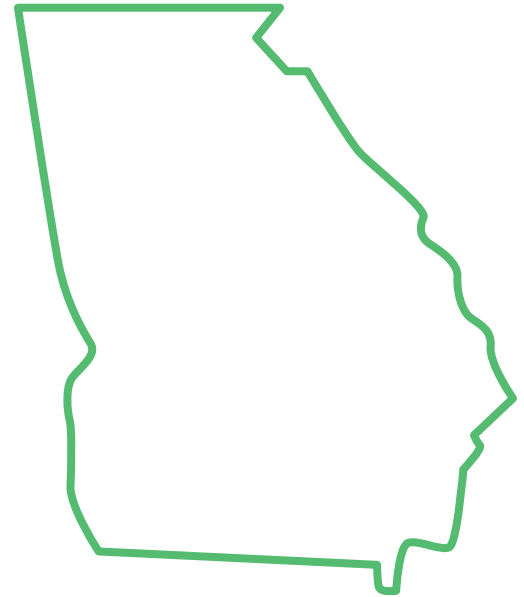


HEIRS' PROPERTY:

Understanding the Legal Issues in *Georgia*

By Francine Miller
March 2024



Introduction

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

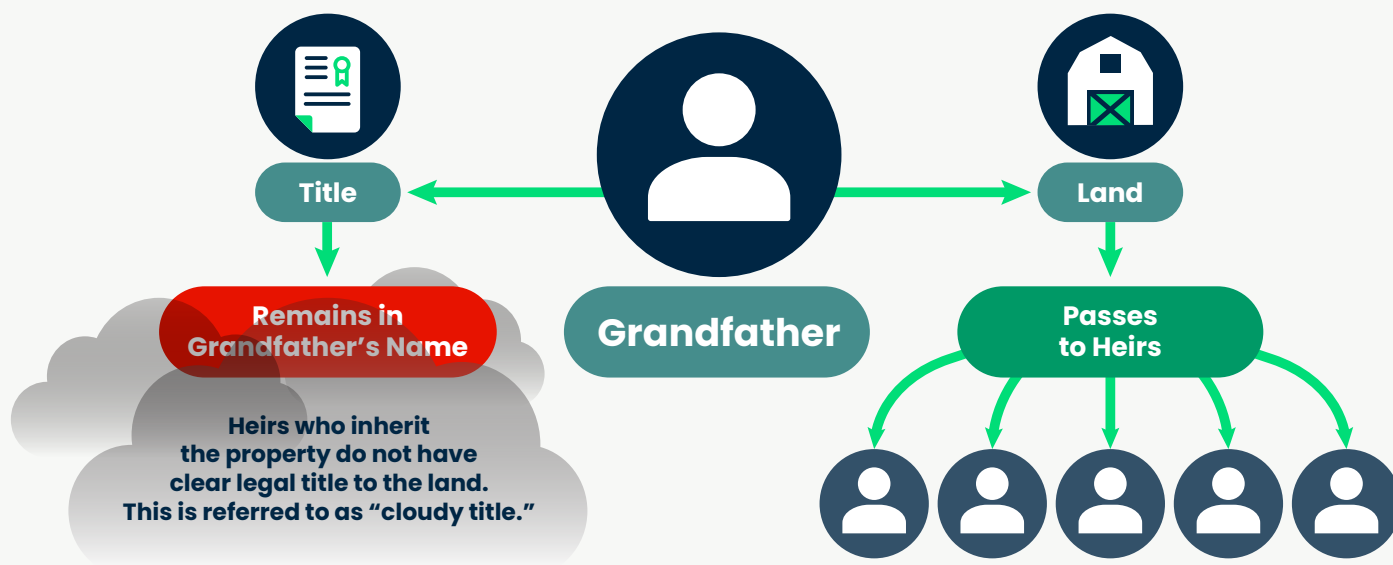
For the heirs, owning property as tenants in common without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, apply for USDA grants or loans, and build wealth from the land by engaging in commercial activity,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

The Archives of the Georgia State University System

5800 Jonesboro Road
Morrow, GA 30260
Phone: (678) 364-3710

Website: georgiaarchives.org/research/research_help

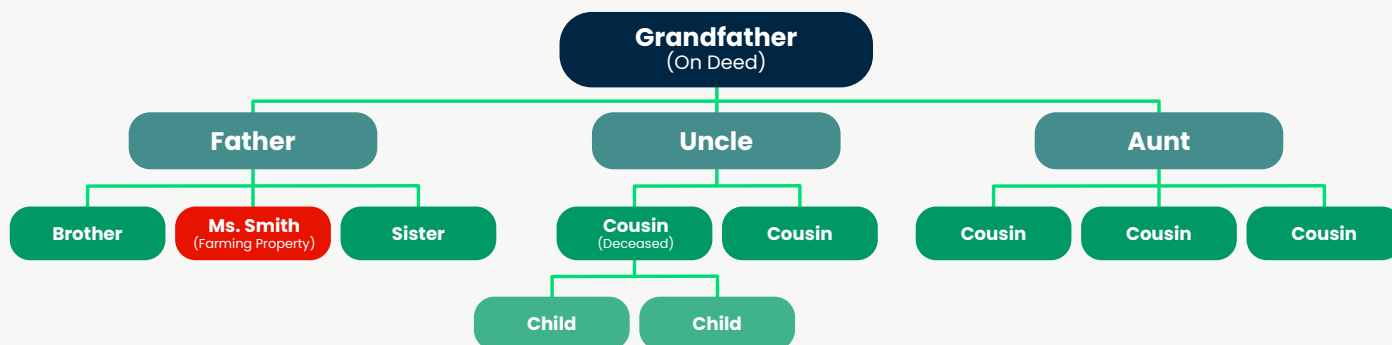
Georgia Public Library Service

2872 Woodcock Boulevard, Suite 250
Atlanta, GA 30341
Phone: (404) 235-7200

Website: georgialibraries.org/archival-services/genealogy/

For land records, individuals can go to the office of the Clerk of Superior Court in the county where the land is located to trace land ownership and visit the Georgia Superior Court Clerks' Cooperative Authority website to review additional records regarding the land.³

An example of a simple family tree for Ms. Smith



Intestate Succession in Georgia⁴

The following chart describes some of the many possibilities under Georgia 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.⁵

If a person dies with:	Here's who inherits:
children but no spouse	the children inherit everything
a spouse but no children	the spouse inherits everything
a spouse and children	the spouse and children equally share the intestate property, unless there are 3 or more children; in this case the spouse gets one-third and the children split two-thirds between them
parents but no spouse or children	the parents inherit everything
siblings but no spouse, children or parents	the siblings inherit everything
children born outside of marriage	If the father was not married to the children's mother when she gave birth to them, then they do not automatically have a right to inherit the father's property. A child born outside of a marriage is considered "illegitimate" under state law. The criteria to determine whether an illegitimate child may inherit from his or her father is determined by the law that was in place at the time of the father's death. For example, the current law provides that an illegitimate child may receive a share of the father's estate if (1) a court establishes the father's paternity, (2) the father has acknowledged his paternity in writing, (3) the father signed the child's birth certificate, or (4) there is other clear and convincing evidence of the father's paternity. However, the burden is often on the child to prove that they are entitled to inherit from the father.

Understanding Partition Law

Heirs who inherit land intestate (without a will) own it as tenants in common.⁶ 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.⁷ 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.

The UPHPA became effective in Georgia on July 1, 2013, and applies to all actions filed after that date.⁸ The law changes the way partition sales occur in states that have adopted it. In Georgia, 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 glossary definition) before paying 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 Georgia

When a property owner does not pay their property taxes by the due date, the tax collector (typically the tax commissioner of the county where the property is located) issues a notice of nonpayment to the property owner's last known address. If the taxes remain unpaid for 30 days or more, the tax collector has the right to issue a tax execution, which is also known as a tax lien. The local sheriff then becomes responsible for notifying the property owner in writing that a tax execution has been issued and that they will advertise the property for sale if the tax is not paid within 20 days of the notice.

The sale occurs by auction at the place indicated in the written notice. The highest bidder gets title to the land, subject to the landowners' right of redemption (see below for how a landowner can "redeem," or get back, their property). If the

landowner does not redeem the property within the required timeframe, the highest bidder can either foreclose on the property to get title or wait for four years. In either case, the highest bidder purchases the land for a fraction of the cost unless the landowner takes action to redeem. If the landowner does nothing, they lose their land.

Landowners can redeem their property for up to 12 months from the date of sale to the highest bidder. After those 12 months, landowners can still redeem their property until the bidder successfully forecloses on the property (up to four years after the date of sale). To redeem or get back their property, the landowner must pay "(1) any taxes paid on the property by the purchaser after the sale for taxes; (2) any special assessments on the property; and (3) a premium of 20 percent of the amount for the first year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made and 10 percent for each year or fraction of a year thereafter."¹¹



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 Georgia, if a landowner owns less than 2,000 acres, is a US citizen or corporation, and uses the land for agricultural production, the landowner may qualify for a significant exemption from property taxes. This is often referred to as preferential assessment for agriculture or "ag pref."⁹ The land must be in continuous agricultural production for 10 years, among other requirements. Additionally, the landowner must file an application to the county tax department on or before April 1 of the year taxes are due.¹⁰

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 showing a court that they meet the following requirements.¹²

The possession of the land must be:

- 1. actual and without fraud;**
- 2. hostile (living or working on the land without the owner's permission);**
- 3. exclusive (the person must possess the land for themselves);**
- 4. quiet and peaceable (the land was not taken by force);**
- 5. open and notorious;**
- 6. continuous for 20 years; and**
- 7. accompanied by a claim of right.**

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

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 Georgia, if a person tries to claim adverse possession under color of title, the person must prove they occupied the land for seven years.

Adverse Possession Claims by Co-owners

In Georgia, a person who owns property as a tenant in common (including an heirs' property owner) can bring a claim of right by adverse possession against their co-tenants. To be successful, the person claiming right to the land through adverse possession must show that they "ousted" the other co-tenants from the property to gain full and exclusive possession of the premises. Ouster generally means excluding or removing someone from accessing or using property.

Like in most jurisdictions, in Georgia, all co-owners have the right to occupy property they own. This creates a legal presumption that the possession of property by one co-owner is the same as the possession of property by all the co-owners. This presumption can make it difficult to prove right by adverse possession against a co-owner, because a person claiming adverse possession must demonstrate that their possession of the property is hostile¹³ to possession by the true owner. In the case of heirs' property, this would include all the co-owners.



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.

However, in Georgia a co-owner can show they "ousted" all the other co-owners by proving their co-owners were notified that they claimed sole ownership of the property and proving all the elements of adverse possession set forth above were met *after* the other co-owners were notified of the claim of sole ownership.¹⁴ Selling a portion of the property or granting easements on it can meet the criteria included in Georgia law for proving ouster. Because these activities are visible and recorded with the local office of land records, they can show the co-owner is acting as if they are the *sole* owner. This may be sufficient to demonstrate the other co-owners were notified of the claim.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.¹⁶

Additional Resources

Organizations in Georgia Supporting Heirs' Property Owners

Federation of Southern Cooperatives/Land Assistance Fund

2769 Church Street
East Point, Georgia 30344
Phone: (404) 765-0991
Fax: (404) 765-9178
Email: info@federation.coop
Website: federation.coop

McIntosh Sustainable Environment and Economic Development (SEED)

11355 North Way, Suite A
Darien, GA 31305
Phone: (912) 437-7821
Email: info@mcintoshseed.org
Website: mcintoshseed.org

Georgia Heirs' Property Law Center

54 Ellis St. NE
Atlanta, GA 30303
Phone: (706) 424-7557
Email: info@gaheirsproperty.org
Website: gaheirsproperty.org

Middle Georgia Justice

PO Box 1732
Macon, GA 31202
Phone: (478) 238-0224
Email: info@mgajustice.org
Website: mgajustice.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.

Ouster

A co-owner of heirs' property is "ousted" when one co-owner excludes another co-owner from property they own together as tenants in common.

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



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. *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 See *Search*, CLERKS AUTHORITY, <https://www.gsccca.org/search/> (last visited Nov. 6, 2022). There is a fee for some of the searches for land records.
- 4 GA. CODE ANN. § 53-2-1 et seq. (2020).
- 5 Chart created based on one by Valerie Keene. Valerie Keene, *Intestate Succession in Georgia*, NOLO, <https://www.nolo.com/legal-encyclopedia/intestate-succession-georgia.html> (last visited Nov. 6, 2022).
- 6 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.
- 7 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.
- 8 GA. CODE ANN. § 44-6-181 ET SEQ. (2014).
- 9 GA. CODE ANN. § 48-5-7.1 (2010).
- 10 Bryan Payne, *Frequently Asked Questions about Conservation Use Valuation and Agricultural Preferential Assessment*, WHITE CT. GA., https://www.whitecountyga.gov/sites/default/files/fileattachments/tax_assessor/page/3763/frequently_asked_questions_about_conservation_use_valuation_and.pdf (last visited Nov. 6, 2022).
- 11 GA. CODE ANN. § 48-4-42(a)(1)-(3) (2019).
- 12 GA. CODE ANN. § 44-5-161 et seq. (2010).
- 13 *Hostile Possession*, BLACK'S LAW DICTIONARY (11th ed. 2019) (generally "hostile" in the context of adverse possession is a legal term that means to infringe or encroach on the rights of the owner).
- 14 *Wright v. Wright*, 270 Ga. 530, 532 (1999); See [Adverse possession against cotenant; action to recover possession](#), O.C.G.A. § 44-6-123.
- 15 *Wright*, 270 Ga. at 532.
- 16 GA. CODE ANN. § 22-1-1 et seq. (2020).