
UNDERSTANDING HEIRS' PROPERTY AT THE COMMUNITY LEVEL: OVERVIEW, PREVENTION, & RESOLUTION



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UNDERSTANDING HEIRS' PROPERTY AT THE COMMUNITY LEVEL: OVERVIEW, PREVENTION, & RESOLUTION

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PAGES 3-77

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RESOURCES

PAGES 187-193

Summary of Linked Resources

This material was developed and training for trainers was provided as a partnership with the Socially Disadvantaged Farmers and Ranchers Policy Research Center at Alcorn State University, the Southern Extension Risk Management Education Center, and the Southern Rural Development Center through funding in part from USDA.



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AND RANCHERS POLICY RESEARCH CENTER



**SOUTHERN
EXTENSION
RISK
MANAGEMENT
EDUCATION**



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UNDERSTANDING HEIRS' PROPERTY AT THE COMMUNITY LEVEL: OVERVIEW



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OVERVIEW

OBJECTIVES

- Heirs' property definition
- How heirs' property is identified
- Factors associated with the prevalence of heirs' property
- Relationship between tax sales, partition sales, and land loss
- Laws, policies, and programs relevant to heirs' property

ESTIMATED TIME TO COMPLETE

2 hours

BEFORE THE MEETING

- Add dates and location to slide 1.
- Add today's presenter names to slide 4.
- Set out registration materials, including sign in and nametags.
- Prep for Activity slide 15.
- Access and test for video and sound of video on slide 34.
- Check the map on slide 57 against the source. If the map has changed, update the map and the date to reflect the current information. Map Source:
<https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>
- Set out all handouts except the evaluation for each person.

MATERIALS NEEDED

- Nametags
- Pens or pencils
- That's Me – Icebreaker, if using.

HANDOUTS AND TOOLS

- Agenda – A sample agenda for the entire curriculum is included in the overview section. If you are doing this session as a separate session, you can adapt that sample to fit your situation.

- Definitions and Key Terms
- Guidance for Heirs' Property Operators Participating in Farm Service Agency (FSA) Programs. Fact Sheet, July 2020. Available at: https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/guidance_heirs_property_operators_participating_in_fsa_programs-factsheet.pdf
- Update to FEMA's Individual Assistance Program and Policy Guide, Version 1.1 available at: https://www.fema.gov/sites/default/files/documents/fema_updated-iappg-version-1.1.pdf
- FEMA Makes Changes to Individual Assistance Policies to Advance Equity for Disaster Survivors available at: <https://www.fema.gov/press-release/20210902/fema-makes-changes-individual-assistance-policies-advance-equity-disaster#:~:text=FEMA%20is%20amending%20its%20current,the%20survivor's%20home%20before%20the>
- State Factsheets on Heirs' Property – Go to the link to identify and print the fact sheet for your state if it is available (scroll down the page to see the states). <https://farmlandaccess.org/heirs-property/#statefactsheets>
- Evaluation – The evaluation covers all three sections. If you are not doing all three sections together, you can adapt as described in the evaluation instructions.

INTRODUCTION

INSTRUCTIONS

Before the session begins, insert the date and location for your event. Have this slide up as participants enter the room.

Please acknowledge that this material was developed in partnership with the Socially Disadvantaged Farmers and Ranchers Policy Research Center at Alcorn State University, the Southern Extension Risk Management Education Center, and the Southern Rural Development Center through funding in part from USDA.

NOTE: If you do not do all three segments at the same event, insert slides 1-4 at the beginning of your other sessions as they provide the overarching foundation for the training.



Time: 1 Minute

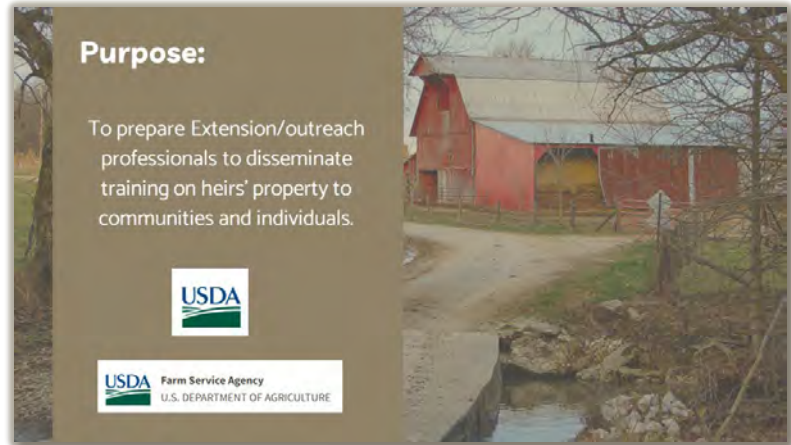
Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

Explain the purpose of the overall curriculum.



Time: 1 Minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

This slide shows the three parts of the curriculum and gives a quick view of the components covered in each section.

Topics to Explore

OVERVIEW	Heirs' property definition
	How heirs' property is identified
	Factors associated with the prevalence of heirs' property
	Impacts of heirs' property
	Relationship between tax sales, partition sales, and land loss
PREVENTION	Laws, policies, and programs relevant to heirs' property
	Basics of estate and succession planning
	Steps to prevent heirs' property when establishing a will
RESOLUTION	Reviews some of the challenges of owning heirs' property
	Importance of working with other family members
	Steps to take to understand who legally owns the property
	Legal structures that can hold land owned by heirs' property owners



Time: 1 Minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

Give time for participants to introduce themselves. You could also include a brief question for them to answer such as what is one question or curiosity you have about heirs' property. Don't take time to answer those at this point. Rather this is about acknowledging where their curiosities are, and how the group can share this time together to learn and support each other.



You may also consider using “That’s Me – Icebreaker” as a warm-up or as an energizer at some point in the training. It is in this book at the end of this section.

Time: 1 Minute

*Materials: That's Me
Icebreaker (if using)*

Handouts: None

SLIDE 1

INSTRUCTIONS

This slide begins the Overview section.



Time: 1 Minute

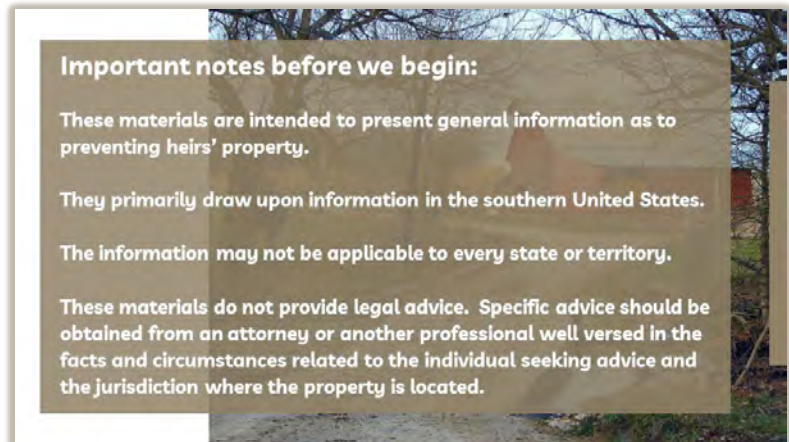
Materials: None

Handouts: None

SLIDE 2

INSTRUCTIONS

Read the disclaimer and answer any questions that may arise.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 3

INSTRUCTIONS

Please acknowledge the primary and contributing authors to this material as well as the funding stream through the Southern Rural Development Center and the Socially Disadvantaged Farmers and Ranchers Policy Research Center at Alcorn State University.

Acknowledgements

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Gloria Bromwell Tinubu, PhD
GBT Associates, LLC

Robert Zabawa, PhD
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Contributors and Reviewers

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Time: 1 Minute

Materials: None

Handouts: None

SLIDE 4

INSTRUCTIONS

Add presenter information and introduce yourselves.

Session Presenters

[add presenter information]

Time: 1 Minute

Materials: None

Handouts: None

SLIDE 5

INSTRUCTIONS

This is the section opener for discussing what heirs' property is.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 6

INSTRUCTIONS

Using the talking points on the slide, give a brief overview of what is meant by heirs' property.


Everyone gets their interest in the property. The interest amount is determined by heirship.

A person is not an heir until their previous generation has passed.

No matter what the interest size, each person is a co-owner, and all co-owners have the same amount of right (legally) to do or not do anything to the land. This will be explained more in the family tree section later in this presentation.

What is Heirs' Property?

- Refers to property passed down informally from generation to generation
- The original landowner dies without a will, or the will was not probated or administered
- State laws determines who inherits your land.
- Can potentially include multiple generations and hundreds of relatives
- No single heir has clear title to the entire parcel.



Time: 2 Minutes

Materials: None

Handouts: None

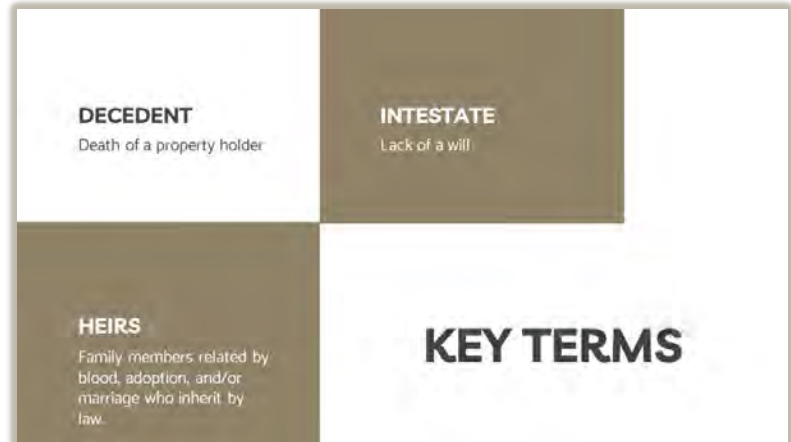
SLIDE 7

INSTRUCTIONS

The three terms on the slide provide a basis for the overview.

Heirs' property refers to, in this case, real property that is owned by someone who dies (decedent), without a will (intestate), and who has surviving family members (heirs). The state in which the decedent lived probates the property in lieu of a will or other estate plan.

Heirs cannot be determined until the death of the decedent.



Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 8

INSTRUCTIONS

This important note helps set the stage for why this education is needed. No one wants the state to make the final decision on how their estate is divided after their death.

Important

If you do not decide
how you want your estate divided,
the state where your estate (property) is
located will decide for you.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 9

INSTRUCTIONS

This chart shows the complexity of what could happen in just one state. State laws vary, making for a very complicated system.

Note: If participants begin asking a lot of “what if” questions about specific situations, use caution in responding. Rather remind participants that these are general statements intended to demonstrate the complexity of the situation.

Also, remember, and remind the participants, that you are not a lawyer, and detailed questions are better answered by a lawyer.

Source: <https://www.nolo.com/legal-encyclopedia/intestate-succession-alabama.html>

For example, if you die without a will in Alabama...

If you die with:	Here's what happens:
• Children but no spouse	• Children inherit everything
• Spouse but no children or parents	• Spouse inherits everything
• A spouse and children who belong to you and that spouse	• Spouse inherits the first \$50,000 of your intestate property, plus 1/2 of the balance of your intestate property
• A spouse and children who are not that spouse's children	• Children inherit remaining intestate property • Spouse inherits 1/2 of the intestate property
• A spouse and parents	• Children inherit 1/2 of the intestate property • Spouse inherits the first \$100,000 of your intestate property, plus 1/2 of the balance of your intestate property
• Parents but no children or spouse	• Parents inherit remaining intestate property
• Siblings but no children, spouse, or parents	• Parents inherit everything
	• Siblings inherit everything

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 10

INSTRUCTIONS

Heirs' property is a phenomenon that has personal and regional implications. The next few slides will walk participants through some data on heirs' property on different levels, helping to create understanding on the extent of the problem.



Time: 1 Minute

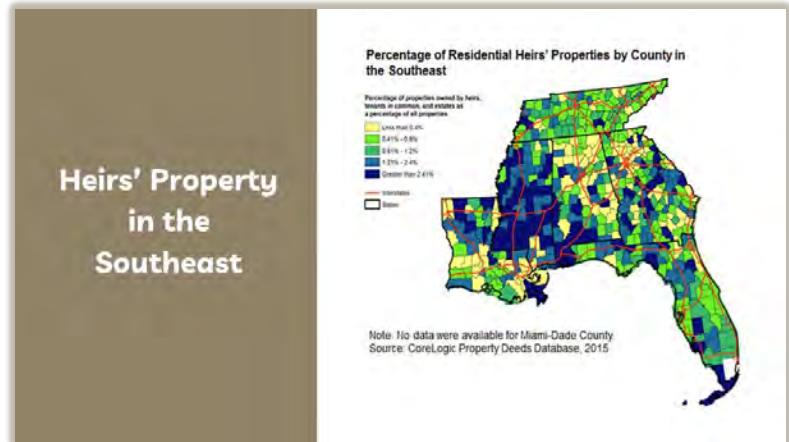
Materials: None

Handouts: None

SLIDE 11

INSTRUCTIONS

While there are concentrations of heir's property across the United States, African American heirs' property is found mainly within the Southeast region.



Time: 1 Minute

Materials: None

Handouts: None

Citation: Carpenter, A., S. Jones and J. S. Pippin. 2016. Understanding Heirs' Property in the Southeast. Federal Reserve Bank of Atlanta. Partner Update, March/April.

SLIDE 12

INSTRUCTIONS

Many families of one county may have heirs' property. Also, in many cases, those with heirs' property may not even live in the same community, county, or even state, where the property is located.



Time: 1 Minute

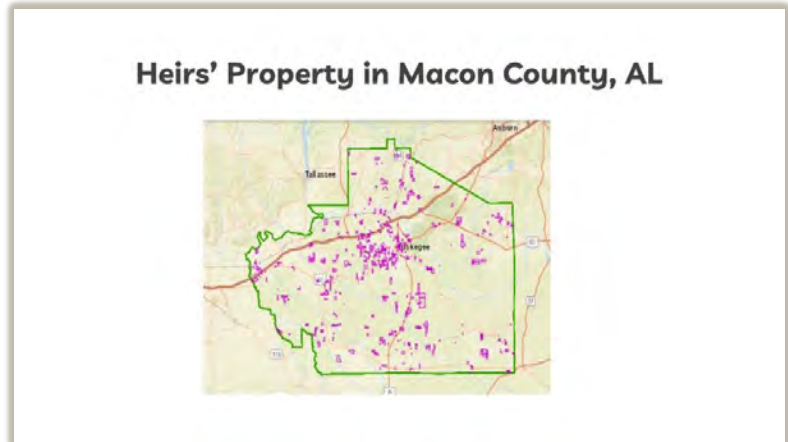
Materials: None

Handouts: None

SLIDE 13

INSTRUCTIONS

Local GIS websites can allow you to see heirs' property at the county level in some states. This example is from Macon County, Alabama, with heirs' property in red.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 14

INSTRUCTIONS

Now, let's focus on your family.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 15

INSTRUCTIONS

Online records are sometimes available through the county revenue commissioner's office (or similar office in other states). The next few slides will demonstrate an example of what might be available online.

You may find it helpful to find the local office for this training and be ready to discuss differences.

Instructions for doing this are on the next slide.

Looking Online

- Locate the county revenue commissioner's office online
- Connect with GIS site (online mapping tool)
- Type in your family's name



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 16

INSTRUCTIONS

This slide shows how Macon County, Alabama's site looks. Notice the link to the GIS Map as the starting point.

Activity: Searching your county records online

- Open your browser on your computer, phone, or other web-based device.
- Search for your county, state, GIS
- Is it accessible? If so, can you type in a search?
- If you can type in a search, type in your last name. Did anything show up?
- Discussion: Take a few minutes for different participants to share what they found or anything they noticed.



Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 17

INSTRUCTIONS

A family name can be entered to begin the search.



Time: 1 Minute

Materials: None

Handouts: None


SLIDE 18

INSTRUCTIONS

These words will sometimes appear in the search for a family name. Seeing any of these may indicate you have heirs' property. The next slide shows how those might appear.

If your family name is followed by

- "heirs of..."
- "estate of..."
- "et al. ..."
- "% interest..."
- "care of..."



Then you may have heirs' property

Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 19

INSTRUCTIONS

Point out how the different designations show up on these examples.

Examples of How This Might Look

The image shows six property tax forms arranged in a 2x3 grid. Each form has a title 'Owner Name and Mailing Address' followed by a specific designation. Orange arrows point to these designations:

- Top-left: 'HEIRS CP' (arrow points to 'CP')
- Top-middle: '75% INT & 25% INT' (arrow points to 'INT')
- Top-right: 'S ESTATE' (arrow points to 'ESTATE')
- Bottom-left: 'CC' (arrow points to 'CC')
- Bottom-middle: 'ESTATE' (arrow points to 'ESTATE')
- Bottom-right: '(DECEASED)' (arrow points to '(DECEASED)')

Each form also includes fields for 'Acct #', 'Tax Dist', and 'Exemptions'.

Time: 5 Minutes

Materials: None

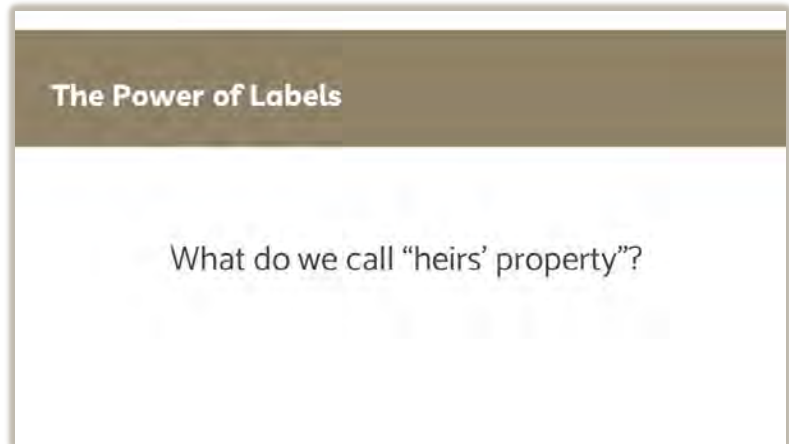
Handouts: None

SLIDE 20

INSTRUCTIONS

As these examples demonstrate, heirs' property is referred to by a lot of different names. These variations sometimes even appear within the same county.

Discussion: What challenges do you think this might cause?



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 21

INSTRUCTIONS

In addition to the challenges of having different terms for heirs' property, inconsistencies in how they are written create even more challenges. Additionally, search terms also may be part of larger terms, "heir" is inside "their" and "estate" may be a proper name for a residential community, or the name of a road.

Label Challenges – Searching for terms



Term	Examples of how it might be written
Heir	Heir
Deceased	Deceased, Dec., Dec'd.
Estate	Estate, Est.
Et al	Et al, etal

Other search challenges:

- The word "heirs" is also part of the word "their"
- "Estate" may be part of a proper name (i.e. "Garden Estate")

Also, while all the land tracts listed under et al, or estate, etc. may not be heirs' property, a significant percentage may be.

Therefore, it may be necessary to ask your county official, the Tax Assessor, the Revenue Commissioner, etc., what term(s) they use to indicate heirs' property.

Time: 5 Minutes

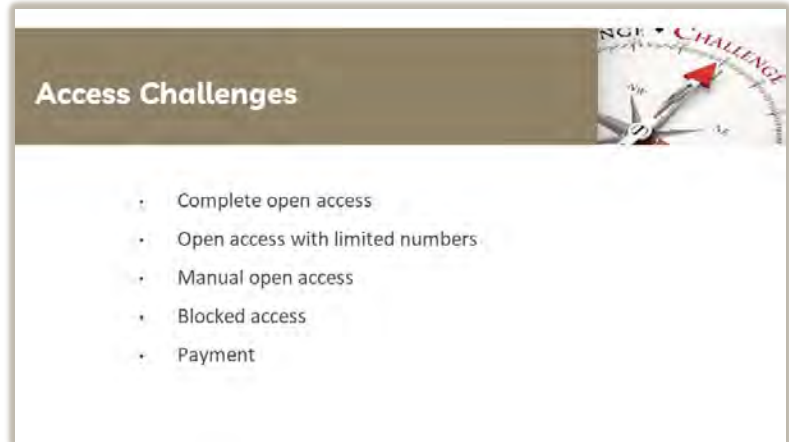
Materials: None

Handouts: None

SLIDE 22

INSTRUCTIONS

Different counties have differing levels of access to on-line land parcel information. Some information is easily accessible, while some may require a login and password, or even a fee.



Access Challenges

- Complete open access
- Open access with limited numbers
- Manual open access
- Blocked access
- Payment

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 23

INSTRUCTIONS

Heirs' property may restrict what the land can be used for, including generating income or improving it, e.g., getting a loan to build a permanent structure such as a house.

Heirs' property restricts how land can be managed. Heirs need to agree on any decision concerning the land, including division of profits, for example:

- Timber harvesting and reforestation
- Farm planting and harvesting
- Mineral rights
- Mortgages and other loans
- USDA programs
- Conservation easements



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 24

INSTRUCTIONS

This slide shows how limits in use of heirs' property land ultimately impact the community.

If heirs' property affects how land is managed, and it cannot be developed to its full potential, then the community loses on potential taxes based on increased development and improvements.

This impacts:

- Roads and Bridges
- Fire and Safety
- Sanitation
- Education



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 25

INSTRUCTIONS

Review these summary points to prepare for the next section.

SUMMARIZING

Up to this point we know that...

- 01 Heirs' property land is held without marketable title
- 02 Heirs' property is passed from one generation to the next due to lack of probated will or judicial proceeding
- 03 Heirs' property has limited investment potential and is at risk for loss through legal and other means

Time: 1 Minute

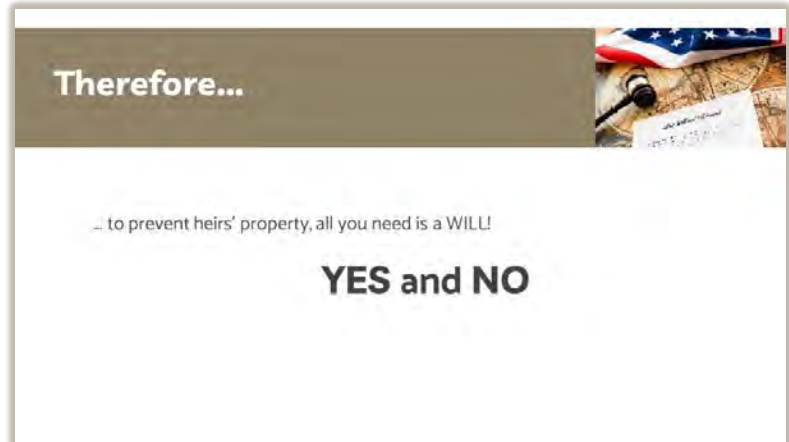
Materials: None

Handouts: None

SLIDE 26

INSTRUCTIONS

Some might quickly assume that all that is needed is a will. However, several points come into the picture as families navigate this space.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 27

INSTRUCTIONS

This slide discusses the “yes/no” in more detail. Note that in addition to the slides in this overview section, this curriculum includes a more detailed section on prevention of heirs' property through estate planning.

Competing Strategies



YES: a properly executed will, written according to state law, that divides land into specific acreages or parcels, can secure title to land from one generation to the next.

NO: a properly executed will is not the only way that property can be transferred from one generation to the next.

The first action is a *legal strategy* and the second is a *cultural strategy*.

Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 28

INSTRUCTIONS

Several barriers exist to transferring land. Some of the most often noted ones are listed here.

Previous studies have found that a large percentage of Americans in general do not have a will (often as high as 50%). The percentage of African Americans without a will is significantly higher, approaching 70% or more. The reasons for not writing a will or other forms of estate planning include misinformation about how, when or who to include in a will; the avoidance of family disputes on who will receive what assets; to even beliefs that writing a will indicates that a person is ready to die or will bring on death.

The expense for an attorney is not insignificant, though some may provide a sliding scale.

Many landowners have past experiences or heard stories dealing with lawyers, judges, and other county officials who participated in land takeaway schemes.

Legal



Barriers to transferring land as a legal strategy include:

- Lack of knowledge about wills
- Expense of hiring attorney
- Mistrust of a legal system that has often helped take away land

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 29

INSTRUCTIONS

On the other hand, some families prefer that all family members have equal access to family land. Unfortunately, besides the economic consequences of heirs' property (provided previously), having unsecured title means that the land is vulnerable to partition sales (upcoming slides).

Read this quote.

Pair/share: What do you hear in this quote that is similar to your family's thoughts about land ownership? What is different?

Cultural: Consider this Quote

"For [the family], the commitment to heir land remained in force, enforced not by law - where the practice and concept was vulnerable - but by shared understanding... The land should stay undivided, open to and for all the heirs.

Land is not a commodity that is sold, but a right that is transferred to kin as needed.

The land was for open access and undivided family use, and not to be restricted by deeds."

A Mind to Stay: White Plantation, Black Homeland, Sydney Nathans (2017)

Time: 5 Minutes

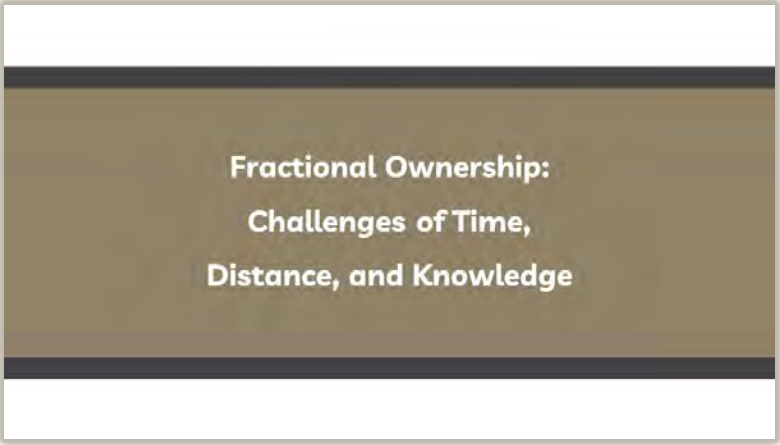
Materials: None

Handouts: None

SLIDE 30

INSTRUCTIONS

This section header signals a change in topics. The next few slides discuss how heirs' property challenges can grow over time and distance.



**Fractional Ownership:
Challenges of Time,
Distance, and Knowledge**

Time: 1 Minute

Materials: None

Handouts: None

SLIDE 31

INSTRUCTIONS

Heirs' property means that heirs have an undivided fractional interest in the land. Fractional here means a percentage interest as opposed to actual acreage. Note these two key factors that influence fractional interest. These are discussed further in the next slide.

Fractional Ownership

The **SIZE** of each heirs' fractional ownership interest depends on several factors such as:

- How many generations removed is an heir from the original deceased landowner?
- How many heirs can rightfully take their inheritance at a specific point in time?



Time: 1 Minute

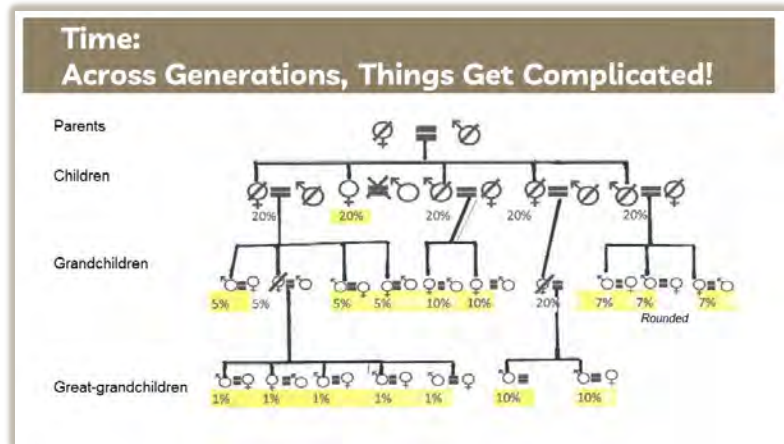
Materials: None

Handouts: None

SLIDE 32

INSTRUCTIONS

In this example, the diagram shows three generations of heirs, with more people in each generation having a smaller fractional interest. Each generation gets a percentage of their parents' share. So, in this example, the five children each had 20%. But as they pass away, their percentage is divided among their respective children.



So here, the differences are:

- Generation 1 (children) – 1 heir surviving at 20%
- Generation 2 (grandchildren) – 8 heirs surviving, with 10%, 7% (rounded), and 5%
- Generation 3 (great-grandchildren) – 7 heirs surviving, with 10% and 1%.

Time: 10 Minutes

Materials: None

Handouts: None

In all, there are 22 heirs, 16 heirs surviving, across three generations, with fractional interests ranging from 20% to 1%.

NOTE: Remember, although not depicted here, a spouse of a deceased heir may inherit that person's share.

SLIDE 33

INSTRUCTIONS

As time goes on, heirs may move to different places and no longer have strong connections to the land. Yet they are still heirs. The lack of connections may leave the land vulnerable as remote heirs may be more willing to sell their share in the land to someone outside the family.

This video (next slide) tells the story of one such family.

Distance Causes Challenges

Heirs may not all live on or near the land.

Distance can lead to disinterest.

- (Stars are just an example showing how families can become geographically scattered.)



Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 34

INSTRUCTIONS

Search Title: "How Property Law Is Used to appropriate Black Land"

After viewing the video, ask participants what they have learned from this family's experience?



Source: https://www.youtube.com/watch?v=ls3P_Fic07I

Time: 22 Minutes

Materials: None

Handouts: None

SLIDE 35

INSTRUCTIONS

Read this quote.

Pair/share – Do you see this situation in your family? What interest do you see in younger generations in maintaining the land?

What challenges could be created if any of the heirs are no longer interested in keeping the land?

Knowledge

"When young people grow up...they don't see the necessity of owning land...My parents, my grandparents, suffered all their lives to buy eleven hundred acres of land...[Land] had a sentimental value to it, 'cause we had to get a livelihood, we had to get our bread from the land....Now children think that milk comes from the store....They don't see the relevance of the land...[They] have no idea what it took for black folks to own land."

A Mind to Stay: White Plantation, Black Homeland, Sydney Nathans (2017)

Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 36

INSTRUCTIONS

In sum, family land is hard to manage. Here are reasons why.

With numerous co-owners, the following can occur, which can impede proper management of the land:

- Heirs do not live on or near the land
- Heirs do not live near each other
- Heirs do not know one another
- Heirs do not know how to locate one another
- Heirs do not have a connection to the land

Summing Up the Management Challenges:

Over time, heirs may not:

- Live on or near the land
- Live near each other
- Know one another
- Know **how** to locate one another
- Have a connection to the land



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 37

INSTRUCTIONS

This slide begins another example of land fractionation over time.



Time: 1 Minute

Materials: None


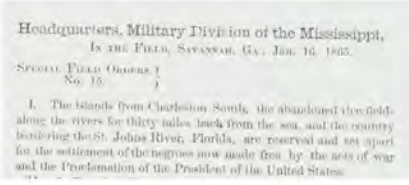
Handouts: None

SLIDE 38

INSTRUCTIONS

A famous example is land taken by the advancing Union armies and distributed to the formerly enslaved.

40 Acres and a Mule



Headquarters, Military Division of the Mississippi,
In the Field, Savannah, Ga., Jan. 16, 1865.
SPECIAL FIELD ORDERS,
No. 15.

I. The islands from Charleston South, the abandoned ricefield, along the rivers for thirty miles back from the sea, and the country bordering the St. Johns River, Florida, are reserved and set apart for the settlement of the negroes now made free by the acts of war and the Proclamation of the President of the United States.

Sherman's Field Order No. 15

"Pertain only to South Carolina, Georgia and Florida coastline and was based on the redistribution of 40,000 acres into 40 acres segments"

Time: 5 Minutes

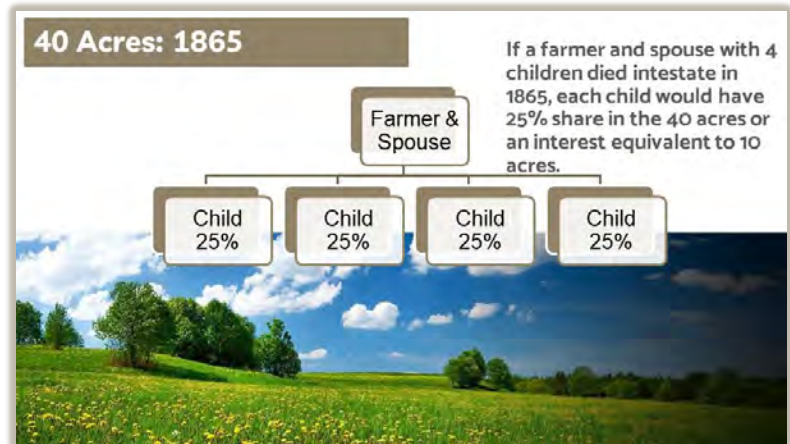
Materials: None

Handouts: None

SLIDE 39

INSTRUCTIONS

Walk participants through this example that might happen in 1865.



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 40


INSTRUCTIONS

“Fast forward” the story to 2020.
How would the story be different?

40 Acres: 1865 - 2020

If each child had 4 children across the 8 generations until 2020, there would be 65,536 heirs, each with a shared interest equivalent to 0.0006 acres, or about 26 square feet.

1865	Gen's	Heirs	40 Acres
	1	4	10
	2	16	2.5
	3	64	0.62
	4	256	0.16
	5	1,024	0.04
	6	4,096	0.01
	7	16,384	0.002
2020	8	65,536	0.0006



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 41

INSTRUCTIONS

Because heirs' property is land without secured title, it is often the target of takeaway strategies, many legal. This next section explores some of the common ways in which the land is lost.

Part II: Land Loss

Landownership has been a privilege denied, stolen and lost for many rural African American communities in the South.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 42

INSTRUCTIONS

This slide outlines some of the ways heirs' property can be lost.

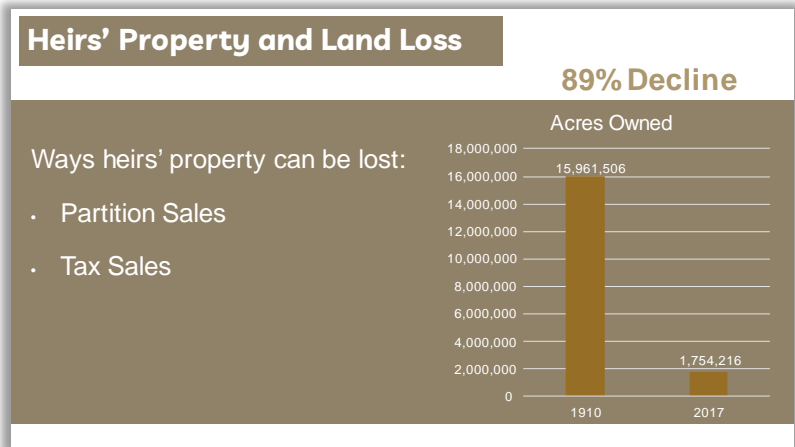
In 1910, there were 15,961,506 acres on Black-owned farms in full-ownership (with no additional rented acres or part-ownership, or land used by tenants or sharecroppers). By the last agricultural census in 2017, this number has declined by 89% to 1,754,216 acres on Black-owned farms in full-ownership.

Major cause of this land loss was through land as heirs' property.

Ways heirs' property can be lost:

- Partition Sales
- Tax Sales

...and some heirs have no interest in the land at all.



Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 43

INSTRUCTIONS

If you don't pay your property taxes, the county auctions your tax bill and interest in a "bid down" process starting at 12%. If you don't reclaim your tax lien within three years, which includes repaying the tax bill plus interest, then the land will go to the bidder.

There are always investors who look for these tax sales as a way of either getting land for just the tax value, or as a way to invest their capital at a high interest rate.

This means that all heirs/landowners, particularly absentee landowners, need to keep track of who is paying the property taxes on their heirs' property.

Tax Sales

Alabama Example: From Non-payment of Taxes:

- Taxes due in October
- Delinquent after December 31st
- Tax sales on May 3, 2021
 - Auction for payment of back taxes and fees, with bidding for interest starting at 12% and going down, to receive a tax lien certificate
 - After 3 years, owns the property (land, house)
 - Up to 3 years, owner has chance to buy back the tax deed by paying past taxes plus interest, up to 12%

Macon
County
Tax Lien
Auction

WHEN
May 4, 2021-Online

WHERE
<http://www.govvase.com/auctions>

TIME
10 am to 4 pm

Auction Details: 01
Purchase Commencement
Macon County, GA

IMPORTANT DATES

MARCH 16, 4:30PM
Last day to pay before delinquency

MARCH 16TH
Tax Lien Auctions can begin to get Taxpayer Items

MARCH 20
Online Registration can begin www.govvase.com

APRIL 30
Online Registration End at 4:30pm

MAY 3
Date for Tax Deeds

MAY 4
Tax Lien Auctions End at 4:30pm

MAY 5
Mailing Bidder's Mail Box before 4:30

Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 44

INSTRUCTIONS

A partition action may be brought against the co-tenants of heirs' property, either family members or non-family members. While a co-tenant cannot "sell" the land, they can sell their interest in the land. In this case, an outside party can gain access to the land as if they were a part of the original family unit, with all the rights and obligations. In

many cases, the point of gaining access to the land is to file a partition action with the final objective of gaining the whole piece of land.

- Partition sales are a common way African-American landowners have lost, and continue to lose, their land.
- A partition sale is a court-ordered sale of land.
- A partition action may be brought by any co-tenant, regardless of their percent interest.
- With a partition sale, at public auction, the highest bidder becomes the owner. The proceeds from the sale are then distributed among all the co-tenants of the property according to the size of their fractional interest.
- The end result is that the land is lost to the family

Partition Sales



Partition Sales*:

- A common cause of land loss among African-American landowners
- A court-ordered sale of land
- May be brought by any owner of a fractional interest, regardless of their percent interest
- At public auction, the highest bidder becomes the owner.
- Proceeds from the sale are distributed among co-tenants based on their fractional interest
- Result: family **loses** the land

* In the absence of the Uniform Partition of Heirs' Property Act, discussed later in this session

Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 45

INSTRUCTIONS

This slide introduces the section on impacts of heirs' property. The next few slides provide the details.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 46

INSTRUCTIONS

Heirs' property impacts multiple levels from the personal/family to community levels.

Impacts	
01	On personal and family assets
02	On community development
03	On participation in federal programs

Time: 1 Minute

Materials: None

Handouts: None

SLIDE 47

INSTRUCTIONS

While owners of heirs' property have an asset, it is an asset with very limited capacity. Stress these shortcomings of this asset.

- Promoting intergenerational poverty – the lack of personal ownership of the land inhibits wealth creation.
- Inhibiting full use of the land– some potential uses of the land require all heirs to agree, which can be challenging
- Hindering insuring property – May require proof of ownership, which is challenging for heirs
- Blocking access to some federal programs – some federal programs require proof of ownership to participate

Impact on Personal and Family Asset:

- Promoting intergenerational poverty
- Inhibiting full use of the land
- Hindering insuring property
- Blocking access to some federal programs



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 48

INSTRUCTIONS

This slide introduces the next topic: provisions of the 2018 Farm Bill.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 49

INSTRUCTIONS

The Farm Bill is an omnibus piece of legislation (meaning it contains numerous pieces of legislation) that controls many farm programs coming out of USDA. It is passed every five years, and the last one was in 2018.

Enacted on December 20, 2018, the 2018 Farm Bill provides support for farmers, ranchers, and forest stewards through a host of farm loan programs, conservation, disaster assistance and other safety nets. The Farm Bill gives states some incentives to pass the Uniform Partition of Heirs' Property Act (UPHPA), discussed in detail in Part V.

The provisions in the 2018 Farm Bill relevant to heirs' property owners include those making certain farmers operating on the land that is heirs' property eligible to receive a farm number and participate in U.S. Department of Agriculture (USDA) programs. The bill also requires USDA to collect and report on data related to farmland ownership, tenure, transition, and entry of beginning and socially disadvantaged farmers and ranchers.

Farm Bill 2018

Issues addressed relevant to heirs' property owners:

- Eligibility provisions for heirs' property operators to obtain a farm number
- Conservation and Heirs' Property
- Heirs' Property as barrier to participation with USDA
- USDA Farm Services Agency Relending Program for those seeking to resolve heirs' property
- Farmland ownership data collection

Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 50

INSTRUCTIONS

The Farm Bill language ensures more farmers – especially African American farmers and farmers of color operating on land with undivided interests – can secure farm numbers and access USDA programs that enable them to protect the soil and water, continue to operate viable farms that feed their communities, and pass farming vocation and farmland on to future generations

Farm Bill 2018 and Heirs' Property Owners

The Farm Bill ensures more farmers can:

- Secure farm numbers and access USDA programs that enable them to protect the soil and water;
- Continue to operate viable farms that feed their communities
- Pass farming vocation and farmland on to future generations

Gives states incentives to adopt the Uniform Heirs Property Partition Act which:

- Gives protection for owners of heirs' property;
- Improves notification practices;
- Broadens judicial consideration
- Establishes priorities for buyout by family members of the interest of the individual and physical division of the land

A full discussion of the UHPA is in Part V of this presentation.

Addition of the Fair Access for Farmers and Ranchers Act has already provided a critical incentive to more states to adopt the Uniform Heirs Property Partition Act. This is important because the UHPA establishes several important protections for owners of heirs' property: improved notification practices, broader judicial consideration – courts, for example, would consider how long a family has owned the land and whether that family would be rendered homeless if it were sold – and the establishment of priorities for buy-out by family members of the interest of the individual requesting sale and physical division of the land before a forced sale would be permitted.

Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 51

INSTRUCTIONS

The 2018 Farm Bill also authorizes the Farm Service Agency (FSA) to loan funds to qualified intermediaries to relend to families seeking to resolve heirs' property issues and obtain clear title to farmland that has multiple owners. The program is authorized in appropriation of up to \$10 million annually.

For the first time, FSA is authorized to lend to cooperatives or other intermediary institutions authorized to make loans with priority to entities with experience working with socially disadvantaged farmers and ranchers.

Congress has provided \$5 Million with another \$5 million pending but the program has not yet started lending.

Sec 5601 also allows families to access State Mediation programs to resolve succession issues.

Heirs' Property Relending Program



Relending Program through Farm Service Agency (FSA):

Purpose:

Authorizes loan funds to qualified Intermediaries to relend to families seeking to solve heirs' property issues and obtain clear title

Funding:

Appropriated up to \$10 million annually

Funded by Congress at \$5 Million with another \$5 Million pending

Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 52

INSTRUCTIONS

For decades, state partition laws contributed to widespread and devastating land loss among families who owned land as tenants-in-common. As a result of class action lawsuits and the publication of an article on partition action abuses, a task force was formed to start efforts to reform partition law. The next few slides give an overview of what this means to heirs' property owners.



Time: 1 Minute

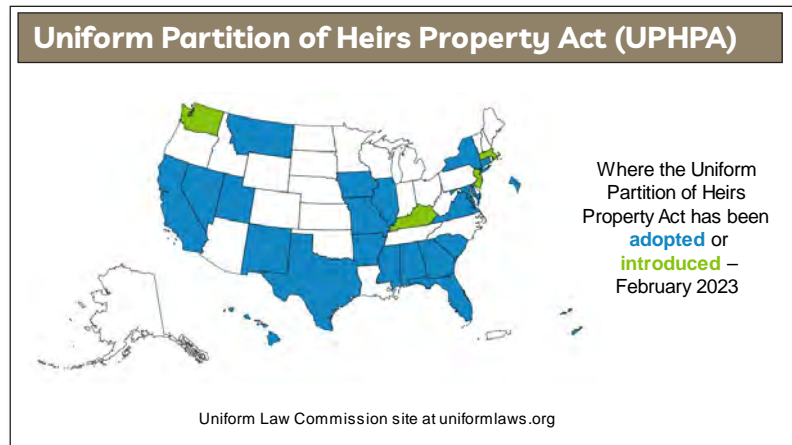
Materials: None

Handouts: None

SLIDE 53

INSTRUCTIONS

The American Bar Association's (ABA) Section of Real Property, Trusts and Estates Law formed a task force and submitted a proposal in 2006 to the Uniform Law Commission. The Uniform Law Commission also known as the National Conference of Commissioners on Uniform State Laws worked to develop a model State statute that would address partition laws. The Uniform Law Commission approved the Uniform Partition of Heirs Property Act ("UPHPA") in the summer of 2010. It is important to note that the Uniform Law is not effective until adopted by state legislature. This is a map of states that have enacted the Uniform Partition of Heirs Property Act, highlighted in blue. It also shows states where the UPHPA was introduced in states highlighted in green.



Time: 2 Minutes

Materials: None

Handouts: None

Source: <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>

NOTE - Be sure to check this map source and update the map and the date before the presentation if anything has changed.

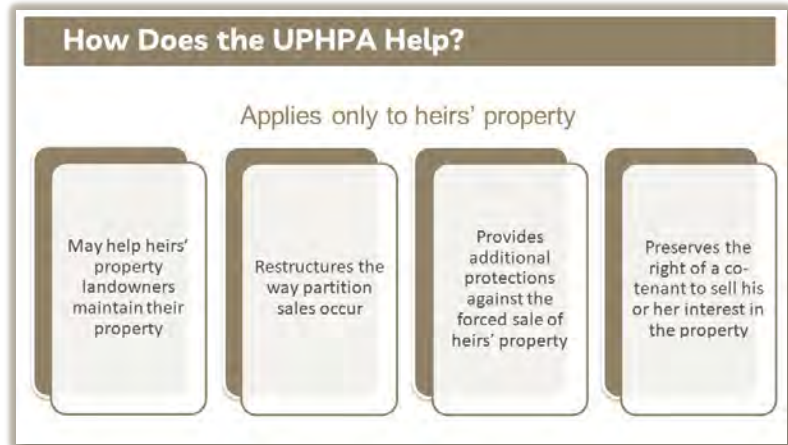
SLIDE 54

INSTRUCTIONS

This slide gives an overview of how the UPHPA helps heirs' property owners. The UPHPA contains legal protections for heirs' property landowners designed to address the devastating effects of partition sales while balancing the interest of all owners of the property. In order for a partition action to be governed by the UPHPA, the property in question must constitute "Heirs Property" as defined by the UPHPA.

NOTE: A co-tenant is defined as a person having a fractional ownership interest in property.

The next few slides give more detail.



Time: 2 Minutes

Materials: None

Handouts: None

Source: The Uniform Partition of Heirs Property Act, Section 2. Definitions

SLIDE 55

INSTRUCTIONS

This slide gives a snapshot of the specific protections included. The following slides go into more detail.

How Does the UHPA Help?	
Provides the following protections in partition actions:	
01	Enhances Notice
02	Independent Appraisal
03	Right of First Refusal
04	Preference for Partition-in-Kind
05	Open-Market Sale
06	Partition in Kind- Dividing land into pieces of equal value for co-tenants

Time: 1 Minute

Materials: None

Handouts: None

SLIDE 56

INSTRUCTIONS

The new sales procedure is designed to mirror the traditional procedures real estate brokers use when they market properties and provides enhanced notice regarding the partition sale. In addition to sending notice of filing of a partition action to all known heirs' who are locatable, the plaintiff shall post a conspicuous sign on the heirs' property.

Enhances Notice

Co-tenant requesting a partition MUST:



- Provide notice of the partition action to all co-tenants; and
- Post a conspicuous sign on the heirs' property.

- The sign must state that an action for partition has commenced and list the name and address of the court.
- The court may require the plaintiff to publish on the sign the name of the plaintiff and of any known cotenants.

Time: 2 Minutes

Materials: None

Handouts: None

- **Source:** The Uniform Partition of Heirs Property Act, Section 4: Service; Notice by Posting.

SLIDE 57

INSTRUCTIONS

Co-tenants can agree on the value of the property. If, however, all co-tenants do not agree on the value of the property, the court will order a disinterested licensed real estate appraiser to determine the fair market value of the property.

Independent Appraisal

- Unless all parties agree on the value of the property, the court determines the property's fair market value.
- A disinterested, licensed real estate appraiser in state where the property is located is usually appointed or the judge may determine that the value of the property does not justify the expense.



Source: Uniform Partition of Heirs Property Act, Section 6.
Determination of Value.

Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 58

INSTRUCTIONS

The Right of First Refusal or Buy-Out Provision allows a co-tenant who did not request a partition by sale to purchase the property. Any cotenant who does not request a partition sale may purchase the share of the cotenants who petitioned the court for a sale. If two or more cotenants want to purchase the property, the court will divide the seller's interest between the buyers according to their existing ownership shares.

Right of First Refusal or Buy-Out Provision

- Any co-tenant not seeking partition by sale may buy the interest of the co-tenant(s) seeking partition by sale.
- If more than one co-tenant wants to purchase the property, the court will divide the seller's interest between the buyers according to their existing ownership shares.



Time: 1 Minute

Materials: None

Handouts: None

Source: Uniform Partition of Heirs Property Act, Section 7. Co-tenant Buyout.

SLIDE 59

INSTRUCTIONS

A co-tenant may elect to have his or her share of property awarded in kind where the court divides the property into physically distinct and separately titled tracts. The UPHPA requires a court to determine whether a partition-in-kind is appropriate when a co-tenant chooses to partite the property in kind or when no co-tenant decides to purchase the shares from the co-tenant who petitioned the court to sell the property. A preference exists to divide the property in kind unless the court using the "totality of the circumstances" test and considering economic and non-economic factors finds a partition in kind will result in manifest prejudice to the cotenants as a group.

Preference for Partition-in-Kind

If no co-tenant decides to purchase the shares from the co-tenant who petitioned the court to sell the property, or there is a co-tenant who has requested partition in kind, the court must use the "totality of the circumstances" test to determine whether a partition-in-kind is appropriate, considering:

- Economic factors such as the value of total land compared to value if sold as parcels
- Sentimental attachment to the land
- Lawful use of the land (Residing on the land)
- Paid property taxes, maintenance, and other expenses associated with the land

Time: 2 Minutes

Materials: None

Handouts: None

Economic factors: The total fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole.

Non-economic factors considered by the court are:

- Sentimental attachment to the land
- Lawful use of the land (Residing on the land)
- Paid property taxes, maintenance, and other expenses associated with the land

Source: Uniform Partition of Heirs Property Act, Section 7. Co-tenant Buyout.

SLIDE 60

INSTRUCTIONS

If the property is to be sold, it must be listed with a licensed real estate broker for sale at a price no lower than the court-determined value for a reasonable time. If another method will produce a better price, the Court may waive the open-market sale procedure.

Open-Market Sale

- If the property is sold, it must be listed with a licensed real estate broker for sale at a price no lower than the court-determined value for a reasonable period of time.
- The court may order a sale by another method if the open market sale is unsuccessful.



Time: 1 Minute

Materials: None

Handouts: None

Source: Uniform Partition of Heirs Property Act, Section 10. Open-Market Sale, Sealed Bids, or Auction.

SLIDE 61

INSTRUCTIONS

This is important to note to participants.

Legal language per Alabama Code:

“A partition, sale or other disposition of property pursuant to this chapter shall not affect or displace a mortgage or other lien on the property and shall not affect or displace the obligations of any person who is a party to the mortgage or other lien or who is obligated on any note or other agreement secured by the mortgage or other lien.” Ala. Code 35-6A-12

Effect on Liens

A partition or sale for division under the UHPA doesn't mean you won't be responsible for existing mortgages or liens on the property. You will likely still be obligated to satisfy/pay them.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 62

INSTRUCTIONS

Be sure to emphasize that for your audience to understand how the UHPA can help resolve their heirs' property issue, it is important to speak with an attorney licensed to practice law in the state where the land (real property) is located.

Points to discuss include:

- The ethical rules concerning representing a family or one or more members
- Whether UHPA is enacted in your state, and if not, how the heirs' property law is governed
- How the UHPA or other applicable real property law may help resolve your heirs' property issue.

Critical Step to determine how the UHPA can help you...

Speak with an attorney licensed to practice law in the state where your land (real property) is located about the UHPA, its enactment in your state, and how it can help resolve your heirs' property issue.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 63

INSTRUCTIONS

Thank the participants and ask for any additional questions.



Time: 1 Minute

Materials: None

Handouts: None

Understanding Heirs' Property at the Community Level

[SAMPLE AGENDA]

[LOCATION]

[DATE]

[DATE]

- | | |
|-------|--|
| 8:30 | Welcome, orientation, objectives |
| | Introductions and warm-up |
| 9:15 | Overview |
| 10:00 | Break |
| 10:25 | Overview, continued |
| 12:00 | Lunch |
| 1:00 | Regroup, questions from over lunch, transition to Prevention |
| 1:20 | Prevention |
| 3:00 | Break |
| 3:20 | Day One Reflections, |
| 4:30 | Adjourn |

[DATE]

- | | |
|-------|--|
| 8:30 | Warm-up, recap, overnight questions |
| 9:00 | Resolution |
| 10:10 | Break |
| 10:30 | Resolution, continued |
| 12:10 | Last items, evaluation, closing activity, thanks |
| 12:30 | Adjourn |

[YOUR LOGO HERE]

HEIRS' PROPERTY: DEFINITIONS AND KEY TERMS

“DURING LIFE” DOCUMENTS

Conservatorship and/or Guardianship – the appointment of a guardian or conservator by a judge to manage the financial affairs and/or daily life of another person due to old age or physical or mental limitations

Living Will (advance healthcare directive) – a written, legal document that spells out medical treatments you would or would not want to be used to keep you alive, as well as your preferences for other medical decisions, such as pain management or organ donation, when you can no longer make decisions for yourself

Power of Attorney (POA) – a legally binding document that allows you to appoint someone to manage your property, medical, or financial affairs

“END OF LIFE” CONCEPTS, ROLES, & DOCUMENTS

Key Concepts

Assets – real or personal property (including cash/liquidity) owned by a person or company, regarded as having value and the ability to meet debts, commitments, or legacies.

Decedent – a person who has died

Estate – a person's property or net worth. When the person is deceased, their estate goes through probate and is distributed according to the terms of their Last Will & Testament. If there is no will, the estate is “administered” in accordance with the state's laws of intestate succession

Estate Administration – a court-administered process in which the probate court administers the estate in accordance with the state's laws of intestate succession to the decedent's heirs-at-law

Intestate – the decedent died without a valid Last Will & Testament. When a person dies intestate, the estate is distributed in accordance with the state's laws of intestate succession, after creditors are paid

Probate – a court-administered process in which the probate court confirms the validity of a Last Will & Testament and allows other people the option to challenge the will. The estate is then administered in accordance with the Last Will & Testament. (Called “succession” in Louisiana)

Testate – the decedent died with a valid Last Will & Testament

Roles

Administrator - a court-appointed person ordered to manage the estate of a deceased person who died intestate

Beneficiary - a person entitled to receive funds or other property under a trust, Last Will & Testament, retirement account, or insurance policy.

Executor/Executrix - a court-appointed person or institution who is responsible for carrying out the terms of a Last Will & Testament and overseeing the probate of the Will & administration of the assets/estate

Heir - a person legally entitled by law to the property of a decedent; a person inheriting and continuing the legacy of a predecessor

Notary - a person authorized to perform certain legal formalities and certify/witness signatures on estate planning documents, contracts, deeds, etc.

Personal Representative - a collective name for either Executors or Administrators

Spouse - a life partner in a marriage, civil union, or common-law marriage as recognized by state law

Testator/Testatrix - a person who has written and executed a Last Will & Testament before their death

Trustee - a trustee is a person or business that administers a trust

Documents

Codicil - an addition or supplement that explains, modifies, or revokes a Last Will & Testament or part of one

Holographic Will - a handwritten and testator-signed document that is legally binding in some states, but not produced by a lawyer

Irrevocable Trust - created when a person gives up his/her rights to change the terms of a trust once created. The trustor/grantor cannot later change the terms of an irrevocable trust.

Last Will & Testament (Will) - a document which directs how property (including minor children) is to be distributed to beneficiaries and heirs upon a person's death

Living Trust - a legal arrangement established by an individual (the grantor/trustor) during their lifetime to protect their assets and direct their distribution after the grantor's death. Avoids the probate process.

Mutual Will - a type of will, usually executed by a married or committed couple, that is mutually binding

Revocable Trust - allows the trustor/grantor to amend and make changes to the trust after it has been formed

Testamentary Trust - a trust that is specified in and created by a person's Last Will & Testament

Trust - a fiduciary arrangement that allows a third party, or trustee, to hold assets on behalf of a beneficiary or beneficiaries.

Ownership/Distribution of Property

Community Property - property owned jointly by a married couple (in some states).

Heir's Property - property owned jointly by numerous co-owners, most of whom are related. It usually passes from one generation to another when a landowner dies intestate or with no succession/estate planning for the land

Joint Tenancy with Rights of Survivorship - the holding of an estate or property jointly by two or more parties, the share of each passing to the other or others upon death.

Life Estate - an interest in property only for the life of a person with the remaining interest (remainder) to vest in others upon the death of the person holding the life estate

Per Capita - Latin term = "by head" or "for each head." The inheritance is distributed among all the heads of your beneficiaries within the same generation/class. Lower generations are effectively disinherited.

Per Stirpes - a way of distributing the estate of a decedent where each branch of the family receives an equal share of an estate. Latin term = "by roots" or "by branch"

Tenants-In-Common - co-owners who jointly own property without rights of survivorship

Transfer on Death/Payable on Death - lets beneficiaries receive assets at the time of the person's death without going through probate

Types of Entities

Corporation - a legal entity that is separate and distinct from its owners. For profit corporations act through a board of directors selected by its shareholders (owners).

Limited Liability Company - a legal entity that is separate and distinct from its owners. It acts through its manager(s) or its members (owners)

HEIRS' PROPERTY

"THAT'S ME" ICEBREAKER

Instructions: Tell everyone in the room to move their chairs back so they can stand up and sit down easily without bumping into tables or other people. Let people know that if standing up and sitting down is difficult for them, they can simply raise their hands high.

To start, tell participants you will be reading some statements. If the statement is true for them, they will stand up, say "That's me" then sit back down. They start the icebreaker sitting down.

Do a quick practice statement relative to why people are assembled. This could include something like:

- I am in [location].
- I am at the [event name].

Encourage people to be enthusiastic with their responses. "That's me"

Some sample statements:

- I have lived in only one state my whole life.
- I have lived in another country.
- I have driven a tractor
- I have cooked for more than 20 people.
- I am the baby of the family.
- I am the oldest child in the family.
- I am a middle child.
- I work for a Land-Grant University
- I work for a non-profit or community-based organization
- I am a lawyer.

You can add/adapt to fit the content of your session. You can go to really fun and unusual statements, such as:

- I have ridden in a hot air balloon.
- I like rollercoasters.
- I like a good watermelon

or add in some that are more serious.

- I am deeply concerned about heirs' property.
- I know someone who has lost heirs' property land.
- My family has lost heirs' property land.

UNDERSTANDING HEIRS' PROPERTY AT THE COMMUNITY LEVEL: PREVENTION



Alcorn.

SOCIALLY DISADVANTAGED FARMERS
AND RANCHERS POLICY RESEARCH CENTER



OBJECTIVES

- Basics of estate and succession planning
- Steps to prevent heirs' property when establishing a will

ESTIMATED TIME TO COMPLETE

3 hours

BEFORE THE MEETING

- If you are continuing this presentation on the same day as the overview, remove the introduction slides (slides 1-4)
- Insert today's presenters on slide 4 of the prevention section.
- Prepare cards for What's My Meaning Game by printing on card stock and cutting to make the card deck
- Print out copies of the Sample Role Play Script (one copy for each person who will play a role). Feel free to adapt this to fit your audience.

MATERIALS NEEDED

- In-person: What's My Meaning Game.
 - Definitions and Key Terms Card Set – print on cardstock and cut out for use in the game.
- Virtual: What's My Meaning Game.
 - Quizlet: Use online flashcards and quizzes to learn the terms
 - Jamboard: Write the terms and definitions on sticky notes and participants work in a group to match them up
 - Flippity: Can create online games to facilitate vocabulary quizzes
- Sample Role Play Scripts

HANDOUTS AND TOOLS

- Agenda – A sample agenda for the entire curriculum is included in the overview section. If you are doing this session as a separate session, you can adapt that sample to fit your situation.
- Definitions and Key Terms Handout (See Overview for handout)
- Evaluation – The evaluation covers all three sections. If you are not doing all three sections together, you can adapt as described in the evaluation instructions.

INTRODUCTION

INSTRUCTIONS

Before the session begins, insert the date and location for your event. Have this slide up as participants enter the room.

Please acknowledge that this material was developed in partnership with the Socially Disadvantaged Farmers and Ranchers Policy Research Center at Alcorn State University, the Southern Extension Risk Management Education Center, and the Southern Rural Development Center through funding in part from USDA.

NOTE: If you do not do all three segments at the same event, insert slides 1-4 at the beginning of your other sessions as they provide the overarching foundation for the training.



Time: 1 Minute

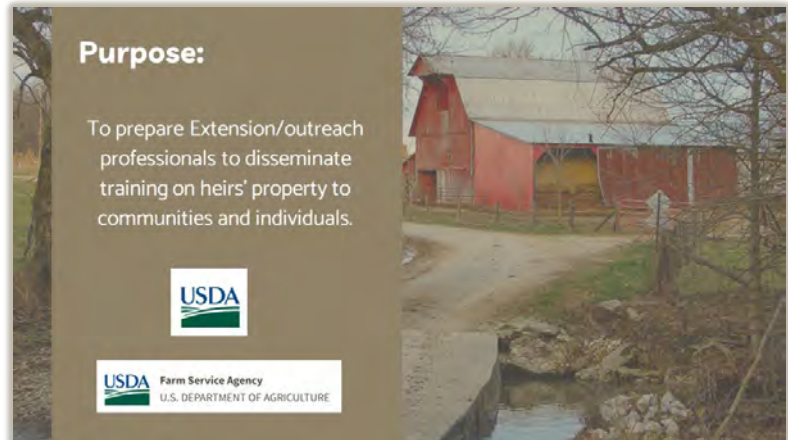
Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

Explain the purpose of the overall curriculum.



Time: 1 Minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

This slide shows the three parts of the curriculum and gives a quick view of the components covered in each section.

Topics to Explore

OVERVIEW	Heirs' property definition
	How heirs' property is identified
	Factors associated with the prevalence of heirs' property
	Impacts of heirs' property
	Relationship between tax sales, partition sales, and land loss
	Laws, policies, and programs relevant to heirs' property
PREVENTION	Basics of estate and succession planning
	Steps to prevent heirs' property when establishing a will
RESOLUTION	Review some of the challenges of owning heirs' property
	Importance of working with other family members
	Steps to take to understand who legally owns the property
	Legal structures that can hold land owned by heirs' property owners



Time: 1 Minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

Give time for participants to introduce themselves. You could also include a brief question for them to answer such as what is one question or curiosity you have about heirs' property. Don't take time to answer those at this point. Rather this is about acknowledging where their curiosities are, and how the group can share this time together to learn and support each other.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 1

INSTRUCTIONS

This slide introduces the prevention section.



Time: 1 Minute

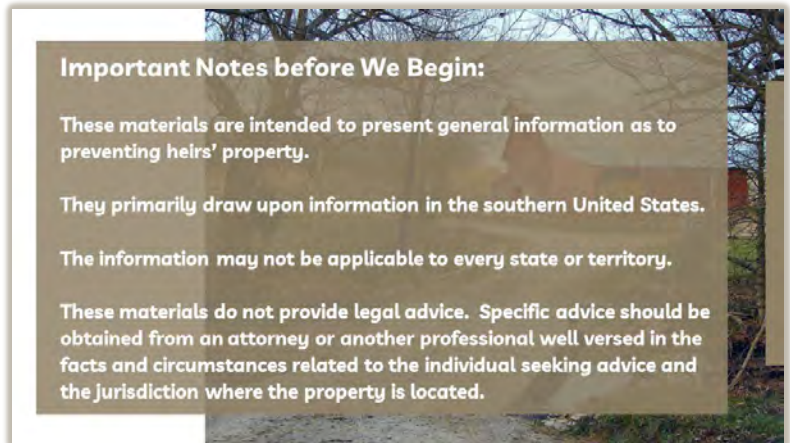
Materials: None

Handouts: None

SLIDE 2

INSTRUCTIONS

Read the disclaimer and answer any questions that may arise.



Important Notes before We Begin:

These materials are intended to present general information as to preventing heirs' property.

They primarily draw upon information in the southern United States.

The information may not be applicable to every state or territory.

These materials do not provide legal advice. Specific advice should be obtained from an attorney or another professional well versed in the facts and circumstances related to the individual seeking advice and the jurisdiction where the property is located.

Time: 1 Minute

Materials: None

Handouts: None

SLIDE 3

INSTRUCTIONS

Please acknowledge the primary and contributing authors to this material as well as the funding stream through the Southern Rural Development Center and the Socially Disadvantaged Farmers & Ranchers Policy Center at Alcorn State University.

Acknowledgements

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Time: 1 minute

Materials: None

Handouts: None

SLIDE 4

INSTRUCTIONS

Add presenter information and introduce yourself.



Time: 1 minute

Materials: None

Handouts: None

SLIDE 5

INSTRUCTIONS

Use the talking points on the slide to provide an overview of this session.

SESSION OVERVIEW

- Contemplating Estate Planning
- Important Terms
- Basics of Estate Planning/Succession Planning
- Preventing Heirs' Property When Writing Your Will
- Title to Real Property
- Working with an Attorney

Time: 1 minute

Materials: None

Handouts: None

SLIDE 6

INSTRUCTIONS

Ask the participants: What is an estate? Do you have an estate plan? Asking your audience this will help you get an idea of the “mental models” in the minds of the audience. Many people do not feel like the term “estate planning” is far removed from their lives because “estate” signals a high level of wealth.



Time: 3 Minutes

Materials: None

Handouts: None


SLIDE 7

INSTRUCTIONS

Ask the participants the questions on slide. Asking these questions will help you get to know where the audience is and what they are interested in learning.

Estate Planning

- What do you know?
- What do you want to know?



Time: 4 Minutes

Materials: None

Handouts: None

SLIDE 8

INSTRUCTIONS

Ask the question on the slide.
Asking this question will help you see who in the audience might be able to share their experiences.



How many of you have used an attorney to get an estate plan in place?

Time: 1 Minute

Materials: None

Handouts: None

SLIDE 9

INSTRUCTIONS

Ask the participants the question on the slide. Most people are focused on the monetary and time costs of getting a will in place. This will help people think about the hidden costs of not having one.

- Probate can be very costly
- Incapacitation and the need to obtain guardianship can be expensive
- Higher taxes without a trust



Time: 3 Minutes

Materials: None

Handouts: None

SLIDE 10

INSTRUCTIONS

Ask the participants the question on the slide. This will give you an understanding of obstacles your audience feels or experiences.



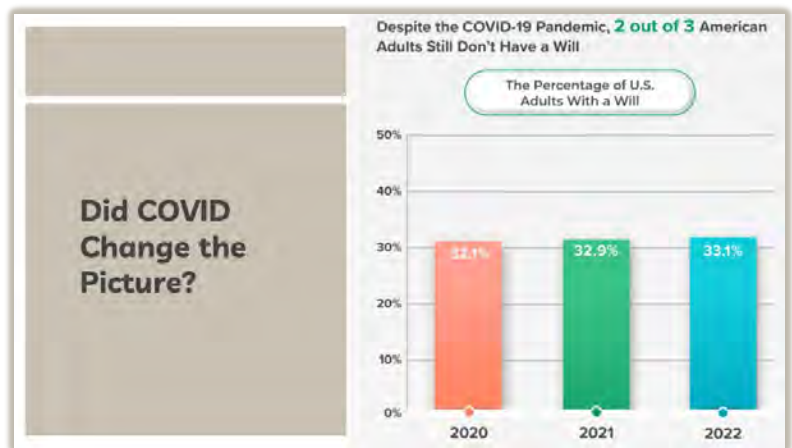
Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 11**INSTRUCTIONS**

Discuss the slide. It is possible that the most important thing that an Extension educator can do in the space of estate planning is to provide motivation for taking action.

**Source:**

<https://www.caring.com/caregivers/estate-planning/wills-survey/>

In 2005–2006, Minnesota Extension had twelve farm transition and estate planning workshops with 524 family members making up 301 farm family businesses. 152 (50.4%) farm family businesses completed a six-month follow-up survey. After the workshop itself, 81% intended to begin the process. However, of the 152 that completed the six-month follow-up, 57.4% reported they had begun the process of an estate plan with only 7.3% having completed it. For those who had not begun the process, time was the reported obstacle. For those who had made some progress, developing goals and consensus among family were the most reported obstacles.

Hachfeld, G. A., Bau, D. B., Holcomb, C., Kurtz, J. N., Craig, J., & Olson, K. D. (2009). Farm Transition and Estate Planning: Farmers' Evaluations and Behavioral Changes Due to Attending Workshops. *The Journal of Extension*, 47(2), Article 8. <https://tigerprints.clemson.edu/joe/vol47/iss2/8>

Time: 2 Minutes

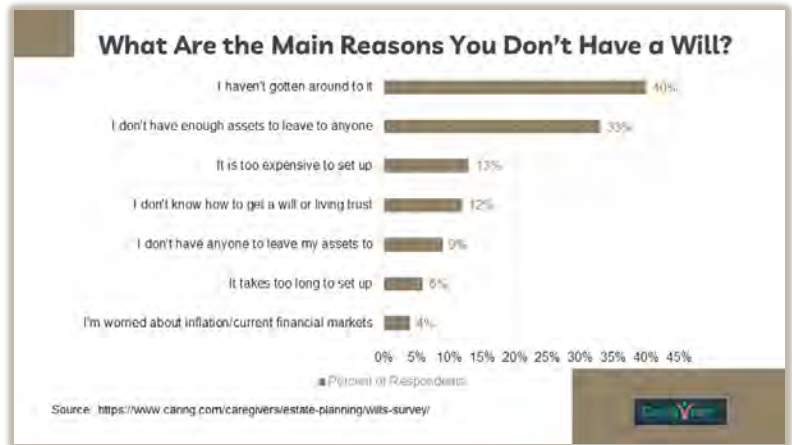
Materials: None

Handouts: None

SLIDE 12

INSTRUCTIONS

Discuss the slide. This will give you an understanding of obstacles your audience feels or experiences.



Source: <https://www.caring.com/caregivers/estate-planning/wills-survey/>

Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 13

INSTRUCTIONS

Discuss the slide.

What do you notice?

What surprises you?



Source: <https://news.gallup.com/poll/351500/how-many-americans-have-will.aspx>

Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 14

INSTRUCTIONS

Ask the participants the question on the slide and discuss.

- While not in the survey of reasons people do not have a will, when talking to people casually about establishing a will, they often mention being worried that if they write a will, it is like they are inviting their death. Many people are not comfortable talking about death.
- Helping people reframe the topic of death is very powerful. Once the audience shares, you can ask about upsides about talking about death, including that it helps us live more fully.
- This quote from Mr. Rogers is applied to a scene in "A Beautiful Day in the Neighborhood" movie about Mr. Rogers' life.



Time: 5 Minutes

Materials: None

Handouts: None

Discussion: What do you think about this quote as it relates to estate planning?

SLIDE 15



INSTRUCTIONS


The Conversation Project has talking points and worksheets to help families having hard conversations.

Resources:

- “Relationships are the main challenge facing farm families. Participants often pointed out that many programs teach management and planning strategies, but few focus on communication and family dynamics. Treating family members fairly and equally, dealing with off-farm heirs, and addressing in-law relationships are often the largest obstacles farm families face when building estate plans.
- Hogge, J., Eborn, B., Packham, J., Findlay, R., & Harrison, S. (2017). Multiyear Succession and Estate Planning for Farm and Ranch Families. *Journal of Extension*, 55(4), Article 19. <https://tigerprints.clemson.edu/joe/vol55/iss4/19>
- The Conversation Project: <https://www.ihl.org/Engage/Initiatives/ConversationProject/Pages/default.aspx>

Helping people share their wishes for care through the end of life.



Free Guides:

Conversation Starter Guide	Guide to Choosing a Health Care Proxy
Guide to Being a Health Care Proxy	Guide for Talking with a Health Care Team

Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 16

INSTRUCTIONS

There are some common terms that you have heard during this training. Let's see who remembers their meaning. We are going to play a Card Game entitled "What's My Meaning."

Prepare index cards before the training (Print index card template on card stock and cut to make the card deck)



1. Have participants to select a card from the stack & place it face down on the table.
2. Review the most common terms with the group.
3. Ask for a volunteer to start the game.
4. Have the volunteer to read their term and tell the group the meaning.
5. To end the game, have everyone turn over the cards, answer if they know and understand the meaning of the term on their card.

Time: 10 Minutes

Materials: Definitions and Key Terms Card Set

Handouts: Definitions and Key Terms

Materials: Definitions and Key Terms Card Set

Handout: Definitions and Key Terms (see Overview section)

Virtual Ideas for the What's My Meaning Game:

1. Quizlet: Use online flashcards and quizzes to learn the terms
2. Jamboard: Write the terms and definitions on sticky notes and participants work in a group to match them up
3. Flippity: Can create online games to facilitate vocabulary quizzes

SLIDE 17

INSTRUCTIONS

This is a section divider to introduce the next topic.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 18

INSTRUCTIONS

Most people take care of their property while living, but many of these same people make no plans for its management after their death. Despite concern for families, friends, and property during their lifetimes, they fail to provide guidance when it is most needed—when they are no longer present to make decisions. As a result, the state decides how their belongings will be distributed. Therefore, everyone should consider having an estate/succession plan.

We All Need an Estate Plan

This session will focus on questions of property.

Estate planning guides your loved ones in decision-making in the event you are no longer capable or if you die.



Time: 1 Minute

Materials: None

Handouts: None

Source: <https://www.investopedia.com/terms/e/estateplanning.asp>

SLIDE 19

INSTRUCTIONS

Explain these definitions and key differences between a living will and a simple will or last will and testament.

Living Will	A Simple Will or Last Will and Testament
<ul style="list-style-type: none">• Is a written statement that details medical treatment preferences in the event the person is not able to express his/her wishes• Includes a Healthcare Power of Attorney and Advance Health Directive in some states• No longer is in effect after the person has died	<ul style="list-style-type: none">• Is a legal document that designates how property, assets, and dependent responsibilities are distributed after death.• Does not take effect until a person has died

Time: 5 Minutes

Materials: None

Handouts: None

Source: https://www.americanbar.org/groups/law_aging/resources/health_care_decision_making/power_atty_guide_and_form_2011/

SLIDE 20

INSTRUCTIONS

Review these potential benefits of a will.

BENEFITS OF A TESTAMENTARY WILL	
01	Specifies wishes for your funeral
02	Chooses who you want to carry out your wishes (Executor)
03	Limits inheritance disputes
04	Clarifies the gifting of possessions and money (subject to state laws pertaining to spousal rights)
05	Identifies who should care for your children/dependents
06	Helps your heirs access your assets faster and easier
07	May reduce inheritance tax

Time: 5 Minutes

Materials: None

Handouts: None

Source:

- <http://extension.msstate.edu/publications/publications/planning-your-estate-part-2-where-theres-will-theres-way>
- https://www.investopedia.com/articles/pf/07/estate_plan_checklist.asp

SLIDE 21

INSTRUCTIONS

This slide describes the process for validating a will. It also describes situations where probate likely will be needed. Each state will have a specific process for estate administration/succession. Some states file copies of probated wills in the land records. Other states have the executor or administrator file a deed on behalf of the estate.



Probate Process

Process of validating a will

- Executor files in local court
- Not all wills must be probated

Probate will likely be needed if:

- Real estate is involved
- Beneficiaries are minors
- Disputes over asset distribution occur
- Assets are complex and high in value
- Will is not written well

Time: 3 Minutes

Materials: None

Handouts: None

SLIDE 22

INSTRUCTIONS

Discuss the points on the slide that can cause a will to be deemed invalid.

What Could Make a Will Invalid?

- Each state has its own requirements for a "valid" will.
- Generally, it will be *invalid* if it:
 - Was not properly executed
 - Was not properly witnessed (does not apply to holographic wills)
 - Fails to include appropriate language
 - Fails to address spouse and children (states vary as to the right to exclude a spouse or child)
 - Is a product of undue influence, fraud or was executed at a time when the testator was not competent



Time: 3 Minute

Materials: None

Handouts: None

SLIDE 23

INSTRUCTIONS

If someone dies without a will, it is called "intestate," which means

- The state uses established rules to determine distribution.
- Dying intestate can add significant time to the process of distribution.
- If your children are minors, the court will appoint a representative to look after their interests.
- Dying intestate may have tax consequences.

Intestate: Dying without a Will

<p>Distribution</p>  <p>State law determines distribution</p>	<p>Children</p>  <p>Court appoints children's guardian</p>	<p>Time</p>  <p>Takes longer to settle estate</p>	<p>Taxes</p>  <p>May have tax consequences</p>
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Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 24

INSTRUCTIONS

Review these different types of wills.

Additional key points are:

- Holographic wills are not recognized in some states. In states that permit the documents, the will must meet minimal requirements, such as proof that the testator wrote it and had the mental capacity to do so. This type of will can slow the process down and may impact other benefits as well.
- After one party dies, the remaining party is bound by the terms of the mutual will.
- Testamentary can be written by an individual, but having it prepared by a trusts and estates attorney tends to ensure it will be worded precisely, correctly, and in keeping with your state's laws.
- A simple will is typically good for people with simple situations. A simple will is a type of testamentary will.



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 25

INSTRUCTIONS

Having a will does not mean you avoided creating issues similar to heirs' property. Decisions have to be made by owners to manage property and put it to productive use. If property is held jointly by children, all the children as owners must consent to the use of the property. This may lead to disagreements and a deadlock.

Simple Will: How It May Create Similar Issues to Heirs' Property



- A simple will often leaves **all** assets including real property:
 - First, to a spouse
 - Second, if the spouse is deceased, equally to children.
- If children inherit under this type of simple will, they hold an **undivided** interest in the property.
 - **Unlike** heirs' property, the property is titled in their name
 - **Like** heirs' property, they cannot use it without unanimous consent of all siblings involved.

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 26

INSTRUCTIONS

Review these tips for handling property distribution among multiple children.

Additional talking points are below:

Physical division of property may require a survey.

Properties of the same acreage may have different values. For example, some properties having higher value are those having greater road frontage, more fertile soils, having utilities present, etc. Thus, some choose to have the property divided after death based on equal value of parcels (perhaps divided by an appraiser or other person).

Sometimes, if an appraiser or other person is asked to divide property after the death of the property owner, they might first divide the overall property into pieces of equal value (not necessarily equal size) and then there may be a drawing where each child obtains a parcel at random.

Your lawyer should advise you on:

- How to provide for the payment of debts and taxes so the property division is not affected by claims of creditors or required tax payments
- What is needed in terms of a temporary process to manage the farm, ranch, or forest to avoid interruption in the business

Other problems are created if the children are under the age of majority when they inherit the property.

Tips to Avoid Heirs' Property Issues in a Will

Helpful Tips

Put in writing how the land would be divided among spouse and children if they inherit.

Common ways to divide:

- Physically divided into separate parcels for each person using valid legal descriptions.
- Financially divided based on equal value of parcels by a process specified in the will.

Ask your lawyer to advise you on:

- How to provide for the payment of debts and taxes so the property division is not affected by claims of creditors or required tax payments.
- What is needed in terms of a temporary process to manage the farm, ranch or forest to avoid interruption in the business.

Time: 5 Minute

Materials: None

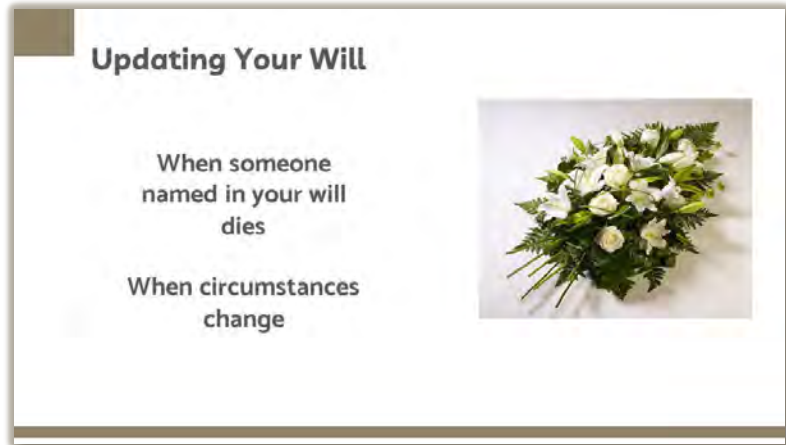
Handouts: None

SLIDE 27

INSTRUCTIONS

Updating a will after the death of someone named is important to prevent later difficulties. For instance, if a child is deceased and the Will conveys property to more than one unnamed grandchild, it creates a risk for difficulties arising from lack of unanimous consent. Updating wills after the death of a spouse or child may avoid this

problem. Similarly, a change in circumstances surrounding people or things named in the will should lead to the will being updated.



Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 28

INSTRUCTIONS

One spouse/parent may prefer to leave real property as a life estate to a spouse or a child in the event of circumstances important to that parent.

A life estate may be limited so as to require the holder to live on the property for a specified number of months each year if there is a concern that commitment to a nursing home or other facility would not enable the holder to manage the property. The property could be managed by others in order to keep the income stream benefitting the nursing home resident. This may have implications on eligibility for the government benefit.

A life estate ensures the parent that the children receive the property after the death of the person holding the life estate. For instance, if property solely owned by one person is first left by that person to their spouse, the surviving spouse may later remarry and change their will or for other reasons cut a child out of their will (as allowed by law).

Life estates may provide for a child with special needs so that they may remain in the family home if it is in their best interest.

Life estates may also allow a child who earns their livelihood on the farm/ranch to continue living there for their life.

Your lawyer should advise you as to what rights/obligations pass under a life estate under the law of the state where your property is located so that you could make changes to match your desires.

In most states, a life tenant has exclusive control of the property during their life. They generally must keep property in good repair.

Granting a Spouse or a Child a Life Estate

One spouse/parent may prefer to leave real property as a life estate to a spouse or a child in the event of circumstances important to that parent. Examples include:

- Planning for property management if a spouse needs to go to a nursing home after inheriting.
- Ensuring a child receives the property after the death of a spouse.
- Providing for the care of someone with special needs.
- Allowing someone earning their livelihood from the property (farm/ranch) to remain there.

Your lawyer should advise you on rights/obligations of a life estate based on the state laws where the property is located.

Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 29

INSTRUCTIONS

Using a trust or business entity can avoid partition and the decedent can determine the use and management of the property after his or her death.

Generally, interests in entities could include shares of stock in a corporation, membership interests in a limited liability company, partnership shares/units in a partnership, etc.

Some trusts are created by a will. Other trusts are created prior to the owner's death by a trust instrument.

Prior to your death:

If the trust is created prior to the owner's death, the owner will deed their property to the trust. Trusts are managed by one or more trustees who have broad discretionary powers. Prior to the death of either spouse, your lawyer may help you convey property to a trust, corporation, limited liability company or other entity.

NOTE: Seek advice as to the effect on property taxes, if the property is your homestead.

If property is placed in an entity prior to your death, your will provides for the interests in the entity you created to be left to a spouse or children.

Upon death through a will:

Upon death, if you have kept the property in your name, a will may place property in a trust for the benefit of a spouse or children.

Placing Property in an Entity – An Alternative Approach to Physically Dividing Property

Your property can be conveyed to a trust, corporation, limited liability company or other entity

- Prior to your death – Seek advice on property taxes (if homestead)
- Upon death if designated in your will

Be sure to seek a lawyer's assistance.

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 30

INSTRUCTIONS

Discuss these advantages and disadvantages of placing property in an entity

- Advantages include:
 - The property stays together in one undivided tract and is managed by a trustee (if held in a trust) or a board, manager(s) or general partner(s) if held in another entity.
 - This does not require unanimous consent for most management actions.
 - There may be a prohibition on sale of property or interests.
- Disadvantages include:
 - Restrictions placed on transfer of interests in the entity may make a sale difficult when a child needs to sell for health, financial or other personal reasons.
 - Disagreements over management decisions made by others may cause family dissention.
- In entities other than a trust, unanimous consent of the owners of an interest in the entity may be required to sell the property or place a mortgage on it. General day-to-day affairs are decided by majority vote of the board of directors (for a corporation), the manager(s) (for a limited liability company) and the partners (for a partnership). A holdout will usually not create a deadlock.
- A common requirement may include restrictions on transfer of interest in the family-owned entities. A proposed sale may first be required to be offered to the other owners or the entity before being sold to a third-party.

Placing Property in an Entity – An Alternative Approach to Physically Dividing Property

Advantages:	Disadvantages:
<ul style="list-style-type: none"> • Property stays together in one undivided tract. • Unanimous consent is not required for most management actions • There may be a prohibition on sale of property or interests. 	<ul style="list-style-type: none"> • Restrictions may make sale of a person's interest difficult. • Disagreements on management decisions may cause friction.



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 31

INSTRUCTIONS

Understanding how your property is titled is vital to drafting your will. This next session explores some things to consider.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 32

INSTRUCTIONS

This slide depicts the types of information typically found on a title certificate or report.

A few things to note:

- Generally, only the surface title is examined (not mineral title).
- The examiner reviews all instruments for a period of years required by the law of the applicable state.

Title to Real Property: Examining Title

A title certificate or report will generally specify the:

- Record title owner(s)
- Type of shared ownership, if applicable (e.g., Joint Tenancy with Survivorship Rights or Tenancy in Common)
- Legal description
- Tax parcels and status of payment
- Encumbrances (e.g., easements, covenants)
- Title claims or unresolved issues



Title should be examined by a lawyer or a title company.

Type of shared ownership - your interest may be limited by the form of the deed to you if you hold title by:

- Joint Tenancy with right of survivorship (typical for husband and wife) that vests title in the survivor of the decedent.
- Tenancy in Common (typical for siblings) that vests title in the heirs of the decedent at law (in the absence of a will).

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 33

INSTRUCTIONS

Discuss these key points related to transferring land by deed.

These options have been noted earlier but are repeated here to weave the connections.

- Conveying real property before death
- Reserving or granting a life estate when conveying property to allow limited use by the life tenant prior to death
- Conveying title by a transfer on death deed that transfers full title on death

Transferring Title by Deed

- Real Property can be conveyed by deed rather than by will.
- A recorded deed takes precedence over a will disposing the same property.
- Deeds should be prepared by a licensed attorney.
- Options for transferring include:
 - Conveying real property before death
 - Reserving or granting a life estate
 - Conveying title by a transfer on death deed (in some states)



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 34

INSTRUCTIONS

Discuss these key elements involved in keeping a title current.

Maintaining Property as Heirs' Property through Current Marketable Title

After title is examined, the names and percentage interests of each family member should be determined.

Record. Title should be updated to reflect current ownership and percentage interest according to the law of the states where the property is located which may include:

- Affidavit of Heirship
- Probate of wills
- Administration of Estates
- Judicial Determination of Heirship



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 35

INSTRUCTIONS

Discuss the advantages and disadvantages of this approach using the talking points on the slide.

Maintaining Property as Heirs' Property through Current Marketable Title (cont'd.)

Advantages

- Keeps family current as to names and percentage of ownership of family members
- Keeps relationships between family members

Disadvantages

- Must be updated upon the death of each heir
- Does not address disabilities (incompetence) during lifetime
- Does not prevent an heir from selling their fractional interest
- Does not prevent any heir or purchaser from seeking partition of the property

Time: 3 Minutes

Materials: None

Handouts: None

SLIDE 36

INSTRUCTIONS

The next section explores important considerations in working with a lawyer in the planning process.

Activity: Using the role play samples as a guide, demonstrate how a visit with an attorney may go.



Time: 15 Minutes

*Materials: Sample Role Play
Scripts*

Handouts: None

SLIDE 37

INSTRUCTIONS

Note these important benefits to working with an attorney to develop your estate/succession plan.

Benefits to Working with an Attorney



While working with an attorney for an estate/succession plan is not required:

- An attorney can prevent the problem of incorrect wording, or an invalid will
- Incorrect wording can lead to the will being contested, which adds to:
 - Family turmoil
 - Length of time for distribution

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 38

INSTRUCTIONS

The cost of having a will developed varies widely. This slide gives some very general ideas of what someone might find locally.

Simple will generally is around **\$500-\$600** per person.

Nationwide, the average cost for an attorney or firm to create a will is **\$940 to \$1,500** for an individual person. Most firms will reduce their price to a few hundred dollars when adding on a second nearly identical will for a spouse.

It's very common for a lawyer to charge a flat fee to write a will and other basic estate planning documents, **Ranging from \$300 to a more common \$1,000.**

If specific tax planning is needed, the will and tax advice will be more expensive.

Other factors that can influence cost include these:

- Cost will vary from state to state and from attorney to attorney
- Some attorneys charge by their time and others have a flat rate
- The more complicated your situation is, the more expensive the fee

Cost of a Will	
<p>Factors that influence cost:</p> <ul style="list-style-type: none"> • State • Flat fee vs. time • Complexity of the situation 	<ul style="list-style-type: none"> • Simple may be as low as \$500 - \$600 per person. • Nationwide average is \$900 - \$1,500 for an individual will created by an attorney or firm. • Lawyers sometimes charge a flat fee to write a will and other estate planning documents, ranging from \$300 to a more common \$1,000

HOW MUCH WILL IT COST?

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 39

INSTRUCTIONS

Lawyers can have a variety of specialties. This is important to understand so you are choosing one with the best training and experience.

Specialty Areas of Lawyers

- Not all lawyers know all parts of the law
- One part is "Trusts and Estates"
- Some states recognize specialization and certify lawyers.
 - For example: Florida bar recognizes the specialty of, "Wills, Trusts, and Estates"
- Some lawyers have advanced degrees (e.g. LLM in taxation)



Time: 5 Minutes

Materials: None

Handouts: None

Source: Here are specialties recognized by the American Bar Association for the chart: <https://www.americanbar.org/topics/>

21 specialty areas of law are listed by the American Bar Association

SLIDE 40

INSTRUCTIONS

This slide gives just a sample of different kinds of specialty areas for lawyers. It helps provide an idea of why finding one with the right expertise is important.



Source: Here are specialties recognized by the American Bar Association for the chart: <https://www.americanbar.org/topics/>

21 specialty areas of law are listed by the American Bar Association

Time: 1 Minute

Materials: None

Handouts None

SLIDE 41

INSTRUCTIONS

Choosing an attorney is similar to other good shopping. This slide offers some key points to guide the decision.

Choosing an Attorney

Like buying other products and services, you are looking for a "good fit"

- Comparison shop
- Ask for referrals
- Look for experience in estate/succession
- Be sure they are licensed in your state



Time: 5 Minutes

Materials: None

Handouts: None

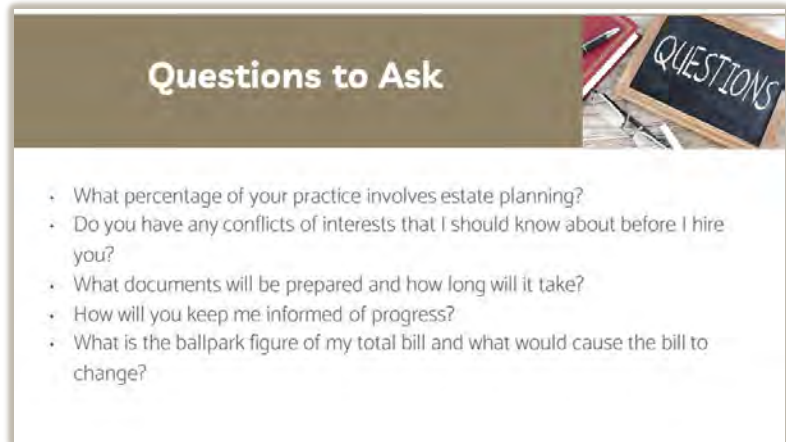
Source:

- <https://extension.tennessee.edu/publications/Documents/SP743-B.pdf>
- <https://www.uaex.uada.edu/life-skills-wellness/personal-finance/retirement-and-estate-planning/>
- <https://401kcalculator.net/retirement-calculator/>

SLIDE 42

INSTRUCTIONS

When meeting to interview an attorney about possibly hiring him or her, listen and give the best information so that the attorney can assess your needs in the best way possible. Some questions to ask before deciding who to hire are depicted on this slide.



Questions to Ask

- What percentage of your practice involves estate planning?
- Do you have any conflicts of interests that I should know about before I hire you?
- What documents will be prepared and how long will it take?
- How will you keep me informed of progress?
- What is the ballpark figure of my total bill and what would cause the bill to change?

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 43

INSTRUCTIONS

Being prepared is likely to save you time and money.

Attorneys may have you fill out a form and give you a list of documents to bring with you on your first appointment, which may include:

- Written summary of what you hope to achieve with your estate plan
- Document with your full name and address and the full names and addresses of your spouse and children and anyone you plan to include in your will
- Complete personal income tax returns for 3-5 years
- Balance sheet with assets and liabilities owned by you
- Deeds and mortgages
- List and details of any other oral or written agreements that you have with a lender, creditor, landlord, tenant or other party
- Marital agreements and/or divorce decrees



Documents to Bring

- Written summary of what you plan to achieve with your estate plan
- Documents with the full names and addresses for you, your spouse, children, and anyone else you plan to include in your will
- Complete income tax returns, previous 3-5 years
- Balance sheet: assets and liabilities owed to you
- Deeds and mortgages
- Detailed list of any other oral or written agreements
- Marital agreements and/or divorce decrees
- Beneficiary designations (insurance, retirement plans, etc.)
- Prior wills, power of attorneys, any other pre-existing versions

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 44

INSTRUCTIONS

Ensure that your will is safe by following these three steps.

- Store the original will in a safe place.
- Let your executor know where the original will is stored, along with needed information such as the password for the safe.
- Give duplicate signed copies to the executor and your attorney if you have one.

Originals and Copies of Your Will



- Store the original will in a safe place.
- Let your executor know where the original will is stored.
- Give duplicate signed copies to the executor and your attorney.

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 45

INSTRUCTIONS

Wrap up this session with any questions participants may have.



Time: 5 Minutes

Materials: None

Handouts: None

Heirs' Property Key Terms Cards – Print on Cardstock and cut apart for activity

<p>Administrator</p>	<p>a court-appointed person ordered to manage the estate of a deceased person who died intestate</p>
<p>Assets</p>	<p>real or personal property (including cash/liquidity) owned by a person or company, regarded as having value and the ability to meet debts, commitments, or legacies</p>
<p>Beneficiary</p>	<p>a person entitled to receive funds or other property under a trust, Last Will & Testament, retirement account, or insurance policy</p>
<p>Codicil</p>	<p>an addition or supplement that explains, modifies, or revokes a Last Will & Testament or part of one</p>
<p>Community Property</p>	<p>property owned jointly by a married couple (in some states)</p>

<p>Conservatorship</p>	<p>the appointment of a guardian or conservator by a judge to manage the financial affairs and/or daily life of another person due to old age or physical or mental limitations</p>
<p>Corporation</p>	<p>a legal entity that is separate and distinct from its owners. For profit corporations act through a board of directors selected by its shareholders (owners)</p>
<p>Decedent</p>	<p>a person who has died</p>
<p>Estate</p>	<p>a person's property or net worth. When the person is deceased, their estate goes through probate and is distributed according to the terms of their Last Will & Testament. If there is no will, the estate is “administered” in accordance with the state’s laws of intestate succession</p>
<p>Executor/Executrix</p>	<p>a court-appointed person or institution who is responsible for carrying out the terms of a Last Will & Testament and overseeing the probate of the Will & administration of the assets/estate</p>

<p>Heir</p>	<p>a person legally entitled by law to the property of a decedent; a person inheriting and continuing the legacy of a predecessor</p>
<p>Heir's Property</p>	<p>property owned jointly by numerous co-owners, most of whom are related. It usually passes from one generation to another when a landowner dies intestate or with no succession/estate planning for the land</p>
<p>Holographic Will</p>	<p>a handwritten and testator-signed document that is legally binding in some states, but not produced by a lawyer</p>
<p>Intestate</p>	<p>the decedent died without a valid Last Will & Testament. When a person dies intestate, the estate is distributed in accordance with the state's laws of intestate succession, after creditors are paid</p>
<p>Irrevocable Trust</p>	<p>created when a person gives up his/her rights to change the terms of a trust once created. The trustor/grantor cannot later change the terms of an irrevocable trust.</p>

<p>Joint Tenancy with rights of Survivorship</p>	<p>the holding of an estate or property jointly by two or more parties, the share of each passing to the other or others upon death.</p>
<p>Last Will & Testament (Will)</p>	<p>a document which directs how property (including minor children) is to be distributed to beneficiaries and heirs upon a person's death</p>
<p>Life Estate</p>	<p>an interest in property only for the life of a person with the remaining interest (remainder) to vest in others upon the death of the person holding the life estate</p>
<p>Limited Liability Company</p>	<p>a legal entity that is separate and distinct from its owners. It acts through its manager(s) or its members (owners)</p>
<p>Living Trust</p>	<p>a legal arrangement established by an individual (the grantor/trustor) during their lifetime to protect their assets and direct their distribution after the grantor's death. Avoids the probate process.</p>

<p>Living Will (Advance Healthcare Directive)</p>	<p>a written, legal document that spells out medical treatments you would or would not want to be used to keep you alive, as well as your preferences for other medical decisions, such as pain management or organ donation, when you can no longer make decisions for yourself</p>
<p>Mutual Will</p>	<p>a type of will, usually executed by a married or committed couple, that is mutually binding</p>
<p>Notary</p>	<p>a person authorized to perform certain legal formalities and certify/witness signatures on estate planning documents, contracts, deeds, etc.</p>
<p>Per Stirpes</p>	<p>a way of distributing the estate of a decedent where each branch of the family receives an equal share of an estate. Latin term = "by roots" or "by branch"</p>
<p>Personal Representative</p>	<p>a collective name for either Executors or Administrators</p>

<p>Power of Attorney (POA)</p>	<p>a legally binding document that allows you to appoint someone to manage your property, medical, or financial affairs</p>
<p>Probate</p>	<p>a court-administered process in which the probate court confirms the validity of a Last Will & Testament and allows other people the option to challenge the will. The estate is then administered in accordance with the Last Will & Testament (called "succession" in Louisiana)</p>
<p>Revocable Trust</p>	<p>allows the trustor/grantor to amend and make changes to the trust after it has been formed</p>
<p>Spouse</p>	<p>a life partner in a marriage, civil union, or common-law marriage as recognized by state law</p>
<p>Testate</p>	<p>the decedent died with a valid Last Will & Testament</p>

<p>Testator /Testatrix</p>	<p>a court-appointed person or institution who is responsible for carrying out the terms of a Last Will & Testament and overseeing the probate of the Will & administration of the assets/estate</p>
<p>Transfer on Death Payable on Death</p>	<p>lets beneficiaries receive assets at the time of the person's death without going through probate</p>
<p>Trustee</p>	<p>a trustee is a person or business that administers a trust</p>
<p>Trust</p>	<p>a fiduciary arrangement that allows a third party, or trustee, to hold assets on behalf of a beneficiary or beneficiaries.</p>
<p>Testamentary trust</p>	<p>a trust that is specified in and created by a person's Last Will & Testament</p>

HEIRS' PROPERTY

LAWYER SKIT - PREVENTION

Role play a situation between a lawyer and a person or couple coming to visit a lawyer for the first time to begin working on a will. You may use some of the questions under "Questions a Lawyer May Ask" and allow the other person to make up answers. Or you may use the suggested script. Feel free to edit any of this content to fit your audience and the amount of time you have allotted for this activity.

Meeting with a Lawyer - Drafting a Will

Questions a Lawyer May Ask

- I require a retainer to begin. I will need you to pay me \$250.00 before I can begin work.
- I need you to sign an engagement letter. It explains the legal services I am rendering to you and the terms, the use of the retainer, and the terms and conditions of my employment. Please let me know if you have any questions. If not, please sign the letter and return it to me.
- What is your full (legal) name and date of birth, address, and phone?
- Are you married and if so, what is the name of your spouse?
- Do you have children and if so, what are their names and ages?
- Who do you want to be the executor of your estate, that is the person who will handle carrying out the wishes for your estate you set out in your will?
- Do you have real property?
- To whom do you want to leave your real property (your home and any other land)?
- To whom do you want to leave your personal property (furniture, cars, jewelry, or other personal property)?

- Do you have any children who are under 21, and if so, who do you want to designate as their guardian (if their other parent is not living at the time of your death)?
- Did you want to create a trust for any minor children or other person in your will and if so, let me know what you want to accomplish with the trust?
- Do you want to also execute a power of attorney for healthcare and a general power of attorney when you execute your wills? If so, I will have some more questions concerning those documents.

Suggested Script

Participants:

- Lawyer (whose practice includes wills and estates)
- Client (divorced woman who has not remarried)

Setting:

First meeting of the lawyer and client concerning drafting a will.

Skit:

This is a suggested skit. It should be modified as desired, or participants could ad lib as desired. Information that is needed is represented by brackets [with an explanation within the brackets].

[Lawyer] Good [morning/afternoon]. My name is [insert name]. I practice law in [insert city] and my practice include wills and estate work. Thank you for meeting with me today.

[Client] It is nice to meet you. My name is [insert name]. I received your letter about meeting today and explaining the terms of my engaging you as my lawyer. I also brought documents as you requested and ones that I thought would help you in drafting a will for me.

[Lawyer] Good. Before we proceed, I need to make certain we are clear on who I represent (only you or others) and the terms of my engagement including the retainer payment. Please let me know if you have any questions concerning the engagement letter so that I can answer those and revise it to reflect our agreement. I need you to sign it before I begin working for you.

[Client] You will only represent me. I am divorced and have not remarried. I do have a question as to why you want me to pay you something now when you have not done any work for me.

[Lawyer] My practice is to charge \$500 for a simple will. I am paid \$250 up front and \$250 upon completion and execution of the will. I found this keeps clients committed to complete their will and prevents me from not having any payment for the work I have done if a client changes their mind and does not complete their will. If that is satisfactory, please sign and return the letter to me along with your check for \$250 made payable to my firm's trust account as described in the engagement letter. Please let me know the names and ages of your children and where they presently live, as well as the names and city of residence of anyone else to whom you would make a bequest (gift) under your will?

[Client] I have three children. They are:

- [Name of child] who is [list age* should be 21 and above] and lives in [list city] whose father was my first husband who died.
- [Name of child] who is [list age* should be 21 and above] and lives in [list city] whose father was my first husband who died.
- [Name of child] who is [list age* should be 21 and above] and lives in [list city], whose father is my second husband from whom I am divorced.

I do not plan to give anything to anyone other than my three children.

[Lawyer] Please give me the name and date of death and date of divorce of your husbands.

[Client] My first husband was [name], and he died on [date]. His estate was probated in [name] County, and I inherited everything from him. My second husband was [name], and we divorced on [date] and that divorce proceeding was in [name] County. I brought a copy of the order closing the estate of my first husband and the final decree of divorce from my second husband as you requested in your letter to me.

[Lawyer] Thank you. Do you own any real property now and if so, please describe it and where it is located?

[Client] Yes. I own two properties. One is my home located at [insert street address and city]. The other property is 160 acres of family [farm/timber] property in [insert name] County that I inherited. I want to leave both to my children equally. They will sell the home since none of them need or want it.

They will keep the family [farm/timber] property in the family. I brought a copy of the deeds to both properties as you requested in your letter to me.

[Lawyer] Thank you. Tell me about the ownership and any debt on the property. Do you own both properties in your name? Do you have any mortgage or deed of trust on the property?

[Client] I own both properties solely in my name. I have a mortgage on my home with [name] bank. I do not have any debt on the family [farm/timber] property. I brought a copy of the mortgage as you requested in your letter to me.

[Lawyer] Thank you. What you are describing is typical for a simple will that a lawyer prepares where there is no living spouse. Let's talk about your home first. I suggest you will direct your home to be sold by your executor and the mortgage or deed of trust paid from the proceeds and the net proceeds be paid equally to your children. This keeps one child from holding up the sale by refusing to sell it if you leave it jointly to all three. How does that sound?

[Client] I had not thought of them having a dispute over the sale. One of my children is a little hard to deal with at times and enjoys fighting with the other siblings, so I agree with that suggestion.

[Lawyer] Let's talk about your family 160 acre tract. Many people like you would choose to leave this property jointly to their children. Although when your will is probated, the title will be clear on the property, you will have created an heirs property issue in that the three of them jointly own the property as a whole. This means none of them own any particular part and they all have to agree on how to use the property. There could be problems arising from these heirs' property issues. Solutions include: (1) splitting the property into 3 distinct pieces of equal value; (2) putting the property in a limited liability company (LLC) where they each have a 1/3rd interest but where decisions as to management and use are made by a majority vote of each of them as a member/manager; or, (3) creating a trust that has similar provisions for a trustee to manage the property for the benefit of all three children. There are other options, but first tell me whether any of these options appeal to you or if you have another approach you would like to discuss. Some of these options will require you to pay me additional fees. I will estimate those for you when you decide how to proceed.

[End of skit.]

UNDERSTANDING HEIRS' PROPERTY AT THE COMMUNITY LEVEL: RESOLUTION



Alcorn.

SOCIALLY DISADVANTAGED FARMERS
AND RANCHERS POLICY RESEARCH CENTER



RESOLUTION

OBJECTIVES

- Determining who legally owns the land
- Strategies for families to address heirs' property
- Preparing to work with an attorney

ESTIMATED TIME TO COMPLETE

3 hours

BEFORE THE MEETING

- If this is a continuation of the training on the same day, remove the introduction slides. If it is a session held on a day by itself, fill in the date and location information on the first introduction slide.
- Add presenter information to slide 4.
- Check to see if map on slide 8 is up to date using the link below. If the map has changed, copy the map from the website and replace the one on the slide. Also update the date on the slide.
<https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>

MATERIALS NEEDED

Paper and pencils/pens for participants

HANDOUTS AND TOOLS

- Agenda – A sample agenda for the entire curriculum is included in the overview section. If you are doing this session as a separate session, you can adapt that sample to fit your situation.
- These are the same as in the Overview. If your participants have these from that session, you do not need to print again. However, if you are doing this session as a stand-alone section, you will need to print these:
 - Guidance for Heirs' Property Operators Participating in Farm Service Agency (FSA) Programs. Fact Sheet, July 2020. Available at:
https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/guidance_heirs_property_operators_participating_in_fsa_programs-factsheet.pdf

- Update to FEMA's Individual Assistance Program and Policy Guide, Version 1.1 available at: https://www.fema.gov/sites/default/files/documents/fema_updated-iappg-version-1.1.pdf
- FEMA Makes Changes to Individual Assistance Policies to Advance Equity for Disaster Survivors available at: <https://www.fema.gov/press-release/20210902/fema-makes-changes-individual-assistance-policies-advance-equity-disaster#:~:text=FEMA%20is%20amending%20its%20current,the%20survivor's%20home%20before%20the>
- State Factsheets on Heirs' Property – Go to the link to identify and print the fact sheet for your state if it is available (scroll down the page to see the states).
<https://farmlandaccess.org/heirs-property/#statefactsheets>
- Evaluation – The evaluation covers all three sections. If you are not doing all three sections together, you can adapt as described in the evaluation instructions.

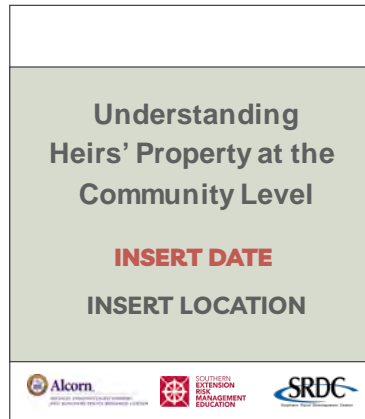
INTRODUCTION

INSTRUCTIONS

Before the session begins, insert the date and location for your event. Have this slide up as participants enter the room.

Please acknowledge that this material was developed in partnership with the Socially Disadvantaged Farmers and Ranchers Policy Research Center at Alcorn State University, The Southern Extension Risk Management Education Center, and the Southern Rural Development Center through funding in part from USDA.

NOTE: If you do not do all three segments at the same event, insert slides 1-4 at the beginning of your other sessions as they provide the overarching foundation for the training.



Time: 1 Minute

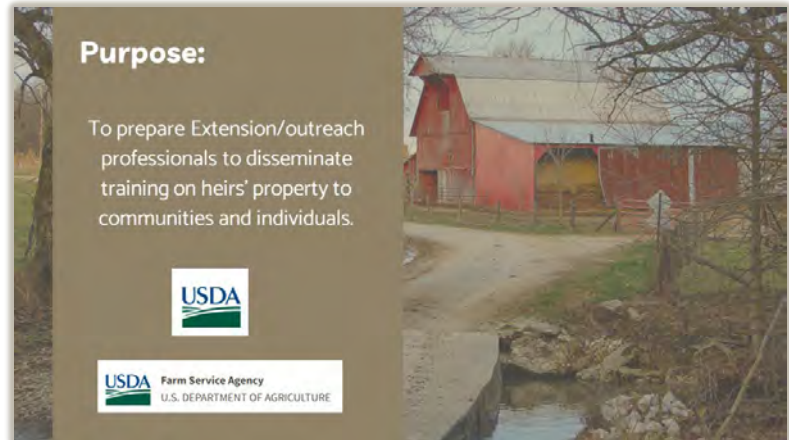
Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

Explain the purpose of the overall curriculum.



Time: 1 Minute

Materials: None

Handouts: None


INTRODUCTION

INSTRUCTIONS

This slide shows the three parts of the curriculum and gives a quick view of the components covered in each section.

Topics to Explore

OVERVIEW	Heirs' property definition
	How heirs' property is identified
	Factors associated with the prevalence of heirs' property
	Impacts of heirs' property
	Relationship between tax sales, partition sales, and land loss
PREVENTION	Laws, policies, and programs relevant to heirs' property
	Basics of estate and succession planning
RESOLUTION	Steps to prevent heirs' property when establishing a will
	Reviewsome of the challenges of owning heirs' property
	Importance of working with other family members
	Steps to take to understand who legally owns the property
	Legal structures that can hold land owned by heirs' property owners



Time: 1 Minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

Give time for participants to introduce themselves. You could also include a brief question for them to answer such as what is one question or curiosity you have about heirs' property. Don't take time to answer those at this point. Rather this is about acknowledging where their curiosities are, and how the group can share this time together to learn and support each other.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 1

INSTRUCTIONS

This slide begins the resolution section.



Time: 1 Minute

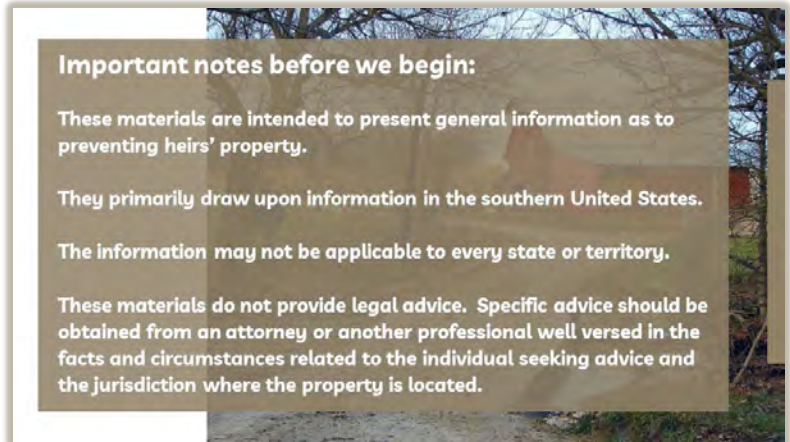
Materials: None

Handouts: None

SLIDE 2

INSTRUCTIONS

Read the disclaimer and answer any questions that may arise.



Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 3

INSTRUCTIONS

Please acknowledge the primary and contributing authors to this material as well as the funding stream through the Southern Rural Development Center and the Socially Disadvantaged Farmers and Ranchers Policy Center at Alcorn State University.

Acknowledgements & Introductions

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Time: 1 Minute

Materials: None

Handouts: None

SLIDE 4

INSTRUCTIONS

Add presenter information and introduce yourselves.



Time: 1 Minute
Materials: None
Handouts: None

SLIDE 5

INSTRUCTIONS

During this session, participants will better understand:

- The challenges of heirs' property but also understand why some families might choose to continue holding their land and homes as heirs' property
- The importance of working with other family members to consider how best to manage and enjoy their heirs' property
- The steps necessary should heirs decide to turn their heirs' property into a different legal form and what advantages such a change might bring
- The different legal forms available to owners of heirs' property should they decide to change

SESSION OVERVIEW

- Review some of the challenges of owning heirs' property
- Importance of working with other family members
- Steps to take to understand who legally owns the property
- Discuss different legal structures that can hold land owned by heirs' property owners

Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 6

INSTRUCTIONS

First, we'll do a review of things you have heard in previous sections.

Review of Challenges for Heirs' Property Owners



- Partition Sale
- Lack of Access to Loans
- No Access to Government Programs
- Forced Tax Sales
- Limited Wealth Generation

Time: 3 Minutes

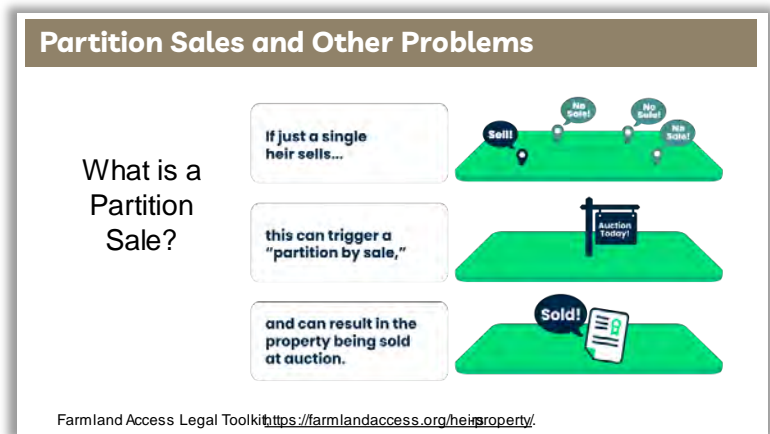
Materials: None

Handouts: None

SLIDE 7

INSTRUCTIONS

In previous sessions, heirs' property has been generally described as a form of ownership which has several serious problems. The problem which has attracted the most attention is the danger that the family may lose the property because property taxes were not paid or because of a court-ordered sale of the property, a so-called "partition sale."

**Two kinds of partition actions:**

- **Partition in kind:** land is divided according to the percentage of ownership held by each heir. This may occur if all the land is similar in quality and value, the number of heirs is small, and the heirs agree on how the land should be divided. Heirs involved in voluntary partitioning should check with appropriate local government offices to be sure they are following all necessary procedures, and they should also consult with a lawyer to be sure all documents are properly filed.
- **Partition by sale,** where the property is sold, and proceeds of the sale are divided among heirs according to their respective shares. Some forms of property (e.g., a house) do not lend themselves to partitions in kind.

Time: 7 Minutes

Materials: None

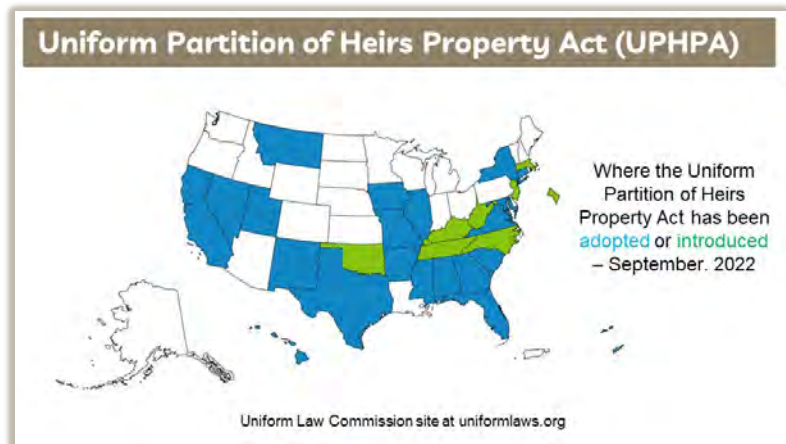
Handouts: None

Heirs may agree that partition by sale is the best way to divide the property, or one heir (or the purchaser of an heirs' interest) may force the sale on other members of the family. There are numerous examples of partition actions brought about by an outsider such as a real estate developer who purchases the share of one heir and then goes to a local court and demands that the property be sold, and proceeds distributed. (Like in the Lewis family in the VICE video we watched during the "prevention" portion of this training.) Such sales historically often resulted in an auction of the property on the courthouse steps, and the property is sold for much less than it is worth. With the passage of the Uniform Partition of Heirs Property Act, which we'll talk about next, advocates hope that this has changed.

SLIDE 8

INSTRUCTIONS

The widespread injustices of this process led to the creation of the Uniform Partition of Heirs Property Act, a state law giving some protections to heirs' property owners. This map depicts where states have adopted or introduced the UPHPA. The UPHPA contains legal protections for heirs' property owners designed to address the devastating effect of partition sales. The UPHPA restructures the way partition sales occur in states that adopt the act, and generally includes three major reforms to partition law:



- If a co-owner brings a partition action in court, the court must provide an opportunity to the other co-owners to buy out the co-owner who brought the action. (right of first refusal)
- If there is no buyout, then the law provides a preference for the court to order a partition in kind and divide the property, rather than order a sale. The law requires courts to take into account factors other than economic, such as the value of family heritage, historical value of the property, or the impact of the sale on those living on the property.
- If a partition in kind is not ordered, the UPHPA requires the court to sell the property at a market sale, not at an auction sale, and specifies a process for the property to be appraised and sold for its fair market value. The law is designed to preserve and maximize the wealth generated for the heirs' property owners by the sale.

Time: 6 Minutes

Materials: None

Handouts: None

In addition, notice of the lawsuit must be provided by posting a conspicuous sign on the property itself.

NOTE - Be sure to check this map source and update the map and the date before the presentation if anything has changed: <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>



SLIDE 9

INSTRUCTIONS

Reminder of the facts of the Lewis story: Lewis family owned 480 acres in Louisiana since the late 1800s. There were multiple heirs, not all in touch. Some family members lived on the property; many had raised kids there. A lot of the family was dispersed, in New York and other places. The family living on the land was unaware that heirs could sell their interests to people outside the family.

Breakout Discussion:

- How might the example of the Lewis family in the Vice News video have played out differently if the UPHPA had been in effect?
- Could the heirs living on the property have found out about the lawsuit earlier than they did?
- Could the court have just moved forward with the sale of the property as it did, without doing other things first? What would the court have to do?
- If the court went forward with a sale, would the sale have been conducted differently than through auction?

A timber developer was able to purchase about 20% of the family's shares from distant heirs and brought an action for partition in the local court in Louisiana, asking the court to sell the property so he could get the value of his shares. The "notice" provided by the court was solely in a local newspaper; no notice of the partition lawsuit was delivered to the property or given to any of the heirs living on the land. Ultimately the property was sold at auction for \$550,000. (The VICE story did not say whether the timber developer was the one who bid at auction, but he did end up owning all the land.)

Time: N/A

Materials: None

Handouts: None

Questions for discussion: If the Uniform Partition of Heirs Property Act was law in Louisiana,

1. Could the heirs living on the property have found out about the lawsuit earlier than they did?
 1. Better notice would have been given to all tenants, including a sign with notice on the property.
2. Could the court have just moved forward with the sale of the property as it did, without doing other things first? What would the court have to do?
 1. The family members who did not bring the action would have the right to buy out (the right of first refusal) those members who want to sell their interests.
3. If the court went forward with a sale, would the sale have been conducted differently than through auction?
 1. The property would have been appraised to determine its fair market value. The property would be sold by an impartial broker on the open market rather than at auction.

SLIDE 10

INSTRUCTIONS

Other challenges of owning land as heirs' property include:

- Heirs' property owners can also lose their properties through tax sales if real estate taxes are not paid in a timely way. This has often happened because there can be confusion about who is responsible for paying property taxes, and people often don't understand they have legal rights to reclaim property within a certain time period even if the property is taken by the government.
- Unwillingness of banks and other lenders to accept heirs' property as collateral for a loan because who owns the property is not clear. As a result, heirs' property owners cannot use the land as collateral to get low-interest loans to start a business, pay for schooling, or even build a house on land owned as heirs' property. This limits the ability of owners of heirs' property to build wealth that can be passed from generation to generation. Research has shown that Black Americans have been less successful in building intergenerational wealth, and heirs' property is one reason.
- Dead Capital which is an economic term related to property which is informally held, is not legally recognized, and cannot be exchanged for financial capital. So you have the burden but not the benefit of the property.
- Unable to participate in government programs that could help on the farm. For example, in order to participate in most USDA programs, farmers must get a "farm number" from the Farm Service Agency of USDA. Because people have to show clear ownership of land to get a farm number, many heirs' property owners were left out. This changed recently (see next slide).

Financial challenges due to owning land as Heirs' Property

- Possibility of forced tax sale of property
- Unable to use property as collateral for a loan
- Dead Capital
- No access to some government programs (USDA)



Time: 4 Minutes

Materials: None

Handouts: None

SLIDE 11

INSTRUCTIONS

Progress:

- **Farm Service Agency** (FSA) of USDA: has now issued guidance listing alternative documentation heirs' property owners can use to show they are in control of the farm operation and obtain a farm number. However, heirs' property owners are generally unable to get help from USDA programs designed to assist homeowners because they do not have clear title to their homes.
- **FEMA:** Only very recently has the federal government changed its policies so that heirs' property owners can get emergency assistance after a hurricane or other natural disaster. For those with heirs' property that need emergency assistance, FEMA and the states have recently expanded the criteria to be eligible for disaster relief. Heirs' property owners can certify that they own the property damaged.



Time: 5 Minutes

Materials: None

Handouts: See note

Handouts:

- Guidance for Heirs' Property Operators Participating in Farm Service Agency (FSA) Programs. Fact Sheet, July 2020. Available at: https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/guidance_heirs_property_operators_participating_in_fsa_program_s-factsheet.pdf
- Update to FEMA's Individual Assistance Program and Policy Guide, Version 1.1 available at: https://www.fema.gov/sites/default/files/documents/fema_updated-iappg-version-1.1.pdf
- FEMA Makes Changes to Individual Assistance Policies to Advance Equity for Disaster Survivors available at: <https://www.fema.gov/press-release/20210902/fema-makes-changes-individual-assistance-policies-advance-equity-disaster#:~:text=FEMA%20is%20amending%20its%20current,the%20survivor's%20home%20before%20the>

SLIDE 12

INSTRUCTIONS

The Heirs' Property Relending Program was authorized by Congress through the 2018 Farm Bill. This is a new program that could help heirs' property landowners who are close to resolving their issues and just need funds to complete resolution. For example, if heirs need to buy out another heir's share, they could borrow money under this program, and then pay it back over time. Or if heirs need to hire a lawyer to codify the agreement they've already reached, they could borrow money to pay a lawyer, and then pay it back over time. This is not a grant program, though, so families need to be clear about that.

The family in the VICE NEWS Video might have qualified for this program to be able to buy out the developer who brought the lawsuit against them and any heirs not interested in maintaining ownership of the property.

Heirs' Property Relending Program

- [Heirs Property Relending Program](#)
 - USDA lending money to Community Development Financial Institutions
 - CDFI's lending money to heirs property owners to resolve title issues
 - Borrower must be heir (by blood or marriage) of ancestor who owned the farm, and must complete a succession plan
 - Funds can be used to resolve ownership issues, buyout other interests, and complete succession plan
 - This may also include closing costs, appraisals, title searches, surveys, preparing documents, mediation, and legal services.

Time: 3 Minutes

Materials: None

Handouts: None

SLIDE 13

INSTRUCTIONS

Use this time to answer any questions from the previous section.



Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 14

INSTRUCTIONS

Because of these problems, the most common advice that owners of heirs' property receive is that they need to change the way the property is owned. However, owners of heirs' property may decide no change is necessary.

Following are important things that families must consider in deciding whether to change the way heir's property is held. Resolving heirs' property requires a lot of time, effort, and money to identify all potential heirs, get unanimous agreement on what to do, and hire a lawyer to change the legal status of the property. If many generations have passed since the original property owner died, there may be hundreds of heirs, some of whom have moved away and may no longer be in contact with others in the family and may have no idea that they are owners of heirs' property. Even so, these individuals have the same rights of ownership as those living on the land and paying taxes on the property. Because ownership is so complex and family members may have many different opinions on what should be done with the property, there may be advantages to changing the way the property is owned or even, in some cases, selling the property (including to a sub-set of heirs who are most interested in or emotionally attached to the property).

Or it could be that there are a relatively small number of heirs, who all get along, and who all agree on how the property should be used. This might represent a situation where leaving the property as heirs' property, at least for this generation, works. However, as the number of heirs increases, and different generations with different family lines are represented among the heirs, the likelihood of disagreements increases. That is where changing property ownership to a different legal status could make sense.

Some case studies illustrate the complex family dynamics associated with heirs' property. These case studies are drawn from research done in rural Alabama by Janice Dyer at Auburn University.

One Size Does Not Fit All

- Property decisions are nuanced often involving disagreement over what's the best course of action.
- Clearing a title requires a lot of time, effort, and money, especially if there are dozens of owners.
- With increased numbers of heirs, the likelihood of disagreement increases.



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 15

INSTRUCTIONS

The following three case studies give some pictures into why families may make different choices about their heirs' property. We will discuss risks and resolution strategies for each.



Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 16

INSTRUCTIONS

Read or summarize the case study.

Darleen and 34 relatives each inherited a share of 20 acres of property purchased by Darleen's ancestors. The three largest interests are controlled by cousins who are over 80 years old with a total of 12 children between them. Nobody currently lives on the property, but the family regularly uses the cabin for family reunions and retreats. While there is currently no threat of development and all interests are held by the 35 family members, she wants to clear the title before the three elderly cousins pass away further fractionalizing the interest and making resolution more difficult. She is planning the next family reunion to have all interests in attendance in hopes of starting the process to clear the title. The lesson here is that time is of the essence when older relatives hold large interests which will become further divided should they pass.

Case Study: The Owens Family

- Darleen inherited a share of the 20 acre family land which she co-owns with 34 relatives.
- While there is currently no threat of loss, 3 cousins are over 80 years old.
- At the next family reunion, she hopes to clear the title in hopes of keeping it in the family.



Time: 6 Minutes

Materials: None

Handouts: None

SLIDE 17

INSTRUCTIONS


Read or summarize the case study.

Gwen moved from Michigan back to rural Alabama to care for her ailing mother. The condition of her home is deteriorating, and she is not eligible for government loan programs that could provide assistance. Gwen says her grandfather “fixed it” so that the 102 acres of heirs’ property could not be sold, meaning that the land was not

divided among individual heirs but rather passed down to the whole family with the understanding that the land was to be kept together for the family. Making decisions on what to do with the land has created tensions within the family. For example, one family member took it upon himself to sell some timber off the land and pocket the proceeds rather than sharing with other heirs. In another case, a family member wanted to build a fence around their house, but other heirs objected. It is difficult to manage and maintain the property and fulfill the desire of her grandparents for the land to remain in the family if the land continues to be owned in common by so many people who have to agree on everything.

A possible resolution could be for the co-owners to agree to put ownership of the land into an entity, either a trust or an LLC, for example, and work out how to make decisions and manage the land on behalf of the family. (Or they could enter into a tenants-in-common agreement. We’ll discuss these entities later.) Doing this would require family members to talk to each other and come to agreement about how to manage and maintain the land, for everyone’s benefit.

Case Study: Gwen



The joys (and costs) of collective ownership of family land

Time: 6 Minutes

Materials: None

Handouts: None

SLIDE 18

INSTRUCTIONS

Read or summarize the case study.

Ronnie and his wife, Angela, along with other members of the family, live in homes on land they inherited as heirs' property. They all pitch in and pay property taxes. Ronnie and Angela had income that qualified them to build a new house if they had clear title. But despite the efforts of a housing organizer in the area, they declined to take this step, not wanting to take any action that might 'disturb the peace' and affect the close family relationships that exist. To overcome this barrier, Ronnie and Angela request assistance from their attorney on how to best proceed. The attorney, serving as a neutral party beyond family dynamics, sends a notification letter informing co-heirs' of their interest in the property and that an anonymous family member is seeking to clear title and why this would be of benefit to the owner since the land could be improved.

This sets up Ronnie and Angela to have other family members involved or to simply have their interests purchased outright without any conflict. A letter on legal letterhead can go a long way. By having the attorney initiate the conversation, it saves Ronnie and Angela from potential conflict while giving the attorney the opportunity to explain the situation removed from the interpersonal context. It also opens the door for Ronnie and Angela to begin building their next home.

Furthermore, the Heirs Property Relending Program has financial resources available for Ronnie and Angela to buy out their co-heirs', which might be an option. We'll talk about this more shortly; this is a loan program that USDA is sponsoring, available to heirs' property owners who are close to resolving their issues but need financial assistance.

Case Study: Ronnie and Angela

- Unable to get bank loan for home to improve the house.
- Unwilling to change family dynamics to clear title and manage the land.
- Use an attorney to alter family dynamics.



Time: 6 Minutes

Materials: None

Handouts: None

SLIDE 19

INSTRUCTIONS

Understanding that some families will choose to continue owning their property as heirs' property, the remainder of this presentation will focus on how owners of heirs' property might proceed to resolve their heirs' property issues to overcome some of the known constraints that limit the ability of heirs' property owners to effectively use, manage, and generate wealth from their property.

Family wants to resolve the issues - then what?



Time and patience!

Big picture questions

- Has a family tree been created? Are all the heirs known and contacted?
- How does the family want to use the property?
- How (in what legal form) should the family own the property?

Resolving heirs' property issues takes time and patience. Ultimately, you'll need to figure out who all the heirs are, come to an agreement among all the heirs regarding what to do with the land, and clear the title to the land so that ownership is controlled by the current generation.

Time: 4 Minutes

Materials: None

Handouts: None

In this section we'll talk about some general themes, and then discuss how you can gather as much information as possible before getting legal help.

SLIDE 20

INSTRUCTIONS

Family Conversations: Ultimately, all or most of the heirs to the property are going to have to reach agreement regarding what to do with the land. Understanding your own goals and limitations is important before having a conversation with other family members about their goals and limitations.

Family Conversations



- Identify your goals and limitations
- Start with heirs you know
- Identify other heirs
- Decide on goals
- Recognize different heirs may have different interests
- Be aware of your own limitations – emotional, financial, time

What are your goals? Do you want to continue to be an owner? Do you want to make sure the land stays in the family? Do you plan to improve the economic value of the land?

Time: 8 Minutes

Materials: None

Handouts: None

What are your limitations? How much time and money are you willing to invest? What about emotional limits? Family dynamics can be complicated, especially when it comes to shared assets. Are there family members with whom you cannot work well or don't want to engage? Knowing your goals and limitations is important and should help inform any strategy you pursue. It can be useful to check back on them if things get difficult and you need to decide whether to stick with the strategy you have developed.

Once you have your own goals and limits in mind, reaching out to other family members is next. Identifying heirs is an important first step. Then you can begin discussing goals. Having clear goals for addressing the challenges involved in owning land as heirs' property is important to be able to develop a strategy that leads to family agreement and, hopefully, resolution of title issues (meaning, getting the title in the name of the current owners). The goals can vary depending on your circumstances. They can include figuring out how to get qualified for USDA and other programs for agriculture and conservation, ensuring the family always has a place to live, or simply taking care of the same land your ancestors cared for. Discussing all goals of all heirs is important because they may not be the same and may even conflict. Some heirs may have no interest in the property and may not want the burden of ownership. Other heirs might need money and would be happy to sell their share to others. (This, of course, can be a problem if that other person is not a member of the family.)


SLIDE 21

INSTRUCTIONS

Getting Started: Often when a family decides to change the legal status of their heirs' property, one person might lead the process. Maybe that is you. You are motivated by whatever goal or set of goals you have established. You are aware of your limitations and feel that the challenges ahead can be overcome. So now we are going to talk about how to proceed. Resolving heirs' property issues can be overwhelming. This presentation is going to include a lot of information, but you will not be able to take action on everything all at once. **START SMALL.** But don't procrastinate because you don't know where to start. **START SMALL.**

Getting Started

- Start small - identify a do-able task
- Build capacity gradually



Time: 3 Minutes

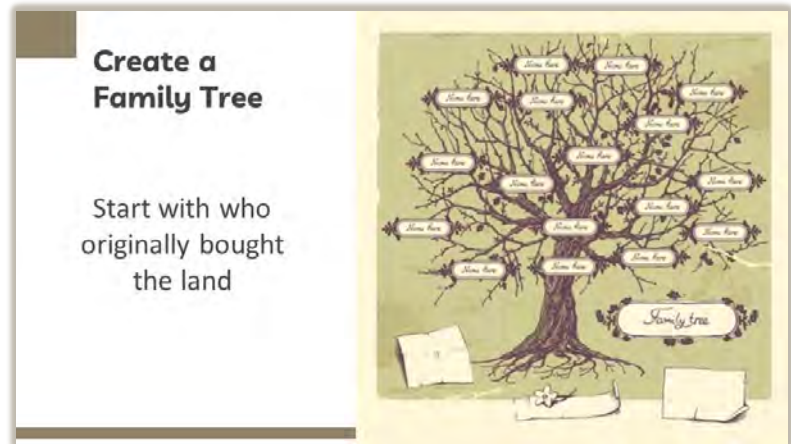
Materials: None

Handouts: None

SLIDE 22

INSTRUCTIONS

One of the first things the family must do to resolve heirs' property issues is to identify all the heirs who have an interest in the land, from the person who initially bought the property to the youngest in the family. If only one or two generations are involved, this can be a relatively simple task and you may be able to draw the family tree based on your own personal knowledge.



But imagine the property was bought by an ancestor three or four generations in the past. There could be hundreds of heirs, including many whose whereabouts (or even existence) may not be known. That sounds daunting, and it does make things difficult. But it is not impossible, and there are ways to satisfy courts that honest efforts have been made to identify all heirs. A court may allow an “heirship affidavit” to be filed, in which the family shows the information it does have about the heirs and demonstrates that it made a diligent search for anyone missing. Simply do the best you can and keep records of your efforts. Consult family Bibles, birth certificates and death certificates, or use the various ancestry tracing websites that are available. Other ways to find information to create the family tree: cemeteries, obituaries, family Bible, social media. Make sure to add birth and death dates to the family tree, and if someone died whether they died with or without a will.

Time: 5 Minutes

Materials: None

Handouts: None

Talk with family members, including those you are getting to know for the first time. Tell them what you are doing and why and ask them what they want to do. Use these conversations to build a consensus, or at least a common understanding that something should be done.

Creating a family tree involves developing a list of all family members, their dates of birth and death, if they married, if they divorced, if they divorced and then remarried, and if they had any children from those marriages (or otherwise). For those who are living, write down their contact information (phone numbers, residential addresses, email addresses).

SLIDE 23

INSTRUCTIONS

This is an activity for each participant to complete. Consider the option of making this an assignment to all participants before start of the session and have them answer the first three questions posed in the slide.

Activity: Imagine one of your own grandparents owned 100 acres of land and died with no will. Build a family tree showing your own parent and your parent's siblings. Are they all alive? How many children and grandchildren do they have? Add up the number of potential heirs. Do you know how to contact all of them? Are they likely to be of one mind regarding what to do with 100 acres?

Create a family tree:

Note: Consider using "Family Tree Builder" a free software program, at www.myheritage.com

Or

National Genealogical Society: <https://www.ngsgenealogy.org/free-resources/build-family-tree/>

Activity: Build Your 3-Generation Family Tree

- Pick one set of your grandparents
- How many children did they have?
- How many siblings and cousins do you have?
- How many total heirs?

(Don't forget spouses of deceased heirs.)

Time: 15 Minutes (if participants complete activity during session, 5-7 minutes otherwise)

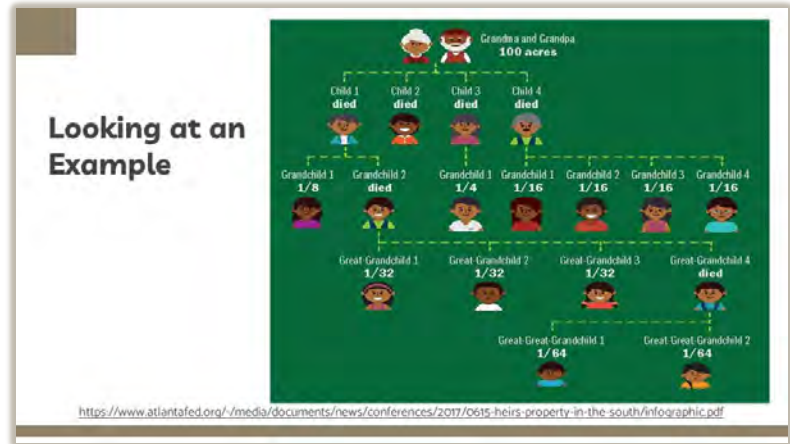
Materials: Blank paper, pens or pencils

Handouts: None

SLIDE 24

INSTRUCTIONS

A slide to illustrate the fractionalization of shares. This process of intestate succession – when someone dies without a will, who inherits – differs by state and is even more complex if you include siblings from other marriages and children born to parents who aren't married.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 25

INSTRUCTIONS

A slide for participants to draw in their tree.

Potential Questions

- Could you go beyond your grandparents?
- What was the more challenging aspects? Where did it get to be more complex?
- Could you get in contact with all of the respective branches today?
- Could you get all of these people on the same page?
- What lessons did you learn?



Time: 10 minutes

Materials: None

Handouts: None

SLIDE 26

INSTRUCTIONS

Can you locate two individuals in your family tree who view or assess the value of land differently? Placed-based attachment and cultural significance largely differ between family members and across generations.

What is the value of your land, economically, emotionally, and culturally? Can you have an appraisal done to determine the economic value of the land? Do you have timber on your land that can be sold to generate income? Can you lease the land for agriculture or other activities? Do you know the history of the land, how your ancestor acquired it, and what it was used for? All of this information will be important to share with family members and help determine next steps.

What does the land mean to the family?

- Emotionally & Culturally:
 - Why purchased
 - How used
 - Family Legacy
- Economically:
 - Land appraisal
 - Income opportunities:
 - Timber
 - Leases
 - Agriculture
 - Other



Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 27

INSTRUCTIONS

So, the family is working on the family tree, thinking about what the land means to them. While these things are happening, there are still things that need to be done regarding the land.

- The property must be secured and protected from outside threats such as trespassers and squatters. Otherwise, they can assert a legal claim to your land.

Legally this is generally called “adverse possession”. Each state’s laws differ, but generally, in order to be able to claim adverse possession, trespassers or squatters have to show they have been living on the land for a certain number of years, they don’t have permission to be living there, they have been living there openly, not in secret, and they had exclusive use of the land.

- Property taxes must be paid. Otherwise, the town or county can seize the land and slap a tax lien on it and ultimately, sell the land. Again, every state’s procedures for this are different, but if the taxes are not paid, you will lose the land.
- Establish and maintain communication with known heirs/family members. You do not want an heir to sell their interest to an outsider, and then you and the other heirs will be subject to a partition action. Each state’s laws differ, but generally any co-owner of the land can bring an action in court to obtain the value of their interest in the property, and then a court can order that the property either be physically divided or sold. Family members should all be reminded not to sign anything, especially from someone outside the family, without discussing the matter with a trusted advisor.

Things a Family Should do While Resolving Heirs' Property Issues



- **Secure the property** (avoid adverse possession claims)
- **Make sure property taxes are paid** (avoid losing land due to tax sale)
- **Establish and maintain communication** among all heirs
- Don't sign anything without speaking to a trusted advisor!

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 28

INSTRUCTIONS

Review these key terms related to property ownership:

- Title - a legal term concerning ownership of property.
- Deed - a legal document that transfers title from one to person to another and should be recorded in the courthouse or other office of land records (depends on the state).
- Clouded Title - Heirs' property owners generally have what's called "cloudy" title to their property, because the deed remains in the name of ancestors who are no longer alive, rather than in the name of the current owners.

Property Ownership: Key Terms

- **Title** - Legal term regarding *ownership* of the property
- **Deed** - Legal *document* that transfers title from one person to another
- **"Cloudy" Title** - when the deed remains in the name of ancestors who have passed



Time: 4 Minutes

Materials: None

Handouts: None

SLIDE 29

INSTRUCTIONS

Gathering documentation before visiting with an attorney is critical. Examples of documents to bring include:

- Most recent deed to the land
- Wills
- Tax documents
- Deeds
- Any contracts or leases on the property
- Easements

Documenting Ownership: Things to Do

- **Gather** all documents on the property – wills, tax documents, deeds, leases
- **Search** the Register of Deeds (or other office where land records for county are kept) for deeds and maps
- **Explore** Clerk of Court (or other office where records of property liens are kept) for liens (debts) or other judgements against the property

Searching county offices:

- This differs by state, but there's usually a county office that holds land records including deeds and maps. You will find maps of the property and the history of ownership of the property.
- Clerk of Court records (or whatever office keeps land records in the county where your land is located) for any liens (debts) or other judgements and documents associated with the property.

Time: 4 Minutes

Materials: None

Handouts: None

Title search: Ultimately, you will have to conduct a title search to confirm the current owners of the family land. A title search is the formal process of retrieving the necessary documentation and information to determine the current ownership interests in a piece of land. This can be done by a title abstractor but will need to be confirmed by an attorney. A title search reveals all the past owners of the property, a legal description of the property, and any liens on or other unresolved issues concerning the property.

SLIDE 30

INSTRUCTIONS

Selecting an attorney: Lawyers who help families with heirs' property matters must have experience in estate planning (also known as succession planning), real estate, and business law. Choose someone with appropriate experience and with a good reputation. Asking trusted advisors can help.

Also, understanding costs for every stage of the process is helpful. Ask the attorney to explain potential costs along the way. A lawyer can review documents provided, review available records, and recommend next steps. These recommendations should include estimated costs for each stage of resolving the heirs' property issues and should also include estimated costs for advice regarding what the family can do to prevent further distribution of heirs' property, such as creating a trust or a business entity to hold the land.

Selecting an Attorney - Considerations:

- Lawyer has appropriate experience in estate planning and real estate law
- Lawyer is recommended by trusted advisors - has a good reputation
- Lawyer explains costs for every stage of resolving the issues



Time: 3 Minutes

Materials: None

Handouts: None

SLIDE 31

INSTRUCTIONS

Use this time to answer any questions from the previous section.



Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 32

INSTRUCTIONS

Legal Strategies for Protecting and Maintaining Heirs' Property: The next few slides will introduce different structures that may be useful in securing heirs' property land. Protecting and maintaining family land is important. Sometimes family members will want to leave the status quo and not change any of the legal arrangements, but different legal structures can help protect lands from loss.



Time: 2 minutes

Materials: None

Handouts: None

SLIDE 33

INSTRUCTIONS

Now we're going to talk about different legal structures for holding land. We're talking about this so you have some familiarity with the terms; obviously, it's not your job to give legal advice, but it is important that you have some sense of what these things are.

Examples of Legal Structures to Hold Land:

- Trusts
- Limited Liability Company (LLC)
- Tenant-in-Common Agreement



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 34

INSTRUCTIONS

Sometimes, creating a single entity that owns the land, in which each family member effectively owns an interest, can be a more secure way of owning the property and transferring it to future generations. So, rather than each family member owning a share of the land directly, they would own a share in the entity that owns the land.

Legal Strategies: Trusts

- Heirs' property owners can transfer their interest in the land to the trust and then name one or more people to serve as the trustee(s).
- The remaining heirs' property owners can be the beneficiaries of the trust.
- The trustee would manage and control the land, and be responsible for maintenance and tax payments, according to terms set out in a trust agreement.

Trusts:

- Heirs' property owners can deed their interest in the land to the trust and then name one or more people to serve as the trustee(s).
- The remaining heirs' property owners can be the beneficiaries of the trust.
- The trustee would manage and control the land, and be responsible for maintenance and tax payments, according to terms set out in a trust agreement.

Time: 4 Minutes

Materials: None

Handouts: None

SLIDE 35

INSTRUCTIONS

LLCs or Corporations

Heirs' property owners can form a business entity such as an LLC (limited liability company) or corporation and transfer the property to the LLC or corporation. There are fees for the initial filing and annual reports.

An operating agreement or by-laws can establish:

- What happens to a member's share when they die
- What happens if a member wants to sell
- How decision-making and management will be handled
- Who is responsible for maintenance, tax payments, and other duties
- How profits and costs are shared

Legal Strategies: Limited Liability Company (LLC) or Corporation

- Heirs' property owners can form a business entity such as an LLC or corporation and transfer the property to it.
- An operating agreement or bylaws can establish:
 - What happens to a member's share when they die
 - What happens if a member wants to sell
 - How decision-making and management will be handled
 - Who is responsible for maintenance, tax payments, and other duties
 - How profits and costs are shared

Time: 4 Minutes

Materials: None

Handouts: None

SLIDE 36

INSTRUCTIONS

Tenant-in-Common Agreement

The legal structure remains the same; the co-heirs all own the land as tenants in common.

Instead of creating a new entity that governs the family's ownership of the property, family members could enter into a "tenant-in-common agreement." Here, each family member still owns a share in the land itself, but they reach an agreement that does the following:

- Sets out the rights and responsibilities of all the property owners.
- Can help address who will manage the property, how it will be used, how the taxes will be paid, and what happens if a co-tenant wants to sell their interest.

Legal Strategies: Tenant-in-Common Agreement

- The legal structure remains the same; the co-heirs all own the land as tenants in common.
- Sets out the rights and responsibilities of all the property owners.
- Can help address:
 - Who will manage the property
 - How it will be used
 - How the taxes will be paid
 - What happens if a co-tenant wants to sell their interest

Time: 4 Minutes

Materials: None

Handouts: None

SLIDE 37

INSTRUCTIONS

Conflict: The case studies described earlier suggest family conflicts and disagreements are common. However, they should not stop families from moving forward.

Communication and transparency within the family is going to be critical. Is there someone in the family who can lead this as a project? Is it you?

Navigating Family Conflict



Family conflicts are common but need not end the process of resolving the issues

- Right of First Refusal (UPHPA States)
- Keep communication open and transparent
- Gain agreement on goals
- Hire facilitators, mediators, or even arbitrators, if necessary, to help work through decision-making process

Families will need to discuss these important points together:

- Discussing the issues
- Understanding the property as a resource, a potential source of wealth, and its cultural importance
- Figuring out how to deal with conflicts that will inevitably arise, these are all things that the family will have to discuss.

Time: 5 Minutes

Materials: None

Handouts: None

Members of the family should decide how best to be in touch with one another, as the process of resolving heirs' property is generally long and complicated, and questions will arise, and discussion will be needed. Many one-on-one conversations will be held but there may be need for a family gathering/reunion where the family can work out issues together.

In some cases, it may be useful to consider using facilitators or mediators (or even arbitrators) to help conversations be productive. Some non-government organizations that focus on heirs' property might be valuable sources of assistance in identifying facilitators or mediators to work with you and your family.

Facilitators are neutral individuals whose job it is to help a group engage in dialogue, ensuring that all participants can share equally and that the group's dialogue leads to a decision or resolution. Even where there is no conflict, having a skilled, neutral person outside of the family be tasked with helping family members have conversations about the property, ensuring that co-owners feel empowered to speak, and keeping the group focused on the task at hand can help tremendously.

Similar to a facilitator, a mediator is a neutral third party who facilitates conversation aimed at resolution of a dispute. Like facilitators, they do not make any decisions; rather they facilitate the conversation and make sure all parties are heard and understood. They can identify issues and interests and help guide the parties to a resolution.

Using a facilitator or mediator can be advantageous for numerous reasons. The burden of making sure the conversation happens is placed on the neutral third party. It also is typically more affordable than either inaction, which leads to its own challenges, or going to court. You can choose a professional who has deep knowledge about heirs' property, but this is not necessary since the person is not tasked with making a decision, but rather helping family members come to agreement.

Arbitration, like mediation, is a dispute resolution process. The arbitrator is neutral like a facilitator or mediator, but they do make a decision. Their role is similar to a judge. However, unlike a judge, the parties choose the arbitrator, which allows them to choose someone with subject matter expertise. Parties present their "case," similar to court litigation, and then the arbitrator makes a decision to which all parties agree in advance, ruling for one party or the other.

SLIDE 38

INSTRUCTIONS

During this session, we have discussed:

- The challenges of heirs' property but also understanding why some families might choose to continue holding their land and homes as heirs' property
- The importance of working with other family members to consider how best to manage and enjoy their heirs' property
- The steps necessary should heirs decide to turn their heirs' property into a different legal form and the advantages such a change might bring
- The different legal forms available to owners of heirs' property should they decide to change

Material Covered

- Some of the challenges of owning heirs' property
- The importance of working with all family members
- Creating a family tree
- Considerations relevant to a family's decision about how to resolve heirs' property issues
- Different legal structures that can hold land owned by heirs' property owners

Time: 1 Minute

Materials: None

Handouts: None

SLIDE 39

INSTRUCTIONS

Wrap up with any questions participants may have.



Time: 10 Minutes

Materials: None

Handouts: None

SUMMARY OF LINKED RESOURCES

Resources for Heirs' Property Education

Heirs' Property Resources

http://srdc.msstate.edu/heir_property/Detailed%20Resources-2-17-2020.pdf

Extension, research, and outreach materials with a focus on heirs' property as well as organizations involved in the work.

Farmland Access Legal Toolkit

<https://farmlandaccess.org/heirs-property/>

Produced by the Center for Agriculture and Food Systems at the Vermont Law School, this provides a thorough website covering many aspects of heirs' property.

Heirs Property and the Uniform Partition of Heirs' Property Act: Challenges, Solutions and Historic Reform

<https://www.americanbar.org/products/inv/book/422849297/>

This book addresses many challenges that have plagued disadvantaged families that own heirs' property. The book also discusses a range of solutions to these problems, including legal reform measures, proactive legal planning to avoid heirs' property ownership or to resolve it, and wealth building strategies for heirs' property owners.

Preventing Heirs' Property/Estate Planning

Publications (Various)

<https://www.gaheirsproperty.org/publications>

Various publications produced by Georgia Heirs Property Law Center concerning prevention of heirs' property, owning heirs' property, and facts and myths of heirs' property.

Wills

<https://www.tnstate.edu/extension/documents/Wills.pdf>

One-page fact sheet published by Tennessee State University Extension. Discusses basic elements of wills.

Farm Transfer

<https://farmlandaccess.org/farm-transfer/>

Published by the Center for Agriculture & Food Systems. A farmland access legal toolkit, it discusses heirs' property, wills, and trusts, along with other farm transfer related subjects. Also available in Spanish.

Estate Planning – A Simplified Guide for Oklahoma Farm and Ranch Families

<https://extension.okstate.edu/fact-sheets/estate-planning-a-simplified-guide-for-oklahoma-farm-and-ranch-families.html>

Basic fact sheet on estate planning produced by Oklahoma State Extension.

Planning Today for Tomorrow's Farms: A Workbook for Tennessee Farm Families

<https://extension.tennessee.edu/publications/Documents/SP822.pdf>

Published by University of Tennessee Extension, the documents covers estate and succession planning extensively (126 pages).

Wills and Life Planning Self-help Tools

<https://louisianalawhelp.org/issues/representing-yourself-audio-guides-forms-more/life-planning-forms-multimedia-presentations>

Links to 12 resources on wills and life planning.

Louisiana Affidavit of Small Succession

<https://lawhelpinteractive.org/Interview/GenerateInterview/7130/engine>

Produced by probono.net, this site assists in filling out legal documents free of charge.

Where There's a Will, There's a Way

<http://extension.msstate.edu/publications/publications/planning-your-estate-part-2-where-theres-will-theres-way>

Estate Plan Checklist

https://www.investopedia.com/articles/pf/07/estate_plan_checklist.asp

What is Estate Planning? Definition, Meaning, and Key Components

<https://www.investopedia.com/terms/e/estateplanning.asp>

Working with an Attorney

<https://extension.tennessee.edu/publications/Documents/SP743-B.pdf>

Retirement and Estate Planning

<https://www.uaex.uada.edu/life-skills-wellness/personal-finance/retirement-and-estate-planning/>

Heirs' Property Resolution

Family Conversations

The Conversation Project

<https://theconversationproject.org/>

Various aids in assisting families in having end-of-life conversations with family members.

Create or Update the Family Tree

Suggestions for Heirs' Property Owners

<https://farmlandaccess.org/suggestions-for-heirs-property-owners/>

Step-by-step guide in planning towards single-entity ownership starting with developing a family tree.

Heirs Determination Worksheets for the State of Georgia

<https://static1.squarespace.com/static/5994bdde197aea0c96b51664/t/5f2319fd5809270950f72026/1596135934663/Heirs+Determination+Worksheets+fillable+w+Resources.pdf>

Downloadable forms: <https://www.gaheirsproperty.org/preparation>

Worksheet and family tree produced by Georgia Heirs Property Law Center.

Visiting the Attorney

Directory of Legal Sources in Your State

Working List – Legal Services Providers/Heirs' Property

<https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:2a27c1ce-18c7-463e-8c72-63a4fc49c1c1#pageNum=1>

Document developed by University of Georgia's Carl Vinson Institute of Government. Describes known resources of legal aid available by state.

Documents to Bring on First Visit

Working With an Attorney

<https://extension.tennessee.edu/publications/Documents/SP743-B.pdf>

Questions to ask and documents to bring to the first meeting with an attorney, University of Tennessee Extension.

State Specific Data on Heirs' Property

<https://farmlandaccess.org/heirs-property/#statefactsheets>

Extension Educator Competencies and Skills

Cultural Competency Skills

Cultural Competence in Health and Human Services

<https://necin.cdc.gov/pages/cultural-competence>

CDC document that discusses cultural and linguistic competence attitudes and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations.

Standards for Cultural Competence in Social Work Practice

https://nlcs.w.ca/sites/default/files/inline-files/cultural_competency_standards.pdf

Standards and definitions of cultural competence.

Cultural Competence in Financial Counseling and Coaching

<http://www.professionalfincounselingjournal.org/cultural-competence-in-financial-counseling-and-coaching.html>

Article discussing cultural competence in financial counseling and coaching.

America Saves (Website)

<https://americasaves.org/>

A campaign managed by the nonprofit Consumer Federation of America, motivates, encourages, and supports low- to moderate-income households to save money, reduce debt, and build wealth.

Organizations Providing Direct Assistance to Heirs' Property Owners

Black Family Land Trust:

<http://www.bflt.org/>

Center for Heirs Property Preservation:

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

Located in South Carolina

Community Legal Services of mid-Florida

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

Federation of Southern Cooperatives/Land Assistance Fund

<https://www.federation.coop/>

Aids multiple states in the South

Georgia Heirs' Property Law Center

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

HeirShares:

<http://www.heirshares.com/>

Indian Land Tenure Foundation

<https://iltf.org/>

Land Loss Prevention Project

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

Located in North Carolina

Legal Services of Eastern Missouri Neighborhood Vacancy Initiative

<https://lsem.org/neighborhood-vacancy-initiative/>

Louisiana Appleseed Center for Law & Justice:

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

McIntosh SEED

<https://mcintoshseed.org/>

Located in Georgia

Mississippi Center for Justice

<https://mscenterforjustice.org/>

Sustainable Forestry and African American Land Retention Program

<http://www.sflrnetwork.org/>

Includes links to the eight partners working with landowners.

Three Rivers Legal Services, Inc.

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

Located in Florida

University of Arkansas at Pine Bluff, Keeping it in the Family Program

https://www.uapb.edu/academics/school_of_agriculture_fisheries_and_human_sciences/outreach_and_cooperative_extension/small_farm_program/

Winston County Self Help Cooperative

<https://wchc.com/>

Located in Mississippi