Article 2.

Partition of Real Property.

Part 1. General Provisions.

§ 46A-20. Venue in partition.

A proceeding to partition real property shall be commenced in the county where the property is located. If the property, whether consisting of one or more tracts, is located in more than one county, the proceeding may be commenced in any of the counties where any part of the property is located; in this case, the petitioner shall file a notice of lis pendens in each of the other counties. (1868-9, c. 122, s. 7; Code, s. 1898; Rev., s. 2486; C.S., s. 3214; Ex. Sess. 1924, c. 62, s. 1; 2020-23, ss. 2(b), 3.)

§ 46A-21. Petition by cotenant or personal representative of cotenant; necessary and proper parties; joinder of spouses.

(a) Any person claiming real property as a tenant in common or joint tenant may petition to partition the property in superior court. The personal representative of a deceased tenant in common or deceased joint tenant may also petition to partition the property as part of a petition to sell the deceased cotenant's interest for the payment of debts and other claims against the deceased cotenant's estate as provided in G.S. 28A-17-3.

(b) The petitioner shall serve and join all tenants in common and joint tenants of the property. The petitioner may serve and join any other person with an interest in the property, any lessee of the property, and any holder of a lien, mortgage, or deed of trust on the property.

(c) The petitioner is not required to serve or join spouses of cotenants of the real property unless the spouse is also a cotenant. (1868-9, c. 122, s. 1; Code, s. 1892; Rev., s. 2487; C.S., s. 3215; 1963, c. 291, s. 2; 1985, c. 689, s. 16; 2020-23, ss. 2(d), 3.)

§ 46A-22. Unknown or unlocatable parties; summons, notice, and representation.

(a) If, at the time of or subsequent to the filing of the petition, the petitioner shows by affidavit or otherwise that the petitioner cannot after due diligence ascertain the name or location of a person that the petitioner is required to, or chooses to, serve under G.S. 46A-21(b), the court shall authorize service by publication under G.S. 1A-1, Rule 4. The notice by publication shall include a description of the property that includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) Before or after the notice by publication, the court shall appoint a guardian ad litem under G.S. 1A-1, Rule 17, to represent any unknown or unlocatable person that the petitioner is required to, or chooses to, serve under G.S. 46A-21(b). (1887, c. 284; Rev., s. 2490; C.S., s. 3218; 2009-512, s. 1; 2020-23, ss. 2(h), 3.)

§ 46A-23. Petition by judgment creditor of cotenant.

(a) If a judgment debtor has a personal liability on a judgment docketed in the superior court of a county where the judgment debtor owns real property as a tenant in common or joint tenant, the judgment creditor may petition for an actual partition of the property. If the court apportions a share of the property to the judgment debtor, the judgment creditor may seek to execute the judgment against the judgment debtor's share by (i) setting aside the judgment debtor's homestead in the share, as determined according to Article X of the North Carolina Constitution and Article 16 of Chapter 1C of the General Statutes, and (ii) selling the remaining part of the share.

(b) The remedy provided in this section does not deprive a judgment creditor of any other remedy in law or equity to enforce a judgment lien. (1905, c. 429; Rev., s. 2489; C.S., s. 3217; 2020-23, ss. 2(g), 3.)

§ 46A-24. Surface and oil, gas, or mineral interests in separate owners; partitions distinct.

When title to the oil, gas, or mineral interests in real property has been separated in ownership from the title to the surface of the property, a tenant in common or joint tenant of the oil, gas, or mineral interests may partition the oil, gas, or mineral interests, distinct from the surface, without joining the owner of the surface. Similarly, a tenant in common or joint tenant of the surface of the property may partition the surface, distinct from the oil, gas, or mineral interests, without joining the owner of the oil, gas, or mineral interests. An owner of the oil, gas, or mineral interests is not required to join a partition of the surface of the property, and an owner of the surface of the property is not required to join a partition of the oil, gas, or mineral interests. The rights of either owner shall not be prejudiced by a partition of the other interests. (1905, c. 90; Rev., s. 2488; C.S., s. 3216; 2020-23, ss. 2(f), 3.)

§ 46A-25. Partition of real property subject to a contingent future interest; requirements.

When real property is subject to a contingent future interest, any judgment partitioning the property is valid and binding upon all persons having an interest in the property, whether or not in being, if all of the following requirements are met:

(1) The following persons are parties:
   a. Persons with a present interest or a vested future interest.
   b. Persons in being with a contingent future interest and that would have a present interest if the contingency had occurred at the time the proceeding was commenced.
   c. Persons not in being with a contingent future interest.

(2) The following parties are represented by a guardian ad litem appointed under G.S. 1A-1, Rule 17:
   a. Unborn individuals.
   b. Parties not in being.
   c. Parties who are minors or incompetent adults and who do not have a guardian of the estate or general guardian.
   d. Unknown or unlocatable parties. (1933, c. 215, s. 1; 1959, c. 1274, s. 1; 2020-23, ss. 2(q), 3.)

§ 46A-26. Methods of partition.

In a partition proceeding under this Article, the court shall order one of the following methods of partitioning the real property:

(1) Actual partition under Part 2 of this Article.
(2) Partition sale under Part 3 of this Article so long as the requirements of that Part are satisfied.
(3) Actual partition of part of the property and a partition sale of the remaining part.
(4) Partition of part of the property, whether by actual partition or by partition sale, and order that the remaining part continue to be held in cotenancy. The court, however, shall not order a cotenant to continue to hold property in cotenancy

over the cotenant's objection. (1887, c. 214, s. 1; Rev., s. 2506; C.S., s. 3227; 2020-23, ss. 2(r), 3.)

§ 46A-27. Carrying costs, including property taxes; improvements; right to contribution.

(a) Right to Contribution. – A cotenant has a right to contribution from the other cotenants for the cotenant's payment of the real property's carrying costs and for the lesser of the following:

(1) The value added to the real property by the cotenant's improvements as of the date of the commencement of the proceeding.

(2) The actual costs of the cotenant's improvements.

(b) Procedure. – In the case of an actual partition, a cotenant may on application assert the cotenant's right to contribution at any time before the commissioners file their report. In the case of a partition sale, a cotenant may on application assert the right at any time during the partition proceeding.

(c) Property Taxes. – A cotenant's right to contribution for property taxes under this section is limited to the amount of property taxes paid by the cotenant during the 10 years preceding the filing of the partition petition, plus interest at the legal rate under G.S. 24-1.

(d) Scope. – Nothing in this section affects the rights of cotenants outside a real property partition proceeding initiated under this Chapter.

(e) Carrying Costs Defined. – For purposes of this section, "carrying costs" means the actual costs of preserving the value of and the cotenants' interests in the real property, including property taxes, homeowner's insurance, repairs, and payments for a loan to acquire the real property. (2020-23, s. 3.)

§ 46A-28. Court's authority to make orders before final determination of proceeding; notice and hearing.

(a) Before final determination of a proceeding to partition real property, on application of any of the parties, the court may make any orders that it finds to be in the best interest of the parties, including, but not limited to, orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, the appointment of a receiver pursuant to G.S. 1-502(6) or a limited receiver for the real property pursuant to Article 38A of Chapter 1 of the General Statutes, and access to the property for the purpose of inspecting, surveying, appraising, or selling the property.

(b) A party making a written application under subsection (a) of this section shall serve a copy of the application on all other parties and any other person the court may require. The court shall schedule a hearing on the application, if, within 10 days of being served, a person files a response in opposition to the application or requests a hearing. If no person files a response or requests a hearing within 10 days of being served, the court may decide the application without a hearing. (1981, c. 584, s. 1; 2020-23, ss. 2(e), 3; 2020-75, s. 3(e); 2021-93, s. 8.)

§ 46A-29. Mediation.

(a) Parties interested in the real property may agree at any time during the proceeding to mediation of a partition. G.S. 7A-38.1 and G.S. 7A-38.3B apply to a mediation under this section.

(b) When a partition sale is requested, the court, on its own motion or a motion of a party, may order mediation before considering whether to order a sale. (2009-512, s. 3; 2020-23, ss. 2(z), 3.)

§ 46A-30: Reserved for future codification purposes.

§ 46A-31: Reserved for future codification purposes.

§ 46A-32: Reserved for future codification purposes.

§ 46A-33: Reserved for future codification purposes.

§ 46A-34: Reserved for future codification purposes.

§ 46A-35: Reserved for future codification purposes.

§ 46A-36: Reserved for future codification purposes.

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§ 46A-40: Reserved for future codification purposes.

§ 46A-41: Reserved for future codification purposes.

§ 46A-42: Reserved for future codification purposes.

§ 46A-43: Reserved for future codification purposes.

§ 46A-44: Reserved for future codification purposes.

§ 46A-45: Reserved for future codification purposes.

§ 46A-46: Reserved for future codification purposes.

§ 46A-47: Reserved for future codification purposes.

§ 46A-48: Reserved for future codification purposes.

§ 46A-49: Reserved for future codification purposes.

Part 2. Actual Partition.

§ 46A-50. Commissioners appointed; compensation; oath; delay or neglect.

(a) Appointment. – The superior court shall appoint three disinterested commissioners to apportion the real property to be partitioned among the cotenants. If the property to be partitioned is located in more than one county, the court may appoint additional commissioners if necessary

from counties where the property is located other than the county where the proceeding is commenced.

(b) Compensation. – The clerk of the superior court shall fix the compensation of commissioners for the partition of real property according to G.S. 1-408.

(c) Oath. – The commissioners shall be sworn according to Chapter 11 of the General Statutes.

(d) Delay or Neglect. – If, after accepting the commission, any of the commissioners unreasonably delays or neglects to perform his or her duties as a commissioner, the court may remove the commissioner and appoint a new commissioner. (1868-9, c. 122, ss. 1, 2, 10; Code, ss. 1892, 1893, 1901; Rev., ss. 2487, 2492, 2498; C.S. 3219, 3220, 3221; Ex. Sess. 1924, c. 62, s. 2; 1945, c. 472; 1949, c. 975; 1953, c. 48; 1971, c. 1185, s. 8; 2020-23, ss. 2(i)-(l), 3.)

§ 46A-51. Commissioners to inspect and partition real property; apportioning shares; charging owelty on shares of disproportionately greater value.

(a) Apportioning Shares; Charging Owelty on Shares. – The commissioners together shall inspect the real property and partition it among the cotenants by apportioning it into shares proportionate in value as nearly as possible to the cotenants' interests in the property. To the extent the commissioners find it necessary to make an equitable partition, they may do any of the following:

(1) Apportion the property into shares disproportionate in value to the cotenants' interests in the property and charge owelty on the shares of disproportionately greater value in the amounts of money necessary to redress the disproportion, to be paid to the shares of disproportionately lesser value.

(2) Adjust the shares or any owelty charged on the shares to account for a court order for contribution under G.S. 46A-27 or any other court order.

(b) Interest on Owelty. – Owelty shall bear interest at the legal rate under G.S. 24-1 until paid.

(c) Minor's Share. – If a share charged with owelty is apportioned to a minor, the money shall not be payable until the minor becomes 18 years old. If the minor has a guardian of the estate or general guardian, however, the guardian shall pay the money when the guardian receives assets belonging to the minor, other than the share, that may be used for that purpose. If the guardian fails to comply with this subsection, the guardian shall be personally liable for any interest that accrued due to the failure. (1868-9, c. 122, ss. 3, 8, 9; Code, ss. 1894, 1899, 1900; 1887, c. 284, s. 2; Rev., ss. 2491, 2496, 2497; C.S., ss. 3222, 3223, 3224; 1971, c. 1231, s. 1; 1995, c. 379, s. 14(b); 2020-23, ss. 2(m)-(o), 3.)

§ 46A-52. Partition where cotenants unknown or title disputed.

(a) If there are any cotenants whose names are not known or whose title is in dispute, the shares of those cotenants shall be apportioned together as one parcel.

(b) In any partition proceeding, if two or more cotenants appear as respondents claiming the same undivided interest in the real property to be partitioned, or if any part of the undivided interest claimed by the petitioner is disputed by any respondent, it shall not be necessary to decide on their respective claims before the court orders an actual partition or partition sale of the property. The controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding. (1868-9, c. 122, s. 3; Code, s. 1894; 1887, c. 284, ss. 2, 4; Rev., ss. 2491, 2511; C.S., s. 3225; 1937, c. 98; 2020-23, ss. 2(p), 3.)

§ 46A-53. Apportionment of shares in common.

When requested by two or more cotenants, the commissioners may, by order of the court, apportion their several shares to them in common, as one parcel, so long as the apportionment is not injurious or detrimental to any cotenant. (2020-23, s. 3.)

§ 46A-54. Dedication of streets.

Upon motion of any party or the commissioners, the clerk may authorize the commissioners to propose in their report the dedication of portions of the real property that are necessary as a means of access to any share or that are otherwise advisable for public or private highways, streets, or alleys. The court shall consider the proposal as a part of the report and, if approved by the court, it shall constitute a dedication. Only a dedication approved by a judge of the superior court affects the interest of a minor, an incompetent adult, or another person under a legal disability. (1969, c. 45; 2020-23, ss. 2(t), 3.)

§ 46A-55. Report of commissioners; contents; filing and service; extension; map.

(a) Report. – The commissioners shall file a report of their proceedings in the office of the clerk of superior court within 90 days after the last commissioner receives a notice of appointment. The report shall be signed by at least two commissioners and shall describe particularly the real property or parcels of real property apportioned, the share apportioned to each cotenant in severalty, and any owelty charged. The clerk of the superior court may, for good cause shown, extend the time for filing the report for an additional period not exceeding 60 days. At the time of filing, the commissioners shall serve a copy of the report on all the parties.

(b) Map. – The commissioners may employ a disinterested professional land surveyor to prepare a map of the real property showing the quantity, courses, and distances of each share. If a map is prepared, the map shall accompany and form a part of the report of the commissioners. (1868-9, c. 122, ss. 4, 5; Code, ss. 1895, 1896; Rev., ss. 2493, 2494; C.S., ss. 3228, 3229; 1949, c. 16; 2009-362, s. 1; 2020-23, ss. 2(s), (u), 3.)

§ 46A-56. Confirmation of report; appeal; motion for relief.

(a) If no exception to the report of the commissioners is filed within 10 days of service of the report on all the parties, the clerk shall confirm the report.

(b) If an exception to the report of commissioners is filed, the clerk shall do one of the following:

(1) Confirm the report.
(2) Recommit the report for correction or further consideration.
(3) Vacate the report and direct the same commissioners to reapportion the real property.
(4) Vacate the report, discharge the commissioners, and appoint new commissioners to view the real property and partition it.

(c) Appeal from the clerk to superior court of an order of confirmation of the report of commissioners is governed by G.S. 1-301.2 except that the judge may take only the actions specified in subsection (b) of this section and shall not adjudge a partition of the property different from that made by the commissioners.

(d) After confirmation of the report, any party may seek relief from the order of confirmation for mistake, fraud, or collusion by a motion in the proceeding. This relief, however,

shall not affect an innocent purchaser for value and without notice. (1868-9, c. 122, s. 5; Code, s. 1896; Rev., s. 2494; C.S., s. 3230; 1947, c. 484, s. 2; 1999-216, s. 11; 2020-23, ss. 2(v), 3.)

§ 46A-57. Report and confirmation enrolled and registered; effect.

The report of the commissioners, when confirmed, and the order of confirmation shall be enrolled and certified to the register of deeds and registered in the office of each county where the real property is located. The confirmed report is binding among and between the parties and the parties' heirs and assigns. (1868-9, c. 122, s. 6; Code, s. 1897; Rev., s. 2495; C.S., s. 3231; 1965, c. 804; 2020-23, ss. 2(w), 3.)

§ 46A-58. Clerk to docket owelty.

If the court orders owelty, the clerk shall enter the owelty on the judgment docket in the same manner as judgments are entered on the docket. The clerk shall mark as plaintiffs on the judgment docket persons whose shares are to be paid owelty, and the clerk shall mark as defendants on the judgment docket persons whose shares are charged with owelty. The entry on the docket shall contain the title of the special proceeding in which the property was partitioned. When owelty is paid, the entry upon the judgment docket shall be marked satisfied in the same manner as judgments are cancelled and marked satisfied, and the clerk shall be entitled to the same fees for entering this judgment as the clerk is entitled to for docketing other judgments. The docketing of owelty under this section does not release the property from the owelty. Any judgment docketed under this section is not a lien on any property other than the property charged with owelty. (1911, c. 9, s. 1; C.S., s. 3232; 2020-23, ss. 2(x), 3.)

§ 46A-59. Order for possession.

(a) An order for possession of real property apportioned pursuant to this Part, in favor of the party to which an apportionment has been made and against any party in possession at the time of application therefor, may be issued by the clerk of the superior court if all of the following apply:

(1) No appeal from the order of confirmation of the report of commissioners has been made within the time prescribed under G.S. 1-301.2, or if an appeal has been made, the judge confirmed the report pursuant to G.S. 46A-56(c).

(2) The report and confirmation have been duly recorded in the office of the register of deeds pursuant to G.S. 46A-57.

(3) Ten days' notice has been given by the party applying for the order for possession to each party remaining in possession at the time application is made. The notice shall not be given until the clerk has confirmed the report of the commissioners pursuant to G.S. 46A-56.

(b) An order for possession issued pursuant to this section shall be directed to the sheriff and shall authorize the sheriff to remove all occupants and their personal property from the real property and to put the party to which an apportionment has been made in possession. The order shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. The party to which an apportionment has been made has the same rights and remedies in connection with the execution of an order for possession and the disposition of personal property following execution as are provided to a landlord under State law, including Chapters 42 and 44A of the General Statutes. (2020-23, s. 3.)

§ 46A-60: Reserved for future codification purposes.

§ 46A-61: Reserved for future codification purposes.

§ 46A-62: Reserved for future codification purposes.

§ 46A-63: Reserved for future codification purposes.

§ 46A-64: Reserved for future codification purposes.

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§ 46A-69: Reserved for future codification purposes.

§ 46A-70: Reserved for future codification purposes.

§ 46A-71: Reserved for future codification purposes.

§ 46A-72: Reserved for future codification purposes.

§ 46A-73: Reserved for future codification purposes.

§ 46A-74: Reserved for future codification purposes.

Part 3. Partition Sale.

§ 46A-75. Sale in lieu of actual partition.

(a) Subject to G.S. 46A-29(b), the court shall order a sale of the real property described in the petition, or of any part of the property, under this Part only if it finds by a preponderance of the evidence that an actual partition of the property pursuant to Part 2 of this Article cannot be made without substantial injury to any of the parties, after having considered evidence in favor of actual partition and evidence in favor of a sale presented by any of the parties. The party seeking a sale of the property has the burden of proving substantial injury under this section.

(b) In determining whether an actual partition would cause substantial injury to any of the parties, the court shall consider all of 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.

(3) Whether charging owelty under G.S. 46A-51 would eliminate or mitigate any substantial injury to any of the parties caused by an actual partition.

(c) If the court orders a partition sale, the court shall make specific findings of fact and conclusions of law supporting the order.

(d) As provided in G.S. 46A-52, if two or more parties claim the same undivided interest in the property, the court is not required to decide the issue before ordering a partition sale of the property. (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; 2020-23, ss. 2(y), 3.)

§ 46A-76. Sale procedure.

(a) General. – The procedure for a partition sale is the same as is provided in Article 29A of Chapter 1 of the General Statutes, except as provided in this Part.

(b) One Commissioner Sufficient. – In a partition sale, the court is not required to appoint more than one commissioner.

(c) Persons Not to Be Appointed. – The clerk of the superior court shall not appoint the clerk, an assistant clerk, or a deputy clerk to make a sale of the real property.

(d) Additional Requirement; Notice of Public Sale. – If the court orders a public sale, the commissioner shall certify to the court that at least 20 days prior to sale, a copy of the notice of sale was sent by first-class mail to the last known address of all parties previously served pursuant to G.S. 1A-1, Rule 4(j). An affidavit from the commissioner that copies of the notice of sale were mailed to all parties entitled to notice in accordance with this section satisfies the certification requirement and shall also be deemed prima facie true. (1868-9, c. 122, ss. 13, 15, 31; Code, ss. 1904, 1906, 1921; 1899, c. 161; Rev., ss. 2512, 2513; C.S., ss. 3239, 3242; 1949, c. 719, s. 2; 1985, c. 626, s. 2; 1987, c. 282, s. 7; 2009-512, s. 4; 2020-23, ss. 2(ff), (mm), 3.)

§ 46A-77. Cotenant credit.

Any cotenant entering the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns in the real property and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and allocating the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When two or more cotenants jointly make the high bid or offer at the sale, they may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of their undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of carrying costs or improvements of the real property under G.S. 46A-27. (1868-9, c. 122, ss. 13, 31; Code, ss. 1904, 1921; Rev., s. 2512; C.S., s. 3239; 1949, c. 719, s. 2; 1985, c. 626, s. 2; 1987, c. 282, s. 7; 2009-512, s. 4; 2020-23, ss. 2(gg), 3.)

§ 46A-78. Partition sale of real property subject to a life estate.

If the real property to be partitioned by sale is subject to a life estate, a life tenant who joins in the proceeding shall receive the value of the life tenant's share calculated according to mortality tables accepted by the court and paid out of the proceeds to the life tenant. The owners of the

remainder or reversionary interest have no interest in this payment to the life tenant. (1887, c. 214, s. 3; Rev., s. 2509; C.S., s. 3235; 2020-23, ss. 2(bb), 3.)

§ 46A-79. Partition sale of remainder or reversionary interest of real property.

The existence of a life estate in real property does not bar a partition sale of the remainder or reversionary interest of the property, and for the purposes of partition, the tenants in common or joint tenants of the remainder or reversionary interest shall be deemed to possess the property as if no life estate existed. The partition shall not, however, interfere with the possession of the life tenant during the existence of the life tenant's estate. (1887, c. 214, s. 2; Rev., s. 2508; C.S., s. 3234; 2020-23, ss. 2(aa), 3.)

§ 46A-80. Sale of standing timber; valuation of life estate.

(a) When two or more persons own real property with standing timber, as tenants in common, joint tenants, or partners, one or more of the persons may seek a partition sale of the timber, separate from the real property.

(b) If real property with standing timber is subject to a life estate, the life tenant or an owner of the remainder or reversionary interest, whether as a tenant in common, joint tenant, partner, or sole owner, may seek a partition sale of the timber, separate from the real property. The life tenant shall be made a party to the proceeding and is entitled to receive the life tenant's share of the proceeds, to be calculated according to mortality tables accepted by the court.

(c) An order allowing a life tenant to sell standing timber requires a finding that the cutting of the timber is in keeping with good husbandry and that no substantial injury will be done to the remainder or reversionary interest. (1895, c. 187; Rev., s. 2510; C.S., s. 3236; 1949, c. 34; 1975, c. 476, s. 1; 1997-133, s. 3; 2020-23, ss. 2(cc), 3.)

§ 46A-81. Sale of oil, gas, or mineral interests.

In a partition of oil, gas, or mineral interests of real property, when the court determines any of the following, the court shall order a sale of the oil, gas, or mineral interests and allocate the proceeds according to the interests of the tenants in common or joint tenants:

(1) It is in the best interest of the cotenants of the oil, gas, or mineral interests to sell the interests.

(2) Actual partition of the oil, gas, or mineral interests would cause injury to some or all of the cotenants of the oil, gas, or mineral interests. (1905, c. 90, s. 2; Rev., s. 2507; C.S., s. 3237; 2020-23, ss. 2(dd), 3.)

§ 46A-82. Sale of real property required for public purposes on cotenant's petition.

When the real property of tenants in common or joint tenants is required for public purposes, one or more cotenants, or the cotenant's guardian of the estate or general guardian, may file a petition verified by oath in the superior court of the county where the property or any part of the property is located, setting forth in the petition that the property is required for public purposes and that the cotenants' interests would be promoted by a sale of the property. If all necessary parties are before the court and the court finds the facts alleged in the petition to be true, the court shall order a sale of the property, or as much of it as may be necessary. Attorneys' fees shall be assessed in accordance with G.S. 46A-3. Mediator fees and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B. Other costs and expenses shall be assessed in accordance with G.S. 6-21.

(1868-9, c. 122, s. 16; Code, s. 1907; Rev., s. 2518; C.S., s. 3238; 1949, c. 719, s. 2; 2005-67, s. 4; 2020-23, ss. 2(ee), 3.)

§ 46A-83. Petition for revocation of confirmation order.

(a) Grounds for Revocation. – Notwithstanding G.S. 46A-76 or any other provision of law, within 15 days of entry of the order confirming the partition sale of real property, the purchaser or any party to the partition proceeding may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding, any of the following:

a. Notice of the partition was not served on the petitioner for revocation as required by G.S. 1A-1, Rule 4.

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46A-76(d).

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

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

(b) Effect of Notice. – A petitioner for revocation shall not prevail under sub-subdivision (a)(2)a. or b. of this section, if the petitioner was mailed notice of the sale in accordance with G.S. 46A-76(d).

(c) Service; Notice of Hearing. – The party petitioning for revocation shall serve all parties required to be served under G.S. 1A-1, Rule 5, and shall serve the officer or person designated to make the sale under G.S. 1A-1, Rule 4(j). The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make the sale, and all parties required to be served under G.S. 1A-1, Rule 5.

(d) Petition by Purchaser. – In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence all of the following, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer:

(1) A lien remains unsatisfied on the property to be conveyed.

(2) The purchaser has not agreed in writing to assume the lien.

(3) The lien will not be satisfied out of the proceeds of the sale.

(4) The existence of the lien was not disclosed in the notice of sale of the property.

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

(e) Petition by Party. – In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that the petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(f) Resale. – If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is as provided under G.S. 46A-76. (1977, c. 833, s. 1;

1985, c. 626, ss. 3-7; 2001-271, s. 19; 2009-362, s. 4; 2009-512, s. 5; 2020-23, ss. 2(hh), 3; 2021-91, s. 2(c).)

§ 46A-84. Petition for revocation based on inadequate price.

In the case of a petition brought pursuant to G.S. 46A-83(a)(2)c., and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as determined by the court. Before ruling on the petition brought pursuant to G.S. 46A-83(a)(2)c., the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to the purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer. (1977, c. 833, s. 1; 1985, c. 626, ss. 3-7; 2001-271, s. 19; 2009-362, s. 4; 2009-512, s. 5; 2020-23, ss. 2(ii), 3.)

§ 46A-84.5. Petition for revocation based on default bid.

If a purchaser in a partition sale defaults on the purchaser's bid, any party to the partition proceeding or the officer or person designated to make the sale may at any time petition the court to revoke its order confirming the partition sale. The petitioner for revocation shall serve all parties required to be served under G.S. 1A-1, Rule 5, and, if the purchaser is not a party, serve the purchaser under G.S. 1A-1, Rule 4(j). If the court finds that the purchaser defaulted on the purchaser's bid and is unable to cure the default, the court shall revoke its order of confirmation and order a resale. (2021-91, s. 2(b).)

§ 46A-85. Order becoming final; appeal; purchase of property.

(a) Order Becoming Final; Appeal. – An order confirming the partition sale of real property becomes final 15 days after entry of the order of confirmation or when the clerk denies a petition for revocation, whichever occurs later. A party may appeal an order confirming the partition sale of real property within 10 days of the order becoming final.

(b) Purchase of Property. – After the order of confirmation becomes final, the successful bidder may immediately purchase the property.

(c) Effect of Deed. – The deed of the officer or person designated to make the sale shall convey to the purchaser such title and estate in the property as the cotenants and all other parties to the proceeding had in the property.

(d) Sale Proceeds. – Upon receipt of the sale proceeds by either the court or the commissioner, the court shall secure to each cotenant the cotenant's ratable share in severalty of the proceeds of sale. If the ratable share due to each cotenant has not yet been determined by the court, the court shall set the matter for hearing on the court's own motion or upon motion of a party or commissioner. (1868-9, c. 122, ss. 13, 31; Code, ss. 1904, 1921; Rev., ss. 2512, 2513; C.S., ss. 3241, 3244; 1949, c. 719, s. 2; 1977, c. 833, ss. 1-3; 1985, c. 626, ss. 3-8; 2001-271, s. 19; 2009-362, s. 4; 2009-512, s. 5; 2020-23, ss. 2(jj)-(*ll*), (nn), 3.)

§ 46A-86. Sale proceeds belonging to certain parties.

(a) Minor; Incompetent Adult. – When real property is sold under this Chapter and a party to the proceeding is a minor or an incompetent adult, the court shall take appropriate steps to secure the proceeds for the benefit of the party, including any of the following:

(1) For proceeds up to the allowable amounts in G.S. 7A-111, receive, administer, and disburse the proceeds pursuant to that section.

(2) Order the proceeds disbursed to any of the following:

a. A guardian of the estate or general guardian under Chapter 35A of the General Statutes.

b. An agent under Chapter 32C of the General Statutes.

c. In the case of a minor, a custodian under Chapter 33A of the General Statutes.

d. A custodial trust under Chapter 33B of the General Statutes.

e. A trust under Chapter 36C of the General Statutes.

(b) Certain Other Parties. – When a sale is made under this Chapter, the court shall invest or deposit under G.S. 7A-112 and G.S. 7A-112.1 proceeds belonging to the following parties:

(1) A party who is imprisoned, if the proceeds cannot be disbursed to, or at the direction of, the party.

(2) An unknown or unlocatable cotenant.

A party may seek disbursement of these proceeds by filing a motion in the proceeding. If the party shows that the proceeds belong to the party, the court shall order that the proceeds be disbursed to the party. (1868-9, c. 122, s. 17; Code, s. 1908; 1887, c. 284, s. 3; Rev., s. 2516; C.S., s. 3245; 2020-23, ss. 2(oo), 3.)

§ 46A-87: Reserved for future codification purposes.

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§ 46A-96: Reserved for future codification purposes.

§ 46A-97: Reserved for future codification purposes.

§ 46A-98: Reserved for future codification purposes.

§ 46A-99: Reserved for future codification purposes.