

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 581
Senate Judiciary II Committee Substitute Adopted 6/30/09

Short Title: Partition Sales/Extend Report & Answer Times.

(Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE FOR THE COMMISSIONERS IN A PARTITION ACTION TO REPORT BACK TO THE COURT ON THEIR PROPOSED DIVISION OF THE LAND, TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, TO PROVIDE NOTICE OF RIGHT TO SEEK COUNSEL, AND TO CLARIFY THE TIME PERIOD FOR APPEALING A CONFIRMATION ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-17 reads as rewritten:

"§ 46-17. Report of commissioners; contents; filing.

The commissioners, within a reasonable time, not exceeding ~~60~~ 90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in ~~his~~ the clerk's discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property."

SECTION 2. G.S. 1-394 reads as rewritten:

"§ 1-394. Contested special proceedings; commencement; summons.

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall



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1 be within 30 days after the date of service of summons or after the final determination of any
2 motion required to be made prior to the filing of an answer."

3 **SECTION 3.** Article 1 of Chapter 46 of the General Statutes is amended by adding
4 a new section to read:

5 "**§ 46-2.1. Summons.**

6 (a) In partition proceedings initiated under this Chapter, the period of time for
7 answering a summons is provided in G.S. 1-394.

8 (b) Written notice shall be included in the petition in a manner reasonably calculated to
9 make the respondent aware of the following:

10 (1) That the respondent has the right to seek the advice of an attorney and that
11 free legal services may be available to the respondent by contacting Legal
12 Aid of North Carolina or other legal services organizations.

13 (2) That pursuant to G.S. 6-21 the court has the authority, in its discretion, to
14 order reasonable attorneys' fees to be paid as a part of the costs of the
15 proceeding."

16 **SECTION 4.** G.S. 46-28.1 reads as rewritten:

17 "**§ 46-28.1. Petition for revocation of confirmation order.**

18 (a) ~~Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the~~
19 ~~partition sale of real property shall not become final and effective until 15 days after entered.~~
20 ~~At any time before the confirmation order becomes final and effective, within 15 days of entry~~
21 ~~of the order confirming the partition sale or real property, any party to the partition proceeding~~
22 ~~or the purchaser may petition the court to revoke its order of confirmation and to order the~~
23 ~~withdrawal of the purchaser's offer to purchase the property upon the following grounds:~~

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

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

27 a. Notice of the partition was not served on the petitioner for revocation
28 as required by Rule 4 of the Rules of Civil Procedure; or

29 b. Notice of the sale was not mailed to the petitioner for revocation as
30 required by G.S. 46-28(b); or

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

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

36 (b) The party petitioning for revocation shall deliver a copy of the petition to all parties
37 required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make
38 such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court
39 shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the
40 hearing to be served on the petitioner, the officer or person designated to make such a sale and
41 all parties required to be served under Rule 5 of G.S. 1A-1.

42 (c) In the case of a petition brought under this section by a purchaser claiming the
43 existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a
44 preponderance of the evidence that:

45 (1) A lien remains unsatisfied on the property to be conveyed; and

46 (2) The purchaser has not agreed in writing to assume the lien; and

47 (3) The lien will not be satisfied out of the proceeds of the sale; and

48 (4) The existence of the lien was not disclosed in the notice of sale of the
49 property, the court may revoke the order confirming the sale, order the
50 withdrawal of the purchaser's offer, and order the return of any money or
51 security to the purchaser tendered pursuant to the offer.

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

3 (d) In the case of a petition brought pursuant to this section by a party to the partition
4 proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a
5 case pursuant to a., b., or c. of subsection (a)(2), the court may revoke the order confirming the
6 sale, order the withdrawal of the purchaser's offer, and order the return of any money or
7 security to the purchaser tendered pursuant to the offer.

8 (e) If the court revokes its order of confirmation under this section, the court shall order
9 a resale. The procedure for a resale is the same as is provided for an original public sale under
10 Article 29A of Chapter 1 of the General Statutes.

11 (f) An order confirming the partition sale of real property becomes final and effective
12 15 days after entry of the order of confirmation or when the clerk denies a petition for
13 revocation, whichever occurs later. A party may appeal an order confirming the partition of sale
14 of real property within 10 days of the order becoming final and effective."

15 **SECTION 5.** G.S. 1-301.2(e) reads as rewritten:

16 "(e) Appeal of Clerk's Decisions. – ~~A~~ Except as provided in G.S. 46-28.1(f), a party
17 aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may,
18 within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing
19 de novo. Notice of appeal shall be in writing and shall be filed with the clerk. The order or
20 judgment of the clerk remains in effect until it is modified or replaced by an order or judgment
21 of a judge. A judge of the court to which the appeal lies or the clerk may issue a stay of the
22 order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk
23 issuing the stay. Any matter previously transferred and determined by the court shall not be
24 relitigated in a hearing de novo under this subsection.

25 **SECTION 6.** This act becomes effective October 1, 2009.