

389A.030 Action in Circuit Court for sale or division of property.

- (1) When two (2) or more persons other than tenants by the entirety in residential property actually occupied by them as a principal residence share title to real estate in such manner that a conveyance by them jointly would pass a fee simple title, any one (1) or more of them may bring an action for the sale or division thereof in the Circuit Court of the county in which the land, or the greater part thereof, lies, making parties defendant those owners who have not joined as plaintiffs. A fiduciary possessing a power of sale may institute such an action against owners of interests not represented by him. Defendant owners shall be brought before the court in the manner provided by the civil rules whether or not a fiduciary possesses a power of sale of the defendant's interest, but any fiduciary possessing such a power shall also be made a defendant. The case shall be tried without a jury.
- (2) A defendant who is under disability and for whom no fiduciary is acting shall be represented in the action by a guardian ad litem, but in the event of sale of such defendant's interest the court shall retain control of the proceeds of such interest until a duly appointed and adequately bonded fiduciary or custodian pursuant to a court order makes claim to the funds.
- (3) In all such actions indivisibility of the real estate shall be presumed unless an issue in respect thereto is raised by the pleading of any party, and if the court is satisfied from the evidence that the property is divisible, without materially impairing the value of any interest therein, division thereof pursuant to KRS 381.135 shall be ordered.
- (4) If a sale of all or any part of the real estate shall be ordered, the court shall refer the matter to the master commissioner or appoint a commissioner to conduct a public sale and convey the property upon terms of sale and disposition of the net proceeds as may have been determined by the court.
- (5) The death of any party pending the action and prior to distribution of the proceeds of sale or setting apart a divisible share shall not affect the action but the court may direct distribution or apportionment to the successors in interest of the decedent upon application therefor.
- (6) If the interest of any party be one for life, or other term, in any portion of the real estate, the court shall determine the value of such interest and direct that such party receive a portion of the net sale proceeds or portion of the property if divisible, in fee in satisfaction of such interest, but if any party to the action objects to such procedure, and if the court finds that such procedure would defeat the objects and purpose of a person not a party to the action, such as a testator, grantor or settlor, but that sale or division is nevertheless desirable, the court shall order that the interest of the life or term tenant shall continue as to his portion of the real estate or the net proceeds of the sale thereof, in the latter case by directing that the funds derived from the sale of that portion of the real estate in which the life or term interest existed be paid to a trustee, appointed by and accountable to the District Court, for reinvestment and distribution of income and principal in a manner consistent with the instrument under which the life or term estate was created.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 277, sec. 6, effective July 15, 1982. --

Created 1980 Ky. Acts ch. 87, sec. 6, effective July 15, 1980.