

March 12, 2009

H 580. PARTITION SALES/NOTICE, CREDIT, APPRAISAL. Filed 3/12/09. *TO PROVIDE GREATER NOTICE TO PARTIES WHO MAY BE UNKNOWN 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, AND TO REQUIRE A COURT TO ORDER AN INDEPENDENT APPRAISAL IF A PARTY TO THE PARTITION CHALLENGES THE AMOUNT BID IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.*

Amends GS 46-6 by requiring a petitioner in a partition action to specifically allege in an affidavit or otherwise what due diligence was exercised in attempting to ascertain unknown or unlocatable persons that may be interested in the property. Specifies facts to be included in the affidavit. Requires the clerk to determine if the petitioner exercised due diligence before ordering notice by publication. Specifies information required in the notice by publication in a newspaper. Provides that attorneys who (1) currently represent the parties in the pending proceeding and (2) previously represented the parties in a related partition proceeding cannot represent unknown or unlocatable parties who may have an interest in the property. Requires the court (was, in the court's discretion) to appoint a disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented, if before or after (was, after) a general notice by publication any person interested in the premises and entitled to notice fails to appear.

Amends GS 46-28 to allow any cotenant, making an offer in a sale for the entire parcel, to receive (1) credit for the interest the cotenant already owns and (2) a corresponding reduction in the amount of money owed after deducting the costs and fees associated with the sale. Allows cotenants to aggregate credit for the cotenants' interest when making a joint offer. Makes a conforming change.

Amends GS 46-28.1 to require the court to order an independent appraisal if any party to the partition proceedings petitions the court to revoke its order of confirmation and order a withdrawal of the offer based upon the grounds that the amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property. Based on that appraisal, allows the court to (1) revoke the confirmation order, (2) order withdrawal of the purchaser's offer, and (3) order the return of any money or security to the purchaser tendered pursuant to the offer. Apportions the cost of an independent appraisal to all parties, pro rata. Effective October 1, 2009.

Intro. by Bryant.

GS 46