

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 613*

Short Title: Partition Sales/Commrs., Sellers, Buyers. (Public)

Sponsors: Senator Atwater.

Referred to: Judiciary II.

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT ATTORNEYS REPRESENTING PARTIES IN A PARTITION ACTION FROM SERVING AS COMMISSIONERS TO DIVIDE THE LAND, EXCEPT BY CONSENT OF THE PARTIES, AND TO SPECIFY WHO MAY NOT HOLD A PARTITION SALE OF PROPERTY AND WHO MAY NOT PURCHASE PROPERTY IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. 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."

SECTION 2.(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 2.(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 (1) Attorneys who currently represent the parties in the pending partition
2 proceeding or the attorneys' agents.
3 (2) Attorneys who have previously represented the parties in a related partition
4 proceeding or the attorneys' agents.
5 (3) Commissioners who have been involved in the partition proceedings at any
6 time or the commissioners' agents.
7 (4) Appraisers who have been involved in the partition proceedings at any time
8 or the appraisers' agents."

9 **SECTION 3.** This act becomes effective October 1, 2009.