

2021 Regular Session

HOUSE BILL NO. 400

BY REPRESENTATIVE COUSSAN

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

PROPERTY: Provides relative to the partition of property

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

1 the petition for partition by private sale. The petition for partition by private sale
2 shall be granted first priority, and the sale shall be executed under Title IX of Book
3 VII of the Code of Civil Procedure.

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

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

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

18 * * *

19 Art. 4622. Petition

20 A. 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 counsel that
25 the facts alleged in the petition are true.

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

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

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

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

11 Section 3. This Act shall become effective upon signature by the governor or, if not
 12 signed by the governor, upon expiration of the time for bills to become law without signature
 13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 15 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 400 Reengrossed

2021 Regular Session

Coussan

Abstract: Provides relative to requirements for partitions of co-owned property.

Present law (C.C. Art. 811) provides for partitions by licitation and private sale.

Proposed law (C.C. Art. 811) retains present law but provides that partitions for private sales among co-owners as petitioned by a co-owner shall be prioritized.

Present law (C.C.P. Art. 4607) provides that private sales without the consent of all co-owners shall not be for less than two-thirds of the appraised value of the property.

Proposed law (C.C.P. Art. 4607) provides that the sale shall not be for less than the appraised value of the property and clarifies that the private sale shall be executed with a court-appointed representative on behalf of the absentee or non-consenting co-owner.

Present law (C.C.P. Art. 4622) provides for the petition requirements for partition of property owned by an absentee. The petition requirements shall describe the property and be supported by an affidavit of the petitioner or petitioner's counsel.

Present law (C.C.P. Art. 4622) provides for petition requirements for private sale. The petition for private sale shall describe the primary terms of the proposed sale, identify the proposed purchaser, including whether the proposed purchaser is related to any co-owner, and disclose to the petitioning co-owners whether there are any costs associated with the sale that will be paid to any person related to the petitioning co-owners within the fourth degree or a juridical entity in which the co-owner has a direct or indirect financial interest.

Proposed law (C.C.P. Art. 4622) provides that the partition petition among co-owners shall have priority status for consideration by the court. The petition shall describe the primary terms of the proposed sale, identify the proposed purchaser and whether the proposed purchaser is a co-owner or third party, declare the source of funds to be used in the sale, and if the proposed purchaser is a juridical entity, disclose whether any co-owner has a relationship with that entity.

Proposed law (C.C.P. Art. 4622) provides that upon judgment ordering the sale, payment shall be made using certified funds within 24 hours.

Present law (C.C.P. Art. 4624) provides for the publication of the notice of partition proceeding. The notice shall notify the absent defendant that the plaintiff is seeking to have the property partitioned and that the absent defendant has 15 days from the date of the publication of initial notice to answer the plaintiff's petition.

Proposed law (C.C.P. Art. 4624) retains present law but clarifies the partition by licitation or by private sale are to be governed by Chapters 1 and 2 of Title IX of Book VII of the Code of Civil Procedure.

Present law (C.C.P. Art. 4625) provides for trial and judgments related to the partition of co-owned property.

Proposed law (C.C.P. Art. 4625) retains present law but clarifies that the absentee or non-consenting co-owner shall be represented by a court-appointed representative, who may also be a co-owner.

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

(Amends C.C. Art. 811 and C.C.P. Arts. 4607, 4622, 4624, and 4625)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Require that for partitions by private sale without the consent of all co-owners, the sale shall be for the appraised value.
2. Add that the petition shall disclose the name of the proposed purchaser, whether the proposed purchaser is a co-owner or third party, and if the proposed purchaser is a juridical entity, whether that entity has a relationship with any co-owner.