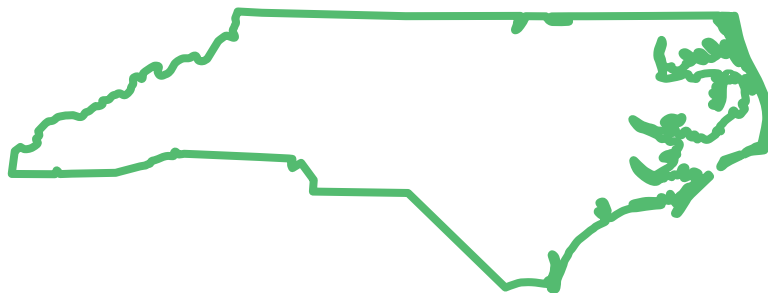


HEIRS' PROPERTY:

Understanding the
Legal Issues in

North Carolina



By Francine Miller

November 2022

Introduction

The purpose of this factsheet is to prevent the loss of land owned as heirs' property in North Carolina. It examines state laws that are relevant to heirs' property owners in North Carolina, 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 10.

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.

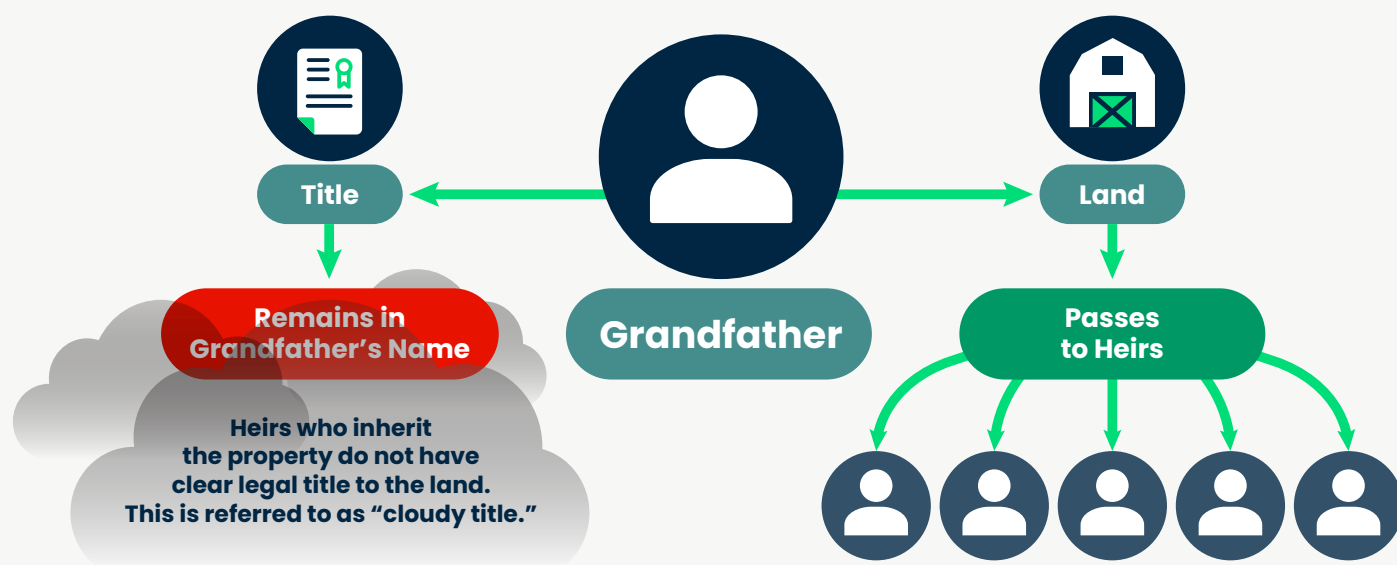
For the heirs, owning property as tenants in common without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, apply for USDA grants or loans, and build wealth from the land by engaging in commercial activity, 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.

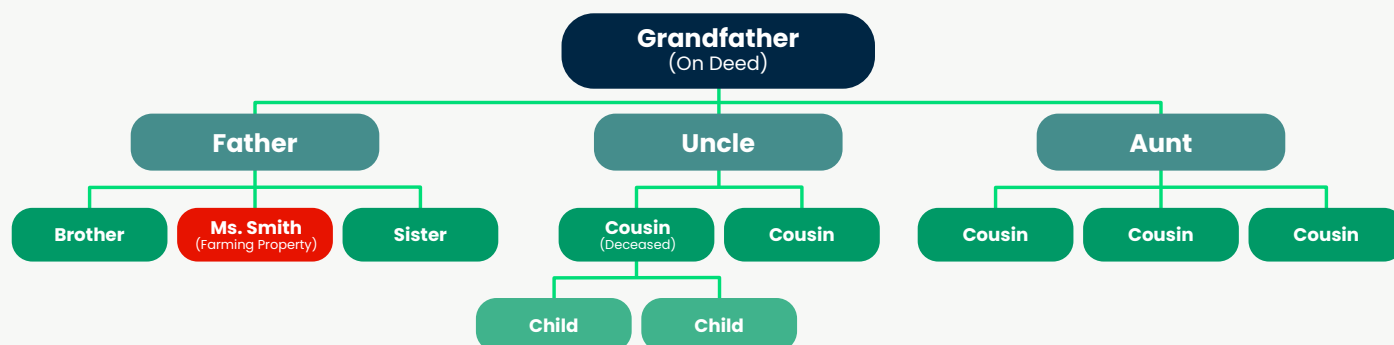


Finding the Family (Genealogy) and Land Records

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.

For land records, individuals can go to the property appraiser's office in the county where the land is located to trace land ownership, and to the county clerk of court to review any judgment or probate records regarding the land.³

An example of a simple family tree for Ms. Smith



Intestate Succession in North Carolina⁴

The following chart describes some of the many possibilities under North Carolina 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 equally
a spouse but no children or parents	the spouse inherits everything
a spouse and one child or descendants of one deceased child	the spouse inherits half of the decedent's intestate real estate the child or the descendants of a deceased child inherit half of the decedent's intestate real estate
a spouse and two or more children, or descendants of those deceased children	the spouse inherits one-third of the decedent's intestate real estate the children or descendants of the deceased children inherit two-thirds of the decedent's intestate real estate
a spouse and parents but no children or descendants	the spouse inherits half of the decedent's intestate real estate the parents inherit half of the decedent's intestate real estate
parents but no spouse or descendants	the parents inherit everything equally
siblings but no spouse, descendants, or parents	the siblings inherit everything equally

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 sold for fair market value. That legislation, drafted by the Uniform Law Commission, is called the **Uniform Partition of Heirs Property Act** (UPHPA).

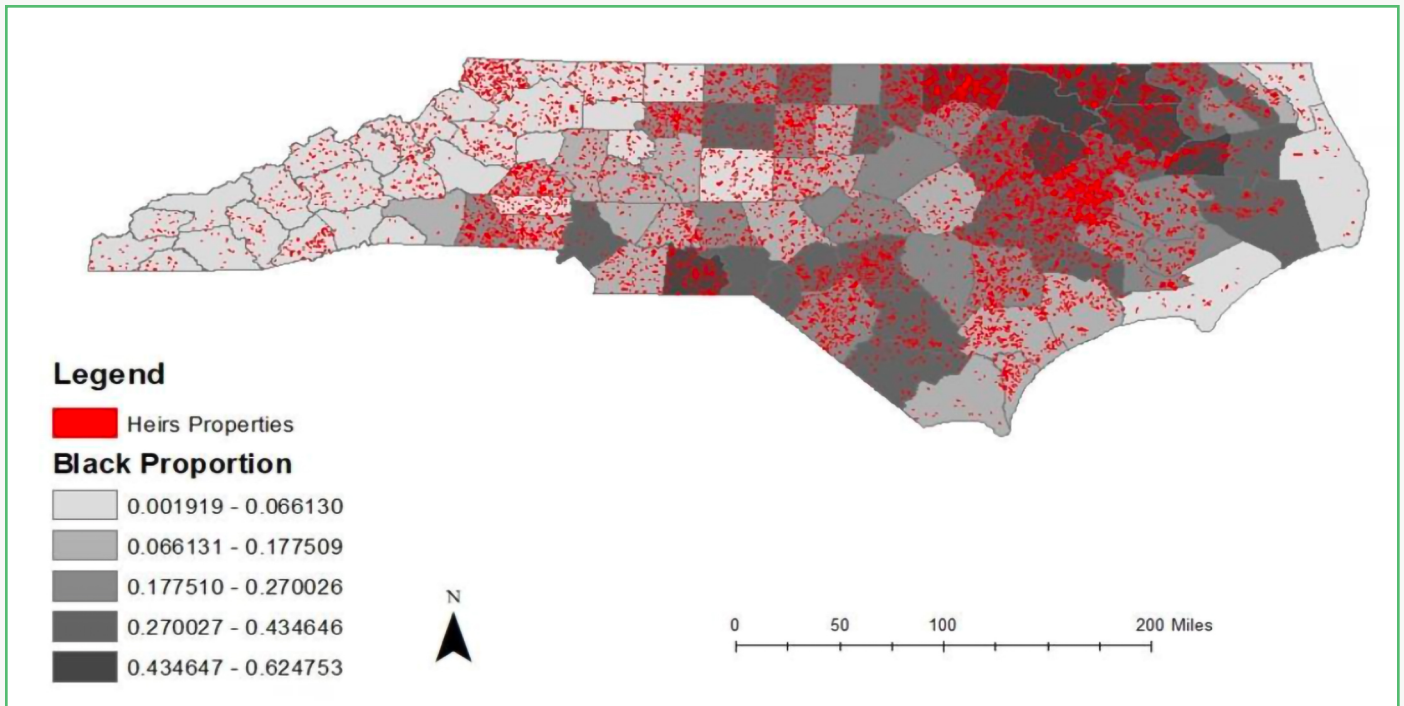
It provides a more equitable system for partition actions of heirs' property.

Although the UPHPA was introduced in the North Carolina legislature in 2022, it was not enacted. Advocates will want to monitor the legislature to see whether the bill is reintroduced.

In North Carolina, the clerk of superior court in the county where a piece of land is located decides whether it should be divided or sold. In practice, however, courts often partition by sale even though North Carolina law specifies that partition in kind is favored.⁷ Petitioners often ask the court to sell rather than divide a property by arguing that division is impractical. The clerk can also decide to divide a property or sell it based solely on economic interests. In other words, they do not have to consider any other criteria such as current use of the land, family legacy, or emotional attachment. If the property is sold, the heirs receive cash proportional to their interests minus the costs of the litigation and the land's sale.

When a partition action is brought in North Carolina, co-owners do not have the right to purchase the interest of the person who brought the action.⁸ Therefore, the court decides whether to sell or divide the land, and the other property owners have no say and cannot intervene in the action.

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.



Source: Joseph Sloop, Ph.D., CGCIO, GISP
 Geographic Information Officer
 MapForsyth | City-County Geographic Information Office

The map above illustrates the likely amount of heirs' property in North Carolina. The red dots indicate property identified as heirs' property. The black regions and variations of grey represent the proportions of African American residents across the state. Visually, this map is striking because it shows the large amount of heirs' property in North Carolina signaling significant intergenerational family wealth at risk of loss.

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 North Carolina, families can reach out to:

North Carolina Agricultural Mediation Program (NCAMP)

Western Carolina University College of Business

1 University Drive Forsyth 122G Cullowhee, NC 28723

Phone: (336) 303-0466, (704) 724-9429 or (828) 227-3567

Email: ncampoutreach@bellsouth.net or bsclarke@email.wcu.edu

Website: ncamediation.org

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 North Carolina

If landowners do not pay annual property taxes within one year, the county in which the land is located can place a tax lien on the property and sell it to recover the unpaid taxes.⁹ The land can either be sold through a foreclosure lawsuit or a process called in rem, each of which results in loss of the land. The highest bidder at the tax sale will receive a tax deed to the land, which provides proof the tax sale was valid.

The previous owner can get the property back (known as "redeeming ownership") by paying the delinquent taxes, any taxes owed after the tax sale, and any expenses associated with the sale.¹⁰ However, the previous owner must act quickly as they only have approximately ten days after the purchaser pays the taxes on the land to redeem it before the court confirms the sale.¹¹



Potential Tax Savings for Agricultural Land

Heirs' property owners of agricultural land should consider the potential for financial savings by receiving an agricultural exemption for property taxes due. Agricultural land can be appraised at its present-use value, instead of its market value.¹² Present-use value is the value of the land based on its use as agricultural land and its ability to generate income. Savings over time can be significant for heirs' property owners because an appraisal based on present-use value is usually much less than appraisals based on market value.¹³

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 four requirements. The occupation of the land must be:

- actual or hostile (the person is living or working on the land without permission);
- open, notorious, and visible (for example, constructing a house or barn);
- continuous and uninterrupted for 20 years; and
- exclusive (the person must possess the land for themselves).¹⁴

If the person claiming adverse possession has legal documents showing they own the land, they are making their claims "under color of title." Adverse possession under color of title means the person must be relying on a recorded written document that they believe shows they are the actual owner of the property. In this instance, they could be awarded full ownership of the land if they meet the above criteria for seven years.¹⁵

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. In North Carolina, the state, county, municipal governments, administrative agencies such as school boards and the Department of Transportation, and even private companies such as utility companies and railroads, can take private land through eminent domain.¹⁶

In addition, municipalities in North Carolina can petition a court to assign a "receiver" for vacant properties that are not in compliance with local building codes. The receiver can be appointed by the court to rehabilitate, demolish, or sell the property. Once appointed, the receiver has substantial power over what happens to the property.¹⁷ Heirs' property owners need to monitor their property to be aware of any activity that could put the property at risk.

Additional Resources

Organizations in North Carolina Supporting Heirs' Property Owners

The Land Loss Prevention Project (LLPP)

401 N. Mangum St., 2nd Floor
Durham, NC 27701

Mailing address:

PO Box 179
Durham, NC 27702

Phone: (919) 682-5969

Email: llppinfo@landloss.org

Website: landloss.org

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

This resource was developed as a collaboration between Vermont Law and Graduate School's **Center for Agriculture and Food Systems**, the **Federation of Southern Cooperatives**, and the **Policy Research Center for Socially Disadvantaged Farmers and Ranchers at Alcorn State University**, with funding from the US Department of Agriculture's National Agricultural Library. This project was led by Francine Miller, Senior Staff Attorney and Adjunct Professor, Center for Agriculture and Food Systems at Vermont Law and Graduate School. Special thanks to Heather Francis, Constantin Mathioudakis, and Suhasini Ghosh for their extensive work researching and developing this resource as student clinicians and research assistants as well as Legal Food Hub Fellow Andrew Marchev. We thank Mavis Gragg, Esq., for reviewing this report.

About CAFS



farmlandaccess.org

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. *Heirs' 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 *10 Ways to Save Your Land*, LAND LOSS PREVENTION PROJ., <https://www.landloss.org/resources/index.html> (last visited Nov. 4, 2022).
- 4 N.C. GEN. STAT. § 29-1 et seq. (1959).
- 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 *Butler v. Weisler*, 208 S.E.2d 905, 909 (N.C. App. 1974).
- 8 Faith Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs' Property Owners Facing Partition in Equity*, 17 TEMP. POL. & CIV. RTS. L. REV. 1 (2007).
- 9 N.C. GEN. STAT. § 105-369 (2020).
- 10 N.C. GEN. STAT. § 105-369 (2020).
- 11 N.C. GEN. STAT. § 105-374 (2020); North Carolina allows people to put in a higher bid than the purchaser at a tax sale, within ten days of the sale. If that happens, the original owner has an additional ten days to redeem the property by paying all delinquent taxes due, costs and fees..
- 12 Tony Simpson, *Present-Use Value Program Guide*, N.C. DEP'T OF REV. 3 (Jan. 1, 2019), https://ncadfp.org/documents/2019_puv_program_guide_000.pdf.
- 13 See Tony Simpson, *Present-Use Value Program Guide*, N.C. DEP'T OF REV. 4 (Jan. 1, 2019), https://ncadfp.org/documents/2019_puv_program_guide_000.pdf (providing information on whether land held as heirs' property meets the criteria to qualify for an appraisal based on present-use value).
- 14 N.C. GEN. STAT. ANN. § 1-38 (West 1963).
- 15 N.C. GEN. STAT. § 1-38 (West 1963).
- 16 N.C. GEN. STAT. § 40A-1 et seq. (2006).
- 17 Tyler Mulligan, *Receivership: A New Tool for Addressing Vacant Problem Properties in North Carolina*, COATES' CANONS N.C. LOC. GOV'T L. (June 21, 2018), <https://canons.sog.unc.edu/2018/06/receivership-a-new-tool-for-addressing-vacant-problem-properties-in-north-carolina/>; N.C. GEN. STAT. § 160D-1130 (2020).