

RULE 4:63. Waste; Partition; Account; Dower; Curtesy

4:63-1. Partition; Dower; Curtesy

If in an action for partition or for the admeasurement of dower or curtesy, the court shall be satisfied that a division of the real estate can be made without great prejudice to the owners thereof, it may appoint one or more persons as commissioners to ascertain and report in writing the metes and bounds of each share; if not so satisfied, it may direct a sale or, in its discretion, if the action is one for dower or curtesy, an assignment from the rents and profits.

Note: Source-R.R. 4:81-2, 5:2-4; amended July 26, 1984 to be effective September 10, 1984.

4:63-2. Notice of Motion for Sale Free From Dower and Curtesy

In proceedings for the sale of real estate by a fiduciary or for partition, notice of an application to sell free and clear of a right or estate of dower or curtesy shall be served within this State in accordance with R. 1:5-2 at least 35 days prior to the application; or if it shall appear by affidavit made pursuant to R. 4:4-5 that the party entitled to notice cannot be served within this State, the notice may be served pursuant to R. 4:4-5, provided that service is completed at least 35 days prior to the application.

Note: Source-R.R. 4:81-4. Amended July 7, 1971 to be effective September 13, 1971; amended July 13, 1994 to be effective September 1, 1994.

4:63-3. Calculation of Gross Sum in Lieu of Dower or Curtesy

The gross sum to be allowed in lieu of dower or curtesy or an estate for life or years devised in lieu of dower or curtesy shall be fixed by the court at such an amount as, in its opinion and under the circumstances of the case, will provide a reasonable satisfaction for the dower or other interest. In fixing that amount, the court shall proceed after the sale as follows:

- **(a)** The court shall calculate the value of the dower or other interest upon the basis of the net proceeds of the sale, above costs and expenses, applying the principle of life annuities and using the table printed in the Appendix to these rules. Except in unusual circumstances, the amount fixed by the court shall not be greater than that arrived at under this paragraph.
- **(b)** The court shall also calculate the value of the dower or other interest upon the basis of the clear yearly income from the premises, applying the same principle and using the same table. In ascertaining the clear yearly income, allowance shall be made for insurance, taxes and all repairs necessary to keep the premises in as good a condition as at the sale, including the renewal of any part of the buildings thereon required, because of deterioration or ordinary wear and tear.
- **(c)** If the interest on the net proceeds of sale at 5 1/2% or at such other interest rate as the court determines on good cause shown is appropriate, exceeds the clear yearly income, the amount fixed by the court shall, except in unusual circumstances, be determined by adding to the amount arrived at under paragraph (b), in cases of dower or curtesy, 1/2 - or in other cases, 1/4 - of the difference between the amount arrived at under paragraph (a) and the amount arrived at under paragraph (b).
- **(d)** The court shall make inquiry as to the health of the person entitled to the dower or other interest and shall reduce the gross sum accordingly if such person does not have an average life expectancy.

Note: Source-R.R. 4:81-5; paragraph (c) amended to be effective immediately [February 24, 1978] as to all matters wherein final judicial review has not been exhausted; paragraph (c) amended June 29, 1990 to be effective September 4, 1990.

4:63-4. Calculation of Investment in Lieu of Dower or Curtesy

If an income from an investment is allowed in lieu of dower, curtesy or other estate referred to in R. 4:63-3, the amount of the investment shall be fixed by the court so that the income therefrom will, in its opinion and under the circumstances of the case, provide a reasonable satisfaction for the dower or other interest. In fixing that amount, the court shall proceed after the sale as follows:

- **(a)** The court shall calculate such amount upon the basis of the net proceeds of the sale, above costs and expenses. Except in unusual circumstances, the amount fixed by the court shall not be greater than that arrived at under this paragraph.
- **(b)** The court shall also determine the clear yearly income from the premises as provided by R. 4:63-3, and then calculate the amount of the investment, basing it upon this income capitalized at 5 1/2% or at such other rate of interest as the court for good cause shown determines is appropriate.
- **(c)** If the amount arrived at under paragraph (a) exceeds that arrived at under paragraph (b) the court shall, except in unusual circumstances, fix the amount of the investment by adding to the amount arrived at under paragraph (b), in cases of dower or curtesy, 1/2 of the excess, or in other cases 1/4 of the excess.

Note: Source-R.R. 4:81-6; paragraph (b) amended February 24, 1978 to be effective immediately as to all matters wherein final judicial review has not been exhausted; paragraph (b) amended June 29, 1990 to be effective September 4, 1990.