

§ 46-28.1. Petition for revocation of confirmation order.

(a) Notwithstanding G.S. 46-28 or any other provision of law, within 15 days of entry of the order confirming the partition sale or real property, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

- (1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.
- (2) In the case of any party to the partition proceeding:
 - a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or
 - b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or
 - c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

- (1) A lien remains unsatisfied on the property to be conveyed; and
- (2) The purchaser has not agreed in writing to assume the lien; and
- (3) The lien will not be satisfied out of the proceeds of the sale; and
- (4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in

full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes.

(f) An order confirming the partition sale of real property becomes final and effective 15 days after entry of the order of confirmation or when the clerk denies a petition for revocation, whichever occurs later. A party may appeal an order confirming the partition of sale of real property within 10 days of the order becoming final and effective. (1977, c. 833, s. 1; 1985, c. 626, ss. 3-7; 2001-271, s. 19; 2009-362, s. 4; 2009-512, s. 5.)