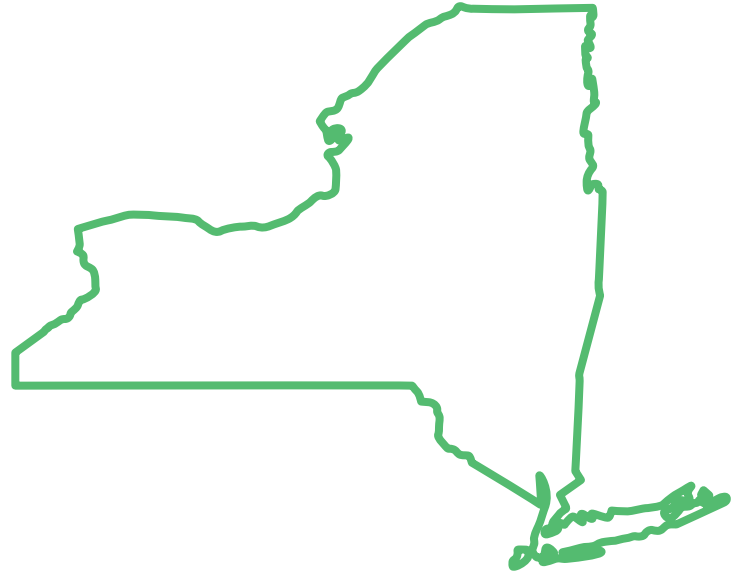


# HEIRS' PROPERTY:

Understanding the  
Legal Issues in  
**New York**

*By Francine Miller*  
August 2024



## Introduction

The purpose of this factsheet is to prevent the loss of land and homes owned as heirs' property in New York. It examines state laws that are relevant to heirs' property owners in New York, 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 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 automatically upon death 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, or if the will is deemed invalid or was lost and never probated.

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 and structures attached to the land rather than each heir owning an individual lot or piece of the property. 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.

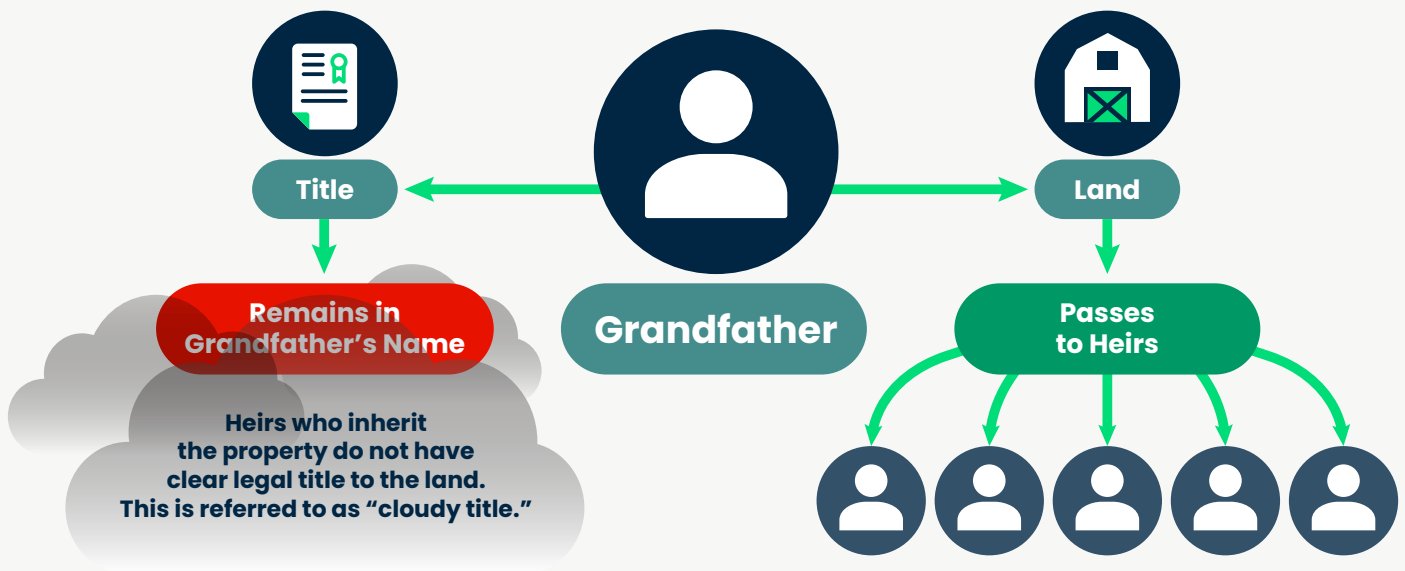
For the heirs, owning property as tenants in common without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, obtain assistance with existing delinquent loans or mortgages, apply for USDA grants or loans, qualify for certain tax credits, receive disaster relief, and build wealth from the property by engaging in commercial activity, such as selling timber or other resources or leasing a portion of the property—all of which may 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](https://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](https://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:

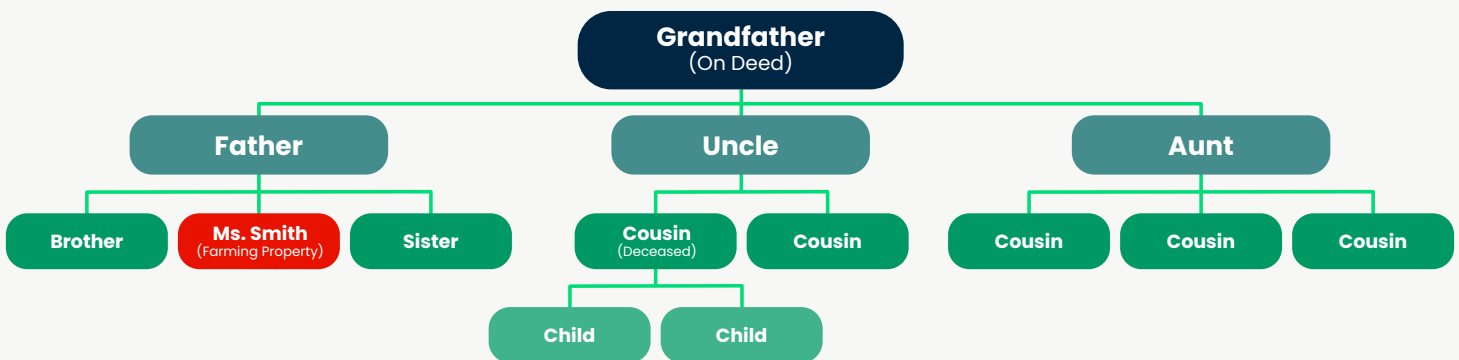
1. **the heirs' birth and death dates,**
2. **information about the county of death,**
3. **proof of whether they died with a will, and**
4. **any current contact information for living heirs.**

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.<sup>1</sup> 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.<sup>2</sup> 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.

## An example of a simple family tree for Ms. Smith



## 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) and [findagrave.com](https://www.findagrave.com). Social media, relatives, and family friends are also good sources of information. Family bibles may be a good source of information and can sometimes be used as evidence to show heirs. Local libraries also house genealogical records and can provide research help. (See below for examples of libraries around New York state that are useful sources of information.) Finally, there are several genealogical databases and records available on a statewide basis.

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### New York State Archives

Provides a basic guide to researching genealogical records, including a list of locations in New York that maintain records, and where to obtain copies of records at the Department of Health.

Website: [archives.nysed.gov/research/birth-marriage-death-records](https://archives.nysed.gov/research/birth-marriage-death-records)

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### New York City Department of Records and Information Services

Offers access to genealogical records from 1855–1949, along with information on how to obtain certified copies of important records.

31 Chambers Street, New York, NY 10007

Website: [nyc.gov/site/records/historical-records/genealogy.page](https://nyc.gov/site/records/historical-records/genealogy.page)

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### New York State Department of Health, Vital Records Section

This department maintains the birth, marriage, and death certificates for New York State (it does not include New York City).

PO Box 2602, Albany, NY 12220-2602

Phone: (855) 322-1022 (toll free)

Website: [health.ny.gov/vital\\_records](https://health.ny.gov/vital_records)

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### New York City Health Department

This office maintains birth and death certificates for New York City.

Website: [nyc.gov/site/doh/services/birth-death-records-birth.page](https://nyc.gov/site/doh/services/birth-death-records-birth.page)

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### Buffalo Public Library

Contains many genealogical records.

Central Library, 1 Lafayette Square

Buffalo, NY 14203-1887

Phone: (716) 858-8900

Email: [askus@buffalolib.org](mailto:askus@buffalolib.org)

Genealogy Collection Resources: [buffalolib.org/special-collections/genealogy](https://buffalolib.org/special-collections/genealogy)

Ethnic Genealogy Research Guides: [buffalolib.org/special-collections/guides-publications#8](https://buffalolib.org/special-collections/guides-publications#8)

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### Onondaga County Public Library

Contains genealogical records and resources to help research.

Local History / Genealogy Dept

447 South Salina Street, 3rd Floor, Syracuse, NY 13202-2494

Phone: (315) 435-1900

Email: [lhg@onlib.org](mailto:lhg@onlib.org)

Website: [onlib.org/research/special-collections/local-history-genealogy](https://onlib.org/research/special-collections/local-history-genealogy)

Research Resources Link: [onlib.org/research/special-collections/local-history-genealogy/programs-research-aids](https://onlib.org/research/special-collections/local-history-genealogy/programs-research-aids)

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### Land Records

Each county in New York State maintains its own land records, which can generally be found at the county or town offices. For example, Albany County's online database contains records from 1980 forward and can be found at [albanycounty.com/government/county-clerk/services/online-records-search](https://albanycounty.com/government/county-clerk/services/online-records-search).

In New York City, land records can be found through the Automated City Register Information System (ACRIS). ACRIS contains property records and document images for Manhattan, Queens, Bronx, and Brooklyn from 1966 to the present.

Website: [a836-acris.nyc.gov/CP](https://a836-acris.nyc.gov/CP)

The Richmond County Clerk's website contains property records and document images for Staten Island. See [richmondcountyclerk.com/Search/SearchIndex](https://richmondcountyclerk.com/Search/SearchIndex).

## Intestate Succession in New York

The following chart describes some of the many possibilities under New York intestate succession laws. If there are multiple generations involved, working with an attorney can help to successfully identify all the current owners.<sup>3</sup>

If a person dies with:	Here's who inherits:
children but no spouse	the children inherit everything equally
a spouse but no children	the spouse inherits everything
a spouse and children	<p>the spouse inherits the first \$50,000 of the intestate property plus half of what remains</p> <p>the children inherit the remaining intestate property equally</p>
parents but no children or spouse	the parents inherit everything equally
siblings but no children, spouse, or parents	the siblings inherit everything equally
children born outside of marriage	<p>children are presumed to belong to the mother that 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 paternity is legally established by a court before or after his death by clear and convincing evidence, if the father has acknowledged paternity, or if there was genetic testing done to confirm paternity.</p>

# Understanding Partition Law

Heirs who inherit land intestate (without a will) own it as tenants in common.<sup>4</sup> 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 and the structures on the land; no co-owner can be prevented from using and occupying the entire parcel, regardless of their percentage of ownership of the property.

**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. Generally in an urban setting, partition by sale is the only option because a home attached to the land cannot be physically divided.

Historically, when a court ordered partition by sale, the property was sold to the public, usually by forced sale at an auction. 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.<sup>5</sup> This has resulted in a tremendous amount of land loss and loss of generational wealth 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, including that if the property is sold in a partition action, it is sold for fair market value and not at auction. 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.

On December 6, 2019, New York adopted a modified version of the UPHPA. The Act applies to all actions filed after that date.<sup>6</sup> The UPHPA changes the way partition sales occur in states that have adopted it. As in other states where UPHPA has been adopted, the New York Act 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 the co-owners' interests in the property, then the law provides a set of factors for the court to weigh that consider 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.

The New York law provides several additional significant protections for heirs' property owners, as follows:

1. In every partition action involving heirs' property, the plaintiff files a summons and complaint with the court and the defendant(s) must answer the complaint within a certain amount of time. After the time for filing an answer has run, the plaintiff must file a Request for Judicial Intervention (RJI) with the court. If the property is identified as heirs' property, the court has sixty (60) days to hold a mandatory settlement conference between the parties before any

further proceedings take place. If a co-owner appears and has not yet answered the complaint, the court must advise the co-owner of their obligation to respond and gives them thirty (30) days from the date of the settlement conference to answer the complaint. At the settlement conference, if any party fails to negotiate in good faith, the court can dismiss the action.<sup>7</sup>

2. The Act protects heirs that occupy the family property by expanding the definition of heirs' property to include any property that is occupied by an heir with an ownership interest.<sup>8</sup>
3. The Act gives priority for buying out the co-owners who filed the partition action to defendant heirs in the following order – occupants of the property, non-occupant heirs, and co-owners who are not family members.<sup>9</sup>
4. When considering a partition in kind, the court may consider how a co-tenant acquired their share. If they bought it, then the court may consider the price, terms, and conditions of the purchase. Courts may also consider the use of the property by a co-tenant occupant

in determining whether a partition by sale is appropriate. These factors help courts protect occupants who are co-owners of the property from predatory developers who purchase heirs' shares to force a partition by sale.<sup>10, 11</sup>

5. Under recent modifications to New York law, adopted May 20, 2024, a third party (someone who purchased an interest in the property or otherwise acquired an interest in a manner other than inheriting it) cannot commence a partition action of heirs' property. Only a co-tenant heir who inherited their interest in the property can commence a partition action of heirs' property.<sup>12</sup>
6. The new modifications to the UHPA provide that heirs have a right of first refusal from anyone attempting to sell their share. This means that if an investor wants to buy a fractional interest of the heirs' property from a co-tenant heir, the investor is required to notify the other co-tenant heirs of their offer. The co-tenant heirs then have the opportunity to buy the interest from the selling co-tenant heir for the same price the investor is offering.<sup>13</sup>

**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 property. 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 homes, 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 (see definition in glossary) to the 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.<sup>14</sup> 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 New York<sup>15</sup>

Depending on the county in New York, property taxes are due at different times throughout the year. For example, in New York City property taxes are collected quarterly if the property is worth less than \$250,000, and semi-annually if valued at more than \$250,000.<sup>16</sup> In other counties, taxes are due once a year. The amount of tax due on a property becomes a lien on January 1 following issuance of the tax bill.<sup>17</sup>

If a property owner does not pay the taxes when due, they become delinquent. Each county in New York has its own procedure for how it handles the sale of property following tax delinquency. Generally, if taxes are delinquent, the county can either hold the tax lien placed on the property or sell it to a third party.<sup>18</sup> The owner of the tax lien gets a tax lien certificate. Ultimately, that certificate can either be “redeemed,” or bought back, by the property owner by paying the delinquent taxes, interest, and costs. Alternatively, the purchaser of the tax lien certificate can bring a foreclosure action in court to obtain the deed and full ownership of the property.

Generally, if a third party purchased the tax lien and wants to file a petition for foreclosure, the earliest it can be filed is twenty-one months after the taxes become delinquent. However, New York counties and cities can set their own rules, so that period of time can be longer in certain counties.<sup>19</sup>

New York property owners have at least two years after the lien date to “redeem” or get back their property. In some counties, that period can be three or four years. In order to redeem the property, the owner must pay all delinquent taxes, interest, and costs either to the county or to the third party that purchased the tax lien. If the county allows, a co-owner or occupant of a home can enter into a payment plan to pay the back taxes.

New York used to permit the surplus from a delinquent property’s tax sale to be kept by the counties rather than paying it to the original property owner. However, a recent U.S. Supreme Court case, *Tyler v. Hennepin*,<sup>20</sup> found that practice to be unconstitutional. In response, New York legislators amended the law in New York to allow the surplus to be paid to the property owner after any other lienholders (such as a mortgage company) are paid.<sup>21</sup>

In New York, there are additional tax programs available to reduce tax burdens. The School Tax Relief Program (“STAR”), Enhanced STAR, and the Senior Citizen Homeowners’ Exemption (“SCHE”) are all tax reduction programs that homeowners can qualify for based on income and age.<sup>22</sup>





## 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 New York, landowners who build agricultural structures on agricultural land can obtain a 10-year exemption on any increase to the property's taxable value that a new agricultural building might add. The building must remain in agricultural use for the entire ten years and the landowner must apply for the Agricultural Buildings Tax Credit within one year of completion of construction of the building.<sup>23</sup>

In addition, tax assessors can appraise land at its agricultural value rather than the fair market value for development and other uses. Agricultural value is based on the property's use as agricultural or forest land and its ability to generate income. Heirs' property owners can benefit from significant savings over time because an appraisal based on land's agricultural value is usually much less than an appraisals based on fair market value.

In New York, landowners must file an application with their local county assessors to qualify for the "current use" program (tax assessment at agricultural value). Generally, the land must consist of at least seven acres and be used to produce agricultural products grossing sales of more than \$10,000 per year for two years. Recent amendments to New York law allow for landowners of less than seven acres to qualify, but they must demonstrate gross sales of at least \$50,000 per year for two years. There are certain exceptions to these requirements, so property owners should carefully review the rules to ensure they are in compliance.<sup>24</sup>

Finally, New York property owners who own agricultural land and derive most of their income from farming may be entitled to the Farmers School Tax Credit, which gives eligible farmers a credit on their income taxes to compensate them for money paid for school district property tax. The amount will depend on how many acres are owned and the amount of school district property taxes are paid.<sup>25</sup>

# 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.

New York offers some protection to landowners by requiring that the trespasser have a claim to the property as of right. This means they must have a reasonable belief that they are the true owners of the property, whether supported by documentation or not.

However, in adverse possession cases, the claimant is not required to show such a claim of right "if the owner or owners of the real property throughout the statutory period cannot be ascertained in the records of the county clerk, or the register of the county, of the county where such real property is situated, and located by reasonable means."<sup>26</sup> This could have particular implications for heirs' property owners.

A person can gain full ownership of land they do not own by occupying the land and meeting the following requirements. The "possession" of the land must be:

- hostile and under a claim of right (the trespasser has a reasonable basis for believing that the property legally belongs to them);
- open (the owner is on notice that the trespasser is acting as if they owned the land);
- continuous for ten years;

- exclusive (in the possession of the trespasser alone), and
- actual (exercising control over the property).<sup>27</sup>

"Possession" means that the person has cultivated, fenced, or improved the land. In New York, the person making the adverse possession claim is presumed to have a claim of right if the other elements of adverse possession are met, even if they do not have a physical document as evidence. Most importantly, the person making the adverse possession claim must have improved, fenced, or cultivated the land without acknowledging there is another true owner — in essence, they have conducted themselves as if they were the true owner.<sup>28</sup>

New York legislators have protected landowners from adverse possession claims by excluding certain small actions from qualifying, like planting a garden or extending a chain link fence into a neighbor's yard.<sup>29</sup> This protection is effective for adverse possession claims that begin after the statute was enacted on July 7, 2008.<sup>30</sup>

## Adverse Possession Claims by Co-owners

In New York 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. That person must show that they "ousted" the other co-tenants from the property in order to gain full and exclusive possession of the premises. Ouster generally means excluding someone from property.

Like most jurisdictions, in New York all co-tenants have the right to occupy the property they own, so there is a legal presumption that

the possession of property by one co-tenant in common is the same as the possession of the property by all the co-tenants. This can make it difficult to prove adverse possession against a co-tenant, because a person claiming adverse possession has to demonstrate that their possession of the property is hostile to the possession of the true owner (here, all the co-tenants).

However, in New York, a co-tenant can prove adverse possession against co-tenants by proving all the elements of adverse possession set forth above have been met for 20 years.<sup>31</sup> In addition, a co-tenant can show they “ousted” all the other co-tenants by demonstrating they explicitly informed their co-tenants that they were excluded from the property or otherwise denied them their rights (actual ouster), or by proving that they have been “so openly hostile that the nonpossessing cotenants can be presumed to know that the property is being adversely possessed against them.”<sup>32</sup> This is known as constructive or implied ouster and can be proven by showing, that the co-tenant in possession made improvements, took out loans on the property, or leased out portions of the property.<sup>33</sup> To prove ouster, it must be unmistakable that the co-tenant is refusing to acknowledge their co-tenants’ rights to possess the property. In other words, paying taxes and maintaining the property is not sufficient to prove ouster.<sup>34</sup> The co-tenant attempting to prove either actual or constructive ouster must show that their co-tenants were ousted for at least 10 years.

## 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.<sup>35</sup> If your property is in danger of being taken under eminent domain laws, a notice will be sent to you, left on the property, or published in the local newspaper, so it is important to monitor the property for any notices.

## NY FarmNet

Owning land as heirs’ property can be stressful. This is especially true when there are disputes or hard conversations among family members. Mental health and transition consultation services are available to heirs’ property owners in New York through NY FarmNet, which provides free, confidential on-farm consulting services to farmers who need assistance with financial, family, or emotional issues. Individuals can connect with NY FarmNet support and resources 24/7 by calling 1-800-547-3276 or by submitting a request for services form online at [nyfarmnet.org](https://nyfarmnet.org).

NY FarmNet consultants work with farmers in teams of two, with one person focusing on financial issues and another focusing on family or emotional issues. Financial consultants have a background in agriculture and assist with business plans, cash flow analysis, succession planning, life after farming, developing financial records and record-keeping systems, and loan applications, among other things. Family consultants have a master’s level degree in social work or counseling. They work with farmers to improve family and marital relations, develop strategies for better communication, manage stress and anxiety, facilitate difficult discussions, and run family business meetings so that all members have a voice.

**NY FarmNet services are available free to any farmer within the State of New York.**

### NY FarmNet

350 Warren Hall  
Ithaca, NY 14853  
Phone: (800) 547-3276  
Website: [nyfarmnet.org](https://nyfarmnet.org)



## 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 New York, families can reach out to:**

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### **New York State Agricultural Mediation Program**

PO BOX 215  
Chatham, NY 12037  
Phone: (866) 669-7267  
Email: [info@nysamp.com](mailto:info@nysamp.com)  
Website: [nysamp.com](http://nysamp.com)

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### **The New York Peace Institute**

The New York Peace Institute offers free mediation services to residents of Manhattan and Brooklyn, and can help mediate family conflict.  
Website: [nypeace.org/mediation](http://nypeace.org/mediation)

# Additional Resources

## Support for Heirs' Property Owners in New York

### Center for NYC Neighborhoods

60 Broad Street  
New York, NY 10004  
Website: [cnycn.org/get-help](https://cnycn.org/get-help)  
Phone: (855) HOME-456 (toll-free)  
Email: [info@cnycn.org](mailto:info@cnycn.org)

### City Bar Justice Center Homeowner Stability Project

42 West 44th Street  
New York, NY 10036  
Phone: (212) 382-6766 or  
Email [HSP@nycbar.org](mailto:HSP@nycbar.org)

### Legal Services NYC

Phone: (917) 661-4500 | Mon. - Fri. 9:30am to 4pm  
Website: [legalservicesnyc.org/contact-us](https://legalservicesnyc.org/contact-us)



Visit [farmlandaccess.org](https://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](https://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; the decedent is also often referred to as "the deceased."

## Deed

A legal document, usually recorded in the office of a city, 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. Heirs are also people who are entitled to inherit property under a will or trust.

## 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 or transfer on death 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.

## Real property

A parcel of land and structures permanently attached to it, such as a house or barn. The owner of real property has all the rights of ownership, including the right to possess, sell, lease, and enjoy the land.

## Residue

The remaining probate assets of the decedent that have not been used to cover debts or have not been given away in the decedent's will.

## Surrogate's Court

A court of special jurisdiction in New York that maintains jurisdiction over all actions and proceedings relating to the affairs of decedents, including entering a will into probate and petitioning for letters of administration. Letters of administration are issued by the Surrogate's Court and give someone the authority to act as the administrator of an estate.

## 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 city, 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-owners"), 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](http://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](http://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 probate 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. See *Heirs' Property*, CTR. FOOD & AGRIC. SYS., <https://farmlandaccess.org/heirs-property/#challenges> (last visited June 25, 2024); see also *Wills*, CTR. FOOD & AGRIC. SYS., <https://farmlandaccess.org/wills/> (last visited June 25, 2024).
- 3 N.Y. EST. POWERS & TRUSTS ch. 17-B, art. 4.
- 4 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.
- 5 Thomas W. Mitchell, *Historic Partition Law Reform: A Game Changer for Heirs' Property Owners*, TEX. A&M UNIV. SCH. L. LEGAL STUD. RSCH. PAPER, 65 (2019).
- 6 N.Y. REAL PROP. ACTS. § 993; see also *infra* notes 12–13 (highlighting additional recent modifications to the statute that helps heirs' property owners).
- 7 N.Y. REAL PROP. ACTS. § 993(5). This is a critical addition to the statute that has helped heirs' property owners in New York City. Failure to negotiate in good faith can include failure to attend settlement conferences, failure to negotiate realistic solutions to either buy or sell a co-owner's interest and generally failure to act fairly in the negotiations. The settlement conference is conducted by a court referee, who writes a report at the end of the conference and can recommend that the action be dismissed because a party failed to negotiate in good faith. For the action to get dismissed, a party must make a motion to the judge to adopt the referee's report and recommendation.
- 8 See N.Y. REAL PROP. ACTS. § 993(2)(e)(iv)(D) (expanding the UHPA provision which requires that twenty percent of the property be owned by heirs of the original owner to be deemed heirs' property).
- 9 N.Y. REAL PROP. ACTS. § 993(7)(d)(ii).
- 10 N.Y. REAL PROP. ACTS. § 993(9)(a)(v); N.Y. REAL PROP. ACTS. § 993(9)(a)(vii).
- 11 For a complete discussion of the enactment of the UHPA in New York, and the accompanying policy rationales for additional protections required in the urban environment, see THOMAS W. MITCHELL & ERICA LEVINE POWERS, *HEIRS' PROPERTY AND THE UNIFORM PARTITION OF HEIRS PROPERTY ACT: CHALLENGES, SOLUTIONS, AND HISTORIC REFORM (2022)* (citing SCOTT KOHANOWSKI, *RURAL CONTEXT AND STRENGTHENING IT: THE NEW YORK EXPERIENCE AND A FRAMEWORK FOR UHPA ADVOCACY (2022)*).
- 12 N.Y. REAL PROP. ACTS. § 993(12).
- 13 N.Y. REAL PROP. ACTS. § 993(13).
- 14 A cotenant who pays all the taxes and solely maintains the property can use those facts to attempt to establish a claim of adverse possession against another cotenant. See *infra* notes 28–30.
- 15 There can be significant differences between each county in New York State regarding how they handle tax sales, so property owners are advised to check with the county clerk in which the property lies regarding that county's procedures.
- 16 *Property Tax Bills and Payments*, NYC DEP'T OF FIN., <https://www.nyc.gov/site/finance/property/property-bills-and-payments.page> (last visited June 26, 2024) (showing in practice most properties are billed quarterly even if valued at the higher amount).
- 17 N.Y. REAL PROP. TAX § 902.
- 18 In New York City a moratorium on tax lien sales was instituted in 2021, and while there have been various efforts to reinstate these, there have been no tax lien sales since 2021.
- 19 N.Y. REAL PROP. TAX § 1123(1).
- 20 *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023).
- 21 N.Y. REAL PROP. ACTS. §§ 1195–1197 (noting the landowner must make a claim for the surplus).
- 22 Information regarding the STAR program can be found at New York State's Department of Taxation and Finance website. See *STAR resource center*, NEW YORK STATE, <https://www.tax.ny.gov/star/> (last visited June 27, 2024). Information regarding the SCHE program can be found at New York State's Department of Taxation and Finance website. See *Senior citizens exemption*, NEW YORK STATE, <https://www.tax.ny.gov/star/> (last visited June 27, 2024).
- 23 *Tax Credits and Agricultural Assessments*, NEW YORK STATE, <https://agriculture.ny.gov/>

[land-and-water/tax-credits-and-agricultural-assessments](#) (last visited June 27, 2024).

- 24 See *Agricultural assessment program: overview*, NEW YORK STATE, [https://www.tax.ny.gov/research/property/assess/valuation/ag\\_overview.htm](https://www.tax.ny.gov/research/property/assess/valuation/ag_overview.htm) (last visited June 27, 2024) (noting the forms and requirements landowners must complete).
- 25 *Agriculture in New York State*, NEW YORK STATE ASSEMBLY, <https://nyassembly.gov/write/upload/req/agriculture.pdf?v=1669142559> (last visited June 27, 2024).
- 26 N.Y. REAL PROP. ACTS. § 501(3).
- 27 N.Y. REAL PROP. ACTS. § 501 *et seq.*; see also *Becker v. Murtagh*, 968 N.E.2d 433, 437 (N.Y. 2012); *Hogan v. Kelley*, 927 N.Y.S.2d 157, 158 (N.Y. App. Div. 2011).
- 28 *Bolognese v. Bantis*, 187 N.Y.S.3d 689 (N.Y. App. Div. 2023). The New York statute was amended in 2008, and the standards were changed slightly, but where the adverse possession claim is based on actions prior to 2008, the old standards apply. *Id.*
- 29 N.Y. REAL PROP. ACTS. § 543.
- 30 *Franza v. Olin*, 897 N.Y.S.2d 804, 807 (N.Y. App. Div. 2010).
- 31 N.Y. REAL PROP. ACTS. § 541; see also *Myers v. Bartholomew*, 697 N.E.2d 160, 161 (N.Y. 1998).
- 32 *Myers v. Bartholomew*, 697 N.E.2d 160, 161 (N.Y. 1998).
- 33 *Golobe v. Altchek*, 182 N.Y.S.3d 58, 59–60 (N.Y. App. Div. 2023).
- 34 *Perez v. Perez*, 644 N.Y.S.2d 168, 170 (N.Y. App. Div. 1996).
- 35 See generally N.Y. EM. DOM. PROC. §§ 101–709.