

# Guide to ACEP-ALE for Heirs' Property Landowners





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COVER PHOTOS, CLOCKWISE FROM TOP LEFT: USDA/NRCS; USDA/NRCS; WBRITTEN/ISTOCKPHOTO; INGA SPENCE/ALAMY; KEITH WELLER/USDA





This guide is meant to help heirs' property landowners participate in the Agricultural Conservation Easement Program – Agricultural Land Easements component (ACEP-ALE). We hope it informs conversations with family members and land protection professionals who may work with you to protect your land and your family's legacy. The guide describes what heirs' property is and highlights opportunities for participating in the United States Department of Agriculture's Natural Resources Conservation Service (USDA NRCS) programs, including ACEP-ALE. It lists key considerations and provides examples of how you and your family can use the program to achieve your goals. The guide ends with steps for getting started and organizations and resources that can support you.

## What is Heirs' Property?

**Heirs' property** describes family land inherited by multiple people and owned as **tenants in common**. This form of ownership means each person holds a fractional interest in the land while having the right to use the whole property.

Heirs' property is often created when a person dies without a valid **will**. Without a will, probate courts transfer assets to heirs (also known as **next of kin**) based on rules described in state law. In these situations, heirs automatically hold the land as tenants in common. Heirs' property can also arise when a will leaves property to more than one person but does not specify the type of ownership. Tenancy in common is the default form of ownership in most states. Ownership can become even more divided as the land passes from one generation to the next. Further, if heirs do not follow state requirements to close out an **estate** in **probate** court and update the property records with the names of the new owners, legal ownership, or **title**, becomes unclear.

Heirs' property can affect any family. It is prevalent among marginalized communities in rural areas. Heirs' property also affects lower-income families, both rural and urban, who lack the financial resources to plan their estates. Black families in the South experience especially high rates of heirs' property. Discrimination has prevented equitable access to legal and estate planning services and created mistrust in legal institutions. Heirs' property is considered to be the leading cause of involuntary land loss among Black communities.

{ Terms in **blue** appear in the glossary on page 9. }

### You might have heirs' property if...

You know there is land "in the family" but do not know who pays property taxes.

Writing wills is not a common practice in your family.

The names on the most recent property deed are deceased family members.

## Challenges for Agricultural Producers and Landowners

Owning heirs' property is not inherently bad but can create some challenges. Owning land together requires unanimous decisions and united action. While some families choose to co-own land, without clear communication it can be difficult to fulfill ownership responsibilities like paying mortgages, property taxes, and utilities, covering the expenses of maintaining the property, or selling resources associated with the land (e.g. timber or mineral rights, carbon credits). Missed mortgage or property tax payments have caused foreclosures leading to land loss.

In addition, most states allow anyone with an ownership interest to legally split the property, known as a **partition**. Courts generally have two options: **partition-in-kind** or **partition-by-sale**. Courts may order a partition-by-sale if the property cannot be equitably divided into separate parcels. This might arise if there are structures or significant improvements on the land that cannot be split up, like a house or irrigation system. In states that have passed the **Uniform Partition of Heirs Property Act** (UPHPA), there are safeguards in place to make sure heirs' property is sold for a fair amount on the open market in the event of a partition-by-sale.

Owning heirs' property may also keep you from investing in and making improvements to your property. It may be more difficult to reach decisions about maintaining or building agricultural structures or making other capital investments, especially if these expenses do not directly benefit all owners. Or, you may not feel secure enough in your long-term control of the property to make investments. These same challenges apply to the adoption of conservation practices, which can involve significant effort and funding and take time to see the benefits, or "return on investment."

If your **deed** does not list all current property owners, ownership is unclear. This will make it more difficult to apply for a mortgage and qualify for government programs, including conservation programs that provide loans and financial assistance.

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## Opportunities to Participate in USDA Natural Resources Conservation Service Programs

Despite these challenges, you can participate in USDA programs as an owner of heirs' property. The 2018 Farm Bill created new ways for individuals to document they are **farm operators** with USDA's Farm Service Agency (FSA). As an operator, you can obtain a **farm number**, which identifies your parcel and farm operation and is required for USDA lending and disaster relief programs and to participate in county committees. USDA Natural Resources Conservation Service (NRCS) also requires a farm number to participate in conservation programs. FSA accepts more types of documentation to set up a farm number if your state has adopted the UHPA. For more details and a summary of USDA policies and initiatives related to heirs' property, visit: [USDA Heirs Webpage](#).

## NRCS Agricultural Conservation Easement Program

There are additional eligibility requirements for conservation easement programs administered by NRCS. A **conservation easement** is a voluntary deed restriction you can place on your property to permanently protect natural resources and open space on your land by prohibiting future development. NRCS administers several conservation easement programs that compensate farmers and landowners for protecting, and in some cases restoring, a range of natural resources.

This guide focuses on the agency's most widely available conservation easement program for working lands, the Agricultural Land Easements (ALE) component of the [Agricultural Conservation Easement Program \(ACEP\)](#). ACEP is a voluntary program that helps landowners, land trusts, and other entities protect working farms and ranches from development and protect, restore, and enhance wetlands using conservation easements. The ACEP-ALE enrollment option provides matching funds to **eligible entity partners** to buy agricultural land easements from willing landowners to keeping working land available for agriculture. NRCS contributes up to 50% of the appraised fair market value of the easement. If you are protecting grasslands of special environmental significance, NRCS can contribute up to 75% of the easement value.

ACEP-ALE requires participants to demonstrate clear title at the easement closing, meaning there are no questions about ownership and no unacceptable **encumbrances or liens**. Some title issues must be addressed before you apply to the program, while others can be resolved before closing. Being able to identify all owners and document ownership interests is necessary to apply to the program. The ACEP-ALE program manager in your state NRCS office may need to consult with an NRCS **realty specialist** to confirm that your ownership documentation is acceptable. Encumbrances or liens, like a mortgage or unpaid property tax bill, may be addressed after the easement acquisition process starts but must be resolved by the time the easement is closed.

## Key Considerations and Requirements

The following questions can help you decide if ACEP-ALE will help you achieve your family's conservation and financial goals. Use these questions to start conversations with family members and advisors assisting your family with heirs' property issues and land protection.

### Can you identify all property owners and demonstrate their ownership interests?

You must be able to identify all legal property owners and each owner needs to show how they received their ownership interest. Acceptable documentation showing ownership includes deeds, probate court orders, or **heirship affidavits**. You will need to produce copies of the current ownership records at the time of application. If it is unclear who the current owners are, consult an attorney or title agent to help identify the chain of title. You can also ask your county recorder's office or Clerk of the Court for copies of the current ownership records. See how to get started on page 7.

### Do all current owners want to keep their interest in the land?

If all heirs agree they would like to keep their ownership interests, it is important to talk about a shared vision for the land. For instance, do you want to keep the land available for active agricultural use? Are you interested in restoring wetlands or forestland or enhancing wildlife habitat on your property?

{ Terms in **blue** appear in the glossary on page 9. }

If all heirs do not want to retain ownership, buying out their interests before applying to ACEP-ALE could simplify the application and acquisition process. This is because each owner must set up records with FSA individually to meet program eligibility. Another option is to use proceeds from the sale of an easement to buy out the interests of owners not interested in retaining ownership long term. See Example 2 on page 5 for an illustration of how this can work.

Creating a legal entity representing all the heirs could help streamline program participation. Examples of this could be a partnership, limited liability corporation (LLC), corporation, or trust. An attorney can give you advice on which arrangement would fit your family's needs and an accountant can advise you on tax implications associated with each type of legal entity. The legal entity can hold title to the property, coordinate decision-making, and designate who can sign paperwork.

### **Among those interested in keeping ownership, do you understand the benefits and the responsibilities involved with having an easement on the property?**

NRCS easement programs compensate you for limiting specific uses and activities to protect threatened farmland and rangeland. Proceeds can be used for any purpose! Landowners have used funds to construct, expand, or repair agricultural buildings or structures; buy equipment for farming, processing, and marketing agricultural products; or buy additional land. Participation in easement programs gives you access to conservation professionals who can suggest land management practices to improve your land and provides capital to help you adopt them. Participation also can help transfer land to a new generation; the conservation easement limits future land development, which may lower the fair market value for the next buyer.

At the same time, consider whether you and all other owners will be willing to work with NRCS and an eligible entity partner to enroll your land. Make sure an attorney representing your interests reviews the conservation easement deed terms so that you understand these provisions and their impacts on your land and operation. You will work with your eligible entity partner and NRCS over time to uphold the terms of the easement.

### **Among the owners interested in enrolling the land in an easement program, can each person meet USDA landowner eligibility requirements?**

Once you have established who holds ownership interests in the property, check that each owner can satisfy the following eligibility requirements before applying:

#### **Have farm records established with USDA Farm Service Agency (FSA).**

This is information kept by USDA to identify the parcels you own and/or farm, cropping history, and other farm information. Owner names, tax identification numbers, ownership percentages, and other information may be needed for each person or entity. You may already have a farm number with FSA as a farm operator if you have participated in USDA programs in the past.

#### **Highly erodible land and wetland compliance on all the land you own and/or farm.**

These requirements aim to reduce soil loss on land experiencing erosion and to protect wetlands for the multiple benefits they provide. If you are not sure whether your land is (or needs to be) in compliance, FSA staff will help. If a landowner is a legal entity or considered a joint operation, all members of the entity will also have to answer this question.

#### **Average adjusted gross income (AGI) of less than \$900,000 annually for the three preceding tax years.**

If you are unsure what your AGI is, you can check your tax returns. If one member has an AGI exceeding the limit, there may be a reduction in the amount the federal government contributes toward the project. If a landowner is a legal entity or considered a joint operation, all members of the entity will also have to answer this question.

## How You Can Use Easement Proceeds

ACEP-ALE compensates you for selling an agricultural conservation easement to an eligible entity partner with funds from NRCS. The program protects your land and gives you capital to use for any purpose. What follows are three examples illustrating how the sale of an easement through ACEP-ALE could benefit you and your family.

In all the examples, four individuals inherited agricultural land without a will and own equal shares in the whole property as tenants in common. The appraised fair market value of the unprotected property is \$500,000. The value of the property when protected by ACEP-ALE is \$200,000. The value of the ACEP-ALE easement is \$300,000. The NRCS and eligible entity partner contributions are \$150,000 each.\*

### EXAMPLE 1

All heirs want to retain ownership and keep the land available for agricultural use. They are interested in making improvements to the land and buildings and running a joint operation. The heirs are working with heirs' property experts, attorneys, and accountants to decide how to use the proceeds to accomplish their goals. In this case, they decide to direct their proceeds into a family trust. This type of legal entity will simplify making future decisions about the money. This trust can be managed by the heirs or other trustees.

<b>A) SALE OF EASEMENT</b>	
\$500,000	appraised fair market value of the unprotected property
-\$200,000	appraised value of the property once protected with an ACEP-ALE
\$300,000	value of the ACEP-ALE, which equals proceeds for the heirs
<b>B) USE OF EASEMENT PROCEEDS</b>	
\$300,000	proceeds placed in family trust
-\$60,000	amount authorized by the family trust to improve fencing and install irrigation
\$240,000	amount remaining in the trust to cover future property expenses

**What was accomplished:** The heirs retained ownership and preserved their family's land and legacy. They exercised their right to limit future uses and activities to ensure the land remains available for agriculture. The proceeds from the easement sale enabled them to make investments in the farm operation that improved its viability while reserving some money for future land management. Down the road, they may consider renting some of their land to their neighbor or sell the land to a new landowner.

\* An eligible entity partner may ask for a landowner donation if it does not have the cash resources to complete the transaction. Landowner donations are **not required** by NRCS to protect your land. If you choose to donate all or part of the appraised value of a conservation easement, you may be eligible for federal income tax deductions (and some state tax incentives) for the value of the donation.

## EXAMPLE 2

Three heirs want to sell the property (**SELLERS**) and one heir wants to retain ownership and keep the land in agricultural use (**OWNER 1**).

<b>A) SALE OF EASEMENT</b>		
\$500,000		appraised fair market value of the unprotected property
- 200,000		appraised value of the protected property
\$300,000		value of the ACEP-ALE, which equals proceeds for the heirs
<b>B) DISTRIBUTION OF PROCEEDS</b>		
\$300,000		proceeds from the ACEP-ALE transaction
÷ 4		number of heirs
\$75,000		the amount due to each heir from sale of ACEP-ALE
<b>C) BUY OUT</b>		
\$500,000		appraised fair market value of the unprotected property
÷ 4		number of heirs
\$125,000		each heir's share of total fair market value of the property
\$125,000		each heirs' share of total fair market value of the property
- \$75,000		amount each heir receives from sale of ACEP-ALE
\$50,000		remaining amount due to each Seller from Owner 1 to complete the buyout
\$75,000		Owner 1's proceeds from sale of ACEP-ALE
÷ 3		number of Sellers
\$25,000		amount paid to each Seller by Owner 1
<b>D) RESULT</b>		
\$75,000		amount due to each Seller from sale of ACEP-ALE
\$25,000		amount paid to each Seller from Owner 1's proceeds from sale of ACEP-ALE
+ \$25,000		additional amount paid to each Seller by Owner 1 from outside sources
\$125,000		each Seller's share of the total fair market value of the property

**What was accomplished:** One heir, **OWNER 1**, was able to buy the property from the others while preserving the family's land and legacy. The heirs exercised their right to limit future uses and activities to ensure the land remains available for agriculture even if the land is sold in the future. The sale of the easement made the buyout more affordable by reducing the amount **OWNER 1** would need to borrow or pay out of pocket to complete the buyout from \$375,000 to \$75,000. Further, it would be easier for **OWNER 1** to get a loan for the remaining buyout because the loan would be smaller compared to the equity they have in the property.

### EXAMPLE 3

In this scenario, all four heirs want to sell their ownership interests in the family land while ensuring it is protected from development and stays available for agriculture.

<b>A) SALE OF EASEMENT</b>	
\$500,000	appraised fair market value of the unprotected property
- 200,000	appraised value of the protected property
<u>\$300,000</u>	value of the ACEP-ALE, which amounts to the proceeds for the heirs
<hr/>	
<b>B) DISTRIBUTION OF PROCEEDS</b>	
\$300,000	proceeds from the ACEP-ALE
÷ 4	number of heirs
<u>\$75,000</u>	amount due to each heir from sale of ACEP-ALE
<hr/>	
<b>C) SALE OF PROTECTED PROPERTY</b>	
\$200,000	appraised value of the protected property (the actual sales price of the property when listed on the open market may differ)
÷ 4	number of heirs
<u>\$50,000</u>	approximate amount paid to each heir from the sale of the protected property
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<b>D) RESULT</b>	
\$75,000	amount paid to each heir from sale of ACEP-ALE
+ \$50,000	amount paid to each heir from sale of protected property
<u>\$125,000</u>	total proceeds paid to each heir for the protected property

**What was accomplished:** The heirs preserved their family's land and legacy. They exercised their right to limit future uses and activities to ensure the land remains available for agriculture. The easement sale reduced the fair market value of the property, making it more affordable and accessible to new producers. The proceeds from the easement sale, and later the sale of the protected property, provided cash to each heir.



## How to Get Started

Here are some steps you can take to understand and document ownership and develop a shared vision for your family's land. Doing this work prepares you to have productive conversations with an attorney or an

organization that specializes in heirs' property. It can also help you participate in ACEP-ALE if you and your family choose to permanently protect your farmland or ranchland.

1



**Create a Family Tree:** Make a family tree detailing *all* heirs, including children, spouses, cousins, and legally adopted members. This will help you identify all owners of the property and will be useful for your attorney later.

2



**Gather Property Deeds:** Collect and organize copies of deeds associated with the property to help clarify ownership interests and identify any encumbrances or liens. Check to see if the names on the most recent deed match the names of the current owners.

3



**Collect Family History Documents:** Gather documents that provide additional information about the family history such as obituaries, death certificates, marriage licenses, divorce decrees, adoption papers, family bibles, and birth certificates. This can help illustrate changes in ownership over time.

4



**Determine Heirs' Intentions:** Reach out to your family to understand their desires and intentions for the land. These conversations will inform plans, especially around protecting the land with an easement.



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## How to Find More Help

### Heirs' Property Experts

To get help with heirs' property issues, you can contact one of the non-profit organizations that provide an array of direct assistance options to develop a decision-making arrangement among the heirs and to clear title. They may also help evaluate whether easement programs make sense for your family.

- [Black Family Land Trust](#) (Virginia and North Carolina)
- [Center for Heirs' Property Preservation](#) (South Carolina)
- [Community Legal Services](#) (Florida)
- [Federation of Southern Cooperatives Land Assistance Fund](#) (Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, North Carolina, Texas, and U.S. Virgin Islands)
- [Georgia Heirs Property Law Center](#) (Georgia)
- [Indian Land Tenure Foundation](#)
- [Land Loss Prevention Project](#) (North Carolina)
- [Legal Aid of North Carolina](#) (North Carolina)
- [Mississippi Center for Justice](#) (Mississippi)
- [Southern Rural Development Center](#) (Mississippi)
- [Wake Forest Law Heirs' Property Project](#) (North Carolina)

In addition, you could consult with a private attorney qualified to practice in your state with experience in estate planning, wills and trusts, and real estate law.

### Land Protection Entities

To find a farmland protection partner, such as a land trust or state or local government, to enable to you participate in ACEP-ALE, refer to the following directories:

- Find a land trust or public program near you using American Farmland Trust's [farmland protection directory](#).
- Use Land Trust Alliance's [land trust database](#).

A smaller number of land protection entities also report that they provide services related to heirs' property landowners or their mission explicitly addresses the needs of landowners and producers of color.

### Educational Resources

Some organizations conduct research and offer education around heirs' property.

- [Socially Disadvantaged Farmers and Ranchers Policy Research Center](#), Alcorn State University
- [Farmland Access Legal Toolkit](#), Vermont Law School
- [HeirShares](#)

### USDA Natural Resources Conservation Service

To find out more about how [ACEP-ALE](#) and other [NRCS easement programs](#) could help you, contact [NRCS](#). NRCS has a statewide office in each state and local service centers in most counties throughout the U.S. Program administration staff are often located in the state office, while district conservationists and field staff are in local offices. For a summary of USDA policies and initiatives related to heirs' property, visit this page: [USDA Heirs Webpage](#).



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## Glossary

**Conservation easement:** A conservation easement is a voluntary deed restriction you can place on your property to permanently protect natural resources and open space on your land by prohibiting future development. An **agricultural conservation easement** limits non-agricultural development, what can be built on the property, where structures can be located, subdivision, and other uses that are inconsistent with agriculture to keep land available for farming. The easement is granted to a farmland protection partner that monitors and enforces the restrictions included in the easement. Conservation easements are permanent and run with the land. For more information about agricultural conservation easements, see [AFT's Agricultural Conservation Easement Fact Sheet](#).

**Deed:** A deed is a written legal document used to show the legal owner(s) of a piece of property.

**Eligible entity partner:** An eligible entity partner is the non-profit organization like a land trust, or state or local government agency that holds and enforces the conservation easement. They acquire the easement by purchasing it from the landowner, accepting a donation of land, or a combination of both. To find a partner, use American Farmland Trust's [farmland protection directory](#) or Land Trust Alliance's [land trust database](#).

**Encumbrances and liens:** An encumbrance is a claim against property by someone who is not the owner. Encumbrances may impact the ability to transfer land. A lien is a legal right held by a financial creditor attached to the property. See [the NRCS Title Exception Guide](#) for more information.

**Estate:** Estate is a term used to refer to the assets and debts of a deceased person, including real property.

**Farm number:** A farm number is a number assigned by the USDA Farm Service Agency to identify where your farm is located. A farm number is required to be eligible for most USDA programs.

**Farm operator:** Farm operator is defined by USDA as an individual, entity, or joint operation who is in general control of the farming operations for the current year. The farm operator is the person who runs the farm, making day-to-day management decisions. The operator could be an owner, hired manager, cash tenant, share tenant, or a partner.

**Heirship affidavit:** An affidavit is a sworn statement a person makes before a notary or officer of the court confirming that certain facts are true to the best of that person's knowledge. An heirship affidavit is a type of sworn statement made for the purpose of establishing the heirs of a deceased person and can be used to transfer ownership of property. It describes the relationship of the person making the statement to the deceased individual. It also lists the deceased individual's property, debts, and assets.

**Heirs' property:** Heirs' property is land inherited without a will, or land inherited by multiple people in equal shares through a will. Heirs hold the land as tenants in common.

**Next of kin:** Next of kin is the closest living relative (or relatives), like a spouse, children, parents, or siblings as defined in state law. If a person dies without a will (known as dying intestate), their next of kin is first in line to inherit their assets and property.

**Partition, Partition-in-kind and Partition-by-sale:** Partition is a legal action where people who own real estate together via a tenancy in common want to end their shared ownership but cannot agree on how to split the property. They can file a partition action to ask a court to split up the property. The court has two options known as partition-in-kind or partition-by-sale. A **partition-in-kind** physically divides the property into parts and gives each heir full ownership of a divided part of the property. A **partition-by-sale** means the property as a whole is sold and the cash is distributed to the heirs in proportion to their ownership interests.

**Probate:** Probate is the formal legal process where a probate court supervises the administration of an estate and transfers property at death according to the terms of a will or, if there is no will, according to state laws.

**Realty specialist:** A realty specialist is an NRCS staff person with special expertise in completing real estate transactions.

**Tenants in common:** Tenancy in common is a type of shared land ownership where each owner owns a percentage of the property as an undivided interest. An undivided interest does not correspond to any actual, physical portion of the land. All owners have the right to occupy and use the entire property, regardless of the proportion they own. These property shares can be freely transferred. Heirs' property is a form of tenancy in common that arises within a family after a landowner dies, but tenancies in common also arise in other circumstances.

**Title:** Title is ownership of land. Clear title means there are no claims or disputes about the ownership. The opposite is unclear ownership, known as "cloudy title."

**Uniform Partition of Heirs Property Act (UPHPA):** UPHPA is a model law developed by the Uniform Law Commission that individual states can adopt and make part of their state law. The law preserves the rights of heirs by adding processes to state probate law, like notice, appraisal, right of first refusal, and court-supervised open-market sales that can help keep the land in the family, or if the property is sold, ensuring all heirs receive a fair share of the proceeds.

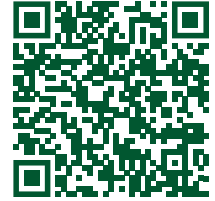
**Will:** A will is a legal document instructing the distribution of assets, including land, to named beneficiaries.



**American Farmland Trust (AFT)** is the nation's leading conservation organization dedicated to protecting farmland, promoting sound farming practices, and keeping farmers on the land.

**AFT's Farmland Information Center (FIC)** is a clearinghouse for information about farmland protection and stewardship developed in partnership with USDA NRCS. Visit [farmlandinfo.org](http://farmlandinfo.org) or call (800) 370-4879.

To access a digital version of this guide, visit [farmlandinfo.org/publications/acep-ale-for-heirs-property-landowners-guide](http://farmlandinfo.org/publications/acep-ale-for-heirs-property-landowners-guide) or scan the QR code.



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