

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE BILL 367  
PROPOSED COMMITTEE SUBSTITUTE H367-CSBE-21 [v.1]  
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Short Title: Uniform Partition of Heirs Property Act.

(Public)

Sponsors:

Referred to:

March 24, 2021

A BILL TO BE ENTITLED  
AN ACT TO ENACT THE UNIFORM PARTITION OF HEIRS PROPERTY ACT.  
The General Assembly of North Carolina enacts:

**SECTION 1.** Article 2 of Chapter 46A of the General Statutes is amended by adding a new Part to read:

"Part 4. Uniform Partition of Heirs Property Act.

**"§ 46A-87. Short title.**

This Part shall be known and may be cited as the "Uniform Partition of Heirs Property Act."

**"§ 46A-88. Definitions.**

As used in this Part, the following definitions apply:

- (1) Ascendant. – An individual who precedes another individual in lineage, in the direct line of ascent from the other individual.
- (2) Collateral. – An individual who is related to another individual under the operation of the intestate succession provisions of Chapter 29 of the General Statutes but who is not the other individual's ascendant or descendant.
- (3) Descendant. – An individual who follows another individual in lineage, in the direct line of descent from the other individual.
- (4) Determination of value. – A court order determining the fair market value of heirs property under this Part or adopting the valuation of the property agreed to by all cotenants.
- (5) Heirs property. – Real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition proceeding:
  - a. There is no agreement in a record binding all the cotenants which governs the partition of the property.
  - b. One or more of the cotenants acquired title from a relative, whether living or deceased.
  - c. Any of the following apply:
    1. Twenty percent (20%) or more of the interests are held by cotenants who are relatives.
    2. Twenty percent (20%) or more of the interests are held by an individual who acquired title from a relative, whether living or deceased.
    3. Twenty percent (20%) or more of the cotenants are relatives.
- (6) Partition by sale. – A court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open-market sale conducted under G.S. 46A-96.



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- (7) Partition in kind. – The division of heirs property into physically distinct and separately titled parcels.
- (8) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (9) Relative. – An ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this State other than this Part.

**"§ 46A-89. Applicability; relation to other law.**

(a) In a proceeding to partition real property under Article 2 of this Chapter, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property shall be partitioned under this Part unless all of the cotenants otherwise agree in a record.

(b) This Part supplements Article 1 of this Chapter and the other Parts of this Article and, if a proceeding is governed by this Part, replaces provisions of this Chapter that are inconsistent with this Part.

**"§ 46A-90. Service; notice by posting.**

(a) This Part does not limit or affect the method by which service of a summons and notice in a partition proceeding may be made.

(b) If the petitioner in a partition proceeding seeks authorization for notice by publication and the court determines that the property may be heirs property, the petitioner, not later than 10 days after the court's determination, shall post a conspicuous sign on the property that is the subject of the proceeding. The sign must state that the proceeding has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the petitioner to publish on the sign the name of the petitioner and the known respondents.

**"§ 46A-91. Commissioners.**

If the court appoints commissioners pursuant to G.S. 46A-50 or G.S. 46A-76, each commissioner, in addition to the requirements and disqualifications applicable to commissioners in G.S. 46A-50, must be disinterested and impartial and not a party to or a participant in the proceeding.

**"§ 46A-92. Determination of value.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, if the court determines that the property that is the subject of a partition proceeding is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (d) of this section.

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and order the petitioner to send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this State to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subsection (d) of this section, not later than 10 days after the appraisal is filed, the court shall order the petitioner to send notice to each party with a known address, stating the following:

- (1) The appraised fair market value of the property.
- (2) That the appraisal is available at the office of the clerk of superior court.

(3) That a party may file with the court an objection to the appraisal not later than 30 days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to subsection (d) of this section, the court shall conduct a hearing to determine the fair market value of the property no sooner than 30 days after a copy of the notice of the appraisal is sent to each party under subsection (e) of this section, whether or not an objection to the appraisal is filed under subdivision (3) of subsection (e) of this section. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f) of this section, but before considering the merits of the partition proceeding, the court shall determine the fair market value of the property and order the petitioner to send notice to the parties of the value.

**"§ 46A-93. Cotenant buyout.**

(a) If any cotenant requested partition by sale, after the determination of value under G.S. 46A-92, the court shall order the petitioner to send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(b) No later than 45 days after the notice is sent under subsection (a) of this section, any cotenant except a cotenant that requested partition by sale may give notice to the court that the cotenant elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under G.S. 46A-92 multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After expiration of the period in subsection (b) of this section, the following rules apply:

(1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and order the petitioner to send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall order the petitioner to send notice to all the parties of that fact and resolve the partition proceeding under G.S. 46A-94(a) and (b).

(e) If the court sends notice to the parties under subdivisions (1) or (2) of subsection (d) of this section, the court shall set a date, no sooner than 60 days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After the date set by the court, the following rules apply:

(1) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(2) If no electing cotenant timely pays that cotenant's apportioned price, the court shall resolve the partition proceeding under G.S. 46A-94(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) No later than 20 days after the court gives notice pursuant to subdivision (3) of subsection (e) of this section, any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-day period, the following rules apply:

(1) If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall promptly issue an order reallocating the interests of all of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition proceeding under G.S. 46A-94(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall promptly issue an order reallocating all of the cotenants' interests, disburse the amounts held by the court to the persons entitled to them, and promptly refund any excess payment held by the court.

(g) No later than 45 days after the court sends notice to the parties pursuant to subsection (a) of this section, any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending proceeding of the interests of cotenants named as respondents and served with the complaint but that did not appear in the proceeding.

(h) If the court receives a timely request under subsection (g) of this section, the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to all of the following limitations:

(1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (a) through (f) of this section have been paid into the court and those interests have been reallocated among the cotenants as provided in those subsections.

(2) The purchase price for the interest of a non-appearing cotenant is based on the court's determination of value under G.S. 46A-92.

#### **"§ 46A-94. Partition alternatives.**

(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to G.S. 46A-93, or if, after conclusion of the buyout under G.S. 46A-93, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in G.S. 46A-95, finds that partition in kind will result in substantial injury to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

(b) If the court does not order partition in kind under subsection (a) of this section, the court shall order partition by sale pursuant to G.S. 46A-96 or, if no cotenant requested partition by sale, the court shall dismiss the proceeding.

(c) If the court orders partition in kind pursuant to subsection (a) of this section, the court may require that one or more cotenants pay one or more other cotenants' amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out pursuant to G.S. 46A-93, a part of the property representing the combined interests of these

cotenants as determined by the court and the shares of these cotenants shall be apportioned together as one parcel.

**"§ 46A-95. Considerations for partition in kind.**

(a) In determining under G.S. 46A-94(a) whether partition in kind would result in substantial injury to the cotenants as a group, the court shall consider the following:

- (1) Whether the heirs property practicably can be divided among the cotenants.
- (2) Whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur.
- (3) Evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other.
- (4) A cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant.
- (5) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property.
- (6) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property.
- (7) Any other relevant factor.

(b) The court may not consider any one factor in subsection (a) of this section to be dispositive without weighing the totality of all relevant factors and circumstances.

**"§ 46A-96. Open-market sale; sealed bids; auction.**

(a) If the court orders a sale of heirs property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(b) If the court orders an open-market sale and the parties, not later than 10 days after the entry of the order, agree on a real estate broker licensed in this State to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this State to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under subsection (b) of this section obtains within a reasonable time an offer to purchase the property for at least the determination of value, then the following apply:

- (1) The broker shall comply with the reporting requirements in G.S. 46A-97.
- (2) The sale may be completed in accordance with State law other than this Part.

(d) If the broker appointed under subsection (b) of this section does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may do any of the following:

- (1) Approve the highest outstanding offer, if any.
- (2) Redetermine the value of the property and order that the property continue to be offered for an additional time.
- (3) Order that the property be sold by sealed bids or at an auction.

(e) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under G.S. 46A-76.

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

**"§ 46A-97. Report of open-market sale.**

(a) A broker appointed under G.S. 46A-96(b) to offer heirs property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under G.S. 46A-92 or G.S. 46A-96.

(b) The report required by subsection (a) of this section must contain all of the following information:

(1) A description of the property to be sold to each buyer.

(2) The name of each buyer.

(3) The proposed purchase price.

(4) The terms and conditions of the proposed sale, including the terms of any owner financing.

(5) The amounts to be paid to lienholders, if any.

(6) A statement of contractual or other arrangements or conditions of the broker's commission.

(7) Any other material facts relevant to the sale.

**"§ 46A-98. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**"§ 46A-99. Relation to the Electronic Signature in Global and National Commerce Act.**

This Part modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, 15 U.S.C. § 7003(b)."

**SECTION 2.** G.S. 46A-26 reads as rewritten:

**"§ 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.

(5) If the property is determined to be heirs property, as defined in G.S. 46A-121, then partition under Part 4 of this Article as a partition of heirs property."

**SECTION 3.** This act becomes effective July 1, 2022, and applies to petitions for partition filed on or after that date.