

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 578
Committee Substitute Favorable 5/7/09

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

(Public)

Sponsors:

Referred to:

March 16, 2009

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

10 The General Assembly of North Carolina enacts:

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

13 **"§ 46-2.1. Summons; notice.**

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

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

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

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

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

25 **"§ 46-6. Unknown or unlocatable parties; ~~summons and~~ summons, notice, and**
26 **representation.**

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

35 (b) If Before or after such general notice by publication if any person interested in the
36 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 making an offer in a sale of an entire parcel shall receive credit for the
21 interest the cotenant already owns and shall receive a corresponding reduction in the amount of
22 money owed after deducting the costs and fees associated with the sale. When making a joint
23 offer, cotenants may aggregate the credit for the cotenants' interests."

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

25 "**§ 46-28.1. Petition for revocation of confirmation order.**

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

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

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

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

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

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

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

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

18 (d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section,
19 and when an independent appraisal has not been previously entered into evidence in the action,
20 upon the request of either party the court shall order an independent appraisal by a
21 State-licensed or State-certified real estate appraiser in accordance with the Uniform Standards
22 of Professional Appraisal Practice. If based on this appraisal and all the evidence presented, the
23 court finds the amount bid or price offered to be inadequate, inequitable, and resulting in
24 irreparable damage to the owners, the court may revoke the order confirming the sale, order the
25 withdrawal of the purchaser's offer, and order the return of any money or security tendered by
26 the purchaser pursuant to the offer. The cost of an independent appraisal shall be apportioned to
27 all parties requesting the appraisal, and the court in its discretion may require the parties to
28 make full or partial payment of the actual cost prior to the appraisal.

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

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