

A Quick Guide to Addressing Heirs' Property in Your Community

Introduction

Over 1.6 million acres of land in the United States and countless numbers of housing and other properties in thousands of communities are held in undivided interest – this is referred to as **heirs' property**. The degree to which properties in your community lack clear titles, including those held in undivided interests, presents critical implications for local governments. These properties are often sold in tax and partition sales at a reduced value, potentially diminishing the value of surrounding properties and eroding the tax base. There are additional challenges and implications for families and communities that elected and appointed local officials can address.

This guide is intended for use by local county officials to develop an informed strategy to address issues arising when property owners pass away without a will. It may also be useful to faith communities, churches, community and neighborhood groups, funeral directors, and others who support families when they lose loved ones and who also look out for community well-being. Insurance, real estate, legal, and others with an interest in resolving these issues may also benefit.

This guide provides:

- **An Overview** of the implications and costs of heirs' property to cities and counties
- **A Quick Guide** for community leaders to act on heirs' property issues
- **Tools and Approaches** for cities and counties to assess the scale of economic, social, and other impacts of heirs' property, especially as it relates to farm and timberland properties
- **Recommendations** for community-level approaches to address heirs' property
- **A Quick Guide** for Advising Families, Farmers and Heirs' Property Owners
- **A Glossary** of useful terms for navigating heirs' property situations
- **Resources** for officials, individuals, especially farmers, and families

What is Heirs' Property?

When an estate is administered by the state, the heirs who are entitled by familial relationship to the deceased's property become co-owners, and the land becomes "**heirs' property**." This chart from a recent SRDC report assessing the impact of heirs' property¹, illustrates the number of heirs to one property.

Ms. Smith

On father's side:

1. There is Ms Smith + a brother = 2
Her father had 2 sisters
2. One sister had 3 children
3. One sister had 3 children

Number = $2+3+3 = 8$

On mother's side:

1. There is Ms Smith + a brother = 2
Her mother had 3 brothers and 5 sisters:
2. Brother 1 had 1 child
3. Brother 2 had 5 children
4. Brother 3 had 3 children
5. Sister 1 had 2 children
6. Sister 2 had 4 children
7. Sister 3 had 4 children
8. Sister 4 had 2 children
9. Sister 5 had 2 children

Number = $2+1+5+3+2+4+4+2+2 = 25$



Fig 1. Sample chart with 33 legal heirs to single family-owned property

Why Should Public Officials in Local Communities Be Concerned about Land Held in Heirs' Property Status?

Heirs' property presents a challenge for towns and counties in that it can be difficult to assess and exacts both financial and ecological tolls on the locality's resources. Heirs' property also presents a sometimes-devastating challenge to families who are unable to determine a shared vision among their family members to preserve their elders' legacy. Additionally, the family may lose out on rental or farm income and the chance to enjoy the property with loved ones.

When one dies without a will, state law determines how a person's estate will be divided among surviving family members. Lacking instructions for distribution of the deceased's property, the state uses statutory formulas to distribute property on behalf of the deceased.

When landowners execute a valid will, they choose to whom their property will pass at their death. In most instances, this greatly reduces the number of people who inherit, which makes it easier to manage and make decisions about the land.

The family tree below demonstrates an example of how a family may grow across

multiple generations. Often, for families in the Rural South, older generations have raised many children and grandchildren, who may all become co-owners to heirs' property, creating insecure and sometimes volatile ownership.

This chart from the SRDC report on heirs' propertyⁱⁱ, illustrates how shares are distributed among generations and families depending on the number of heirs in each.

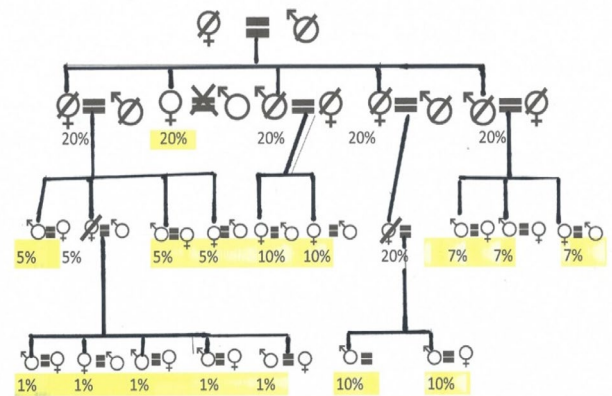


Figure 2. – Determining Shares of Interest Over Generations

Even when an owner leaves a will, families may need to resolve the interests of numerous heirs, facing a protracted legal process to pass clear title to members of subsequent generations. During this legal process, the challenges faced by the heirs are similar to those faced by other heirs' property owners.

Tax Revenue Implications for Communities

Heirs' property can present a challenge for city and county tax collectors because property taxes are less likely to be paid when land ownership is unclear or contentious. Because property taxes assist in funding local services, this loss of tax revenue can directly impact support for school districts, emergency service

providers, and local and statewide infrastructure.

Should the county proceed with a foreclosure and move to sell the property at a public auction, it may also prevent the county from receiving the full value of the delinquent taxes and associated costs, creating a loss that will likely not be recuperated.

Broad Impacts of Having Numerous Heirs' Properties in a Single Community

In addition to the tax revenue implications, there are other consequences for communities with large numbers of heir-owned parcels. As discussed in the section above, a high incidence of heirs' property in a jurisdiction can greatly skew and lower the tax base. In short, the tax base is narrowed with fewer residents paying direct taxes, which dramatically decreases the amount of revenue received and subsequently increases the rate at which the other residents are taxed.

The failure to unite the family toward a common goal for protection of the property often leaves large swaths of vacant or abandoned properties. Vacant property often creates a financial burden for adjacent property owners and the municipality. When property goes unused, its potential for output represents an opportunity loss to the surrounding communities. Neighboring property values also plummet when surrounding properties are foreclosed on or are determined to be vacant, and local governments shoulder the cost of maintaining, servicing, and, when necessary, demolishing abandoned properties.

In a study of vacant properties in Philadelphia, for example, the researchers

determined that the city spent more than \$20 million to maintain abandoned property, which cost the city approximately \$5 million per year in lost tax revenue to the city and school district.ⁱⁱⁱ That impact is even more profound in the Southern United States where abandoned properties span hundreds and thousands of acres and represent millions of dollars of value in unused and/or underutilized property.

Because tenants in common each hold an equal right to the property, the consent of all tenants is often required to make decisions regarding the land. This creates a challenge when co-owners have different expectations for how the property will be used—for instance, whether it will be used as a residence for subsequent generations; to produce farm income; or to harvest timber. If families are unable to come to an agreement on how to make use of the property, the property is more likely to become vacant or unusable, ultimately resulting in the loss of family homes, land, and the loss of legacy to the family.

A co-tenancy of this kind also impacts how and whether the property can be used as collateral for home, farm, or equipment loans. An individual co-tenant cannot encumber the property without the consent of all other co-tenants. Without funding from lenders, many families cannot afford to make use of the property though the addition of structures and fences, for example, which for title-secure owners can add improvement value that raises the total land value.

Land held in heirs' property status is also vulnerable to **adverse possession**—whereby another person or entity openly occupies land without the permission of the owners with the intent to make it their own—a right which is afforded to the trespassers in many states after a period of hostile occupation.

Finally, this form of ownership, especially if many properties in a neighborhood or a community are so held, is vulnerable to a **partition sale** – when an outside bidder purchases the share of one or more heirs who often live outside of the community, thereby forcing a sale of the entire property to distribute the often-small proceeds to each shareholder. Partition sales have corresponding implications for the value of surrounding properties. The new outside owners may also have very different views on the kind of development to pursue than those who are local residents or landowners.

When properties are vacant, unoccupied, mismanaged or neglected, it is more than merely a loss for the family – it also creates a threat of destruction for all adjoining parcels. Similarly, when farm and forested properties are held in insecure status, they are vulnerable to buyout by outside often absentee owners who contribute little economic value to the local community.

This form of ownership also creates a barrier for co-owners to receive federal or state assistance for recovery, repairs, and disaster support. Many recovery programs require the demonstration of clear title to provide support. If the heirs' owners cannot prove ownership by deed, or through a probated estate, they are often unable to make the necessary repairs to make the dwelling and/or the land workable or inhabitable.

A recent examination of federal disaster assistance in the Southeast found that:

“Nationally, FEMA denies requests for help from about two percent of applicants for disaster aid because of title issues. In majority-Black counties, the rate is twice as high, according to a Washington Post analysis, in large part because Black people are twice as likely to pass down property informally. But in parts of the Deep South, FEMA has rejected up to a quarter of

applicants because they can't document ownership, according to the Post analysis. In Hale County [AL], FEMA has denied 35 percent of disaster aid applicants for this reason since March [2021].^{iv}

The Uniform Partition of Heirs Property Act^v, if it has passed in your state, may offer families a key tool to protect their property, stop partition sales and/or begin a process to distribute assets and pass property on to members of new generations. It requires families to take certain steps to resolve the estate, including making a family tree, contacting all heirs, and getting an appraisal of assets. The UHPA has recently been recognized in federal law in the 2018 Farm Bill and with respect to some disasters, allowing families who use it to access certain federal benefits.

The inability to utilize inherited assets for families seeking to build and sustain generational wealth can fuel cycles of decline, underdevelopment and poverty that reverberate across entire communities with significant numbers of heirs' owners.

Quick guide for tax assessors and service providers

Prepared with a better understanding of the scope and consequences of heirs' property, local officials are in a critical position to assess the incidence of heirs' property in their locality and to take concrete action toward assisting the owners with managing and caring for the property. What does that look like?

STEPS TO TAKE ACTION

1. Assess the prevalence of heirs' property in your locality by searching for terms like “Et al” or “Estate” to see which classifications are most common.

2. Regularly review your locality's tax base for signs of narrowing, especially after natural disasters or emergencies such as the COVID-19 pandemic.
3. Regularly monitor the ownership of properties on which the property taxes are delinquent. Provide owners of record with information and resources on heirs' property mitigation, with list of local resources.
4. Share findings from your review with the community.
5. Provide additional contacts and resources to those most likely to experience insecure ownership including leaders in communities with many such properties, such as historically black churches or other faith communities.
6. Work with your community to develop a network of providers willing to assist with connecting heirs' property owners with networks and services that they need to prevent land loss. Pay particular attention to connecting those for whom there may be a gap in legal services with groups who can assist at little or no cost.
7. Offer resources to explain heirs' property and provide a network of services and meaningful guidance for determining how best to protect and manage the land. If applicable in your state, consider educating the community on the UHPA and how it may assist heirs' property owners in your locality.

Strategies for Assessing the Scale of the Problem for Your City or County

It may be useful for counties and localities to determine if there are areas of your jurisdiction where insecure ownership is more prevalent. A solid first step for county tax assessors and revenue commissioners developing a community-level assessment

strategy is to review the terms used to describe properties held in heirs' property status in their jurisdictions.

Improving clarity can allow counties to produce more accurate estimates of heirs' property acreage and location. This could also create a more streamlined process for providing financial and educational resources and support to co-owners of heirs' property, which could work, in some instances, to prevent partitions and encourage cooperation among families before family-owned land becomes so fractionated as to no longer be useful to any of the owners.

Research Tools and Approaches

An effective strategy can make use of the county's *Geographic Information System* (GIS) to perform an electronic search to determine all the terms associated with heirs' property in your area.

The GIS system may also enable you to obtain information including the owner's name, street and mailing address, zoning restrictions, and a reference to the most recent deed or probated estate associated with the address.

The most common **search terms** associated with heirs' property include *Heir*, *Heirs*, *Heirs'*, *Estate*, *Et al.*, *Deceased*, and the following abbreviations: *Dec.*, *Dec'd*, *Decd*, *Est.*, and *Etal*.

Specific Implications for Forest and Farmland Held in Heirs' Property

Table 1

Total Heir Parcels by Search Term

	Mississippi	Alabama Black Belt	Texas
Et al, etal	89.09%	55.60%	42.74%
Estate, est.	10.84%	7.06%	42.03%
Deceased	0.02%	16.97%	13.46%
Heirs' Property	0.04%	20.36%	1.77%

See the example above from a recent report assessing the impact of heirs' property^{vi}, the researchers focused their attention on three states in the Southeastern United States. They were able to identify the most-used terms to indicate heirs' property ownership for the counties in each of these states.^{vii}

Once you've determined the most prevalent terms used in your area, you may expand your assessment to include as many heir-related terms as possible.

GIS information is available to residents and officials alike. For service providers, and community-based organizations, this data also could be useful to develop opportunities for heirs' property owners to create estate plans, preventing further division among generations and encouraging the centralization of ownership and management.

With respect to rural properties, heirs' property status may limit a family's ability to access US Department of Agriculture loan or other farm programs or to secure timber contracts to earn income for timber sales. Aside from the financial loss of the opportunity to earn income from timber, there is also a potential ecological impact. Sustainable timber harvesting may help mitigate the risk of forest fires by ensuring the removal of dead and dying trees.

The 2018 Farm Bill provided new authority for farmers operating on heirs' property to utilize alternate documentation to obtain a farm number and access conservation and other farm programs.^{viii} It is important that families must know about and be aware of how to utilize these authorities. See [Guidance for Heirs' Property Owners Participating in Farm Service Agency Programs](#) which also details additional authorities in states with the UHPA in place.

The 2018 Farm Bill also authorized a relending program to help farm families borrow funds from intermediary lenders to resolve estate issues, including buying out other heirs. The [FSA Heirs' Property Relending Program](#) has recently taken effect^{ix} and is now seeking applications from qualified intermediary lenders. Watch the Farm Service Agency Website for when these lenders are ready to work with families to provide loans and other help resolve estates.

The 2018 Farm Bill also instructed USDA to complete an updated TOTAL Survey, to provide comprehensive data on farmland ownership, tenure, transition, and entry of beginning and socially disadvantaged farmers and ranchers as a follow-on to the Census of Agriculture (Sec. 12607). This

study is crucial to better understand the policies and trends that lead to secure land tenure and thriving farm businesses.

Congress has thus far not provided funds to begin this crucial study. However, as Congress embarks on creating new policies and programs related to climate change with deep implications for rural communities, it is important to understand the connection between land held in undivided interests and how such land is most vulnerable to becoming land held in absentee ownership.

Research has consistently demonstrated that localities with a preponderance of both heirs' property and concentrated absentee ownership^x also have high rates of poverty, low income, low education rates, and a higher age base.^{xi}

This form of ownership also presents obstacles for heirs' property owners to obtain homeowner's insurance (or flood insurance), especially if the property is unoccupied. Vacant property represents a great risk to insurance companies because the land is more vulnerable to theft, vandalism, fire, and storm damage. If heirs can secure an insurance policy, it can come at a cost that for many families is prohibitively expensive. For properties that are not vacant, a problem remains in that homeowners' policies require that the owners be listed on the policy and that the owners reside on the property. Without a clear showing of title, it can be difficult, if not impossible, for co-owners to secure a policy to protect the property in an era of increasing disasters, with growing consequences for rural and urban communities alike.

Recommendations to Share with Heirs' Property Owners, Families and Farmers

1. Families holding heirs' property should consider convening a family meeting so that you may discuss your individual and collective goals for the property. Would you like to create a homestead? Execute a timber contract? Farm the land? Rent the land?
2. Work with an attorney to complete a thorough investigation of your family tree and of public record to determine the chain of title for the property and the ownership interests of each heir. Utilize the Uniform Partition of Heirs Property statute to help protect the family during the process.
3. Discuss what tools and resources may be available to you, with your family and attorney, to protect the property. This may include developing an agreement between the heirs for how the property will be managed or creating a business entity, like a trust or LLC (limited liability company), that may assist in consolidating insecure ownership. A legal vehicle like an LLC can help families to centralize ownership and property management. It allows the family to build a collaborative vision for the property and to place a limit on how someone holds and exercises an interest in the property going forward, which can lessen the instance of heirs' property status.
4. Consider drafting and executing a Last Will and Testament, or a succession plan for your farming operation so that you may prevent any further division in future generations.
5. Learn how using the UPHPA can help your family access certain farm and other benefits while you complete the process of distributing assets and passing on clear title to property to new generations.

Conclusion

Heirs' property presents a challenge for towns and counties in that it can be difficult to assess, and it can create both ecological and financial hardships for the locality's resources. Heirs' property also presents a sometimes-devastating challenge to families who wish to preserve their elders' legacy but have been unable to determine a shared vision among their family members. This can result in a large cost for the family who may lose out on rental or farm income or who may lose out on the chance to enjoy the property with their loved ones.

Communities may best work to resolve or better manage heirs' property by developing a community approach that connects landowners with attorneys, surveyors, and other service providers that can assist families in moving forward and preventing any further loss of property.

Efforts by local communities to help families address heirs' property issues can be an important step to improve resilience and to strengthen and protect your economic base.

USEFUL TERMS & FAQ

Estate (for the purposes of this guide) includes all of the deceased's assets (land as well as cash, property, cars, etc.) and any other personal belongings (jewelry, artwork, heirlooms, furniture, etc.) still in their possession at their passing.

Heirs' property describes land that is owned by the descendants of a deceased landowner, who died without executing a valid will that would have determined the subsequent owner(s) of the property. When someone dies without a will, state law determines how that estate will be divided among surviving family members.

What is a Partition Sale?

A partition is a legal action that asks the court to divide a piece of property among the co-owners. When asked, the court will decide the most equitable way to divide the property. When possible, courts generally prefer what is referred to as a "partition in kind," which is a physical division of the property into separate parcels to be owned individually by each heir.

When a physical division is not possible or would create inequity between the co-owners, the court will opt to sell the property at auction and divide the proceeds among the co-owners proportionate to their share of ownership in the property.

This may provide welcome news to families who agree that a sale would best serve the interests of the co-owners. More often, however, one or more co-owners do not wish to sell and so hope to purchase the property at auction. This expectation can be dangerous because it is possible for a third party to outbid the co-owners who wish to purchase, resulting in the loss of the property for the family altogether.

What is a Tax Sale?

One of the most important responsibilities among co-owners is the payment of property taxes. When there are multiple generations of heirs, which is often the case, it becomes increasingly difficult to coordinate paying shared expenses, including property taxes. The inability to co-manage this responsibility can lead to a delinquency from which it can be challenging to recover. When the taxes are not paid, the amount due is treated as a lien on the property, and the city or county may initiate a foreclosure proceeding to collect on the unpaid taxes due. When the tax collector initiates this process, a lawsuit is filed against the

owner(s) requesting that the property be sold to satisfy the tax delinquency in addition to any fees that have been assessed in connection with the foreclosure. The property is then sold at a public auction.

What is the UPHPA?

The Uniform Partition of Heirs Property Act (UPHPA) is a model statute that was introduced in 2010 as a tool to stabilize heirs' property ownership by modifying partition law. The UPHPA seeks to protect generational wealth through the addition of several due process considerations aimed at keeping property within families.

Currently, 17 states and the U.S. Virgin Islands have enacted the UPHPA.^{xiii}

The UPHPA seeks to protect co-owners:

- By requiring that a right of first refusal be offered to the non-petitioning heirs.
- By developing specific criteria that judges are encouraged to consider when deciding whether to divide or sell the property, with a clear preference toward a physical division unless the division would result in a substantial prejudice.
- By expressing a preference for sale on the open market, which yields a higher sale price that allows the co-tenants to retain as much of the value of the property as possible.

WHERE TO LEARN MORE:

This Guide was developed for SRDC by the Rural Coalition in consultation with the North Carolina Association of Black Lawyers Land Loss Prevention Project, and Tuskegee University. Research conducted through SRDC by several 1890 Universities was a fundamental resource in preparing this guide, and we urge those using this resource to consult that research report here

for additional valuable information:

<https://www.srdc.msstate.edu>

For additional information, research, and resources:

Southern Rural Development Center

P.O. Box 587

Mississippi State, MS 39762

662-325-3207

<https://www.srdc.msstate.edu>

For more information on federal policies and programs to address heirs' property, contact:

Rural Coalition

1029 Vermont Avenue Suite 601

Washington, DC 20005

<https://www.ruralco.org/>

For more information on federal policy and estate planning, contact:

Land Loss Prevention Project

P.O. Box 179

Durham, NC 27702

1-800-672-5839

<https://www.landloss.org>

For More information on addressing Heirs' Property Issues especially related to farm and forest land, contact:

The Federation of Southern Cooperatives/Land Assistance Fund

2769 Church St.

East Point, GA 30344

404-765-0991

<https://www.federation.coop>

For additional research and policy resources:

Socially Disadvantaged Farmers and Ranchers Policy Center

1000 ASU Drive, #449
Lorman, MS 39096-7500
(601) 877-6601 dfrinfo@alcorn.edu
<https://sites.alcorn.edu/socially-disadvantaged-farmers/>

Other Resources:

Miss. State Univ. & Southern Rural Development Center; Southern Region

Heirs' Property Collaborative Final Report (2021).

Heirs' Property Efforts in the South: Survey Responses (2018)

"Ten Ways to Save Your Land," Land Loss Prevention Project, (2018) See:
<https://www.landloss.org/docs/t/Ten-Ways-to-Save-Your-Land-8th-Edition.pdf>

"Equity Advances in the 2018 Farm Bill," Rural Coalition (2019)
<https://www.ruralco.org/equity-advances-in-the-2018-farm-bill>

Footnotes

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- i Henry, J., Thompson, S., and Zabawa, R. (2021). Southern region heirs' property collaborative final report. Southern Rural Development Center. http://srdc.msstate.edu/heir_property/SOUTHERN-REGION-HEIRS-PROPERTY-Final-Report-2021.pdf
- ii Henry, J., Thompson, S., and Zabawa, R. (2021). Southern region heirs' property collaborative final report. Southern Rural Development Center. http://srdc.msstate.edu/heir_property/SOUTHERN-REGION-HEIRS-PROPERTY-Final-Report-2021.pdf
- iii U.S. Dep't of Housing & Urban Dev.'s Office of Policy Dev. & Research, Vacant and Abandoned Properties: Turning Liabilities into Assets (Winter 2014), <https://www.huduser.gov/portal/periodicals/em/winter14/highlight1.html>
- iv <https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property/>
- v <https://www.uniformlaws.org/committees/community-home?communitykey=50724584-e808-4255-bc5d-8ea4e588371d&tab=groupdetails>
- vi Henry, J., Thompson, S., and Zabawa, R. (2021). Southern region heirs' property collaborative final report. Southern Rural Development Center. http://srdc.msstate.edu/heir_property/SOUTHERN-REGION-HEIRS-PROPERTY-Final-Report-2021.pdf
- vii Henry, J., Thompson, S., and Zabawa, R. (2021). Southern region heirs' property collaborative final report. Southern Rural Development Center. http://srdc.msstate.edu/heir_property/SOUTHERN-REGION-HEIRS-PROPERTY-Final-Report-2021.pdf
- viii <https://www.farmers.gov/working-with-us/heirs-property-eligibility>
- ix <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/Farm-Loan-Programs/pdfs/Heirs%20prop%20FRM%20plus%20direct%20loan%20changes%207%2022%202021.pdf>
- x https://www.researchgate.net/publication/344021201_Taking_Goldschmidt_to_the_Woods_Timberland_Ownership_and_Quality_of_Life_in_Alabama
- xi Henry, J., Thompson, S., and Zabawa, R. (2021). Southern region heirs' property collaborative final report. Southern Rural Development Center. http://srdc.msstate.edu/heir_property/SOUTHERN-REGION-HEIRS-PROPERTY-Final-Report-2021.pdf
- xii See Partition of Heirs' Property Act, Uniform Law Comm'n, <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d> (last visited May 17, 2021).

This work is supported by the Agriculture and Food Research Initiative, grant no. 2019-69006-29334, from the U.S. Department of Agriculture, National Institute of Food and Agriculture.

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