

1975 WL 28902 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 6, 1975

*1 The Honorable Ferdinand B. Stevenson
Member
House of Representatives
Columbia, South Carolina

Dear Representative Stevenson:

You have inquired as to the possible conflict between §§ 19-161 and 15-1822 of the CODE OF LAWS OF SOUTH CAROLINA (1962). It is my opinion that these two provisions of the Constitution are not in conflict. At common law, the heir or tenant of the property in question had a duty to partition the property and to assign, fairly and equitably, a portion of the property to the widow. This assignment was valid unless the widow protested and recourse to the courts was not necessary unless there was a disagreement. Under current South Carolina law, § 15-1822, the master in-equity ‘upon proper proceedings filed, grant orders for the partition of real and personal estates and for the admeasurement of dower when the right of partition as dower is not contested or the same has been ascertained by a degree of the court.’ Thus § 15-1822 applies to situations where the partitioning of the land subject to dower is carried out initially by the heir or tenant and the widow agrees to the division.

On the other hand § 19-161 et seq. provide that a widow may initiate the assignment or admeasurement of dower by applying for a writ of admeasurement to the judge of probate court in which the lands are situated. The statutes provide that the writ shall be directed to five commissioners who shall admeasure and not mete out to the widow one-third part of all the lands of her deceased husband. However, if, in the opinion of a majority of the commissioners, the lands cannot be fairly and equitably divided without manifest disadvantages, § 19-166 provides that the commissioners ‘shall assess a sum of money to be paid to the widow in lieu of her dower by the heir-at-law or such other person who may be in possession of the said land.’ South Carolina case law has established a one-sixth interest in the appraised value of the lands as a proper assignment for dower. [Stewart v. Blease, 4 S.C. 37 \(1872\)](#); [Jefferies v. Allen, 34 S.C. 189, 13 S.E. 365 \(1891\)](#).

The specific question which you raised concerning ‘forced admeasurement’ is not covered specifically by either of these statutes or by any other statute of the Code. However, several alternative approaches may be useful to the executor or the heir-at-law. Section 19-491, et seq. of the Code provide that the executor of the estate, if the assets are not sufficient to pay claims against the estate, may notify the Probate Court and the Probate Court may sell the land ‘in aid of assets.’ The land sold is either taken subject to the dower interest or else the Court may order one-sixth of the proceeds of the sale to be paid to the widow of the decedent in lieu of dower. [Stewart v. Pearson, 4 S.C. 4 \(1872\)](#). If the sale of the land is not necessary to satisfy claims against the estate, the land is passed to the devisee or legatee subject to the dower interest and the executor is no longer involved in the proceeding. Research has indicated no statutory authority which allows the devisee or legatee to directly compel the widow to have her portion admeasured. Possibly, in accord with the common law, the devisee can assign a portion of the widow and apply to the master in equity under § 15-1822 for an order. The widow may then either contest this or file for admeasurement under § 15-1822. Another possibility is for the devisee of the land to treat his estate as a fee simple estate in the land, and the widow, in order to receive profits or a portion of the land, will be compelled to file an action for a writ of admeasurement or for an accounting of the profits.

*2 I hope this information is of use to you.
Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

1975 WL 28902 (S.C.A.G.)

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.