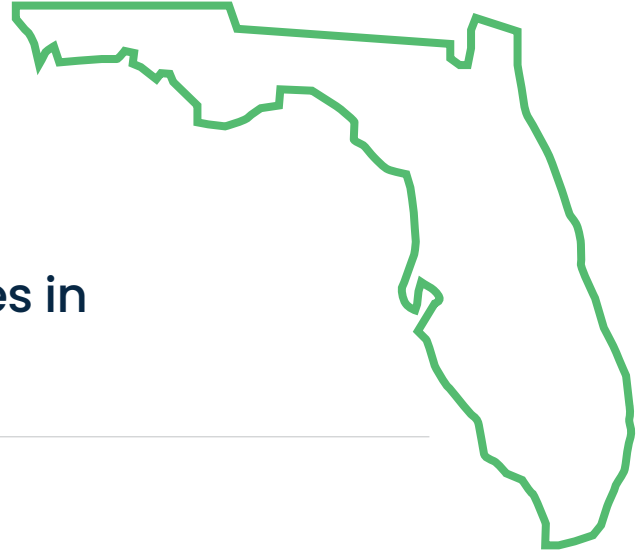


HEIRS' PROPERTY:

Understanding the Legal Issues in *Florida*

By Francine Miller
November 2022



Introduction

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

It also explains relevant legal issues, including:

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

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



For a glossary of legal terms used in this factsheet, refer to page 11.

What is Heirs' Property?

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

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

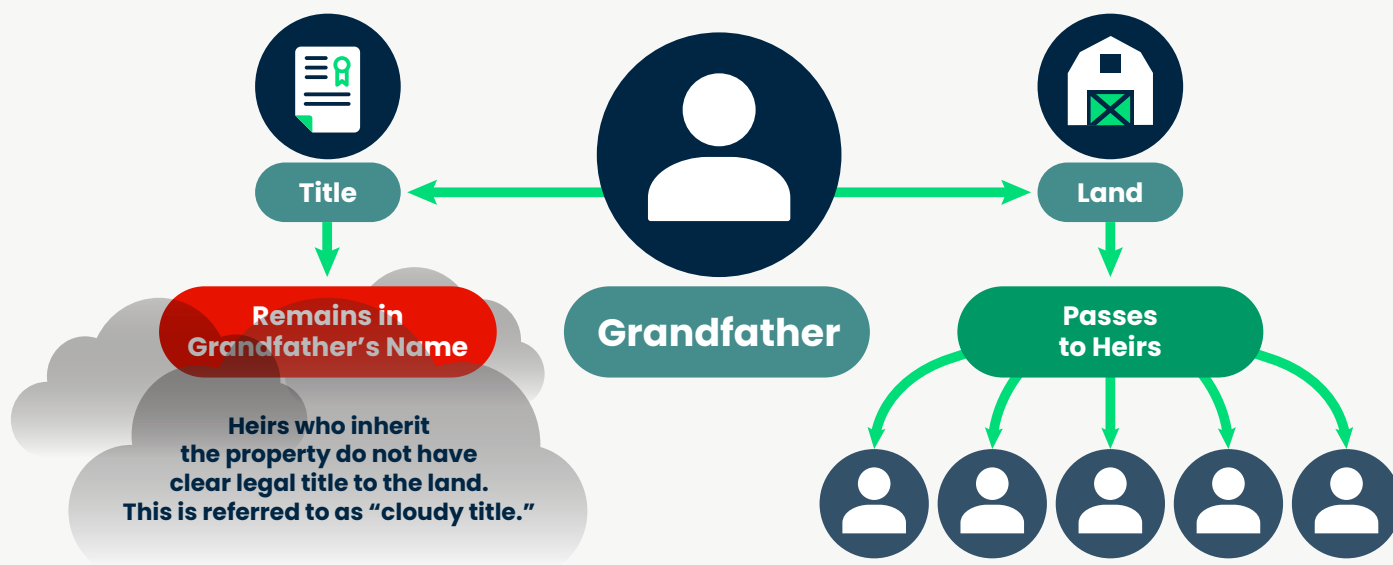
For the heirs, owning property as tenants in common without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, apply for USDA grants or loans, and build wealth from the land by engaging in commercial activity,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



Learn More Using the Farmland Access Legal Toolkit

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

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



Identifying Heirs

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

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

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

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

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

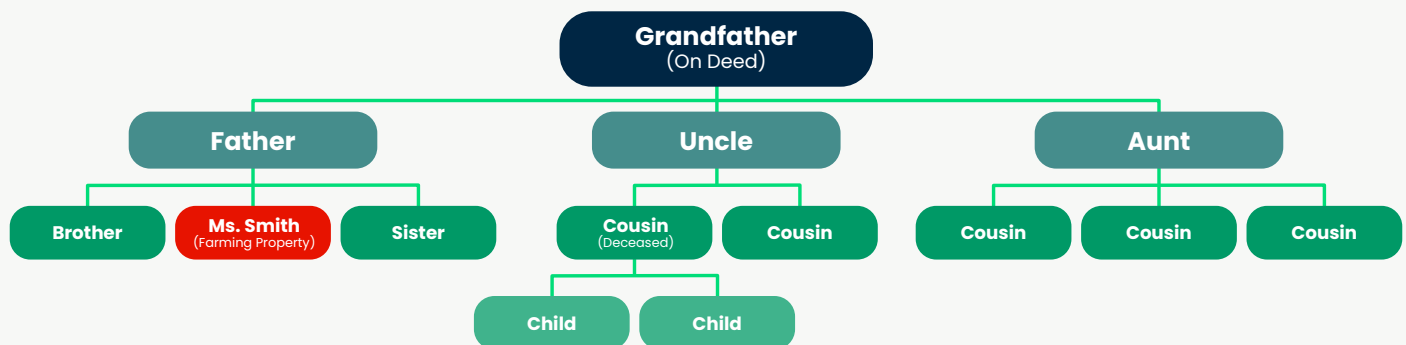


Finding the Family (Genealogy) and Land Records

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

For land records, individuals can go to the property appraiser's office in the county where the land is located to trace land ownership, and to the county clerk of court to review any judgment or probate records regarding the land.

An example of a simple family tree for Ms. Smith



Intestate Succession in Florida³

The following chart describes some of the many possibilities under Florida 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 but no spouse	the children inherit everything
a spouse but no descendants	the spouse inherits everything
a spouse and children whose parents are the decedent and the spouse, and no other children	the spouse inherits everything
a spouse and children that are children of the person who died but not the spouse	the spouse inherits half of the intestate property; children of the person who died inherit the other half equally
parents but no spouse or descendants	the parents inherit everything equally
siblings but no spouse, descendants, or parents	siblings—or if they have already died, their children—inherit everything
children born outside of marriage	<p>if the person who died is the mother, children inherit as normal; if the person who died is the father, children inherit if:</p> <ul style="list-style-type: none"> (1) the father participated in a marriage ceremony, even if it turned out to be void, (2) a court establishes the father's paternity before or after his death, or (3) the father has acknowledged his paternity in writing⁴

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, 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.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, 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.

The UPHPA became effective in Florida on July 1, 2020, 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 Florida, 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 up the title 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. 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 Florida

Each year, unpaid real estate taxes become overdue on April 1. After April 1, the state adds a three percent penalty to the taxes due, five percent on the delinquent amount as a tax collector's commission, plus any additional costs incurred by the tax collector. In May, the tax collector advertises the delinquent taxes in the local newspaper for three consecutive weeks. By June 1, the tax collector is required to hold an auction to sell tax sale certificates for properties with delinquent taxes from the previous year. At auction, individuals or organizations buy tax sale certificates on delinquent property by paying the overdue taxes plus any additional costs and penalties that have been assessed.

Tax sale certificates are a lien on the property that is held by the person who pays the overdue taxes (the "payor")—they do not give the payor an interest in the property. Rather, the tax sale certificates give the payor a legal claim against the property, so that it can't be sold or used as collateral without the payor being notified. Importantly, tax sale certificates generally accrue interest that the property owner must pay to the holder of the tax sale certificates. Consequently, speculators purchase these tax sale certificates as investments because they can earn money by collecting the interest due on the certificates.

Certificate holders can start foreclosing on a property from two years after the taxes become overdue until seven years after the taxes become overdue. To foreclose on the property, the certificate holder must pay the tax collector fees and interest relating to the property. The clerk of the circuit court then schedules the sale of the property at public auction. The highest bidder becomes the owner of the property after having bid at least the amount of the delinquent taxes, costs, and fees accrued. The tax certificate holder has no advantage at the auction; it is open to all bidders.

After purchase at public auction, the purchaser must bring an action to quiet title in the circuit court where the property is located to have clear title. An action to quiet title is a special legal proceeding that puts anyone who has a claim to the land on notice that the purchaser of the property is asserting their ownership. Unless someone comes forward with a claim for the property, the proceeding results in a judgment that gives full, clear title to the purchaser.

Heirs' property owners in Florida who have lost their property due to unpaid property taxes can get their property back—or "redeem" the property—if they pay all taxes and fees due to the tax certificate holder before the property is purchased at auction.⁸



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, land is classified as "agricultural" in Florida if the landowner can demonstrate that it is being used for a "bona fide agricultural purpose," which is legally defined as "good faith commercial agricultural use of the land."⁹

A tax appraiser will consider:

- 1. how long the land has been used for agriculture**
- 2. whether the land has been used continuously for agriculture**
- 3. the purchase price of the land**
- 4. how much of the land is used for agriculture, though there is no minimum requirement**
- 5. whether the land has been cared for in accordance with accepted commercial agricultural practices, including fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices**
- 6. whether the land has been leased, and if so, the terms of the lease**
- 7. any other relevant factors¹⁰**

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:

- 1. Possessing the land openly and visibly, in a way that is clear to everyone that they are acting as if they own it, contrary to the actual owner's rights.**
- 2. Possessing the land continuously and exclusively for at least seven years.**

In this context, "possession" means cultivating the land, fencing all the land, or improving the land in some way such as building structures, planting timber, or other activities that add to its value.

In addition to the requirements above, the person claiming adverse possession must do it either "under color of title" or "without color of title." Adverse possession under color of title means the person must be relying on a recorded written document that they believe shows they are the actual owner of the property. Adverse possession without color of title means the person has filed paperwork with the county tax appraisers within one year of being on the property claiming ownership of the property and has paid all property taxes and fees due for at least seven years.¹¹

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. In Florida, the state, county, municipal governments, administrative agencies such as school boards and the Department of Transportation, and even private companies such as utility companies and railroads, can take private land through eminent domain.¹²

The Constitution of the State of Florida provides that private property shall not be taken by eminent domain "except for a public purpose and with full compensation [] paid to each owner..."¹³ The law includes a process that requires the entity seeking to condemn the property to negotiate in good faith with the landowner. If the parties cannot reach agreement, then they may petition the court for a jury trial to obtain the property. 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.



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 Florida, families can reach out to:

Federation of Southern Cooperatives Mediation Services

Florida field office:

224 NW Hillsboro St.

Lake City, FL 32055

Phone: (404) 765-0991

Fax: (404) 765-9178

Email: info@federation.coop

Website: federation.coop/land-retention

Florida Agricultural Mediation Program Dispute Resolution Education Resources

516 S. Creyts Road Suite A

East Lansing, MI 48917

Phone: (517) 334-0034

Email: resolve@drer.org

Website: agmediation.org

Additional Resources

Organizations in Florida Supporting Heirs' Property Owners

Bay Area Legal Services, No Place Like Home program

Phone: (800) 625-2257

Website: bals.org/volunteer/no-place-like-home

Communities That Care Community Land Trust

6031 NW 1st Place

Gainesville, FL 32607

Phone: (352) 262-9038

Website: communitiesthatcareclt.org

Community Legal Services of Mid-Florida (CLSMF)

Real Property Rights Protection

Various locations

Phone: (800) 405-1417

Website: clsmf.org

FAMU Cooperative Extension College of Agriculture and Food Sciences

Florida A&M University

Room 215

Perry-Paige Building south

Tallahassee, FL 32307

Phone: (850) 561-2190



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

Jacksonville Area Legal Aid

126 W. Adams St.

Jacksonville, FL 32202

Phone: (904) 356-8371

Website: jaxlegalaid.org



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.

Probate

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

Tax lien

A state or local government's right to keep real estate for payment of some debt or obligation.

Tax sale

A legal process used by a county or town to take the property of a landowner who has not paid their property taxes in full and sell it to recover the unpaid taxes.

Tenants in common

People who each own an individual, undivided interest in property (also known as "co-tenants"), but not necessarily equal interests. See the definition of co-tenants, above.

Testate

A person dies "testate" when they have a valid will.

Title

Refers to ownership rights in land. As a legal concept, title exists even without any documents, but a deed is the most common way to determine who has title in land. (See definition of deed, above.) Sometimes a will or an affidavit may be used to document ownership rights.

Undivided interest

An interest in property that is held in common with others in a single property. These interests can be unequal; that is, the value of each interest can vary.

Acknowledgments

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 as well as Legal Food Hub Fellow Andrew Marchev. We thank the following people for reviewing this resource: Jami Coleman, Esq., and Dr. Sandra Thompson.

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 FLA. STAT. § 732.101 et seq. (2020).
- 4 FLA. STAT. § 732.108(2)(a)–(c).
- 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 FLA. STAT. § 64.201–14 (2020).
- 8 FLA. STAT. § 197.472 (2014).
- 9 FLA. STAT. § 193.461(3)(b) (2018).
- 10 FLA. STAT. § 193.461(3)(b)(1)(a)–(g).
- 11 FLA. STAT. § 95.16–18 (1995); Donovan A. McFarlane, *Adverse Possession in the State of Florida: Statutory Analysis and Considerations*, 3 J. CIV. LEGAL SCI. 120, 120 (2014).
- 12 FLA. STAT. § 73 et seq. (1965); *Florida Eminent Domain Law 101*, ANSBACHER L. (May 12, 2017), <https://www.ansbacher.net/blog/florida-eminant-domain-law-101/>.
- 13 FLA. CONST. § 6, art. 10.