

Article 2.

Partition Sales of Real Property.

§ 46-22. Sale in lieu of partition.

(a) Subject to G.S. 46-22.1(b), 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, after having considered evidence in favor of actual partition and evidence in favor of a sale presented by any of the interested parties.

(b) In determining whether an actual partition would cause "substantial injury" to any of the interested parties, the court shall consider the following:

- (1) Whether the fair market value of each cotenant's share in an actual partition of the property would be materially less than the amount each cotenant would receive from the sale of the whole.
- (2) Whether an actual partition would result in material impairment of any cotenant's rights.

(b1) The court, in its discretion, shall consider the remedy of owelty where such remedy can aid in making an actual partition occur without substantial injury to the parties.

(c) The court shall make specific findings of fact and conclusions of law supporting an order of sale of the property.

(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section. (1868-9, c. 122, ss. 13, 31; Code, ss. 1904, 1921; Rev., s. 2512; C.S., s. 3233; 1985, c. 626, s. 1; 2009-512, s. 2.)