

HEIRS' PROPERTY

This resource features information including:

OVERVIEW

Heirs' property is property that is jointly owned by descendants of a person who died, usually without a will or estate plan. These descendants have shared rights to the land.

If the estate is left unresolved, the following generations of descendants also inherit ownership in the land, resulting in dozens or hundreds of heirs, each with an interest in the property.

CHALLENGES

Legal Title: Co-owners cannot use the property as collateral for loans or access government programs that require proof of ownership, leading to less ability to build wealth from the land.

Tenants in Common: 100% agreement among heirs is required for any activity on the land, including selling timber, leasing, or other activities that could generate income.

Partition Sales: Owners of heirs' property are particularly vulnerable to losing their land because they are subject to a legal action called a "partition action." Any co-owner (including non-family members) of the property can bring an action in court to obtain the value of their interest in the property.

These challenges have been especially devastating to Black landowners, resulting in the loss of land, wealth, and family legacy.

PROGRESS

25 states have enacted the Uniform Partition of Heirs' Property Act, providing due process protections for heirs' property owners.

The 2018 Farm Bill required the USDA to allow heirs' property owners to obtain Farm Service Agency identification numbers (farm numbers) that allow for program access.

FEMA developed guidelines for its agents to accept documentation from heirs' property owners who do not have clear title to obtain disaster relief funding.



STATE FACTSHEETS ON LEGAL ISSUES

Scan QR code or go to cafs.vermontlaw.edu/resource-library/heirs-property-state-factsheets to find factsheets that examine individual state laws that are relevant to heirs' property owners and outline steps owners can take to resolve property issues before seeing an attorney.

State Factsheets on Legal Issues

The factsheets aim to prevent the loss of land owned as heirs' property in specific states. Each examines state laws that are relevant to heirs' property owners and outlines steps owners can take to resolve property issues before seeing an attorney.

Each factsheet also addresses relevant legal issues in a given state, including 1) how to identify legal heirs of the original ancestor who owned the land, 2) state partition law, 3) state law that permits the sale of land due to unpaid property taxes, and 4) state law addressing adverse possession and condemnation (terms defined in the glossary in each resource.)



HEIRS' PROPERTY:

Understanding the Legal Issues in Georgia

By Francine Miller
November 2022



Introduction

The purpose of this factsheet is to prevent the loss of land owned as heirs' property in Georgia. It examines state laws that are relevant to heirs' property owners in Georgia, and outlines steps they can take to resolve property issues before seeing an attorney.

It also explains relevant legal issues, including:

1. **how to identify the legal heirs of the original ancestor who owned the land,**
2. **state partition law,**
3. **state law that permits the sale of land due to unpaid property taxes, and**
4. **state law addressing adverse possession and condemnation** (these terms are defined in the glossary, below).

This resource may be useful to professionals assisting heirs' property owners, such as lawyers, nonprofit and community development advocates, and cooperative extension agents.

**For a glossary of legal terms used in this factsheet, refer to page 10.**

Identifying Heirs

To resolve heirs' property issues, an important first step is tracing the ownership of the land from the original titled owner to the current owners. Many practitioners encourage heirs' property owners to build a family tree identifying all the heirs, deceased and living. Specifically, heirs' property owners will want to collect:

1. **the heirs' birth and death dates,**
2. **county of death,**
3. **proof of whether they died with a will, and**
4. **any current contact information for living heirs.**

The goal is to gather information about anyone who may have at any time held any interest in the land, so it is important to identify all the heirs, all of whom might be entitled to an interest in the land.

When a person dies with a valid will, they die "testate" and their will determines who inherits their property.¹ When a person dies without a will, they die "intestate" and state law governing intestate succession determines who inherits that person's real estate and other assets.² Who inherits a person's land by intestate succession varies depending on which family members survive the decedent.

There are generally a number of types of living heirs entitled to inherit from a decedent, including: the spouse of the decedent; biological and adopted children, and their descendants; parents of the decedent; siblings of the decedent, and if they have died, their descendants (the decedent's nieces and nephews); and grandparents and cousins.

Finding the Family (Genealogy) and Land Records

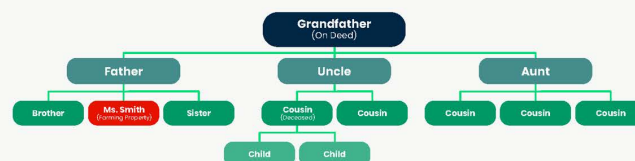
Resources to help identify and locate heirs and build the family tree include genealogists and family history sites such as [ancestry.com](https://www.ancestry.com), [myheritage.com](https://www.myheritage.com), and [familysearch.org](https://www.familysearch.org). Family bibles can be a good source of information and can sometimes be used to show heirs. Local libraries can also be a great resource for genealogical records and research help (see contact information below). In addition, individuals can go to:

The Archives of the Georgia State University System
5800 Jonesboro Road
Morrow, GA 30260
Phone: (678) 364-3710
Website: georgiaarchives.org/research/research_help

Georgia Public Library Service
2872 Woodcock Boulevard, Suite 250
Atlanta, GA 30341
Phone: (404) 235-7200
Website: georgialibraries.org/archival-services/genealogy/

For land records, individuals can go to the office of the Clerk of Superior Court in the county where the land is located to trace land ownership and visit the Georgia Superior Court Clerks' Cooperative Authority website to review additional records regarding the land.³

An example of a simple family tree for Ms. Smith



Scan this **QR code** or go to: cafs.vermontlaw.edu/resource-library/heirs-property-state-factsheets to download any of the factsheets that examine individual state laws that are relevant to heirs' property owners.

Please contact Francine Miller at fmiller@vermontlaw.edu with questions or comments.