

March 12, 2009

**H 579. PARTITION SALES/BUYOUT, FACTORS, ATTNY FEES.** Filed 3/12/09. *TO PROVIDE A BUYOUT OPTION IN THE PARTITION PROCEDURES WHEREBY NONPETITIONING EXISTING OWNERS MAY BUY OUT THEIR CO-OWNERS WHO SEEK THE SALE OF THE PROPERTY, TO CHANGE THE CURRENT PURELY ECONOMIC "SUBSTANTIAL INJURY" TEST TO DETERMINE WHEN A COURT SHOULD ORDER A PARTITION SALE INTO A MULTIPLE FACTOR TEST THAT ALSO CONSIDERS NONECONOMIC FACTORS, AND TO PROHIBIT THE ASSESSMENT OF ATTORNEYS' FEES IN A PARTITION SALE AGAINST A CO-OWNER WHO OPPOSES THE PARTITION SALE.*

Enacts a new GS 46-22.1 to create a "buyout option," which would allow nonpetitioning cotenants to purchase the petitioner's interest in the property, if the court determines the property cannot be partitioned in-kind (physical division). Provides that, within 15 days of the determination that the property cannot be divided in-kind, a petitioner may, with permission of the court, withdraw as a petitioner and become a nonpetitioning cotenant with the ability to purchase the interests of any petitioners and allows a nonpetitioning cotenant to become a petitioner. If no petitioner remains after 15 days, then the proceeding is dismissed and petitioners who have withdrawn are liable for the costs of the action. Requires that a nonpetitioning cotenant notify the court of an intent to exercise the buyout option between 15 and 30 days after determining that the property cannot be divided in-kind. Provides that a nonpetitioning cotenant may purchase an interest in the property even if a default judgment has been entered against the cotenant and that each cotenant is entitled to purchase a portion of the available interest equal to the cotenant's existing percentage ownership divided by the total percentage ownership of all cotenants participating in the buyout. Directs that independent appraisers appointed and approved by the court will determine the value of the interest if the cotenants cannot agree, with the costs taxed to all cotenants, and that any cotenant may submit an appraisal at the cotenant's expense. Requires that an appraiser file a written appraisal within 30 days of being appointed by the court. Allows the petitioner to object to the appraised value of an interest subject to sale by written notice, by requesting a hearing, within 10 days of the filing of the appraiser's report. Provides that the nonpetitioner cotenants who have exercised the buyout option have 45 days to pay the court the set price and the court must then transfer and deliver title. Allows remaining cotenants to purchase a portion of the interest, based on the percentage ownership, within 10 days of the expiration of the 45 day deadline if a defaulting cotenant fails to purchase the interest at the set price. If all cotenants default, then the court may order a sale of the property. Clarifies that this section does not apply to written tenants-in-common or joint tenants management agreements.

Amends GS 46-22(b) by adding factors, other than economic value, to be considered by the court when determining "substantial injury" for purposes of ordering a sale of property instead of actual partition, including longstanding ownership, sentimental links, use, and tax and maintenance contributions of the owners. Prohibits the court from considering any one factor as dispositive. Makes conforming changes.

Enacts a new GS 46-22.2 to prohibit a court from charging attorneys' fees against a nonpetitioning cotenant who contests the partition or sale of a property by appearing in person in court. Makes a conforming change to GS 6-21(7).

Effective October 1, 2009.

**Intro. by Bryant.**

GS 6, 46