

March 12, 2009

**H 578. PARTITION SALES/COMMRS., SELLERS, BUYERS.** Filed 3/12/09. *TO PROHIBIT ATTORNEYS REPRESENTING PARTIES IN A PARTITION ACTION FROM SERVING AS COMMISSIONERS TO DIVIDE THE LAND, EXCEPT BY CONSENT OF THE PARTIES, AND TO SPECIFY WHO MAY NOT HOLD A PARTITION SALE OF PROPERTY AND WHO MAY NOT PURCHASE PROPERTY IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.*

Amends GS 46-7 (Commissioners appointed), GS 46-31 (Who may not hold sale), and enacts a new GS 46-31.1 (Ineligible purchasers) to exclude attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding from (1) serving as commissioners to divide and apportion, except with the consent of all parties; (2) holding the sale of a property; or (3) purchasing a property in connection with a partition sale. Also establishes in GS 46-31.1 that commissioners and appraisers who were involved in the partition proceedings at any time, and their agents, cannot purchase land in the partition sale. Effective October 1, 2009.

**Intro. by Bryant.**

GS 46

May 7, 2009

**H 578. PARTITION SALES/COMMRS., SELLERS, BUYERS.** Filed 3/12/09. House committee substitute deletes all the provisions of the 1st edition and replaces it with *AN ACT TO PROVIDE NOTICE OF RIGHT TO SEEK LEGAL COUNSEL AND CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE 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; TO REQUIRE A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.* Requires written notice to be included in the petition initiating the partition proceedings that informs the respondent of the right to seek legal counsel and that informs the respondent that the court has the authority to order reasonable attorneys' fees to be paid as a part of the costs of the partition proceeding and to apportion those costs among the parties. Amends GS 46-6 to permit notice by publication if there are persons interested in the premises whose names are unknown and allows the court to appoint some disinterested person to represent the unlocatable or unknown owner. Otherwise as the title indicates. Effective October 1, 2009, and applies to partition actions filed on or after that date.

May 12, 2009

**H 578. PARTITION SALES/COMMRS., SELLERS, BUYERS.** Filed 3/12/09. House committee substitute makes the following changes to 2nd edition. Amends proposed new GS 46-28(c) by adding provisions directing credits and adjustments in a partition sale to be further adjusted by the court to reflect a lack of contribution of one or more cotenants to the payment of expenses of the real property and by making clarifying changes to new subsection (c). Also makes clarifying changes to proposed new GS 46-28.1(d1). Makes change to title to reflect change in proposed new subsection (d1) to allow, rather than require, a court to order an independent appraisal in a partition proceeding.

Deletes in proposed new GS 46-2.1 that when the court orders reasonable attorneys' fees to be paid as a part of the costs of the proceeding that those costs may be apportioned among all parties.

July 21, 2009

**H 578. PARTITION SALES/COMMRS., SELLERS, BUYERS.** Filed 3/12/09. Senate committee substitute makes the following changes to 3rd edition. Deletes proposed GS 46-2.1, which provided for summons and notice in partition proceedings.

Amends GS 46-22 by adding factors to be considered by the court when determining whether a partition in kind of all property or some of the property cannot be made without *substantial injury* to include (1) whether the property is able to be fairly and equitably divided, (2) evidence of longstanding ownership, (3) property use, (4) weighing the harm between the parties, (5) tax and maintenance contributions of the owners, and (6) any other economic or noneconomic factors that the court finds appropriate. Also requires the court to order sale of the property only if it finds that an actual partition cannot be made without substantial injury to the interested parties *taking into account the totality of circumstances*. Requires the court to use the remedy of owelty (the difference which is paid or secured by one coparcener to another, for the purpose of equalizing a partition) where such remedy can aid in making a partition in kind occur without substantial injury to the parties.

Enacts new GS 46-22.1 to allow persons interested in the premises to agree at any time to mediation of a partition. Allows the court or the clerk to order mediation before considering whether to order a sale if a partition sale is requested. Specifies that the provisions of GS 7A-38.1 and GS 7A-38.3B apply.

Changes the title to *AN ACT TO CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE 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; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE; TO REVISE THE STANDARD FOR DETERMINING WHAT CONSTITUTES "SUBSTANTIAL INJURY" WITH REGARDS TO A PETITION FOR A SALE OF PROPERTY; AND TO PROVIDE FOR MEDIATION OF PARTITION DISPUTES*.

August 3, 2009

**H 578. PARTITION SALES/COMMRS., SELLERS, BUYERS.** Filed 3/12/09. Senate committee substitute makes the following changes to 4th edition. Amends GS 46-22 to require the court to order a sale of property only if it finds by a preponderance of the evidence that an actual partition cannot be made without substantial injury to the interested parties (was, cannot be made without substantial injury to the interested parties taking into account the totality of the circumstances). Requires that when the court determines substantial injury, the court must consider (1) whether the fair market value of each cotenant's share in an actual division of the property would be materially less than the amount each cotenant would receive from the sale of the whole and (2) whether a sale or an in-kind division would result in material impairment of any cotenants' rights (was, in determining whether a partition in-kind of all the property or some of the property cannot be made without substantial injury, the court must consider seven specified factors). Requires the court, *in its discretion*, to consider owelty where it can aid in making partition in-kind occur without substantial injury. Requires the court to make specific findings of fact and conclusions of law supporting an order of sale of the property.

August 7, 2009

**H 578. PARTITION SALES/COMMRS., SELLERS, BUYERS.** Filed 3/12/09. Conference report recommends the following changes to 5th edition to reconcile matters in controversy. Specifies in proposed amended GS 46-22 that a court must consider evidence in favor of actual partition and evidence in favor of a sale that is presented by any interested parties before making the necessary findings and ordering a sale of the property. Modifies the factors to be considered by the court when determining *whether an actual partition would cause substantial injury to any of the interested parties* by requiring consideration of (1) whether fair market value of each cotenant's share in an actual partition (was, division) of the property would be materially less than the amount each cotenant would receive from the sale of the whole and (2) whether an actual partition (was, division) would result in material impairment of any cotenant's rights. Makes technical changes.

Makes a technical change to the title.

September 1, 2009

**SL 2009-512 (H 578). PARTITION SALES/COMMRS., SELLERS, BUYERS.** AN ACT TO CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE 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; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE; TO CLARIFY THE STANDARD FOR DETERMINING WHAT CONSTITUTES "SUBSTANTIAL INJURY" WITH REGARDS TO A PETITION FOR A SALE OF THE PROPERTY; AND TO PROVIDE FOR MEDIATION OF PARTITION DISPUTES. Summarized in *Daily Bulletin* 3/12/09, 5/7/09, 5/12/09, 7/21/09, 8/3/09, and 8/7/09. Enacted August 26, 2009. Effective October 1, 2009.