

1 AN ACT relating to heir property and making an appropriation therefor.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
4 READ AS FOLLOWS:

5 *Sections 1 to 13 of this Act may be cited as the Uniform Partition of Heir Property Act.*

6 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
7 READ AS FOLLOWS:

8 *As used in Sections 1 to 13 of this Act:*

9 *(1) "Ascendant" means an individual who precedes another individual in lineage, in*
10 *the direct line of ascent from the other individual;*

11 *(2) "Collateral" means an individual who is related to another individual under the*
12 *law of intestate succession of this state but who is not the other individual's*
13 *ascendant or descendant;*

14 *(3) "Descendant" means an individual who follows another individual in lineage, in*
15 *the direct line of descent from the other individual;*

16 *(4) "Determination of value" means a court order determining the fair market value*
17 *of heir property under Section 6 or 10 of this Act or adopting the valuation of the*
18 *property agreed to by all cotenants;*

19 *(5) "Heir property" means real property held in tenancy in common which satisfies*
20 *all the following requirements of the filing of a partition action:*

21 *(a) There is no agreement in a record binding all the cotenants which governs*
22 *the partition of the property;*

23 *(b) One (1) or more of the cotenants acquired title from a relative, whether*
24 *living or deceased; and*

25 *(c) Any of the following applies:*

26 *1. Twenty percent (20%) or more of the interests are held by cotenants*
27 *who are relatives;*

1 2. Twenty percent (20%) or more of the interests are held by an
 2 individual who acquired title from a relative, whether living or
 3 deceased; or

4 3. Twenty percent (20%) or more of the cotenants are relatives;

5 (6) "Partition by sale" means a court-ordered sale of the entire heir property,
 6 whether by auction, sealed bids, or open-market sale conducted under Section 10
 7 of this Act;

8 (7) "Partition in kind" means the division of heir property into physically distinct
 9 and separately titled parcels;

10 (8) "Record" means information that is inscribed on a tangible medium or that is
 11 stored in an electronic or other medium and is retrievable in perceivable form;
 12 and

13 (9) "Relative" means ascendant, descendant, or collateral, or an individual
 14 otherwise related to another individual by blood, marriage, adoption, or law of
 15 this Commonwealth other than Sections 1 to 13 of this Act.

16 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
 17 READ AS FOLLOWS:

18 (1) Sections 1 to 13 of this Act apply to partition actions filed on or after the effective
 19 date of this Act.

20 (2) In an action to partition real property under this chapter, the court shall
 21 determine whether the property is heir property. If the court determines that the
 22 property is heir property, the property shall be partitioned under Sections 1 to 13
 23 of this Act unless all of the cotenants otherwise agree in a record.

24 (3) Sections 1 to 13 of this Act supplement the provisions of this chapter and, if an
 25 action is governed by Sections 1 to 13 of this Act, shall replace provisions that are
 26 inconsistent with Sections 1 to 13 of this Act.

27 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) Sections 1 to 13 of this Act do not limit or affect the method by which service of a
3 complaint in a partition action may be made.

4 (2) If the plaintiff in a partition action seeks an order of notice by publication and
5 the court determines that the property may be heir property, the plaintiff, not later
6 than ten (10) days after the court's determination, shall post and maintain while
7 the action is pending a conspicuous sign on the property that is the subject of the
8 action. The sign must state that the action has commenced and identify the name
9 and address of the court and the common designation by which the property is
10 known. The court may require the plaintiff to publish on the sign the name of the
11 plaintiff and the known defendants.

12 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
13 READ AS FOLLOWS:

14 If the court appoints commissioners under KRS 381.135, each commissioner, in
15 addition to the requirements and disqualifications applicable to commissioners under
16 this chapter, shall be disinterested and impartial and not a party to or a participant in
17 the action.

18 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
19 READ AS FOLLOWS:

20 (1) Except as otherwise provided in subsections (2) and (3) of this section, if the court
21 determines that the property that is the subject of a partition action is heir
22 property, the court shall determine the fair market value of the property by
23 ordering an appraisal pursuant to subsection (4) of this section.

24 (2) If all cotenants have agreed to the value of the property or to another method of
25 valuation, the court shall adopt that value or the value produced by the agreed
26 method of valuation.

27 (3) If the court determines that the evidentiary value of an appraisal is outweighed by

1 the cost of the appraisal, the court, after an evidentiary hearing, shall determine
2 the fair market value of the property and send notice to the parties of the value.

3 (4) If the court orders an appraisal, the court shall appoint a disinterested real estate
4 appraiser licensed in this Commonwealth to determine the fair market value of
5 the property assuming sole ownership of the fee simple estate. On completion of
6 the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

7 (5) If an appraisal is conducted pursuant to subsection (4) of this section, not later
8 than ten (10) days after the appraisal is filed, the court shall send notice to each
9 party with a known address, stating:

10 (a) The appraised fair market value of the property;

11 (b) That the appraisal is available at the county property valuation
12 administrator's office; and

13 (c) That a party may file with the court an objection to the appraisal not later
14 than thirty (30) days after the notice is sent, stating the grounds for the
15 objection.

16 (6) If an appraisal is filed with the court pursuant to subsection (4) of this section,
17 the court shall conduct a hearing to determine the fair market value of the
18 property not sooner than thirty (30) days after a copy of the notice of the
19 appraisal is sent to each party under subsection (5) of this section, whether or not
20 an objection to the appraisal is filed under subsection (5)(c) of this section. In
21 addition to the court-ordered appraisal, the court may consider any other
22 evidence of value offered by a party.

23 (7) After a hearing under subsection (6) of this section, but before considering the
24 merits of the partition action, the court shall determine the fair market value of
25 the property and send notice to the parties of the value.

26 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
27 READ AS FOLLOWS:

- 1 (1) If any cotenant requests partition by sale, after the determination of value under
2 Section 6 of this Act, the court shall send notice to the parties that any cotenant
3 except a cotenant that requested partition by sale may buy all the interests of the
4 cotenants that requested partition by sale.
- 5 (2) Not later than forty-five (45) days after the notice is sent under subsection (1) of
6 this section, any cotenant except a cotenant that requested partition by sale may
7 give notice to the court that it elects to buy all of the interests of the cotenants that
8 requested partition by sale.
- 9 (3) The purchase price for each of the interests of a cotenant that requested partition
10 by sale is the value of the entire parcel determined under Section 6 of this Act
11 multiplied by the cotenant's fractional ownership of the entire parcel.
- 12 (4) After expiration of the period in subsection (2) of this section, the following rules
13 apply:
- 14 (a) If only one (1) cotenant elects to buy all the interests of the cotenants that
15 requested partition by sale, the court shall notify all the parties of that fact;
- 16 (b) If more than one (1) cotenant elects to buy all the interests of the cotenants
17 that requested partition by sale, the court shall allocate the right to buy
18 those interests among the electing cotenants based on each electing
19 cotenant's existing fractional ownership of the entire parcel divided by the
20 total existing fractional ownership of all cotenants electing to buy and send
21 notice to all the parties of that fact and of the price to be paid by each
22 electing cotenant; and
- 23 (c) If no cotenant elects to buy all the interests of the cotenants that requested
24 partition by sale, the court shall send notice to all the parties of that fact and
25 resolve the partition action under subsections (1) and (2) of Section 8 of this
26 Act.
- 27 (5) If the court sends notice to the parties under subsection (4)(a) or (b) of this

1 section, the court shall set a date, not sooner than sixty (60) days after the date
2 the notice was sent, by which electing cotenants must pay their apportioned price
3 into the court. After this date, the following rules apply:

4 (a) If all electing cotenants timely pay their apportioned price into court, the
5 court shall issue an order reallocating all the interests of the cotenants and
6 disburse the amounts held by the courts to the persons entitled to them;

7 (b) If no electing cotenant timely pays its apportioned price, the court shall
8 resolve the partition action under subsections (1) and (2) of Section 8 of this
9 Act as if the interests of the cotenants that requested partition by sale were
10 not purchased; and

11 (c) If one (1) or more but not all of the electing cotenants fail to pay their
12 apportioned price on time, the court, on motion, shall give notice to the
13 electing cotenants that paid their apportioned price of the interest
14 remaining and the price for all that interest.

15 (6) Not later than twenty (20) days after the court gives notice pursuant to subsection
16 (5)(c) of this section, any cotenant that paid may elect to purchase all of the
17 remaining interest by paying the entire price into the court. After the twenty (20)
18 day period, the following rules apply:

19 (a) If only one (1) cotenant pays the entire price for the remaining interest, the
20 court shall issue an order reallocating the remaining interest to that
21 cotenant. The court shall issue promptly an order reallocating the interests
22 of all of the cotenants and disburse the amounts held by it to the persons
23 entitled to them;

24 (b) If no cotenant pays the entire price for the remaining interest, the court
25 shall resolve the partition action under subsections (1) and (2) of Section 8
26 of this Act as if the interests of the cotenants that requested partition by sale
27 were not purchased; and

1 (c) If more than one (1) cotenant pays the entire price for the remaining
2 interest, the court shall reapportion the remaining interest among those
3 paying cotenants, based on each paying cotenant's original fractional
4 ownership of the entire parcel divided by the total original fractional
5 ownership of all cotenants that paid the entire price for the remaining
6 interest. The court shall issue promptly an order reallocating all of the
7 cotenants' interests, disburse the amounts held by it to the persons entitled
8 to them, and promptly refund any excess payment held by the court.

9 (7) Not later than forty-five (45) days after the court sends notice to the parties
10 pursuant to subsection (1) of this section, any cotenant entitled to buy an interest
11 under this section may request the court to authorize the sale as part of the
12 pending action of the interests of the cotenants named as defendants and served
13 with the complaint but that did not appear in the action.

14 (8) If the court receives a timely request under subsection (7) of this section, the
15 court, after hearing, may deny the request or authorize the requested additional
16 sale on such terms as the court determines are fair and reasonable, subject to the
17 following limitations:

18 (a) A sale authorized under this subsection may occur only after the purchase
19 prices for all interests subject to sale under subsections (1) to (6) of this
20 section have been paid into court and those interests have been reallocated
21 among the cotenants as provided in those subsections; and

22 (b) The purchase price for the interest of a non-appearing cotenant is based on
23 the court's determination of value under Section 6 of this Act.

24 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) If all the interests of all cotenants that requested partition by sale are not
27 purchased by other cotenants pursuant to Section 7 of this Act, or if at the

1 conclusion of the buyout under Section 7 of this Act a cotenant remains that has
 2 requested partition in kind, the court shall order partition in kind unless the
 3 court, after consideration of the factors listed in Section 9 of this Act, finds that
 4 partition in kind will result in manifest prejudice to the cotenants as a group. In
 5 considering whether to order partition in kind, the court shall approve a request
 6 for two (2) or more parties to have their individual interests aggregated.

7 (2) If the court does not partition in kind under subsection (1) of this section, the
 8 court shall order partition by sale pursuant to Section 10 of this Act or, if no
 9 cotenant requested partition by sale, the court shall dismiss the action.

10 (3) If the court orders partition in kind pursuant to subsection (1) of this section, the
 11 court may require that one (1) or more cotenants pay one (1) or more other
 12 cotenant amounts so that the payments, taken together with the value of the in-
 13 kind distributions to the cotenants, will make the partition in kind just and
 14 proportionate in value to the fractional interests held.

15 (4) If the court orders partition in kind, the court shall allocate to the cotenants that
 16 are unknown, unable to be located, or the subject of a default judgment, if their
 17 interests were not brought out pursuant to Section 7 of this Act, a part of the
 18 property representing the combined interests of these cotenants as determined by
 19 the court, and this part of the property shall remain undivided.

20 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
 21 READ AS FOLLOWS:

22 (1) In determining under subsection (1) of Section 8 of this Act whether the partition
 23 in kind would result in manifest prejudice to the cotenants as a group, the court
 24 shall consider the following:

25 (a) Whether the heir property practicably can be divided among the cotenants;

26 (b) Whether the partition in kind would apportion the property in such a way
 27 that the aggregate fair market value of the parcels resulting from the

1 division would be materially less than the value of the property if it were
2 sold as a whole, taking into account the condition under which a court-
3 ordered sale likely would occur;

4 (c) Evidence of the collective duration of ownership or possession of the
5 property by a cotenant and one (1) or more predecessors in title or
6 predecessors in possession to the cotenant who are or were relatives of the
7 cotenant or each other;

8 (d) A cotenant's sentimental attachment arising because the property has
9 ancestral or other unique or special value to the cotenant;

10 (e) The lawful use being made of the property by a cotenant and the degree to
11 which the cotenant would be harmed if the cotenant could not continue the
12 same use of the property;

13 (f) The degree to which the cotenants have contributed their pro rata share of
14 the property taxes, insurance, and other expenses associated with
15 maintaining ownership of the property or have contributed to the physical
16 improvement, maintenance, or upkeep of the property; and

17 (g) Any other relevant factor.

18 (2) The court may not consider any one (1) factor in subsection (1) of this section to
19 be dispositive without weighing the totality of all relevant factors and
20 circumstances.

21 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
22 READ AS FOLLOWS:

23 (1) If the court orders a sale of heir property, the sale shall be an open-market sale
24 unless the court finds that a sale by sealed bids or an auction would be more
25 economically advantageous and in the best interest of the cotenants as a group.

26 (2) If the court orders an open-market sale and the parties, not later than ten (10)
27 days after the entry of the order, agree on a real estate broker licensed in this

- 1 Commonwealth to offer the property for sale, the court shall appoint the broker
2 and establish a reasonable commission. If the parties do not agree on a broker,
3 the court shall appoint a disinterested real estate broker licensed in this
4 Commonwealth to offer the property for sale and shall establish a reasonable
5 commission. The broker shall offer the property for sale in a commercially
6 reasonable manner at a price no lower than the determination of value and on
7 the terms and conditions established by the court.
- 8 (3) If the broker appointed under subsection (2) of this section obtains within a
9 reasonable time an offer to purchase the property for at least the determination of
10 value:
- 11 (a) The broker shall comply with the reporting requirements in Section 11 of
12 this Act; and
- 13 (b) The sale may be completed in accordance with law of this Commonwealth
14 other than Sections 1 to 13 of this Act.
- 15 (4) If the broker appointed under subsection (2) of this section does not obtain within
16 a reasonable time an offer to purchase the property for at least the determination
17 of value, the court, after hearing, may:
- 18 (a) Approve the highest outstanding offer, if any;
- 19 (b) Redetermine the value of the property and order that the property continue
20 to be offered for an additional time; or
- 21 (c) Order that the property be sold by sealed bids or at an auction.
- 22 (5) If the court orders a sale by sealed bids or an auction, the court shall set terms
23 and conditions of the sale. If the court orders an auction, the auction must be
24 conducted under Section 18 of this Act.
- 25 (6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is
26 entitled to a credit against the price in an amount equal to the purchaser's share
27 of the proceeds.

1 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) Unless required to do so within a shorter time frame by this chapter, a broker
4 appointed under subsection (2) of Section 10 of this Act to offer heir property for
5 open-market sale shall file a report with the court not later than seven (7) days
6 after receiving an offer to purchase the property for at least the value determined
7 under Section 6 or 10 of this Act.

8 (2) The report required by subsection (1) of this section shall contain the following
9 information:

10 (a) A description of the property to be sold to each buyer;

11 (b) The name of each buyer;

12 (c) The proposed purchase price;

13 (d) The terms and conditions of the proposed sale, including the terms of any
14 owner financing;

15 (e) The amounts to be paid to lienholders;

16 (f) A statement of contractual or other arrangements or conditions of the
17 broker's commission; and

18 (g) Other material facts relevant to the sale.

19 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
20 READ AS FOLLOWS:

21 In applying and construing this uniform act, consideration must be given to the need to
22 promote uniformity of the law with respect to its subject matter among states that enact
23 it.

24 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
25 READ AS FOLLOWS:

26 This act modifies, limits, and supersedes the Electronic Signatures in Global and
27 National Commerce Act, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or

1 supersede Section 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize electronic
2 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. sec.
3 7003(b).

4 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO
5 READ AS FOLLOWS:

6 (1) The heir property research fund is created in the State Treasury as a restricted
7 fund. The restricted fund shall consist of moneys deposited pursuant to Section
8 15 of this Act. The Kentucky Real Estate Authority shall administer the fund.

9 (2) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of
10 the fiscal year shall not lapse but shall be carried forward into the succeeding
11 fiscal year to be used for the purposes set forth in subsection (4) of this section.

12 (3) Any interest earned on moneys in the fund shall become a part of the fund and
13 shall not lapse.

14 (4) The funds deposited into the heir property research fund shall be made available
15 to residents of Kentucky, upon application, in the form of one (1) time grants up
16 to two thousand dollars (\$2,000). Grant funds shall be used to assist applicants in
17 conducting research into their family history, specifically relating to
18 identification, evaluation, preservation, partition, or sale of heir property. Grant
19 funds shall only be used to:

20 (a) Conduct genealogical research;

21 (b) Conduct a property title search;

22 (c) Order a property appraisal;

23 (d) Order a property survey;

24 (e) Consult a real estate attorney; or

25 (f) Engage any other professional service or resource reasonably related to
26 identifying, evaluating, preserving, partitioning, or selling heir property.

27 (5) The Kentucky Real Estate Authority shall prescribe, and make available on its

1 **Web site, an application process and eligibility criteria for grants. Applications**
2 **for grants shall be approved based on a showing of financial need.**

3 ➔Section 15. KRS 64.012 is amended to read as follows:

4 (1) The county clerk shall receive for the following services the following fees:

5 (a) 1. Recording and indexing of a:

- 6 a. Deed of trust or assignment for the benefit of creditors;
- 7 b. Deed;
- 8 c. Deed of assignment;
- 9 d. File-stamped copy of documents set forth in KRS 14A.2-040(1) or
10 (2) that have been filed first with the Secretary of State;
- 11 e. Real estate option;
- 12 f. Power of attorney;
- 13 g. Revocation of power of attorney;
- 14 h. Lease which is recordable by law;
- 15 i. Deed of release of a mortgage or lien under KRS 382.360;
- 16 j. United States lien;
- 17 k. Release of a United States lien;
- 18 l. Release of any recorded encumbrance other than state liens;
- 19 m. Lis pendens notice concerning proceedings in bankruptcy;
- 20 n. Lis pendens notice;
- 21 o. Mechanic's and artisan's lien under KRS Chapter 376;
- 22 p. Assumed name;
- 23 q. Notice of lien issued by the Internal Revenue Service;
- 24 r. Notice of lien discharge issued by the Internal Revenue Service;
- 25 s. Original, assignment, amendment, or continuation financing
26 statement;
- 27 t. Making a record for the establishment of a city, recording the plan

- 1 or plat thereof, and all other service incident;
- 2 u. Survey of a city, or any part thereof, or any addition to or
- 3 extensions of the boundary of a city;
- 4 v. Recording with statutory authority for which no specific fee is set,
- 5 except a military discharge;
- 6 w. Will or other probate document pursuant to KRS Chapter 392 or
- 7 394;
- 8 x. Court ordered name change pursuant to KRS Chapter 401;
- 9 y. Land use restriction according to KRS 100.3681; and
- 10 z. Filing with statutory authority for which no specific fee is set.

11 For all items in this subsection if the entire thereof does not exceed
 12 five (5) pages**\$34.00**~~[\$33.00]~~

13 And, for all items in this subsection exceeding five (5) pages,
 14 for each additional page\$3.00

15 And, for all items in this subsection for each additional reference
 16 relating to same instrument\$4.00

17 2. The ~~thirty-four~~**thirty-three** dollar ~~(\$34)~~~~(\$33)~~ fee imposed by this
 18 subsection shall be divided as follows:

19 a. Twenty-seven dollars (\$27) shall be retained by the county clerk;
 20 ~~and~~

21 b. Six dollars (\$6) shall be paid to the affordable housing trust fund
 22 established in KRS 198A.710 and shall be remitted by the county
 23 clerk within ten (10) days following the end of the quarter in which
 24 the fee was received. Each remittance to the affordable housing
 25 trust fund shall be accompanied by a summary report on a form
 26 prescribed by the Kentucky Housing Corporation; **and**

27 **c. One dollar (\$1) shall be paid to the heir property research fund**

- 1 the road is established, changed, closed, or discontinued, and by
- 2 the applicant when it is not\$3.00
- 3 (p) Registration of licenses for professional persons required to register
- 4 with the county clerk\$10.00
- 5 (q) Certified copy of any record\$5.00
- 6 Plus fifty cents (\$.50) per page after three (3) pages
- 7 (r) Filing certification required by KRS 65.070(2)(a)\$5.00
- 8 (s) Filing notification and declaration and petition of candidates
- 9 for Commonwealth's attorney.....\$200.00
- 10 (t) Filing notification and declaration and petition of candidates for county
- 11 and independent boards of education\$20.00
- 12 (u) Filing notification and declaration and petition of candidates for
- 13 boards of soil and water conservation districts\$20.00
- 14 (v) Filing notification and declaration and petition of candidates for
- 15 other office\$50.00
- 16 (w) Filing declaration of intent to be a write-in candidate for office\$50.00
- 17 (x) Filing petitions for elections, other than nominating petitions\$50.00
- 18 (y) Notarizing any signature, per signature\$2.00
- 19 (z) Filing bond for receiving bodies under KRS 311.310\$10.00
- 20 (aa) Noting the assignment of a certificate of delinquency and recording
- 21 and indexing the encumbrance under KRS 134.126 or 134.127\$27.00
- 22 (ab) Filing a going-out-of-business permit under KRS 365.445\$50.00
- 23 (ac) Filing a renewal of a going-out-of-business permit under KRS 365.445 \$50.00
- 24 (ad) Filing and processing a transient merchant permit under KRS 365.680 . \$25.00
- 25 (ae) Recording and indexing a real estate mortgage:
- 26 1. For a mortgage that does not exceed thirty (30) pages\$63.00
- 27 2. And, for a mortgage that exceeds thirty (30) pages, for each additional

1 page\$3.00

2 (f) Filing or recording a lien or release of lien by a consolidated local
3 government, urban-county government, unified local government, or city of
4 any class\$20.00

5 (2) The sixty-three dollar (\$63) fee imposed by subsection (1)(ae) of this section shall
6 be divided as follows:

7 (a) Fifty-seven dollars (\$57) shall be retained by the county clerk; and

8 (b) Six dollars (\$6) shall be paid to the affordable housing trust fund established
9 in KRS 198A.710 and shall be remitted by the county clerk within ten (10)
10 days following the end of the quarter in which the fee was received. Each
11 remittance to the affordable housing trust fund shall be accompanied by a
12 summary report on a form prescribed by the Kentucky Housing Corporation.

13 (3) For services related to the permanent storage of records listed in paragraphs (a), (g),
14 (n), and (ae) of subsection (1) of this section, the clerk shall be entitled to receive a
15 reimbursement of ten dollars (\$10).

16 ➔Section 16. KRS 324B.050 is amended to read as follows:

17 (1) The Kentucky Real Estate Authority is hereby created within the Department of
18 Professional Licensing.

19 (2) The authority shall be managed by an executive director, who shall be appointed by
20 the secretary of the Public Protection Cabinet with prior written approval from the
21 Governor. The executive director shall be exempted from the classified service.

22 (3) The authority shall have the power and authority to:
23 (a) Provide appropriate personnel staffing and administrative support to the real
24 property boards;
25 (b) Establish and maintain an office, meeting space, office supplies, furniture,
26 storage space, and any other supplies that are necessary to carry out the duties
27 of the authority and the real property boards;

- 1 (c) Make available for public inspection all decisions, opinions, and
 2 interpretations formulated or used by the authority and the real property
 3 boards in discharging their functions;
- 4 (d) Publicize the functions and purposes of the authority and the real property
 5 boards;
- 6 (e) Employ administrative coordinators who shall carry out the administrative
 7 functions and day-to-day operations of the real property boards. The
 8 maximum number of administrative coordinators shall be one (1) for each real
 9 property board. Administrative coordinators shall be exempted from the
 10 classified service;
- 11 (f) Enter into agreements with any state agency, political subdivision of the state,
 12 postsecondary education institution, or other person or entity to assist with
 13 implementation of the duties and responsibilities of the authority or, upon
 14 request, the real property boards;~~and~~
- 15 (g) Charge the real property boards a reasonable amount for the services of the
 16 authority and its employees; and
- 17 (h) Promulgate administrative regulations to create and administer an
 18 application process for grants from the heir property research fund and to
 19 issue grants from the fund pursuant to Section 14 of this Act.

20 ➔Section 17. KRS 381.135 is amended to read as follows:

- 21 (1) (a) As used in this subsection:
- 22 1. "Ownership interest in a closely held farm corporation or partnership"
 23 means any interest in a farm with one (1) or more of the shareholders or
 24 partners owning twenty percent (20%) or more of the corporation or
 25 partnership.
- 26 2. "Farm" means a tract of at least five (5) contiguous acres used for the
 27 production of agricultural or horticultural crops including, but not

1 limited to, livestock, livestock products, poultry, poultry products, grain,
2 hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables,
3 flowers, or ornamental plants, including provision for dwellings for
4 persons and their families who are engaged in the above agricultural use
5 on the tract, but not including residential building development for sale
6 or lease to the public.

7 (b) A person desiring a division of land held jointly with others, a person desiring
8 an allotment of dower or curtesy, or a person with an ownership interest of
9 twenty percent (20%) or more in a closely held farm corporation or
10 partnership may file in the Circuit Court of the county in which the land or the
11 greater part thereof lies a petition containing a description of the land, a
12 statement of the names of those having an interest in it, and the amount of
13 such interest, with a prayer for the division or allotment; and, thereupon, all
14 persons interested in the property who have not united in the petition shall be
15 summoned to answer not more than twenty (20) days after service of the
16 summons. The written evidences of the title to the land, or copies thereof, if
17 there be any, must be filed with the petition.

18 (2) The statutory guardian of an infant or guardian or conservator of a person adjudged
19 mentally disabled may file or unite in the petition, in the names of, and in
20 conjunction with such infant or mentally disabled person; and, if the petition be
21 against an infant or mentally disabled person the guardian or conservator may
22 appear and defend for them; if they fail to do so, the court shall appoint a discreet
23 person for that purpose.

24 (3) Upon such a petition by all interested in the property, or upon the expiration of
25 twenty (20) days after the service of a summons on all who have an interest in the
26 property and have not united in the petition, the court may order the division, or
27 allotment of dower or curtesy, according to the rights of the parties, *except that if*

1 *the court determines that the property is heir property under the Uniform*
2 *Partition of Heir Property Act, then such partition or sale shall comply with the*
3 *provisions of Sections 1 to 13 of this Act.*

- 4 (4) The court shall appoint three (3) competent persons as commissioners to determine
5 the division or allotment of land, having a due regard for the rights of all parties
6 interested. Before proceeding to act, the commissioners shall take an oath to
7 discharge their duty impartially.
- 8 (5) The order of appointment shall fix a time and place for the meeting of the
9 commissioners who shall meet accordingly; but, if prevented from meeting at the
10 time and place so fixed, they may meet as soon thereafter as convenient, and may
11 adjourn to such other time and place as they may agree upon, until their duty shall
12 be performed.
- 13 (6) The commissioners shall equitably determine the allotment to the parties of their
14 respective interests in the land. A registered land surveyor shall perform the actual
15 survey of the land in accordance with the determination made by the
16 commissioners, and prepare the descriptions of the land, including all related maps,
17 plats, and documents, and he shall affix thereto his personal seal and signature,
18 unless such actual survey and the resultant description, maps, plats, and documents
19 pertaining to this land are already in existence. The commissioners shall make
20 report thereof to the court, which may either confirm, set aside, or remand the report
21 to the commissioners for correction.
- 22 (7) If the report be confirmed, a commissioner to be appointed for the purpose shall, by
23 deed, convey to each party the land allotted to him.
- 24 (8) If the report be confirmed by the Circuit Court, it, together with said surveyor's
25 descriptions, survey and all related documents, and the applicable deeds shall be
26 certified by the clerk of that court to the county clerk, for record.
- 27 (9) Two (2) of the commissioners may act, if one (1) refuses or fails to do so.

1 (10) A party summoned may, by answer, controvert the allegations of the petition or
2 contest the rights claimed therein; and, thereupon, the case shall be tried and
3 decided as an ordinary action, but without the intervention of a jury.

4 (11) The costs of the action shall be apportioned among the parties in the ratio of their
5 interests, except that the costs arising from a contest of fact or law shall be adjudged
6 against the unsuccessful party.

7 (12) No verification of the pleadings shall be required.

8 (13) The commissioners and the land surveyor shall be paid a reasonable compensation,
9 to be taxed as costs.

10 (14) This section shall not affect the jurisdiction of courts of equity to make partition or
11 allot dower or curtesy.

12 ➔Section 18. KRS 389A.030 is amended to read as follows:

13 (1) (a) When two (2) or more persons other than tenants by the entirety in residential
14 property actually occupied by them as a principal residence share title to real
15 estate in such manner that a conveyance by them jointly would pass a fee
16 simple title, any one (1) or more of them may bring an action for the sale or
17 division thereof in the Circuit Court of the county in which the land, or the
18 greater part thereof, lies, making parties defendant those owners who have not
19 joined as plaintiffs. A fiduciary possessing a power of sale may institute such
20 an action against owners of interests not represented by him. Defendant
21 owners shall be brought before the court in the manner provided by the civil
22 rules whether or not a fiduciary possesses a power of sale of the defendant's
23 interest, but any fiduciary possessing such a power shall also be made a
24 defendant. The case shall be tried without a jury.

25 (b) This section shall not apply to property that the court determines is heir
26 property under the Uniform Partition of Heir Property Act. If the property is
27 heir property, then such partition or sale shall comply with the provisions of

1 Sections 1 to 13 of this Act.

- 2 (2) A defendant who is under disability and for whom no fiduciary is acting shall be
3 represented in the action by a guardian ad litem, but in the event of sale of such
4 defendant's interest the court shall retain control of the proceeds of such interest
5 until a duly appointed and adequately bonded fiduciary or custodian pursuant to a
6 court order makes claim to the funds.
- 7 (3) In all such actions indivisibility of the real estate shall be presumed unless an issue
8 in respect thereto is raised by the pleading of any party, and if the court is satisfied
9 from the evidence that the property is divisible, without materially impairing the
10 value of any interest therein, division thereof pursuant to KRS 381.135 shall be
11 ordered.
- 12 (4) If a sale of all or any part of the real estate shall be ordered, the court shall refer the
13 matter to the master commissioner or appoint a commissioner to conduct a public
14 sale and convey the property upon terms of sale and disposition of the net proceeds
15 as may have been determined by the court.
- 16 (5) The death of any party pending the action and prior to distribution of the proceeds
17 of sale or setting apart a divisible share shall not affect the action but the court may
18 direct distribution or apportionment to the successors in interest of the decedent
19 upon application therefor.
- 20 (6) If the interest of any party be one for life, or other term, in any portion of the real
21 estate, the court shall determine the value of such interest and direct that such party
22 receive a portion of the net sale proceeds or portion of the property if divisible, in
23 fee in satisfaction of such interest, but if any party to the action objects to such
24 procedure, and if the court finds that such procedure would defeat the objects and
25 purpose of a person not a party to the action, such as a testator, grantor or settlor,
26 but that sale or division is nevertheless desirable, the court shall order that the
27 interest of the life or term tenant shall continue as to his portion of the real estate or

1 the net proceeds of the sale thereof, in the latter case by directing that the funds
2 derived from the sale of that portion of the real estate in which the life or term
3 interest existed be paid to a trustee, appointed by and accountable to the District
4 Court, for reinvestment and distribution of income and principal in a manner
5 consistent with the instrument under which the life or term estate was created.