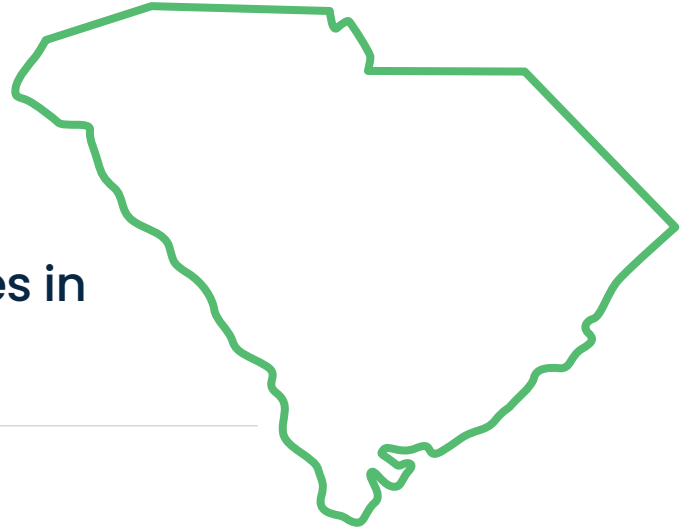


HEIRS' PROPERTY:

Understanding the Legal Issues in *South Carolina*

By Francine Miller
March 2024



Introduction

The purpose of this factsheet is to prevent the loss of land owned as heirs' property in South Carolina. It examines state laws that are relevant to heirs' property owners in South 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 11.

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.

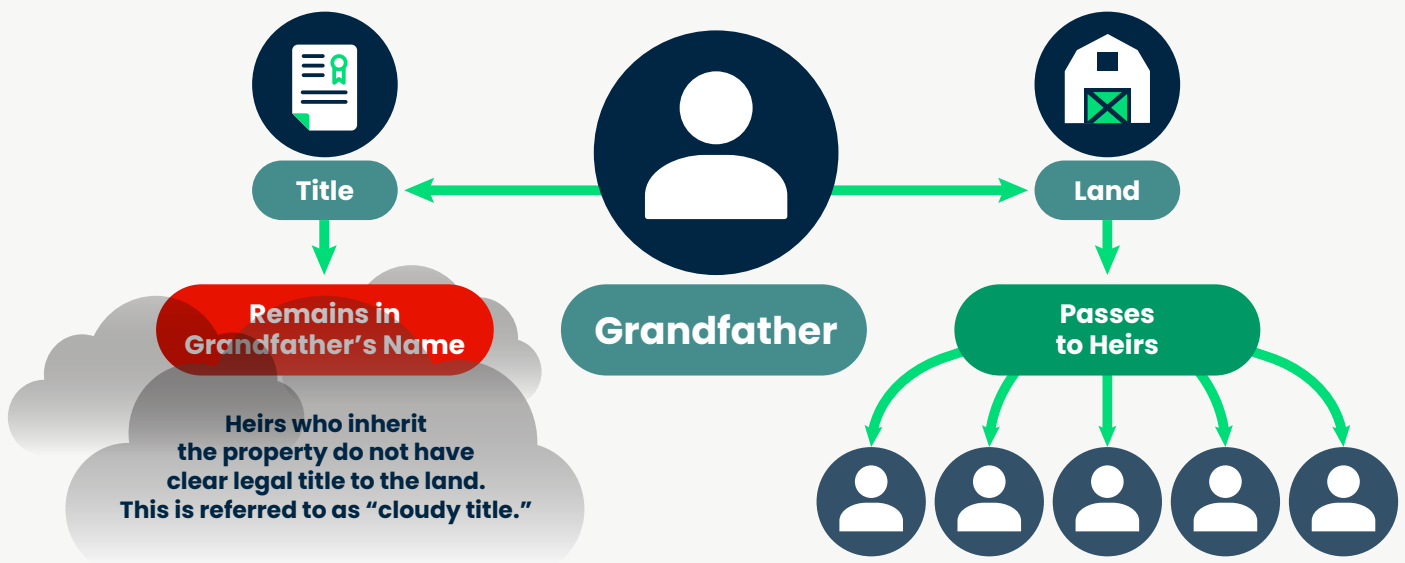
For the heirs, owning property as tenants in common without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, apply for USDA grants or loans, and build wealth from the land by engaging in commercial activity,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

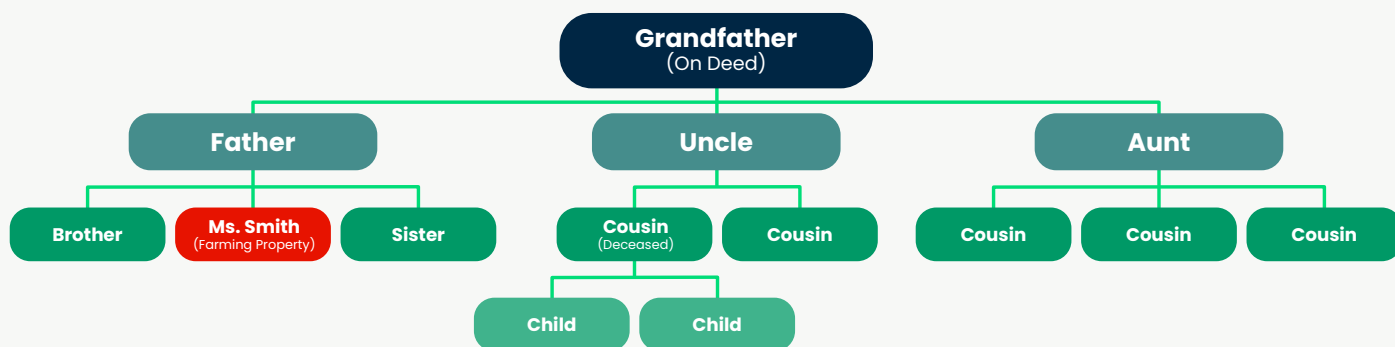


Finding the Family (Genealogy) and Land Records

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 probate court in their county to review any judgment or probate records regarding the land.³ Individuals can also 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 records regarding the land (it's helpful to search by the heirs' names). Another useful place to search for deed records is the Register of Mesne Conveyances (the RMC office, also known as the deeds office) in the county where the property is located. These records may recite family history in the deed clauses. Finally, some county appraiser or tax assessor's offices have "property cards" that record transactions regarding the property, which can be helpful when gathering information to use to search for deeds in the RMC office.

An example of a simple family tree for Ms. Smith



Intestate Succession in South Carolina⁴

The following chart describes some of the many possibilities under South 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 (and/or grandchildren) but no spouse	the children inherit everything equally amongst themselves, and if any of the decedent's children have died and they had children, those grandchildren inherit what the child would have inherited equally amongst themselves
a spouse but no children	the spouse inherits everything
a spouse and one or more children	the spouse inherits half of the intestate estate, and the child or children split the other half equally
parents but no spouse or children	the parents inherit everything equally
siblings but no spouse, children, or parents	the siblings inherit everything equally
children born outside of marriage	Children born outside of marriage inherit from a man if paternity is established in court by clear and convincing proof, either during or after the man's lifetime. A woman who gives birth to a child is presumed to be their mother, from whom the child will inherit, unless there is evidence of adoption or a termination of parental rights.

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.

In 2017, the South Carolina legislature enacted the Clementa C. Pinckney Uniform Partition of Heirs' Property Act.⁷ The law changes the way partition sales occur in states that have adopted it. In South Carolina, 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 South Carolina

When a landowner fails to pay annual property taxes, the overdue amount becomes a tax lien. The governmental taxing authority may then begin a process to sell the land through a tax sale.

In South Carolina, taxes on real property are due between September 30 and January 15 of the following year.⁸ If property taxes are not paid by January 15, interest accrues on the taxes due. Landowners have until March 16 to pay taxes plus any interest accrued. If they are not paid by March 16, the county tax assessor issues a tax execution on the property—this begins the process that eventually can result in a tax sale.⁹ The assessor must serve at least four notices of delinquency on the landowner before the property is sold at auction.¹⁰

South Carolina heirs' property landowners generally have an opportunity to "redeem," or get back their land, after a sale takes place.¹¹ Generally, the landowner can redeem the property within 12 months of the sale of the property by paying all unpaid taxes, interest, and penalties, and all costs and fees, along with interest at varying rates depending on when the redemption takes place.¹²

However, there is at least one county in South Carolina that does not allow heirs' property owners to redeem their land, based on a narrow interpretation of who is the "owner" of the land.¹³ Consequently, it is not good practice for heirs' property owners to rely on the ability to redeem property to get their land back after not paying taxes in full.

If the original landowners fail to redeem their property, title in the name of the purchaser of the property is no longer able to be challenged 24 months after the date of sale.¹⁴



Potential Tax Savings for Agricultural Land

Heirs' property owners of agricultural land should consider the potential for financial savings by receiving an agricultural tax deferment.¹⁵ For tax purposes, if a parcel of land is used for agricultural purposes (including timber sales), it is possible that the tax assessment could be based on that agricultural use, rather than at the value of the land if it was being used for residential or commercial development. This is known as taxation based on the fair market value for agricultural purposes.

In order to qualify, there are requirements for minimum acreage (5 acres for timber, 10 acres for other agricultural uses), and a complicated formula set forth by statute regarding how to compute such an assessment. It is also important to know that if the use of the land changes and it no longer qualifies for the reduced land use assessment, the landowner may have to pay back three years' worth of taxes that were saved (this is known as "rollback").¹⁶

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 for ten (10) years, erecting a "substantial enclosure," and managing the land and property so that it has been "cultivated and improved."¹⁷

Adverse Possession Claims by Co-owners

In South Carolina, a person who owns property as a tenant in common (including an heirs' property owner) can bring a claim of 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 South Carolina 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 adverse possession against a co-owner, because a person claiming adverse possession must demonstrate that their possession of the property is hostile¹⁸ to possession by the true owner. In the case of heirs' property, this would include all the co-owners.

However, in South Carolina a co-owner can prove they "ousted" the other co-owners in the same way a person can show adverse possession, but their possession must be for a longer time. If they can prove all the elements of adverse possession set forth above and have been occupying the property for 20 years (rather than the 10 years required for claims of adverse possession against those who are not co-owners), they can prove a claim for adverse possession against their co-owners.¹⁹ If a co-owner *actually* ousts other co-owners, they will be able to claim adverse possession after 10 years.²⁰ This requires proving all the elements of adverse possession in addition to showing that the other co-owners either had notice or should have known that their co-owner was holding themselves out to the public as the sole owner of the property.

Condemnation and Eminent Domain

Condemnation occurs when the local, state or federal government, or private entity, 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 South Carolina, the Eminent Domain Procedure Act governs condemnation actions.²¹ The Act sets forth requirements for notice, appraisal of the property, and trial of the action. Importantly, if a landowner objects to the condemnation action, they must file a separate action with the court within 30 days of receiving notice that the property is being condemned.²² Note that litigation expenses including legal fees may be awarded to the prevailing party in an action challenging the condemnation.²³



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 South Carolina, families can reach out to:

Federation of Southern Cooperatives Mediation Services

Georgia field office:

624 W Oglethorpe Blvd.

Albany, GA 31701

Phone: (229) 432-5799

Fax: (229) 439-0894

Email: info@federation.coop

Website: federation.coop

The Center for Heirs' Property Preservation

8570 Rivers Avenue, Suite 170

N. Charleston, SC 29406

Phone: (843) 745-7055

Email: info@heirsproperty.org

Website: heirsproperty.org

Additional Resources

Organizations in South Carolina Supporting Heirs' Property Owners

The Center for Heirs' Property Preservation

8570 Rivers Avenue, Suite 170

N. Charleston, SC 29406

Phone: (843) 745-7055

Email: info@heirsproperty.org

Website: heirsproperty.org

South Carolina Legal Services

(multiple offices throughout South Carolina)

Phone: (888) 346-5592

Website: sclegal.org

To apply online: lawhelp.org/sc/online-intake



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 *Probate Court*, S.C. J. BRANCH, <https://www.sccourts.org/probatecourt/> (last visited Nov. 3, 2022).
- 4 S.C. CODE ANN. § 62-2-101 et seq. (2014).
- 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 S.C. CODE ANN. § 15-61-310 et seq. (2018).
- 8 S.C. CODE ANN. § 12-45-70 (2013).
- 9 S.C. CODE ANN. § 12-45-180 (2012).
- 10 S.C. CODE ANN. § 12-51-40 (2013).
- 11 S.C. CODE ANN. § 12-51-90 (2012).
- 12 S.C. CODE ANN. § 12-51-90 (2012).
- 13 See David Slade, *SC Family That Lost Heirs Property Over \$112 Tax Bill Loses Again in Court*, POST & COURIER (Oct. 2, 2022), https://www.postandcourier.com/news/sc-family-that-lost-heirs-property-over-112-tax-bill-loses-again-in-court/article_820beaf2-3b56-11ed-a191-a3adf74fed81.html.
- 14 S.C. CODE ANN. § 12-51-150, 160 (2012).
- 15 S.C. CODE ANN. § 12-43-220(d) (2015).
- 16 S.C. CODE ANN. § 12-43-220(d)(4) (2015).
- 17 S.C. CODE ANN. § 15-67-210 (2013); S.C. CODE ANN. § 15-67-220 (2012); S.C. CODE ANN. § 15-67-250 (2016).
- 18 *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).
- 19 *Woods v. Bivens*, 292 S.C. 76, 81-82 (S.C. 1987) (citing *May v. Jeter*, 245 S.C. 529, 539 (S.C. 1965)).
- 20 *Watson v. Little*, 224 S.C. 359, 365 (S.C. 1953).
- 21 S.C. CODE ANN. § 28-2-10 et seq. (2013).
- 22 S.C. CODE ANN. § 28-2-470 (2012).
- 23 S.C. CODE ANN. § 28-2-510 (2016).