

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 578
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09

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

(Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE NOTICE OF RIGHT TO SEEK LEGAL COUNSEL AND CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

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

"§ 46-2.1. Summons; notice.

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

(b) Written notice shall be included in the petition in a manner reasonably calculated to make the respondent aware of the following:

(1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.

(2) That pursuant to G.S. 6-21 the court has the authority, in its discretion, to order reasonable attorneys' fees to be paid as a part of the costs of the proceeding."

SECTION 2. G.S. 46-6 reads as rewritten:

"§ 46-6. Unknown or unlocatable 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 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. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some



1 disinterested person to represent the owner of any shares in the property to be divided, the
2 ownership of which is unknown or unlocatable and unrepresented."

3 **SECTION 3.** G.S. 46-28 reads as rewritten:

4 "**§ 46-28. Sale procedure.**

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

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

20 (c) Any cotenant who enters the high bid or offer at any sale of one hundred percent
21 (100%) of the undivided interests in any parcel of real property shall receive a credit for the
22 undivided interest the cotenant already owns therein and shall receive a corresponding
23 reduction in the amount of the total purchase price owed after deducting the costs and fees
24 associated with the sale and apportioning the costs and fees associated with the sale in
25 accordance with the orders of the court. The high bid or offer shall be for one hundred percent
26 (100%) of the undivided interests in the parcel of real property sold, and the credit and
27 reduction shall be applied at the time of the closing of the cotenant's purchase of the real
28 property. When jointly making the high bid or offer at the sale, two or more cotenants may
29 receive at the closing an aggregate credit and reduction in the amount of the total purchase
30 price representing the total of such cotenants' undivided interests in the real property. Any
31 credits and reductions allowed by this subsection shall be further adjusted to reflect any
32 court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants
33 entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s)
34 of the net sales proceeds due to a court finding of the lack of contribution of one or more
35 cotenants to the payment of expenses of the real property."

36 **SECTION 4.** G.S. 46-28.1 reads as rewritten:

37 "**§ 46-28.1. Petition for revocation of confirmation order.**

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

- 44 (1) In the case of a purchaser, a lien remains unsatisfied on the property to be
45 conveyed.
- 46 (2) In the case of any party to the partition proceeding:
 - 47 a. Notice of the partition was not served on the petitioner for revocation
48 as required by Rule 4 of the Rules of Civil Procedure; or
 - 49 b. Notice of the sale was not mailed to the petitioner for revocation as
50 required by G.S. 46-28(b); or

1 c. The amount bid or price offered is inadequate and inequitable and
2 will result in irreparable damage to the owners of the real property.
3 In no event shall the confirmation order become final or effective during the pendency of a
4 petition under this section. No upset bid shall be permitted after the entry of the confirmation
5 order.

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

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

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

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

24 (d) In the case of a petition brought pursuant to this section by a party to the partition
25 proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a
26 case pursuant to sub-subdivision (a)(2)a., b., or c. of subsection (a)(2), this section. the court
27 may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and
28 order the return of any money or security to the purchaser tendered pursuant to the offer.

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

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

46 **SECTION 5.** This act becomes effective October 1, 2009, and applies to partition
47 actions filed on or after that date.