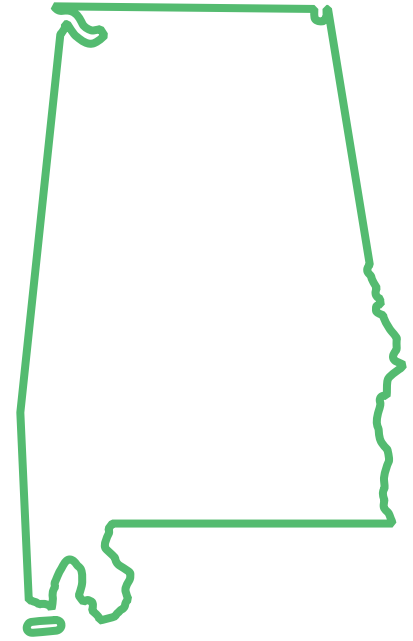


HEIRS' PROPERTY:

Understanding the Legal Issues in *Alabama*

By Francine Miller
November 2022



Introduction

The purpose of this factsheet is to prevent the loss of land owned as heirs' property in Alabama. It examines state laws that are relevant to heirs' property owners in Alabama, and outlines steps they can take to resolve property issues before seeing an attorney.

It also explains relevant legal issues, including:

- 1. how to identify the legal heirs of the original ancestor who owned the land,**
- 2. state partition law,**
- 3. state law that permits the sale of land due to unpaid property taxes, and**
- 4. state law addressing adverse possession and condemnation**
(these terms are defined in the glossary, below).

This resource may be useful to professionals assisting heirs' property owners, such as lawyers, nonprofit and community development advocates, and cooperative extension agents.



For a glossary of legal terms used in this factsheet, refer to page 12.

What is Heirs' Property?

Heirs' property (sometimes known as family land) is property that has been transferred to multiple family members by inheritance, usually without a will. Typically, it is created when land is transferred from someone who dies without a will to that person's spouse, children, or other heirs who have a legal right to the property. However, even if the person who died had a will, they may still create heirs' property if they leave land to multiple heirs without specifying which heirs get which section of the land.

When heirs' property is created, the heirs own all the property together (in legal terms, they own the property as "tenants in common"). In other words, they each own an interest in the undivided land rather than each heir owning an individual lot or piece of the land. In addition, unless the heirs go to the appropriate administrative agency or court in their jurisdiction and have the title or deed to the land changed to reflect their ownership, the land will remain in the name of the person who died.

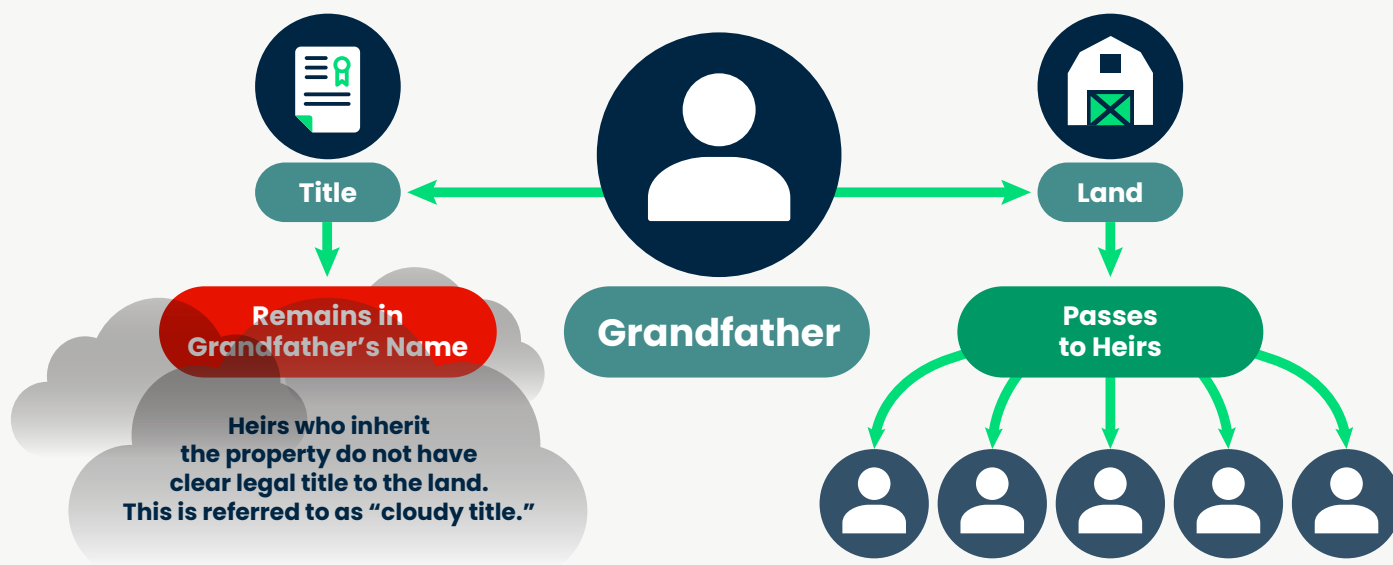
For the heirs, owning property as tenants in common without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, apply for USDA grants or loans, and build wealth from the land by engaging in commercial activity, such as selling timber or other resources—all of which require proof of ownership. It also leaves the property vulnerable to being acquired by real estate developers and unscrupulous actors.



Learn More Using the Farmland Access Legal Toolkit

For a more comprehensive overview of heirs' property issues, visit farmlandaccess.org/heirs-property.

Find additional advice for heirs' property owners, including how to proactively avoid and address legal challenges, at farmlandaccess.org/suggestions-for-heirs-property-owners.



Identifying Heirs

To resolve heirs' property issues, an important first step is tracing the ownership of the land from the original titled owner to the current owners. Many practitioners encourage heirs' property owners to build a family tree identifying all the heirs, deceased and living. Specifically, heirs' property owners will want to collect:

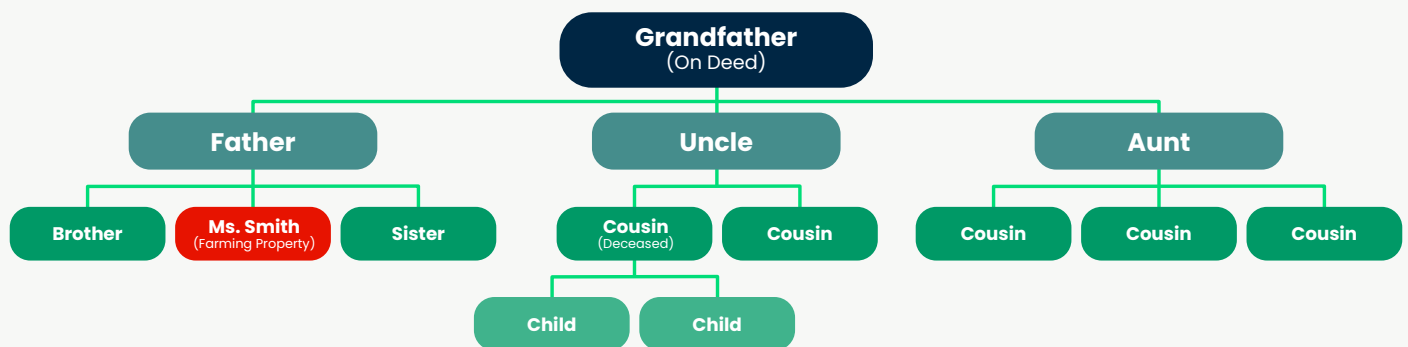
1. the heirs' birth and death dates,
2. county of death,
3. proof of whether they died with a will, and
4. any current contact information for living heirs.

The goal is to gather information about anyone who may have at any time held any interest in the land, so it is important to identify all the heirs, all of whom might be entitled to an interest in the land.

When a person dies with a valid will, they die "testate" and their will determines who inherits their property.¹ When a person dies without a will, they die "intestate" and state law governing intestate succession determines who inherits that person's real estate and other assets.² Who inherits a person's land by intestate succession varies depending on which family members survive the decedent.

There are generally a number of types of living heirs entitled to inherit from a decedent, including: the spouse of the decedent; biological and adopted children, and their descendants; parents of the decedent; siblings of the decedent, and if they have died, their descendants (the decedent's nieces and nephews); and grandparents and cousins.

An example of a simple family tree for Ms. Smith





Finding the Family (Genealogy) and Land Records

Resources to help identify and locate heirs and build the family tree include genealogists and family history sites such as [ancestry.com](https://www.ancestry.com), [myheritage.com](https://www.myheritage.com), and [familysearch.org](https://www.familysearch.org). Family bibles can be a good source of information and can sometimes be used to show heirs. Local libraries can also be a great resource for genealogical records and research help (see below for information regarding the public library). There are also several genealogical databases and records available on a statewide basis:

Mobile Public Library

Phone: (251) 494-2190

Email: mainlhg@mplonline.org

Website: mobilepubliclibrary.org/databases/genealogy.php

University of Alabama

Manuscript Collection:

Website: lib.ua.edu/collections/manuscript-collections/#/Business_Industry

University of Alabama

Request a Research Consultation:

lib.ua.edu/using-the-library/library-instruction/request-a-research-consultation/

State of Alabama Department of Archives and History

Online Genealogical Digital Collection:

digital.archives.alabama.gov/digital/collection/hgpub

Montgomery Public Library (access to [ancestry.com](https://www.ancestry.com) through their library card)

mccpl.lib.al.us/Pages/Index/131470/ancestry-library-edition

Alabama Department of Public Health Vital Records and Center for Health Statistics

201 Monroe Street, Suite 1150

Montgomery, AL 36104

Phone: (334) 206-5418

Mailing address:

P.O. Box 5625

Montgomery, AL 36103-5625

Website: alabamapublichealth.gov/vitalrecords/birth-certificates.html

Individuals can get land records from their local probate office's records and recording or land records department. They can also search their local revenue commissioner's office for property tax records. Generally, this can be done in person or by mail. Alabama maintains an online search engine for lands records from 1819 through 1950; records after 1950 are maintained by each county's probate office.³

Intestate Succession in Alabama⁴

The following chart describes some of the many possibilities under Alabama intestate succession laws. If there are multiple generations involved, it is likely going to be important to work with an attorney to successfully identify all the current owners.

If a person dies with:	Here's who inherits:
children but no spouse	the children inherit everything (including grandchildren if their parent—the decedent's child—has died; grandchildren split their parent's share equally between them)
a spouse but no children or parents	the spouse inherits everything
a spouse and children who belong to the decedent and that spouse	the spouse inherits the first \$50,000 of the intestate property plus half of what remains the children inherit the remaining intestate property
a spouse and children who are not that spouse's children	the spouse inherits half of the intestate property the children inherit half of the intestate property
a spouse and parents	the spouse inherits the first \$100,000 of the intestate property, plus half of the balance of the intestate property the parents inherit the remaining intestate property
parents but no children or spouse	the parents inherit everything
siblings but no children, spouse, or parents	the siblings inherit everything equally if they are full siblings, but half-siblings take by shares from the parents (half to any siblings from the father and half to any siblings from the mother)
children born outside of marriage	children are presumed to belong to the mother that birthed them, absent evidence of adoption, so they would inherit if their mother is the decedent children inherit from a deceased man if paternity is legally established by a court before or after his death by clear and convincing evidence

Understanding Partition Law

Heirs who inherit land intestate (without a will) own it as tenants in common.⁵ Tenants in common each own an *undivided* interest in the whole parcel of land, which means that none of the heirs can claim any specific piece of land. As tenants in common, each heir has equal rights to use and occupy the land.

Heirs' property owners are especially vulnerable to losing their land because they are subject to partition actions to physically divide or sell the land.

As co-owners of the property, any of the tenants in common can bring an action in court asking for partition of the property.

There are two ways a court can partition or divide the property: partition in kind or partition by sale. If a court orders partition in kind, the land must be physically divided equitably and proportionate to the fractional interest and value of each co-owner's share. If the court orders partition by sale, it triggers a process that requires the property to be sold.

Historically, when a court ordered partition by sale, the property was sold to the public. This typically happened by a mandatory sale at an auction. Often, property owners lost their family legacies and generally received a small percentage of what the land was worth—far below the property's fair market value.⁶ This has resulted in a tremendous amount of land loss among African Americans in the United States. Since 2010, there have been efforts to pass legislation at the state level to ensure that heirs' property owners have certain due process rights, or fair treatment under the law in accordance with established rules and requirements. This includes protections to ensure that property

sold in a partition action is appraised by a professional and sold for fair market value. That legislation, drafted by the Uniform Law Commission, is called the **Uniform Partition of Heirs Property Act** (UPHPA). It provides a more equitable system for partition actions of heirs' property.

The UPHPA became effective in Alabama on January 1, 2015, and applies to all actions filed after that date.⁷ The law changes the way partition sales occur in states that have adopted it. In Alabama, the UPHPA made three major reforms to partition law:

- 1. If a co-owner brings a partition action in court, the court must provide an opportunity for the other co-owners to buy out the co-owner who brought the partition action.**
- 2. If there is no buyout of co-owners' interests in the property, then the law provides a set of factors for the court to consider that take into account sentimental value and family legacy when determining whether to order a partition in kind and divide up rather than sell the property.**
- 3. If the court does not order a partition in kind, the UPHPA requires the court to sell the property at fair market value and lays out a process for the property to be fairly appraised and sold, with proceeds distributed to all co-owners based on their respective shares.**

Court actions for partition should be avoided if possible. If a physical partition of the land is desired by all co-owners, they should attempt to divide the property voluntarily by agreement with the help of a surveyor and real estate attorney. If an heir receives a notice of a partition action, they should immediately consult an attorney to protect the heirs' rights in the land. Historically, partition sales have been devastating to African American landowners, resulting in forced sales of millions of acres of property and the loss of a tremendous amount of land, wealth, and family legacy.

Avoiding Tax Sales

It is very important for heirs' property owners to make sure property taxes are paid in full because tax sales can lead to loss of land. Property becomes subject to a tax sale when a landowner fails to pay annual property taxes on time. The overdue amount generally becomes a tax lien, which may cause the local government authority to begin a process to sell the land.

Heirs' property owners should not wait to clear title to the property (see definition in the glossary) before paying the property taxes.

Note that in many families, one or more of the heirs pays the total amount of the annual property taxes due, including the portions owed by other co-owners. Ideally, the other co-owners reimburse the family members who cover their share. If they do not, the co-owner who paid the taxes can get reimbursed through voluntary repayment, distribution of income received from the property, or sale proceeds if the land is sold. Importantly, payment of taxes does not increase a co-owner's ownership interest. Rather, it creates a claim for reimbursement from any co-owner who is not paying the taxes. Anyone who pays taxes on the property should keep tax bills and receipts so that they can request or claim reimbursement.

How Tax Sales Work in Alabama

Property taxes are due each year on October 1 and become delinquent if not paid by January 1 of the following year.⁸ When a landowner does not pay their property taxes, the unpaid total becomes a lien on the property, and the probate court may order the sale of the property for payment of the unpaid taxes.⁹

There are several steps to this process. Before the sale can occur, the probate court holds a hearing. The county tax collector must give the landowner notice 10 days prior to the hearing. After the hearing, the county tax collector must give 30 days' notice of the property's upcoming sale to the landowner or co-owners. The tax collector can serve the owners in person by leaving a notice at the property, or by certified mail return receipt requested. The tax collector can also put the notice in a local newspaper. If a landowner has not paid their taxes, they should look for any notices or postings related to their property in the local newspaper. If the tax collector serves notice in these ways, a court will assume the owners have been notified. If the landowner is not a resident of the county and does not have a registered agent in the county, publishing notice in the local county newspaper for three (3) consecutive weeks will be considered sufficient.

After the 30 days' notice has been provided, the property's sale occurs at the county courthouse or annex where the property is located. The sale is held as a public auction where the property is sold to the highest bidder. The sale must occur between the hours of 10 a.m. and 4 p.m. If the property is not sold on the first day, it will continue to be put up for sale until someone makes a bid.¹⁰

Alabama landowners have opportunities to redeem (get back) their property. If the state buys a property, the landowner can redeem their property at any time until the state sells it to someone else. If the property is purchased at auction by someone other than the state, it may be redeemed at any time within three years from the date of the sale.¹¹ To redeem the property, the landowner must pay the auction price for the property plus any interest, additional taxes, costs, and fees.



Potential Tax Savings for Agricultural Land

Heirs' property owners of agricultural land should consider the potential for financial savings by receiving an agricultural tax exemption for property taxes due. In Alabama, tax assessors can appraise land at its agricultural or "current use" value rather than a much higher fair market value for other uses. Agricultural value is based on the property's use as agricultural or forest land and its ability to generate income. Heirs' property owners can benefit from significant savings over time because an appraisal based on land's agricultural value is usually much less than private appraisals based on fair market value. The criteria for whether forestland or cropland qualifies as agricultural land differs depending on the county. Landowners are required to apply to the local county tax assessor between October 1 and January 1 of any given year to have their property appraised at agricultural value.¹²

Avoiding Adverse Possession and Condemnation

Heirs' property owners must also manage and monitor their land to ensure the property is not taken through adverse possession or eminent domain (that is, condemned by the local, state, or federal government).

Adverse Possession

Adverse possession allows a trespasser to become the owner of land they do not own if they meet certain criteria and bring an action in court asking a judge to declare them the owner. Failure to monitor and manage heirs' property can invite neighbors and others to develop a strong case for seeking ownership of land in this way. To avoid this, "No Trespassing" signs should be posted, and if a family member cannot check the land periodically, a manager should be hired.

A person can gain full ownership of land they do not own by occupying the land and meeting the following requirements. The "possession" of the land must be:

- 1. actual (based on actual use of the land);**
- 2. hostile (the person must be living or working on the land without permission);**
- 3. exclusive (the person must possess the land for themselves);**
- 4. open and notorious (not trying to hide the use, being obvious, telling others); and**
- 5. continuous for 20 years.¹³**

"Possession" means that the person has been cultivating the land, fenced the land, or improved the land in some way such as building structures, planting timber, or other activities that add to its value. Living on the land can also count as possession.

Adverse possession under "color of title" can be demonstrated in a few different ways. First, the person seeking to demonstrate this must be relying on a recorded written document that they believe shows they are the actual owner of the property. Second, the person must have

been paying taxes on the property for 10 years or more. Finally, the person must show they are descended from someone who owned the land. In Alabama, if a person tries to claim adverse possession under color of title, the person must prove they occupied the land for 10 years.¹⁴

Condemnation and Eminent Domain

Condemnation occurs when the local, state, or federal government forces a landowner to sell their land to the government. State and federal governments, local city and county governments, and private businesses can take private land under "eminent domain" laws if they can show that doing so is necessary for a public use or purpose.¹⁵ If your property is in danger of being taken under eminent domain laws, a notice will be sent to you, left on the property, or published in the local newspaper, so it is important to monitor the land for any notices.



Agricultural Mediation Services

Family disputes are unfortunately common with heirs' property. There are often multiple generations of heirs who must come to an agreement, which can be difficult. The United States Department of Agriculture's Farm Service Agency (FSA) runs an Agricultural Mediation Program which can be used by heirs' property owners to mediate family disputes. The FSA provides funding to relevant state agencies to support mediation between individuals involved in many kinds of disputes related to agricultural issues. These include USDA decisions on loans, conservation programs, wetland determinations, and rural water loan programs; lease issues between landlords and tenants; family farm transition issues; farmer-neighbor disputes; and family disputes regarding heirs' property.

If family members co-owning heirs' property cannot reach agreement, agricultural mediation services can help. In Alabama, families can reach out to:

Alabama Agricultural Mediation Program Alabama Department of Agriculture & Industries

1445 Federal Drive Montgomery, Alabama 36107-1123

Phone: (334) 240-7151

Email: mediation@agi.alabama.gov

Scott.absher@agi.alabama.gov

Website: agi.alabama.gov/agcompliance/mediation-program

Additional Resources

Organizations in Alabama Supporting Heirs Property Owners

Alabama State Association of Cooperatives Federation of Southern Cooperatives, Alabama Field Office

575 Federation Rd.
Gainesville, AL 35464

Mailing address:

PO Box 95

Epes, AL 35460

Phone: (205) 652-9676

Fax: (205) 652-9678

Email: info@federation.coop

The Sustainable Forestry and African American Land Retention Network (SFLR)

Multiple locations

Email: sflr@forestfoundation.org

Website: sflrnetwork.org



Visit farmlandaccess.org
for more resources related
to accessing, transferring,
and conserving farmland.



For a list of national organizations helping heirs' property owners, visit
farmlandaccess.org/heirs-property/#organizationsprovidingassistance.

DISCLAIMER: This document provides general legal information for educational purposes only. It is not meant to substitute, and should not be relied upon, for legal advice. Each operation and situation is unique, state laws vary, and the information contained here is specific to the time of publication. Accordingly, for legal advice, please consult an attorney licensed in your state.

Glossary

The following definitions are from multiple sources and are not specific to any particular state statute. Of course, any statutory definitions (terms defined in the laws of a particular state) would overrule these definitions in any legal proceeding.

Adverse possession

A legal doctrine that describes when someone occupies property for a period of time and then claims legal rights to it.

Ancestor

A person from whom someone is descended; a direct blood relative.

Clearing title

The legal process of proving and obtaining a deed for the current owners of heirs' property.

Condemnation/eminent domain

The right of a government or its agent to take private property for a public purpose, with compensation to the property owner (such as a public utility taking land so they can build power lines).

Co-tenants

Those who own heirs' property with others. In a partition action under the Uniform Partition of Heirs Property Act, the co-tenants are all the co-owners of heirs' property, regardless of the size of the fractional interest owned. See the definition of tenants in common, below.

Decedent

A person who has died; decedent is also often referred to as "the deceased."

Deed

A legal document, usually recorded in the office of a town or county that keeps land records, often used to show the legal owner(s) of a piece of property.

Descendant

A person related to someone who has died, either directly (parent, child, grandchild) or indirectly (aunts and uncles, cousins). This includes anyone legally adopted.

Estate

The real property (land and buildings) and personal property (clothing, furniture, cars, and so on) of a person who has died. In probate settings, the "estate" includes the total assets (things one owns) *and* liabilities (debts) of a person who has died.

Heirs

People who are entitled under state "intestate" law to inherit property from someone who has died.

Intestate

A person dies "intestate" when they die without a valid will.

Intestate real estate

Land and other property (such as houses or buildings) owned by the decedent when they died and not addressed in a will, and which does not pass to anyone based on language in the deed itself (such as a joint survivorship clause).

Intestate succession

State laws addressing who inherits property from someone who dies without a will (or when a will is found to be invalid), or any property that was not included in the decedent's will.

Joint tenants

Two or more owners of equal shares of property who have a right of survivorship, meaning that if one joint tenant dies their share goes to the other joint tenant(s) in equal shares.

Probate

The legal process of proving the validity of a will in court, and handling the estate of a decedent whether there is a will or not.

Tax lien

A state or local government's right to keep real estate for payment of some debt or obligation.

Tax sale

A legal process used by a county or town to take the property of a landowner who has not paid their property taxes in full and sell it to recover the unpaid taxes.

Tenants in common

People who each own an individual, undivided interest in property (also known as "co-tenants"), but not necessarily equal interests. See the definition of co-tenants, above.

Testate

A person dies "testate" when they have a valid will.

Title

Refers to ownership rights in land. As a legal concept, title exists even without any documents, but a deed is the most common way to determine who has title in land. (See definition of deed, above.) Sometimes a will or an affidavit may be used to document ownership rights.

Undivided interest

An interest in property that is held in common with others in a single property. These interests can be unequal; that is, the value of each interest can vary.

Acknowledgments

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About CAFS



The Farmland Access Legal Toolkit is a project of Vermont Law and Graduate School's Center for Agriculture and Food Systems (CAFS), which uses law and policy to build a more sustainable and just food system. With local, regional, national, and international partners, CAFS addresses food system challenges related to food justice, food security, farmland access, animal welfare, worker protections, the environment, and public health, among others. CAFS works closely with its partners to provide legal services that respond to their needs and develops resources that empower the communities they serve. Through CAFS' Food and Agriculture Clinic and Research Assistant program, students work directly on projects alongside partners nationwide, engaging in innovative work that spans the food system.

Please visit www.vermontlaw.edu/cafs to learn more.

Endnotes

- 1 It is important to file a deceased person's will along with a petition to probate the will with the local court where the person resided and where the property is located as soon as possible after the person has died.
- 2 Estate planning and will making are critical to avoid the challenges for heirs' property owners outlined above. For more information on the importance of wills and estate planning see the Farmland Access Legal Toolkit. *Heir's Property*, CNTR. AGRIC. & FOOD SYSS., <https://farmlandaccess.org/heirs-property/#challenges> (last visited Oct. 25, 2022); *Wills*, CNTR. AGRIC. & FOOD SYSS., <https://farmlandaccess.org/wills/> (last visited Oct. 25, 2022).
- 3 *Lands*, ALA. SECRETARY STATE, <https://www.sos.alabama.gov/administrative-services/lands> (last updated Nov. 6, 2022).
- 4 Chart created based on one by Valerie Keene. Valerie Keene, *Intestate Succession in Alabama*, NOLO, <https://www.nolo.com/legal-encyclopedia/intestate-succession-alabama.html> (last visited Nov. 6, 2022). The Alabama statutes governing intestate succession can be found at AL Code Section 43-8-40 et seq.
- 5 Heirs who inherit property through a valid will may also own the land as tenants in common if it is left to them without designation of the specific land each heir receives.
- 6 Thomas W. Mitchell, *Historic Partition Law Reform: A Game Changer for Heirs' Property Owners*, TEXAS A&M UNIV. SCH. L. 74 (June 12, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3403088.
- 7 ALA. CODE § 35-6A-3(a) (2018).
- 8 ALA. CODE § 40-1-3 (2019).
- 9 ALA. CODE § 40-10-1 (2006).
- 10 ALA. CODE § 40.10.15 (2006).
- 11 ALA. CODE § 40.10.120 (2006).
- 12 More information on applying for current use valuation of heir's property can be found on the Alabama Department of Revenue website. *About*, ALA. DEPT. REV., <https://revenue.alabama.gov/property-tax/current-use/> (last visited Nov. 6, 2022)
- 13 *Morgan v. Ala. Power Co.*, 469 So. 2d 100 (Ala. 1985); *See also* ALA. CODE § 6-5-200 (2017).
- 14 ALA. CODE § 6-5-200 (2017).
- 15 *See generally* ALA. CODE § 18-1A (2012).