

HEIRS' PROPERTY:

Understanding the Legal Issues in *Louisiana*

By Francine Miller
February 2023



Introduction

The purpose of this factsheet is to prevent the loss of land owned as heirs' property in Louisiana. It examines state laws that are relevant to heirs' property owners in Louisiana, 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 14.

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 Louisiana, this is referred to as ownership by "indivision" meaning each person has an undivided share. In other words, each property owner has 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.

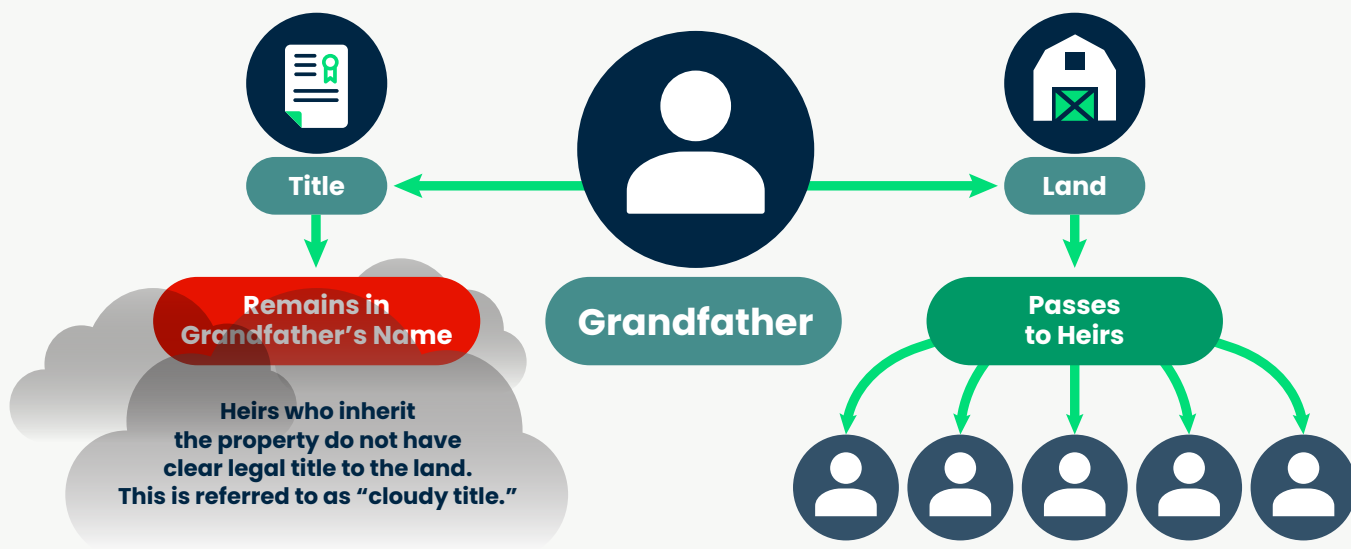
For the heirs, owning property together without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, apply for USDA grants or loans, and build wealth from the land by engaging in commercial activity, such as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

The purpose of this factsheet is to help heirs' property landowners understand the laws that can contribute to the loss of land, and to help them understand steps they can take prior to seeing an attorney to resolve their heirs' property issues. It covers legal issues regarding who are heirs to the original ancestor who owned the land, partition laws, property taxes, adverse possession, and condemnation.

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. information about the county of death;
3. proof of whether they died with a will; and
4. any current contact information for living heirs.

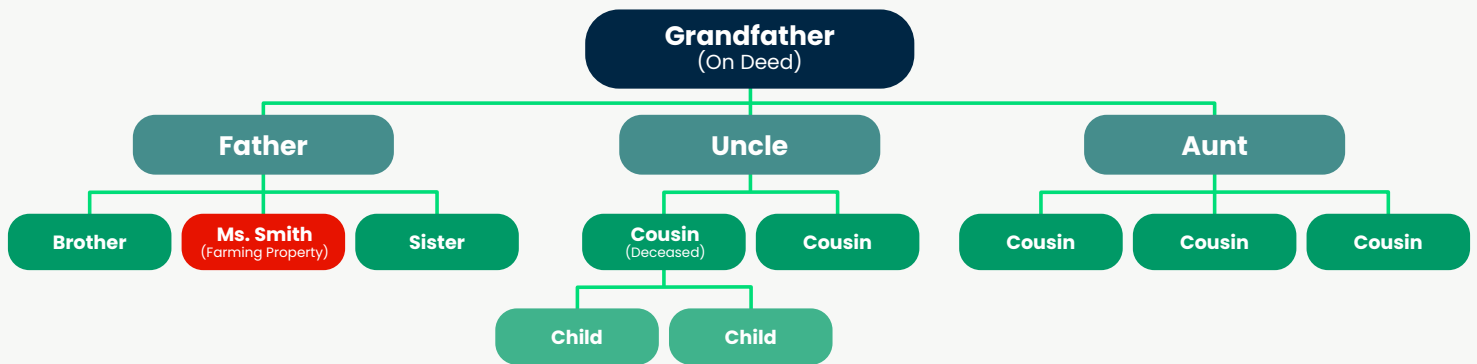
The goal is to gather information about anyone who may have held an interest in the land at any point in time. Consequently, it is important to identify all the heirs, all of whom might be entitled to an interest in the land.

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

In Louisiana, the following types of heirs may be entitled to inherit from a decedent who dies intestate:

- biological and adopted children, or their descendants;
- parents of the decedent;
- siblings of the decedent, or their descendants (the decedent's nieces and nephews);
- the spouse of the decedent.

An example of a simple family tree for Ms. Smith



Intestate Succession in Louisiana²

The following chart describes some of the many possibilities under Louisiana’s intestate succession laws and highlights the importance of working with an attorney to determine the current owners. Louisiana treats the inheritance of separate property, which is property acquired by a spouse outside of the marriage, differently from the inheritance of community property, which is property acquired by spouses together during the marriage (see glossary for definitions of separate property and community property).

Separate Property

If a person dies without a will (also known as a “testament”) in Louisiana, the person’s *separate* property is distributed among his or her relatives as follows:

If a person dies with children	the children (or grandchildren, if applicable) inherit the property.
If a person dies with no children but has siblings (or nieces/nephews) and parents	the siblings (or nieces/nephews, if applicable) inherit ownership of the property subject to the right of the surviving parent to use the property during his or her lifetime.
If a person dies with no children and no living parents but has siblings	the siblings (or nieces/nephews, if applicable) inherit the property.
If a person dies with no children but has siblings and parents and a spouse	the siblings (or nieces/nephews, if applicable) inherit ownership of the property subject to the right of the surviving parent to use the property during his or her lifetime.
If a person dies with no children but has siblings and a spouse	the siblings (or nieces/nephews, if applicable) inherit the property.
If a person dies with no children and no siblings (or nieces/nephews) but has living parents	the parents inherit the property.
If a person dies with no children and no siblings (or nieces/nephews) but has parents and a spouse	the parents inherit the property.

Separate Property

If a person dies without a will (also known as a “testament”) in Louisiana, the person’s *separate* property is distributed among his or her relatives as follows:

If a person dies with no children, no siblings (or nieces/nephews), and no parents but has a spouse	the spouse inherits the property.
If a person dies with no children, no siblings (or nieces/nephews), no parents, and no spouse but has grandparents	the grandparents inherit the property.
If a person dies with no children, no siblings (or nieces/nephews), no parents, no spouse, and no grandparent(s) but has aunts or uncles	the aunts or uncles inherit the property.
If a person dies with no children, no siblings (or nieces/nephews), no parents, no spouse, no grandparents, and no aunts or uncles but has cousins	the cousins inherit the property.
If a person dies with no children, no siblings (or nieces/nephews), no parents, no spouse, no grandparents, no aunts or uncles, and no cousins	the state inherits the property.

Note the following:

- Adopted children are entitled to inherit in the same manner as biological children.
- Children that were put up for adoption by the decedent are entitled to inherit.
- Children born outside of marriage that were formally acknowledged or whose paternity/maternity was proven in court are recognized as descendants and are entitled to inherit. Acknowledgment can be the parent’s name listed on the birth certificate or the parent having paid child support.

Community Property

If a person dies without a will (also known as a “testament”) in Louisiana, the person’s *community* property is distributed among his or her relatives as follows:

If a person dies with children and a spouse	the children inherit ownership of the property subject to the right of the surviving spouse to use the property until the spouse dies or remarries.
If a person dies with no children and a spouse	the spouse inherits the property in full.

Note, if a person dies with only surviving children and no surviving spouse, there is no community property (since community property only exists if both spouses are alive and own property together).



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 determine heirs. Local libraries can also be a great resource for genealogical records and research help.

Individuals can also go to the clerk of court in the parish where the land is located to trace land ownership, and to the clerk of the district or circuit court to review any judgment or probate records regarding the land.

Understanding Partition Law

Heirs who inherit land intestate (without a will) are co-owners of the property.³ Each heir owns an *undivided* interest in the whole parcel of land, which means that none of the heirs can claim any specific piece of land. As co-owners, 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 owners can bring an action in court asking for partition of the property.

A court in Louisiana can partition, or divide, the property by ordering a partition in kind or a partition by sale or licitation. If a court orders a 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 or licitation, it triggers a process that requires the property to be sold, either by private sale or by auction, and each co-owner receives a portion of the net proceeds based on their percentage of ownership interest.

Historically, when a court ordered partition by sale at auction (known as licitation in Louisiana), the property was sold to the public by a sale at an auction. Often, this resulted in the loss of family legacies for property owners who generally received a small percentage of what the land was worth—far below the property's fair market value.⁴ This process 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 in Louisiana to ensure that heirs' property owners have certain due process

rights, or fair treatment under the law in accordance with established rules and requirements. Advocates have pressed for 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).⁵ It provides a more equitable system for partition actions of heirs' property. Essentially, the UPHPA restructures the way partition sales occur by enacting certain procedural safeguards, including favoring partition in kind over partition by sale, requiring that the co-owners are given the option to buy out the co-owner who brought the partition action, and finally, if the property is to be sold rather than divided, the court must have the property appraised for fair market value and sold in an open market sale instead of at auction.

In 2021, the Louisiana House of Representatives passed a resolution directing the Louisiana State Law Institute to study how partition law impacts heirs' property owners, and whether the UPHPA should be adopted in Louisiana.⁶ In January 2022, the Louisiana State Law Institute provided the legislature with an interim report, which states that a committee of the Institute is drafting a Louisiana version of the UPHPA, but is concerned about unintended consequences of the law. The Institute will provide a final report to the legislature after the newly drafted proposed law is reviewed.⁷

In Louisiana, judicial partitions begin when a co-owner petitions the court. Actions for judicial partition require the parties to follow the same procedural rules as other court actions, including the requirement to serve (deliver written notice of the petition) the other parties. That said, the rules for service provide alternate methods of service if attempts at personal service (physically handing the other co-owners notice of the action) or service at the person's home are ineffective.

If a court orders a partition in kind, the land is physically divided equitably and proportionally to the value of each co-owner's share. In Louisiana, there is a preference for partition in kind.⁸ However, the standard is based on the ability to divide the property into lots of equal value for each co-owner. The court will order a partition by sale if the property cannot be divided fairly.

Partitions by sale can occur in one of two ways: partition by licitation or by private sale. Partition by private sale occurs when co-owners agree on the value of the property, and preference is given to one of the current co-owners.⁹ Typically, ownership of the land remains in the family when partitions are by private sale. Partition by licitation results in sale of the property at auction.

One quirk of Louisiana law: the law provides that if an heir or co-owner has occupied a section of the co-owned property for 30 years without interruption, they can successfully oppose a partition action.¹⁰

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 their 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.

If just a single heir sells...



this can trigger a "partition by sale,"



and can result in the property being sold at auction.



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.¹¹

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 Louisiana

When a landowner does not pay their property taxes, the unpaid total turns into a lien on the property. If the taxes are not paid by December 31 (January 31 in Orleans Parish), they become delinquent. On or before the first Monday of February of each year, tax collectors must send written notice by certified mail, return receipt requested, to landowners, alerting them that the taxes due, plus costs and interest, must be paid within 20 days or the property will be advertised for sale. If the taxes are not paid on or before May 1 of that year, the tax sale will be advertised in a newspaper distributed in the area which the property is located. To stop the sale of the property, Louisiana law permits landowners to pay the relevant amounts due at any time before the sale.¹²

The purchaser of property at a tax sale receives a "tax sale title" and full ownership of the property after the redemption period ends (see below).¹³

Louisiana landowners have up to three years (or 18 months in some cases in Orleans Parish) to redeem property sold at a tax sale. Redeeming a property means the original landowner has the right to buy the property back from the owner of the tax sale title (the person who purchased the property at a tax sale). The landowner can redeem the property up to three years after the tax sale certificate was recorded, by paying the price paid by the purchaser, plus costs, plus a 5 percent penalty and 1 percent interest per month.¹⁴



Potential Tax Savings for Agricultural Land

Heirs' property owners of agricultural, horticultural, and forest lands and traditional marshlands should also consider the potential for financial savings by ensuring that the land is assessed for property taxation at its agricultural value ("use valuation") rather than its fair market value.¹⁵ This reduces the property owner's taxes due to the discount applied because the land is being used for agricultural production rather than assessing taxes based on fair market value. To qualify, the land must meet certain legal requirements, including being at least three acres in size, or having produced an average gross annual income of at least \$2,000 for the four preceding years. To receive the use valuation, a landowner must file an application with the parish or tax district where the land is located.¹⁶ The determination of use value requires detailed information about the land and its productivity. Savings over time can be significant for heirs' property owners because an assessment based on agricultural value is usually less than an assessment based on fair market value.¹⁷

Avoiding Acquisitive Prescription (Adverse Possession) and Expropriation (Condemnation)

Heirs' property owners must also manage and monitor their land to ensure the property is not taken through acquisitive prescription (or adverse possession, in other states) or expropriation (or eminent domain in other states, i.e., condemnation by the local, state, or federal government).

Acquisitive Prescription (Adverse Possession)

Acquisitive prescription 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 occupation of the land must be:

1. continuous for 30 years, unless the person believes they own the land (under "color of title,") and then it must be continuous for 10 years;¹⁸
2. uninterrupted;
3. peaceable, meaning the actual owners of the property have not sued to re-establish possession during that time;
4. public, meaning obvious and not hidden;
5. unequivocal, meaning that there is no denying the occupation, rightful or not; and
6. within visible, discernible bounds.

The last requirement means that the occupation of the land must be visible and the boundaries of the occupation must be obvious. The party claiming adverse possession can only claim the land that they are actually using within a clear boundary.

Acquisitive prescription under "color of title" means the person is relying on a recorded written document that they believe shows they are the actual owner of the property. In Louisiana, if a person tries to claim acquisitive prescription under color of title, they must prove they have occupied the land for 10 years.¹⁹

Expropriation (Eminent Domain or Condemnation)

Expropriation (or eminent domain, in other states) occurs when the local, state, or federal government forces a landowner to sell their land to the government.²⁰ State and federal governments, local city and parish governments, and certain private businesses can take private land under expropriation laws if they can show that doing so is necessary for a public use or purpose. A landowner must be compensated for the value of the property before the contemplated use by the state or private entity.²¹



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 Louisiana, families can reach out to:

Georgia/Louisiana Agricultural Mediation Program Federation of Southern Cooperatives/Land Assistance Fund

3717 Prescott Rd
Alexandria, LA 71301
Phone: (318) 704-2423
Fax: (318) 704-2424
Email: info@federation.coop

Additional Resources

Organizations in Louisiana Supporting Heirs' Property Owners

Federation of Southern Cooperatives/Land Assistance Fund

3717 Prescott Rd
Alexandria, LA 71301
Phone: (318) 704-2423
Fax: (318) 704-2424
Email: info@federation.coop
Website: federation.coop

Louisiana Appleseed

935 Gravier Street, Suite 2155
New Orleans, LA 70112
Phone: (504) 910-1767
Email: contact@louisianaappleseed.org
Website: louisianaappleseed.org

Southern University Law Center

2 Roosevelt Steptoe Drive
Baton Rouge, LA 70813
Phone: (225) 771-2552
Fax: (225) 771-2474
Email: jhunter@sulc.edu
Website: sulc.edu



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.

Affidavit of death, domicile, and heirship

An affidavit, signed by an individual who can swear to its contents, lists the heirs of a decedent who has died intestate, including birth and death dates, names of spouses, and other relevant details, and is filed along with other probate documents with the parish clerk of court.

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.

Co-owners

People who each own an individual, undivided interest in a piece of property (also known as people who own a piece of property in "indivision").

Decedent

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

Deed

A legal document, usually recorded in the county court clerk's land records, often used to show the legal owner 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 property of a person who has died (the decedent).

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 governing who inherits property from someone who dies without a will, or any property that was not dealt with in a will.

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.

Real property

Land and any permanent structures on the land, including homes and other buildings.

Separate property

Property owned or claimed by either spouse before marriage and the property acquired by either spouse during marriage by gift, devise, or descent.

Tax sale

A legal process used by a parish to take the property of a landowner who has not paid their taxes and sell it to pay the unpaid taxes.

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.)

Undivided interest

An interest in property that is held in indivision (e.g., 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, and to Andrew Marchev, Legal Fellow. We thank Ebony Woodruff, Esq., for reviewing this report.

About CAFS



farmlandaccess.org

Vermont Law and Graduate School's Center for Agriculture and Food Systems (CAFS) 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 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*, CTR. AGRIC. & FOOD SYSS., <https://farmlandaccess.org/heirs-property/#challenges> (last visited Oct. 25, 2022); *Wills*, CTR. AGRIC. & FOOD SYSS., <https://farmlandaccess.org/wills/> (last visited Oct. 25, 2022).
- 2 LA. CIV. CODE ANN. art. 880 et seq. (1982).
- 3 Heirs who inherit property own the land as co-owners if it is left to them without designation of the specific land each heir receives.
- 4 Thomas W. Mitchell, *Historic Partition Law Reform: A Game Changer for Heirs' Property Owners*, TEX. A&M SCH. L. 74 (June 12, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3403088.
- 5 The Uniform Partition of Heirs Property Act can be found at the website of the Uniform Law Commission. *Partition of Heirs Property Act*, UNIF. L. COMM'N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d> (last visited Jan. 22, 2023).
- 6 H.R. 201, 2021 Leg. (La. 2021).
- 7 Marguerite L. Adams et al., *Interim Report to the Legislature in Response to HR No. 201 of the 2021 Regular Session: Relative to the Uniform Partition of Heirs Property Act*, LA. STATE L. INST. SUCCESSIONS & DONATIONS COMM. (Jan. 26, 2022), <https://lsli.org/files/reports/2022/2021%20HR%20201%20Partition%20of%20Heirs%20Property%20Interim%20Report.pdf>
- 8 LA. CIV. CODE ANN. art. 4606 (2011).
- 9 LA. CIV. CODE ANN. art. 811 (1991).
- 10 LA. CIV. CODE ANN. art. 1305 (2021); LA. CIV. CODE ANN. ART. 3486 (1983).
- 11 See generally LA. STAT. ANN. § 47:2121 et seq. (2009) (providing information on tax sales in Louisiana).
- 12 LA. STAT. ANN. § 47:2153 (2010).
- 13 LA. STAT. ANN. § 47:2121 (2009).
- 14 LA. CONST. art. 7, § 25.
- 15 LA. STAT. ANN. § 47:2301 et seq. (1994).
- 16 LA. STAT. ANN. § 47:2304 (2000).
- 17 See, e.g., *Use Value Application*, TANGIPAHOA PARISH ASSESSOR, <https://tangiasessor.com/use-value-application> (last visited Jan. 22, 2023) (providing an example of an application form and requirements for Tangipahoa Parish).
- 18 LA. CIV. CODE ANN. art. 794 (1977).
- 19 LA. CIV. CODE ANN. art. 742 (2021).
- 20 LA. STAT. ANN. § 19:1 et seq. (2016).
- 21 LA. STAT. ANN. § 19:9 (2020).