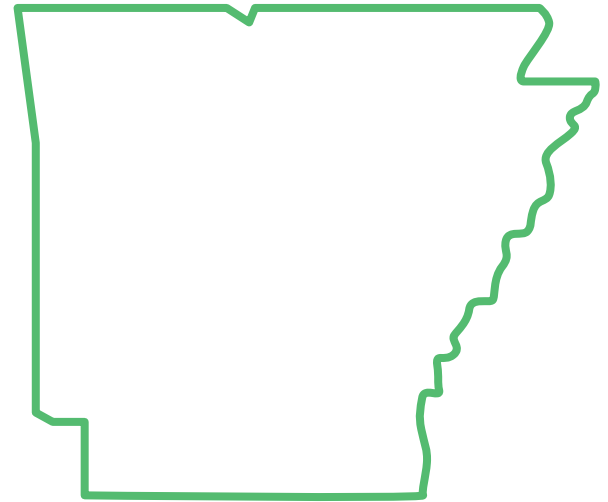


HEIRS' PROPERTY:

Understanding the Legal Issues in *Arkansas*

By Francine Miller
March 2024



Introduction

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

It also explains relevant legal issues, including:

- 1. how to identify the legal heirs of the original ancestor who owned the land,**
- 2. state partition law,**
- 3. state law that permits the sale of land due to unpaid property taxes, and**
- 4. state law addressing adverse possession and condemnation**
(these terms are defined in the glossary, below).

This resource may be useful to professionals assisting heirs' property owners, such as lawyers, nonprofit and community development advocates, and cooperative extension agents.



For a glossary of legal terms used in this factsheet, refer to page 10.

What is Heirs' Property?

Heirs' property (sometimes known as family land) is property that has been transferred to multiple family members by inheritance, usually without a will. Typically, it is created when land is transferred from someone who dies without a will to that person's spouse, children, or other heirs who have a legal right to the property. However, even if the person who died had a will, they may still create heirs' property if they leave land to multiple heirs without specifying which heirs get which section of the land.

When heirs' property is created, the heirs own all the property together (in legal terms, they own the property as "tenants in common"). In other words, they each own an interest in the undivided land rather than each heir owning an individual lot or piece of the land. In addition, unless the heirs go to the appropriate administrative agency or court in their jurisdiction and have the title or deed to the land changed to reflect their ownership, the land will remain in the name of the person who died.

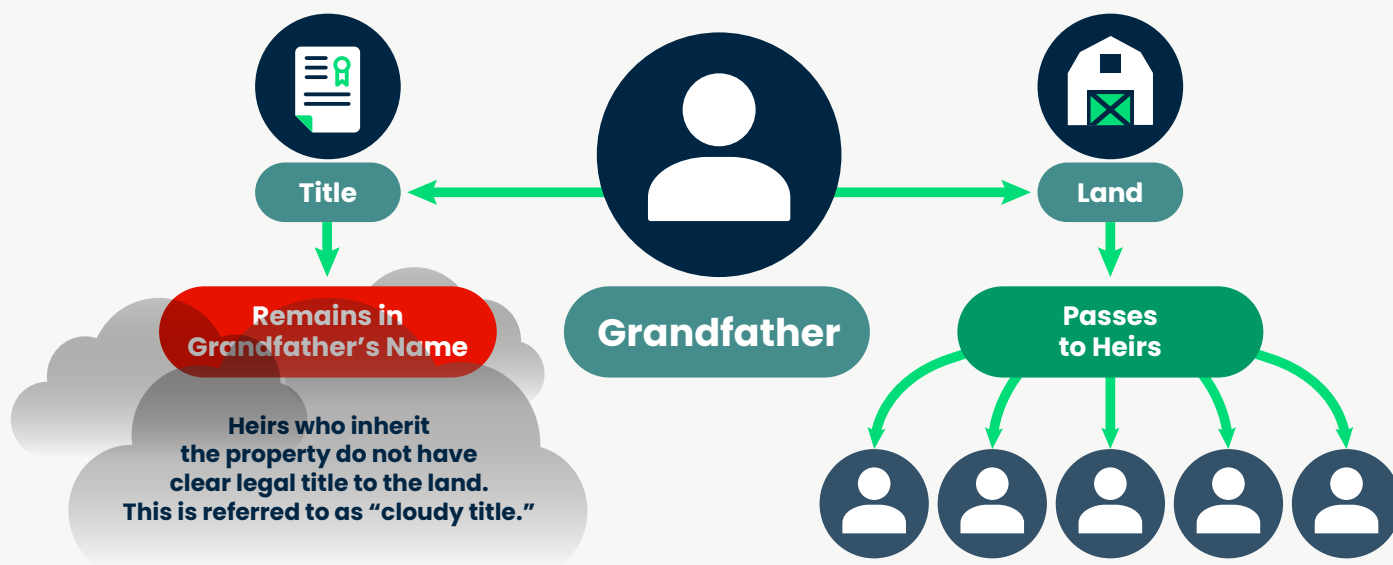
For the heirs, owning property as tenants in common without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, apply for USDA grants or loans, and build wealth from the land by engaging in commercial activity, such as selling timber or other resources—all of which require proof of ownership. It also leaves the property vulnerable to being acquired by real estate developers and unscrupulous actors.



Learn More Using the Farmland Access Legal Toolkit

For a more comprehensive overview of heirs' property issues, visit farmlandaccess.org/heirs-property.

Find additional advice for heirs' property owners, including how to proactively avoid and address legal challenges, at farmlandaccess.org/suggestions-for-heirs-property-owners.



Identifying Heirs

To resolve heirs' property issues, an important first step is tracing the ownership of the land from the original titled owner to the current owners. Many practitioners encourage heirs' property owners to build a family tree identifying all the heirs, deceased and living. Specifically, heirs' property owners will want to collect:

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

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

When a person dies with a valid will, they die "testate" and their will determines who inherits their property.¹ When a person dies without a will, they die "intestate" and state law governing intestate succession determines who inherits that person's real estate and other assets.² Who inherits a person's land by intestate succession varies depending on which family members survive the decedent.

There are generally a number of types of living heirs entitled to inherit from a decedent, including: the spouse of the decedent; biological and adopted children, and their descendants; parents of the decedent; siblings of the decedent, and if they have died, their descendants (the decedent's nieces and nephews); and grandparents and cousins.



Finding the Family (Genealogy) and Land Records

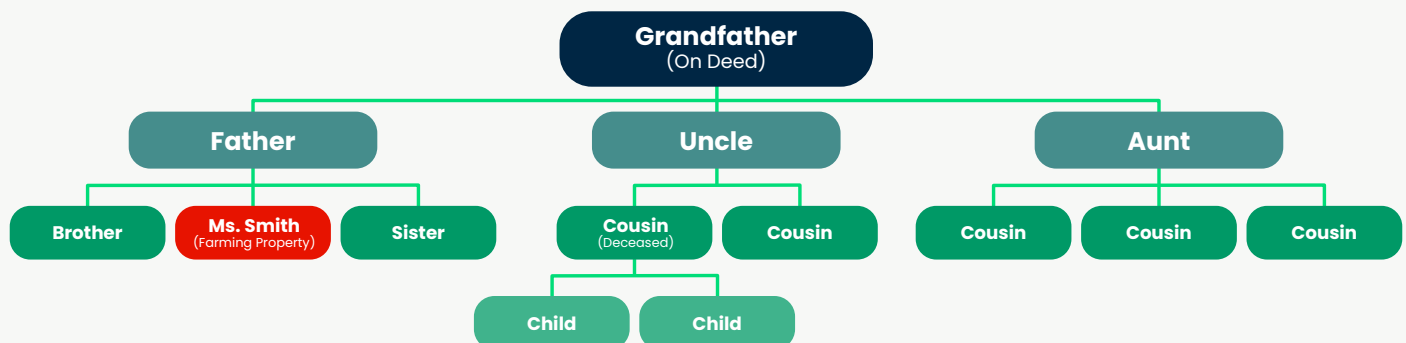
Resources to help identify and locate heirs and build the family tree include genealogists and family history sites such as [ancestry.com](https://www.ancestry.com), [myheritage.com](https://www.myheritage.com), and [familysearch.org](https://www.familysearch.org). Family bibles can be a good source of information and can sometimes be used to show heirs. Local libraries can also be a great resource for genealogical records and research help.

Additional information as to births, deaths, and marriages can be obtained from the Vital Records Department of the Arkansas Department of Health.

Individuals can go to the county offices where land is located to review records pertaining to the land. These records may include:

- **Circuit court records determining land ownership or ancestry (such as paternity actions and divorces);**
- **Probate records such as wills, affidavits of heirship, and final probate judgments;**
- **County real estate records (including deeds and surveys);**
- **Tax assessor's and collector's records (which may indicate potential heirs, but do not prove ownership);**
- **Records of marriage recorded with the county clerk's office.**

An example of a simple family tree for Ms. Smith



Intestate Succession in Arkansas³

The following chart describes some of the many possibilities under Arkansas 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 or other descendants but no spouse	the children and descendants inherit all intestate property
a spouse of at least three years but no children	the spouse inherits everything
a spouse and children	<p>the spouse gets one-third of real property in the form of a life estate and one-third of the personal property</p> <p>the children inherit all of the real property subject to the spouse's life estate, and two-thirds of the personal property</p>
a spouse of less than three years but no children	<p>the spouse inherits half of all property</p> <p>parents, siblings, or other relatives inherit the remaining half of the property</p>
parents but no children or spouse	the parents inherit everything
siblings but no children, spouse, or parents	the siblings inherit everything
children born outside of marriage	<p>If the child's mother is the decedent, the child inherits in the same way a child born within a marriage does. If the child's father is the decedent, then they receive a share if (1) the decedent later married the child's mother; (2) a court establishes paternity; (3) the decedent acknowledged in writing that he was the child's father; (4) the decedent consented to his name on the child's birth certificate; or (5) the decedent has promised in writing or been ordered by a court to support the child. These rights must be established within 180 days of the death of the father.⁴</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.

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.

The UPHPA became effective in Arkansas on January 1, 2016, and applies to all actions filed after that date.⁷ The law changes the way partition sales occur in states that have adopted it. In Arkansas, 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 Arkansas

In Arkansas, property taxes are due each year on October 15. If a landowner does not pay their property taxes within one year of the due date, they become delinquent, and their land is forfeited to the state.⁸ The county collector holds the land for a year after delinquency. During that period, if the taxes due (including penalties

and interest) are not paid, the property is transferred by certification to the Commissioner of State Lands. However, notice is provided to the landowner with a statement outlining all taxes, penalties, interest, and costs due prior to transfer.⁹

Between 30 and 40 days before transfer to the Commissioner of State Lands, the county collector must publish notice in a local newspaper that the property will be forfeited. The notice must include the name of the property owner, the amount needed for the owner to buy back the property (called "redemption"), and the date by which the property must be redeemed.¹⁰

Once the land is transmitted, the state owns the land and can sell it after holding it for at least one year. The state must notify the former owner by mail of any sale by the Commissioner of State Lands.¹¹

To redeem the property, the landowner must pay the back taxes due, plus any fees that have accumulated prior to certification to the state. If the landowner cannot redeem the property, the county collector will transmit the land to the state. The landowner also has another opportunity to redeem the property by paying the taxes and fees due before the state sells the land.¹² There are special rules for property considered a homestead because a homestead qualifies for a special tax assessment as a residence.¹³

Avoiding Adverse Possession and Condemnation

Heirs' property owners must also manage and monitor their land to ensure the property is not taken through adverse possession or eminent domain (that is, condemned by the local, state, or federal government).

Adverse Possession

Adverse possession allows a trespasser to become the owner of land they do not own if they meet certain criteria and bring an action in court asking a judge to declare them the owner. Failure to monitor and manage heirs' property can invite neighbors and others to develop a strong case for seeking ownership of land in this way. To avoid this, "No Trespassing" signs should be posted, and if a family member cannot check the land periodically, a manager should be hired.

A person can gain full ownership of land they do not own by occupying the land and meeting the following requirements.

The occupation of the land must be:

- **actual and hostile**—the person must live or work on the land, "exercising control" without permission;
- **open, notorious, and visible**—the possessor should be visibly using the property as an owner would;
- **continuous and uninterrupted for 7 years, but if the land is "wild and unimproved," for 15 years;**¹⁴
- **exclusive**—the person must possess the land for themselves;
- **intentional**—the possessor must know that someone else owns the land;
- **accompanied by the payment of all taxes due for 7 or 15 years, depending on whether the land is "wild and unimproved," as above.**¹⁵

In Arkansas, unlike many other states, the person claiming adverse possession must have paid the property taxes for the occupied land. In addition, the person claiming adverse possession must at least allege that they knew the land belonged to someone else while they occupied it.

Adverse Possession Claims by Co-owners

In Arkansas, 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 Arkansas 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 hostile¹⁶ to possession by the true owner. In the case of heirs' property, this would include all the co-owners.

However, in Arkansas a co-owner can show they "ousted" the other co-owners by proving two things. First, they must demonstrate their co-owners were notified that they claimed sole ownership of the property. Second, they must prove all the elements of adverse possession set forth above were met *after* the other co-owners were notified of the claim of sole ownership. Selling the property can meet the criteria included in Arkansas law for proving ouster. Because this action is visible and recorded with the local office of land records, 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.¹⁷

In addition, Arkansas statutes provide for a method for a co-owner to oust the other co-owners and gain full ownership to the surface rights of a property. Like all states, Arkansas law provides that the surface rights to a property can be split from the mineral rights. Surface rights are the rights to the surface area of a tract of land. This can include structures, trees, and plants, as well as water, depending on local ordinances or rules. Mineral rights are the rights to most things that lie beneath the surface of a property; i.e., oil, gas, coal, or other minerals.¹⁸

A co-owner in Arkansas can bring an action in court to gain full title to the surface rights of a property if they can prove that they are unable to locate other co-owners, and the co-owners have “made no written demand upon the cotenant or tenant-in-common, in possession, for rents, profits, or possession of the surface rights for a twenty-year period.”¹⁹ The co-owner must publish notice that they intend to oust their co-owners twice over a two-week period in a newspaper that is distributed in the same geographic area as the property and then bring an action in court to gain clear title to the surface rights.

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. It is critical that heirs’ property owners monitor their property for notice of any such action in order to take advantage of legal protections before condemnation occurs.²⁰



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

Unfortunately, as of November 2022, the Arkansas Department of Agriculture only offers mediation services between landowners and their creditors. For example, if a lender denies a farmer a loan, the farmer can request mediation before resorting to an administrative appeal within the relevant agency. Mediation helps producers avoid significant costs associated with litigation.

For help on these types of creditor issues, families can contact:

Arkansas Agricultural Mediation Program Arkansas Department of Agriculture

1 Natural Resources Drive
Little Rock, Arkansas 72205
Phone: (501) 225-1598
Email: cami.davis@agriculture.arkansas.gov
Website: agriculture.arkansas.gov

Additional Resources

Organizations in Arkansas Supporting Heirs' Property Owners

Keeping it in the Family Sustainable Forestry and African American Land Retention (SFLR) Program

Kandi Williams

Outreach Coordinator

University of Arkansas at Pine Bluff

Phone: (870) 571-9428

Fax: (870) 667-7047

Email: williamska@uapb.edu

The KKAC Organization

Furonda Brasfield, Esq.

Legal Director, Heirs' Property Clearinghouse

Phone: (870) 330-7122

Fax: (870) 251-0410

Email: furonda@brasfieldlawfirm.com

Website: kkac.org



Visit farmlandaccess.org
for more resources related
to accessing, transferring,
and conserving farmland.



For a list of national organizations helping heirs' property owners, visit
farmlandaccess.org/heirs-property/#organizationsprovidingassistance.

DISCLAIMER: This document provides general legal information for educational purposes only. It is not meant to substitute, and should not be relied upon, for legal advice. Each operation and situation is unique, state laws vary, and the information contained here is specific to the time of publication. Accordingly, for legal advice, please consult an attorney licensed in your state.

Glossary

The following definitions are from multiple sources and are not specific to any particular state statute. Of course, any statutory definitions (terms defined in the laws of a particular state) would overrule these definitions in any legal proceeding.

Adverse possession

A legal doctrine that describes when someone occupies property for a period of time and then claims legal rights to it.

Ancestor

A person from whom someone is descended; a direct blood relative.

Clearing title

The legal process of proving and obtaining a deed for the current owners of heirs' property.

Condemnation/eminent domain

The right of a government or its agent to take private property for a public purpose, with compensation to the property owner (such as a public utility taking land so they can build power lines).

Co-tenants

Those who own heirs' property with others. In a partition action under the Uniform Partition of Heirs Property Act, the co-tenants are all the co-owners of heirs' property, regardless of the size of the fractional interest owned. See the definition of tenants in common, below.

Decedent

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

Deed

A legal document, usually recorded in the office of a town or county that keeps land records, often used to show the legal owner(s) of a piece of property.

Descendant

A person related to someone who has died, either directly (parent, child, grandchild) or indirectly (aunts and uncles, cousins). This includes anyone legally adopted.

Estate

The real property (land and buildings) and personal property (clothing, furniture, cars, and so on) of a person who has died. In probate settings, the "estate" includes the total assets (things one owns) and liabilities (debts) of a person who has died.

Heirs

People who are entitled under state "intestate" law to inherit property from someone who has died.

Intestate

A person dies "intestate" when they die without a valid will.

Intestate real estate

Land and other property (such as houses or buildings) owned by the decedent when they died and not addressed in a will, and which does not pass to anyone based on language in the deed itself (such as a joint survivorship clause).

Intestate succession

State laws addressing who inherits property from someone who dies without a will (or when a will is found to be invalid), or any property that was not included in the decedent's will.

Joint tenants

Two or more owners of equal shares of property who have a right of survivorship, meaning that if one joint tenant dies their share goes to the other joint tenant(s) in equal shares.

Life estate

Property owned by a person during their lifetime, which is automatically transferred to someone else upon their death.

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.

Personal property

Tangible items such as cars, jewelry, household items, and bank accounts, investments, and other financial assets; all property owned by decedent that is not real property (land and buildings) (see definition below).

Probate

The legal process of proving the validity of a will in court, and handling the estate of a decedent whether there is a will or not.

Real property

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

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

This resource was developed as a collaboration between Vermont Law and Graduate School's **Center for Agriculture and Food Systems**, the **Federation of Southern Cooperatives**, and the **Policy Research Center for Socially Disadvantaged Farmers and Ranchers at Alcorn State University**, with funding from the US Department of Agriculture's National Agricultural Library. This project was led by Francine Miller, Senior Staff Attorney and Adjunct Professor, Center for Agriculture and Food Systems at Vermont Law and Graduate School. Special thanks to Heather Francis, Constantin Mathioudakis, and Suhasini Ghosh for their extensive work researching and developing this resource as student clinicians and research assistants; to Andrew Marchev, legal fellow at Vermont Law and Graduate School; and to Brooke Meadowcraft, student at Wake Forest University School of Law. We thank Amy Pritchard, Esq., for reviewing this report.

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 ARK. CODE ANN. § 28-9-203 et seq. (2019).
- 4 ARK. CODE ANN. § 28-9-209(d) (2016).
- 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 ARK. CODE ANN. § 18-60-1001 et seq. (2017).
- 8 ARK. CODE ANN. § 26-37-107 (2017).
- 9 ARK. CODE ANN. § 26-37-101 (2012).
- 10 ARK. CODE ANN. § 26-37-102 (2018).
- 11 ARK. CODE ANN. § 26-37-301 (2012).
- 12 ARK. CODE ANN. § 26-37-301 (2012).
- 13 ARK. CODE ANN. § 26-37-301 (2012).
- 14 ARK. CODE ANN. § 18-11-106 (2010).
- 15 ARK. CODE ANN. § 18-11-102 (2015); ARK. CODE ANN. § 18-11-103 (2020).
- 16 *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).
- 17 *Mitchell v. Hammons*, 31 Ark. App. 180 (Ark. Ct. App. 1990); see also *Stephenson v. Chadwick*, 1994 WL 571911 (Ark. Ct. App. 1994).
- 18 See G. Alan Perkins, *Rights and Conflicts Among Surface Owners, Mineral Owners and Lessees in Arkansas*, 68 ARK. L. REV. 381, 383 (2006) (noting that the mineral rights owner has implied rights to use the surface to explore and develop the minerals).
- 19 ARK. CODE ANN. § 18-11-105 (2020).
- 20 *Id.*