

Understanding Heirs' Property at the Community Level

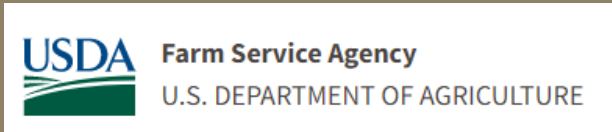
February 8th, 2024

VCE Winter Conference



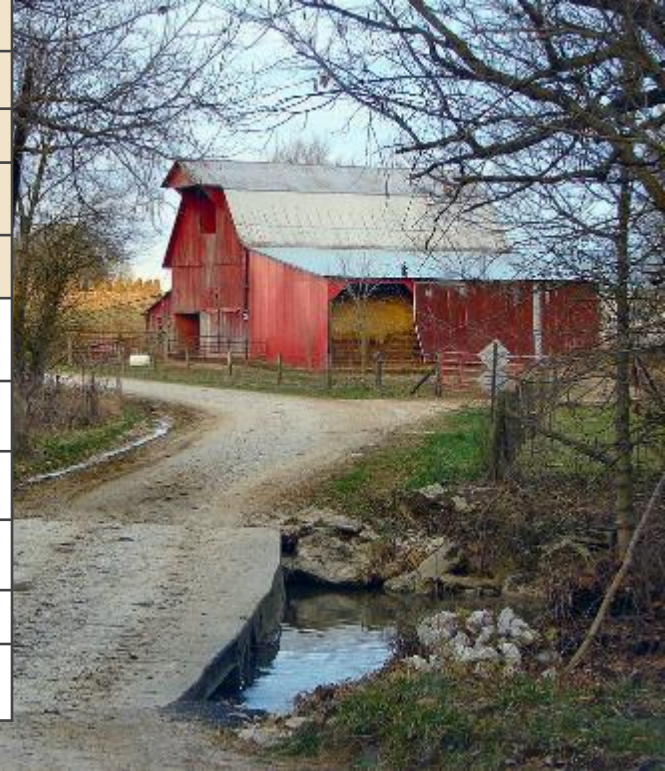
Purpose:

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



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

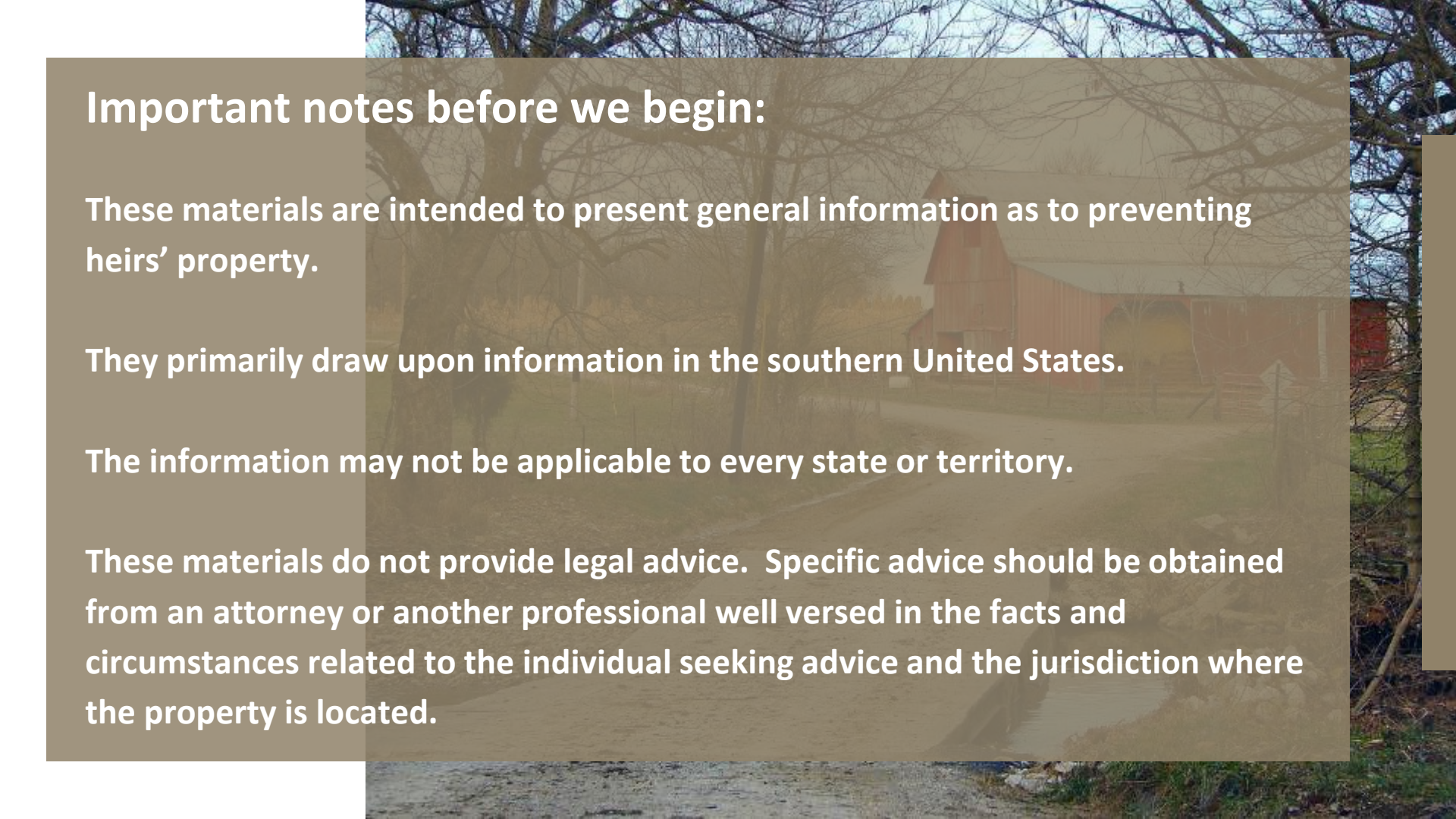


A photograph of a rural landscape. In the background, a red barn with a white roof is visible, partially obscured by bare trees. In the foreground, a concrete culvert pipe leads into a small stream. The scene is overlaid with a semi-transparent brown rectangle that contains the text "WHY ARE WE HERE?".

WHY ARE WE HERE?

A photograph of a rural property featuring a large red barn with a white roof. In the foreground, a concrete culvert structure leads to a small stream. The scene is framed by bare trees, suggesting a late autumn or winter setting. A semi-transparent brown rectangular box is overlaid on the left side of the image, containing the text.

OVERVIEW: HEIRS' PROPERTY

A photograph of a red barn with a gambrel roof, situated in a rural area. The barn is partially obscured by a semi-transparent brown overlay that contains text. Bare trees are visible in the background, suggesting a late autumn or winter setting. The overall scene is peaceful and rural.

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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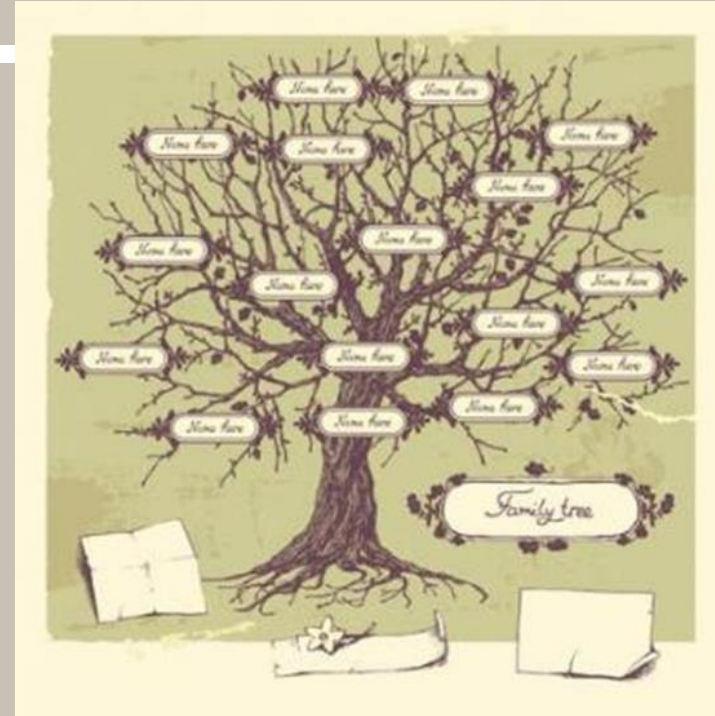


Part I: The Land



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 estate (property) is
located will be divide based on intestate
succession law



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

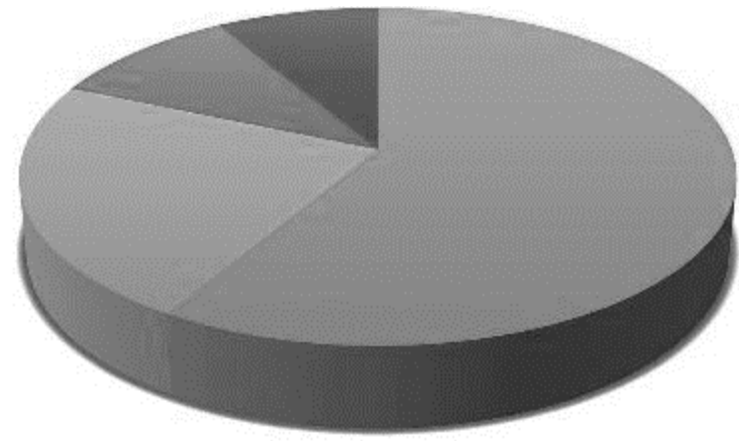
If a person dies with:	Here is who inherits:
children but no spouse	the children inherit everything equally
a spouse but no descendants or parents	the spouse inherits everything
a spouse and descendants, all of whom are descendants of the decedent and the spouse	the spouse inherits everything
a spouse 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

**Fractional Ownership:
Challenges of Time,
Distance, and Knowledge**

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:

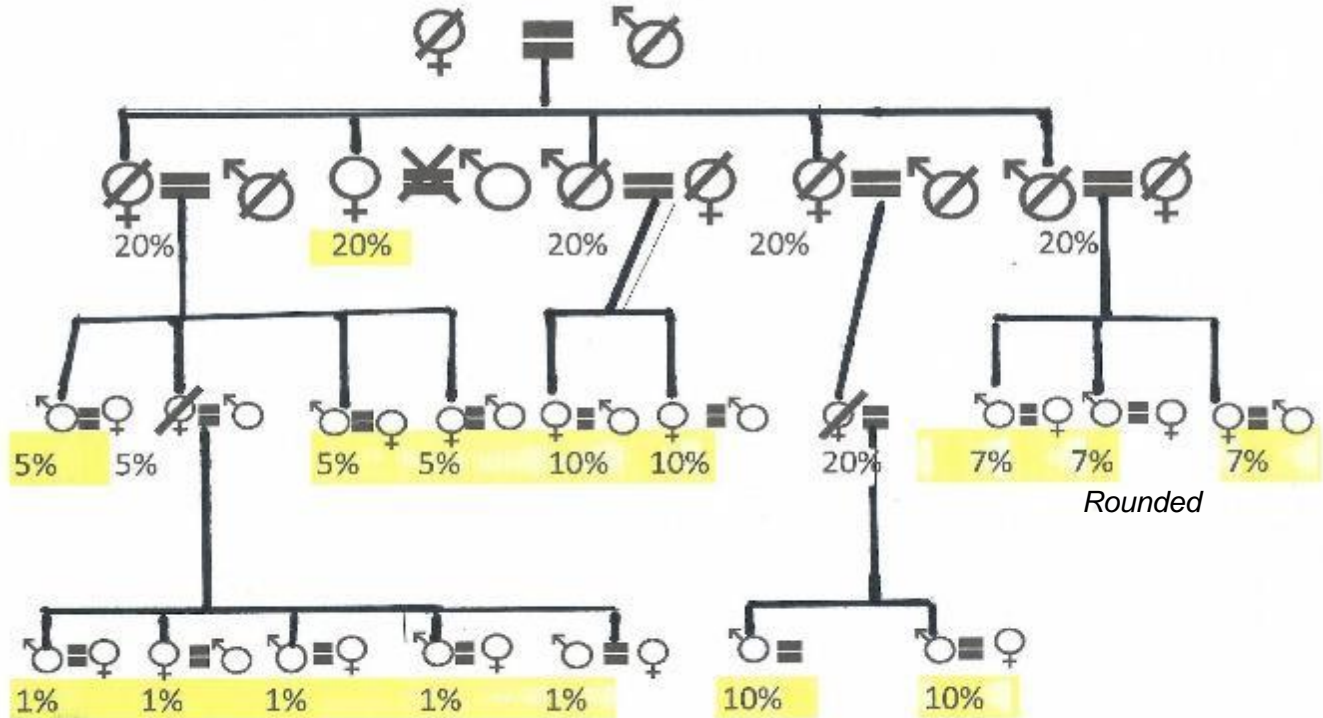
Across Generations, Things Get Complicated!

Parents

Children

Grandchildren

Great-grandchildren



Distance Causes Challenges

Heirs may not all live on or near the land.

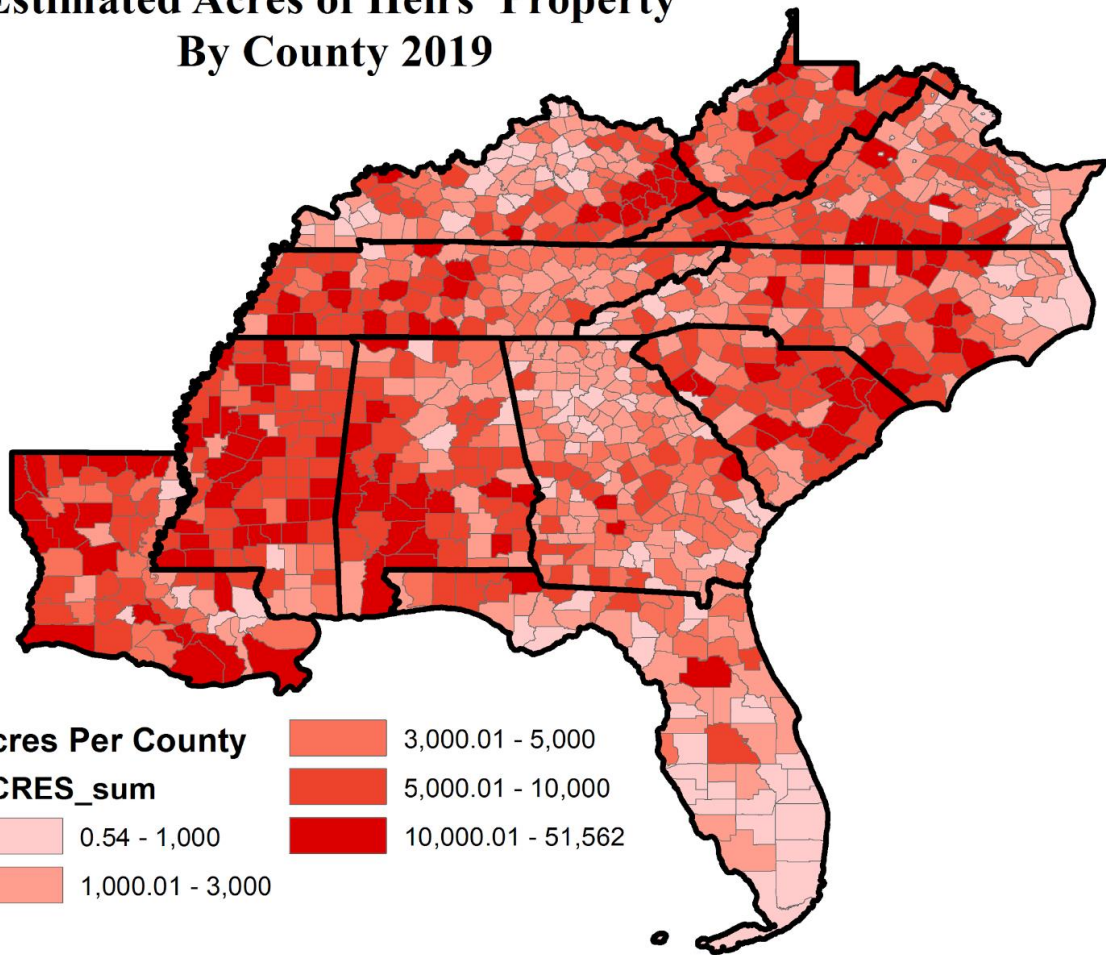
Distance can lead to disinterest.

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



Heirs' Property in the Southeast

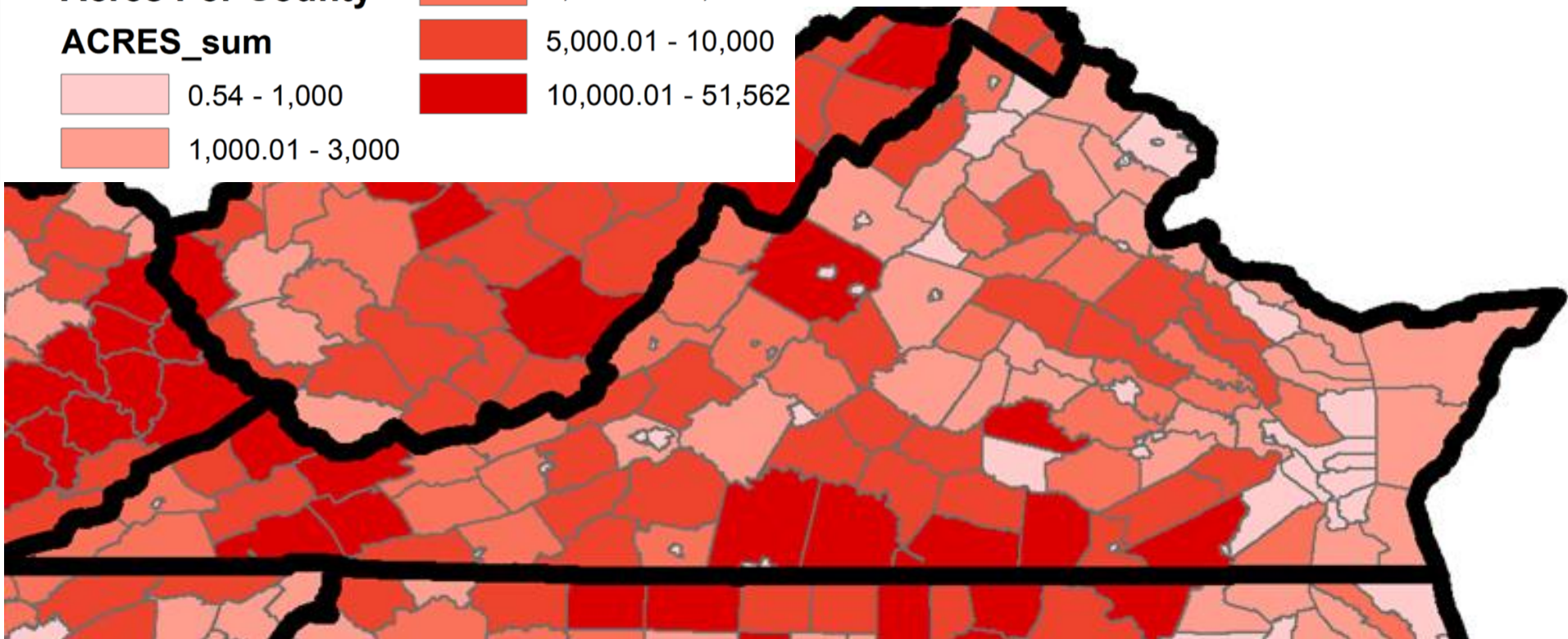
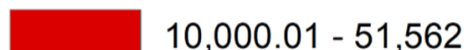
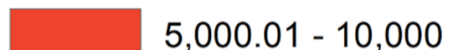
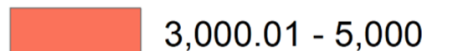
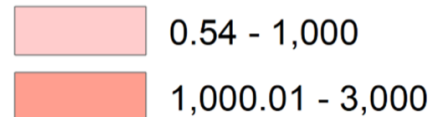
Estimated Acres of Heirs' Property By County 2019



Estimated Acres of Heirs' Property By County 2019

Acres Per County

ACRES_sum



Impact of Heirs' Property: On the Landowner

Heirs' property restricts how land can be managed.

Examples of management decisions:

- Timber harvesting and reforestation
- Farm planting and harvesting
- Mineral rights
- Mortgages and other loans
- USDA programs
- Conservation easements



Impact of Heirs' Property: On the Community



Affects how
land is
managed



Land cannot
be developed
to full
potential



Community
loses taxes



Lost
opportunities
for
improvements

SUMMARIZING

Up to this point we know that...

01

Heirs' property land is held without marketable 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

Therefore...



... to prevent heirs' property, all you need is a WILL!

YES and NO

Competing Strategies



YES: a properly executed will, written according to state law, that divides land into specific acreages or parcels, can secure title to land from one generation to the next.

NO: a properly executed will is not the only way that property can be transferred from one generation to the next.

The first action is a *legal strategy* and the second is a *cultural strategy*.

Cultural: Consider this Quote

“For [the family], the commitment to heir land remained in force, enforced not by law – where the practice and concept was vulnerable – but by shared understanding... The land should stay undivided, open to and for all the heirs.

Land is not a commodity that is sold, but a right that is transferred to kin as needed.

The land was for open access and undivided family use, and not to be restricted by deeds.”

A Mind to Stay: White Plantation, Black Homeland, Sydney Nathans (2017)

Knowledge

“When young people grow up...they don’t see the necessity of owning land....My parents, my grandparents, suffered all their lives to buy eleven hundred acres of land...[Land] had a sentimental value to it, ‘cause we had to get a livelihood, we had to get our bread from the land....Now children think that milk comes from the store....They don’t see the relevance of the land....[They] have no idea what it took for black folks to own land.”

A Mind to Stay: White Plantation, Black Homeland, Sydney Nathans (2017)

Summing Up the Management Challenges:

Over time, heirs may not:

- Live on or near the land
- Live near each other
- Know one another
- Know **how** to locate one another
- Have a connection to the land



Part II: Land Loss

Land ownership has been a privilege denied, stolen and lost for many rural African American communities in the South.

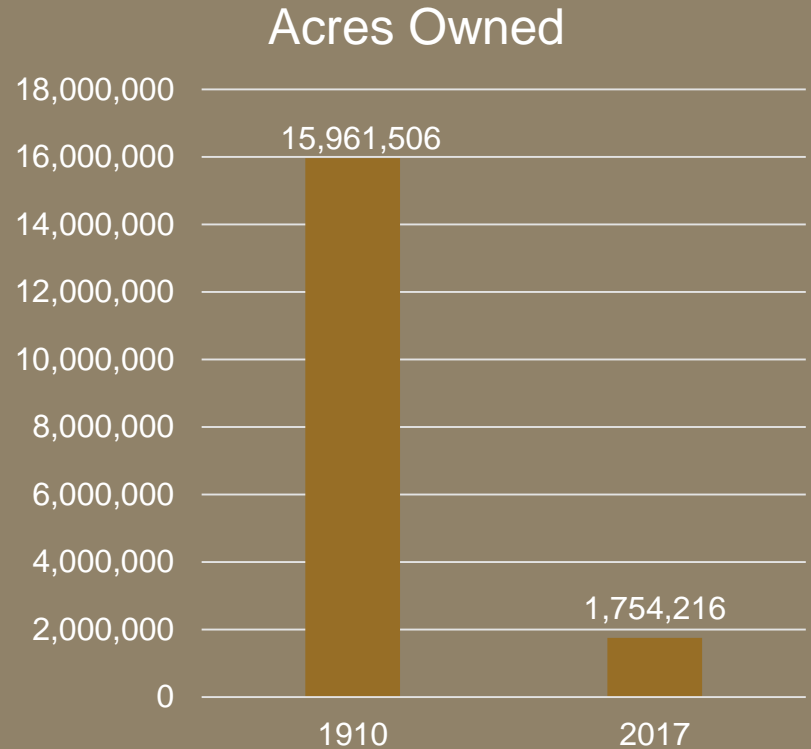


Heirs' Property and Land Loss

89% Decline

Ways heirs' property can be lost:

- Partition Sales
- Tax Sales



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

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

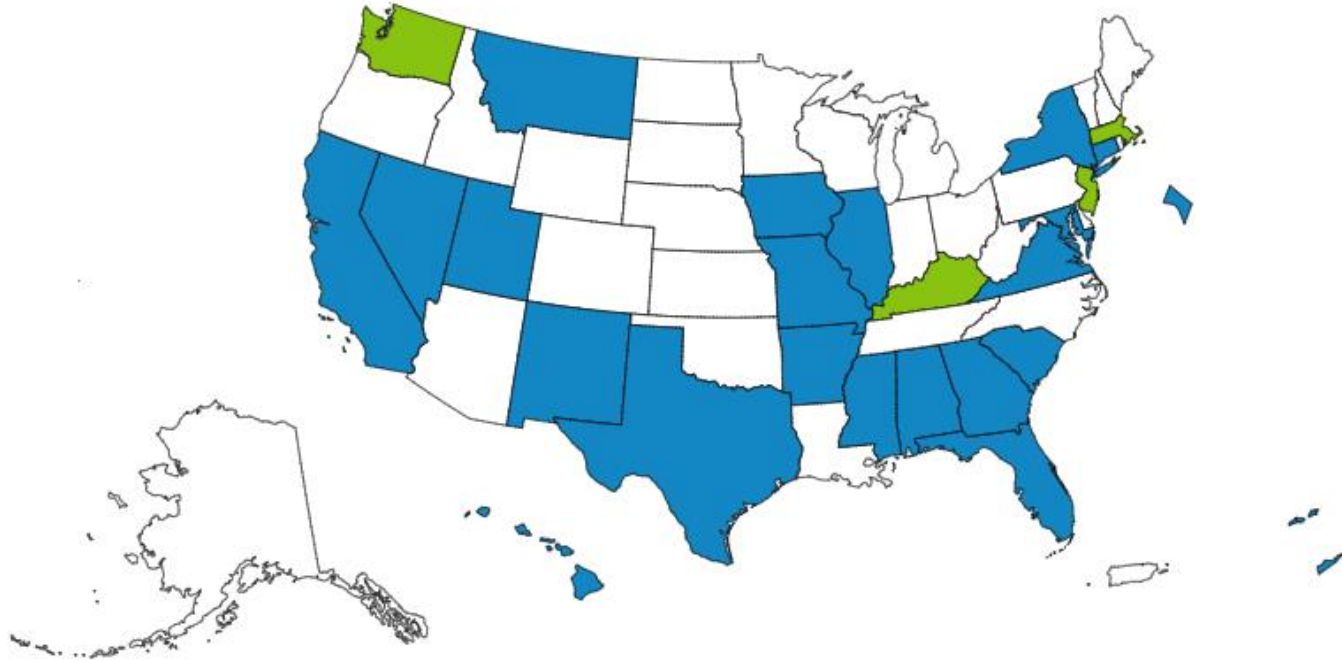
Partition Sales



Partition Sales:

- A common cause of land loss among African-American landowners
- A court-ordered sale of land
- May be bought by any owner of a fractional interest, regardless of their percent interest
- At public auction, the highest bidder becomes the owner.
- Proceeds from the sale are distributed among co-tenants based on their fractional interest
- Result: family **loses** the land

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

How Does the UHPA Help?

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

How Does the UHPA Help?

Provides the following protections in partition actions:

01

Enhances Notice

02

Independent Appraisal

03

Right of First Refusal

04

Preference for Partition-in-Kind

05

Open-Market Sale

06

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

Enhances Notice

Co-tenant requesting a partition MUST:

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



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 co-tenant 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.



Preference for Partition-in-Kind

If no co-tenant decides to purchase the shares from the co-tenant who petitioned the court to sell the property, or there is a co-tenant who has requested partition in kind, the court must use the “totality of the circumstances” test to determine whether a partition-in-kind is appropriate, considering:

- Economic factors such as the value of total land compared to value if sold as parcels
- Sentimental attachment to the land
- Lawful use of the land (Residing on the land)
- Paid property taxes, maintenance, and other expenses associated with the land

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.



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



**Part III: Importance of
Heirs' Property**

Impacts

01

On personal and family assets

02

On community development


03

On participation in federal programs

Impact on Personal and Family Asset:

- Promoting intergenerational poverty
- Inhibiting full use of the land
- Hindering insuring property
- Blocking access to some federal programs



The image is a vertical collage of three photographs. The top photograph shows a red cardinal perched on the edge of a white roof, with bare trees in the background. The middle photograph is a large, semi-transparent brown rectangle containing the text 'Part IV: How can Extension play a role?'. The bottom photograph shows a concrete culvert pipe installed in a stream bed, with water flowing through it and rocks on the banks.

Part IV: How can Extension play a role?

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

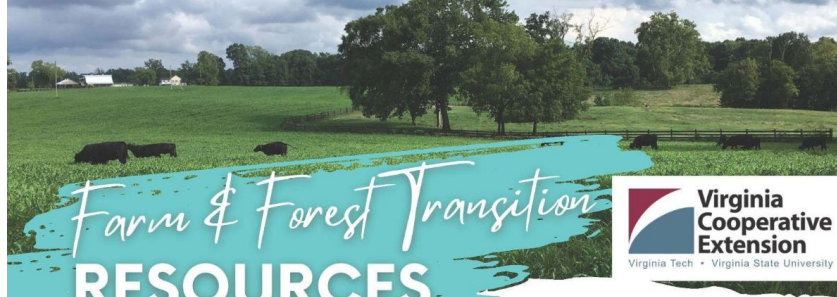
02

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 ksnape@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 Crystl Hopkins 540-967-3422 herysti2@vt.edu or Rachel Henley 804-598-5640 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 <https://virginiafarmlink.org>



Updated 11/2023

Prevention & Resolution

Heirs' Property train-the-trainer

01

January 17 - Petersburg

02

February 21 - Danville

03

April 16 - Emporia

04

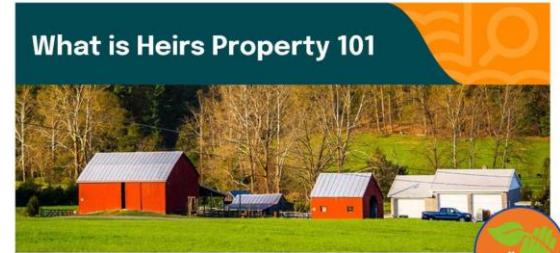
May 29 - Tidewater

05

July 10 - Culpepper

06

August 28 - New Castle




What is Heirs Property 101

Wednesday, January 17, 2024 · 9 am-1 pm · FREE
VSU Randolph Farm Pavilion, 4415 River Road, Petersburg, VA

What is Heirs Property 101? Estate planning, land transition, land access and land succession. This is a Train-the-Trainer session for extension staff who are working with landowners. This training will equip extension staff with the tools to provide education, training and outreach to underprivileged producers and landowners to improve their understanding of Heirs Property at the community level. The workshop will also offer land inheritance education and resources to disadvantaged landowners and their heirs. Special guest presenter Lillian "Ebonie" Alexander, the Executive Director of the Black Family Land Trust, Inc., lives on her family farm in rural Southside Virginia. She will discuss the challenges families face in retaining land and family communication surrounding land inheritance. She will also share resources and steps for successful family land assets building and succession. The VSU Heirs Property team consists of the Small Farm Outreach Program, The Black Family Land Trust, The Tennis Group, S. Miller Law Firm and our Virginia Tech Extension Partners. The VSU-SFOP Heirs Property Train-the-Trainer model will be used to educate other extension professionals who work with landowners and underserved communities.

Register at ext.vsu.edu/calendar For more information, contact Clifford Somerville at 804-892-4581 or csomerville@vsu.edu.



Visit ext.vsu.edu for information on this and other upcoming events.

If you are a person with a disability and desire any assistive devices, services or other accommodations to participate in this activity, please call 804-624-2292 / TDD 800-828-1120 during business hours of 8 am and 5 pm to discuss accommodations five days prior to the event.

Registration and attendance are subject to the policies of Virginia Tech. Virginia Tech reserves the right to cancel or postpone any event at any time without notice. Registration and attendance are subject to the policies of Virginia Tech. Virginia Tech reserves the right to cancel or postpone any event at any time without notice. Registration and attendance are subject to the policies of Virginia Tech. Virginia Tech reserves the right to cancel or postpone any event at any time without notice.



Thank you!

