charged to Opponents of Sale, GS 46-22.2. If you appear in court in person, Attorneys' fees cannot be charged against you. The second option gives the court more options. (See Attachment 2, Subsection x(a), Line 31, & Attachment 3, Page 15, Line 25).

M. Woodson asked the question regarding what was meant by "in person".

Mr. Blackledge responded that they are physically there. He was trying to come up with a way to state that the person was doing more than just sending in a piece of paper saying that they oppose or object and thereby avoiding any attorneys' fees.

Co-Chair Bryant shared that one of the concerns with this provision was that people might just try to avoid paying their share of the attorneys' fees by filing a pleading if someone advised them of that or subject them to it to avoid paying their share. That was not the point. The point was to not force the person who opposed the sale to participate in what they had opposed if they actually had defended the case.

Rep. Stam gave an example of why he agreed with the alternative, and he moved to adopt the alternative.

Co-Chair Bryant asked for a second. There was none. Ms. Craig-Taylor had a comment.

Ms. Craig-Taylor liked the provision, to not assess attorney fees against parties that are contesting the action. There is some appearance of impropriety again. She made a substitute motion to adopt the provision presented on page 15 - G.S.46.22.2. (See Attachment 2, Page 15, Line 25).

Mr. Harris seconded.

Rep. Stam stated that he trusts the Clerk to do this in a fair manner. The effect of adopting the current motion would be a reduction in value of property for people who own property by tenants in common.

Co-Chair Bryant called for a vote on the motion. The motion carried.

Rep. Stam called for a division.

Co-Chair Bryant stated that all in favor of the substitute motion raise your hand. The substitute motion carried. The other motion died for lack of relevancy.

Mr. Blackledge introduced item 11, "Substantial Injury" Multiple Factor Test, and he stated that one of the complaints was that the current test does not take into account non-economic factures. The language on page 14 would add the consideration of non-economic factors. This asks the court to look at a more than just the traditional "Substantial Injury" and to look at a series of factors and determine whether or not to go ahead with the sale. (See Attachment 2, Page 14, Line 45 & Page 15, Line 3).

Rep. Stam asked a question regarding if the property can't be divided and because of these reasons can't be sold what, then what happens to the property? Does it stay forever as is?

Ms. Craig-Taylor asked if the committee were being asked to add more factors into consideration for the court's decision?

Rep. Stam asked a question regarding the effect of this provision other than the fact that it will depreciate the value of common property by 30, 40, or 50%.

Mr. Harris responded to Rep. Stam's question. He said that the effect, he thinks, would be to provide further guidance to the Clerk and especially the Assistant Clerks of Court that would be hearing these cases - providing as much guidance as possible so that in situations where there is only one attorney representing any of the parties, in truly an adversarial proceeding, they would have as much information at their finger tips as possible in making ajudication.

Rep. Stam asked if the court says no sale, then what happens?

Co-Chair Bryant answered his question by saying that the question before the court is can it be divided or sold. To say that nothing happens is not an option, unless there are other factors.

Sen. Jones asked whether it can be appealed to a higher court for a judge make a final decision.

Co-Chair Bryant responded that it can be appealed to a higher court. The Judge would review the Clerk's decision on appeal.

Mr. Powell asked whether a petition can be switched to an in-kind or not?

Co-Chair Bryant asked if there was a motion on this or to include it for further study?

Mr. Harris made the motion to adopt the provision. The motion carried.

Rep. Stam called for a division by show of hands.

The motion was carried.

The meeting was adjourned at 5:50pm. Co-Chair Bryant reopened the meeting to ask for a motion to adopt the January 9, 2009 minutes. A motion was made by Mr. David Harris and the minutes were approved.

Respectfully Submitted:

opresentative Angela R. Bryant, Co-Chair

Karon Hardy, Committee Assistant

House Pages

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NAME	FIRM OR AGENCY AND ADDRESS
Leslie Amold	SOG-Daily Bulletin
Barny L. Williams	Conservation Trust for North Carolina
Tom Steele, Jr	Real Property Section NCBA Wishard, Abords Heunding in Distance
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Henry M Lancaster	LCA
Keith Weatherly	Office of Rep. Stam
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Jahr Gancery	LLPP
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Dannoth Sharpley	Black Family Land trust
Swonala "Saul" Horne	LCPP
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NAME	FIRM OR AGENCY AND ADDRESS
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NORTH CAROLINA GENERAL ASSEMBLY



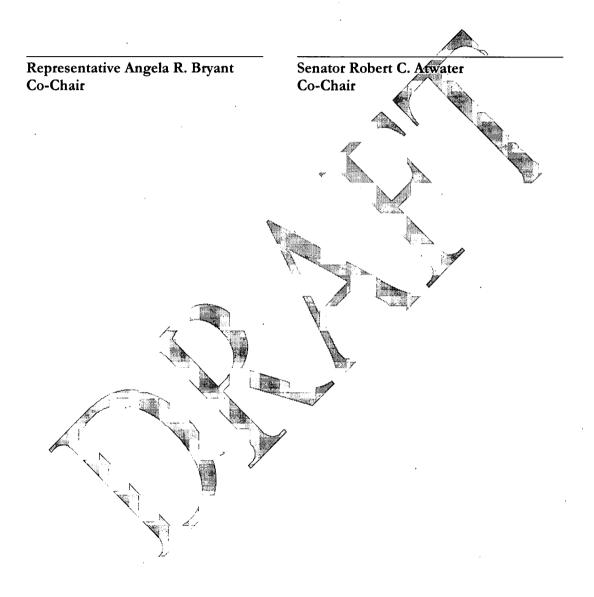
PARTITION SALES STUDY COMMITTEE

REPORT TO THE
2009 SESSION
of the
2009 GENERAL ASSEMBLY

JANUARY, 2009

TRANSMITTAL LETTER

The Partition Sales Study Committee respectfully submits the following report.



COMMITTEE INTRODUCTION

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The Partition Sales Study Committee was created by Part XLII of S.L. 2008-181 to address the impact of the partition sale procedures on the economic use and loss of heir property and farmland by heirs in North Carolina (see Appendix). The Committee consisted of 18 members including five members of the House of Representatives, five members of the Senate, two Clerks of Superior Court, and six members of the public with an expertise or stakeholder interest in the issue. Sen. Robert C. Atwater and Representative Angela Bryant co-chaired the Committee.

The Committee was required to submit its final report, including legislative recommendations, to the 2009 General Assembly no later than March 1, 2009 and terminated on that date, or upon submission of its report, whichever occurred first.

COMMITTEE MEMBERS

Pro Tem's Appointments

Senators

Sen. Robert C. Atwater (Co-Chair) Sen. Charles Woodrow Albertson Sen. Philip Edward Berger Sen. Edward Walter Jones Sen. David F. Weinstein

Public Members Mr. David H. Harris Jr. Hon. Richard E. Hunter Jr. Mr. Gregory C. Malhoit Ms. Pamela Thombs

Speaker's Appointments

Representatives Rep. Angela R. Bryant (Co-Chair) Rep. Lucy T. Allen Rep. Henry M. Michaux Jr. Rep. Timothy Lee Spear Rep. Paul B. Stam

> Public Members Hon. F. Gordon Battle Ms. Phyliss Craig-Taylor Hon, James C. Stanford Mr. Steve Woodson

COMMITTEE STAFF

Legal Staff

Steve Rose, Research Division Brad Krehely, Research Division Ryan Blackledge, Bill Drafting Division

Committee Clerks

Carol Resar, Legislative Assistant to Sen. Atwater Karon Hardy, Legislative Assistant to Rep. Bryant

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The Committee met three times, December 1, 2008, January 9, 2009, and January 26, 2009.

December 1, 2008

The Committee reviewed its charge with a presentation by Committee Co-counsel Brad Krehely. Following the review of the Committee's charge, the Committee heard presentations from the Honorable Richard E. Hunter, Jr., Clerk of Superior Court of Warren County and the Honorable James C. Stanford, Clerk of Superior Court of Orange County. Both are members of the Committee. They discussed property partition procedures, covering actual partitions and sales.

Faith Rivers, Associate Professor of Law at Elon University School of Law, made a presentation to the Committee that reviewed the history of heir property and joint property ownership. She also discussed some of the challenges poor landowners face from partition sales. Finally, she reviewed the procedures in South Carolina and Alabama.

 Andrew Branan, Executive Director of the North Carolina Farm Transition Network, discussed the work of his organization in preventing problems associated with the partition of heir property. His organization approaches the problem using a planning and prevention approach in which the family tries to decide what they will want to happen to the land when the time comes. This involves consideration of what they have and which family members may wish to continue farming the land. This involves education of family members, as well as the professional people who might serve them, such as lawyers and accountants.

The Committee discussed what had been presented, as well as additional information it required. The Administrative Office of the Courts, the Real Property Section of the North Carolina Bar Association, and the Land Loss Prevention Project all offered to assist the Committee in its work.

January 9, 2009

The Committee began its meeting with a presentation by Committee Co-counsel Ryan Blackledge who reviewed the North Carolina statutory provisions for partition actions.

John Pollock, Enforcement Director of the Alabama Fair Housing Center, presented an overview of partition procedures around the United States. Mr. Pollock made some specific suggestions for changes to North Carolina law that included:

- Require the Court to consider non-economic value of property in weighing sale.
- Allow a buyout option for partition sale opponents if division is not possible.
- Ensure that owners receive notice of the action.
- Establish sale procedures.
- Disallow the assessment of attorney's fees against parties that contest the sale.

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Ms. Earls presented case studies of the sales of heir property in Orange County and submitted the following recommendations to the Committee:

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Require consideration of specific factors in determining whether partition in kind or sale of the land will be ordered.

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• Establish a statutory procedure for co-tenants who oppose assale to buy out other cotenants that includes a court-obtained neutral appraisal.

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Eliminate opportunities for conflicts of interest.

Increase the time to respond to a petition.

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Mr. Dorosin made the following recommendations to the Committee:

17 18 • Give parties opposed to partition the right to purchase the petitioner's fractional interest ("buyout option"). Strengthen existing statutory provisions against potential conflicts of interest.

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Prohibit the assessment of attorney's fees against parties opposed to partition.

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Tom Steele, the immediate past chair of the Real Property Section of the North Carolina Bar Association, told the Committee that it is the opinion of the North Carolina Bar Association that the procedure for partition sales works well and should not be changed. The proposed changes would add more problems, delays and expense to the current partition sales process and unnecessarily burden family members. Speaking personally, he felt the Bar would not be opposed to changing the time for response to a partition petition from 10 days to 30 days.

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Mr. Blackledge then reviewed past bills introduced in the General Assembly to change the partition procedure, none of which had been enacted. He also cautioned the Committee that certain proposed buy-out provisions could raise constitutional issues if they favored one party over another or did not result in all parties receiving full value for their ownership share.

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The Committee did receive a specific proposal to change the response time for answering a partition petition from 10 days to 30 days from Rep. Paul Stam, a member of the Committee. Rep. Stam also told the Committee that some of the suggestions it had received from presenters to the Committee could have the effect of devaluing the property of some tenants-in-common by 30-50%. He illustrated how the process can work successfully by discussing two of the partition cases he had handled in the past..

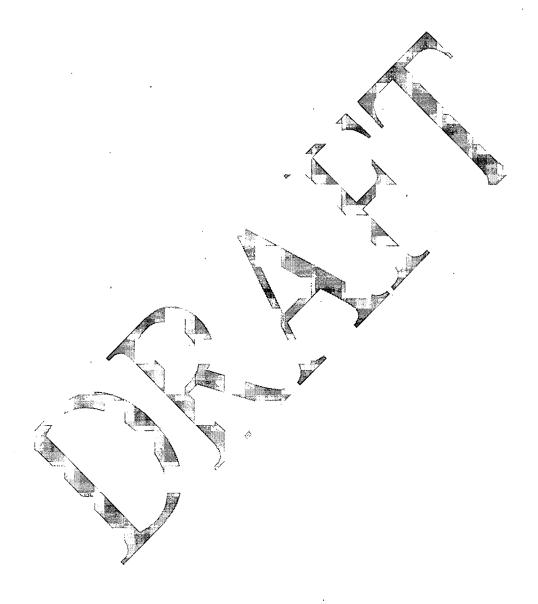
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Co-chair Bryant asked the Committee members to submit proposals to Committee Counsel as soon as possible so they could be prepared for discussion at the next meeting of the Committee.

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The Committee received various suggestions for inclusion in the Committee's recommendations to the 2009 General Assembly. After a thorough discussion of the proposals, and in light of all the information the Committee had received at its previous meetings, the Committee made the recommendations set out in this report.



The Committee should discuss findings and recommendations during the January 26 meeting.

As a starting point for discussion, Cochair Bryant drafted the following:

Tenancy in Common ownership is the most common form of concurrent land ownership. This occurs largely from failure to proactively divide land and write wills devising singular interests and is caused by lack of resources for and access to legal advice and a distrust of the legal system by many low-income landowners (heirs property).

Land held as tenancy in common is particularly vulnerable to forced sale, owing to the increasing number of owners over the generations and the fact that any one owner is legally empowered to bring a forced sale action at any time. This legal process, "partition sales", has been noted in numerous studies by USDA and others, as a cause of loss in small farmland ownership, particularly by African Americans.

While North Carolina law favors division over sale of jointly-owned property, it appears that many actions are brought, in the first instance, for the sale of the property, alleging that the property cannot be divided without producing less value to the owner than a share of the money proceeds from a sale of the whole. In most instances, the parties petitioning for the sale are represented by counsel, and the respondents to & opposing the sale action are often not represented by counsel. When counsel are involved on both sides, studies of cases in two counties, indicated that partition cases are more likely dismissed, and we assume, satisfactorily resolved among the owners.

The NC standard of "substantial injury" and material impairment of cotenant rights need to force a sale has been interpreted as a solely financial/economic determination — i.e. the fair market value of share in-kind would be materially less than a share of the money from a sale of the whole. That eliminates any consideration of factors such as ancestral attachment, historical value, use of property, longstanding ownership & upkeep of the property, use of property for livelihood, provision of eldercare, or companionship for prior owners.

In some cases involving heirs property, there can be unknown and unlocatable owners who, without due diligence on the part of petitioners, will not get actual notice of the proceedings.

The practical likelihood and ease of getting the forced sale while the law favors division and provides for many options to favor division, e.g. division in part and sale in part and the practical likelihood of the lack of counsel for those wanting the keep the land raises some fairness issues for respondents, especially those of lower income, who want to keep possession and ownership of their property.

There are several issues of potential conflict of interest — attorneys representing the parties being allowed to serve as commissioners for the division and the sale and being involved in the selection of the Guardian Ad Litem for the unknown or unlocatable heirs.

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There is also a fairness issue in that parties who are opposed to the partition sale are often forced to pay a share of the attorneys' fees of the petitioner who forces the sale. The attorneys' fees are usually awarded by the clerk, in their discretion, from the sale proceeds before the co-tenants are paid their proportional shares from proceeds that are often the result of below market value sales.

The NC Bar and Land Title Association emphasize that the current partition sales system has stood the test of time and is an equitable and expeditious method for co-owners to resolve differences without expensive, protracted, adversarial litigation and that partition is an absolute right of a tenant



1	PROPOSED LEGISLATION	
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3	EXTEND DEADLINE FOR COMMISSIONERS' REPORT	9
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15	EXTEND DEADLINE FOR COMMISSIONERS REPORT	
16	SECTION x. G.S. 46-17 reads as rewritten:	

"§ 46-17. Report of commissioners; contents; filing.

 The commissioners, within a reasonable time, not exceeding 60-90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in his the clerk's discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property."

EXTEND DEADLINE FOR ANSWERING A SUMMONS

SECTION 2. (a) G.S. 1-394 reads as rewritten:

"§ 1-394. Contested special proceedings; commencement; summons.

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil

Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION x.(b) Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"§ 46-2.1 Summons.

In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394."

CREDIT FOR CO-OWNER INTEREST WHEN PURCHASING PROPERTY

SECTION x. G.S. 46-28 reads as rewritten:

"§ 46-28. Sale procedure.

- (a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General Statutes. Statutes, except as provided herein.
- (b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.
- Any cotenant making an offer in a sale shall receive credit for the interest the cotenant alread owns and shall receive a corresponding reduction in the amount of money the cotenant pays if the cotenants offer is confirmed. When making a joint offer, cotenants may aggregate the credit for the cotenants' interests."

NOTICE PROVISIONS

SECTION x. G.S. 46-6 reads as rewritten:

"§ 46-6. Unknown parties; summons and summons, notice, and representation.

If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. If after such general notice by publication any person interested in the premises and entitled to notice fails to

appear, the court shall in its discretion appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented.

- (a) Upon the filing of a petition for partition, petitioner may demonstrate to the court, by affidavit or otherwise, that there are persons interested in the property whose names are unknown or who are unlocatable. Petitioner must exercise due diligence in attempting to ascertain these unknown or unlocatable persons. The petitioner must specifically allege in an affidavit or otherwise the facts showing what due diligence the petitioner exercised. The petitioner shall set forth facts based upon the personal knowledge of the petitioner concerning the methods, means, and attempts to locate and to effect personal service on the unknown or unlocatable persons, including efforts to utilize, review, or otherwise draw upon sources of information readily available to the petitioner, including Internet sources. Before ordering notice by publication, the clerk must determine that petitioner did exercise due diligence in attempting to find unknown or unlocatable persons who may have an interest in the property.
- (b) When the clerk orders notice by publication, all of the following notice provisions shall apply:
 - Publication in one or more newspapers. The court shall order notices to be given to unknown or unlocatable persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address or other common designation for the property, the legal description, the acreage of the property, and the number of buildings on the property.
 - Posting a sign on the property. Within 10 days after the date the order is made for publication, the clerk or the clerk's designee shall affix a conspicuous sign on the property subject to partition. The sign shall be posted prominently to provide reasonable notice to interested persons. The sign shall state that a partition action has been commenced, and it must identify the name of the petitioner, the known respondents, and the court in which the action is pending.
 - Recording a notice. The petitioner shall record, if not already recorded, a notice of the pending action in the office of the register of deeds in the county or counties in which the real property or any portion of the property is situated. The notice shall contain the name of the court where the action is pending, the names of all the parties to the action at the time of recording, and a description of the real property affected by the action.
- (c) If after such general notice by publication any person interested in the premises and entitled to notice fails to appear, the court shall in its discretion appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented. For purposes of this section, attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding are not "disinterested" and cannot represent unknown or unlocatable persons who may have an interest in the property. Attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parting in a related partition proceeding also cannot recommend persons to represent unknown or unlocatable persons who may have an interest in the property."

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ATTORNEYS REPRESENTING PARTIES CANNOT BE COMMISSIONERS

SECTION x. G.S. 46-7 reads as rewritten:

"§ 46-7. Commissioners appointed.

The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in more than one county, then the court may appoint such additional commissioners as it may deem necessary from counties where the land lies other than the county where the proceedings are instituted. For purposes of this section, attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding are not "disinterested" and cannot serve as commissioners."

INELIGIBLE SELLERS AND PURCHASERS

SECTION x.(a) G.S. 46-31 reads as rewritten:

"§ 46-31. Clerk not to appoint self, assistant or deputy to sell real property. Who may not hold sale

No clerk of the superior court shall appoint himself or his assistant or deputy to make sale of any property in any proceeding before him. The following persons shall not sell or be appointed to sell the property in a partition sale under Article 2 of Chapter 46 of the General Statutes:

- (1) The clerk of superior court, the clerk's assistant clerk, or the clerk's deputy clerk if there has been a proceeding before that clerk of court.
- (2) Attorneys who currently represent the parties in the pending partition proceeding.
- (3) Attorneys who have previously represented the parties in a related partition proceeding."

SECTION x.(b) Article 4 of Chapter 46 is amended by adding a new section to read: "\$ 46-31.1. Ineligible Purchasers.

Unless they have an ownership interest in the land, the following persons are not eligible to purchase land in a partition sale under Article 2 of Chapter 46 of the General Statutes:

- (1) Attorneys who currently represent the parties in the pending partition proceeding or the attorneys' agents.
- Attorneys who have previously represented the parties in a related partition proceeding or the attorneys' agents.
- (3) Commissioners who have been involved in the partition proceedings at any time or the commissioners' agents.
- (4) Appraisers who have been involved in the partition proceedings at any time or the appraisers' agents."

REQUIRE APPRAISAL BEFORE SALE CONFIRMED BY COURT

SECTION x. G.S. 46-28 reads as rewritten:

"§ 46-28. Sale procedure.

- (a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General Statutes. Statutes, except as provided herein.
- (b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail.

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

(c) Prior to either a private sale or a public sale under Artièle 29A of Chapter 1 of the General Statutes, an appraisal of the property shall be made. This appraisal shall be used by the court to help determine whether the amount of the bid or price offered is inadequate and inequitable under G.S. 46-28.1(a)(2)c."

BUYOUT PROVISION

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

"§ 46-22.1. Sale of cotenants' interest in lieu of sale of property.

- If the court determines the property cannot be partitioned in-kind as provided in this Chapter, the court shall, prior to ordering a sale of the property described in the petition, or of any part, allow the nonpetitioning cotenants to purchase the petitioner's interest in the property (the 'buyout option'). The court shall explain the buyout option procedures to any cotenant who appears in person before the court without counsel.
- Within 15 days of the determination that the property cannot be divided in-kind, a petitioner may, with permission of the court, withdraw as petitioner and become a nonpetitioning cotenant with the ability to purchase the interest of any petitioners. Likewise, a nonpetitioning cotenant who wishes to be bought out may, with permission of the court, become a petitioner. If no petitioner remains in the partition action 15 days after the court determines that the property cannot be partitioned in kind, then the proceeding shall be dismissed and the petitioners who have withdrawn shall be liable for the costs of the action.
- (c) A nonpetitioning extensit who wishes to exercise the buyout option shall notify the court of the cotenant's intentino sooner than 15 days and no later than 30 days after the court has determined that the property cannot be partitioned in-kind. A nonpetitioning cotenant may purchase an interest in the property as provided in this section even if a default judgment has been entered against the cotenant. If more than one nonpetitioning cotenant wishes to exercise the buyout option, each cotenant shall be entitled to purchase a portion of the available interest equal to the cotenant's existing percentage ownership divided by the total percentage ownership of all cotenants participating in the buyout.
- If the cotenants cannot agree on the price of the petitioner's interest, the value of the interest shall be determined by one or more competent and independent real estate appraisers approved and appointed by the court. A second appraiser shall be appointed if a second appraisal is requested by the cotenants and the court finds that a second appraisal is needed. The cost of any appraisals ordered pursuant to this section shall be taxed as part of the costs of court to all cotenants. Any of the cotenants may also submit an appraisal to the court from an appraiser not appointed by the court, but those cotenants shall pay the cost of that appraisal.

- (e) An appraiser appointed under subsection (d) of this section shall file a written appraisal of the property to the court within 30 days of being appointed. If the court receives appraisals of different values, the court shall evaluate the appraisals and determine the weight to be given to each in determining the value of the interest subject to sale.
- (f) If the petitioner objects to the value of the interest as determined by an appraiser, the petitioner shall file written notice of the objection with the court no later than 10 days after the filing of the appraiser's report and shall request a hearing on the value of the interest subject to sale. The court shall hold a hearing limited to determining the value of the interest subject to sale and, after hearing evidence as to the issue, shall enter an order stating the value.
- (g) Upon a determination of the value of the interest as provided in this section, the nonpetitioning cotenants who have exercised the buyout option shall have 45 days to pay into the court the price set as the value of the interest. Upon payment of the price, the court shall order that the proper instruments transferring title in the interest be executed and delivered to the purchasing cotenants.
- (h) If one or more but not all of the cotenants who exercised the buyout option under subsection (c) fail to pay the price set as the value of the interest, the remaining cotenants who exercised the buyout option may purchase a portion of the defaulting cotenant's interest by paying the price of the share into the court within 10 days after the expiration of the 45-day deadline provided in subsection (g) of this section. The portion that each of the remaining cotenants may purchase shall be equal to the cotenant's original percentage ownership divided by the total percentage ownership of all cotenants interested in purchasing the defaulting cotenant's interest. If none of the cotenants who exercised the buyout option pays the price set as the value of the interest, the court may order a sale of the property aspinovided in G.S. 46-22.
- (i) This section shall not apply when there is a written tenants-in-common or joint tenants management agreement.

"SUBSTANTIAL INJURY" MULTIPLE FACTOR TEST

SECTION x. G.S. 46-22 reads as rewritten:

"§ 46-22. Sale in lieu of partition.

(a) The court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested parties.

- (b) "Substantial injury" means the fair market value of each share in an in kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if an in kind division would result in material impairment of the cotenant's rights. In determining "substantial injury," the court shall consider at least the following factors:
 - (1) whether the property is able to be divided between the party or parties seeking a partition by sale and those seeking to remain tenants in common;
 - (2) whether a partition in kind would apportion the property in such a way that the value of the parcels resulting from the division, in the aggregate, would be materially less than the actual value of the property if it was sold as a whole, based upon a valuation that takes into account the type of sale conditions under which the court-ordered sale would occur;
 - (3) evidence of longstanding ownership by any individual owner as supplemented by the period of time that any person or persons that such a cotenant is or was

I	related to by related by blood, marriage, or adoption who was in the chain c
2	title owned an interest in the property;
3	(4) any owner's particular sentimental links with or attachment to the property
4	including any attachments arising out of the fact that the property ha
5	ancestral or other unique or special value to one or more of the co-owners;
6	(5) the use being made of the property by any of the owners and the degree t
7	which this owner or owners would be harmed if they could not continue to us
8	the property for these purposes;
9	(6) the degree to which the owners have contributed their pro rata share of the
10	property taxes, insurance, and other carrying charges associated wit
11	maintaining ownership of the real property as well-as the degree to which the
12	owners have contributed to the physical improvement or the upkeep, of the
13	property, including any upkeep related to protecting the interests of the
14	owners against any person who has no legal claim to the property but wh
15	attempts to use the property without the consent of the owners; and
16	(7) any other economic or non-economic factors that the court finds appropriat
17	to consider.
18	(c) In considering the factors set forth in Section 46-22(b) as well as any other economic of
19	non-economic factor that the court may consider to be relevant, a court should not consider an
20	single factor to be dispositive.
21	(e)(d) The court shall specifically find the facts supporting an order of sale of the property.
22	(d)(e) The party seeking a sale of the property shall have the burden of proving substantial
23	injury under the provisions of this section."
24	injury under the provisions of this section.
25	NO ATTORNEYS' FEES CHARGED TO OPPONENTS OF SALE
26	SECTION x.(a) Article 2 of Chapter 46 of the General Statutes is amended by
27	adding a new section to read:
28	"§ 46-22.2. Attorneys' fees prohibited.
29	In a partition proceeding under Articles flor 2 of this Chapter, the court shall not asses
30	attorneys' fees against a nonpetitioning cotenant who contests the partition or sale of the propert
31	by appearing in person before the court."
32	SECTION x.(b) G.S. 6-21(7) reads as rewritten:
33	"§ 6-21. Costs allowed either party or apportioned in discretion of court.
34	Costs in the following matters shall be taxed against either party, or apportioned among the
35	parties, in the discretion of the court:
36	parties, in the discretion of the court.
30 37	(7) All costs and expanses incurred in special proposed in section of fact the division and at
38	(7) All costs and expenses incurred in special proceedings for the division or sale
39	of either real estate or personal property under the Chapter entitled Partition
	Partition, except as otherwise provided therein.
40 41	The word "costs" as the same appears and is used in this costion shall be constituted to 1.1.1.
	The word "costs" as the same appears and is used in this section shall be construed to include
42	reasonable attorneys' fees in such amounts as the court shall in its discretion determine and
43	allow: provided that attorneys' fees in actions for alimony shall not be included in the costs a

provided herein, but shall be determined and provided for in accordance with G.S. 50-16.4."

APPENDIX

Authorization for the study committee from S.L. 2008-181:

PART XLII. STUDY THE IMPACT OF PARTITION SALES OF REAL PROPERTY ON THE ECONOMIC USE AND LOSS OF HEIR PROPERTY AND FARMLAND BY HEIRS IN NORTH CAROLINA (H.B. 1527 – Bryant, Farmer-Butterfield, Allen, Harrison)

SECTION 42.1. There is created the Partition Sales Study Committee to address the issue of the impact of the partition sale procedures on the economic use and loss of heir property and farmland by heirs in North Carolina.

SECTION 42.2. The Committee shall be comprised of 18 members as follows:

- (1) Nine members appointed by the Speaker of the House of Representatives as follows:
 - (a) Five members of the House of Representatives.
 - (b) A Clerk of Superior Court
 - (c) Three members of the public with an expertise or stakeholder interest in the issue.
- (2) Nine members appointed by the President Pro Tempore of the Senate as follows:
 - (a) Five members of the Senate.
 - (b) A Clerk of Superior Count.
 - (c) Three members of the public with an expertise or stakeholder interest in the issue.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair of the Committee. A quorum of the Committee shall be a majority of its members. The Committee shall meet upon the joint call of the cochairs.

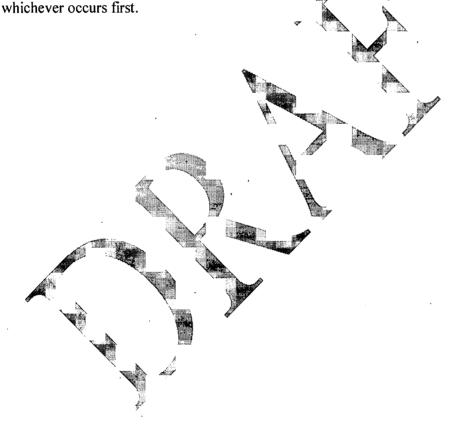
SECTION 42.3. The Committee shall study the laws and procedures concerning partition sales in North Carolina and how these laws affect landowners in the State, examining both the effectiveness and equity of the current law and exploring potential alternatives. Specifically, the Committee shall:

- (1) Review information about partition sales and examine current trends in partition sales in the State, especially related to sales initiated by strangers in interest to heirs or related cotenants.
- Analyze research and information from North Carolina and other states and jurisdictions regarding the effect of partition laws on desired land retention and economic development.
- (3) Analyze information concerning the comparative frequency of partition sales vs. partition-in-kind in North Carolina.
- (4) Identify and assess alternative partition sales laws from other states.
- (5) Explore how best to balance competing interests of the tenants in common in the partition sales context.
- (6) Identify and consult with academics who have studied partition sales nationally to determine their recommendations concerning best practices in partition proceedings.
- (7) Identify current barriers to the adoption of best practices recommendations and to alternative laws adopted by other states and potential options to address these barriers.
- (8) Prepare a report with a statement of the issues and a summary of the research including the Committee's recommendations concerning any needed

improvements and draft legislation to address any inequities presented by partition sales in North Carolina.

SECTION 42.4. Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Committee to aid in its work. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Committee, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 42.5. The Committee shall submit a final report of the results of its study, including any legislative recommendations, to the 2009 General Assembly no later than March 1, 2009. The Committee shall terminate on March 1, 2009, or upon the filing of its final report,





33.

ATTORNEYS' FEES CHARGED TO OPPONENTS OF SALE AT DISCRETION OF THE COURT (ALTERNATIVE)

SECTION x. G.S. 6-21(7) reads as rewritten:

"§ 6-21. Costs allowed either party or apportioned in discretion of court.

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

(7) All costs and expenses incurred in special proceedings for the division or sale of either real estate or personal property under the Chapter entitled Partition.

The court may, in its discretion, choose not to apportion costs and expenses of a Partition action to a party if doing so would be unjust, for reasons stated by the court.

The word "costs" as the same appears and is used in this section shall be construed to include reasonable attorneys' fees in such amounts as the court shall in its discretion determine and allow: provided that attorneys' fees in actions for alimony shall not be included in the costs as provided herein, but shall be determined and provided for in accordance with G.S. 50-16.4."

APPRAISAL BEFORE SALE CONFIRMED BY COURT (ALTERNATIVE)

SECTION x. 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 a., b., or e. a. or b. of subsection (a)(2), 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.
- (d1) In the case of a petition brought pursuant to c. of subsection (a)(2), the court may, in its discretion, order an independent appraisal. Based on the appraisal, 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 cost of an independent appraisal shall be apportioned to all parties, pro rata.
- (e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

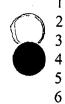
CREDIT FOR CO-OWNER INTEREST WHEN PURCHASING PROPERTY

SECTION x. G.S. 46-28 reads as rewritten:

"§ 46-28. Sale procedure.

- (a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General Statutes. Statutes, except as provided herein.
- (b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.
- Any cotenant making an offer in a sale of an entire parcel shall receive credit for the interest the cotenant already owns and shall receive a corresponding reduction in the amount of money owed after deducting the costs and fees associated with the sale. When making a joint offer, cotenants may aggregate the credit for the cotenants' interests."





ATTORNEYS' FEES CHARGED TO OPPONENTS OF SALE AT DISCRETION OF THE COURT (ALTERNATIVE)

SECTION x. G.S. 6-21(7) reads as rewritten:

"§ 6-21. Costs allowed either party or apportioned in discretion of court.

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

(7) All costs and expenses incurred in special proceedings for the division or sale of either real estate or personal property under the Chapter entitled Partition.

The court may, in its discretion, choose not to apportion costs and expenses of a Partition action to a party if doing so would be unjust, for reasons stated by the court.

The word "costs" as the same appears and is used in this section shall be construed to include reasonable attorneys' fees in such amounts as the court shall in its discretion determine and allow: provided that attorneys' fees in actions for alimony shall not be included in the costs as provided herein, but shall be determined and provided for in accordance with G.S. 50-16.4."

APPRAISAL BEFORE SALE CONFIRMED BY COURT (ALTERNATIVE)

SECTION x. 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 a., b., or e. a. or b. of subsection (a)(2), 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.
- (d1) In the case of a petition brought pursuant to c. of subsection (a)(2), the court may, in its discretion, order an independent appraisal. Based on the appraisal, 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 cost of an independent appraisal shall be apportioned to all parties, pro rata.
- (e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

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- (E) Any cotenant making an offer in a sale of an entire parcel shall receive credit for the interest the cotenant already owns and shall receive a corresponding reduction in the amount of money owed after deducting the costs and fees associated with the sale. When making a joint offer, cotenants may aggregate the credit for the cotenants' interests."



Explanation of DRAFT Buyout Option

Time	Event	Detail
Day 0	Property cannot be	After the commissioners file their report with the court, the court may determine
	partitioned in-kind	that the property cannot be divided up into pieces to distribute to the cotenants.
Days 0-15	Opportunity to switch	The petitioner may, with permission of the court, become a nonpetitioning
	sides (15 days)	cotenant. Likewise, a nonpetitioning cotenant could decide to put up their
		interest in the property for the buyout, and switch sides. If no one wishes to be
		bought out, then the action is dismissed.
Days 15-30*	Notice of desire to	Any nonpetitioning cotenant who wishes to buyout the petitioner must let the
	exercise buyout option	court know. A nonpetitioning cotenant will be able to purchase an amount of the
	(up to 15 days)	interests based on their current interest in the property, depending on how many
	•	other cotenants also want to buyout the petitioner.
Day 30*	Appraiser appointed	If the cotenants cannot agree on a price (likely cannot because the action has
		gone this far already), the court will appoint an independent real estate appraiser.
		The cotenants may request that the court appoint an additional appraiser. The
		cotenants may also hire their own appraiser without getting permission from the
		court, but the cotenants will have to pay for that appraiser out-of-pocket.
Day 30-60*	Appraisal filed (up to	The court-appointed appraiser files a report with the court. If multiple appraisals,
	30 days)	the court weighs the appraisals and determines the property's value.
Day 60-85	Initial Round: Payment	The cotenants who are buying out the petitioner must deposit with the court the
	into court (45 days)	amount they owe based on the appraisal and their existing interest.
Days 85-95*	Second Round:	If some cotenants did not pay for their share in the initial round, the cotenants
	Payment into court (up	who did pay will have the chance to purchase more. The amount available to a
•	to 10 days)	cotenant is based on how may cotenants participate in the second round.

^{*}Time may be shorter than this.

NOTE: The draft includes language that exempts from this procedure cotenants who have a written tenants-in-common or joint tenants management agreement.



NORTH CAROLINA GENERAL ASSEMBLY RALEIGH 27601-2808

MEMORANDUM

TO: FROM:

George Hall, Legislative Services Officer Legislative Services Commission Co-Chairs

Senator Marc Basnight __mB

Speaker Joe Hackney

DATE:

January 30, 2009

RE:

Authorization of staff use for final meeting of the Partition Sales Study

Committee

This memo is to authorize the use of central staff to assist the Partition Sales Study Committee. The Committee Co-Chairs, Rep. Angela Bryant and Sen. Bob Atwater, have requested one final meeting to ensure that all necessary legislative recommendations have been made.

Please work with the Fiscal and Research Divisions, and the Legislative Assistants offices to assign appropriate staff members to these commissions.

Thank you.

Sla. Odwates Ker. Bryank Laura Devivo Cemy Fulk Lia Taylas Willey Taylas Kery Sallsnoth



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Thank you.

Capa to:

Sla. Colwates

Rep. Bryank

Laura Delivo

Clony Fulh

Kla Tackett

Worley Taylor

Kery Golfsnoth



NORTH CAROLINA GENERAL ASSEMBLY COMMITTEE MEETING NOTICE

LEGISLATIVE BUILDING RALEIGH NC 27601

February 3, 2009

MEMORANDUM

TO:

Members of the Partition Sales Study Committee

FROM:

Sen. Robert Atwater, Co-Chair

Rep. Angela R. Bryant, Co-Chair

SUBJECT:

Meeting Notice*

The Partition Sales Study Committee will meet on the following date:

DAY:

Wednesday

DATE:

February 18, 2009

TIME:

4:00 PM

LOCATION:

Room 421, Legislative Office Building

*PLEASE NOTE: This is the final meeting. The purpose of this meeting is to finish consideration of the proposed amendments to G.S. 46-6, Unknown parties; summons, notice, and representation, and to take a final vote on the entire report. No other matters will be considered and no amendments to the body of the report or the other legislative proposals already considered will be accepted. The committee members will receive copies of the report and the adopted legislative proposals, together with a draft of revised proposed G.S. 46-6 as drafted by the staff at the request of the co-chairs prior to the meeting. Please call the staff's attention to any typographical errors prior to the meeting. Proposed amendments to the new draft of G.S. 46-6 will be considered at the meeting.

REMINDER TO NON-LEGISLATIVE MEMBERS: Parking for non-legislative members of the Committee is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available behind the Museum of History Building located on Jones Street in front of State Archives. The cost for visitor parking is \$1.00 per hour or \$8.00 per day and is reimbursed with a parking receipt that is submitted with your travel reimbursement form.

If you have any questions concerning this meeting or if you cannot attend, please contact Carol Resar, Committee Clerk at (919) 715-3036, or Atwaterla@ncleg.net.



Joint Study Committee on Partition Sales Wednesday, February 18, 2009, 4:00 PM 421 LOB

AGENDA

- Welcome and Opening Remarks
 - o Sen. Bob Atwater, Co-Chair
 - o Rep. Angela Bryant, Co-Chair
- Adoption of minutes from January 26, 2009 meeting
- Discussion of Draft of amended G.S. 46-6: Unknown parties; Summons; Notice, and Representation.
- Adoption of Committee Report to the 2009 General Assembly.
- Adjournment

JOINT STUDY COMMITTEE ON PARTITION SALES MINUTES

Wednesday, February 18, 2009 4:00 PM Room 421 Legislative Office Building

The Joint Study Committee on Partition Sales met on Wednesday, February 18, 2009 at 4:00 PM in Room 421 of the Legislative Office Building. Representatives Angela Bryant, Co-Chair, Lucy Allen, Tim Spear and Paul Stam, Senators Atwater, Co-Chair, Ed Jones, and David Weinstein, and public members Phyliss Craig-Taylor, Pamela Thombs, Steve Woodson, David Harris, and The Honorable Gordon Battle attended. Senator Bob Atwater presided.

After welcoming everyone and reminding the Committee members that the only section of the Final Report that will be discussed is the Notice Provisions section found on pages 10 and 11, Senator Atwater asked Mr. Brad Krehely, Research Division, to review the changes made to the Final Report draft (see Attachment #1).

Mr. Krehely told the Committee that the following changes to the Notice Provisions section have been made:

- Page 10, line 41-44, reinserted the original statutory language.
- Page 11, lines 17-18, deleted the number of buildings.
- Page 11, line 17, "street address, if available", is not needed because it reads "or other common designation."
- Page 11, line 21, read" clerk or clerk's designee," now reads "petitioner shall deliver to the sheriff and the sheriff or sheriff's designee."
- Page 11, line 24, added the requirement that the sign remain posted for 30 days, and that the petitioner shall certify to the clerk, by affidavit, that the sign has remained posted for 30 days.
- Page 11, lines 26-38, some changes were made to the size of the sign and what was required to be on the sign.
- The section dealing with recording the notice has been deleted as requested at the last meeting.

After Mr. Krehely's presentation of the changes to the Final Report draft, a lengthy discussion was held by the Committee members, particularly about section (b)(2)b. As a result of the full discussion the following changes were made to the Final Report draft:

- After many attempts through motions to perfect the language in section (b)(2)b, Representative Allen moved to delete on page 11, lines 20-38 section (b)(2)b of the report. Judge Battle seconded. Motion carried.
- > Representative Stam moved to delete on page 11, line 44 the words "not 'disinterest.'" Representative Bryant seconded. Motion carried.

> Representative Bryant moved to delete on page 11, line 39 the words "if after" and insert the words "Before or after," and to delete on page 11, line 40 the words "in its discretion." Mr. Woodson seconded. Motion carried.

After these changes were made, Mr. Harris moved to approve the Notice Provisions section of the Final Report draft as amended. Senator Jones seconded. Motion carried.

Following that motion, Mr. Harris moved to approve the Final Report. Senator Jones seconded. Motion carried.

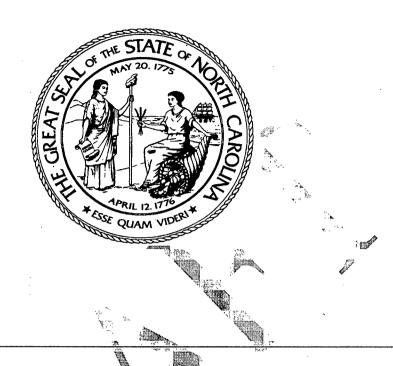
There being no further business, the meeting was adjourned at 5:00 PM.

Senator Bob Atwater, Co-Chair

Carol Resar, Committee Clerk

attachment #/

NORTH CAROLINA GENERAL ASSEMBLY



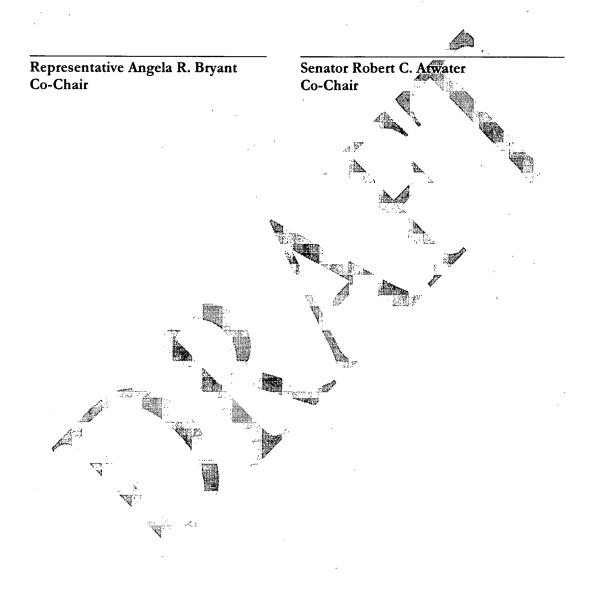
PARTITION SALES STUDY/COMMITTEE

REPORT TO THE
2009 SESSION
of the
2009 GENERAL ASSEMBLY

FEBRUARY, 2009

TRANSMITTAL LETTER

The Partition Sales Study Committee respectfully submits the following report.



COMMITTEE INTRODUCTION

The Partition Sales Study Committee was created by Part XLII of S.L. 2008-181 to address the impact of the partition sale procedures on the economic use and loss of heir property and farmland by heirs in North Carolina (see Appendix). The Committee consisted of 18 members including five members of the House of Representatives, five members of the Senate, two Clerks of Superior Court, and six members of the public with an expertise or stakeholder interest in the issue. Senator Robert C. Atwater and Representative Angela Bryant co-chaired the Committee.

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The Committee was required to submit its final report, including legislative recommendations, to the 2009 General Assembly no later than March 1, 2009 and terminated on that date, or upon submission of its report, whichever occurred first.

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COMMITTEE MEMBERS

President Pro Tempore's Appointments

Speaker's Appointments

17 18

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20 21

22 23 24

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Senators Sen. Robert C. Atwater (Co-Chair Sen. Charles Woodrow Albertson Sen. Philip Edward Berger Sen. Edward Walter Jones Sen. David F. Weinstein

> Public Members Mr. David H. Harris Jr. Hon. Richard E. Hunter Jr. Mr. Gregory C. Malhoit Ms. Pamela Thombs

Representatives Rep. Angela R. Bryant (Co-Chair) Rep. Lucy T. Allen Rep. Henry M. Michaux Jr. Rep. Timothy Lee Spear Rep. Paul B. Stam

> Public Members Hon, F. Gordon Battle Ms. Phyliss Craig-Taylor Hon. James C. Stanford Mr. Steve Woodson

COMMITTEE STAFF

Legal Staff Steven Rose, Research Division Brad Krehely, Research Division Ryan Blackledge, Bill Drafting Division

Committee Clerks

Carol Resar, Legislative Assistant to Sen. Atwater Karon Hardy, Legislative Assistant to Rep. Bryant

The Committee met four times, December 1, 2008, January 9, 2009, January 26, 2009, and February 18, 2009. Complete Committee minutes, including all written material submitted by persons who made formal presentations to the Committee, are permanently available in the Legislative Library.

December 1, 2008

The Committee reviewed its charge with a presentation by Committee Co-counsel Brad Krehely. Following the review of the Committee's charge, the Committee heard presentations from the Honorable Richard E. Hunter, Jr., Clerk of Superior Court of Warren County and the Honorable James C. Stanford, Clerk of Superior Court of Orange County. Both are members of the Committee. They discussed property partition procedures, covering actual partitions and sales.

Faith Rivers, Associate Professor of Law at Elon University School of Law, made a presentation to the Committee that reviewed the history of heir property and joint property ownership. She also discussed some of the challenges poor landowners face from partition sales. Finally, she reviewed the procedures in South Carolina and Alabama.

Andrew Branan, Executive Director of the North Carolina Farm Transition Network, discussed the work of his organization in preventing problems associated with the partition of heir property. His organization approaches the problem using a planning and prevention approach in which the family tries to decide what they will want to happen to the land when the time comes. This involves consideration of what they have and which family members may wish to continue farming the land. This involves education of family members, as well as the professional people who might serve them, such as lawyers and accountants.

The Committee discussed what had been presented, as well as additional information it required. The Administrative Office of the Courts, the Real Property Section of the North Carolina Bar Association, and the Land Loss Prevention Project all offered to assist the Committee in its work.

January 9, 2009

The Committee began its meeting with a presentation by Committee Co-counsel Ryan Blackledge who reviewed the North Carolina statutory provisions for partition actions.

John Pollock, Enforcement Director of the Alabama Fair Housing Center, presented an overview of partition procedures around the United States. Mr. Pollock made some specific suggestions for changes to North Carolina law that included:

- Require the Court to consider non-economic value of property in weighing sale.
- Allow a buyout option for partition sale opponents if division is not possible.
- Ensure that owners receive notice of the action.
- Establish sale procedures.

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Partition Sales Study Committee

Page 5

The Committee also received presentations from Savonala Horne, Executive Director of the Land Loss Prevention Project, Anita Earls, Co-founder and Director of the Southern Coalition for Social Justice, and Mr. Mark Dorosin, Senior Attorney with the UNC Center for Civil Rights.

Disallow the assessment of attorney's fees against parties that contest the sale.

Ms. Home submitted the following written recommendations to the Committee:

- Enhance notice requirements to ensure that owners are made aware of the partition proceeding.
- Provide a buyout option for partition sale opponents and a neutral appraisal.
- Enumerate non-economic factors as specified in the recommendation for evaluating the choice between actual partition and partition sale.
- choice between actual partition and partition sale. Shield partition sale opponents from the assessment of attorney's fees when a forced sale

Ms. Earls presented case studies of the sales of heir property in Orange County and submitted the following recommendations to the Committee:

- Require consideration of specific factors in determining whether partition in kind or sale of the land will be ordered.
- Establish a statutory procedure for co-tenants who oppose a sale to buy out other co-tenants that includes a court-obtained neutral appraisal.
- Eliminate opportunities for conflicts of interest.
- Increase the time to respond to a petition.

Mr. Dorosin made the following recommendations to the Committee:

- Give parties opposed to partition the right to purchase the petitioner's fractional interest ("buyout option").
- Strengthen existing statutory provisions against potential conflicts of interest.
- Prohibit the assessment of attorney's fees against parties opposed to partition.

Tom Steele, the immediate past chair of the Real Property Section of the North Carolina Bar Association, told the Committee that it is the opinion of the North Carolina Bar Association that the procedure for partition sales works well and should not be changed. The proposed changes would add more problems, delays and expense to the current partition sales process and unnecessarily burden family members. Speaking personally, he felt the Bar would not be opposed to changing the time for response to a partition petition from 10 days to 30 days.

Ms. Mariah West, Associate Legal Counsel for the Administrative Office of the Courts (AOC), presented data collected by the AOC. Based on an analysis of data from the past few years, approximately 29% of partition cases filed end up in a sale. The AOC, however, does not have more detailed information on who was involved in the cases or what circumstances led to a sale.

Total Partition Cases Filed

Calendar Year	Cases
2005	510
2006	594
2007	561

Partition Cases Resulting in Sale

Fiscal Year	Cases
2005-06	156
2006-07	161
2007-08	163

Mr. Blackledge then reviewed past bills introduced in the General Assembly to change the partition procedure, none of which had been enacted. He also cautioned the Committee that certain proposed buy-out provisions could raise constitutional issues if they favored one party over another or did not result in all parties receiving full value for their ownership share.

The Committee did receive a specific proposal to change the response time for answering a partition petition from 10 days to 30 days from Representative Paul Stam, a member of the Committee. Representative Stam also told the Committee that some of the suggestions it had received from presenters to the Committee could have the effect of devaluing the property of some tenants-incommon by 30-50%. He illustrated how the process can work successfully by discussing two of the partition cases he had handled in the past.

Co-chair Bryant asked the Committee members to submit proposals to Committee Counsel as soon as possible so they could be prepared for discussion at the next meeting of the Committee.

January 26, 2009

The Committee received various suggestions for inclusion in the Committee's recommendations to the 2009 General Assembly. After a thorough discussion of the proposals, and in light of all the information the Committee had received at its previous meetings, the Committee approved all but the notice provisions for inclusion in the final report. The Committee suggested changes to the notice provision proposal, which were considered at the next meeting.

February 18, 2009

After a thorough discussion of the notice provision proposal, the Committee approved [did not approve] the proposal. The Committee approved the final report and the proposed legislation beginning on page nine of this report.

Tenancy in common ownership is the most common form of concurrent land ownership. Without proper planning, however, tenancy in common ownership can lead to "heirs' property," where multiple family members own the same piece of land but where exact ownership is uncertain, usually due to generations of intestacy resulting in a large number of owners with an interest in the property. Though heirs' property can be avoided through careful legal planning, many low-income landowners lack resources and access to legal advice.

 Any land held as a tenancy in common is susceptible to partition, either in-kind or by sale, and any one owner is legally empowered to bring a partition action at any time. Partition sales occur when the property cannot be divided into smaller parcels without "substantial injury" to the value of the land. Heirs' property is particularly vulnerable to partition because of the increasing number of owners over the generations. Partition sales of heirs' property have been noted in numerous studies by USDA and others as a cause of loss in small farmland ownership, particularly by African Americans.

Though North Carolina law favors division over the sale of jointly-owned property, it appears that many actions are brought, in the first instance, for the sale of the property, alleging that the property cannot be divided without producing less value to the owner than a share of the money proceeds from a sale of the whole. Parties petitioning for the sale are usually represented by counsel, but the respondents to the sale action are often not represented by counsel. Based on sample cases presented to this Committee, when counsel are involved on both sides it appears more likely that that partition cases are dismissed and, the Committee assumes, satisfactorily resolved among the owners.

The North Carolina standard of "substantial injury" and material impairment of cotenant rights in order to force a sale is a financial/economic determination -- i.e. whether the fair market value of a share in-kind would be materially less than a share of the money from a sale of the whole. That eliminates any consideration of factors such as ancestral attachment, historical value, use of property, longstanding ownership and upkeep of the property, use of property for livelihood, provision of eldercare, or companionship for prior owners.

In some cases involving heirs' property, there can be unknown and unlocatable owners who, without due diligence on the part of petitioners, will not get actual notice of the proceedings.

The practical likelihood and ease of getting a forced sale raises some fairness issues for respondents, especially those of lower income, who want to keep possession and ownership of their property. Though the law favors partition in-kind and provides for many options to favor partition in-kind, e.g. division in part and sale in part, a lack of legal representation for respondents makes a forced sale more likely.

There are several opportunities for the appearance of a conflict of interest -- attorneys representing the parties being allowed to serve as commissioners for the division and the sale and attorneys representing the parties being involved in the selection of the Guardian Ad Litem for the unknown or unlocatable heirs.

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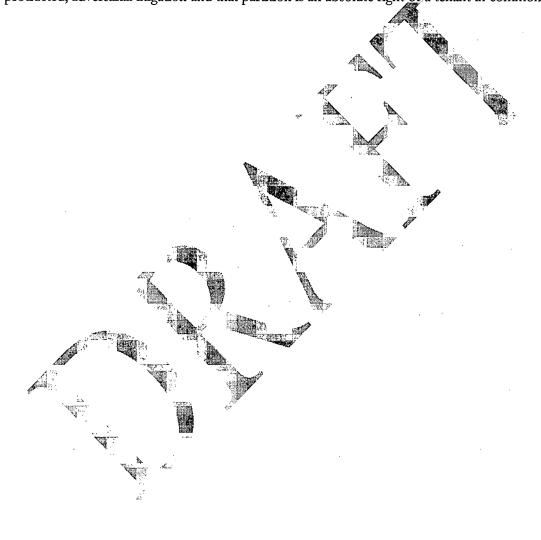


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There is also a fairness issue in that parties who are opposed to the partition sale are often forced to

pay a share of the attorneys' fees of the petitioner who forces the sale. The attorneys' fees are usually awarded by the clerk, in their discretion, from the sale proceeds before the co-tenants are paid their proportional shares from proceeds that are often the result of below market value sales.

The Real Property Section of the North Carolina Bar Association and the North Carolina Land Title Association emphasize that the current partition sales system has stood the test of time and is an equitable and expeditious method for co-owners to resolve differences without expensive, protracted, adversarial litigation and that partition is an absolute right of a tenant in common.



PROPOSED	LEGISLATION
EXTEND DEADLINE FOR COMMISSIONERS'	REPORT

EXTEND DEADLINE FOR ANSWERING A SUMMONS	***************************************	
CREDIT FOR CO-OWNER INTEREST WHEN PURCHASI	NG PROPERTY	10
NOTICE PROVISIONS		10

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"SUBSTANTIAL INJURY" MULTIPLE FACTOR	TEST		15

NO ATTORNEYS' FEES CHARGED TO OPPONENTS OF SALES	16

NO ATTORNEYS' FEES CHARGED TO OPPONENTS OF SALI

EXTEND DEADLINE FOR COMMISSIONERS' REPORT SECTION x. G.S. 46-17 reads as rewritten:

"§ 46-17. Report of commissioners; contents; filing.

The commissioners, within a reasonable time, not exceeding 60 90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in his the clerk's discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property."

EXTEND DEADLINE FOR ANSWERING A SUMMONS SECTION x.(a) G.S. 1-394 reads as rewritten:

"§ 1-394. Contested special proceedings; commencement; summons.

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil

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 Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION x.(b) Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"§ 46-2.1 Summons.

In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394."

CREDIT FOR CO-OWNER INTEREST WHEN PURCHASING PROPERTY SECTION x. G.S. 46-28 reads as rewritten:

"§ 46-28. Sale procedure.

- (a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General Statutes. Statutes, except as provided herein.
- (b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.
- (c) Any cotenant making an offer in a sale of an entire parcel shall receive credit for the interest the cotenant already owns and shall receive a corresponding reduction in the amount of money owed after deducting the costs and fees associated with the sale. When making a joint offer, cotenants may aggregate the credit for the cotenants' interests."

NOTICE PROVISIONS

SECTION x. G.S. 46-6 reads as rewritten:

"§ 46-6. Unknown parties; summons and summons, notice, and representation.

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices as provided in this section. The petitioner must specifically allege in an affidavit or otherwise the facts showing what due diligence the petitioner exercised. The petitioner shall set forth facts based upon the personal knowledge of the petitioner concerning the methods, means,

and attempts to locate and to effect personal service on the unknown or unlocatable persons, including efforts to utilize, review, or otherwise draw upon sources of information readily available to the petitioner, including Internet sources. Before ordering notice by publication, the clerk must determine that petitioner did exercise due diligence in attempting to find unknown or unlocatable persons who may have an interest in the property, to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. If after such general notice by publication any person interested in the premises and entitled to notice fails to appear, the court shall in its discretion appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented.

- (b) When the clerk orders notice by publication, all of the following notice provisions shall apply:
 - Publication in one or more newspapers.—The court shall order notices to be given to unknown or unlocatable persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address or other common designation for the property, the legal description, and the acreage of the property.
 - Posting a sign on the property. Within 10 days after the entry of the order for publication is made, the petitioner shall deliver to the sheriff and the sheriff or sheriff's designee shall affix a conspicuous sign on the property subject to partition. The sign shall be posted prominently to provide reasonable notice to interested persons and shall remain posted for 30 days. Petitioner shall certify to the clerk, by affidavit, that the sign has remained posted on the property for 30 days. The sign shall measure no less than 24 inches high and 30 inches wide and shall state across the first line, in black type of no less than 140 point size, the words 'NOTICE OF PARTITION ACTION. The sign shall state that a partition action has been commenced, and it must include all of the following:
 - a. The file number.
 - b. The caption of the case showing the names of all petitioners, respondents, and unknown heirs.
 - c. The court and county in which the action is pending.
 - d. A description of the property which includes the street address or other common designation for the property, the legal description, and the acreage of the property.
 - e. The date, time, and location of the hearing.
- (c) If after such general notice by publication any person interested in the premises and entitled to notice fails to appear, the court shall in its discretion appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented. For purposes of this section, attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding are not 'disinterested' and cannot represent unknown or unlocatable persons who may have an interest in the property."

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ATTORNEYS REPRESENTING PARTIES CANNOT BE COMMISSIONERS

SECTION x. G.S. 46-7 reads as rewritten:

"§ 46-7. Commissioners appointed.

The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in more than one county, then the court may appoint such additional commissioners as it may deem necessary from counties where the land lies other than the county where the proceedings are instituted. For purposes of this section, attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding are not "disinterested" and cannot serve as commissioners, except by consent of the parties."

INELIGIBLE SELLERS AND PURCHASERS

SECTION x.(a) G.S. 46-31 reads as rewritten:

"§ 46-31. Clerk not to appoint self, assistant or deputy to sell real property. Who may not hold sale

No clerk of the superior court shall appoint himself or his assistant or deputy to make sale of any property in any proceeding before him. The following persons shall not sell or be appointed to sell the property in a partition sale under Article 2 of Chapter 46 of the General Statutes:

- The clerk of superior court, the clerk's assistant clerk, or the clerk's deputy (1) clerk if there has been a proceeding before that clerk of court.
- Attorneys who currently represent the parties in the pending partition (2) proceeding.
- Attorneys who have previously represented the parties in a related partition (3) proceeding."

SECTION x.(b) Article 4 of Chapter 46 is amended by adding a new section to read: "\\$ 46-31.1. Ineligible Purchasers.

The following persons are not eligible to purchase land in a partition sale under Article 2 of Chapter 46 of the General Statutes:

- #**!** (1) Attorneys who currently represent the parties in the pending partition proceeding or the attorneys' agents.
 - Attorneys who have previously represented the parties in a related partition proceeding or the attorneys' agents.
 - Commissioners who have been involved in the partition proceedings at any (3) time of the commissioners' agents.
 - Appraisers who have been involved in the partition proceedings at any time or (4) the appraisers' agents."

APPRAISAL BEFORE SALE CONFIRMED BY COURT

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

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

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 a., b., or c. of subsection (a)(2), 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.
- (d1) In the case of a petition brought pursuant to c. of subsection (a)(2), the court shall order an independent appraisal. Based on the appraisal, 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 cost of an independent appraisal shall be apportioned to all parties, pro rata.
- (e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

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

"§ 46-22.1. Sale of cotenants' interest in lieu of sale of property.

- (a) If the court determines the property cannot be partitioned in-kind as provided in this Chapter, the court shall, prior to ordering a sale of the property described in the petition, or of any part, allow the nonpetitioning cotenants to purchase the petitioner's interest in the property (the 'buyout option'). The court shall explain the buyout option procedures to any cotenant who appears in person before the court without counsel.
- (b) Within 15 days of the determination that the property cannot be divided in-kind, a petitioner may, with permission of the court, withdraw as petitioner and become a nonpetitioning cotenant with the ability to purchase the interest of any petitioners. Likewise, a nonpetitioning cotenant who wishes to be bought out may, with permission of the court, become a petitioner. If no petitioner remains in the partition action 15 days after the court determines that the property cannot be partitioned in-kind, then the proceeding shall be dismissed and the petitioners who have withdrawn shall be liable for the costs of the action.
- (c) A nonpetitioning cotenant who wishes to exercise the buyout option shall notify the court of the cotenant's intent no sooner than 15 days and no later than 30 days after the court has determined that the property cannot be partitioned in-kind. A nonpetitioning cotenant may purchase an interest in the property as provided in this section even if a default judgment has been entered against the cotenant. If more than one nonpetitioning cotenant wishes to exercise the buyout option, each cotenant shall be entitled to purchase a portion of the available interest equal to the cotenant's existing percentage ownership divided by the total percentage ownership of all cotenants participating in the buyout.
- (d) If the cotenants cannot agree on the price of the petitioner's interest, the value of the interest shall be determined by one or more competent and independent real estate appraisers approved and appointed by the court. A second appraiser shall be appointed if a second appraisal is requested by the cotenants and the court finds that a second appraisal is needed. The cost of any appraisals ordered pursuant to this section shall be taxed as part of the costs of court to all cotenants. Any of the cotenants may also submit an appraisal to the court from an appraiser not appointed by the court, but those cotenants shall pay the cost of that appraisal.
- (e) An appraiser appointed under subsection (d) of this section shall file a written appraisal of the property to the court within 30 days of being appointed. If the court receives appraisals of different values, the court shall evaluate the appraisals and determine the weight to be given to each in determining the value of the interest subject to sale.
- (f) If the petitioner objects to the value of the interest as determined by an appraiser, the petitioner shall file written notice of the objection with the court no later than 10 days after the filing of the appraiser's report and shall request a hearing on the value of the interest subject to sale. The court shall hold a hearing limited to determining the value of the interest subject to sale and, after hearing evidence as to the issue, shall enter an order stating the value.
- (g) Upon a determination of the value of the interest as provided in this section, the nonpetitioning cotenants who have exercised the buyout option shall have 45 days to pay into the court the price set as the value of the interest. Upon payment of the price, the court shall order that the proper instruments transferring title in the interest be executed and delivered to the purchasing cotenants.

- (h) If one or more but not all of the cotenants who exercised the buyout option under subsection (c) fail to pay the price set as the value of the interest, the remaining cotenants who exercised the buyout option may purchase a portion of the defaulting cotenant's interest by paying the price of the share into the court within 10 days after the expiration of the 45-day deadline provided in subsection (g) of this section. The portion that each of the remaining cotenants may purchase shall be equal to the cotenant's original percentage ownership divided by the total percentage ownership of all cotenants interested in purchasing the defaulting cotenant's interest. If none of the cotenants who exercised the buyout option pays the price set as the value of the interest, the court may order a sale of the property as provided in G.S. 46-22.
- (i) This section shall not apply when there is a written-tenants-in-common or joint tenants management agreement.

"SUBSTANTIAL INJURY" MULTIPLE FACTOR TEST SECTION x. G.S. 46-22 reads as rewritten: "§ 46-22. Sale in lieu of partition.

- (a) The court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested parties.
- (b) "Substantial injury" means the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if an in-kind division would result in material impairment of the cotenant's rights. In determining substantial injury," the court shall consider at least the following factors:
 - (1) whether the property is able to be divided between the party or parties seeking a partition by sale and those seeking to remain tenants in common;
 - whether a partition in kind would apportion the property in such a way that the value of the parcels resulting from the division, in the aggregate, would be materially less than the actual value of the property if it was sold as a whole, based upon a valuation that takes into account the type of sale conditions under which the court-ordered sale would occur;
 - evidence of longstanding ownership by any individual owner as supplemented by the period of time that any person or persons that such a cotenant is or was related to by related by blood, marriage, or adoption who was in the chain of title owned an interest in the property;
 - (4) any owner's particular sentimental links with or attachment to the property, including any attachments arising out of the fact that the property has ancestral or other unique or special value to one or more of the co-owners;
 - (5) the use being made of the property by any of the owners and the degree to which this owner or owners would be harmed if they could not continue to use the property for these purposes;
 - the degree to which the owners have contributed their pro rata share of the property taxes, insurance, and other carrying charges associated with maintaining ownership of the real property as well as the degree to which the owners have contributed to the physical improvement or the upkeep, of the property, including any upkeep related to protecting the interests of the

- owners against any person who has no legal claim to the property but who attempts to use the property without the consent of the owners; and
- (7) any other economic or non-economic factors that the court finds appropriate to consider.
- (c) In considering the factors set forth in Section 46-22(b) as well as any other economic or non-economic factor that the court may consider to be relevant, a court should not consider any single factor to be dispositive.
 - (e)(d) The court shall specifically find the facts supporting an order of sale of the property.
- (d)(e) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section."

NO ATTORNEYS' FEES CHARGED TO OPPONENTS OF SALE

SECTION x.(a) Article 2 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"§ 46-22.2. Attorneys' fees prohibited.

In a partition proceeding under Articles 1 or 2 of this Chapter, the court shall not assess attorneys' fees against a nonpetitioning cotenant who contests the partition or sale of the property by appearing in person before the court."

SECTION x.(b) G.S. 6-21(7) reads as rewritten:

"§ 6-21. Costs allowed either party or apportioned in discretion of court.

Costs in the following matters shall be faxed against either party, or apportioned among the parties, in the discretion of the court:

All costs and expenses incurred in special proceedings for the division or sale of either real estate or personal property under the Chapter entitled Partition.

Partition, except as otherwise provided therein.

The word "costs" as the same appears and is used in this section shall be construed to include reasonable attorneys' fees in such amounts as the court shall in its discretion determine and allow: provided that attorneys' fees in actions for alimony shall not be included in the costs as provided herein, but shall be determined and provided for in accordance with G.S. 50-16.4."

PART XLII. STUDY THE IMPACT OF PARTITION SALES OF REAL PROPERTY ON THE ECONOMIC USE AND LOSS OF HEIR PROPERTY AND FARMLAND BY HEIRS IN NORTH CAROLINA (H.B. 1527 – Bryant, Farmer-Butterfield, Allen, Harrison)

SECTION 42.1. There is created the Partition Sales Study Committee to address the issue of the impact of the partition sale procedures on the economic use and loss of heir property and farmland by heirs in North Carolina.

SECTION 42.2. The Committee shall be comprised of 18 members as follows:

- (1) Nine members appointed by the Speaker of the House of Representatives as follows:
 - (a) Five members of the House of Representatives.
 - (b) A Clerk of Superior Court.

Authorization for the Committee from S.L. 2008-181:

- (c) Three members of the public with an expertise or stakeholder interest in the issue.
- (2) Nine members appointed by the President Pro Tempore of the Senate as follows:
 - follows:
 (a) Five members of the Senate.
 - (b) A Clerk of Superior Court.
 - (c) Three members of the public with an expertise or stakeholder interest in the issue.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair of the Committee. A quorum of the Committee shall be a majority of its members. The Committee shall meet upon the joint call of the cochairs.

SECTION 42.3. The Committee shall study the laws and procedures concerning partition sales in North Carolina and how these laws affect landowners in the State, examining both the effectiveness and equity of the current law and exploring potential alternatives. Specifically, the Committee shall:

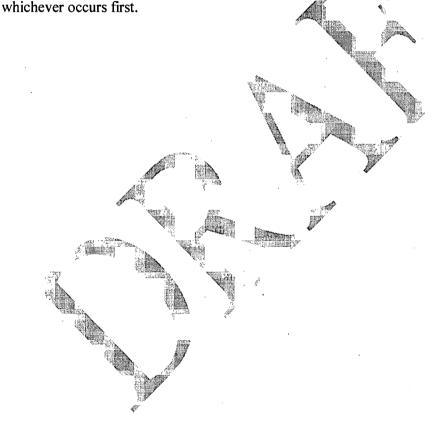
(1) Review information about partition sales and examine current trends in

- Review information about partition sales and examine current trends in partition sales in the State, especially related to sales initiated by strangers in interest to heirs or related cotenants.
- Analyze research and information from North Carolina and other states and jurisdictions regarding the effect of partition laws on desired land retention and economic development.
- 3) Analyze information concerning the comparative frequency of partition sales vs. partition-in-kind in North Carolina.
- (4) Identify and assess alternative partition sales laws from other states.
- (5) Explore how best to balance competing interests of the tenants in common in the partition sales context.
- (6) Identify and consult with academics who have studied partition sales nationally to determine their recommendations concerning best practices in partition proceedings.
- (7) Identify current barriers to the adoption of best practices recommendations and to alternative laws adopted by other states and potential options to address these barriers.
- (8) Prepare a report with a statement of the issues and a summary of the research including the Committee's recommendations concerning any needed

improvements and draft legislation to address any inequities presented by partition sales in North Carolina.

SECTION 42.4. Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Committee to aid in its work. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Committee, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 42.5. The Committee shall submit a final report of the results of its study, including any legislative recommendations, to the 2009 General Assembly no later than March 1, 2009. The Committee shall terminate on March 1, 2009, or upon the filing of its final report,



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VISITOR REGISTRATION SHEET

COMMITTEE ST. STUDY SALFS PARTITION Name of Committee

FFB. 18, 2009

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
CASANDFA WHITE	Anc
Pamela Best	AOC
Rep. Shully Randlema	House- Lm 1025
Mary Hendeson	land Loss Prevention Project PO Box 179, Durham, 27702
John a! Jances	LLPP
Edgar Miller	CTUC
Anita Earls	SCSJ 115 Market 81, 5k. 470 Durham, NC 27701
David Boaz	MWC
Emi brauk	NC Bar Association
Tom Skely	NC BAT ASSOCIATION - Real