

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE BILL 612*

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

Sponsors: Senator Atwater.

Referred to: Judiciary II.

March 17, 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, AND TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

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.(a) 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



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 2.(b)** Article 1 of Chapter 46 of the General Statutes is amended by
4 adding a new section to read:

5 "**§ 46-2.1 Summons.**

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

8 **SECTION 3.** This act becomes effective October 1, 2009.