

MAINE STATE LEGISLATURE

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CHAPTER 219

PARTITION OF REAL ESTATE

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SUBCHAPTER I

GENERAL PROVISIONS

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§ 1951. Jurisdiction

The court of probate, having jurisdiction of the estate of any deceased person, may make partition of all the real estate of such person in this State among the widow or widower and heirs or devisees of such person, and all holding under them, when the proportions of the respective parties are not in dispute between them or do not appear to the judge to be uncertain, depending upon the construction of any devise or other conveyance, or upon other questions that he thinks proper for the consideration of a jury and a court of common law.

R.S.1954, c. 156, § 1.

§ 1952. Reversions or remainders divided

Any reversion or remainder vested in his heirs, expectant on the determination of a particular estate under his will or otherwise, may in like manner be divided either during the existence of such particular estate or after its determination.

R.S.1954, c. 156, § 2.

§ 1953. Equal division impossible; preferences

When the whole or any part of the premises, of greater value than any party's share, cannot be divided without great inconvenience, the same may be assigned to any one or more of the parties, who will accept and pay to the others such sums as the commissioners award to make the partition just; but such partition shall not be established by the court until all such sums are paid or secured, with interest, to the satisfaction of the parties entitled thereto or to the satisfaction of the judge of the probate court having jurisdiction thereof; nor if inconsistent with the condition of the devise under which they claim; but in such assignment males shall be preferred to females and the elder to the younger children of the same sex.

R.S.1954, c. 156, § 5

§ 1954. Alienation of interest of surviving spouse, heir or devisee

No conveyance of the interest of a widow or widower, or any heir or devisee, in the lands of the deceased, by deed, levy of execution or otherwise shall take from the judge of probate his jurisdiction to divide and assign such lands in manner aforesaid; but the same shall inure to the equitable owner of the part so conveyed. In case of the unequal division provided for in section 1953, such owner may make written application to the judge before he accepts such division, for the share of such widow or widower, heir or devisee, and after notice to such widow or widower, heir or devisee, the judge may decide in favor of such owner, and he shall receive said share of the money, or so much thereof, as is proportional to his equitable interest.

R.S.1954, c. 156, § 6.

§ 1955. Attachment of share of surviving spouse, heir or devisee

If the share of any such widow or widower, heir or devisee, or anyone claiming under such widow or widower, heir or devisee, is under attachment, the judge, on like application from the plaintiff in the action or from the attaching officer, shall require the money, not exceeding the amount of the attachment, to be paid to the officer, who shall be answerable therefor in his official capacity, subject to the rights of the parties, as if originally attached.

R.S.1954, c. 156, § 7; 1961, c. 317, § 506.

§ 1956. Estate included in partition

When such partition is made on application of an heir or one holding under him, it shall be made among all the owners and include all the ancestor's estate, which any interested party requires to have included. When made on the application of a devisee or one holding under him, it shall be made of all the estate held by him jointly or in common with others holding under the testator, which any devisee requires to have included.

R.S.1954, c. 156, § 8.

§ 1957. Application for partition by owner; notice

Such partition may be ordered on the petition of any of the owners of any share, after giving personal notice to each of the other owners in the State, and public notice, if any reside out of the State.

R.S.1954, c. 156, § 9.

§ 1958. Revocation of warrant

The judge may, for sufficient cause, revoke any warrant issued by him for making partition or for settling or determining other interests in real or personal estate, and grant a new warrant or proceed otherwise, as circumstances require.

R.S.1954, c. 156, § 10.

§ 1959. Guardians for minors or mentally ill; agents for out of staters

If it appears to the court that any minor or mentally ill person, who has no guardian in the State, is interested in the premises, the court shall assign him a guardian for the action, to appear for him and defend his interest. If any owner resides without the State, having no agent therein, the judge shall appoint an agent to act for him.

R.S.1954, c. 156, § 11; 1959, c. 242, § 8; 1961, c. 317, § 507.

§ 1960. Lands owned in common

When any of the real estate, of which partition is prayed for, is held in common with that of other persons, the judge shall order notice of the intended partition to be given to the cotenant, which notice shall contain a description of the premises to be divided and of the proportion claimed as belonging to the estate

of the deceased; specify the time and place of hearing the case, and be served by delivering to him or leaving at the place of his abode an attested copy thereof, at least 14 days before the time of hearing; but if the cotenant does not reside in the State, such notice shall be given as the judge requires. At the time appointed in the notice, the judge shall hear the parties, determine their respective rights in such estate and direct the commissioners first to divide and set off the estate of the deceased from that of such other persons and then to make the partition prayed for.

R.S.1954, c. 156, § 12.

SUBCHAPTER II

COMMISSIONERS

Sec.

2001. Appointment.

2002. Partition of estate in different counties.

2003. Return of commissioners.

§ 2001. Appointment

The partition shall be made by 3 disinterested commissioners, appointed by said judge, who shall first be sworn, and shall make such partition pursuant to the will of the deceased or the laws regulating the descent of intestate estates, as the case may be, among all the parties owning shares, whether they joined in the petition therefor or not.

R.S.1954, c. 156, § 3.

§ 2002. Partition of estate in different counties

If there is estate in different counties to be divided, the judge may appoint separate commissioners for each county and issue warrants accordingly. In such case, the partition shall be made of the estate in each county as if there were no other to be divided.

R.S.1954, c. 156, § 4.

§ 2003. Return of commissioners

The judge may set aside the return of the commissioners and commit the case anew to the same or other commissioners. The return when accepted by the court shall be recorded in the probate office and the original return, or a true copy thereof

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attested by the register of probate, shall be recorded in the registry of deeds for the county or registry district in which the lands lie, and such partition shall be binding to all intents and purposes upon all the persons interested, saving the right of appeal to the supreme court of probate.

R.S.1954, c. 156, § 13.