

381.135 Court-appointed commissioners to determine division of land jointly held and allotment of dower or curtesy -- Survey requirement.

- (1) (a) As used in this subsection:
 1. "Ownership interest in a closely held farm corporation or partnership" means any interest in a farm with one (1) or more of the shareholders or partners owning twenty percent (20%) or more of the corporation or partnership.
 2. "Farm" means a tract of at least five (5) contiguous acres used for the production of agricultural or horticultural crops including, but not limited to, livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers, or ornamental plants, including provision for dwellings for persons and their families who are engaged in the above agricultural use on the tract, but not including residential building development for sale or lease to the public.
- (b) A person desiring a division of land held jointly with others, a person desiring an allotment of dower or curtesy, or a person with an ownership interest of twenty percent (20%) or more in a closely held farm corporation or partnership may file in the Circuit Court of the county in which the land or the greater part thereof lies a petition containing a description of the land, a statement of the names of those having an interest in it, and the amount of such interest, with a prayer for the division or allotment; and, thereupon, all persons interested in the property who have not united in the petition shall be summoned to answer not more than twenty (20) days after service of the summons. The written evidences of the title to the land, or copies thereof, if there be any, must be filed with the petition.
- (2) The statutory guardian of an infant or guardian or conservator of a person adjudged mentally disabled may file or unite in the petition, in the names of, and in conjunction with such infant or mentally disabled person; and, if the petition be against an infant or mentally disabled person the guardian or conservator may appear and defend for them; if they fail to do so, the court shall appoint a discreet person for that purpose.
- (3) Upon such a petition by all interested in the property, or upon the expiration of twenty (20) days after the service of a summons on all who have an interest in the property and have not united in the petition, the court may order the division, or allotment of dower or curtesy, according to the rights of the parties.
- (4) The court shall appoint three (3) competent persons as commissioners to determine the division or allotment of land, having a due regard for the rights of all parties interested. Before proceeding to act, the commissioners shall take an oath to discharge their duty impartially.
- (5) The order of appointment shall fix a time and place for the meeting of the commissioners who shall meet accordingly; but, if prevented from meeting at the time and place so fixed, they may meet as soon thereafter as convenient, and may

adjourn to such other time and place as they may agree upon, until their duty shall be performed.

- (6) The commissioners shall equitably determine the allotment to the parties of their respective interests in the land. A registered land surveyor shall perform the actual survey of the land in accordance with the determination made by the commissioners, and prepare the descriptions of the land, including all related maps, plats, and documents, and he shall affix thereto his personal seal and signature, unless such actual survey and the resultant description, maps, plats, and documents pertaining to this land are already in existence. The commissioners shall make report thereof to the court, which may either confirm, set aside, or remand the report to the commissioners for correction.
- (7) If the report be confirmed, a commissioner to be appointed for the purpose shall, by deed, convey to each party the land allotted to him.
- (8) If the report be confirmed by the Circuit Court, it, together with said surveyor's descriptions, survey and all related documents, and the applicable deeds shall be certified by the clerk of that court to the county clerk, for record.
- (9) Two (2) of the commissioners may act, if one (1) refuses or fails to do so.
- (10) A party summoned may, by answer, controvert the allegations of the petition or contest the rights claimed therein; and, thereupon, the case shall be tried and decided as an ordinary action, but without the intervention of a jury.
- (11) The costs of the action shall be apportioned among the parties in the ratio of their interests, except that the costs arising from a contest of fact or law shall be adjudged against the unsuccessful party.
- (12) No verification of the pleadings shall be required.
- (13) The commissioners and the land surveyor shall be paid a reasonable compensation, to be taxed as costs.
- (14) This section shall not affect the jurisdiction of courts of equity to make partition or allot dower or curtesy.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 316, sec. 1, effective July 15, 1998. -- Amended 1988 Ky. Acts ch. 227, sec. 1, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 141, sec. 96, effective July 1, 1982. -- Amended 1978 Ky. Acts ch. 384, sec. 508, effective June 17, 1978. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 302, effective January 2, 1978. -- Amended 1974 Ky. Acts ch. 386, sec. 68. -- Transferred 1952 Ky. Acts ch. 84, sec. 1, effective July 1, 1953, from C.C. sec. 499.

Note: 1980 Ky. Acts ch. 396, sec. 105 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.