

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE DRH70418-LM-153 (04/10)

Short Title: Real Property Partition Sale.

(Public)

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Sponsors: Representative Allen.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT REQUIRING THE COURT IN A REAL ESTATE PARTITION CASE TO CONSIDER CERTAIN FACTORS PRIOR TO ORDERING THE SALE OF PROPERTY OWNED BY COTENANTS, AUTHORIZING NON-PETITIONING COTENANTS TO BUY OUT THE INTEREST OF PETITIONING COTENANTS, AND PROHIBITING THE ASSESSING OF ATTORNEYS' FEES AGAINST NON-PETITIONING COTENANTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** 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.~~ Among the factors the court shall consider when determining substantial injury are:

- (1) The fair market value of each cotenant's share after an in-kind partition.
- (2) The use of the property for the livelihood of any cotenant.
- (3) The past noneconomic uses of the property.
- (4) The existence of a homestead on the property.
- (5) The length of any familial retention of the property and whether the cotenant seeks to continue the retention.

(c) The court shall specifically find the facts supporting an order of sale of the ~~property-property~~, including:

- 1           (1)    The length of time and the extent to which each cotenant resided at,  
2                   took care of, or contributed to the upkeep of the property.
- 3           (2)    The extent to which each cotenant visited, spent time with, or provided  
4                   care or companionship to the owners or residents of the property.
- 5           (3)    The extent and nature of any long-term relationship that existed  
6                   between each cotenant and the owners or residents of the property.
- 7           (4)    The length of any familial ownership by the cotenant through the  
8                   cotenant's predecessors in interest.
- 9           (5)    Any noneconomic benefits derived by any cotenant from the  
10                   ownership of the property.

11           (d)    The party seeking a sale of the property shall have the burden of proving  
12           substantial injury under the provisions of this section."

13           **SECTION 2.** Article 2 of Chapter 46 of the General Statutes is amended by  
14           adding the following new sections to read:

15           "**§ 46-22.1. Sale of cotenants' interest in lieu of sale of property.**

16           (a)    If the court determines the property cannot be partitioned in-kind as provided  
17                   in Article 1 of this Chapter, the court shall, prior to ordering a sale of the property  
18                   described in the petition, or of any part, allow the non-petitioning cotenants to purchase  
19                   the petitioner's interest in the property (the 'buyout option'). The court shall notify any  
20                   non-petitioning cotenant who appears in person before the court without counsel of the  
21                   buyout option. A non-petitioning cotenant who wishes to exercise the buyout option  
22                   shall notify the court of the cotenant's intent no later than 10 days before the date the  
23                   matter is scheduled for trial. A non-petitioning cotenant may purchase an interest in the  
24                   property as provided in this section even if a default judgment has been entered against  
25                   the cotenant. If more than one non-petitioning cotenant wishes to exercise the buyout  
26                   option, each shall be entitled to purchase an equal portion of the interest subject to sale.

27           (b)    If the cotenants cannot agree on the price of the petitioner's interest, the value  
28                   of the interest shall be determined by one or more competent and independent real estate  
29                   appraisers approved and appointed by the court. A second appraiser shall be appointed  
30                   if a second appraisal is requested by the cotenants and the court finds that a second  
31                   appraisal is needed. The cost of any appraisals ordered pursuant to this section shall be  
32                   taxed as part of the costs of court to all cotenants. The cotenants may also on their own  
33                   submit a second appraisal to the court, and the cotenants shall pay the cost of that  
34                   appraisal.

35           (c)    An appraiser appointed under subsection (b) of this section shall file a written  
36                   appraisal of the property to the court within 30 days of being appointed. If the court  
37                   receives appraisals of different values, the court shall evaluate the appraisals and  
38                   determine the weight to be given to each in determining the value of the interest subject  
39                   to sale.

40           (d)    If the petitioner objects to the value of the interest as determined by an  
41                   appraiser, the petitioner shall file written notice of the objection with the court no later  
42                   than 10 days after the filing of the appraiser's report and shall request a hearing on the  
43                   value of the interest subject to sale. The court shall hold a hearing limited to

1 determining the value of the interest subject to sale and, after hearing evidence as to the  
2 issue, shall enter an order stating the value.

3 (e) Upon a determination of the value of the interest as provided in this section,  
4 the non-petitioning cotenants who have exercised the buyout option shall have 45 days  
5 to pay into the court the price set as the value of the interest. Upon payment of the price,  
6 the court shall order that the proper instruments transferring title in the interest be  
7 executed and delivered to the purchasing cotenants.

8 (f) If one or more but not all of the cotenants who exercised the buyout option  
9 fail to pay the price set as the value of the interest, the remaining cotenants who  
10 exercised the buyout option may purchase an equal share of the defaulting cotenant's  
11 interest by paying the price of the share into the court within five days after the  
12 expiration of the 45-day deadline provided in subsection (e) of this section. If none of  
13 the cotenants who exercised the buyout option pay the price set as the value of the  
14 interest, the court may order a sale of the property as provided in G.S. 46-22.

15 (g) This section shall not apply when there is a written tenants-in-common or  
16 joint tenants management agreement.

17 **"§ 46-22.2. Attorneys' fees prohibited.**

18 In a partition proceeding under Article 1 or 2 of this Chapter, the court shall not  
19 assess attorneys' fees against a non-petitioning cotenant who contests the partition or  
20 sale of the property or hires an attorney to represent the non-petitioning cotenant's  
21 interest. For purposes of this section, a cotenant's oral communication to the court that  
22 the cotenant opposes the partition or sale of the property is sufficient evidence that the  
23 action is contested."

24 **SECTION 3.** G.S. 6-21(7) reads as rewritten:

25 "(7) All costs and expenses incurred in special proceedings for the division  
26 or sale of either real estate or personal property under the Chapter  
27 entitled ~~Partition~~ Partition, except as therein otherwise provided."

28 **SECTION 4.** This act is effective when it becomes law.