

2021 Regular Session

HOUSE BILL NO. 521

BY REPRESENTATIVE SEABAUGH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROPERTY: Provides relative to partitions of property

1 AN ACT

2 To amend and reenact Civil Code Article 811 and Code of Civil Procedure Articles 4607,
3 4621, 4622, 4624, 4625, 4626, 4626.1, 4627, 4629, and 4643, relative to property;
4 to provide for partitions of property; to provide for partitions by private sale; to
5 provide for absentee co-owners; to provide for time periods; to provide for notice of
6 publication; to provide for petitions, trials, and judgments of partitions by private
7 sale; to provide for the appointment of an attorney; to provide for an effective date;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Civil Code Article 811 is hereby amended and reenacted to read as
11 follows:

12 Art. 811. Partition by licitation or by private sale

13 When the thing held in indivision is not susceptible to partition in kind, the
14 court shall decree a partition by licitation or ~~by~~ private sale and the proceeds shall
15 be distributed to the co-owners in proportion to their shares. In the event that one or
16 more of the co-owners are absentees or have not consented to a partition by private
17 or public sale, the court may set the terms of the sale and order a partition by private
18 sale.

1 Section 2. Code of Civil Procedure Articles 4607, 4621, 4622, 4624, 4625, 4626,
2 4626.1, 4627, 4629, and 4643 are hereby amended and reenacted to read as follows:

3 Art. 4607. Partition by licitation or by private sale

4 A. When a partition is to be made by licitation, the sale shall be conducted
5 at public auction ~~and~~ after the advertisements required for judicial sales under
6 execution.

7 B. When a partition is to be made at private sale without the consent of all
8 co-owners, the sale shall be for not less than two-thirds of the appraised value of the
9 property and shall be made by a court-appointed representative, who may be a co-
10 owner, after the advertisements required for judicial sales under execution are made.
11 All counsel of record, including curators appointed to represent absentee defendants,
12 and persons appearing in proper person shall be given notice of the sale date. At any
13 time prior to the sale, the parties may agree upon a nonjudicial partition.

14 * * *

15 Art. 4621. Partition by licitation or private sale

16 When one of the co-owners of property sought to be partitioned is an
17 absentee, the partition may be ~~effected~~ conducted by licitation or ~~by~~ private sale, as
18 provided in this Chapter, whether the property is divisible in kind or not.

19 Art. 4622. Petition

20 The petition for the partition of property in which an absentee owns an
21 interest, ~~under the articles of this Chapter,~~ shall allege the facts showing that the
22 absent and unrepresented defendant is an absentee, as defined in Article 5251, shall
23 describe the property sought to be partitioned and allege the ownership interests
24 thereof, and shall be supported by an affidavit of the petitioner or of ~~his~~ the
25 petitioner's counsel that the facts alleged in the petition are true. If the partition is
26 to be made by private sale, the petition shall describe the primary terms of the
27 proposed sale, identify the proposed purchaser, if any, disclose whether the proposed
28 purchaser is related to any co-owner, and disclose to the petitioning co-owners
29 whether any costs associated with the sale will be paid to any person related to the

1 petitioning co-owners within the fourth degree or a juridical entity in which the co-
2 owner has a direct or indirect financial interest.

3 * * *

4 Art. 4624. Publication of notice

5 Notice of the institution of the proceeding shall be published at least once in
6 the parish where the partition proceeding is instituted; in the manner provided by
7 law. ~~This~~ The notice shall set forth the title and docket number of the proceeding,
8 the name and address of the court, a description of the property sought to be
9 partitioned, and the terms of the private sale, ~~and~~ The notice shall notify the absent
10 defendant that the plaintiff is seeking to have the property partitioned by licitation
11 or by private sale, and that the absent defendant has fifteen days from the date of the
12 publication of notice, or of the initial publication of notice if there is more than one
13 publication, to answer the plaintiff's petition.

14 Art. 4625. Trial; judgment ordering sale

15 A. Except as otherwise provided in Article 4630, if the petitioner proves on
16 the trial of the proceeding that ~~he~~ the petitioner is a co-owner of the property and
17 entitled to the partition thereof and that the defendant is an absentee who owns an
18 interest therein, the court shall render judgment ordering either the public sale of the
19 property for cash by the sheriff to effect a partition, after the advertisement required
20 by law for a sale under execution or the private sale of the property for cash by the
21 court-appointed representative to effect a partition, after the advertisement required
22 by law for a sale under execution.

23 B. The judgment shall determine the absentee's share in the proceeds of the
24 sale, and award a reasonable fee to the attorney appointed to represent ~~him~~ the
25 absentee to be paid from the absentee's share of the proceeds of the sale.

26 Art. 4626. Judgment ordering reimbursement or payment of amounts due co-owner
27 out of proceeds of public sale

28 A judgment ordering the public sale of property to ~~effect~~ conduct a partition
29 under the provisions of this Chapter shall order, out of the proceeds of such sale, all
30 of the following:

1 (1) The reimbursement to a co-owner of the amount proven to be due the co-
2 owner for the payment of taxes on the property, and the expenses of preservation of
3 the property.

4 (2) The payment to a co-owner of the amount proven to be due the co-owner
5 by another co-owner who has received and retained the fruits and revenues of the
6 property.

7 Art. 4626.1. Judgment ordering reimbursement or payment of amounts due co-
8 owner and payment and allocation of costs of private sale out of proceeds of
9 sale

10 A judgment ordering the private sale of property to ~~effect~~ conduct a partition
11 under the provisions of this Chapter shall order, out of the proceeds of such sale, all
12 of the following:

13 (1) The reimbursement to a co-owner of the amount proven to be due the co-
14 owner for the payment of taxes on the property and the expenses of preservation of
15 the property.

16 (2) The payment to a co-owner of the amount proven to be due the co-owner
17 by another co-owner who has received and retained the fruits and revenues of the
18 property.

19 (3)(a) The payment of reasonable costs related to the sale, including real
20 estate commissions, brokerage fees, appraisal costs, payments associated with the
21 release of encumbrances and other customary closing costs, and the allocation of
22 such costs to one or more co-owners.

23 (b) The court in rendering judgment shall consider whether the costs
24 associated with the sale will be paid to any person related to the co-owners within
25 the fourth degree or a juridical entity in which the co-owner has a direct or indirect
26 financial interest.

27 Art. 4627. Effect of judgment and sale

28 The judgment ordering the public sale or private sale of the property to effect
29 a partition, and the sale made in compliance therewith, has the same force and effect

1 as to the absentee, his succession representative and heirs, as if ~~he~~ the absentee had
2 been served personally with process and the judgment had been rendered against ~~him~~
3 the absentee personally. Thereafter, the absentee, ~~his~~ the absentee's succession
4 representative, and the absentee's heirs are precluded from asserting any right, title,
5 or interest in the property partitioned.

6 * * *

7 Art. 4629. Articles applicable to partition by licitation or private sale

8 Article 4603, the first paragraph of Article 4605, and Articles 4607 and 4614
9 are applicable to both a partition by licitation or a partition by private sale under the
10 provisions of this Chapter.

11 * * *

12 Art. 4643. Appointment of attorney for incompetent when interests conflict

13 A. In any partition of property, whether in kind, by licitation, or by private
14 sale, and whether judicial or conventional, of which an incompetent is a co-owner,
15 and the interests of the incompetent conflict with those of ~~his~~ the incompetent's legal
16 representative, undertutor, or undercurator, as the case may be, the court shall
17 appoint an attorney at law to represent and act for the incompetent in the partition.
18 If two or more incompetent co-owners whose interests conflict have the same legal
19 representative, undertutor, or undercurator, the court shall appoint an attorney at law
20 to represent and act for each of these incompetents in the partition.

21 B. For the purposes of the partition of property, whether in kind, by
22 licitation, or by private sale, and whether judicial or conventional, the attorney at law
23 so appointed shall act in lieu of, and has all of the power and authority of, the legal
24 representative, undertutor, or undercurator referred to in Paragraph A of this Article.

25 Section 3. This Act shall become effective upon signature by the governor or, if not
26 signed by the governor, upon expiration of the time for bills to become law without signature
27 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
28 vetoed by the governor and subsequently approved by the legislature, this Act shall become
29 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 521 Original

2021 Regular Session

Seabaugh

Abstract: Provides relative to court-ordered partitions for property.

Present law (C.C. Art. 811) provides that the court may order a partition by private sale for absentee and nonconsenting co-owners.

Proposed law makes technical changes to present law.

Present law (C.C.P. Art. 4607) provides that if the partition is made at private sale without the consent of all co-owners, the sale cannot be for less than two-thirds of the appraised property value.

Proposed law restructures present law.

Present law (C.C.P. Art. 4621) provides that for an absentee co-owner, a partition may be effected by licitation or private sale.

Proposed law makes technical changes to present law.

Present law (C.C.P. Art. 4622) provides that a petition for partition by private sale shall describe the primary terms of the proposed sale, identify the proposed purchaser, if any, disclose whether the proposed purchaser is related to any co-owner, and disclose whether any costs associated with the sale are paid to a party related to any co-owner within the fourth degree or a juridical entity in which the co-owner has a financial interest.

Proposed law makes technical changes to present law.

Present law (C.C.P. Art. 4624 and C.C.P. Art. 4625) includes partitions by private sale in the requirements of notice publication and trial.

Proposed law makes technical changes to clarify terminology in present law.

Present law (C.C.P. Art. 4626) provides that the judgment dictate that a pro-rata payment of reasonable costs related to the sale be deducted from the share of each co-owner.

Present law (C.C.P. 4626.1) provides that judgments ordering the private sale of a property shall order reimbursement to the co-owner for taxes, preservation expenses, and the amount owed to him by another co-owner receiving and retaining fruits and revenues of the property. The judgment shall also order that reasonable costs related to the sale, including real estate commissions, brokerage fees, appraisal costs, encumbrance releases, and other customary closing costs, be allocated to one or more co-owners.

Proposed law makes technical changes to present law.

Present law (C.C.P. Art. 4627) provides for the effect of a judgment ordering a public sale also applies to private sales.

Proposed law clarifies terminology in present law.

Present law (C.C.P. Art. 4629) provides for applicability to both partitions by licitation and by private sale.

Proposed law makes technical changes to present law.

Present law (C.C.P. Art. 4643) provides for an appointment of an attorney for incompetent parties for partitions by private sale.

Proposed law clarifies terminology in present law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends C.C. Art. 811 and C.C.P. Arts. 4607, 4621, 4622, 4624, 4625, 4626.1, 4627, 4629, and 4643)