

SUMMARY OF LINKED RESOURCES

Resources for Heirs' Property Education

Heirs' Property Resources

<https://srdc.msstate.edu/sites/default/files/2023-06/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://npin.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://nlcsw.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.professionalcounselingjournal.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://wcshe.com/>

Located in Mississippi

List of Service Providers

USDA Farm Service Agency

<https://www.fsa.usda.gov/contact-us>

USDA Natural Resource Conservation Service

<https://www.nrcs.usda.gov/>

USDA Forest Service (State, Private, and Tribal Forestry)

<https://www.fs.usda.gov/>

Southern Regional Extension Forestry

<https://sref.info/resources/state-resources>

Association of Consulting Foresters

<https://www.acf-foresters.org/>

American Forestry Foundation

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

<https://www.forestfoundation.org/what-we-do/increase-carbon-storage/family-forest-carbon-program/>

Historically Black Land-Grant Universities

<https://www.usda.gov/partnerships/1890s-program>

Forest Landowner Association

<https://forestlandowners.com/who-we-are/>

Land Trust Alliance, National

<https://landtrustalliance.org/land-trusts/gaining-ground>

SE Land Trust Alliance

<https://landtrustalliance.org/resources/connect/field-services/southeast>

National Woodland Owners Association: Attn: Mark Megalos

<https://nationalwoodlands.com/homepage/nwoa-contacts/>

Sustainable Forestry and African American Land Retention Program (SFLR):

<https://sflrnetwork.org/network/>

Federation of Southern Cooperatives

<https://www.federation.coop/land-retention>

Help for Landowners (NC & SC)

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

<https://landtrustalliance.org/resources/learn/explore/heirs-property-toolkit>

Mano-Yola and Latino Farmers

<https://www.mano-y-ola.com/about-us>

HEIRS' PROPERTY

CASE STUDY #1: THE THOMAS FAMILY WORKS TOGETHER

Scenario

In 2012, a real estate developer, Mark, purchased a 1/15th interest in heirs' property from two grandchildren of the original owner at a very low price. Seeking to capitalize on this investment, Mark filed a partition lawsuit, intending to force a sale of the property. However, the lawsuit was dismissed in 2019, likely due to the deaths of several heirs and difficulties in getting all parties served. In 2022, the family hired an attorney to clear the title in hopes of preventing another partition lawsuit in the future.

Family Organization

The resolution process began with a thorough legal review of the property, which included a title search, title opinion, and creating a detailed family tree to identify all heirs and calculate their respective fractional interests. Although this process is intricate and time-consuming, it was necessary before the family could coordinate intra-family buyouts and create a unified ownership structure.

Family communication played a key role in the resolution's success. The attorney worked closely with the family to coordinate buyouts among the heirs. These buyouts simplified ownership, reduced the number of disinterested heirs, and allowed the family to regain control and unified management of the property. Family meetings were organized and held monthly to determine which members wished to retain ownership and which preferred to be bought out.

Solution

The solution involved negotiating with Mark to buy out his interest in the property. In 2023, after locating Mark, the attorney began negotiations, and Mark made a firm offer to sell his interest. The family sought a financial sponsor (a business with an heirs' property fund) and countered with an offer that deducted Mark's share of property taxes he had not contributed over the years. Mark accepted the offer, and the buyout was finalized by August 2023. To preserve the property and generate revenue from it, the family formed a limited liability company (LLC). This decision allowed them to protect individual members from liability, streamline management, and create a clear governance structure. The attorney worked with two family representatives to draft the necessary documents, including a name reservation, Articles of Incorporation, and an Operating Agreement. Their Operating Agreement addressed the payment of property taxes and maintenance expenses, income distribution, and succession of membership interests. Additionally, a deed was prepared to transfer ownership of the property from the individual heirs into the LLC, ensuring that the property would remain within the family for many years to come. 96% of the heirs

joined the LLC. 4% of the heirs refused to join, but they were advised to create their own estate plans to ensure their property interests passed seamlessly to their chosen heirs.

Lessons Learned

This case illustrates the importance of legal representation, access to capital, a thorough review of the title by an attorney, and a detailed family tree. It also underscores the value of family communication and cooperation in resolving complex property disputes. By working together and seeking professional guidance, the family was able to successfully navigate a complicated legal landscape, regain control of their property, and set the stage for its preservation and future revenue generation. Forming an LLC proved to be a strategic decision, providing both protection and structure to ensure the property remains a valuable family asset for generations to come.

Discussion Notes

- Rarely do you get a case where every heir is willing to join the entity.
- Success can be defined in many ways. 96% of consolidated title is better than 0%.
- Having an estate plan in place is key. Certain heirs may be willing to will or convey their interest in the property to a sibling or their children, rather than an entity.
- For elder heirs who don't want to be involved, see if elder's children will participate in meetings so that they're on board when the elder passes away
- Continue trying to get heirs on board at family meetings, reunions, etc. Don't give up!
- Heirs may come around over time when the family leads by example.

HEIRS' PROPERTY

CASE STUDY #2: THE REED FAMILY AND LEVERAGING THE UPHPA

Scenario

This case revolves around a partition-by-sale lawsuit filed in 2021 concerning an urban heirs' property. The property belonged to a mother, with her son acting as her power of attorney (POA), and three other children (two brothers and a daughter). The mother and her two sons incorrectly filed a partition lawsuit under an old partition statute, trying to force the sale of the mother's house. However, the lawsuit should have been filed under the Uniform Partition of Heirs Property Act (UPHPA), which applied to all partition lawsuits after January 1, 2015. The lawyer representing the daughter filed an Answer to the lawsuit, arguing that the lawsuit should have been filed under the UPHPA because the property in question was heirs' property. Although neither the plaintiffs' attorney nor the judge was familiar with the UPHPA, they were open to learning and allowed the daughter's lawyer to guide the proceedings according to the UPHPA's provisions.

UPHPA Protections

The UPHPA, which prioritizes the preservation of family-owned properties, required careful adherence to its guidelines throughout the litigation process. During the first buyout round (where heirs who want to keep the property can purchase the shares of heirs who want to sell), the daughter elected to buy out the interests of her brothers and mother. However, the daughter faced a significant challenge, as there was a lack of capital to complete the buyout, and she needed a loan.

Solution

Securing financing became the critical obstacle in resolving the case. Despite the client's excellent credit, no financial institution was willing to provide a loan against heirs' property to accomplish the buyout. The lawyer and her team made several attempts to secure funding for the daughter through various banks and credit unions, but all were unsuccessful. Recognizing the urgency, the lawyer leveraged a personal connection at a trusted but small, rural bank. Establishing personal connections with bankers and loan officers are crucial to accessing capital and other resources. The legal team explained to the loan officer that the client would obtain a clear title upon entry of the final judgment, which ultimately persuaded the bank to provide the necessary financing. To meet the court's deadlines,

the lawyer filed two extensions to allow more time to secure the financing. These extensions were granted, and the lawyer maintained regular communication with the opposing attorney, facilitating a smoother process. The case concluded during the buyout rounds, with the daughter successfully purchasing the other heirs' interests and emerging from the litigation with clear title to the property. The client then put the property into a Trust to protect the property for years to come.

Lessons Learned

This case highlights the importance of legal advocacy and awareness of relevant statutes like the UPHPA, which can significantly influence the outcome of property disputes involving heirs' property. The lawyer's proactive approach in educating the court and opposing counsel about the UPHPA was crucial in ensuring the case was adjudicated fairly. Missing a single step or provision would have seriously affected the outcome. Additionally, the case underscores the challenges of financing heirs' property and the importance of persistence and resourcefulness in overcoming these hurdles. By securing financing through a small, rural bank, the lawyer demonstrated the value of leveraging personal connections and maintaining professional relationships. Finally, the decision to place the property into a trust after securing clear title reflects a strategic move to safeguard the property for future generations, ensuring that it remains a stable and protected family asset. Ensuring a proper estate plan is just as important as clearing title and will reduce the risk of the property becoming heirs' property in the future.

HEIRS' PROPERTY

CASE STUDY #3: THE POWER OF BOLD & STRATEGIC LEGAL ADVOCACY

Scenario

The case centers on Lorine Jackson, an 83-year-old woman facing the potential loss of her home of over 60 years. Some developers purchased a minimal interest in heirs' property from a disinterested cousin. Willie Jackson, Lorine's late husband, owned an 11% interest in the property and had lived on the property with Lorine since the 1960s. In 2006, the developers filed a partition lawsuit to force a sale of the entire property to themselves. Because the lawsuit was filed prior to Alabama adopting the Uniform Partition of Heirs' Property Act, the lawsuit fell under the old partition statute. Following Willie's death in mid-2022, Lorine inherited his interest in the property via his Last Will and Testament. In late 2022, she filed a Motion for Entry of Final Judgment to have the property sold and a Motion for Lorine to be substituted as a party for her late husband. Lorine, recognizing the threat to her home, fired her previous attorney (who was encouraging her to sell and take the money) and hired a new attorney to help her save the land in January 2023. Her new attorney promptly filed a "Notice of Intent to Purchase" on Lorine's behalf, attempting to secure Lorine's right to buy the property and attempt to outbid the developers. Soon thereafter, the Court substituted Lorine in for Willie as a party to the lawsuit.

Family Organization

The legal battle highlighted significant challenges, especially concerning heirs' property and the tactics used by developers. The developers targeted a 40-acre rural parcel located near a popular University, potentially worth millions of dollars, which was owned by twenty family members, each owning small shares of the property. Over several years, these developers were able to purchase several family members' shares outside of court, thereby acquiring a 49% interest by 2022. Lorine's Notice of Intent was met with an objection from the developers, who argued that she filed it too late, based on a statute that required such notices to be filed at least 10 days before trial. The trial took place in 2014. Despite this, Lorine's new attorney argued that she should be allowed to bid for the property, citing her long-standing residence on the property and her lack of standing to file such a notice in 2014 because she was not a party to the case (as Willie was still alive at that time).

Solution

The situation escalated when the Circuit Judge, who initially seemed sympathetic to Lorine's case, recused himself shortly after expressing an inclination to allow her to bid against the developers. In fact, all circuit judges recused themselves from the case, resulting in the appointment of a District Judge with a "non-sympathetic" reputation. This judge swiftly denied Lorine's request to bid, allowing the developers to purchase the property for approximately \$4 million. Lorine's attorney immediately appealed to the Alabama Supreme Court, arguing that Lorine's Notice of Intent was timely filed as soon as she became a party to the case. Additionally, the attorney filed a Motion to pause the sale while the appeal was pending so that Lorine could continue living in the home during the appeal process. Shockingly, the Judge required Lorine to secure a \$4 million bond to pursue the appeal and pause the sale. Miraculously, a financial sponsor reached out to Lorine's attorney, offering to put up the bond in cash and cover the attorneys' fees and expenses for the appeal. While reviewing the 18-year-old case file and conducting legal research, Lorine's attorney discovered a critical oversight on behalf of the developers: the developers, who were accusing Lorine of filing a late Notice of Intent to Purchase had, themselves, failed to file their Notice of Intent to Purchase on time. In fact, they did not file their Notice of Intent to Purchase until 2019, before the second trial in the case. Lorine's attorney found case law which clearly required such a Notice to be filed 10 days before the **first** trial, not any subsequent trials. This revelation significantly strengthened Lorine's position and forced the developers into a favorable settlement which allowed Lorine to keep some of the property just seven days before Lorine's attorney was due to submit her Brief to the Alabama Supreme Court.

Lessons Learned

This case underscores the risks of owning heirs' property, the complexity of partition lawsuits, the great need for capital, and the dangers of not having the protections of the Uniform Partition of Heirs' Property Act. Developers, who are always represented by experienced real estate attorneys (or who are attorneys, themselves), will often exploit legal loopholes and absentee family members to gain ownership interests of valuable land. The importance of timely and strategic legal action is evident, as Lorine's attorney's persistence and thorough research ultimately uncovered a pivotal error in the developers' filings. The case also highlights the power of community and financial support in battling large developers, in that heirs' property owners need access to capital to pay competent attorneys, bid against developers, and afford other court expenses. Ultimately, Lorine achieved a favorable settlement in the 11th hour of an 18-year-old case, allowing her to preserve her husband's legacy, retain a valuable portion of the property as an investment, and purchase a brand-new home, mortgage-free. This outcome not only preserved the land to be used as generational wealth for her children and grandchildren, but also highlighted the importance of bold and strategic legal advocacy in protecting family assets.

HEIRS' PROPERTY

CASE STUDY #4: FRACTIONAL OWNERSHIP

Introduction

Fractional ownership of heirs' property occurs when more than one person inherits property, in this case land, that has been passed down across multiple generations, and where each heir has an undivided interest in (i.e., a fraction of) the land. In cases such as this, it is not unusual for there to be multiple if not tens of heirs after one generation, and even hundreds of heirs after multiple generations. For example, across generations, the farther away from the original owner (child, grand-child, great-grand-child, etc.), the greater the potential number of heirs; and, within generations, the greater number of siblings, cousins, etc., impacts the actual percent interest (fractional size) of the land-holding. For example, the two children of one brother will inherit a different percent interest in heirs' property opposed to the three children of a second brother (50% vs 33%).

Example 1: Hypothetical 40 Acres and a Mule.

As an example on how heirs' property can get complicated very quickly, the rallying cry of "forty acres and a mule" for post-Civil War land ownership is used. In January 1865, Union General Sherman issued Field Order 15, to redistribute 40,000 acres of confiscated land along the South Carolina, Georgia and Florida coastline into 40-acre tracts. If a husband and wife with four children had 40 acres of land in 1865, and both died without a will, then each child would receive 25% interest in the land (a ten-acre equivalent if each child had equal title). By the second generation (grandchildren), there are 16 heirs with a 6.25% in the land, or 2.5 acres. If this pattern continues across the eight 20-year generations from 1865 to the present, then there would be 65,536 heirs with each having a percent interest of land equivalent of 0.0006 acres or about 26 square feet. See Table 1.

Table 1: Fractional Ownership Example 1

1865	Gens	Heirs	% Int	40 Acres
	1	4	0.25	10
	2	16	0.0625	2.5
	3	64	0.0156	0.62
	4	256	0.0039	0.16
	5	1,024	0.00098	0.04
	6	4,096	0.00024	0.01
	7	16,384	0.000061	0.002
2020	8	65,536	0.000015	0.0006

Example 2: Potential Family Heirs.

One June morning, a TU Staff colleague asked if I would present an heirs property workshop with one of my PhD students at their family reunion in July. I casually asked about how many acres of heirs' property they were talking about, and they said about 150 acres. My surprise was when I asked about how many heirs they were talking about; and, without batting an eye, they said, about 1,000! To get a better grasp as to a more accurate count of heirs, we constructed a family tree starting with the original landowner. The original landowner was my colleague's great-grandparent, born in 1862, and who purchased their first piece of land in the 1890s, with two subsequent purchases in the 1900s and teens. This ancestor had eight children. Of the eight, the one in direct line to my colleague, their grandparent, had 13 children. If all the eight had 13 children, then that accounts for 104 possible heirs. Continuing to the next generation, my colleague's parent was one of nine children, and if all the 104 possible heirs had nine children, the possible number of heirs increases to 936, not far from 1,000 (see Table 2)! This is the information that we presented at the family reunion, and it created quite a buzz!

Table 2: Fractional Ownership Example 2

Generations	Children	Heirs
Great-grandparent	8	8
Grandparent	13	104
Parent	9	936
Colleague	2	(1,872)

Conclusion

Of course, not all siblings have the same number of children, some have more, some have less, some have none. However, even half of this number is close to 500 heirs, and more halves go to 250, 125, etc. The Point is, that with every death come more heirs, both within and across generations.

Second, not all heirs live near the land, have the same care for the land, or even know about the land. In many cases, most heirs live out of the county, state, or even region where the land is located. Similarly, one generation's reverence for the land as a family legacy, may not be shared by a younger generation's goal of investment or cash.

Finally, heirs' property, with all its fractional owners, is a family issue. Land use, potential business entities, trusts, taxes, all must be considered, often with the assistance of a legal professional or estate planner.