

353.468 If advantageous to unknown or missing owner, court may declare trust -- Bond of trustee -- Sale of lease -- Trustee's report -- When court not to authorize trustee's lease -- Trustee to use percentage of funds to search for owner -- Period during which unknown or missing owner may establish identity and title.

- (1) If, upon presentation to the Circuit Court of the petition, the answer of the trustee ad litem and the proof presented by the petitioner in such case, it appears to the court that development of the severed mineral interests will be advantageous to the unknown or missing owners, the court shall declare a trust in the lands or estate or interest therein, appoint a trustee therefor and authorize the trustee to sell, execute and deliver a valid mineral lease covering the severed mineral interests in and underlying the lands.
- (2) Should the court appoint a trustee pursuant to subsection (1) of this section, the court shall, in its decree, require the trustee to give a bond in favor of the owners of the severed mineral interest which is to be leased and shall fix the amount of the bond. The decree of the court shall further provide for all of the terms and provisions of the lease which the trustee is authorized to make. It shall be discretionary with the court as to whether or not the trustee's sale of lease shall be public or private and the decree shall provide therefor, and if a public sale be authorized, the court shall in its decree fix and determine the notice to be given. The sale shall be for cash, payable on confirmation of sale. No appraisal shall be required.
- (3) The trustee shall proceed in compliance with the provisions of the decree to sell the lease authorized thereby, and after making the sale shall make a report thereof to the court. Upon filing the report, the court may hear evidence as to whether or not the sale price is reasonable, and if the court is satisfied with the sale and the amount received therefor, the sale shall be confirmed by the court and the lease shall be executed by the trustee with the approval of the court endorsed on the face thereof.
- (4) The court shall not authorize a trustee's lease upon the severed mineral interest of any owner whose identity and whereabouts is known, or can be ascertained by diligent inquiry, or is discovered as a result of the action brought hereunder; and any such owner may intervene as a matter of right at any time prior to the entry of judgment approving the trustee's lease, for the purpose of establishing his title to the severed mineral interests, and if the mineral owners claim is established to the satisfaction of the court, the court shall dismiss the action as to the intervenor's interest at plaintiff's cost.
- (5) The trustee shall collect the proceeds, if any, from the sale of the lease and hold and invest the same for the use and benefit of the unknown or missing owners. The court upon its own motion or upon motion of the trustee may authorize the trustee to expend an amount not to exceed ten percent (10%) of the funds collected by the trustee for the purpose of instituting a search for the unknown or missing owners.
- (6) Within seven (7) years after the date of first commercial production of the severed mineral interests under the trustee's lease, any person being an unknown or missing owner of the severed mineral interest or any undivided portion thereof, may petition

the Circuit Court to redocket the action in which the trustee's lease was sought and approved in accordance with subsection (3) of this section and may thereupon present such proof as the court may deem necessary to establish his identity and title to the severed mineral interest or any portion thereof. If the court finds that the unknown or missing owners have established their identity and title, the trustee shall be directed to distribute the funds in his hands attributable to the unknown or missing owners' interest, and shall assign all future proceeds from said lease to the owners as their interests appear and shall deliver to the owners a recordable instrument documenting their title to the severed mineral interest, which instrument shall bear the endorsement and approval of the Circuit Court on the face thereof.

Effective: July 15, 1982

History: Created 1982 Ky. Acts ch. 165, sec. 5, effective July 15, 1982.