

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1309

Short Title: Refusal Rights-Forced Public Partition Sales.

(Public)

Sponsors: Representatives Michaux; L. Allen and Faison.

Referred to: Judiciary II.

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO OFFER COTENANTS THE RIGHT OF FIRST REFUSAL PRIOR TO A
FORCED PUBLIC PARTITION SALE.

The General Assembly of North Carolina enacts:

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

"§ 46-22.1. Sale of cotenant's interest in lieu of sale by partition.

(a) Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the purchase of the interests of the joint tenants or tenants in common seeking the sale of the property described in the petition pursuant to G.S. 46-22 to the nonpetitioning joint tenants or tenants in common. Provided that the nonpetitioning joint tenants or tenants in common interested in purchasing such interests shall notify the court of that interest not later than 10 days prior to the date set for trial of the case and shall be allowed to purchase whether default has been entered against them or not.

(b) In the circumstances described in subsection (a) of this section, and in the event the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent real estate appraisers or commissioners, as the court shall approve, appointed for that purpose by the court. The appraisers or commissioners appointed under this section shall make their report in writing to the court within 30 days after their appointment.

(c) After the filing of the appraisers' or commissioners' report with the court, the nonpetitioning joint tenants or tenants in common seeking to purchase the interests of those filing the petition shall have 45 days to pay into the court the price set as the value of those interests to be purchased. Upon the payment and approval of it by the court, the clerk shall execute and deliver or cause to be executed and delivered the proper instruments transferring title to the purchasers.

1 (d) Should the nonpetitioning joint tenants or tenants in common fail to pay the
2 purchase price as provided in subsection (c) of this section, the court shall proceed
3 according to its traditional practices in partition sales as described in G.S. 46-22.

4 (e) Should the petitioning joint tenants or tenants in common object to the value
5 of the interests as recommended by the appraisers or commissioners, those joint tenants
6 or tenants in common shall have 10 days from the date of filing of the report to file
7 written notice of objection to the report and request a hearing before the clerk of
8 superior court on the value. An evidentiary hearing limited to the proposed valuation of
9 the interests of the petitioning joint tenants or tenants in common shall be conducted,
10 and an order as to the valuation of the petitioning joint tenants' or tenants in common's
11 interests shall be issued.

12 (f) The costs of the appraisers or commissioners pursuant to this section shall be
13 taxed as a part of the cost of court to those seeking purchase to or purchasing the
14 interests of the joint tenants or tenants in common petitioning to sell their interest in the
15 property described in the petition."

16 **SECTION 2.** This act is effective when it becomes law.