
MODERNIZATION: CHANGES IN NORTH CAROLINA’S
PARTITION STATUTES AND CHANGES THAT STILL NEED TO
BE MADE

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“An act to modernize the statutes on partition of property[.]”¹ The North Carolina General Assembly codified Chapter 46A of the North

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¹ Act effective Oct. 1, 2020, 2020 N.C. Sess. Laws 23 (modernizing partition statutes) (codified as amended at N.C. GEN. STAT. § 46A (2020)).

Carolina General Statutes (“N.C.G.S.”) in an effort to modernize North Carolina’s outdated partition statutes.² Chapter 46A became effective on October 1, 2020, and now governs new partition actions in North Carolina.³ While the codification of Chapter 46A does encompass many changes from the state’s old partition statute (Chapter 46), the declaration that North Carolina’s new partition statutes are now modern is a falsity. This Note will argue that the General Assembly should adopt additional changes in order for Chapter 46A to be, in fact, modern.

Part I of this Note will provide a background on partition laws through examples of what situations give rise to partitions, and provide a history on the origins of partitions and how this form of action arrived in North Carolina. Part II of this Note will examine and discuss the substantive changes from Chapter 46 to Chapter 46A, ranging from new additions not found in Chapter 46 to some changes that have comparable sections in Chapter 46 but which update the previous law. Part III of this Note will contend that Chapter 46A is not as modern as it presents to be. Furthermore, it will argue that there is a popular uniform partition statute that was available at the time of Chapter 46A’s codification which should have been incorporated into North Carolina law.

I. BACKGROUND

To fully understand and analyze the differences between Chapter 46 and Chapter 46A, it is best to first comprehend exactly what a partition action is, what its origins are, and how and why it came to North Carolina.

Partition actions may seem like a foreign language; however, a simple example can shed light on this foggy instance of law. Picture this: Mickey Donald and his family live on a farm. This farm has been in Mickey’s family for generations, passed down from parents to children over hundreds of years. Old Mick Donald, Mickey’s father, was a farmer, like his father before him. Missy Donald, Mickey’s sister, is an amazing farmer in her own right. Sadly, Old Mick Donald passed away a few years ago, leaving his farm, as is tradition, to his children Mickey and Missy. Mickey has never been enamored with farming, but instead has grown up to be a real estate mogul. Mickey wants to transform the farm into a residential housing development, while Missy wants to continue utilizing the property as a farm. Mickey and Missy have disagreed over the use of

² *Id.*

³ *Id.*

the farm for years since their father's passing. Mickey, fed up with Missy, decides to initiate action in court against Missy, so that his dream of the farm becoming a residential housing development can be realized. This is the basis of a partition action. One owner of a particular piece of property brings judicial action against the other co-owners of the property to divide the property among them (known as a partition in kind) or to sell the property and split the proceeds from the sale (known as a partition by sale).⁴

Like the example above, partition actions may be brought due to disagreements among co-owners in the use of jointly-owned land.⁵ However, this is not the only way partition actions might arise. For example, in *Tarr v. Zalaznik*, a partition action over a house was brought after an unmarried couple's relationship deteriorated.⁶ Tarr and Zalaznik bought a property, which included a house, for \$245,000.⁷ Tarr contributed \$145,000 towards the purchase, and Zalaznik contributed \$100,000.⁸ After their relationship failed, Zalaznik continued living in the house for more than a year after Tarr had left.⁹ After the Clerk of Court determined that "an actual partition of the [p]roperty could not be made without substantial injury to the parties," the Clerk appointed a commissioner "to conduct a sale of the [p]roperty," and then distribute the proceeds to Tarr and Zalaznik according to law.¹⁰ The property was sold for \$220,000, and Tarr got 59% of the proceeds, while Zalaznik got 41%.¹¹ The North Carolina Court of Appeals affirmed the percentages, which were ordered by the Clerk and the trial court.¹² As seen through the Mickey Donald example and *Tarr v. Zalaznik*, partition actions are ways in which joint tenants or co-tenants can resolve disagreements over property.

Partitions have deep roots in history, dating back as far as ancient Rome, where "co-owners could enforce a division of the common property by action *communi dividundo*."¹³ This Roman *communi dividundo* is "an

⁴ *Types of Partition*, USLEGAL, <https://partition.uslegal.com/types-of-partition/> (last visited Aug. 31, 2021).

⁵ *See id.*

⁶ 826 S.E.2d 245, 247 (N.C. Ct. App. 2019).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 248.

¹¹ *Id.* at 248–49.

¹² *Id.* at 249, 253.

¹³ William H. Loyd, *Partition*, 67 U. PA. L. REV. 162, 163 (1919).

action which lies for those who have property in common, to procure a division,” not held in partnership.¹⁴ The Roman judge would decide the property’s division.¹⁵ If the lot was easily divisible, “allotments were to be adjudged to the respective co-proprietors,” and if one person received too much, that person would have to pay the others compensation.¹⁶ If the lot was not so easily divisible, then one person would be awarded the property, and must then compensate the other co-proprietors.¹⁷ These Roman judicial proceedings foreshadowed “the statutory language of modern partition statutes and factors modern judges consider in partition actions.”¹⁸ Specifically, in North Carolina, this judicial process of compensating other owners who received unequal portions in a partition proceeding is now known as owelty.¹⁹

Continuing through history, the English’s partition tradition is quite interesting. From the time following the Norman Conquest, indivisible inheritance of property was favored over partition.²⁰ During that time, the county of Kent’s gavelkind laws allowed sons to be granted equal parts of their father’s property upon his death.²¹ However, this was not the norm nor appreciated by all as demonstrated in a statement by Edward I in the 13th century:

[T]hat land and tenements, which in certain hands when undivided are quite sufficient for the service of the state, and the maintenance of many, are afterwards divided and broken up among co-heirs into so many parts and particles that no one portion suffices for its owner’s maintenance.²²

These statements make sense when looking at the feudal history of England because the powerful were trying to keep and amass power.²³ Gavelkind and partitioning would take property (power) and apportion it

¹⁴ *What is COMMUNI DIVIDUNDO?*, LAW DICTIONARY, <https://thelawdictionary.org/communi-dividundo/> (last visited Aug. 27, 2021).

¹⁵ Loyd, *supra* note 13.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ John Mark Huff, *Chop It Up or Sell It Off: An Examination of the Evolution of West Virginia’s Partition Statute*, 111 W. VA. L. REV. 169, 172 (2008).

¹⁹ See N.C. GEN. STAT. § 46A-51 (2020).

²⁰ Loyd, *supra* note 13, at 164.

²¹ See *id.* at 165; *What is GAVELKIND?*, LAW DICTIONARY, <https://thelawdictionary.org/gavelkind/> (last visited Aug. 27, 2021).

²² Loyd, *supra* note 13, at 165.

²³ See Jack Moser, *The Secularization of Equity: Ancient Religious Origins, Feudal Christian Influences, and Medieval Authoritarian Impacts on the Evolution of Legal Equitable Remedies*, 26 CAP. U. L. REV. 483, 526–27 (1997).

among heirs, thereby diffusing the power and eliminating efficiencies of scale relating to agricultural production.²⁴

Despite the royal concerns over diffuse property ownership and power, in 1539, Parliament passed England's first partition statute under the reign of King Henry VIII.²⁵ This partition law allowed "joint tenants and tenants in common of estates of inheritance the right to a compulsory division of the common property by writ of partition."²⁶ One year later, an amendment to the statute was enacted.²⁷ This amended partition statute required courts of equity to assess whether prejudice would come into play for joint owners who were not party to the proceedings.²⁸

In 1795, the first mention of partitions in North Carolina's courts was made in *Collins v. Dickerson*.²⁹ In *Collins*, a partnership was entered into to prepare lands around Lake Phelps for cultivation.³⁰ The plaintiff brought a partition action against his partners because he was bearing the brunt of the preparation costs and wished to proceed in the preparation on his own.³¹ The North Carolina Superior Court of Law and Equity held that even though a partnership had not accomplished its purpose of preparing land for cultivation, the plaintiff was still entitled to partition of the land held by the partnership.³²

In 1869, the North Carolina General Assembly passed its first official partition statute, entitled: "An Act to Regulate Proceedings in the Partition and Sale of Real and Personal Property."³³ Since that time, the partition statute has undergone changes several times.³⁴ The most recent change came in 2020, when there was a complete overhaul of the statute.³⁵

²⁴ See Lloyd Bonfield, *Farewell Downton Abbey, Adieu Primogeniture and Entail: Britain's Brief Encounter with Forced Heirship*, 58 AM. J. LEGAL HIST. 479, 487 (2018).

²⁵ Loyd, *supra* note 13, at 168.

²⁶ *Id.* at 168–69.

²⁷ Huff, *supra* note 18, at 174.

²⁸ *Harris v. Crowder*, 322 S.E.2d 854, 857 (W. Va. 1984).

²⁹ 2 N.C. (1 Hayw.) 240 (N.C. Super. L & Eq. 1795).

³⁰ *Id.* at 240.

³¹ *Id.*

³² *Id.* at 240–41.

³³ An Act to Regulate Proceedings in the Partition and Sale of Real and Personal Property, ch. 122, 1868–69 N.C. Public Laws 311 (amended by N.C. GEN. STAT. § 46A), <https://digital.ncdcr.gov/digital/collection/p249901coll22/id/181138>.

³⁴ See N.C. GEN. STAT. § 46A-1 (the Act was originally enacted in 1868–69 then codified, revised, recodified, and amended by Act effective Oct 1., 2020, 2020 Sess. Laws 23).

³⁵ N.C. GEN. STAT. § 46 (recodified as N.C. GEN. STAT. § 46A (2020)).

The next section of this Note will examine the changes that this overhaul encompassed.

II. THE DIFFERENCES BETWEEN N.C.G.S. CHAPTER 46 AND CHAPTER 46A

North Carolina's General Assembly recodified the state's partition laws from Chapter 46 into Chapter 46A in 2020.³⁶ This recodification encompassed many changes from the old Chapter 46, as will be discussed below. The reason for this change is outlined in the Act's preamble, "to modernize the statutes of partition of property and to make technical, conforming, and modernizing amendments to the elective life estate statute."³⁷ While many of these changes appear to be stylistic, such as updating grammar, punctuation, and similar technical changes, other changes are more substantive.³⁸ This section will focus on and discuss the substantive changes between the two statutes, not the stylistic changes.

A. *New Additions to Chapter 46A not Found in Chapter 46*

In examining Chapter 46A, there are three completely new additions that have no comparable sections in Chapter 46. These sections are N.C.G.S. § 46A-3: Attorney's fees; § 46A-27: Carrying Costs, Including property taxes; improvements; right to Contribution; and § 46A-59: Order for possession.

1. Attorney's Fees

N.C.G.S. § 46A-3 is entitled, "Attorneys' fees."³⁹ As revealed by this section's title, § 46A-3 covers how attorneys' fee are administered in partition proceedings. For partition proceedings in North Carolina, "the court shall allocate among the cotenants of the property those reasonable attorneys' fees incurred by any cotenant for the common benefit of all the cotenants, unless a cotenant shows that doing so would be inequitable. The allocation shall be according to each cotenant's interest in the property."⁴⁰ This means that the court, when participating in partition proceeding, is

³⁶ *Id.*

³⁷ Act effective Oct. 1, 2020, 2020 N.C. Sess. Laws 23 (modernizing partition statutes) (codified as amended N.C. GEN. STAT. § 46A (2020)).

³⁸ *See infra* Part II.a.

³⁹ N.C. GEN. STAT. § 46A-3 (2020).

⁴⁰ *Id.* § 46A-3(a).

required by law to allocate reasonable attorneys' fees, when these costs have been incurred for the benefit of all cotenants.⁴¹ Attorneys' fees allocation is not a novel concept in modern judicial proceedings. In North Carolina, the "common fund doctrine" is based upon the principle that "where one litigant has borne the burden and expense of the litigation that has inured to the benefit of others as well as to himself, those who have shared in its benefits should contribute to the expense."⁴² However, this allocation by the court is limited by any showing of inequity.⁴³ Therefore, a showing of any inequitable circumstance would excuse a cotenant from paying attorneys' fees that their fellow cotenant incurred for the benefit of all the cotenants.⁴⁴

In addition, if attorneys' fees are incurred in "disputing the method of partition or the division of the proceeds of the partition sale[,]" not for the benefit of all cotenants, but for the benefit of some cotenants, N.C.G.S. § 46A-3(b) provides, "fees . . . shall be allocated by the court among those cotenants determined by the court to be aligned with the cotenant on that issue."⁴⁵ This type of allocation makes sense. If an individual is in dispute with other cotenants, that individual should not have to bear the costs of his opponent cotenant's attorney. While other types of legal disputes require the losing side pay the attorneys' fee of the other party,⁴⁶ the North Carolina General Assembly makes clear that partitions do not fall into this limited category of actions.⁴⁷ When a court allocates attorneys' fees based on the alignment of the cotenants to the partition proceeding, the allocation is still based on the "aligned cotenant's interest in the property relative to the total interest of all the aligned cotenants in the property."⁴⁸ To illustrate, assume, Cotenants A and B are in dispute against Cotenants C and D over the method of partition for a property. Cotenant A has 30% of total interest in the property, Cotenant B has 10%, Cotenant C has 40%, and Cotenant D has 20%. The court will allocate costs as follows under N.C.G.S. § 46A-3(b): Cotenant A will be allocated 75% of their side's attorney's fees and Cotenant B will be allocated the remaining 25%, and

⁴¹ *See id.*

⁴² *Hoke Cty. Bd. of Educ. v. State*, 679 S.E.2d 512, 518 (N.C. Ct. App. 2009) (citations omitted).

⁴³ *See id.*

⁴⁴ *See id.*

⁴⁵ N.C. GEN. STAT. § 46A-3(b) (2020).

⁴⁶ *See* 42 U.S.C. § 1988 (2020).

⁴⁷ § 46A-3(b).

⁴⁸ *Id.*

Cotenant C will be allocated 67% of their side's attorneys' fees and Cotenant D will be allocated the remaining 33%.

Under N.C.G.S. § 46A-3(c), the General Assembly implemented a catch-all provision.⁴⁹ According to this section, the court has the "discretion to allocate among the parties reasonable attorneys' fees," not described anywhere in this section.⁵⁰ Thus, in situations not explicitly addressed by § 46A-3(a) or (b), the court may allocate attorneys' fees as it sees fit.

Regarding N.C.G.S. § 46A-3, the North Carolina General Assembly comprehensively covered those situations in which allocation of attorneys' fees could arise. The legislature explicitly outlined two situations where there is a required method for allocation of attorneys' fees, and also gave the court discretion to implement allocation where a situation not explicitly outlined arises.⁵¹

2. Carrying Costs, Including Property Taxes; Improvements; Right to Contribution

N.C.G.S. § 46A-27 is another addition to North Carolina's partition laws. § 46A-27 deals with a cotenant's right to repayment from other cotenants in certain circumstances.⁵² One thing to note about § 46A-27 is the term "carrying costs[,]" which refers to "the actual costs of preserving the value of and the cotenants' interests in the real property, including property taxes, homeowner's insurance, repairs, and payments for a loan to acquire the real property."⁵³ Carrying costs encompass those costs that are required to "carry over" all the interests in the subject property from year to year; in other words, the costs necessary to keep interests in a property.

The new addition provides that cotenants are entitled to contribution from their fellow cotenants for the carrying costs on jointly-owned real property.⁵⁴ However, for the property tax portion of the carrying costs, the cotenant is limited to the tax amount accumulated over the ten years before

⁴⁹ See *id.* § 46A-3(c) (2020).

⁵⁰ *Id.*

⁵¹ See N.C. GEN. STAT. § 46A-3 (2020).

⁵² See N.C. GEN. STAT. § 46A-27 (2020).

⁵³ *Id.* § 46A-27(e).

⁵⁴ *Id.* § 46A-27(a).

the filing of the partition petition.⁵⁵ Not only are cotenants entitled to the real property's carrying costs from their other cotenants, but cotenants are also entitled to the lesser amount of "(1) [t]he value added to the real property by the cotenant's improvements as of the date of the commencement of the proceeding[.]" and "(2) [t]he actual costs of the cotenant's improvements."⁵⁶ This right to repayment of the carrying costs combined with the lesser of the improvement value and costs of improvement is collectively called the cotenant's "right to contribution[.]"⁵⁷

The way in which cotenants go about collecting their "right to contribution" is prescribed in N.C.G.S. § 46A-27(b), "[i]n the case of an actual partition, a cotenant may on application assert the cotenant's right to contribution at any time before the commissioners file their report. In the case of a partition sale, a cotenant may on application assert the right at any time during the partition proceeding."⁵⁸ As presented by the General Assembly, the type of partition controls the way in which cotenants may assert their right to contribution.

It is necessary to describe the differences between an actual partition and a partition sale in order to more fully understand the reasoning of the General Assembly in separating the timing of asserting the right to contribution. There are several remedies a court may grant when it is presented with a partition proceeding.⁵⁹ These remedies include an actual partition, a partition sale, or combination of both an actual partition and a partition sale.⁶⁰ In North Carolina, an actual partition occurs when court-appointed commissioners physically go out to the subject real property and physically divide the land in proportion, as closely as possible, to the value of the cotenants' interests.⁶¹ To put it simply, an actual partition is when commissioners divide the land in proportion to each owner's interests. In North Carolina, a partition sale occurs only when an actual partition will cause substantial injury to a party involved in a partition action.⁶² A partition sale occurs when the subject real property is put up for either

⁵⁵ *Id.* § 46A-27(c).

⁵⁶ § 46A-27(a).

⁵⁷ *Id.*

⁵⁸ *Id.* § 46A-27(b).

⁵⁹ *Id.* § 46A-26.

⁶⁰ *Id.*

⁶¹ *Id.* § 46A-51(a).

⁶² *Id.* § 46A-75(a).

public or private sale and the proceeds of the sale are distributed to the cotenants based on their respective interests.⁶³ The procedure for the partition sale is not governed by N.C.G.S. § 46A however, as the General Assembly declared that N.C.G.S. § 1-29A will govern the partition sale, besides some specific rules set forth in § 46A-76.⁶⁴

The timing of the application for the right to contribution from a cotenant differs depending on whether the partition is in kind or by sale. With a partition in kind, a party should assert a right to contribution before the commissioners determine how the property should be split because the right to contribution might affect the amount of property each party receives. With a partition by sale, a party may assert the right to contribution later on because the only effect is in how the proceeds of the partition sale are to be split.⁶⁵

3. Order for Possession

The third, completely new addition to N.C.G.S. Chapter 46A is N.C.G.S. § 46A-59. § 46A-59 is entitled “Order for possession” and falls under the Actual Partition part of Article 2.⁶⁶ § 46A-59 lays out the elements that must be met before an order for possession is issued by the clerk of superior court, details the execution of the order, and delineates the rights of the parties to the order.⁶⁷ An order for possession, often used in landlord/tenant eviction proceedings,⁶⁸ is a court-issued order declaring that the winning party is the rightful possessor of the property and allows the winning party to “take possession of [the] real property by forcing the person or group currently in possession of the property out.”⁶⁹

⁶³ *Id.* § 46A-76; § 46A-75.

⁶⁴ *Id.* § 46A-76. The partition sale exceptions to N.C. Gen. Stat. § 1-29A are as follows: “the court is not required to appoint more than one commissioner The clerk of the superior court shall not appoint the clerk, an assistant clerk, or a deputy clerk to make a sale of the real property . . . [and] [i]f the court orders a public sale, the commissioner shall certify to the court that at least 20 days prior to sale, a copy of the notice of sale was sent by first-class mail to the last known address of all parties previously served pursuant to G.S. 1A-1, Rule 4(j). An affidavit from the commissioner that copies of the notice of sale were mailed to all parties entitled to notice in accordance with this section satisfies the certification requirement and shall also be deemed prima facie true.” *Id.*

⁶⁵ *Id.* § 46A-27(b).

⁶⁶ *See id.* § 46A-59.

⁶⁷ *Id.*

⁶⁸ *See* N.C. GEN. STAT. § 42-36.2 (2019).

⁶⁹ Erin Eberlin, *Get a Tenant to Move with a Writ of Possession*, BALANCE SMALL BUS., <https://www.thebalancesmb.com/writ-of-possession-2124965> (last updated June 25, 2019).

N.C.G.S. § 46A-59(a) details three circumstances that must be met before the clerk of superior court may enter into an order for possession under North Carolina's new partition chapter.⁷⁰ The first circumstance involves appealing the confirmation order of the report of commissioners to a partition proceeding.⁷¹ If a party did not appeal within the applicable time frame from the order of confirmation of the report of commissioners, then this circumstance is met.⁷² The applicable time frame for appeal is ten days, as prescribed under N.C.G.S. § 1-302.2.⁷³ However, if there was an appeal from the confirmation order of the report of commissioners, then this circumstance is met if “the judge confirmed the report pursuant to G.S. 46A-56(c).”⁷⁴ N.C.G.S. § 46A-56(c) simply restates that a judge may confirm a report by the commissioners, and “shall not adjudge a partition of the property different from that made by the commissioners.”⁷⁵ If either of these appeals circumstances are met the clerk may move on to the second circumstance; otherwise, the clerk may not issue an order for possession.⁷⁶

The second circumstance that must have occurred in order for a clerk of superior court to issue an order for possession is recordation with the correct Register of Deeds office.⁷⁷ The second circumstance is as follows: the report by the appointed commissioners and confirmation by either the clerk or appeal judge must have been recorded in the appropriate Register of Deeds office, pursuant to N.C.G.S. § 46A-57.⁷⁸ All N.C.G.S. § 46A-57 requires is that the confirmation of the commissioners report be “enrolled and certified” to the Register of Deeds office in “each county where the real property is located.”⁷⁹ Again, if this circumstance is met, the clerk moves on to the last circumstance; otherwise, the clerk cannot issue the order for possession.

The last circumstance which must be met before the clerk is authorized to issue an order for possession involves notice.⁸⁰ The party

⁷⁰ N.C. GEN. STAT. § 46A-59(a) (2019).

⁷¹ *Id.* § 46A-59(a)(1).

⁷² *Id.*

⁷³ N.C. GEN. STAT. § 1-301.2(e) (2019).

⁷⁴ § 46A-59(a)(1).

⁷⁵ N.C. GEN. STAT. § 46A-56(c) (2020).

⁷⁶ *Id.* § 46A-59(a).

⁷⁷ *Id.* § 46A-59(a)(2).

⁷⁸ *Id.*

⁷⁹ N.C. GEN. STAT. § 46A-57 (2020).

⁸⁰ *Id.* § 46A-59(a)(3).

which applies for the order for possession must give ten days' notice to every other party that is actually in possession of the property at the time the applicant applies for the order.⁸¹ However, the order for possession applicant is barred from giving notice until after the clerk confirms the report of the commissioners.⁸² So, if all three of these circumstances outlined in N.C.G.S. § 46A-59(a) are met, then the clerk may issue an order for possession.⁸³ Nevertheless, § 46-59(a) implicates two important points that warrant further discussion.

The first important point turns on the General Assembly's use of the word "may" in talking about the clerk's power to issue an order for possession.⁸⁴ Just because all three of the order for possession circumstances are met, does not mean that the clerk of superior court has to issue the order for possession at all.⁸⁵ The word "may" leaves the discretion solely within the hands of the clerk.⁸⁶ This discretion begs the question: what other conditions might be present for a clerk not to order possession to one party, even if all three of the § 46A-59(a) circumstances are met? If bad faith is present on the part of the party seeking the order for possession, it is possible the clerk could refuse to enter an order for possession.

Another interesting tidbit that warrants further discussion is that N.C.G.S. § 46A-59(a) does not contemplate how the notice upon the other parties is to be effectuated.⁸⁷ Because the General Assembly did not explicitly outline how notice was to be effectuated involving a partition proceedings order for possession, this notice standard will have to be implied by the court system. Of course, there are many notice standards applicable in North Carolina for a variety of different topics.⁸⁸ Which one is to apply is a matter of speculation, but it seems like the most fitting notice standard is notice by certified mail or by posting the notice on the

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* § 46A-59(a).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Kingdomware Techs., Inc. v. U.S.*, 136 S. Ct. 1969, 1977 (2016).

⁸⁷ *See* § 46A-59(a)(3).

⁸⁸ *See, e.g.*, N.C. GEN. STAT. § 1-597 (2019) (notice to public through newspaper); N.C. GEN. STAT. § 1-339.52 (2019) (notice of sale of real property through paper where real estate sales are usually hung).

door of the residence as to make sure that the party currently in possession actually receives notice of the order.⁸⁹

N.C.G.S. § 46A-59 not only decrees when the clerk can enter an order for possession, but also details the process by which a partition action (an order for possession) must follow, while considering the rights of the parties.⁹⁰ When an order for possession is issued by the clerk of superior court, the order “shall be directed to the sheriff” who is then authorized “to remove all occupants and their personal property from the real property and to put the party to which a apportionment has been made in possession[,]” of the real property.⁹¹ N.C.G.S. § 46A-59(b) establishes that the execution of the order of possession by the sheriff shall be the same procedure as in a summary ejectment proceeding for landlord/tenants under N.C.G.S. § 42-36.2.⁹² Pursuant to N.C.G.S. § 42-36.2, the sheriff in a partition order for possession must notify the parties in possession of the time the order will be executed, must remove the possessing parties’ property, and may store the property at a storage facility in the county.⁹³ However, the sheriff may not remove the possessing parties’ property if the applicant signs a statement which allows the possessing parties’ property to remain on the subject property, or if the applicant for the order of possession does not want to eject the possessing parties because they have paid all debts and court costs.⁹⁴ If the applicant for the order of possession allows the possessing parties’ property to remain on the property, the sheriff will simply lock the subject property so as to restrict access.⁹⁵ In addition to stating the process which follows an issuance of an order of possession, § 46A-59(b) also establishes that the applicant party “has the same rights and remedies” as a landlord would have under North Carolina law, which includes Chapters 42 and 44A, with regard to their order for possession.⁹⁶

While order for possession might be new to Chapter 46A, it is not new to a similarly related topic: N.C.G.S. Chapter 45 – Mortgages and

⁸⁹ See N.C. GEN. STAT. § 45-21.16(a) (2011); N.C. R. CIV. PRO. 4(j)(1); *in re* Powell, 237 N.C. App. 441, 443 (2014).

⁹⁰ N.C. GEN. STAT. § 46A-59(a) (2020).

⁹¹ *Id.* § 46A-59(b).

⁹² *Id.*

⁹³ N.C. GEN. STAT. § 42-36.2 (2015).

⁹⁴ *Id.* § 42-36.2(a).

⁹⁵ *Id.*

⁹⁶ N.C. GEN. STAT. § 46A-59(b) (2020).

Deeds of Trust.⁹⁷ N.C.G.S. § 45-21.29 is entitled “Orders for possession[,]” and contemplates generally the same topics as N.C.G.S. § 46A-59 – Order for Possession, but does so in the context of mortgages and deeds of trusts.⁹⁸ § 45-21.29 also has circumstances that must be met before the clerk of superior court can enter into an order for possession.⁹⁹ Interestingly enough, the only circumstance that carries over from Chapter 45 to Chapter 46A involves the ten day notice.¹⁰⁰ Although Chapter 45 and 46A both contemplate the same subject matter of orders for possession, the likely reason for lack of complete similarity between the two chapters is probably attributable to the commissioners’ involvement in a partition action.

B. Changes in N.C.G.S. § 46A Found in N.C.G.S. § 46

This section will examine and discuss some of the changes made in Chapter 46A which have comparable sections to Chapter 46, but are improved in the new statute.

1. Petition by Cotenant or Personal Representative of Cotenant; Necessary and Proper Parties; Joinder of Spouses

The first section of Chapter 46A that has a comparable section to its predecessor, Chapter 46, but has considerable changes is N.C.G.S. § 46A-21. The comparable section in Chapter 46 was N.C.G.S. § 46-3, which stated:

One or more persons claiming real estate as joint tenants or tenants in common or the personal representative of a decedent joint tenant, or tenant in common, when sale of such decedent’s real property to make assets is alleged and shown as required by G.S. 28A-17-3, may have partition by petition to the superior court.¹⁰¹

§ 46A-21(b) and (c) modifies § 46-3 in a few significant ways, while § 46A-21(a) keeps § 46-3’s substance in effect.

Upon first reading of the repealed statute, as evident from the above, the statute is clunky and hard to understand. The General Assembly

⁹⁷ N.C. GEN. STAT. § 45 (2019).

⁹⁸ *Id.* § 45-21.29.

⁹⁹ *Id.* § 45-21.29(k).

¹⁰⁰ *Id.* § 45-21(k)(5); *Id.* § 46A-59(a)(3).

¹⁰¹ N.C. GEN. STAT. § 46-3 (recodified as N.C. GEN. STAT. § 46A-21 (2020)). *See generally* Act effective Oct. 1, 2020, 2020 N.C. Sess. Laws sec. 3 (modernizing partition statutes) (codified as amended N.C. GEN. STAT. § 46A (2020)).

recognized this problem and § 46A-21(a) simply restates § 46-3, but makes it more reader friendly. In general, any living tenant in common or joint tenant may petition to partition the subject property.¹⁰² Any representative of a deceased tenant in common or joint tenant may also petition to partition the subject property to recover the deceased's interests.¹⁰³

§ 46A-21(b) adds new requirements not found in § 46-3 regarding service and joinder. Subsection (b) now requires the petitioner of a partition action to “serve and join all tenants in common and joint tenants” of the subject property.¹⁰⁴ Additionally, Subsection (b) gives the petitioner the discretion to serve and join any other party which has an interest in the subject property, which includes “any lessee of the property, and any holder of a lien, mortgage, or deed of trust[.]”¹⁰⁵ This addition by the General Assembly makes sense as the preservation of judicial economy is a staple in North Carolina and the rest of the country.¹⁰⁶ Not only does § 46A-21(b) preserve judicial economy, it also codifies into the North Carolina statutes the decision of the North Carolina Supreme Court in *Richardson v. Barnes* in 1953, which held that the joinder of tenants as petitioners did not invalidate a partition proceeding.¹⁰⁷

§ 46A-21(c) also adds a new provision not found in § 46-3, which states, “[t]he petitioner is not required to serve or join spouses of cotenants of the real property unless the spouse is also a cotenant.”¹⁰⁸ To understand the impact of this new provision, consider this example: A piece of property is co-owned by over thirty different people. Albert is one of those thirty co-owners, but is the only co-owner that actually lives on the property. Another one of the thirty co-owners, Bartholomew, now wishes to partition the property. Under § 46A-21(c), Bartholomew does not have to serve or join all thirty of the co-owners spouses, just those who have an ownership interest in the property. If this was not the case, Bartholomew would have to serve and join at least sixty different parties to the partition action. This is the basic function of § 46A-21. Again, the purpose of §

¹⁰² N.C. GEN. STAT. § 46A-21(a).

¹⁰³ *Id.*

¹⁰⁴ *Id.* § 46A-21(b).

¹⁰⁵ *Id.*

¹⁰⁶ See *State ex rel. City of Charlotte v. Hidden Valley Kings*, 759 S.E.2d 693, 696 (2014) (preserving judicial economy is important to the state of North Carolina).

¹⁰⁷ 77 S.E.2d 925, 927 (N.C. Ct. App. 1953) (holding that the joinder of tenants as petitioners does not invalidate a partition proceeding).

¹⁰⁸ N.C. GEN. STAT. § 46A-21(c).

46A-21(c) is to expedite the partition process.¹⁰⁹ Throughout § 46A-21, the General Assembly clarifies the old § 46-3 and adds two new provisions which not only make sense, but also codifies North Carolina case law into the statute making the petition for partition process more straightforward.

2. Partition of Real Property Subject to a Contingent Future Interest; Requirements

Another section that has been changed, but bears resemblance to its predecessor is N.C.G.S. § 46A-25. This section's predecessor is N.C.G.S. § 46-14.¹¹⁰

The first glaring change is the General Assembly's modification of the phrase "contingent remainder, executory devise"¹¹¹ in Chapter 46 to "contingent future interest" in Chapter 46A.¹¹² While the two versions appear to be different, in actuality they are not. There are two types of future interests: remainders and executory interests.¹¹³ By switching the language in Chapter 46A to "contingent future interest[.]" the General Assembly is simplifying the statute by combining both contingent remainders and executory interests into the umbrella of contingent future interests.

N.C.G.S. § 46A-25 clarifies its extremely muddled predecessor, which stated:

Where land is conveyed by deed, or devised by will, upon contingent remainder, executory devise, or other limitation, any judgment of partition rendered in an action or special proceeding in the superior court authorizing a division or partition of said lands, and to which the life tenant or tenants, and all other persons then in being, or not in being, take such land as if the contingency had then happened, are parties, and those unborn being duly represented by guardian ad litem, such judgment of partition authorizing division or partition of said lands among the respective tenants and remaindermen or executory devisees, will be valid and binding upon all parties thereto and upon all other persons not then in being.¹¹⁴

¹⁰⁹ See *Meachem v. Boyce*, 241 S.E.2d 880, 883–84 (N.C. Ct. App. 1978).

¹¹⁰ See generally § 46A-21.

¹¹¹ N.C. GEN. STAT. § 46-14 (recodified as N.C. GEN. STAT. § 46A-25 (2020)).

¹¹² § 46A-25.

¹¹³ Roger W. Andersen, *Present and Future Interests: A Graphic Explanation*, 19 SEATTLE U. L. REV. 101, 114 (1995).

¹¹⁴ Act effective June 19, 2020, 2020 N.C. Sess. Laws 23 (modernizing partition statutes) (codified as amended at N.C. GEN. STAT. § 46A-25 (2020)).

§ 46A-25 breaks down the thick fog of its predecessor by labeling the requirements that must be met for a partition judgment to be valid and binding on parties with contingent future interests. While Sections (1) and (2) illuminate the gloom § 46-14 created, § 46A-25(2) expressly adds new requirements that must be met for parties represented by a guardian ad litem.¹¹⁵

The first new guardian ad litem requirement is expressed in § 46A-25(2)(c), which requires, “[p]arties who are minors or incompetent adults and who do not have a guardian of the estate or general guardian[,]” must have a guardian ad litem representing them in a partition proceeding for the partition judgment to be valid and binding.¹¹⁶ By amending the predecessor statute (N.C.G.S. § 46-14), the General Assembly adopted into its partition statutes what has been the rule with regard to incompetent adults in this state as it is in other fields of law: that incompetent adults require at the very least a guardian ad litem to protect their interests.¹¹⁷ Under N.C.G.S. § 46-14, such incompetent adults had no protection, unlike that protection created by § 46A-25(2)(c) in the matter of partitions. This is a definitive step in the right direction for modernizing North Carolina’s partition statutes.

The other new provision in N.C.G.S. § 46A-25 is technically not “new” from Chapter 46. § 46A-25(2)(d) states, “[u]nknown or unlocatable parties[,]” must also have a guardian ad litem representing them in order for a partition judgment to be valid and binding.¹¹⁸ This requirement is not novel because N.C.G.S. § 46-6(b) covered unknown or unlocatable parties during a partition proceeding.¹¹⁹ N.C.G.S. § 46-6(b) stated:

Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented.¹²⁰

¹¹⁵ N.C. GEN. STAT. § 46A-25(2).

¹¹⁶ *Id.* § 46A-25(2)(c).

¹¹⁷ N.C. GEN. STAT. § 1A-1, Rule 17(c) (2021); *in re* T.L.H., 772 S.E.2d 451, 454, 457 (2015); *Fox v. Health Force, Inc.*, 547 S.E.2d 83, 87 (2001).

¹¹⁸ § 46A-25(2)(d).

¹¹⁹ N.C. GEN. STAT. § 46-6(b) (recodified as N.C. GEN. STAT. § 46A-22(b) (2020)).

¹²⁰ *Id.*

While unknown and unlocatable parties are specifically new to N.C.G.S. § 46-14, they are not new to the partition statutes in general.¹²¹ Chapter 46A's inclusion of unknown and unlocatable parties in § 46A-25 does not substantively change unknown or unlocatable parties' interests being represented by a guardian ad litem during the partition process. Furthermore, § 46-6 was recodified as N.C.G.S. § 46A-22,¹²² and its incorporation into § 46A-25 serves merely as an added convenience for parties to know their rights in the new partition statutes. The General Assembly cleared the confusions around N.C.G.S. § 46-14, modernized part of the partition statutes by protecting the rights of incompetent adults, and made a necessary connection between interrelated statutes.

3. Commissioners to Inspect and Partition Real Property; Apportioning Shares; Charging Owelty on Shares of Disproportionately Greater Value

The last section of Chapter 46A that this Note will examine before discussing what still remains for the complete modernization of Chapter 46 is N.C.G.S. § 46A-51. N.C.G.S. § 46A-51 is unique because the North Carolina General Assembly blended three sections of Chapter 46 together while adding in new aspects to create N.C.G.S. § 46A-51. The following examination disaggregates and examines each section from Chapter 46 in tandem.

N.C.G.S. § 46A-51(a) covers apportioning shares and charging owelty on those shares.¹²³ N.C.G.S. § 46A-51(a)'s predecessor was N.C.G.S. § 46-10. N.C.G.S. § 46-10 once stated:

The commissioners, who shall be summoned by the sheriff, must meet on the premises and partition the same among the tenants in common, or joint tenants, according to their respective rights and interests therein, by dividing the land into equal shares in point of value as nearly as possible, and for this purpose they are empowered to subdivide the more valuable tracts as they may deem best, and to charge the more valuable dividends with such sums of money as they may think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition.¹²⁴

¹²¹ *See id.*

¹²² Act effective Oct. 1, 2020, 2020 N.C. Sess. Laws 23 (modernizing partition statutes) (codified as amended at N.C. GEN. STAT. § 46A-22 (2020)).

¹²³ N.C. GEN. STAT. § 46A-51(a) (2020).

¹²⁴ N.C. GEN. STAT. § 46-10 (recodified as N.C. GEN. STAT. § 46A-51(a) (2020)).

N.C.G.S. § 46A-51(a) not only clarifies its predecessor, but also adds new commissioner abilities and gets rid of outdated processes.¹²⁵ Particularly, N.C.G.S. § 46A-51(a) gets rid of Chapter 46's requirement that commissioners be summoned by the sheriff and that commissioners have to meet on the subject property.¹²⁶ Under Chapter 46A, the commissioners can now go to the subject property freely to inspect on their own terms rather than when summoned by the sheriff.¹²⁷ N.C.G.S. § 46A-51(a) also grants the commissioners of the partition process the ability to adjust the shares or any owelty charged by implementing a court order for contribution.¹²⁸ It is interesting to mention how old this process is. As mentioned above, the Romans employed the same process now known as owelty. If one person received more than their fair share through a division of land, the Roman judge would order the receiver to compensate his counterparts.¹²⁹

N.C.G.S. § 46A-51(b) encompasses interest that accrues with owelty payments.¹³⁰ N.C.G.S. § 46A-51(b)'s predecessor was N.C.G.S. § 46-11. N.C.G.S. § 46-11 stated, "[t]he sums of money due from the more valuable dividends shall bear interest until paid."¹³¹ The amended version, N.C.G.S. § 46A-51(b) now asserts, "[o]welty shall bear interest at the legal rate under G.S. 24-1 until paid."¹³² Thus, it is clear to see that there is no real divergence from Chapter 46, except the notation to what the interest rate is. The legal rate under N.C.G.S. § 24-1 for these owelty charges would be eight percent per annum.¹³³

Finally, N.C.G.S. § 46A-51(c) encompasses a minor's share subject to owelty.¹³⁴ N.C.G.S. § 46A-51(c)'s predecessor was N.C.G.S. § 46-12. In examining both Chapter 46 and Chapter 46A minor owelty charge statutes, there appears to be one clear variation between the statutes. This variation is Chapter 46A's incorporation of "guardian of the estate" in addition to a "general guardian[.]"¹³⁵ Besides this variation, a minor still

¹²⁵ § 46A-51(a).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* § 46A-51(a)(2).

¹²⁹ Loyd, *supra* note 13.

¹³⁰ § 46A-51(b).

¹³¹ N.C. GEN. STAT. § 46-11 (2020) (current version at N.C. GEN. STAT. § 46A-51(b) (2020)).

¹³² § 46A-51(b).

¹³³ N.C. GEN. STAT. § 24-1 (2016).

¹³⁴ § 46A-51(c).

¹³⁵ *See id.*; N.C. GEN. STAT. § 46-12 (2020) (current version at § 46A-51(c)).

does not have to pay owelty charges until the minor turns eighteen.¹³⁶ Additionally, if the guardian receives assets belonging to the minor, the guardian will have to pay the owelty charges.¹³⁷ If the guardian receives the assets of the minor and does not pay the owelty charges, then the guardian is subject to personal liability of any interest that accrues on the owelty charges based on their lack of payment.¹³⁸

III. WHAT STILL NEEDS TO BE DONE WITH CHAPTER 46A

The North Carolina Generally Assembly stated that the explicit purpose for the passage of Chapter 46A was “to modernize the statutes of partition of property and to make technical, conforming, and modernizing amendments to the elective life estate statute.”¹³⁹ It could be argued that Chapter 46A did in fact modernize North Carolina’s partition statutes encompassed in Chapter 46. Chapter 46A became effective in October of 2020, while the Uniform Partition of Heirs Property Act (the “UPHPA”) was approved by the National Conference of Commissioners on Uniform State Laws (the “NCCUSL”) in 2010.¹⁴⁰ Thus, the UHPA is technically ten years older than Chapter 46A and Chapter 46A would technically be more modern if simply viewed in terms of time. Additionally, modernization, in terms of clarifying archaic statutory writing, was obviously achieved from the transition from Chapter 46 to Chapter 46A as demonstrated in Part II of this Note. So, in terms of time and clarification, Chapter 46A is modern compared to Chapter 46 and the UHPA. However, it appears that the extent of modernization is up to one’s own interpretation because a complete modernization of partition statutes was not adopted by the General Assembly.

Modernization, as this Note views the term, means taking something old and molding it to fit into the circumstances of the present. Consider this simple example: a solely electric powered vehicle is the modern product of a gas-powered vehicle. Technology has progressed to the point where a car can now run purely on electricity instead of gas. In terms of the modernization example, Chapter 46A is a hybrid vehicle; one that can

¹³⁶ § 46A-51(c).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Act effective Oct. 1, 2020, No. 2020-23, 2020 N.C. Sess. Laws 1 (modernizing partition statutes) (codified as amended in scattered sections of N.C. GEN. STAT. § 46A).

¹⁴⁰ UNIF. PARTITION OF HEIRS PROP. ACT (NAT’L CONF. OF COMM’RS ON UNIF. STATE LS. 2010).

be powered by electricity, but still relies somewhat on gas. The point being that Chapter 46A is not a purely electric powered vehicle because it has not entirely embraced the “technology” to make it a purely electric powered vehicle. The UHPA is that “technology” in this example. The UHPA was available for the North Carolina General Assembly to implement into Chapter 46A, but the General Assembly simply did not. Thus, by not adding in parts of the UHPA into the newly codified partition statutes, Chapter 46A is not as modern as the General Assembly contends it is.

The UHPA seeks to add in an alternative type of partition action, in addition to a state’s pre-existing partition actions, called: partition of heirs’ property.¹⁴¹ The NCCUSL states the main purpose of the UHPA is to protect heirs’ property, noting, “[u]nder most state laws, multiple heirs take ownership as tenants-in-common, an unstable form of ownership that too often results in the heirs losing their land through a forced partition sale. Millions of dollars of inherited wealth has been lost by families who were vulnerable to real-estate speculators.”¹⁴² Remember the brother and sister, Mickey and Missy Donald, example of a partition? The UHPA would afford Missy a statutory right to attempt to prevent Mickey from selling away their generational farm. One of the main purposes of the UHPA is to preserve familial wealth.¹⁴³ One of the best ways to preserve familial wealth is through real estate investment.¹⁴⁴ If Mickey is simply allowed to sell the Donald’s property, the wealth that could be generated from the property now ceases to exist because of a partition sale. Currently in North Carolina, under Chapter 46A, poor Missy Donald will likely lose her ancestral homestead. Preventing this outcome would have been a desirable change to North Carolina’s partition statutes.

When Chapter 46A became effective on October 1, 2020, eighteen other states had already enacted the UHPA into their state laws.¹⁴⁵

¹⁴¹ *Id.* at § 2(5).

¹⁴² *Why Your State Should Adopt the Uniform Partition of Heirs Property Act*, UNIF. LAW COMM’N (Jan. 26, 2021), <https://www.uniformlaws.org/viewdocument/enactment-kit-34?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d&tab=librarydocuments>.

¹⁴³ *Id.*

¹⁴⁴ Kirk Chisholm, *Top 10 Ways that Wealthy Families Protect and Grow Their Wealth*, IAG WEALTH MGMT., <https://innovativewealth.com/alternative-investment/top-10-ways-that-wealthy-families-protect-and-grow-their-wealth/> (last visited July 15, 2021).

¹⁴⁵ These states include Virginia, Kentucky, Mississippi, New York, Florida, Illinois, Missouri, Iowa, New Mexico, Texas, South Carolina, Hawaii, Arkansas, Connecticut, Alabama, Montana, Georgia, and Nevada. *Partition of Heirs Property Act*, UNIF. LAW COMM’N,

Tallying into the lack of modernization, three of North Carolina's four neighboring states had already adopted the UHPA before North Carolina codified Chapter 46A: Virginia, South Carolina, and Georgia.¹⁴⁶ Therefore, the General Assembly had ample notice of the existence of the UHPA, yet still failed to incorporate the UHPA into Chapter 46A.

North Carolina should adopt some components of the UHPA, like her neighboring states have. If North Carolina is going to adopt any component of the UHPA, it should be the "Cotenant Buyout" section proposed by the UHPA.¹⁴⁷ "Cotenant Buyout" encompasses exactly what the words mean: that after any cotenant has requested a partition by sale of heirs property, the court sends notice to all other cotenants for the option to purchase the sale-requesting cotenant's interests in an attempt to avoid the partition sale entirely.¹⁴⁸ Going back to the Mickey and Missy Donald example, Missy would be given the option to purchase Mickey's interest at fair market value to protect her ancestral homestead.¹⁴⁹ With only two cotenants, the fair market value of the sale-requesting cotenant's interest might be steep, as the interest would be fifty percent. If the Donalds' property is valued at one million dollars, Missy would have to pay Mickey five hundred thousand dollars. However, where this would really be effective is when there are fifty cotenants and heirs entitled to the property, and only one of the cotenants is requesting a partition sale. In this situation, the cotenant's interest would likely be two percent and the remaining forty-nine cotenants would only have two percent of the fair market value of the property to preserve under the UHPA. If this property is valued at one million dollars, one or more of the cotenants would only have to come up with twenty thousand dollars to keep the property in the family. Preserving familial wealth through the UHPA is a modernization of partition actions, one which is not protected by Chapter 46A. Again, the "Cotenant Buyout" section of the UHPA was available for the North Carolina General Assembly to adopt into Chapter 46A, but the General Assembly simply did not adopt it. Chapter 46A is not as modern as it contends to be because better and more modern partition laws existed at the time of Chapter 46A's adoption.

<https://www.uniformlaws.org/committees/community-home?communitykey=50724584-e808-4255-bc5d-8ea4e588371d&tab=groupdetails> (last visited July 15, 2021).

¹⁴⁶ *Id.*

¹⁴⁷ UNIF. PARTITION OF HEIRS PROP. ACT § 7 (NAT'L CONF. OF COMM'RS ON UNIF. STATE LS. 2010).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at § 6.

Not only will the UHPA assist in modernizing Chapter 46A and afford North Carolinians an opportunity to preserve familial wealth, but also will provide them with priority for certain federal loans.¹⁵⁰ In North Carolina, it is estimated that the total worth of heirs' property in the state is \$1.86 billion.¹⁵¹ That estimate is astounding yet frightening. This is because there is no protection if one tenant of the heirs property decides to bring a partition action. *Atlantic Coast Properties, Inc. v. Saunders* demonstrates the need for the UHPA to be adopted in North Carolina.¹⁵²

In *Saunders*, three children inherited a fourteen acre tract of land in Currituck County from their father.¹⁵³ After passing through inheritance, two families ended up with equal one-half interests in the property.¹⁵⁴ One family lived on the property, the other family lived out of state.¹⁵⁵ The out of state family sold their interest to a property development group who brought the partition action.¹⁵⁶ After a series of appeals and remands, the North Carolina Supreme Court found that the property development group did have the authority to bring a partition action against the family that lived on the property.¹⁵⁷ This family's property would have been considered heirs property under UHPA because there was no agreement governing the parties, the family acquired title through a deceased relative, and fifty percent of the property was owned by the family related to the deceased relative.¹⁵⁸ The UHPA could have allowed the family living on the property an opportunity to abstain from property partitioning, or at the very least, have saved them time, effort, and money through several stages of appeals. *Saunders* is one of the many prime examples as to why adoption of components of the UHPA is vital to modernizing Chapter 46A.

¹⁵⁰ *Why Your State Should Adopt the Uniform Partition of Heirs Property Act*, *supra* note 142 (“The federal government provides loans for development of dormant farmland and for legal expenses incurred by heirs to clear title to property owned by a deceased relative. In the 2018 Farm Bill, Congress included a provision granting preferred status to loan applicants from states that adopt UHPA.”).

¹⁵¹ *Heirs Property*, CONSERVATION TR. FOR N.C., <https://ctnc.org/heirs-property/> (last visited Aug. 25, 2021).

¹⁵² 777 S.E.2d 292 (N.C. Ct. App. 2015).

¹⁵³ *Id.* at 293.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Atl. Coast Props., Inc. v. Saunders*, 807 S.E.2d 182, 185–86 (N.C. Ct. App. 2017), *rev'd*, 813 S.E.2d 194 (N.C. 2018) (agreeing with the dissenting opinion in the case below).

¹⁵⁸ UNIF. PARTITION OF HEIRS PROP. ACT § 2 (NAT'L CONF. COMM'RS UNIF. STATE L. 2010).

Fortunately, there is good news for North Carolina. The General Assembly is currently working through House Bill 367¹⁵⁹ and Senate Bill 363, which if passed and signed by the Governor, would codify the UHPHA in North Carolina into Chapter 46A.¹⁶⁰ This is the crucial step to completely modernizing Chapter 46A. Missy Donald could finally have a source of protection from her brother Mickey in North Carolina.

IV. CONCLUSION

This Note does not seek to discredit the North Carolina General Assembly's work in adapting the old partition statutes to fit into a more easily accessible format through Chapter 46A. However, Chapter 46A as adopted is not as complete a modernization of the old partition statutes as the General Assembly could have enacted. The UHPHA was available to the General Assembly well before October 2020 when Chapter 46A became effective. The fact that the General Assembly is now considering adoption of the UHPHA supports this Note's suggestion that Chapter 46A at the time of its codification was not truly modern.

¹⁵⁹ *North Carolina HB367 Uniform Partition of Heirs Property Act*, TRACKBILL, <https://trackbill.com/bill/north-carolina-house-bill-367-uniform-partition-of-heirs-property-act/2083557/> (last visited Aug. 30, 2021).

¹⁶⁰ *North Carolina SB363 Uniform Partition of Heirs Property Act*, TRACKBILL, <https://trackbill.com/bill/north-carolina-senate-bill-363-uniform-partition-of-heirs-property-act/2087559/> (last visited Aug. 30, 2021).