

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1527

Short Title: Partition Sales of Real Property. (Public)

Sponsors: Representatives Bryant, Farmer-Butterfield, Allen, Harrison (Primary Sponsors); Adams, Luebke, McAllister, Michaux, and Wainwright.

Referred to: Judiciary I.

April 17, 2007

A BILL TO BE ENTITLED

AN ACT ALLOWING THE PARTITION SALE OF REAL PROPERTY ONLY WHEN IT IS IN THE BEST INTEREST OF THE COTENANTS, AUTHORIZING NONPETITIONING COTENANTS TO BUY OUT THE INTEREST OF PETITIONING COTENANTS, AND PROHIBITING THE ASSESSING OF ATTORNEYS' FEES AGAINST NONPETITIONING 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.~~

a sale is in the 'best interest' of all the cotenants. Among the factors the court shall consider when determining 'best interest' are:

- (1) The fair market value of each cotenant's share after an in-kind partition compared to the share of each cotenant in the money equivalent that would be obtained from the sale of the whole.
- (2) Whether an in-kind partition or sale of the property would result in the material impairment of any cotenant's rights.
- (3) The use of the property for the livelihood of any cotenant.
- (4) The noneconomic uses and value of the property to the cotenants.
- (5) The existence of a homestead on the property.
- (6) The length of any familial retention of the property and the interest and ability of any cotenant to continue the retention.
- (7) The length of time and the extent to which each cotenant resided at, took care of, or contributed to the upkeep of the property.
- (8) The extent to which each cotenant visited, spent time with, or provided care or companionship to the owners or residents of the property, and

1 the extent and nature of any long-term relationship that existed
2 between each cotenant and the owners or residents of the property.

3 (b) ~~"Substantial injury" means the fair market value of each share in an in-kind~~
4 ~~partition would be materially less than the share of each cotenant in the money~~
5 ~~equivalent that would be obtained from the sale of the whole, and if an in-kind division~~
6 ~~would result in material impairment of the cotenant's rights.~~

7 (c) The court shall specifically find the facts, including those provided in
8 subsection (a) of this section, supporting an order of sale of the property.

9 (d) The party seeking a sale of the property shall have the burden of proving
10 substantial injury best interest under the provisions of this section."

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

13 **"§ 46-22.1. Sale of cotenants' interest in lieu of sale of property.**

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

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

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

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

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

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

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

15 **"§ 46-22.2. Attorneys' fees prohibited.**

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

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

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

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