



Partition Overview & Terminology

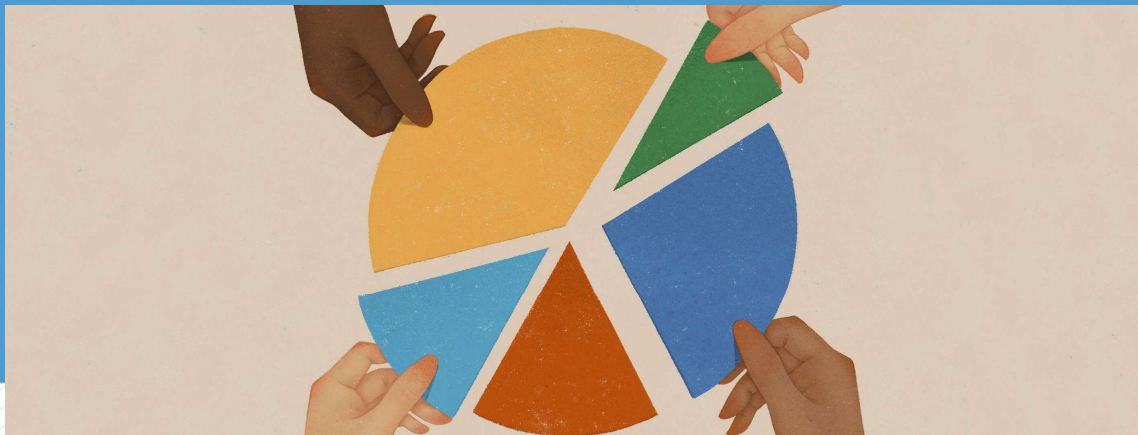
Catherine Wilson, Assistant Professor, UNC SOG



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What is a Partition?



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Where it all starts.... Property Ownership

- **Joint Tenants.**
- **Tenants in Common.**
- **Tenants by the Entirety.**



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Where it all starts.... Property Ownership

- **Joint Tenants.** Ownership by two or more persons who take identical interests simultaneously with the same right of possession and who have a right of survivorship to take the whole property at the other co-owner's death. See G.S. 41-71.
- **Tenants in Common.** Ownership by two or more persons who hold separate undivided interests in property of equal or unequal value, with each having a right to possession of the property, who need not take title from the same instrument or at the same time, and who do not have a right of survivorship upon the death of a co-owner. G.S. 41-81.
- **Tenants by the Entirety.** A type of joint tenancy that arises between spouses who each have control, use, possession, and income from the property; who cannot convey the property without the written agreement of the other, and the property may not be held liable for individual debts of either spouse. See G.S. 41-58; 41-60.



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A Focus on Cotenants

Cotenant.

- A tenancy with two or more co-owners who have unity of possession (equal right of each co-owner to the use and possess the whole property), including joint tenants and tenants in common. See Cotenancy, BLACK'S LAW DICTIONARY 1773 (12th ed. 2024).
- In Chapter 46A, *the term cotenant is used to describe persons who own property together as joint tenants or tenants in common, including those who own real or personal property together.* G.S. 46A-21; 46A-101.
 - However, in other Chapters of the General Statutes, cotenants may refer only to co-owners who own property as tenants in common. See G.S. 41-80.
 - Does **not** include tenants by the entirety.



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Partition, defined.

A partition is a **special proceeding** before the clerk in which a **cotenant** of property

- **petitions** to have property
- **divided** among all the cotenants of that property,
- whether by **physical division**, a **sale**, or a **combination** of both.

G.S. 46A-1; 26A-21; 46A-26.



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Purpose of a Partition

The primary purpose of a partition proceeding is to **sever** the cotenants' **collective ownership** and possession so that they may each own his or her share in **severalty**.

- *Bailey v. Hayman*, 222 N.C. 58 (1942).

- **Severalty**. The quality, state or condition of being separate or distinct. *Severalty*, *Black's Law Dictionary* 1655 (12th ed. 2024).



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Partition Process – The Basics

- A partition begins with a petition filed with the clerk.
 - Majority of partitions involve real property (real estate).
- Partition procedure is the same
 - up to the point where the clerk determines whether the property can be physically divided or whether it must be sold.

Primary issue before the clerk:

- *Can the property at issue be physically divided or must it be sold?*



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The Basics: Two Primary Types of Partition

Partition by Sale

("Partition Sale" or
"Sale in Lieu of Partition")

Actual Partition

("Partition in Kind")



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Actual Partition

- Sometimes called "partition in kind."
- Characteristics:
 - Requires physical division of property.
 - Preferred under NC law.
 - Automatic remedy unless party produces additional evidence.
 - Must be able to prove that a co-owner will be harmed.



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Partition Sale

- Sometimes called “sale in lieu of partition.”
- Characteristics:
 - Requires sale of the property.
 - NOT preferred under NC law.
 - Remedy with serious consequences—property may be sold over the objection of a co-owner.
 - Can only occur if ***actual partition cannot be made without substantial injury to any interested party.***
 - Sale must be a judicial sale under Chapter 1 (public or private).



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Types of Partition

Two main types:

1. **Actual Partition**
2. **Partition by sale**

These are not exclusive—both can occur in the same proceeding... →

Two types of “hybrid” partitions:

3. *Actual Partition + Sale*
4. *Actual Partition or Sale + Cotenancy**

*Must have agreement.

[G.S. 46A-26](#)



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Partitions for Other Types of Property

- Personal Property
- Life estates/remainder interests
- Timber
- Mineral, Oil, and Gas Rights



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Partition by the Numbers

- How many Partition proceedings filed in NC between July 1, 2025 to June 30, 2026?

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Where We're Going

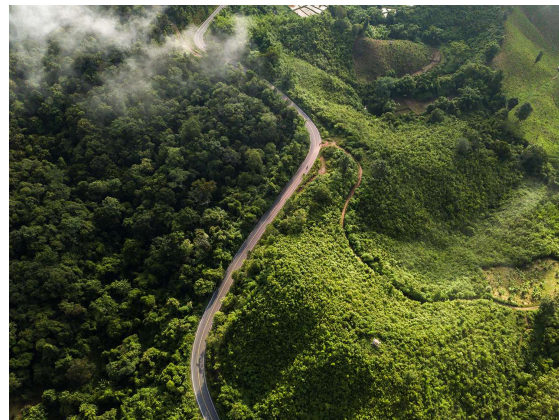


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DAY ONE – Partition Hearing and Physical Division

- Hearing on the Petition
 - Issues Before
 - At the Hearing
- Actual Partition
 - Process
 - Common Issues



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DAY TWO – Partition Sales & Adjustments



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- Partition Sale
 - Understanding the Process
 - Common Issues
- Adjustments
 - Contributions and Improvements
 - Attorneys' Fees

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Goals for this Course – Goal #1

- Understand the fundamentals of the partition process.
 - Up to the hearing
 - During the actual partition process
 - Duering the partition sale process



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Goals for this Course – Goal #2

- Be prepared to write the initial Order.
 - Be forward-looking: Focus on thinking through what could happen.
 - A lot of common problems can be solved/avoided at the outset.
 - We will keep circling back to this Order throughout the course.



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Goals for this Course - #3

- Gain the confidence to deal with the disputes that will come up.
 - (And they will come up.)
 - Includes:
 - Dissatisfaction with divisions, sales
 - Charging and collecting fees
 - Adjustments for carrying costs, improvements, attorney's fees

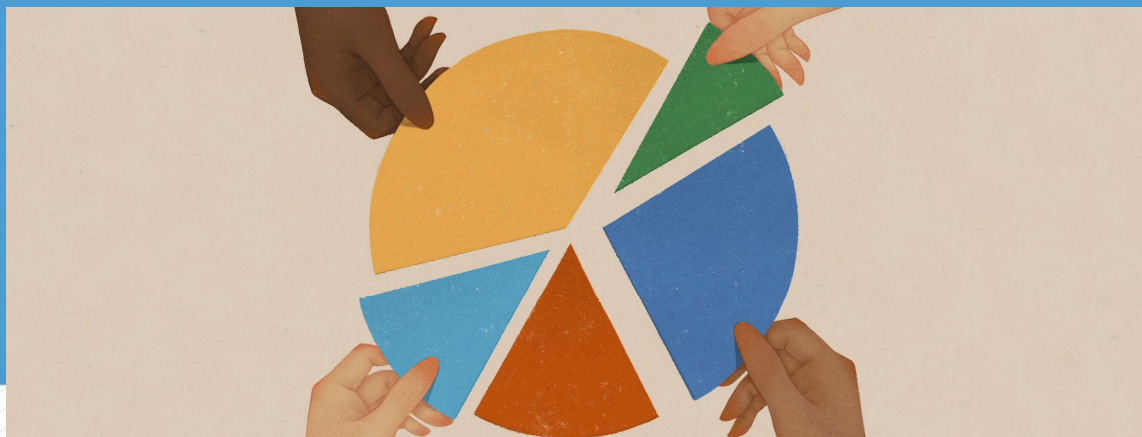


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What I need from you

- Participation
- Questions
- Sharing your experience and practices
- Listening

Partition Resources



Applicable statutes

- For partitions filed on or after October 1, 2020:
 - [Chapter 46A](#) governs partition proceedings,
 - General provisions that apply to all partition proceedings, as set out in G.S. 46A-1 through -3.
 - Article 2 of Chapter 46A, set out in G.S. 46A-20 through -86, governs partition of real property.
 - Article 3 of Chapter 46A, set out in G.S. 46A-100 through -102, governs partition of personal property
- For partitions filed before October 1, 2020, [G.S. Chapter 46](#) governs all partition proceedings.



https://www.ncleg.gov/Laws/GeneralStatutesTOC

 **NORTH CAROLINA GENERAL ASSEMBLY** Bill # (Ex: H1 or S1)

HOUSE SENATE STREAMING CALENDARS COMMITTEES GOV OPS BILLS & LAWS DIVISIONS REDISTRICTING ABOUT

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The General Statutes include changes through SL 2025-97.

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NORTH CAROLINA GENERAL ASSEMBLY

Bill # (Ex: H1 or S1)
2025-2026 Session

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CHAPTER 46A - PARTITION

The General Statutes include changes through **S.L. 2026-7**.

General Statutes published on this website are not official. Please read the [caveats](#) for more information.

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Chapter 46A

Chapter HTML
Chapter PDF

Article 1 - General Provisions.

G.S. 46A-1

§ 46A-1. Partition is a special proceeding.

G.S. 46A-2

§ 46A-2. Summons; notice included in petition.

G.S. 46A-3

§ 46A-3. Attorneys' fees.

G.S. 46A-4 through G.S. 46A-19: Reserved for future codification purposes.

Article 2 - Partition of Real Property.

G.S. 46A-20

§ 46A-20. Venue in partition.

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Clerk of Superior Court Manual Series

Manuals

Civil

Special Proceedings: Real Property and Motor Vehicle

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Courtroom Procedures

Special Proceedings: Family

Incompetency and Guardianship

Decedents' Estates, Trusts, and Powers of Attorney



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Manual: Special Proceedings: Real Property and Motor Vehicle

[Chapter 1: Introduction to Special Proceedings](#) (June 20, 2023)

[Chapter 2: Foreclosure under Power of Sale](#) (August 31, 2012)

[Chapter 3: Proceeding to Determine Ownership of Surplus Proceeds from Foreclosure Sale](#) (September 30, 2010)

[Chapter 4: Judicial Sales](#) (April 30, 2010)

[Chapter 5: Partition](#) (November 30, 2010)

[Chapter 6: Motor Vehicle Liens](#) (September 30, 2010)

[Chapter 7: Cartway Proceeding](#) (September 30, 2010)

[Chapter 8: Condemnation by Private Condemnors](#) (November 30, 2010)

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Next up....

- Issues that arise before the hearing...

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