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## An overview of heirs' property and how you can protect your land for future generations

In addition to being an economic resource, agricultural land may be the place where memories have been made, where the family has birthed new generations or buried loved ones. It may be deeply connected to the history of a family and their place in the community. Recognizing these emotional and cultural ties is essential to understanding the true value of the land beyond its market worth.

### What is Heirs' Property?

According to the United States Department of Agriculture (USDA), heirs' property is defined as "family land that is jointly owned by descendants of a deceased person whose estate did not clear probate." In other words, when the current owner of a property dies without a legally valid will, the property's ownership is distributed equally to that person's heirs. These individuals then become "tenants in common" who have identical rights and interests in the property.

### Why is it such a problem?

This issue has especially impacted Black families, contributing to rapid land dispossession, which has had economic consequences for those families for generations and reshaped communities. Resolving the legal issues of Heirs' Property can support the wealth-building of families and preserve the agricultural land that our communities



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need to sustain healthy food systems and rural economies.

### Myths & Truths

There are many misconceptions about this ownership structure. Sometimes, these misunderstandings are harmless, but other times, they can lead to damaging consequences for families. In this section, we address and "debunk" some of the myths around heirs' property so that families can be more prepared and knowledgeable.

**MYTH:** *If I've been paying taxes on a parcel of land, I own it.*

**TRUTH:** **Just because I am paying taxes on a piece of land, and have been for years, does not mean I have any legal ownership over it.**

If the owner of the land passes away without a legally valid will, the land is "Heirs Property," meaning that it is owned jointly by members of the next generation. This ownership structure has historically made land (and other property) vulnerable to being broken up and sold off to other owners and for other uses.

Because of "cloudy title" and informal ownership, families who own land via tenancy in common can struggle to access financial and technical resources that could help them thrive how to protect land and legacy,

Here are the steps you can take to ensure that your land is protected and resolve any existing heirs property challenges.

<b>1. Clear Title:</b> Work to clear the property's title. Contact one of the entities above—clear ownership is essential.
<b>2. Communicate and Collaborate:</b> Foster open communication and collaboration among all heirs. Encourage regular meetings to discuss the property's management, plans, and any concerns or issues.
<b>3. Establish Rules and Agreements:</b> Create formal agreements or rules governing the use, maintenance, and decision-making related to the property. The agreement could include guidelines for property improvements, financial contributions, and dispute resolution mechanisms.
<b>4. Seek Legal Assistance:</b> Consult with legal professionals experienced in heirs' property issues. They can provide guidance on legal matters, help resolve disputes, and assist with formalizing agreements or restructuring ownership if necessary.
<b>5. Manage the Property:</b> Develop a clear plan for managing the property, including regular maintenance, upkeep, and payment of taxes and other expenses. Consider appointing a property manager or forming a committee overseeing these tasks.
<b>6. Explore Conservation Options:</b> Depending on the nature of the property, explore conservation easements or other land protection strategies that can help preserve its natural or cultural value while providing potential tax benefits. Some programs will even pay landowners to protect their land via conservation easements.
<b>7. Educate Heirs:</b> Educate and provide resources to heirs about the property's importance, its history, and their rights and responsibilities as co-owners. Educating heirs can build a sense of stewardship and commitment to the property's long-term well-being.
<b>8. Consider Partition:</b> In some cases, it may be beneficial to consider partitioning the property, either physically dividing it among heirs or selling it and distributing the proceeds. Partitioning land can help resolve disputes and provide each heir with clear ownership of a portion of the property.
<b>9. Engage with Community Resources:</b> Seek support from community organizations, nonprofits, or government agencies that specialize in heirs' property issues. They may offer resources, funding, or technical assistance to help address challenges and promote the property's success.
<b>10. Plan for Succession:</b> Develop a succession plan to ensure the long-term viability of the property. Succession plans may involve identifying future leaders or decision-makers among the heirs, documenting important information and agreements, and preparing for transitions in ownership or management over time.

**MYTH:** *If I have a copy of a deed to the land, I own it.*

**TRUTH:** **I possess a land deed but this doesn't necessarily mean I own it.**

- “Forced partition sales.” These sales occur when one co-tenant in a heirs' property arrangement decides they want to sell their fractional interest in the property.
- The developer or speculator buys one heirs' stake in the land and becomes an equal co-owner. After petitioning a

court to sell the property—or even just threatening to do so—they may try to buy the entire parcel themselves.

Starting the process of clearing your land's title can feel daunting. But, many networks and organizations can help. Here are a few steps you can take to get the process started.

**Organize deed copies:** Collect and organize copies of all relevant deeds associated with the property to ensure a clear understanding of ownership and any potential legal complexities.

**Create a comprehensive family tree:** Make an exhaustive family tree detailing all heirs, including children, spouses, cousins, and legally adopted members. This provides a comprehensive overview of potential beneficiaries and their relationships and will be very useful for your attorney later.

**Collect documents:** Gather essential documents such as obituaries, death certificates, marriage licenses, divorce decrees, adoption papers, family bibles, and birth certificates. These records offer crucial insights into family history and legal entitlements.

**Initiate family meetings:** Start hosting family meetings to facilitate open communication and gather input from heirs regarding their preferences and concerns regarding the property's future. It is very important to engage your family members early and often during this process.

**Determine heirs' intentions:** Engage with heirs to understand their desires and intentions regarding the land. This insight will inform decision-making and potential resolutions.

**Consult county representatives:** Schedule meetings with county-level United States Department of Agriculture (USDA) officials, including Farm Service Agency (FSA) representatives, to explore available resources and assistance programs. Verify farm and tract numbers and ask about any necessary adjustments regarding controllership.

## LEARN MORE

To read our full report, “Preserving Legacy: Securing Agricultural Land Ownership in North Carolina Through Legal Protection,” visit [farmlandinfo.org/publications/preserving-legacy](http://farmlandinfo.org/publications/preserving-legacy) or scan the QR code. If you'd like to connect with a member of our team, you can reach out to Nicole Gwishiri at [ngwishiri@farmland.org](mailto:ngwishiri@farmland.org)

