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ACT No. 281

HOUSE BILL NO. 594

BY REPRESENTATIVE SEABAUGH

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. <u>In the event that one or</u>
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

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co-owners, the sale shall be for not less than two-thirds of the appraised value of the property and shall be made by a court-appointed representative, who may be a co-owner, after the advertisements required for judicial sales under execution are made. All counsel of record, including curators appointed to represent absentee defendants, and persons appearing in proper person shall be given notice of the sale date. At any time prior to the sale, the parties may agree upon a nonjudicial partition.

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Art. 4621. Partition by licitation or private sale

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

Art. 4622. Petition

The petition for the partition of property in which an absentee owns an interest, under the articles of this Chapter, shall allege the facts showing that the absent and unrepresented defendant is an absentee, as defined in Article 5251, shall describe the property sought to be partitioned and allege the ownership interests thereof, and shall be supported by an affidavit of the petitioner or of his counsel that the facts alleged in the petition are true. If the partition is to be made by private sale, the petition 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 to the petitioning co-owners whether any costs associated with the sale 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.

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Art. 4624. Publication of notice

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

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

Art. 4625. Trial; judgment ordering sale

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

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

Art. 4626. Judgment ordering reimbursement or payment of amounts due co-owner out of proceeds of <u>public</u> sale

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

- (1) The reimbursement to a co-owner of the amount proven to be due him the co-owner for the payment of taxes on the property, and the expenses of preservation thereof; and of the property.
- (2) The payment to a co-owner of the amount proven to be due him the co-owner by another co-owner who has received and retained the fruits and revenues of the property.

1	Art. 4020.1. Judgment ordering remnoursement or payment of amounts due co-
2	owner and payment and allocation of costs of private sale out of proceeds of
3	<u>sale</u>
4	A judgment ordering the private sale of property to effect a partition under
5	the provisions of this Chapter shall order, out of the proceeds of such sale, all of the
6	following:
7	(1) The reimbursement to a co-owner of the amount proven to be due the co-
8	owner for the payment of taxes on the property and the expenses of preservation of
9	the property.
10	(2) The payment to a co-owner of the amount proven to be due the co-owner
11	by another co-owner who has received and retained the fruits and revenues of the
12	property.
13	(3)(a) The payment of reasonable costs related to the sale, including real
14	estate commissions, brokerage fees, appraisal costs, payments associated with the
15	release of encumbrances and other customary closing costs, and the allocation of
16	such costs to one or more co-owners.
17	(b) The court in rendering judgment shall consider whether the costs
18	associated with the sale will be paid to any person related to the co-owners within
19	the fourth degree or a juridical entity in which the co-owner has a direct or indirect
20	financial interest.
21	Art. 4627. Effect of judgment and sale
22	The judgment ordering the public sale or private sale of the property to effect
23	a partition, and the sale made in compliance therewith, has the same force and effect
24	as to the absentee, his succession representative and heirs, as if he had been served
25	personally with process and the judgment had been rendered against him personally.
26	Thereafter, the absentee, his succession representative and heirs are precluded from
27	asserting any right, title, or interest in the property partitioned.
28	* * *

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

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

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

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

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

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

	SPEAKER OF THE HOUSE OF REPRESENTATIVES
	PRESIDENT OF THE SENATE
	GOVERNOR OF THE STATE OF LOUISIANA
APPROVED:	GOVERNOR OF THE STATE OF LOUISIANA

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