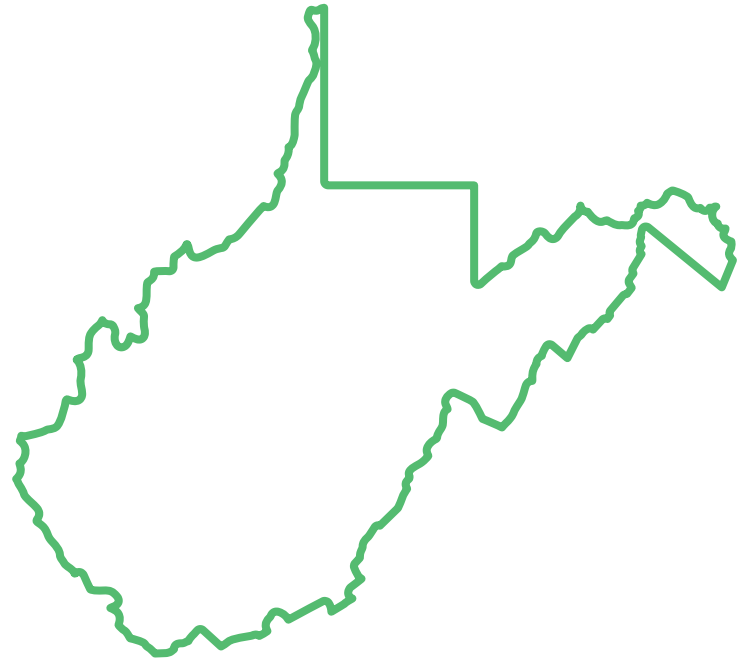


HEIRS' PROPERTY:

Understanding the Legal Issues in *West Virginia*

By Francine Miller
July 2024



Introduction

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

It also explains relevant legal issues that arise in this context, 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 may remain in the name of the person who died.

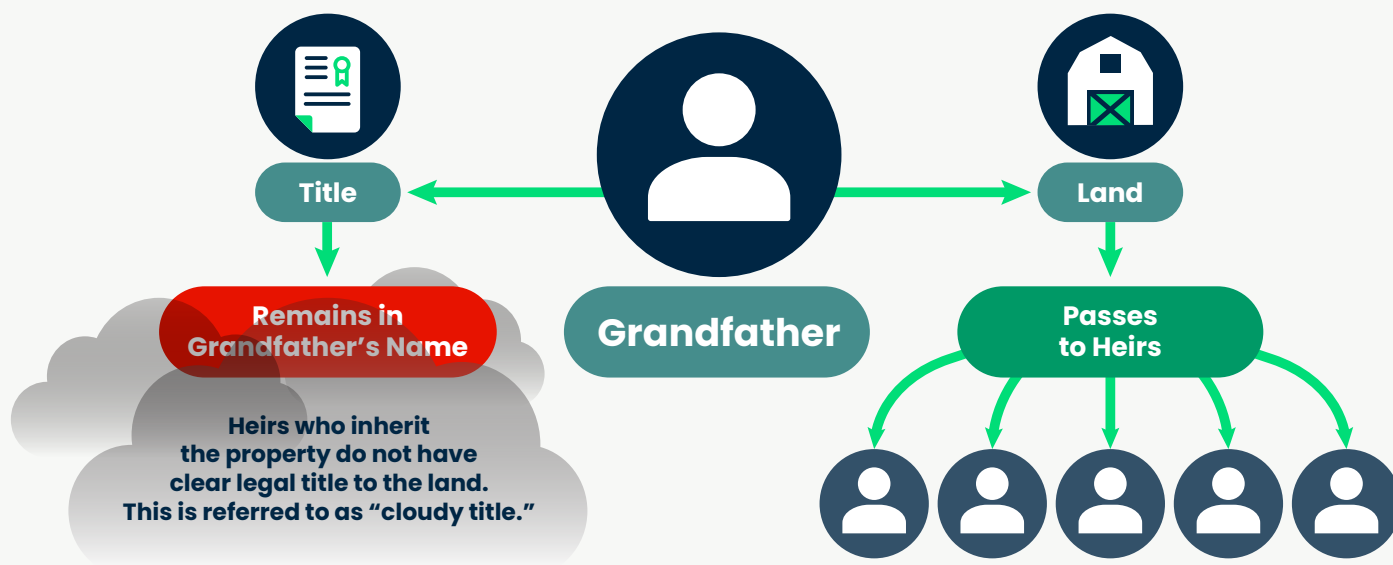
For the heirs, owning property as tenants in common without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, apply for USDA grants or loans, and build wealth from the land by engaging in commercial activity,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

West Virginia Regional History Center³

West Virginia University

1549 University Avenue
Morgantown, WV 26506
Phone: (304) 293-4040

Online Resource

wvrhc.lib.wvu.edu/research/subject-guides/genealogy/online-genealogy-resources#WV

West Virginia State Archives Library

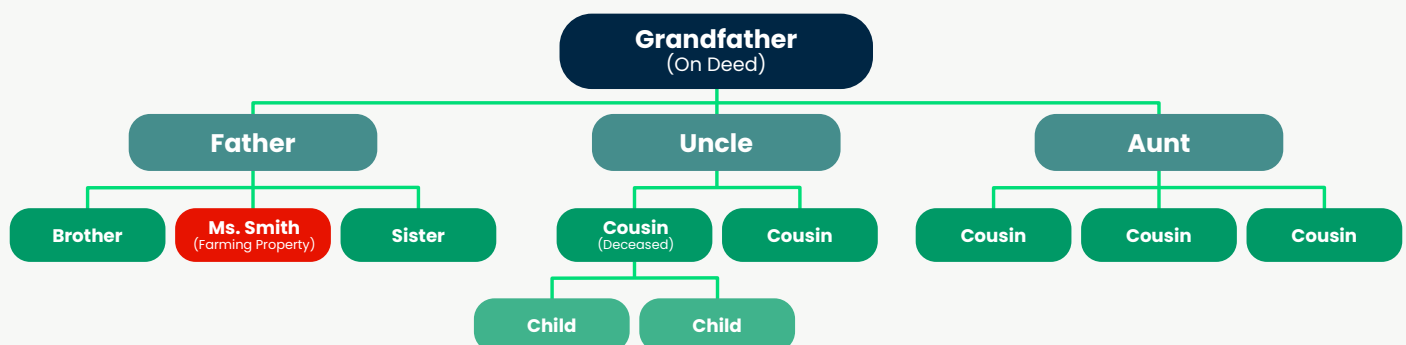
Cultural Center, State Capitol
1900 Kanawha Boulevard East
Charleston, WV 25305
Phone: (304) 558-0220

Online Resource

archive.wvculture.org/vrr

For land records, individuals can go to the circuit court in their district to review any judgment or probate records regarding the land.

An example of a simple family tree for Ms. Smith



Intestate Succession in West Virginia⁴

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

It is important to note that the current intestacy laws in West Virginia have been in place since July 9, 1993. If an ancestor passed away without a will before July 9, 1993, different rules apply. The modern rules governing intestate succession in West Virginia follow.

If a person dies with:	Here's who inherits:
spouse with no children	the spouse inherits the whole estate
a spouse and children who belong to the decedent and that spouse	the spouse inherits the whole estate
a spouse and children who belong to the decedent and that spouse, and the spouse has one or more children that are not children of the decedent	the spouse inherits three-fifths of the estate, and the rest is divided among the decedent's children equally
a spouse and children who are not descendants of the spouse	the spouse inherits one-half of the estate, and the rest is divided among decedent's children equally
children (or grandchildren if children are deceased) but no spouse	the children inherit everything (including their children if their parent—the decedent's child—has died); any grandchildren whose parents died before the decedent split their parents' share equally between them)
parents but no spouse or children	The parents inherit the whole estate and divide it equally
Siblings (or nieces/nephews if siblings are deceased) but no parents, spouse, or children	The siblings inherit the whole estate and divide it equally, with any children of any siblings who have died splitting their parents' shares equally between them
Children born outside of marriage	<p>Children are presumed to belong to the mother who birthed them, absent evidence of adoption, so they would inherit if their mother is the decedent</p> <p>Children inherit from a deceased man if he acknowledged paternity before he died, or paternity is legally established by a court before or after his death</p>

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.

Traditionally, 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. West Virginia law allows for a third kind of partition, partition by allotment, that will be discussed below.

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, as well as areas with lower incomes in Appalachia. 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. 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, including protections to ensure that property sold in a partition action is sold for fair market value and sold in an open market sale instead of at auction, as is customarily the case.

Since 2016, sponsors have introduced various pieces of legislation proposing to adopt the UPHPA in West Virginia, but none have been enacted as of this writing.

Currently, in West Virginia, a joint owner of land may bring a lawsuit against their co-tenants to divide or sell the property they co-own (a partition action). The first step in a partition action is for the court is to determine if the property can be partitioned in kind, which means dividing the land into separate parts for each co-owner to own solely. The party requesting partition must demonstrate that:

1. the property cannot be conveniently divided⁷
2. one or more parties' interests will be advanced by a sale; and
3. the interests of the other parties will not be prejudiced. To make a determination about partition, the court can consider the economic interests of the parties along with non-economic factors such as length of ownership, sentimental interests, and family heritage.⁸

West Virginia's partition laws have a unique feature that allows for partition by allotment before partition by sale. Partition by allotment occurs when a court allows any of the parties in the partition action to purchase the interest of the other parties.⁹ If the parties cannot agree on a value for the property, the court will appoint an objective commissioner to appraise the property for its fair market value. However, the court can decide allotment is not required and order a partition by sale if it believes the parties' interests will not be harmed. The court is not required to

have the property appraised for its fair market value before ordering a partition by sale.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 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, as well as to landowners in parts of Appalachia with lower incomes, 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 state or local government authority to begin a process to sell the land. Heirs' property owners should not wait to clear up the title to a property 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 West Virginia

Each year, the sheriff's departments in each West Virginia county send tax bills to property owners. The amount of taxes owed is based on the calendar year, from January 1 to December 31. On July 1 of each year, a tax lien automatically attaches to the taxed property for the taxes due.¹¹ The full year of taxes due for the property is billed in July and may be paid in two installments. The first installment is due September 1 and payments become delinquent on October 1; the second installment is due March 1 and payments become delinquent on April 1.¹² If taxes are paid on or before the due dates, the taxpayer gets a discount of 2.5% on the amount due.¹³ If the taxpayer is delinquent, interest on the amount due is added at the rate of 9% per year until the full payment is made.¹⁴ Every co-owner is permitted to pay the taxes in full, but cannot pay only a portion of the taxes due.¹⁵

The county sheriff is charged with collecting delinquent taxes. If property taxes remain unpaid, the sheriff can bring a civil action in court to collect the taxes due, or they can certify that the property must be sold at a public auction. Typically, this occurs after October 31 of the same year of the delinquency. The county must give at least 30 days' notice to the property owner and advertise the sale in two newspapers of opposite politics once a week for three consecutive weeks before the sale can be held.¹⁶

In West Virginia, the property owner may be able to get the property back, or "redeem" it, by paying all delinquent taxes, interest, fees, and/or penalties. The property owner has the right to redeem before: (1) the sheriff's certification to the deputy commissioner to sell at auction; (2) sale at auction; and (3) the state auditor executes a new deed.¹⁷ Landowners should consult an attorney before the tax lien is sold to preserve their rights.



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. For tax purposes, if a parcel of land is classified as agricultural, forest, or open-use space, it is possible that the tax assessment could be based on its use for that purpose, rather than the value of the land as if it was being used for residential or commercial development. In West Virginia this is known as Farmland Use Valuation, and it often results in significant financial savings, because the tax assessment is much less than market rate. Most states also have homestead exemptions for eligible homeowners. Keep in mind that many of these programs might require clear title to property.

In West Virginia, a landowner might be eligible for Farm Use Valuation if they own a minimum of five acres and produce at least \$1,000 worth of agricultural products.¹⁸ There are also tax reductions for managed forestland if a landowner has 10 contiguous acres of forested land and works with the state to develop a management plan.^{19,20}

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.

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 to do that.

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.

The occupation of the land must be:

- actual (living or working on the land);
- hostile or adverse (they are living or working on the land without permission);
- open and notorious (they are behaving like the real owner would);
- exclusive (they must possess the land for themselves);
- under color of title (they are relying on a written document that they believe shows they are the owner of the property) or claim of right (they enter upon the land with an intent to claim it as their own); and
- continuous and uninterrupted for statutory period of 10 years.²¹

One way for an heirs' property owner to defeat a possible claim of adverse possession is to give the person on the land permission to use it. This means the person cannot claim their occupancy of the land is "hostile or adverse" as is required. This permission should be in writing.

Adverse Possession Claims by Co-owners

In West Virginia, a person who owns property as a tenant in common (including a heirs' property owner) can try to claim right to the land against their co-tenants by adverse possession. 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 West Virginia, all co-owners have the right to occupy property they own. This creates a legal presumption that possession of the property by one co-owner is the same as the possession of the property by all the co-owners. This legal presumption can make it difficult to prove right to the land by adverse possession against a co-owner, because a person claiming adverse possession must demonstrate that their possession of the property is hostile to possession by the true owner.²² In the case of heirs' property, the "true owner" includes all the co-owners.

To prove ouster in West Virginia, the co-owner must show they meet all the elements set forth above to make a claim of adverse possession. In addition, they must show specific intent to occupy the property as a sole owner. Improving the property, paying the taxes, and collecting any rents or profits can all be actions that demonstrate the required intent.²³ Under West Virginia law, cutting timber on the property likely meets the legal criteria for proving ouster. Because this activity may be "open and notorious," it 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.²⁴

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 the land is necessary for a public use or purpose.

The West Virginia Constitution provides that private property shall not be taken for public use without just compensation.²⁵ State and federal governments, local city and county governments, and private businesses who want to take private property under “eminent domain” laws must bring a court action pursuant to the West Virginia statutes and show that doing so is necessary for a public use or purpose.²⁶



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 USDA’s Farm Service Agency (FSA) runs an Agricultural Mediation Program which can, in some states, be used by heirs’ property owners to mediate family disputes.

While free mediation through the FSA program does not appear to be available in West Virginia for heirs’ property owners, the West Virginia State Bar Association provides a list of members who are willing to serve as mediators in the state.²⁷ In addition, the West Virginia Academy of Mediators and Arbitrators has a list of mediators.²⁸ If family members co-owning heirs’ property cannot reach agreement, mediation services can help.

Additional Resources

Support for Heirs' Property Owners in West Virginia

West Virginia University

Land Use and Sustainable Development Law Clinic

West Virginia University College of Law

Mailing address:

101 Law School Drive

Morgantown, WV 26506

Phone: (304) 293-4633

Email: landuse@mail.wvu.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.

Adverse possession

A legal doctrine that describes when someone occupies property for a period of time and then claims legal rights to it. The person seeking to establish legal ownership by a claim of adverse possession must get a court order.

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; the decedent is also often referred to as "the deceased."

Deed

A legal document, usually recorded in the county office, 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 the state of West Virginia 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 percentage of ownership and thus the value of each interest can vary.

Acknowledgments

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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 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. Legal Aid of West Virginia has a useful website explaining the basics of the probate process in West Virginia. See *Probate: The Process for Dealing with Property and Debts After Death*, LEGAL AID W. VA., <https://legalaidwv.org/legal-information/probate-the-process-for-dealing-with-property-and-debts-after-death/> (last updated Dec. 20, 2023).
- 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*, CTR. AGRIC. & FOOD SYS., <https://farmlandaccess.org/heirs-property/#challenges> (last visited June 15, 2024); *Wills*, CTR. AGRIC. & FOOD SYS., <https://farmlandaccess.org/wills/> (last visited June 15, 2024). See also *Our Best Resource*, W. VA. UNIV. FOUND., <https://plannedgiving.wvuf.org/personal-estate-planning-kit> (last visited June 15, 2024); *Planning Toolkit*, THE MARSHALL UNIV. FOUND., <https://marshall.mylegacygift.org/planning-toolkit> (last visited June 15, 2024).
- 3 Many of these vital records are incomplete online, but the links include research guides that will help families understand what is available on the internet. To obtain records that are not online, one must call and/or visit the county clerk's office. See *Online Genealogy Resources*, W. VA. REG'L HIST. CTR., <https://wvrhc.lib.wvu.edu/research/subject-guides/genealogy/online-genealogy-resources#WV> (last visited June 15, 2024).
- 4 W. VA. CODE §§ 42-1-3-42-1-3G (1992). One can see the rules for those who died prior to July 9, 1993 at the West Virginia legislature's compilation of the West Virginia Code, at <https://code.wvlegislature.gov/>. West Virginia Senior Legal Aid has compiled a flow chart that could be a useful resources as well. See MONGOLIA CNTY. CLERK, https://www.monongaliacountyclerk.com/myfiles/estates/Intestate_Succession_Pamphlet_4.pdf (last visited June 15, 2024).
- 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. See W. VA. CODE § 42-1-3a (1992).
- 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).
- 7 The question of whether the land can be conveniently divided is a legal one that requires consideration of a number of factors.
- 8 See *Ark Land Co. v. Harper*, 599 S.E.2d 754, 761 (W. Va. 2004) (showing that property should be partitioned in kind so that the coal company that had bought an interest could extract coal, but the co-tenant could keep ownership of the rest of the land).
- 9 W. VA. CODE § 37-4-3 (1957).
- 10 *Id.*
- 11 W. VA. CODE § 11A-1-2 (1961).
- 12 W. VA. CODE § 11A-1-3 (1990).
- 13 W. VA. CODE § 11A-1-8a (1989).
- 14 W. VA. CODE § 11A-1-3 (1990).
- 15 The section of West Virginia's code addressing this particular issue includes a few different options for how to pay taxes depending on the individual's interest in the land. For individuals considering this, you should consult with an attorney to ensure you are paying taxes appropriately. W. VA. CODE § 11A-1-9 (1941).
- 16 The section of the West Virginia code addressing proper notice includes a number of provisions. For individuals seeking to determining whether notice was compliant, they should consult with an attorney to ensure notice was given properly. See W. VA. CODE § 11A-3-2 (2023); see also W. VA. CODE § 59-3-2 (2021).
- 17 W. VA. CODE § 11A-3-38(a) (2023); see also W. VA. CODE § 11A-3-47 (2023); W. VA. CODE § 11A-3-56(a) (2023).
- 18 W. VA. CODE § 11-1A-10 (1983).
- 19 W. VA. CODE § 11-1C-11a (1998).

- 20 *Managed Timberland Program*, W. VA. DIV. FORESTRY, <https://wvforestry.com/management-assistance/managed-timberland-program/> (last visited June 17, 2024).
- 21 W. VA. CODE § 55-2-1 (1994); see also *Elder v. Smith*, 474 S.E.2d 590, 592 (W. Va. 1996).
- 22 “Hostile” in the context of adverse possession is a legal term that generally means to infringe or encroach on the rights of the owner. See *Elder v. Smith*, 474 S.E.2d 590, 592 (W. Va. 1996).
- 23 *Cooley v. Porter*, 22 W. Va. 120, 121 (1883).
- 24 *Laing v. Gauley Coal Land Co.*, 153 S.E. 577, 581 (W. Va. 1930).
- 25 W. VA. CONST. art. 3, § 9.
- 26 W. VA. CODE § 54-1-2 (2006).
- 27 W. VA. STATE BAR MEMBERSHIP PORTAL, <https://mywvbar.org/mediator-search-new> (last visited June 18, 2024).
- 28 WEST VIRGINIA ACAD. MEDIATORS & ARBS., <https://www.wvmediators.org/> (last visited June 18, 2024).