

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 614*

Short Title: Partition Sales/Notice, Credit, Appraisal. (Public)

Sponsors: Senator Atwater.

Referred to: Judiciary II.

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE GREATER NOTICE TO PARTIES WHO MAY BE UNKNOWN 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, AND TO REQUIRE A COURT TO ORDER AN
INDEPENDENT APPRAISAL IF A PARTY TO THE PARTITION 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. 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 the petitioner did exercise due diligence in attempting to find unknown or unlocatable persons who may have an interest in the property.

(b) 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 or other common designation for the property, the legal description, and the acreage of the property.

(c) ~~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 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 cannot represent unknown or unlocatable persons who may have an interest in the property."

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

"§ 46-28. **Sale procedure.**



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

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

16 (c) Any cotenant making an offer in a sale of an entire parcel shall receive credit for the
17 interest the cotenant already owns and shall receive a corresponding reduction in the amount of
18 money owed after deducting the costs and fees associated with the sale. When making a joint
19 offer, cotenants may aggregate the credit for the cotenants' interests."

20 **SECTION 3.** G.S. 46-28.1 reads as rewritten:

21 "**§ 46-28.1. Petition for revocation of confirmation order.**

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

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

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

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

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

- 49 (1) A lien remains unsatisfied on the property to be conveyed; and
- 50 (2) The purchaser has not agreed in writing to assume the lien; and
- 51 (3) The lien will not be satisfied out of the proceeds of the sale; and

1 (4) The existence of the lien was not disclosed in the notice of sale of the
2 property, the court may revoke the order confirming the sale, order the
3 withdrawal of the purchaser's offer, and order the return of any money or
4 security to the purchaser tendered pursuant to the offer.

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

7 (d) In the case of a petition brought pursuant to this section by a party to the partition
8 proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a
9 case pursuant to a., b., or c. of subsection (a)(2), the court may revoke the order confirming the
10 sale, order the withdrawal of the purchaser's offer, and order the return of any money or
11 security to the purchaser tendered pursuant to the offer.

12 (d1) In the case of a petition brought pursuant to sub-subdivision c. of subdivision (2) of
13 subsection (a) of this section, the court shall order an independent appraisal. Based on the
14 appraisal, the court may revoke the order confirming the sale, order the withdrawal of the
15 purchaser's offer, and order the return of any money or security to the purchaser tendered
16 pursuant to the offer. The cost of an independent appraisal shall be apportioned to all parties,
17 pro rata.

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

21 **SECTION 4.** This act becomes effective October 1, 2009.