

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE DRS35239-MEz-40S (2/25)

Short Title: Partition Sales/Buyout Provision.

(Public)

Sponsors: Senators McKissick, and Atwater.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A BUYOUT OPTION IN THE PARTITION PROCEDURES  
WHEREBY NONPETITIONING EXISTING OWNERS MAY BUY OUT THEIR  
CO-OWNERS WHO SEEK THE SALE OF THE PROPERTY, AS RECOMMENDED BY  
THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

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

**"§ 46-22.1. Sale of cotenants' interest in lieu of sale of property.**

(a) If the court determines the property cannot be partitioned in-kind as provided in this Chapter, the court shall, prior to ordering a sale of the property described in the petition, or of any part, allow the nonpetitioning cotenants to purchase the petitioner's interest in the property (the 'buyout option'). The court shall explain the buyout option procedures to any cotenant who appears in person before the court without counsel.

(b) Within 15 days of the determination that the property cannot be divided in-kind, a petitioner may, with permission of the court, withdraw as petitioner and become a nonpetitioning cotenant with the ability to purchase the interest of any petitioners. Likewise, a nonpetitioning cotenant who wishes to be bought out may, with permission of the court, become a petitioner. If no petitioner remains in the partition action 15 days after the court determines that the property cannot be partitioned in-kind, then the proceeding shall be dismissed, and the petitioners who have withdrawn shall be liable for the costs of the action.

(c) A nonpetitioning cotenant who wishes to exercise the buyout option shall notify the court of the cotenant's intent no sooner than 15 days and no later than 30 days after the court has determined that the property cannot be partitioned in-kind. A nonpetitioning cotenant may purchase an interest in the property as provided in this section even if a default judgment has been entered against the cotenant. If more than one nonpetitioning cotenant wishes to exercise the buyout option, each cotenant shall be entitled to purchase a portion of the available interest equal to the cotenant's existing percentage ownership divided by the total percentage ownership of all cotenants participating in the buyout.

(d) If the cotenants cannot agree on the price of the petitioner's interest, the value of the interest shall be determined by one or more competent and independent real estate appraisers approved and appointed by the court. A second appraiser shall be appointed if a second appraisal is requested by the cotenants and the court finds that a second appraisal is needed. The cost of any appraisals ordered pursuant to this section shall be taxed as part of the costs of



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1 court to all cotenants. Any of the cotenants may also submit an appraisal to the court from an  
2 appraiser not appointed by the court, but those cotenants shall pay the cost of that appraisal.

3 (e) An appraiser appointed under subsection (d) of this section shall file a written  
4 appraisal of the property to the court within 30 days of being appointed. If the court receives  
5 appraisals of different values, the court shall evaluate the appraisals and determine the weight  
6 to be given to each in determining the value of the interest subject to sale.

7 (f) If the petitioner objects to the value of the interest as determined by an appraiser, the  
8 petitioner shall file written notice of the objection with the court no later than 10 days after the  
9 filing of the appraiser's report and shall request a hearing on the value of the interest subject to  
10 sale. The court shall hold a hearing limited to determining the value of the interest subject to  
11 sale and, after hearing evidence as to the issue, shall enter an order stating the value.

12 (g) Upon a determination of the value of the interest as provided in this section, the  
13 nonpetitioning cotenants who have exercised the buyout option shall have 45 days to pay into  
14 the court the price set as the value of the interest. Upon payment of the price, the court shall  
15 order that the proper instruments transferring title in the interest be executed and delivered to  
16 the purchasing cotenants.

17 (h) If one or more but not all of the cotenants who exercised the buyout option under  
18 subsection (c) of this section fail to pay the price set as the value of the interest, the remaining  
19 cotenants who exercised the buyout option may purchase a portion of the defaulting cotenant's  
20 interest by paying the price of the share into the court within 10 days after the expiration of the  
21 45-day deadline provided in subsection (g) of this section. The portion that each of the  
22 remaining cotenants may purchase shall be equal to the cotenant's original percentage  
23 ownership divided by the total percentage ownership of all cotenants interested in purchasing  
24 the defaulting cotenant's interest. If none of the cotenants who exercised the buyout option pays  
25 the price set as the value of the interest, the court may order a sale of the property as provided  
26 in G.S. 46-22.

27 (i) This section shall not apply when there is a written tenants-in-common or joint  
28 tenants management agreement."

29 **SECTION 2.** This act becomes effective October 1, 2009.