

2020 Regular Session

HOUSE BILL NO. 594

BY REPRESENTATIVE SEABAUGH

PROPERTY: Provides relative to partitions by private sale

1 AN ACT

2 To amend and reenact Civil Code Article 811 and Code of Civil Procedure Articles 4607,
3 4621, 4622, 4624, 4625, 4627, 4629, and 4643 and to enact Code of Civil Procedure
4 Article 4626(3), relative to property; to provide for partitions by private sale; to
5 provide for absentee co-owners; to provide for publication notice; to provide for
6 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, 4627,
19 4629, and 4643 are hereby amended and reenacted and Code of Civil Procedure Article
20 4626(3) is hereby enacted to read as follows:

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

2 When a partition is to be made by licitation, the sale shall be conducted at
3 public auction and after the advertisements required for judicial sales under
4 execution. When a partition is to be made at private sale without the consent of all
5 co-owners, the sale shall be for not less than two-thirds of the appraised value of the
6 property and shall be made by a court-appointed representative, who may be a co-
7 owner, after the advertisements required for judicial sales under execution are made.

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

11 * * *

12 Art. 4621. Partition by licitation or private sale

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

16 Art. 4622. Petition

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

26 * * *

27 Art. 4624. Publication of notice

28 Notice of the institution of the proceeding shall be published at least once in
29 the parish where the partition proceeding is instituted, in the manner provided by

1 law. This notice shall set forth the title and docket number of the proceeding, the
 2 name and address of the court, ~~and~~ a description of the property sought to be
 3 partitioned, and the terms of the private sale and shall notify the absent defendant
 4 that the plaintiff is seeking to have the property partitioned by licitation or by private
 5 sale, and that the absent defendant has fifteen days from the date of the publication
 6 of notice, or of the initial publication of notice if there is more than one publication,
 7 to answer the plaintiff's petition.

8 Art. 4625. Trial; judgment ordering sale

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

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

20 Art. 4626. Judgment ordering reimbursement or payment of amounts due co-owner
 21 out of proceeds of sale

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

24 * * *

25 (3) The payment of reasonable costs related to the sale and pro-rata
 26 allocation of such costs to each co-owner; however, such costs paid to a person
 27 related to a co-owner shall be allocated solely from the share of that co-owner.

1 Art. 4627. Effect of judgment and sale

2 The judgment ordering the public sale or private sale of the property to effect
3 a partition, and the sale made in compliance therewith, has the same force and effect
4 as to the absentee, his succession representative and heirs, as if he had been served
5 personally with process and the judgment had been rendered against him personally.
6 Thereafter, the absentee, his succession representative and heirs are precluded from
7 asserting any right, title, or interest in the property partitioned.

8 * * *

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

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

13 * * *

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

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

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

26 Section 3. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.
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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 594 Reengrossed

2020 Regular Session

Seabaugh

Abstract: Authorizes court-ordered partitions by private sale.

Present law (C.C. Art. 811) provides for court-ordered sale of property by public or private sale; however, if the parties do not agree to a private sale, the property is sold at public sale.

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

Proposed 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 2/3 the appraised property value.

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

Proposed law (C.C.P. Art. 4621) retains present law and provides for partition by private sale.

Proposed 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, and disclose whether the proposed purchaser is related to any co-owner.

Proposed law (C.C.P. Art. 4624 and C.C.P. Art. 4625) amends present law by including partitions by private sale in the requirements of notice publication and trial.

Proposed 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.

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

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

Proposed law provides for an appointment of an attorney for incompetent parties for partitions by private sale.

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, 4627, 4629, and 4643; Adds C.C.P. Art. 4626(3))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Make technical changes.