

# Preserving Legacy

SECURING AGRICULTURAL LAND OWNERSHIP IN  
NORTH CAROLINA THROUGH LEGAL PROTECTION



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ALL PHOTOS ARE OF NORTH CAROLINA FARMERS WHO HAVE ENGAGED IN AMERICAN FARMLAND TRUST PROGRAMMING.

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## This Guide

**This resource supports heirs' property landowners in North Carolina. By sharing contextual information, debunking myths, and pointing readers toward helpful organizations, this guide aims to put landowners on the path to securing their land and legacy.**

## Introduction

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Agricultural land is an incredible asset. Especially if that land has been in a family for generations, land can be almost as much a part of the family as the people in it. 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.

These deep connections may not be enough to keep the land intact and in the family's ownership as it passes down from generation to generation. That's because if the owner does not have a legally valid will before they pass away after their death, the land will be considered "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.

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. With agricultural land of all kinds being increasingly vulnerable to conversion to non-agricultural uses, especially in North Carolina, it is important for families with heirs' property to gain the legal standing they need to keep the land they own as an asset to protect their future and honor their past. Resolving the legal issues of heirs' property can support the wealth-building of families and preserve the agricultural land that our communities need to sustain healthy food systems and rural economies.



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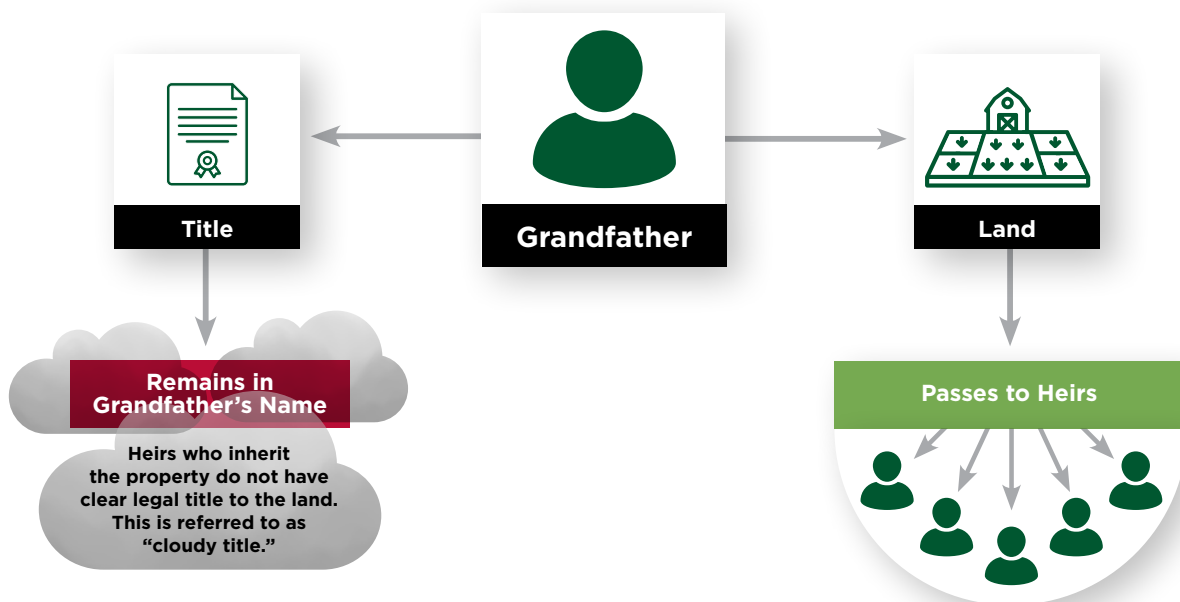
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# What Is Heirs' Property, and Why Is It Such a Problem?

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. If the heirs don't settle the estate and title issues in the probate process in court, the land in question will continue to be owned as heirs' property, passing down from one generation to the next in an informal status that could, over time, lead to dozens of co-owners. The more co-owners involved, the more difficult it can be for families to resolve disagreements about the land, and the more vulnerable the land can become to being fractioned up and sold off, ultimately reducing the asset more and more over time.

Much has been shared in the media—and justifiably so—about the exploitation of heirs' property through "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. This co-tenant could be a distant cousin who lives a thousand miles away from the land. These family members may have never seen the property; therefore, they may have no real connection to it, much less farmed it. Unlike other family members who have farmed, lived, or spent significant time on the land and thus have a deep connection to the land.

Another vulnerability with forced partition of heirs' property involves a scenario in which a 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 and claim

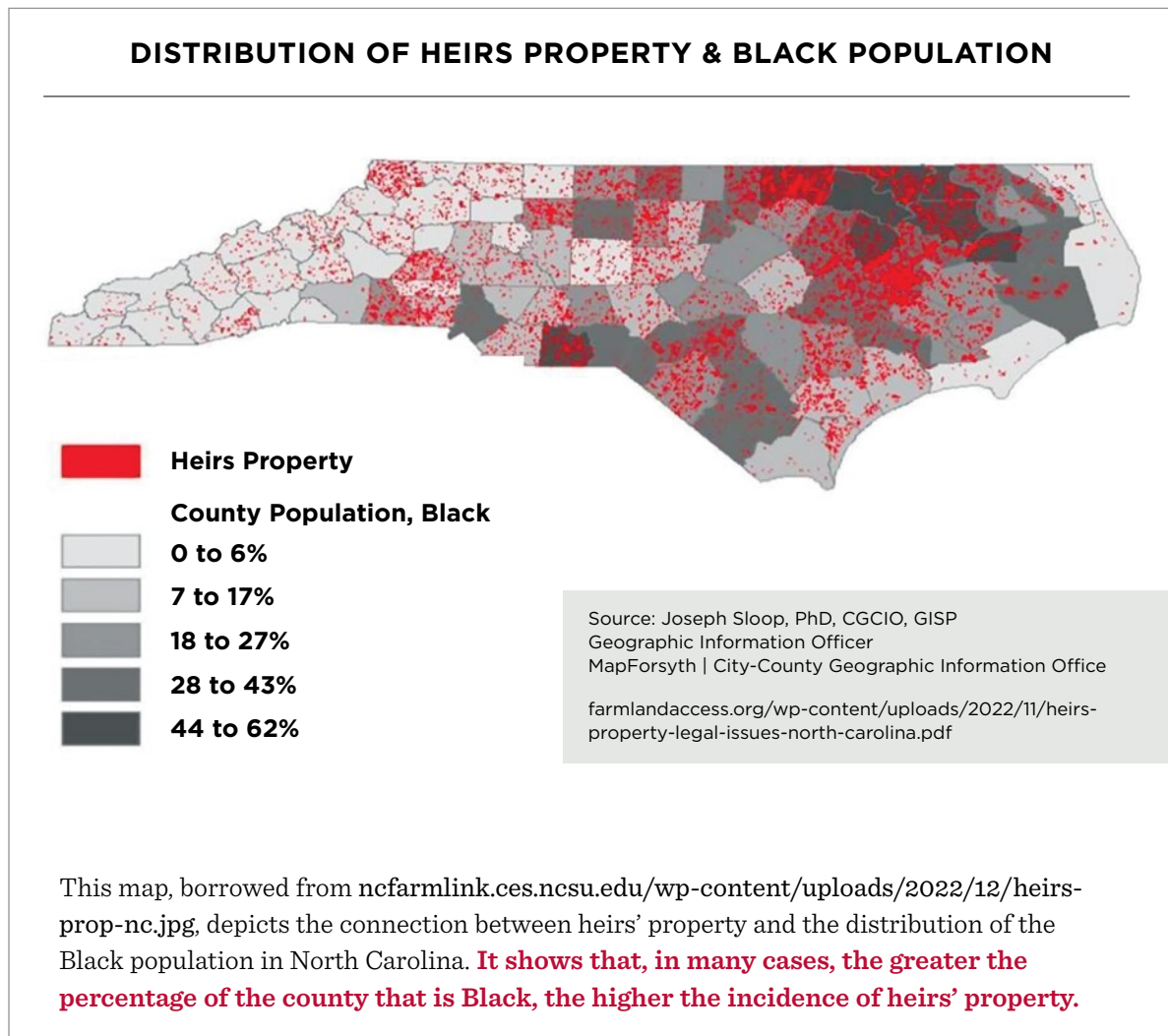


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singular ownership. Once a request to sell has been made, the land is often sold on short notice at public auction. Compared to open market sales, land sold at public auction typically sells at a drastically reduced price, harming families economically and limiting opportunities to build generational wealth.

People of all backgrounds have been affected by forced partition sales. That said, some groups have experienced far more harm than others. Black farmers and landowners in the South, for example, have been hit particularly hard by

forced sales of family-owned property. In the past and present, people of color, especially in rural areas, haven't had equitable access to legal services to create clear, legitimate wills. The costs of acquiring these legal services can sometimes be prohibitive. Justifiable mistrust of local government systems has also led Black farmers into heirs' property ownership. In some instances, Black farmers and landowners have deliberately passed their land down via heirs' property, believing that this arrangement protects the land when it can open the door for exploitation.





Apart from states that have passed the Uniform Partition of Heirs Property Act—a legislative tool, if adopted by a state, which can protect heirs’ property owners from predatory actions—forced partition sales are often perfectly legal, even if morally questionable. As of this writing, North Carolina is one of the few states remaining in the South that has not passed this legislation, making many families in the state vulnerable.

The exploitation of heirs’ property through forced partition sales is devastating. But it’s not the only challenge that heirs’ property owners—and especially heirs’ property foresters and farmers—face. 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. Initiatives that have been a lifeline for some farmers, helping them advance conservation practices and enhance economic viability, are often inaccessible to heirs’ property landowners.

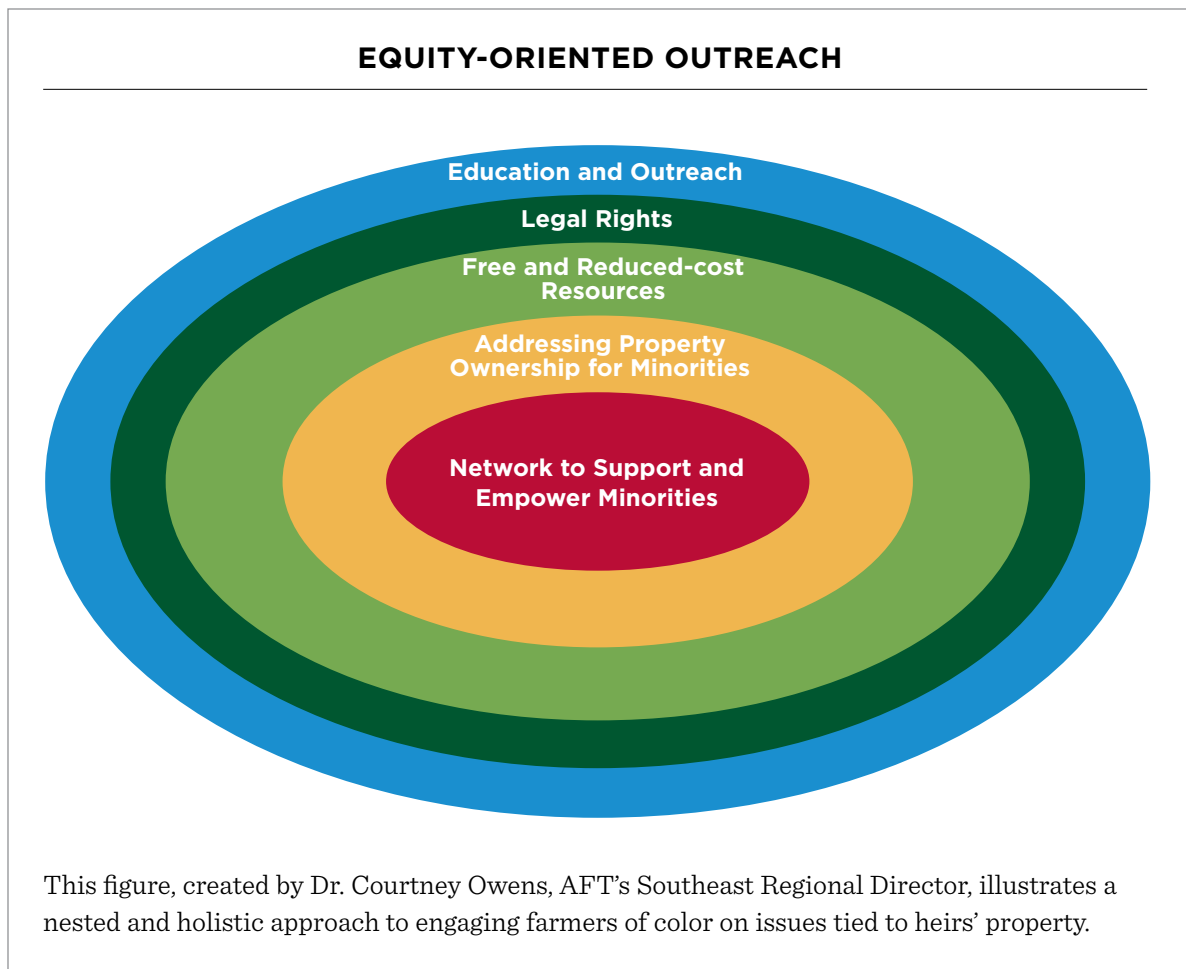
These difficulties aside, many heirs’ property families are working hard to maintain their land and trying to find ways to flourish in the face of adversity. There are steps that landowners can take to help secure their land and legacy, paying homage to ancestors while setting up future generations for success.

# Understanding Heirs' Property Through an Equity Lens

Heirs' property remains one of the most dominating forces affecting land tenure today, especially in many rural and working-class communities. Although heirs' property affects people from all backgrounds and demographics, historically underserved landowners and farmers have faced challenging situations and found it difficult to maintain ownership of family land.

Some policies, like the Uniform Partition of Heirs Property Act, are great mechanisms

to address structural barriers to land tenure. But, these policies alone cannot provide all the support that families need because they do not address grounded, individualized, and community-level challenges, especially those facing farmers and landowners of color. The figure below outlines a holistic framework for addressing heirs' property using an equity lens. These sorts of approaches can be effective in providing grounded, usable support for farmers and landowners who have faced marginalization due to their racial and ethnic identities.





# Who Can Help You Get Started Resolving Heirs' Property Challenges in North Carolina

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Several organizations in North Carolina work to support heirs' property resolution, recognizing the unique challenges faced by families who own such properties. These organizations often collaborate with each other and with local governments, legal professionals, and community groups to address heirs' property challenges comprehensively. The list of organizations below is not exhaustive, but it can serve as a resource to get started.

## **Wake Forest Environmental Law and Policy Clinic**

The Wake Forest's Heirs' Property Project through the Environmental Law and Policy Clinic began in January 2023 by listening to advocates working on heirs' property issues in North Carolina. The Heirs' Property Project is one of only a handful of law school clinics across the nation that provides direct legal services to heirs' property owners and families, and it is the only clinic doing so full-time. The project offers direct legal representation alongside conflict resolution and land management support to heirs' property owners. It also builds a pipeline of lawyers trained to manage heirs' property cases and serves as a hub of research, learning, and interdisciplinary training on land rights issues in North Carolina. To learn more, visit: [law.wfu.edu/clinics/environmental/projects/heirs-property](http://law.wfu.edu/clinics/environmental/projects/heirs-property)

## **Black Family Land Trust**

Black Family Land Trust plays a crucial role in assisting with heirs' property by providing education, advocacy, and direct support to African American landowners and their families. They empower families to make informed decisions about their land tenure and take proactive steps to support families in

protecting their property rights. BFLT offers legal assistance and resources to help families address title issues, clarify ownership interests, and secure property rights. BFLT provides guidance on estate planning strategies tailored to the needs and circumstances of African American landowners while promoting land conservation and sustainable land management practices that honor the cultural and ecological heritage of African American landowners. To learn more, visit: [bflt.org](http://bflt.org)

## **North Carolina Cooperative Extension**

Through its network of county offices, the Cooperative Extension program plays a significant role in addressing heirs' property by providing education, outreach, and resources to landowners and their families. They provide educational resources and programming on various topics, including estate planning, property management, and land ownership. They may offer workshops or consultations for heirs' property owners. The Extension program also collaborates with legal aid organizations, universities, and community groups to offer comprehensive support to families. Key partnerships enhance reach and effectiveness, ensuring their programming is culturally and regionally relevant. To learn more, visit:

- [ncfarmlink.ces.ncsu.edu/heirs-property](http://ncfarmlink.ces.ncsu.edu/heirs-property)
- [ncat.edu/caes/cooperative-extension/small-scale-agriculture-development/hpp.php](http://ncat.edu/caes/cooperative-extension/small-scale-agriculture-development/hpp.php)

## **Rural Advancement Foundation International-USA (RAFI-USA)**

RAFI-USA works as a national organization on issues affecting farmers and rural communities, including land tenure and heirs' property



challenges. RAFI supports advocacy, policy development and analysis, and technical assistance to support heir's property in North Carolina and beyond. They also offer workshops, webinars, trainings, and other resources for landowners. To learn more, visit: [rafiusa.org](http://rafiusa.org)

In addition to these organizations, the North Carolina Bar Association Property Section, in collaboration with legal service organizations such as **Legal Aid of North Carolina**, **Pisgah Legal Services**, and **Land Loss Prevention Project**, has established a pro bono volunteer

clearinghouse to support clients dealing with heir's property issues and improving access to expertise from volunteer attorneys. This initiative aims to address a range of real property and estate planning matters affecting individuals who may be low-income, limited English proficient, older adults, live in rural areas, and their family members to ensure legal aid support for underserved communities most impacted by issues like heirs' property. To learn more, visit: [ncbarfoundation.org/our-programs/ncba-pro-bono-initiatives/heir-property-pro-bono-project](http://ncbarfoundation.org/our-programs/ncba-pro-bono-initiatives/heir-property-pro-bono-project)

# How to Protect Your Land and Legacy

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There are a variety of steps that can be taken to resolve heirs' property challenges so that everyone can benefit—which is most families'

desire. The following are ideas of what can be done to help the process run as smoothly as possible.

- 1. CLEAR TITLE:** Work to clear the property's title. Contact one of the entities above—clear ownership is essential.
- 2. COMMUNICATE AND COLLABORATE:** Foster open communication and collaboration among all heirs. Encourage regular meetings to discuss the property's management, plans, and any concerns or issues.
- 3. ESTABLISH RULES AND AGREEMENTS:** 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.
- 4. SEEK LEGAL ASSISTANCE:** 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.
- 5. MANAGE THE PROPERTY:** 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.
- 6. EXPLORE CONSERVATION OPTIONS:** 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.
- 7. EDUCATE HEIRS:** 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.
- 8. CONSIDER PARTITION:** 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.
- 9. ENGAGE WITH COMMUNITY RESOURCES:** 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.
- 10. PLAN FOR SUCCESSION:** 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.

# How Do I Get Started?

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Resolving heirs' property and obtaining "clean/clear title" on your land is a complex process. It can take a lot of effort and time, and it will most often require working with a qualified attorney to reconcile all issues adequately.

But don't let the complexity of the process keep you from getting started! There are several small steps you can take now to get on the path to securing your land tenure. Below, we've outlined some of the things that you can do to help you and your family gain a clear and clean title to your land.

## **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.



These steps can begin to set you and your family up for success. Once you've accomplished some or all of the tasks above, you can begin to seek out more formal legal assistance from an attorney or an organization that specializes in heirs' property resolution. Taking these steps early could also help save you money—the more work you do upfront to compile a family tree, understand heirs' wishes, and collect key documents, the less work your attorney may need to do down the road.

## Debunking Heirs' Property Myths

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As discussed in this guide, heirs' property can be complex. Because of that, 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:** **The fact that a particular heir (or heirs, or even a non-owner) is paying taxes on a piece of land does not usually have any legal effect on who owns that land—even when that person or people have been paying the taxes alone for many years.**

In most states, even if one heir has paid taxes on a piece of heirs' property for a decade, unless other things have changed as well, it is still

heirs' property, and ownership is still shared with the other heirs. The heir who has been paying may have a right to be reimbursed by the heirs who have not paid, but that right usually does not affect the other heirs' ownership. However, you should always make sure that *someone* is paying the taxes on heirs' property and any other land you own because if you don't, you may lose the land through tax foreclosure.

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

**TRUTH:** **The fact that someone is in possession of a deed to a parcel of land has no bearing on who owns it.**

Lawyers call ownership “title,” and while deeds can serve to transfer title from person to person, deeds in themselves are not the title. A properly executed and recorded deed has the same legal effect regardless of who hangs on to a copy (or who doesn't).





Also, just because a particular person’s name—let’s say James Smith—appears on a deed does not mean that James Smith is the owner of the land. There may be other deeds that came after Mr. Smith’s deed, by which Mr. Smith transferred the title to someone else. There may also be other deeds that *predate* Mr. Smith’s deed, which show that the person who purported to give Mr. Smith the title had actually already given the title to someone else. And, as is often the case in heirs’ property, even if Mr. Smith’s deed was good and valid and the last one ever made involving a piece of land, Mr. Smith may have passed away, and the land may have passed to his heirs. Only a lawyer can tell you what your deed says about the title to a piece of property—and that lawyer will usually need to consult records to review other potential deeds and changes to the title.

Think of a deed as a stepping-stone and title as the house at the end of the path. If you can only see one stepping stone in isolation, you don’t know whether you’re at the end of the path or the beginning—or whether you’re on a side path

that leads nowhere at all. In this sense, a deed to land is quite different from a title document to a car or a mobile home.

**MYTH:** *I know that so-and-so owns this land because I have a copy of a will or deed that’s a few decades old that shows my ancestor’s intent to convey the land to so-and-so.*

**TRUTH:** **As discussed above, a deed on its own does not show who the current owners of land are; wills must be probated to have any effect at all, and some states require that wills be probated within a certain amount of time after the will-maker’s death.**

Just because you have a copy of someone’s will does not mean that the wishes expressed in that will have taken legal effect. First, to be valid, wills must conform to certain requirements—usually including that they are witnessed and notarized; copies of wills are often but not always valid.

Only a lawyer can tell you with certainty whether the will you have in hand is valid.

Second, wills must be probated—that is, filed with a court in a process that settles the deceased’s estate—to have any actual legal effect. Even if you have in hand a will that leaves property to you, in most cases, you will not have any ownership interest in the property until that will has been probated. To be clear, an old will that has never been probated does not, on its own, have any bearing on who owns the property; it must be probated to have any effect. Some states, like Texas, require that wills be probated within a certain amount of time after a person’s death, and in most states, waiting longer than thirty or sixty days to begin probate increases the likelihood of difficulty and complication.

**MYTH:** *If I’m the oldest child in a heirs’ property situation, I own the land.*

**TRUTH:** **By law—unless a parent’s duly probated will provides otherwise—the order of children’s birth has no effect on the amount of ownership interest they inherit when their parent passes away.**

The rules by which the children, spouse, and other relatives of a deceased person inherit their property are called “intestacy laws.” While the precise provisions of these laws vary from state to state, no state has intestacy laws that give firstborn children any preference over their brothers and sisters.

**MYTH:** *Heirs who live on a piece of land have more rights to that land than heirs who do not.*

**TRUTH:** **As a general matter, subject to only a few exceptions, whether an heir lives on the land does not affect their rights to it or their ownership of it.**

As with any form of land ownership in the United States, it is possible (and common!) for heir owners to own a portion of title to heirs’ property but live somewhere else—even outside the state. In such cases, the heirs who live

elsewhere generally have the same rights and responsibilities as heirs who live on the land. They must be consulted before major decisions are made about the land, they have a right to certain profits arising from the use of the land, and they have an obligation to contribute to the upkeep of the land—which usually includes contributing to paying taxes. If they choose, heirs who live elsewhere have a right to return to the land and live on it. No heir can prevent his or her fellow heir from using or occupying the land.

In some states, under certain, narrow circumstances, heirs who live on the land may be able to claim exclusive ownership of the land after a period of twenty years. These circumstances do not usually arise, however, and just because a group of heirs has lived on the land exclusively for twenty years does not mean they have become the sole owners.

**MYTH:** *Keeping our land as heirs’ property is a good way to protect it—it worked for our grandparents, so it will work for us.*

**TRUTH:** **In modern times, keeping land as heirs’ property puts it at far greater risk of loss than clearing title to the land.**

As discussed elsewhere in this guide, the risks involved in owning heirs’ property are manifold. Most importantly, heir owners in many states are at constant risk of dispossession through *partition*—a court-ordered sale of the land. That is certainly the case in North Carolina, given the lack of tenancy-in-common legal reforms. Even without partition, unscrupulous real estate professionals, debt collectors, or others may eventually be able to buy out enough family members to take a controlling interest in the disposition of the property. On top of that, heirs’ property is often a poor foundation for productive use of the land since it is hard to borrow money against heirs’ property, and it

can be challenging to participate in federal land management and conservation programs.

What's most important to understand is that many of these challenges for heir owners are comparatively recent. Partition law was very different during our grandparents' generation—the courts have changed the law over time to make forced sale much easier today than it was back then. Likewise, while scammers have been around for a long time, they have never had access to more information about families, land ownership, tax arrears, and debts. Scammers and other unscrupulous developers have a much easier time finding and targeting heir owners than they did in prior generations. Meanwhile, productive land use has become much more dependent on access to credit and federal programs—meaning that making money off heirs' property is harder today than it was in generations past.

For all these reasons, even though heirs' property may have been a good way of protecting land when your ancestors chose to create it, times have changed—and today, heirs' property is at enormous risk.

**MYTH:** *Someone told me about a legal agreement called a conservation easement that will help our family keep the land undeveloped. We can participate in a program like this even before we clear the title on the land.*

**TRUTH:** **It is possible that, in unique situations, you could place a conservation easement on your land if it's still owned as heirs' property. However, it is likely that you would need to obtain a clear title before pursuing an agreement like this, especially if government funding is involved.**

*Conservation easements* can be great tools for landowners who want to ensure that their land remains undeveloped. If you place a





conservation easement on your property, you continue to own the land. You can farm it, sell it, or pass it on to heirs. You just voluntarily give up certain *development rights*, meaning your farm or forest can never be parceled out and turned into a subdivision or strip mall.

Landowners who would like to see their farm remain as a farm or their forest remain as a forest may be interested in learning more about conservation easements. These legal agreements can be customized to help you and your family meet your goals. For some families, a conservation easement may be a great tool to support future generations while honoring the land and ancestors.

To place a conservation easement on your property, you can work with a nonprofit organization called a *land trust* and/or with a federal or state agency, like the Natural Resources Conservation Service. Some

programs can compensate landowners for their development rights, which can bring a sizeable influx of cash to families. Typically, landowners must have a clear title—or be well on their way to obtaining a clear title—before they can place a conservation easement on their land.

Conservation easements are powerful tools. They are also complex. If you'd like to learn more, you can visit this page on American Farmland Trust's Farmland Information Center: [farmlandinfo.org/protect-your-land](https://farmlandinfo.org/protect-your-land)

If you prefer to speak with someone directly, you can call the Farmland Information Center at 800.370.4879 or submit a question at: [farmlandinfo.org/ask-an-expert](https://farmlandinfo.org/ask-an-expert). Black Family Land Trust can also offer deep expertise and grounded experience on this topic, and they actively work with families in North Carolina. You can reach them at 919.683.5263 or at [bfft.org](https://bfft.org).

# Final Thoughts

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After reading this brief guidebook, readers will hopefully have a better understanding of the context and complexities that surround heirs' property ownership. Ideally, readers—especially

heirs' property owners and families—will also have a sense of how to begin the process of clearing title on their land to secure their land, generational wealth, and legacy.

## UNDERSTANDING THE UNIFORM PARTITION OF HEIRS PROPERTY ACT (UPHPA)

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The Uniform Partition of Heirs Property Act (UPHPA) offers security by providing a fair and transparent process for partitioning heirs' property, ensuring all co-owners have the opportunity to buy out their relatives and preserve their ownership stake. The UPHPA promotes economic stability, community development, and intergenerational wealth transfer by promoting clear title and secure land tenure.

### Importance of the UPHPA in North Carolina

North Carolina, Kentucky, and Louisiana are among three Southern states that have not passed some version of the UPHPA. Learning and understanding the UPHPA can contribute to making it a reality in North Carolina. Here are ways to get informed and involved:

- 1. STAY INFORMED.** Learn more about the UPHPA and the impact of heirs' property on communities across North Carolina. Understanding the issues and benefits is the first step toward meaningful engagement.
- 2. SPREAD THE WORD.** Share information about the UPHPA with friends, family, and networks. Educate others about the importance of equitable property rights and the need for reform. Effective communication can help raise awareness and support.
- 3. ENGAGE WITH LEGISLATORS.** Learn about the legislative process and the role of state legislators in property law. Share information and research findings with legislators to help them understand the impact of the UPHPA and the importance of equitable property rights. Providing well-researched information can aid in informed decision-making.
- 4. GET INVOLVED.** Participate in educational initiatives, community outreach, and coalition-building activities. These efforts can advance the cause of equitable property rights in North Carolina and contribute to a broader understanding of the UPHPA.



