

2020 Regular Session

HOUSE BILL NO. 594

BY REPRESENTATIVE SEABAUGH

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, 4627, 4629, and 4643 and to enact Code of Civil
4 Procedure Article 4626.1, relative to property; to provide for partitions by private
5 sale; to provide for absentee co-owners; to provide for publication notice; to provide
6 for petitions, trials, and judgments of partitions by private sale; to provide for the
7 appointment of an attorney; to provide for an effective date; and to provide for
8 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 sale, the court may set the terms of the sale and order a partition by private sale.

18 Section 2. Code of Civil Procedure Articles 4607, 4621, 4622, 4624, 4625, 4626,
19 4627, 4629, and 4643 are hereby amended and reenacted and Code of Civil Procedure
20 Article 4626.1 is hereby enacted to read as follows:

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

22 When a partition is to be made by licitation, the sale shall be conducted at
23 public auction and after the advertisements required for judicial sales under
24 execution. When a partition is to be made at private sale without the consent of all

1 co-owners, the sale shall be for not less than two-thirds of the appraised value of the
2 property and shall be made by a court-appointed representative, who may be a co-
3 owner, after the advertisements required for judicial sales under execution are made.

4 All counsel of record, including curators appointed to represent absentee defendants,
5 and persons appearing in proper person shall be given notice of the sale date. At any
6 time prior to the sale, the parties may agree upon a nonjudicial partition.

7 * * *

8 Art. 4621. Partition by licitation or private sale

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

12 Art. 4622. Petition

13 The petition for the partition of property in which an absentee owns an
14 interest, under the articles of this Chapter, shall allege the facts showing that the
15 absent and unrepresented defendant is an absentee, as defined in Article 5251, shall
16 describe the property sought to be partitioned and allege the ownership interests
17 thereof, and shall be supported by an affidavit of the petitioner or of his counsel that
18 the facts alleged in the petition are true. If the partition is to be made by private sale,
19 the petition shall describe the primary terms of the proposed sale, identify the
20 proposed purchaser, if any, disclose whether the proposed purchaser is related to any
21 co-owner, and disclose to the petitioning co-owners whether any costs associated
22 with the sale will be paid to any person related to the petitioning co-owners within
23 the fourth degree or a juridical entity in which the co-owner has a direct or indirect
24 financial interest.

25 * * *

26 Art. 4624. Publication of notice

27 Notice of the institution of the proceeding shall be published at least once in
28 the parish where the partition proceeding is instituted, in the manner provided by
29 law. This notice shall set forth the title and docket number of the proceeding, the
30 name and address of the court, ~~and~~ a description of the property sought to be

1 partitioned, and the terms of the private sale and shall notify the absent defendant
 2 that the plaintiff is seeking to have the property partitioned by licitation or by private
 3 sale, and that the absent defendant has fifteen days from the date of the publication
 4 of notice, or of the initial publication of notice if there is more than one publication,
 5 to answer the plaintiff's petition.

6 Art. 4625. Trial; judgment ordering sale

7 Except as otherwise provided in Article 4630, if the petitioner proves on the
 8 trial of the proceeding that he is a co-owner of the property and entitled to the
 9 partition thereof and that the defendant is an absentee who owns an interest therein,
 10 the court shall render judgment ordering either the public sale of the property for
 11 cash by the sheriff to effect a partition, after the advertisement required by law for
 12 a sale under execution: or the private sale of the property for cash by the court-
 13 appointed representative to effect a partition, after the advertisement required by law
 14 for a sale under execution.

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

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

20 A judgment ordering the public sale of property to effect a partition under the
 21 provisions of this Chapter shall order, out of the proceeds of such sale, all of the
 22 following:

23 (1) The reimbursement to a co-owner of the amount proven to be due ~~him~~
 24 the co-owner for the payment of taxes on the property, and the expenses of
 25 preservation ~~thereof, and~~ of the property.

26 (2) The payment to a co-owner of the amount proven to be due ~~him~~ the co-
 27 owner by another co-owner who has received and retained the fruits and revenues
 28 of the property.

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

2 Article 4603, the first paragraph of Article 4605, and Articles 4607 and 4614
3 are applicable to a partition by licitation or a partition by private sale under the
4 provisions of this Chapter.

5 * * *

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

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

15 For the purposes of the partition, the attorney at law so appointed shall act in
16 lieu of, and has all of the power and authority of, the legal representative, undertutor,
17 or undercurator referred to in the first paragraph hereof.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____