



Navigating Heirs Property in the United States: Current State Statutory Approaches

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- Webinar Presentation - Wednesday, November 20, 2024
 - Sponsored by: National Agricultural Law Center
 - Presented by: Jesse Richardson & Jill Apter

Equity erased: Forced sales hurt heirs, poorer homeowners in imperfectly legal system

Investors exploit Reconstruction-era law

Sally Kestin Asheville Watchdog

Published 5:01 a.m. ET Nov. 10, 2021

Report: More than 5,500 family properties in Detroit have title problems



Nushrat Rahman
Detroit Free Press

Published 10:04 a.m. ET Feb. 27, 2024 | Updated 5:00 p.m. ET Feb. 27, 2024



There are at least 5,500 intergenerational properties in Detroit — worth more than \$268 million — with unclear ownership.

The fight to hold onto family property in Virginia

VPM | By **Angie Miles**

Published April 11, 2024 at 6:48 PM EDT

How ‘Tangled Titles’ Affect Philadelphia

Why homeowners’ names must appear on official records—and how it hurts families and neighborhoods when they don’t

REPORT | August 4, 2021 | Updated: August 17, 2021 | Read time: 35 min

Projects: [Philadelphia Research and Policy](#)

Heirs’ Property: The Legal Issue That Has Cost Black Farmers \$326 Billion

September 21, 2023 | 11:29 am

Little Oversight, Deals Signed in the Dark: How Speculators Cash In When NYC Homeowners Die Without Wills

Lawmakers, court authorities and city agencies have failed to safeguard the estates of homeowners who die without wills, threatening the transfer of Black and Latino generational wealth.

BY GEORGE JOSEPH, SAMANTHA MALDONADO AND SUJIN SHIN | JULY 26, 2023, 5:00 A.M.

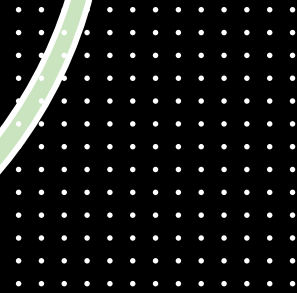
What is Heirs Property?

- **Definition:** Heirs property is a subset of tenancy-in-common property where the owners received concurrent interests in land through inheritance.
- **Characteristics:**
 - Multiple owners, often numerous and related
 - No written agreement governing the property's partition
 - Ownership often acquired from a relative
 - A specific percentage of interests held by relatives or individuals who inherited from relatives (e.g., 20% under the UHPA)
 - Ownership and name recorded on the deed are different





How title gets “tangled”:



Original landowner/titleholder passes without a will



The title does not pass through the legal system for tax or property recording purposes

No formal will or estate plan exists (intestate), and

The remaining heirs do not formally engage the legal system



Original landowner/titleholder’s heirs are the legal property owners but technically the title to the property remains recorded in a deceased family member’s name




Why it matters...

- Identified heirs properties are *conservatively* valued at over \$32 billion
- Disproportionate effect on rural, agricultural properties and specific demographics, including
 - Blacks
 - Native Americans
 - Latinos
 - Hispanics
- Certain areas disproportionately effected:
 - Appalachia
 - American South
 - Low-Income, low-wealth
- Exacerbates with time



Ownership Destabilization: Challenges Resulting from Heirs Property




Vulnerability to Loss: Owners of heirs property face risks of property and economic loss.

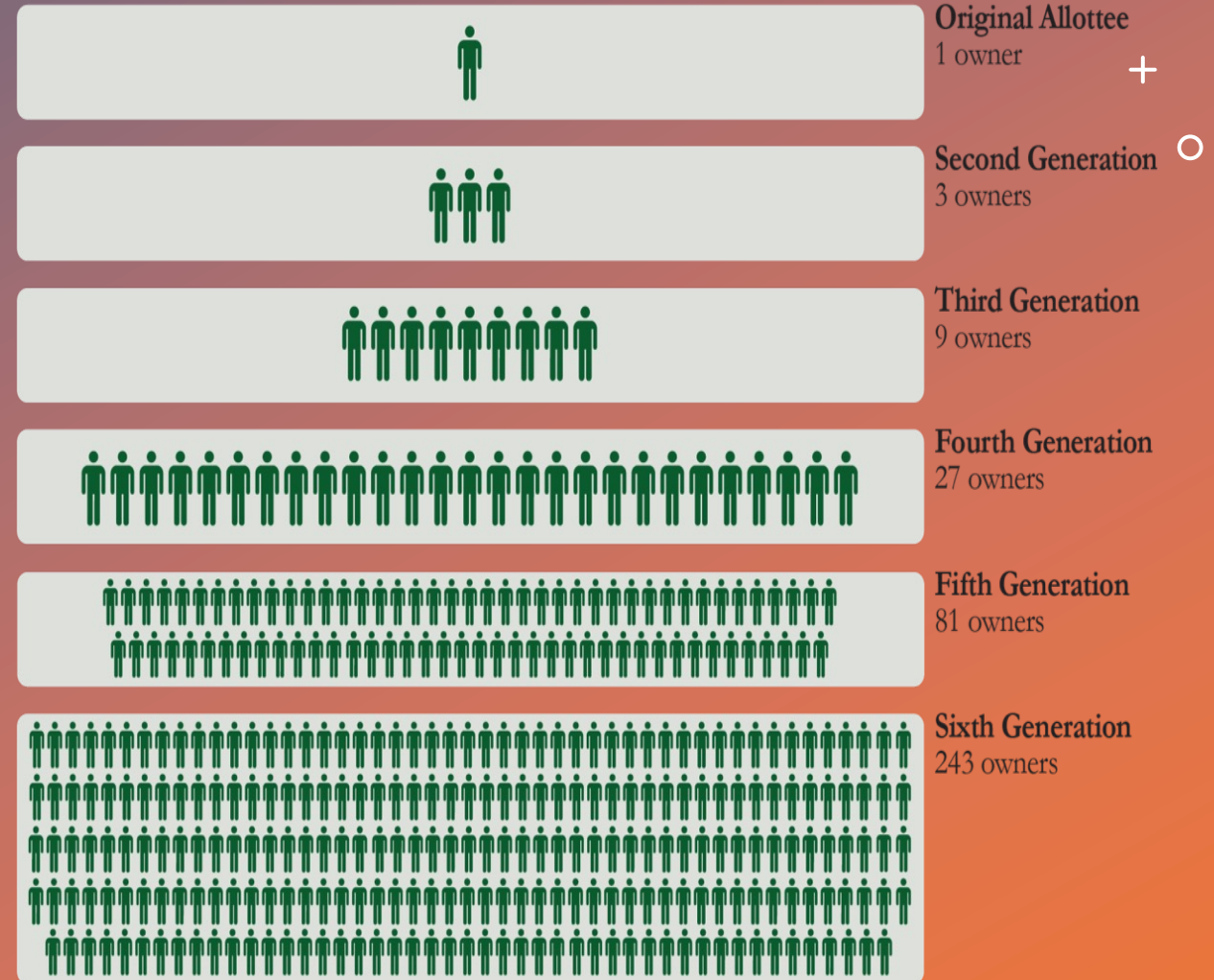
Barriers to Wealth Building: They often cannot leverage their property for loans or other financial benefits.

Susceptibility to Exploitation: Heirs property is frequently targeted for below-market-value sales or taken through tax sales and foreclosure.

Fractionated Ownership: Over generations, ownership interests become diluted, making title clearing increasingly complex and costly.



Fractionated Ownership: Exponentially More Impacted Owners by Generation



Federal Recognition

FEMA Disaster Relief

In 2021, FEMA began allowing heirs property owners to self-certify ownership for disaster relief eligibility.

2018 Farm Bill Provisions

The Farm Bill mandates that the Secretary accept “alternative documentation,” including “self-certification,” to prove ownership for access to grant and financial assistance funds.

Farm Bill Loan Program

The 2018 Farm Bill also created a program to fund loans for heirs property owners to clear title, called the “Heirs Property Relending Program.”

The Research

GOAL – consolidate and/or clear title to heirs property in the least expensive, most efficient way

- for title purposes

- for real property
taxation purposes

- Affidavits of Heirship!



Evolution of the research - grew ever-more complex the more we delved into each state's statutory options for owners of heirs properties to clear or consolidate title.

Quiet Title Action: Formal judicial proceedings where the court investigates and declares who the property owner is.



State Statutory Options

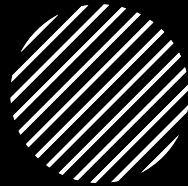
- Categories:
 - (1) Partition
 - (2) Judicial Proceedings
 - (3) Informal Probate
 - (4) Affidavits
 - (5) Marketable Record Title Acts – add a layer of complexity to the analysis

Partition – what it is:

- What it is:
 - A partition is the legal division of a property's concurrent ownership interests so that each owner can enjoy their share separately.
 - This can be done through a court order or by agreement between the owners.
- Results/Outcomes:
 - Partition action results in clear title to the party who prevails in the sale (or division).



Partition – two forms:



Traditional Partition

- May result in a forced sale if the parties cannot agree on division
 - Forced sale may be for far less than fair market value

Uniform Partition of Heirs Property Act (UPHPA)

- aims to protect heirs' property by providing additional safeguards against unfair sales, giving priority to keeping the property within the family through options like buyouts prior to resorting to a full market sale, especially when dealing with inherited land with multiple heir-owners

Judicial Proceedings to Administer the Estate

- How they work: heirs can petition a court for estate administration, which may involve an affidavit of heirship.
 - Some states require an affidavit of heirship, some do not
- Results/Outcome: Clear title to rightful owners



Informal Probate – what it is:



Under the Uniform Probate Code, some states offer a simplified estate administration process overseen by a registrar, requiring less court oversight.



Under informal probate, any heir may apply for an informal appointment or probate:

within three years of the decedent's death; or
anytime if the prior proceedings were dismissed because of doubt of the decedent's death; or
if no court proceeding occurred within the three-year period.



The application for informal probate must include a list of others that have interest in the estate/property.




Informal probate results in clear title.

Affidavits of Heirship – what they are:

Affidavits of heirship are legal documents used to establish ownership of property when someone dies without a will (intestate).

- Bypasses the judicial system by allowing an heir to submit an affidavit of heirship directly to the clerk and recorder.
- Streamlines estate settlement



Affidavits of Heirship – how they effect owners of heirs property:



- Results/Outcome
 - Since direct affidavits of heirship processes are comparatively streamlined, this approach appears the most heir friendly.
 - Involves less time, money, and legal resources than other ways of clearing title.
 - The affidavit of heirship option not only results in clear, recorded title, but also in transferal to the tax assessor for property tax purposes.

Virginia
Model
Statute (VA
Code Ann. §
64.2-510)

(A) “Any person having an interest in real estate that is part of an intestate decedent's estate . . . may execute an affidavit . . . setting forth briefly (i) a description of the real estate . . .; (ii) that the decedent died intestate; and (iii) the names and last known addresses of the decedent's heirs at law. The clerk of the circuit court . . . shall record and index the affidavit as wills are recorded and indexed”

(B) “The clerk of the circuit court . . . shall transmit . . . the affidavit to the [tax] commissioner”

Marketable Record Title Acts (MRTAs)

- What are they: statutes mandating that a party interested in clearing title to a property must only search the records for a statutorily defined time period ranging from 20- to 50-years
 - Variations among states
- Results/outcome
 - Used in conjunction with other avenues/approaches – an “added layer”
 - Heirs in possession could obtain legitimate marketable title;
 - Heirs not in possession have the opportunity to formally record their claim to the property but only if they are aware of the proceedings.
 - A non-heir in possession of the land could also use a MRTA to obtain title

Results/Findings of Survey


(<https://nationalaglawcenter.org/state-compilations/heirs-property/>)

Note that underlined states have also adopted MRTAs

	Traditional Partition	UPHPA Partition	Judicial Proceedings	Informal Probate	Affidavit of Heirship
States where this is the most optimal route to clear title to heirs properties	DE, <u>IN</u> , NH, NJ, <u>NC</u> , <u>OK</u> , OR, PR, RI, WV	DC, IL, IA, MO, NV, VT, Virgin Islands	AL, AR, CA, <u>FL</u> , GA, KS, LA, MD, MS, NY, PA, WI	AK, AZ, <u>CO</u> , HI, ID, ME, MA, <u>MI</u> , <u>MN</u> , MT, <u>NE</u> , NM, <u>ND</u> , SC, <u>SD</u> , UT, WA	<u>CT</u> , KY, <u>OH</u> , <u>TN</u> , TX, VI, WY
# of states	10	7	12	17	7

Affidavits of Heirship – A Potential Solution!

- The most heir-friendly option, under which heirs may directly submit an affidavit to the clerk and recorder for clear title
- **Only statutorily available in 7 states**
- 3 categories of existing statutes
 - Recorded affidavit of heirs provides prima facie evidence of the facts in subsequent court proceedings (Connecticut, Ohio, Tennessee, Texas, and Wyoming)
 - Affidavit of heirs is prerequisite for recordation of a deed pertaining to property acquired by intestacy (Kentucky)
 - Affidavit of heirs recorded and indexed as wills are recorded and indexed, information transmitted to commissioner of revenue, who may transfer the land for tax assessment purposes (See VA Code Ann. § 64.2-510, *supra* slide 16).



Key Considerations for Heirs Property Owners



- **Research Your State's Laws:** Understand the specific options and requirements in your jurisdiction.
- **Consult with Legal Professionals:** Seek guidance from attorneys specializing in real estate and probate law.
- **Explore Alternative Documentation:** If applicable, consider using FEMA self-certification or Farm Bill provisions.
- **Collaborate with Family Members:** Communication and cooperation among heirs are crucial for effective resolution.



How the title industry is addressing the negative effects of heirs' property

Understanding the risks of heirs' property and how to avoid them is essential to build generational wealth through inherited property

November 29, 2023, 10:55 am By [Diane Tomb](#)

JPMorgan Chase Expands Homeownership and Wealth Building Opportunities to Tackle Heirs Property and Appraisal Reform Across the Country

More than \$9.6M in funding will support free legal assistance, appraisal reform and estate planning services in underserved communities

June 18, 2024 10:00 AM Eastern Daylight Time

FHFA Statistics

Sustaining Family Wealth through Heirs' Property Resolutions

Published: 04/02/2024

Representatives Fletcher and Williams Introduce Bills to Make Disaster Aid Accessible to Heirs' Property Owners

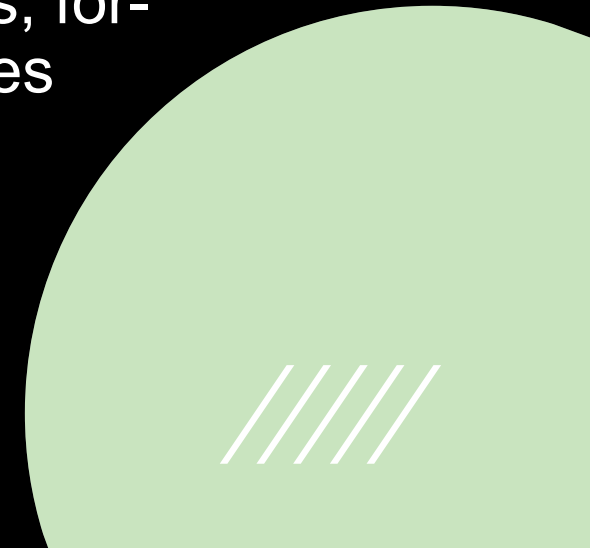
Apr 29, 2024

The Heirs Education & Investment to Resolve Succession of (HEIRS) Property Act of 2024

On, Wednesday, May 1, 2024, Congressmen Sanford D. Bishop, Jr. (GA-02) and Don Davis (NC-01), both members of the U.S. House Agriculture Committee, introduced H.R. 8198, the Heirs Education and Investment to Resolve Succession of (HEIRS) Property Act. Congressman Austin Scott (GA-08) is the Republican lead of the bill in the U.S. House.



Next Steps in the Research

- First report focused on state statutory approaches.
 - Phase 2 general plan:
 - Governmental Action: Federal action (legislative and administrative) and State-level
 - Non-governmental action: Nonprofits; State Bar Associations; Law Clinics; for-profit and nonprofit entities
- 



Phase 2 Research Plan



- Governmental Action
 - Federal
 - Legislation
 - Farm Bill Program
 - Agency Action
 - State
 - Notable Statutes from Previous Research
 - Case Law
 - Quiet Title Suits
- Non-governmental Action:
 - Law School Clinics
 - Nonprofit Organizations
 - For-profit Organizations
 - State Bar Title Standards





Thank You + Q & A

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