

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 626  
HOUSE BILL 182

AN ACT TO PROVIDE A FAIR PROCEDURE IN PARTITION SALES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 46-22 is rewritten to read:

"§ 46-22. **Sale in lieu of partition.** – (a) The court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested parties.

(b) 'Substantial injury' means the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if an in-kind division would result in material impairment of the cotenant's rights.

(c) The court shall specifically find the facts supporting an order of sale of the property.

(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section."

Sec. 2. G.S. 46-28 is amended by designating the current language as subsection (a) and by adding a new subsection (b) to read:

"(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The Commissioner shall also certify to the Court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the Court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b."

Sec. 3. G.S. 46-28.1(a) is rewritten to read:

"(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and

effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

- (1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.
- (2) In the case of any party to the partition proceeding:
  - a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or
  - b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or
  - c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

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

Sec. 4. G.S. 46-28.1(b) is amended by deleting the word "purchaser" in the first line, and substituting the words "party petitioning for revocation."

Sec. 5. G.S. 46-28.1(c) is rewritten to read:

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

- (1) A lien remains unsatisfied on the property to be conveyed; and
- (2) The purchaser has not agreed in writing to assume the lien; and
- (3) The lien will not be satisfied out of the proceeds of the sale; and
- (4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

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

Sec. 6. G.S. 46-28.1(d) is rewritten to read:

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

Sec. 7. G.S. 46-28.1 is amended by adding a new subsection (e) to read:

"(e) If the court revokes its order of confirmation under this section, the court shall order a resale pursuant to the provisions of G.S. 1-339.27."

Sec. 8. G.S. 46-28.2 is rewritten to read:

**"§ 46-28.2. When bidder may purchase.** – After the order of confirmation becomes final and effective, the successful bidder may immediately purchase the property."

Sec. 9. This act shall become effective October 1, 1985.

In the General Assembly read three times and ratified, this the 5th day of July, 1985.