



Heir Property

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Although it does not involve putting seeds in the ground or plants in the ground, or raising livestock, an understanding of the concepts, and consequences or the operation of HEIR PROPERTY is a most important aspect of farming

- Heir Property has absolutely nothing to do with farming or crop production; but
- Heir Property has absolutely everything to do with farming or crop production

Heir Property, is inherited real property (land) owned by two or more people as “tenants in common”. The property is typically passed without a will or with “clouded title” outside the formal probate process. This type of ownership makes it difficult, if not impossible, to do anything with the property.

Discussion of Heir Property

- ▶ To further understand this concept, we must also understand, that all U.S. States, require that all land, within its boundaries, be owned or titled in the name of one, or more individuals, or some entity. There is no untitled property. This concept sometimes conflicts with the concept of **Heir Property**, which, by definition, involves the ownership or titling of the personal and real property formerly owned by a deceased person who has died without a valid or whose estate has not been offered for probate, and the property is untitled.
- ▶ **Property**, is the personal and real property (land) owned, jointly, by the descendants, of someone who has died without a valid will, or whose estate has not been offered for probate. For purposes of this presentation, we are only considering the real estate.

Definitions

- ▶ **Anyone who dies is said to have deceased and is referred to as the decedent;**
- ▶ **To die without a will is to die “intestate”;**
- ▶ **The estate of a decedent, dying intestate, passes to his or her Heirs;**
- ▶ **Heirs are determined by state law, and are “generally” required to be:**
 - 1. A family member related to the decedent by “blood” “marriage” or “adoption”.**
 - 2. Most states, but not all, require that the would-be Heir survive the death of the decedent.**
 - 3. Not only do some states require that an Heir survive the death of the decedent, he or she must do so by a given number of days or will not be considered an Heir.**

Definitions, continued

Each **Heir** owns a fractional interest in the entire **Estate**.

Each **Heir** has the right to use and possess “all” the property, limited only by the rights of the other **Heirs** to use and possess “all” the property.

Title to the property of the **Estate** is not clear but is rather encumbered by “all” **Heirs** and nothing can be done with the property unless agreed to by “all” **Heirs**.

Property cannot be sold, leased or mortgaged without agreement of all **Heirs**.

Property cannot be fully used or possessed by a single **Heir** without agreement or acquiescence of all **Heirs**.

Equally importantly, it is sometimes difficult to get a “Farm Number”, which is required for most Government Programs and/or Loans

Examples

- ▶ **Assume for each example that “A” has died Intestate;**
- ▶ A & B are married and have 2 children;
- ▶ A & B are not married and have 2 children, one of the children dies;
- ▶ A & B are married but have no children, B has children from a prior relationship;
- ▶ A & B are married have 2 children and adopt another child;
- ▶ A & B are not married, B has children from a prior relationship, whom A adopts;
- ▶ A & B are married and have children C & D. D is deceased but had 2 children of his own; and
- ▶ A & B are married and have children C & D. D is deceased but had 2 children E & F. E is deceased but had 5 children

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Who are heirs and why?

Operation of Law

At the death of a decedent, who dies intestate, title to his or her estate passes automatically to the **Heirs** (in the fractional amount to which he or she is entitled). That interest is defined by state law by what are generally known as “Laws of Descent and Distribution” or “Intestate Succession”.

The Estate passes first to the Personal Representative who is responsible for handling the following duties, then on to the respective Heirs:

- ▶ Paying all taxes and other legitimate and qualified expenses (medical, judgments, etc.); and
- ▶ Distributing the remainder of the decedent’s estate to his or her qualified Heirs.

If no Heirs come forward or none qualify, **title to the property passes to the State by a process know as “Escheats”**.

Disadvantages of Heir Property

- ▶ Each Heir's ownership or title interest to the estate is defined by state law;
- ▶ Title to the property of the estate is not clear but rather encumbered by "all" Heirs and nothing can be done with the property unless agreed to by "all" Heirs;
- ▶ Each Heir has the right to use and possess "all" the property, limited only by the rights of the other Heirs to use and possess "all" the property;
- ▶ Property cannot be sold, leased, or mortgaged without the agreement of all Heirs;
- ▶ Individual Heir may not be eligible for federal, and/or state grants, loans, or other funding programs; and
- ▶ Improvements made by individual Heir are owned by all Heirs.

Disadvantages of Heir Property, continued

- ▶ Any **Heir**, or other person with an interest in the property, can force a sale or division of the Estate property;
- ▶ Under a procedure known as adverse possession, most states allow complete strangers to enter upon the property, of others, in a manner described as being open, hostile and continuous (period differs among states), and after that period, make an ownership claim against the property. This usually happens without the true owner's knowledge and can apply to the actual ownership or use of some or a part of the property. (CAN APPLY TO NON HEIR PROPERTY).
- ▶ Estate can be sold by state or feds for payment of taxes;
- ▶ Sale of property can be forced by creditor(s) of any **Heir**; and
- ▶ At the death of an **Heir**, without a will, the number of **Heirs** may increase and the ownership interest of each **Heir** may decrease;

Possible Solutions to Heir Property Situation

1. **Action to Establish Heirs or Quiet Title.** Court proceeding to identify and determine who is entitled to own and share the deceased's estate when the person dies without a will
2. **“Partition” or “Division” Sale.** The forced sale of property, held by Heirs, or others, with each owner receiving a distribution of the sales proceeds that corresponds to his or her ownership interest in the property
3. **Partition in Kind.** The forced division of property, held by Heirs, or others, with each owner receiving an actual tract of land that corresponds to his or her specific ownership interest in the property.
4. **Filing a Probate Action.** Court proceeding used to identify and determine who is entitled to own and share the deceased's estate when the person dies without a will.

Possible Solutions to Heir Property Situation

- 1. However, under a new provision, known as the “Uniform Partition Of Heirs Protection Act”, which has been adopted by at least twenty states, and the U.S. Virgin Islands, it is now more advantageous to use the partition vehicle as a means of resolving Heir Property issues. Some of the key provisions are: 1) a clearer definition of Heirs Property; 2) in the event of a property sale, those not wishing to sale could purchase the interest of the seller, and the former would have to match only the amount that the seller has invested in the property rather than the land’s fair market value; and 3) crucially, the Court must consider both economic and noneconomic factors in determining whether property should be partitioned in kind or sold. Once the Court determines that the property is Heir property, specific steps are taken to ensure that the property is adequately appraised and that the interest of Heirs are protected.**

Possible Solutions to Heir Property Situation

- ▶ **The Farm bill authorizes alternative documentation for Heir's property operators to establish a farm number. In states that have adopted the (UPHPA), that documentation, may include: (1) a court order; or (2) certificates from local recorder of deeds that the recorded owner is deceased and at least 1 heir has initiated a procedure to retitle the land.**
- ▶ **In states that have not adopted the (UPHPA), the following are accepted to establish the farm as an operator: (1) a tenancy-in-common agreement, approved by the majority of heirs, giving right to manage and control; (2) tax returns for previous 5 years showing and undivided farming interest; (3) self-certification that individual has undivided farming interest; (4) any other documentation acceptable by FSA that establishes individual has general control of farming interest (affidavits, powers-of-attorney, and cancelled checks and/or receipts for rent payments, and/or operating expenses.**
- ▶ **Create Legal Entity - (Corporation or LLC) or other Operating Agreement to control and/or manage the property. Existing Heirs convey their interest in the estate to the legal entity, which owns and controls the land. The Heirs own the legal entity and indirectly own the land.**
- ▶ **Explore use of USDA-FSA programs that are available for veterans (landowners) and the socially disadvantaged farmers and/or ranchers.**

How do I Establish Farm Ownership

- ▶ Proof of ownership may include the following;
 - ▶ A copy of a deed, if recorded
 - ▶ An unrecorded deed, if the specific USDA program does not require a recorded deed
 - ▶ A certification of an heir that may not be able to provide a legal documentation to confirm ownership of the property. The certification will need to be accompanied by documentation such as
 - Real estate tax assessment or bill
 - Proof of gift tax
 - Affidavit of ownership
 - Other documentation as may exist under State law.
- Your first step, in this process should be to contact the FSA office, serving your local area. You can find this office at www.farmers.gov/servicelocator.
- Contact that office, or our office, for more information.

Steps to Protect Your Land

- ▶ Ensure taxes get paid when due;
- ▶ Prepare a Will;
- ▶ Do title search to insure there are no unpaid taxes, liens or other claims against the property; and
- ▶ Construct a “Family Tree” and keep information on all family members who may potentially become Heirs.

