

2021 Regular Session

HOUSE BILL NO. 400

BY REPRESENTATIVE COUSSAN

1 AN ACT

2 To amend and reenact Civil Code Article 811 and Code of Civil Procedure Articles 4607,
3 4622, 4624, and 4625, relative to property; to provide for partitions by private sale;
4 to provide relative to absentee or non-consenting co-owners; to provide for petition
5 requirements; to provide for sale requirements; to provide for an effective date; and
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

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

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

11 A. When the thing held in indivision is not susceptible to partition in kind,
12 the court shall decree a partition by licitation or, as provided in Paragraph B of this
13 Article, by private sale and the proceeds shall be distributed to the co-owners in
14 proportion to their shares.

15 B. In the event that one or more of the co-owners are absentees or have not
16 consented to a partition by private sale, the court ~~may set the terms of the sale and~~
17 shall order a partition by private sale and shall give first priority to the private sale
18 between the existing co-owners, over the sale by partition by licitation or private sale
19 to third parties. The court shall order the partition by private sale between the
20 existing co-owners as identified in the conveyance records as of the date of filing for
21 the petition for partition by private sale. The petition for partition by private sale

1 shall be granted first priority, and the sale shall be executed under Title IX of Book
2 VII of the Code of Civil Procedure.

3 Section 2. Code of Civil Procedure Articles 4607, 4622, 4624, and 4625 are hereby
4 amended and reenacted to read as follows:

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

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

17 * * *

18 Art. 4622. Petition

19 A. The petition for the partition of property in which an absentee owns an
20 interest, under the articles of this Chapter, shall allege the facts showing that the
21 absent and unrepresented defendant is an absentee, as defined in Article 5251, shall
22 describe the property sought to be partitioned and allege the ownership interests
23 thereof, and shall be supported by an affidavit of the petitioner or of his counsel that
24 the facts alleged in the petition are true.

25 B.(1) If the partition is to be made by private sale, the petition for partition
26 between the co-owners shall have first priority status by the court and shall describe
27 include all of the following:

28 (a) ~~the~~ The primary terms of the proposed sale;

29 (b) The name of the proposed purchaser and whether the proposed purchaser
30 is a co-owner or third party in accordance with Civil Code Article 811(B). ~~identify~~

1 ~~the proposed purchaser, if any, disclose whether the proposed purchaser is related to~~
2 ~~any co-owner;~~

3 (c) The source or location of funds to be used in the sale.

4 (d) If the proposed purchaser is a juridical entity, including but not limited
5 to corporations, limited liability companies, partnerships, and sole proprietorships,
6 and whether that entity has a relationship with any co-owner. ~~and disclose to the~~
7 ~~petitioning co-owners~~

8 (e) Whether ~~whether~~ any costs associated with the sale will be paid to any
9 person related to the petitioning co-owners within the fourth degree or a juridical
10 entity in which the co-owner has a direct or indirect financial interest.

11 (2) Upon judgment of the court ordering the sale, payment shall be made
12 within twenty-four hours using cash or certified funds.

13 * * *

14 Art. 4624. Publication of notice

15 Notice of the institution of the proceeding shall be published at least once in
16 the parish where the partition proceeding is instituted, in the manner provided by
17 law. This notice shall set forth the title and docket number of the proceeding, the
18 name and address of the court, a description of the property sought to be partitioned,
19 and the primary terms of the private sale and shall notify the absent defendant that
20 the plaintiff is seeking to have the property partitioned by licitation or by private sale
21 under Civil Code Article 811 and Chapters 1 and 2 of this Title, and that the absent
22 defendant has fifteen days from the date of the publication of notice, or of the initial
23 publication of notice if there is more than one publication, to answer the plaintiff's
24 petition.

25 Art. 4625. Trial; judgment ordering sale

26 A. Except as otherwise provided in Article 4630, if the petitioner proves on
27 the trial of the proceeding that he is a co-owner of the property and entitled to the
28 partition thereof and that the defendant is an absentee who owns an interest therein,
29 the court shall render judgment ordering either the public sale of the property for
30 cash by the sheriff to effect a partition, after the advertisement required by law for

1 a sale under execution or the private sale of the property ~~for cash by the court-~~
 2 ~~appointed representative to effect a partition,~~ executed on behalf of the absentee or
 3 non-consenting co-owner by a court-appointed representative, who may be a co-
 4 owner, under Chapters 1 and 2 of this Title, and after the advertisement required by
 5 law for a sale under execution.

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____