



# Understanding Heirs' Property at the Community Level

**August 29, 2025**

**Virginia State University  
Small Farm Outreach Program**

**George Washington Carver Center  
9432 N James Madison HWY, Rapidan Va 22733**



**Alcorn.**

SOCIALLY DISADVANTAGED FARMERS  
AND RANCHERS POLICY RESEARCH CENTER



**SOUTHERN  
EXTENSION  
RISK  
MANAGEMENT  
EDUCATION**





# Purpose:

To prepare Extension/outreach professionals to disseminate training on heirs' property to communities and individuals.



**Farm Service Agency**

U.S. DEPARTMENT OF AGRICULTURE







# **Important Notes before We Begin:**

**These materials are intended to present general information as to preventing heirs' property.**

**They primarily draw upon information in the southern United States.**

**The information may not be applicable to every state or territory.**

**These materials do not provide legal advice. Specific advice should be obtained from an attorney or another professional well versed in the facts and circumstances related to the individual seeking advice and the jurisdiction where the property is located.**



# Acknowledgements

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# Warm Up and Introductions



# Topics to Explore

OVERVIEW	Heirs' property definition
	How heirs' property is identified
	Factors associated with the prevalence of heirs' property
	Impacts of heirs' property
	Relationship between tax sales, partition sales, and land loss
	Laws, policies, and programs relevant to heirs' property
PREVENTION	Basics of estate and succession planning
	Steps to prevent heirs' property when establishing a will
RESOLUTION	Review some of the challenges of owning heirs' property
	Importance of working with other family members
	Steps to take to understand who legally owns the property
	Legal structures that can hold land owned by heirs' property owners





# SESSION OVERVIEW

- What is Heirs' Property
- Basics of Estate Planning/ Succession Planning
- Preventing Heirs' Property When Writing Your Will
- Title to Real Property
- Working with an Attorney





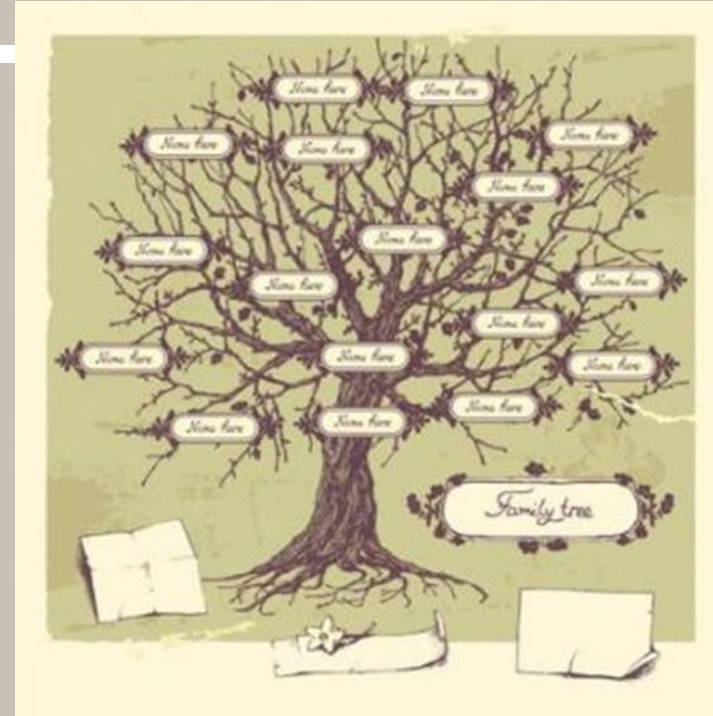
# WHAT IS HEIRS' PROPERTY?





# What is Heirs' Property?

- Refers to property passed down informally from generation to generation
- The original landowner dies without a will, or the will was not probated or administered
- State laws determines who inherits your land.
- Can potentially include multiple generations and hundreds of relatives
- No single heir has clear title to the entire parcel.





## **DECEDENT**

Death of a property holder

## **INTESTATE**

Lack of a will

## **HEIRS**

Family members related by blood, adoption, and/or marriage who inherit by law.

# **KEY TERMS**





# Important

If you do not decide  
how you want your estate divided,  
the state where your property is located will  
divide based on intestate succession law

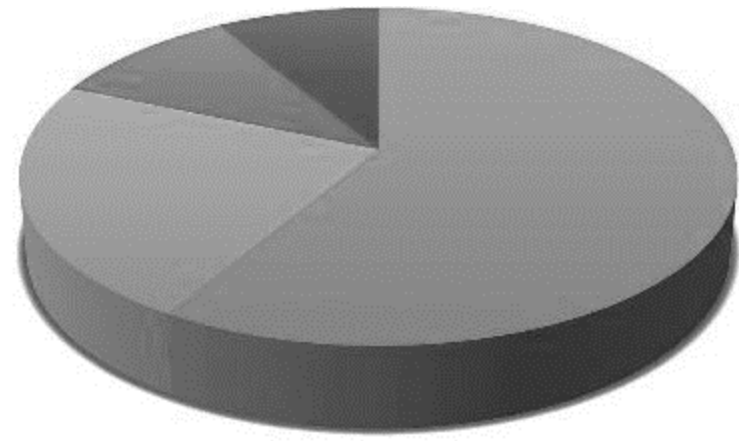




# Fractional Ownership

The **SIZE** of each heirs' fractional ownership interest depends on several factors such as:

- How many generations removed is an heir from the original deceased landowner?
- How many heirs can rightfully take their inheritance at a specific point in time?





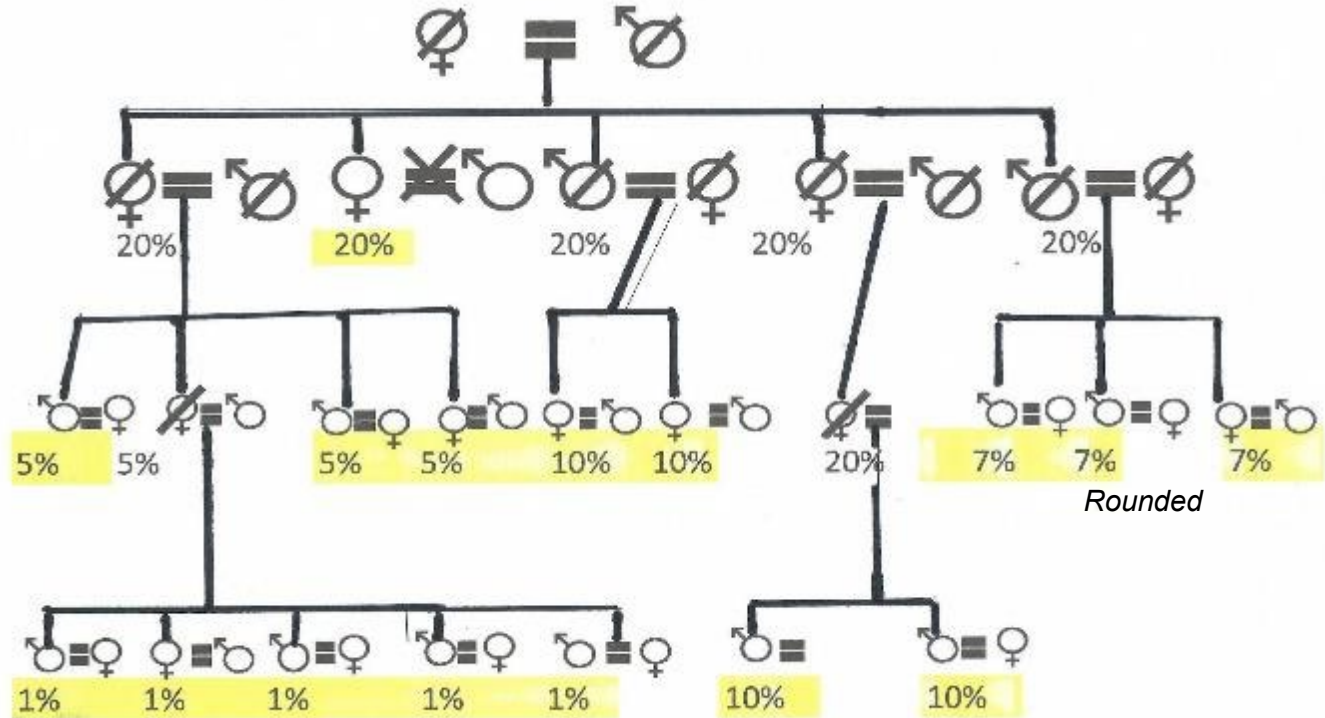
# Time: Across Generations, Things Get Complicated!

Parents

Children

Grandchildren

Great-grandchildren



# Distance Causes Challenges

Heirs may not all live on or near the land.

Distance can lead to disinterest.

★ (Stars are just an example showing how families can become geographically scattered.)





# Heirs' Property in the Southeast

## Estimated Acres of Heirs' Property By County 2019

Acres Per County

ACRES\_sum

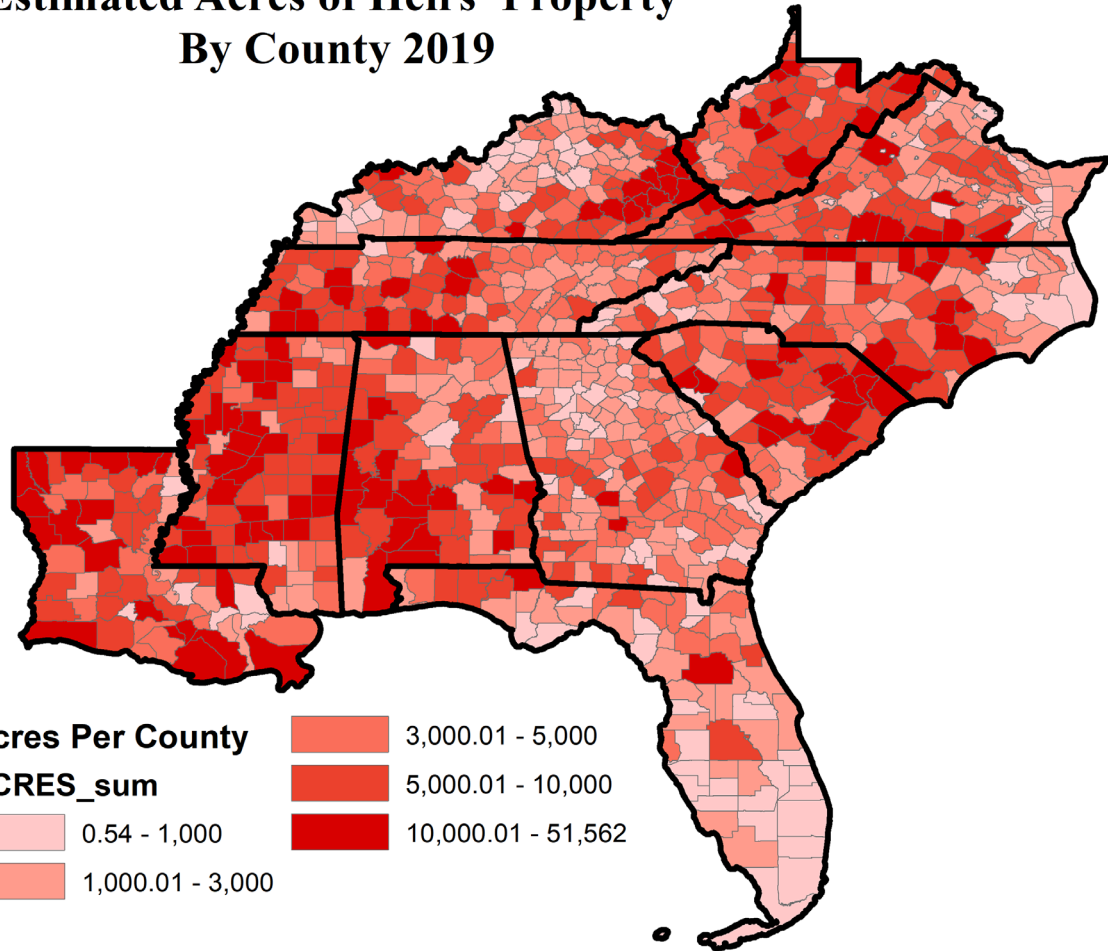
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# Estimated Acres of Heirs' Property By County 2019

**Acres Per County**

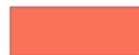
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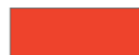
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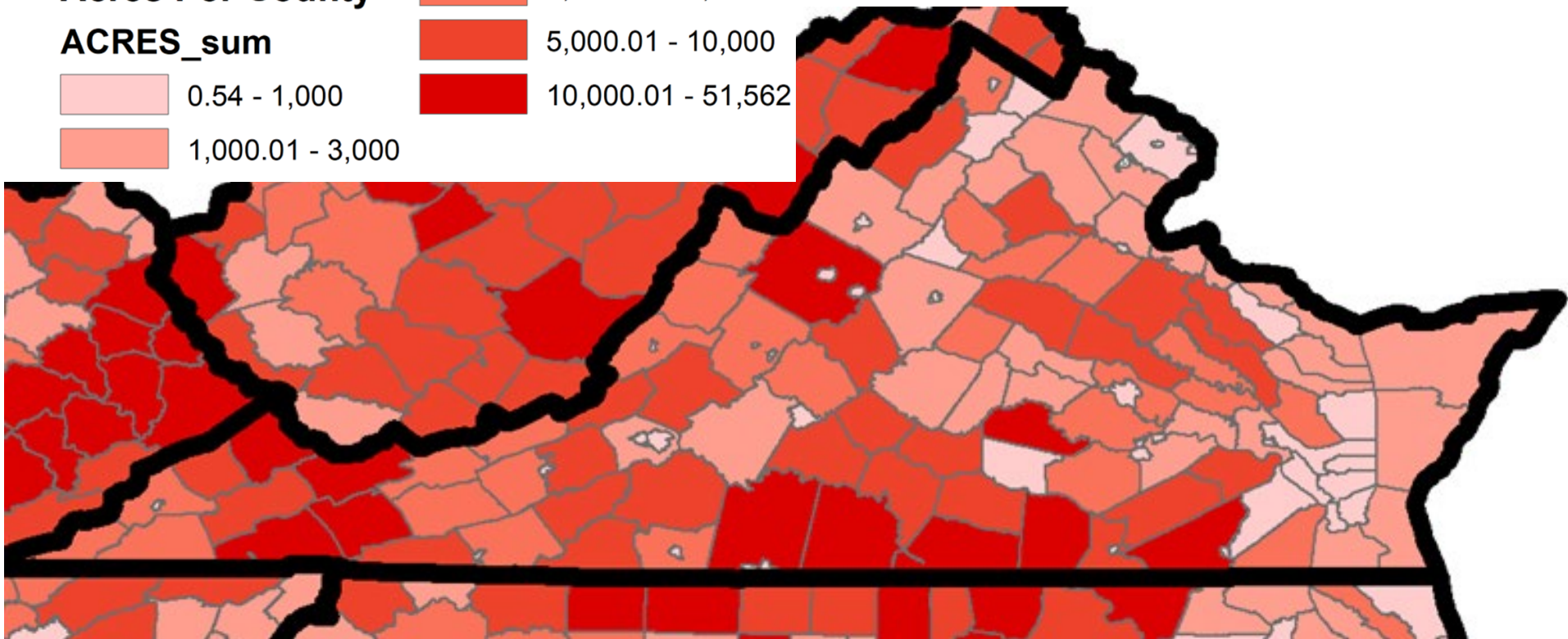
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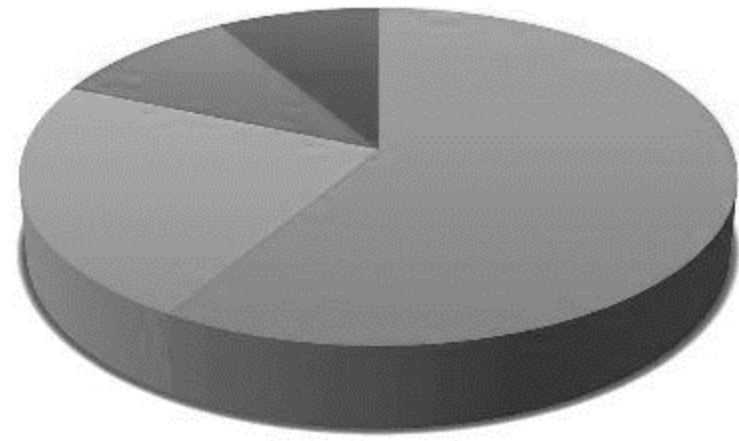




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# Impact of Heirs' Property: On Heirs & Community



Affects how  
land is  
managed



Land cannot  
be developed  
to full  
potential



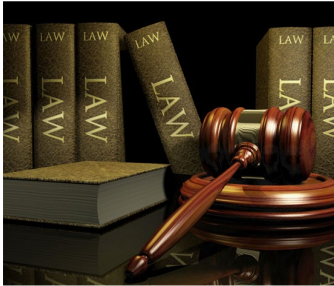
Potential Loss  
of Property



Lost  
opportunities  
for  
improvements

# Intestate: Dying without a Will

## Distribution



State law determines distribution

## Children



Court appoints children's guardian

## Time



Takes longer to settle estate

## Taxes



May have tax consequences



# SUMMARIZING

## Up to this point we know that...

01

Heirs' property land is held without clear title

02

Heirs' property is passed from one generation to the next due to lack of probated will or judicial proceeding

03

Heirs' property has limited investment potential and is at risk for loss through legal and other means



The background of the slide features a photograph of a snowy path leading towards a building with a red roof, partially obscured by bare trees. A semi-transparent brown banner is overlaid across the middle of the image.

# **Business Structures Taxes & Title to Real Property**





# Placing Property in an Entity – An Alternative Approach to Physically Dividing Property

Your property can be conveyed to a trust, corporation, limited liability company or other entity

- Prior to your death – Seek advice on property taxes (if homestead)
- Upon death if designated in your will

Be sure to seek a lawyer's assistance.

# Examples of Legal Structures to Hold Land:

- Trusts
- Limited Liability Company (LLC)
- Tenant-in-Common Agreement







# PREVENTING HEIRS' PROPERTY



# Heirs Property Check Sheet



Complete the VSU Heirs' Property workshop  
with participants





# Basics of Estate and Succession Planning







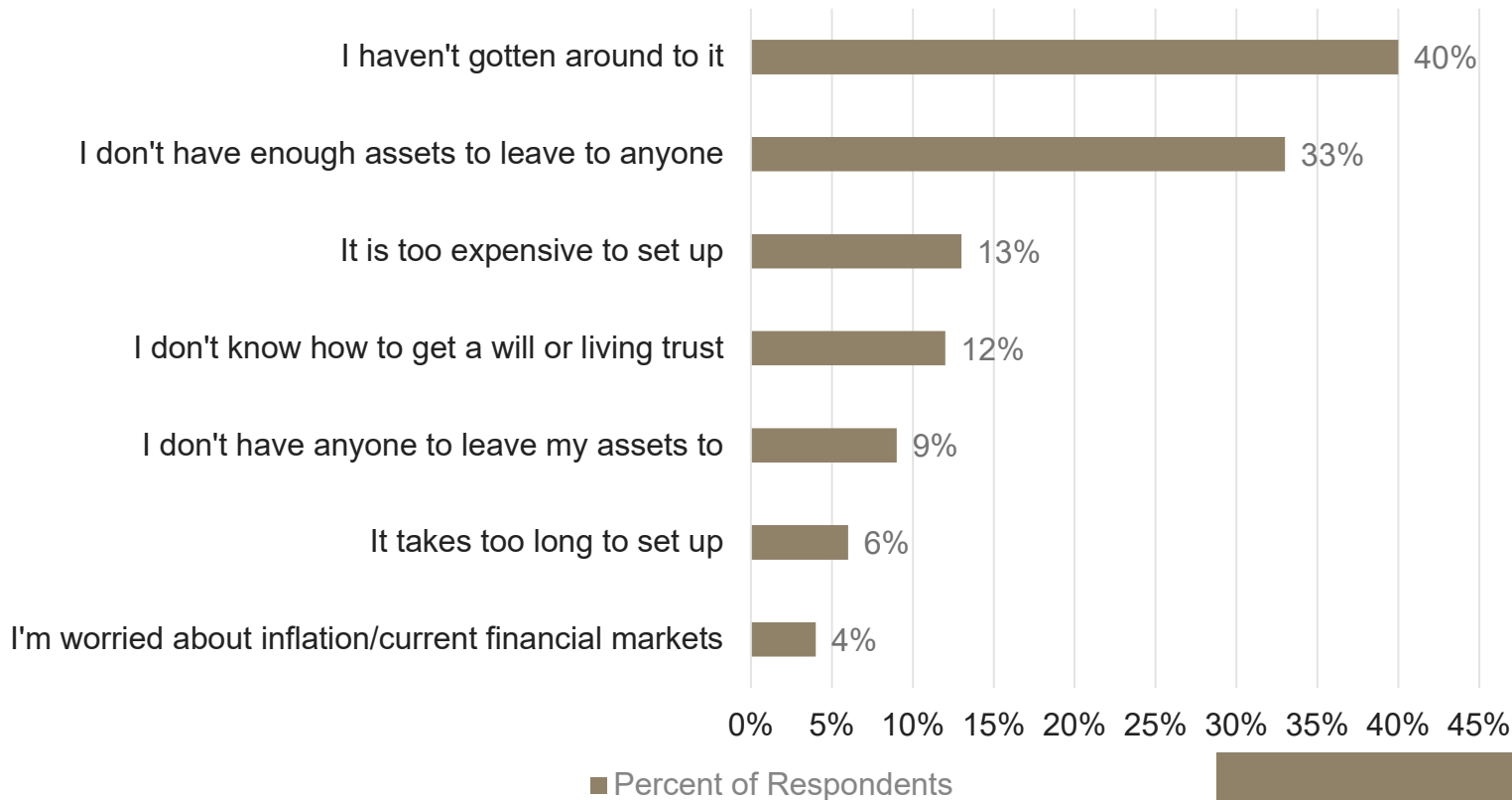
**What are the costs  
of not having an  
estate plan in  
place?**

**What are the reasons for not having an estate plan in place?**





# What Are the Main Reasons You Don't Have a Will?



Source: <https://www.caring.com/caregivers/estate-planning/wills-survey/>



# Percentage of Americans Having a Will by Subgroup

Do you have a will that describes how you would like your money and estate to be handled after your death?

	% Yes, have a will
U.S. adults	46
<b>Age</b>	
65+ years old	76
50-64 years old	53
30-49 years old	36
18-29 years old	20
<b>Annual household income</b>	
\$100,000 or more	61
\$40,000-\$99,999	49
Under \$40,000	30
<b>Education</b>	
College graduate	57
Not college graduate	40
<b>Race/Ethnicity</b>	
White adults	55
Nonwhite adults	28

**Source:**

<https://news.gallup.com/poll/351500/how-many-americans-have-will.aspx>





# We All Need an Estate Plan

This session will focus on questions of property.

Estate planning guides your loved ones in decision-making in the event you are no longer capable or if you die.





# How comfortable are you talking about death?

1      2      3      4      5      6      7      8      9      10

“Anything that’s human is mentionable, and anything that is mentionable can be more manageable. When we can talk about our feelings, they become less overwhelming, less upsetting, and less scary. The people we trust with that important talk can help us know that we are not alone.”

-- Mr. Fred Rogers



# Updating Your Will

When someone  
named in your will  
dies

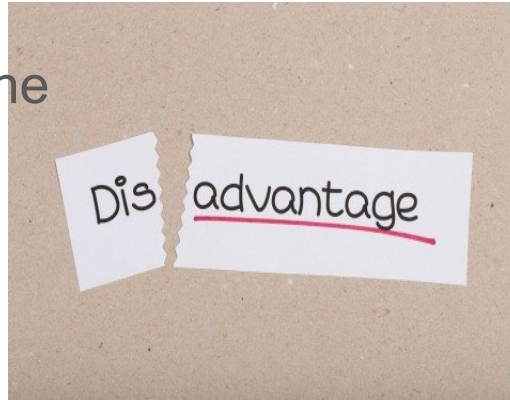
When circumstances  
change



# Placing Property in an Entity – An Alternative Approach to Physically Dividing Property

## Advantages:

- Property stays together in one undivided tract.
- Unanimous consent is not required for most management actions
- There may be a prohibition on sale of property or interests



## Disadvantages

- Restrictions may make sale of a person's interest difficult.
- Disagreements on management decisions may cause friction.

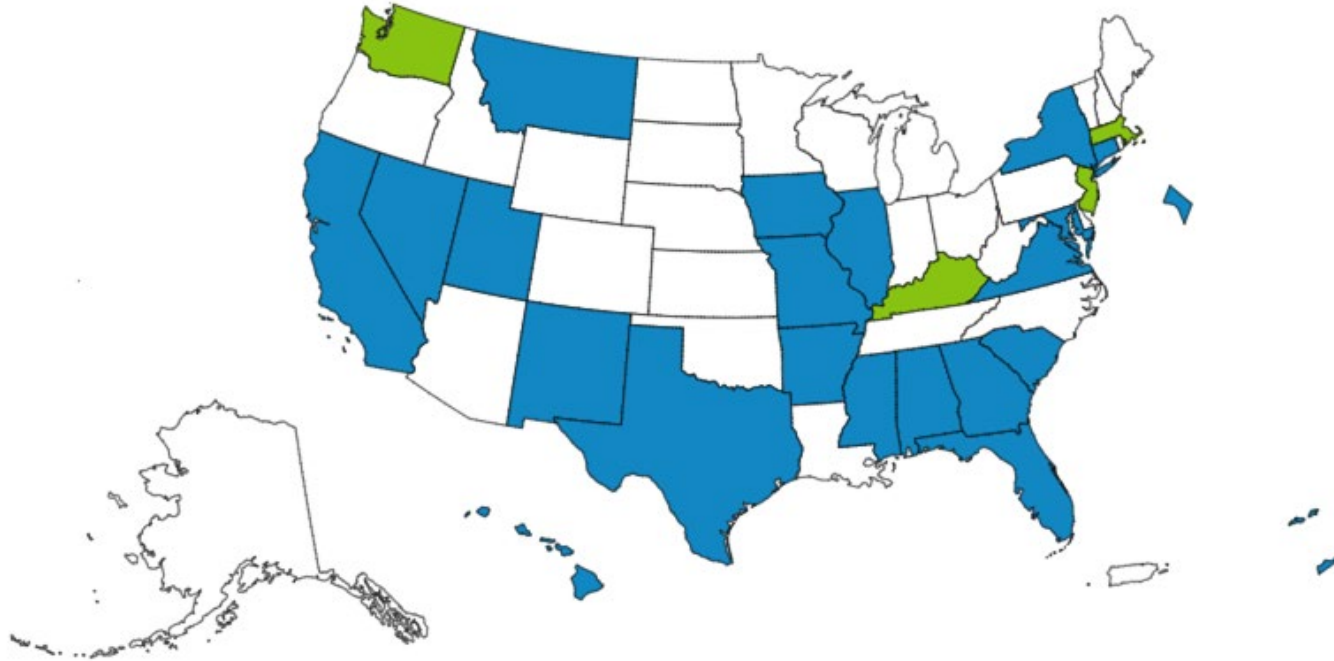




# For example, if you die without a will in Virginia...

If a person dies with:	Here is who inherits:
children but no spouse	the children inherit everything equally
a spouse but no descendants or parents	the spouse inherits everything
a spouse and descendants, all of whom are descendants of the decedent and the spouse	the spouse inherits everything
a spouse and descendants, at least one of whom who is not a child of the surviving spouse	the spouse inherits one-third of the person's estate, and the remaining two thirds is shared between the children of the decedent (whether from the surviving spouse or not)
parents but no spouse or descendants	the parents inherit everything equally
siblings but no spouse, descendants, or parents	the siblings or their descendants inherit everything equally

# Uniform Partition of Heirs Property Act (UPHPA)



Where the Uniform  
Partition of Heirs  
Property Act has been  
**adopted** or  
**introduced** –  
February 2023

Uniform Law Commission site at [uniformlaws.org](https://uniformlaws.org)



## Applies only to heirs' property

May help heirs' property landowners maintain their property

Restructures the way partition sales occur

Provides additional protections against the forced sale of heirs' property

Preserves the right of a co-tenant to sell his or her interest in the property



01

02

03

04

05

06

# How Does the UHPHA Help?

**Provides the following protections in partition actions:**

Enhances Notice

Independent Appraisal

Right of First Refusal

Preference for Partition-in-Kind

Open-Market Sale

Partition in Kind- Dividing land into pieces of equal value for co-tenants





# Enhances Notice

Cotenant requesting a partition MUST:

- Provide notice of the partition action to all co-tenants; and
- Post a conspicuous sign on the heirs' property.



# Tax Sales

## In Virginia:

- The property owner must receive notice at least 30 days prior to initiating any judicial proceeding for a tax sale of the property.
- The taxpayer has the option of asking the tax collector to enter into a payment agreement over a period not to exceed 60 months.
- If the owner fails to redeem before the date of sale, the taxing authority puts the property up for sale.
- The successful bidder on the property obtains title to the property and owns it from that point forward.



**Tax Lien Auction**

**WHEN**  
**May 4, 2021-Online**

**WHERE**  
<http://www.govease.com/auctions>

**TIME**  
**10 am to 4 pm**

**Iverson Gandy, Jr.**  
Revenue Commissioner  
Macon County, AL

**MARCH 19TH**  
Tax Lien Auction List Goes to the Tuskegee News

**MARCH 29**  
Online Registration opens-  
[www.govease.com](http://www.govease.com)

**APRIL 30**  
Online Registration End at 4:30pm

**MAY 3**  
Open for Pre-bidding

**May 4**  
-Tax Lien Auction Online  
-No Delinquent Payment Accepted

**MAY 5**  
Winning Bidders Must Pay Before 4:30

# Open-Market Sale

- If the property is sold, it must be listed with a licensed real estate broker for sale at a price no lower than the court-determined value for a reasonable period of time.
- The court may order a sale by another method if the open market sale is unsuccessful.



# Effect on Liens

A partition or sale for division under the UHPA doesn't mean you won't be responsible for existing mortgages or liens on the property. You will likely still be obligated to satisfy/pay them.







## Critical Step to determine how the UHPA can help you...

Speak with an attorney licensed to practice law in the state where your land (real property) is located about the UHPA, its enactment in your state, and how it can help resolve your heirs' property issue.



# Title to Real Property: Examining Title

A title certificate or report will generally specify the:

- Record title owner(s)
- Type of shared ownership, if applicable (e.g., Joint Tenancy with Survivorship Rights or Tenancy in Common)
- Legal description
- Tax parcels and status of payment
- Encumbrances (e.g., easements, covenants)
- Title claims or unresolved issues

Title should be examined by a lawyer or a title company.



# Maintaining Property as Heirs' Property through Current Marketable Title

After title is examined, the names and percentage interests of each family member should be determined.

Record. Title should be updated to reflect current ownership and percentage interest according to the law of the states where the property is located which may include:

- Affidavit of Heirship
- Probate of wills
- Administration of Estates
- Judicial Determination of Heirship



# Probate Process



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## Process of validating a will

- Executor files in local court
- Not all wills must be probated

## Probate will likely be needed if:

- Real estate is involved
- Beneficiaries are minors
- Disputes over asset distribution occur
- Assets are complex and high in value
- Will is not written well



# Independent Appraisal

- Unless all parties agree on the value of the property, the court determines the property's fair market value.
- A disinterested, licensed real estate appraiser in the state where the property is located is usually appointed or the judge may determine that the value of the property does not justify the expense.





# Right of First Refusal or Buy-Out Provision

- Any cotenant not seeking partition by sale may buy the interest of the co-tenant(s) seeking partition by sale.
- If more than one co-tenant wants to purchase the property, the court will divide the seller's interest between the buyers according to their existing ownership shares.





# Maintaining Property as Heirs' Property through Current Marketable Title (cont'd.)

## Advantages

- Keeps family current as to names and percentage of ownership of family members
- Keeps relationships between family members

## Disadvantages

- Must be updated upon the death of each heir
- Does not address disabilities (incompetence) during lifetime
- Does not prevent an heir from selling their fractional interest
- Does not prevent any heir or purchaser from seeking partition of the property

# Granting a Spouse or a Child a Life Estate



One spouse/parent may prefer to leave real property as a life estate to a spouse or a child in the event of circumstances important to that parent. Examples include:

- Planning for property management if a spouse needs to go to a nursing home after inheriting.
- Ensuring a child receives the property after the death of a spouse.
- Providing for the care of someone with special needs.
- Allowing someone earning their livelihood from the property (farm/ranch) to remain there.

Your lawyer should advise you on rights/obligations of a life estate based on the state laws where the property is located.





# Farm Bill 2018

Issues addressed relevant to heirs' property owners:

- Eligibility provisions for heirs' property operators to obtain a farm number
- Conservation and Heirs' Property
- Heirs' Property as barrier to participation with USDA
- USDA Farm Services Agency Relending Program for those seeking to resolve heirs' property
- Farmland ownership data collection



# Working with an Attorney





- An attorney can prevent the problem of incorrect wording, or an invalid will
- Incorrect wording can lead to the will being contested, which adds to:
  - Family turmoil
  - Length of time for distribution

# Specialty Areas of Lawyers – Just a Sample!



Health

★ Trusts & Estates

Family

International

Taxation

Criminal

Real Estate

Trials and Litigation

Corporate



# Specialty Areas of Lawyers

- Not all lawyers know all parts of the law
- One part is “Trusts and Estates”
- Some states recognize specialization and certify lawyers.
  - For example: Florida bar recognizes the specialty of “Wills, Trusts, and Estates”
- Some lawyers have advanced degrees (e.g. LLM in taxation)





## Living Will

- Is a written statement that details medical treatment preferences in the event the person is not able to express his/her wishes
- Includes a Healthcare Power of Attorney and Advance Health Directive in some states
- No longer is in effect after the person has died

## A Simple Will or Last Will and Testament

- Is a legal document that designates how property, assets, and dependent responsibilities are distributed after death.
- Does not take effect until a person has died



## **HOLOGRAPHIC WILL**

Is handwritten and signed by the testator but are not witnessed (not valid in all states)

## **MUTUAL WILL**

Is usually done by a married or committed couple

# **TYPES OF WILLS**

## **TESTAMENTARY WILL**

Is prepared and signed in the presence of witnesses; most recognized by the court

## **SIMPLE OR BASIC TESTAMENTARY WILL**

Lays out what you would like to have happen to your assets after you die; most recognized by the court



# Cost of a Will

Factors that influence cost:

- State
  - Flat fee vs. time
  - Complexity of the situation
- Simple may be as low as **\$500 - \$600** per person.
  - Nationwide average is **\$900 - \$1,500** for an individual will created by an attorney or firm.
  - Lawyers sometimes charge a flat fee to write a will and other estate planning documents, **ranging from \$300 to a more common \$1,000**

HOW MUCH  
WILL IT COST?

# Transferring Title by Deed

- Real Property can be conveyed by deed rather than by will.
- A recorded deed takes precedence over a will disposing the same property.
- Deeds should be prepared by a licensed attorney.
- Options for transferring include:
  - Conveying real property before death
  - Reserving or granting a life estate
  - Conveying title by a transfer on death deed (in some states)





# Choosing an Attorney

Like buying other products and services, you are looking for a “good fit”

- Comparison shop
- Ask for referrals
- Look for experience in estate/succession
- Be sure they are licensed in your state



# Questions to Ask



- What percentage of your practice involves estate planning?
- Do you have any conflicts of interests that I should know about before I hire you?
- What documents will be prepared and how long will it take?
- How will you keep me informed of progress?
- What is the ballpark figure of my total bill and what would cause the bill to change?

# Documents to Bring



Estate Plan

- Written summary of what you plan to achieve with your estate plan
- Documents with the full names and addresses for you, your spouse, children, and anyone else you plan to include in your will
- Complete income tax returns, previous 5 years
- Balance sheet: assets and liabilities owed to you
- Deeds and mortgages
- Detailed list of any other oral or written agreements
- Marital agreements and/or divorce decrees
- Beneficiary designations (insurance, retirement plans, etc.)
- Prior wills, power of attorneys, any other existing versions



# What Could Make a Will Invalid?

- Each state has its own requirements for a “valid” will
- Generally, it will be invalid if it:
  - Was not properly executed
  - Was not properly witnessed (does not apply to holographic wills)
  - Fails to include appropriate language
  - Fails to address spouse and children (states vary as to the right to exclude a spouse or child)
  - Is a product of undue influence, fraud or was executed at a time when the testator was not competent



# Originals and Copies of Your Will



- Store the original will in a safe place.
- Let your executor know where the original will is stored.
- Give duplicate signed copies to the executor and your attorney.



# Simple Will: How It May Create Similar Issues to Heirs' Property



- A simple will often leaves ~~all~~ assets including real property:
  - First, to a spouse
  - Second, if the spouse is deceased, equally to children.
- If children inherit under this type of simple will, they hold an *undivided* interest in the property.
  - **Unlike** heirs' property, the property is titled in their name
  - **Like** heirs' property, they cannot use it without unanimous consent of all siblings involved.



# **BENEFITS OF A TESTAMENTARY WILL**

**01**

**Specifies wishes for your funeral**

**02**

**Chooses who you want to carry out your wishes (Executor)**

**03**

**Limits inheritance disputes**

**04**

**Clarifies the gifting of possessions and money (subject to state laws pertaining to spousal rights)**

**05**

**Identifies who should care for your children/dependents**

**06**

**Helps your heirs access your assets faster and easier**

**07**

**May reduce inheritance tax**



# Tips to Avoid Heirs' Property Issues in a Will

Helpful  
Tips

Put in writing how the land would be divided among spouse and children if they inherit.

Common ways to divide:

- Physically divided into separate parcels for each person using valid legal descriptions
- Financially divided based on equal value of parcels by a process specified in the will

Ask your lawyer to advise you on:

- How to provide for the payment of debts and taxes so the property division is not affected by claims of creditors or required tax payments.
- What is needed in terms of a temporary process to manage the farm, ranch or forest to avoid interruption in the business.

# Takeaways

01

Not having a will results in heirs property, but having a will does not necessarily prevent heirs' property

02

Heirs' property leaves rural land vulnerable to development, sale, and unable to be utilized effectively

03

UPHPA in Virginia provides some protection against forced sale of a property



# How Extension can help:

01

Prevention through estate planning education

02

Educate about the risks to families posed by being in heirs' property and laws/policies designed to protect

03

Connect families to resources and tools for next steps in heirs' property resolution



# Prevention through farm transition



## AgrAbility Virginia

- AgrAbility Virginia promotes safety, wellness, and accessibility on the farm through education, rehabilitative services, and assistive technology.
- For more information: <https://agrability.alce.vt.edu/>

## AgriStress Helpline for Virginia

- The AgriStress Helpline is a free and confidential crisis and support line that you can call or text 24/7 at 833-897-2474. The helpline is answered by trained professionals (also trained on the factors that impact people working in agriculture) who can offer support and/or help you find mental health resources in your area.
- For more information: <https://www.agrisafe.org/agriStress-helpline/>

## Farm Agricultural Resources and Mediation of Virginia (FARMVA)

- FARMVA works to help settle disputes between USDA agencies in Virginia and their customers and clients, help resolve disputes involving agricultural issues and family farm transition. Our mediators are all familiar with farming and rural issues.
- For more information: <https://affiliate.wcu.edu/agriculturalmediation/farmva/>

## Generation NEXT

- A collaboration between Virginia Cooperative Extension and the Virginia Department of Forestry – is an outreach program specifically designed to help family forestland owners make informed and intentional decisions regarding passing their land forward to the next generation.
- Contact Karen Snape [ksnake@vt.edu](mailto:ksnake@vt.edu) or your district forestry extension agent <https://ext.vt.edu/natural-resources/legacy-planning/training.html> <https://sites.google.com/vt.edu/generationnext/home>

## IFTN Certified Farm Succession Coordinators

- The International Farm Transition Network (IFTN) trains and certifies farm service providers to assist farm families and businesses navigate and plan for transitioning to a successor.
- Contact Crysti Hopkins 540-967-3422 [hcrysti2@vt.edu](mailto:hcrysti2@vt.edu) or Rachel Henley 804-598-5640 [rachelhenley@vt.edu](mailto:rachelhenley@vt.edu) for more information
- For a list of coordinators: <https://www.farmtransition.org/coordinators/>

## Virginia Farm Link

- An online database designed to link farm owners interested in exiting agriculture with those seeking farms and farm businesses.
- Contact 804-786-1906 [farmlinkadmin@vdaes.virginia.gov](mailto:farmlinkadmin@vdaes.virginia.gov) <https://virginiafarmlink.org>



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**University**  
**Small Farm**  
**Outreach Program**

**(804) 524-3292**



Visit our Online Heirs Property Resources Page  
at

[https://vsusmallfarms.com/heirs -property/](https://vsusmallfarms.com/heirs-property/)



# Questions and Discussion

