Heir Property

In Alabama

Alabama Cooperative Extension System

Alabama A&M and Auburn Universities

HE-852
HEIR PROPERTY IN ALABAMA
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After the Civil War, many African Americans were deeded land by others or purchased land for themselves. Because of laws against teaching slaves to read and write, and later Jim Crow laws restricting access to legal assistance, many landowners did not leave written wills. A tradition of verbal bequeaths remains common today in the African-American community. However, verbal bequeaths are not generally recognized by Alabama law, resulting in what is called heir property – land held in common by the descendants (or heirs) of someone who has died without a will, or whose estate was not offered for probate.

While many co-owners enjoy the flexibility heir property offers and the sense of community it fosters, the title to such property is usually considered clouded. There are a number of disadvantages to keeping land under a clouded title instead of a clear title. Problems associated with holding land as heir property, such as forced tax and partition sales, often lead to non-family members buying the land. Holding land as heir property is one of the leading

*Bold-faced words can be found in the glossary on page 26.
causes of land loss among African Americans.

There are many misconceptions surrounding heir property, and confusion often occurs about who owns what. It is important to be aware of risks involved in heir property, to know your rights as a landowner, and to take the proper steps to protect your land. Heirs have a right to enjoy the benefits of landownership, but they also have the responsibility to ensure that the land is cared for.
The Code of Alabama specifies how *intestate* property is to be distributed if someone dies without a valid will or does not state how his or her property is to be disbursed in the will. If the spouse and children survive the deceased, they acquire the estate. If the deceased is not survived by a spouse or child, other family members are entitled to the deceased’s assets, depending on their degree of kinship. The Code of Alabama also specifies that half-blood relatives (those who share only one biological parent with their siblings) are entitled to receive the same portion of the estate as if they are of whole-blood. The law states that adopted children are treated the same as biological children. It also provides protection for those born out of wedlock (paternity must be established, generally while the father is alive, if the heir is a child of the father), those conceived before the deceased’s death, and those with alien status. If no heir (anyone who is a descendant of the deceased’s grandparents) survives the deceased, the estate is passed to the State.
DISADVANTAGES OF HEIR PROPERTY

Partition Sales. Any co-owner can force a sale to get his or her share.

Tax sales. If taxes are not paid, the government can take the land.

Borrowing. The land cannot be used as collateral or to borrow money from a bank to build a home.

Federal and state funding. May not be eligible for federal funding for housing or repairs. May not be eligible for other programs that require clear title, like weatherization programs.

Timber. Most timber companies will not purchase timber from land without a clear title.

Improvements. Any improvements made to the land (planting trees, making agricultural improvements or building a home) become property of all heirs entitled to the land.

Leasing. It is difficult to lease the land out for agricultural or recreational purposes.
Adverse possession. Someone else can claim ownership of your land, even if he or she has not paid for it, simply by showing possession (for example, by building a fence around your land).

Size of interests. With each passing generation that dies without a will, the number of heirs increases while the size of each person’s interest decreases. It becomes increasingly difficult to physically divide the land into equal pieces among the heirs.

Buying the land. If land is sold, many family members cannot afford to “buy out” other co-owners or outbid developers or real estate speculators.

Joe lives by himself on 100 acres of heir property that had belonged to his grandfather. He pays the taxes and takes care of the land. Joe decided to have some of the timber on the land harvested to earn some extra cash to help with the taxes and upkeep of the property. He contacted a timber consulting firm that had agreed to evaluate the land and prepare the sale. But when the timber buyer conducted a title search of the land, the company discovered that Joe’s name was not on the deed. Joe was a co-owner and would need the consent and signatures of the other 13 heirs. But Joe did not have contact information for many of his relatives, who lived all over the country. Without a clear title, Joe cannot sell the timber by himself.
Heir property, no matter how many people share ownership of it, is always vulnerable to a partition sale. If there is an attempt to divide land among the owners through a “partition in kind,” but a consensus cannot be reached or the land is not suitable for division, the family may be given a chance to purchase the land at its appraised value. Otherwise, the court will order a sale of the land. Co-owners can also initiate a sale. If a co-owner decides to sell your family’s land, he or she does not need your consent or the consent of the other heirs before seeking such a sale. One or several co-owners can sue you and other heirs, forcing a court-ordered sale of land (usually at a fraction of its true value) to the highest bidder. If a family member cannot be reached when a suit for partition is filed, the court will appoint a guardian ad litem to act in the interest of the missing relative.

Family members may be unable to out-bid developers or real estate speculators. Proceeds from the forced sale are distributed among the
co-owners according to their fractional interests, but only after court fees, the costs of conducting the sale (surveying, postage), and attorney fees (usually 10 percent of the final sale price) are deducted. In some cases, developers may purchase a distant relative’s share, then ask to have this share sold—forcing the whole tract of land to be sold.

On page 12 is an example of a family tree and how intestate property originally worth $22,000 might be split up among the living members of several generations.

Sara owns an interest in 70 acres along with her two brothers and three cousins. While Sara sees her brothers regularly, she rarely speaks with her cousins and doesn’t even know where one of them lives. Sara has always lived on the family’s land and, with help from her brothers, she pays the taxes. One day she receives a notice through certified mail that her cousin, who lives up north and has never helped pay the taxes, is suing her and the other co-owners for a partition sale. Sara doesn’t want the land sold, but she does not have the money to buy out her cousin’s interest in the property. She tries to organize her brothers and two other cousins to pool their money, but she is unable to do so in time. The land is sold at the courthouse to the highest bidder—a real estate speculator from out of town. Sara must now move off the land she has always called home.
Land value: $22,000
Court fee: -$700
Expenses: -$1,100
Lawyer cut (10%): -$2,200
Total: $18,000
RIGHT OF FIRST REFUSAL

Alabama is one of few states that have a “right of first refusal” law. This law grants families a right of first refusal if another co-owner forces a sale. In other words, the law requires that if an heir decides to force a partition sale of the whole parcel, he or she must first offer his or her individual share of the property to family members. However, owing to an Alabama Supreme Court decision, the heir who is trying to force the partition sale can also offer to buy the shares of all the other family members, and this will effectively cancel out the family members’ right of first refusal, resulting in a private sale. If family members do choose to invoke the right of first refusal, they are given 10 days before the date of the trial to notify the court of their intention to buy out the heir. If a price agreement cannot be reached, the court will order an appraisal. Family members then have 30 days to pay the amount, plus court fees (including the appraisal). However, the family often may not be able to pay, and the land is sold at an auction.
Managing heir property is difficult because of confusion about who owns what. Sometimes, with so many co-owners entitled to the land, it is difficult to keep track of who is (or should be) paying the annual property taxes on the land. If taxes are not paid, the land may be taken away from the family and sold at a tax sale to make up for unpaid taxes. Co-owners of the land may have trouble contacting one another and organizing to save the property.

In Alabama, property taxes are due on October 1st every year and become delinquent on January 1st of the following year. Interest on unpaid taxes accrues at 1% per month (12% annually), and a fee is charged if taxes are paid late. If someone has failed to pay taxes on property, the tax assessor’s office usually sends out delinquency notices, then puts an ad in the newspaper announcing the delinquency for several weeks. Tax sales of property are then advertised in the newspaper or posted at the county courthouse. Tax sales are usually held in May, and the landowner has until the day before the sale to pay...
the taxes. Once the property is sold at an auction to the highest bidder, there is usually a grace period during which the property can be redeemed. This is known as “right of redemption.” The purchaser, who receives a tax certificate, must pay the taxes on the property for three consecutive years before receiving a tax deed. During this time, the original owners can get their property back, but first they must pay the delinquent tax amount, taxes owed since the sale, late fees, and interest accrued on the property.
BECAUSE THE TITLE IS CLOUDED, DOES OWNING LAND IN HEIR PROPERTY FORM PROTECT IT FROM BEING SOLD OR LOST OUTSIDE THE FAMILY?

No. No matter how many are entitled to joint ownership of the land, even one heir or co-owner can demand that the land be divided or sold. Creditors could also force a sale to collect what they are owed.

WHY CAN’T I GET A MORTGAGE FROM A BANK?

Banks and other financial institutions require collateral to protect them in case loans are not repaid. Through a mortgage, owners transfer the title to the bank. Since co-owners each have an undivided interest in heir property and are not legal owners of the entire property, they cannot transfer the title.
WHY CAN’T I GET HOUSING SERVICE LOANS OR FUNDING FOR REPAIRS ON MY HOUSE?

Government lenders and organizations usually require that you have clear title to your home and land. If an heir property owner makes home improvements, thus increasing the value of the home, any other co-owner can force the land and the home that is built on it to be sold. Organizations don’t want to take the risk of losing their investment through such a partition sale.

Tom and Mary recently moved back to Alabama to care for Tom’s ailing mother. They moved into the home that Tom’s father had built for the family in the 1950s. Although the home was conveniently located adjacent to his mother’s trailer, it was in poor condition—the roof leaked and the floor sagged. Tom and Mary decided to build a newer home for the three of them to share. The couple drove more than 40 miles to the nearest USDA Rural Development office to apply for a loan. But they soon learned that because the land they wanted to build the home on was owned by many people and did not have a clear title, they were ineligible for a mortgage. They then went to a local bank to try to get a mortgage, but were not eligible for that either because they couldn’t use the land as collateral.
THERE ARE 10 ACRES AND 10 HEIRS – DO WE EACH OWN ONE ACRE?

Based on laws of **intestate succession**, all owners each hold a fractional interest in the whole of the estate. If the land is sold, each owner receives payment based on his or her percentage of the property value, but if the land remains undivided, all owners get equal access to the entire property. Because land varies geographically throughout a parcel, it cannot be assumed that each acre is equal in value.

THERE IS TIMBER ON MY FAMILY’S HEIR PROPERTY THAT I WOULD LIKE TO SELL. WHY WON’T TIMBER COMPANIES BUY IT?

Most companies make sure you have a clear title to the land before they harvest timber. Otherwise, if they purchase timber from heir property, but pay only one co-owner, they are liable for failing to make sure all owners were paid.
I LIVE ON THE LAND AND PAY THE TAXES. WHY DON’T I OWN IT OUTRIGHT?

The tax assessor’s office is only concerned about receiving tax payments, regardless of who is making them. Because all co-owners are jointly responsible for making sure the taxes get paid, the assessor’s office assumes that whoever is paying the taxes is doing so on behalf of the rest of the heirs. Heirs who do not help pay the taxes do not give up any rights as co-owners. Those paying the taxes don’t acquire additional property rights.

WE HAVE HAD A SURVEY DONE OF OUR FAMILY LAND – IS THIS CONSIDERED PROOF OF OWNERSHIP?

No. A survey only confirms the physical dimensions of the property. It does not grant ownership of the land to anyone – only a will or deed can do that. However, if you decide to clear the title to your land, or if you have problems with adverse possessors, it is a good idea to have the land surveyed.
TAXES
Visit your county tax assessor’s office and make sure property taxes are paid and up to date. If you are in default, be sure to pay the taxes and any fees and interest you may owe. If you have a dispute regarding the amount of the taxes, first pay them, and then take the steps to appeal the bill. Also, make sure the tax assessor’s office has the current address of the person who will keep track of taxes.

LAST WILL AND TESTAMENT
Leaving a will prevents the formation or further division of heir property. Even if your share of property is undivided, it is important to leave your interest in a will to whoever you would like to receive it. This prevents further division of interests and, when steps are taken to clear the title, the search will eventually reach your descendants, who will receive their due. The Alabama Area Agencies on Aging draft wills for free for anyone older than 60. See Contact Information at the end of this booklet.
EXPENSES
Keep track of all expenses related to the property. This includes taxes paid, landscaping, or any improvements to structures or the land that would increase the property’s value. If a partition sale is forced, you may be entitled to a larger share of the proceeds.

FAMILY TREE
Construct a family tree. Figure out whose name is on the deed and fill in each succeeding generation, including dates of deaths. Legal documents, such as birth and death certificates and marriage licenses, can be used to help construct a family tree. Family bibles, letters, diaries, funeral programs, obituaries, genealogy Web sites, and family reunions are also good sources of information.

LEGAL ASSISTANCE
If your land is being threatened, get a lawyer. While many cases can be settled out of court, few can be settled without a lawyer. A lawyer can make sure your rights as a landowner are being protected and can help you decide which option is best for your family. Some organizations, like Legal Services Alabama, provide free legal services for qualified low-income residents. See Contact Information at the end of this booklet.
Clearing an heir property title usually requires a lawyer to help draft documents, determine who the heirs are and the size of their fractional interests, and coordinate communication with family members. Once you have decided to clear a title, consider the following ownership options through which the land is not sold.

Families with a clear title can choose to own the land individually or as a separate legal entity. Each option presented below has advantages and disadvantages. All require performing a quiet title action to determine who the heirs are and to make sure there are no outstanding claims to the land. Before deciding which option is best for your family, it is a good idea to contact as many heirs as possible, get everyone’s input, and consult an attorney.
PARTITION IN KIND

This is a legal process through which land is physically divided up among co-owners based on fractional interests. After the land is surveyed, property lines are drawn for each person. Each co-owner then receives an administrator’s deed for his or her portion of the land. Partitions in kind are performed under a written agreement that is signed by all of the co-owners and is filed and recorded in the local courthouse. In the agreement, each subdivided parcel is described. Partitions in kind may be done by court order if an heir petitions the court to divide the property.

ADVANTAGES. Because each person has a clear deed to his or her portion of the land, each can develop it in any way. Each person can get a mortgage, harvest timber, and may be eligible for housing programs and funding that require a clear title.

DISADVANTAGES. Because each person has a deed, each has the option to sell his or her land and does not need the consent of others to do so. Family members do not have a say in who buys the land, how it is managed, or whether it stays in the family.
FAMILY LAND TRUST

Through a family land trust, co-owners form a trust. A trustee, who may or may not be a family member, is designated and makes decisions regarding the property on behalf of and for the benefit of the beneficiaries (the remaining family members). Because the trustee holds the title to the land and it is not divided among heirs, the title remains clear. Although the beneficiaries may change as families expand or heirs die, the land remains the property of the trustee, and there is no confusion about who pays the taxes and is responsible for maintenance. These responsibilities are stipulated in the trust agreement. The trust agreement also specifies how any income generated by the land is to be disbursed.

ADVANTAGES. Because the title is clear and the trustee holds ownership of the land, it is less likely to be sold. The property may be preserved a lot longer than it would be if it was divided up.

DISADVANTAGES. There may be restrictions on how the land is to be managed or developed. It is important that the donors take care in selecting a trustee and in deciding what the trust allows for.
LIMITED LIABILITY COMPANY (LLC)

Existing family members form such companies. The family owns the company, which owns the land. The articles of organization, which are filed with the Secretary of State, specify how many votes each member is entitled to and how profits are to be distributed. The LLC can develop the property any way it wants – it can even build condominiums that could generate ongoing revenue for the family. Family members can choose to sell their interests, but only to the company or other family members.

ADVANTAGES. The requirements to create limited liability companies are less complicated than those placed on corporations. Because the company has limited liability, members are protected from actions and debts incurred by the company.

DISADVANTAGES. Alabama levies an annual “privilege tax” on limited liability companies – a fee paid for the benefit of limited liability. LLCs also have to file separate tax returns.
Administrator’s deed: Deed drawn up by an administrator (appointed by the probate judge) for land left by someone who has died intestate.

Adverse possession: Process through which someone acquires property without paying for it, usually by occupying it exclusively, openly, and continuously (for example, by building a fence around the land).

Clouded title: An encumbered land title, or one with an outstanding claim (for example, land with a lien against it or for which ownership is not documented).

Co-owner: Someone who shares ownership of something with one or more other people.

Guardian ad litem: Someone appointed to make decisions on behalf of a minor, an incompetent person, or an absent party.

Heir: One who is entitled to inherit the estate of someone who has died with or without a valid will.

Heir property: Land that is held as an undivided interest by the descendants of a landowner who died without a will or whose estate was not probated.
**Intestate**: To die without a valid will.

**Intestate succession**: How property that belonged to someone who has died without a will is disbursed.

**Partition sale**: Forced sale of property held communally by more than one owner; each owner receives a portion of the money collected by the sale, based on his or her interest.

**Probate**: Court process through which a will is proven valid and the estate is administered according to the terms of the will.

**Quiet title action**: Court proceeding involving property issues, which can be used to identify heirs and “quiet” any claims or challenges to a property title.

**Tax deed**: Deed issued by the court transferring a title to someone who has purchased land at a tax sale.

**Tax sale**: Court-ordered sale of land to make up for unpaid taxes on the property.

**Title**: Legal evidence of a right to a property.
CONTACT INFORMATION

Area Agencies on Aging (Call 800-AGELINE)

Alabama Tombigbee Regional Commission
107 Broad Street
Camden, AL 36726
(334) 682-4234
(888) 617-0500
Counties served: Choctaw, Clarke, Conecuh, Dallas, Marengo, Monroe, Perry, Sumter, Washington, Wilcox

Central Alabama Aging Consortium
818 South Perry Street
Suite 1
Montgomery, AL 36104
(334) 240-4666
(800) 264-4680
Counties served: Autauga, Elmore, Montgomery

East Alabama Regional Planning & Development Commission
1130 Quintard Avenue
Suite 300
Anniston, AL 36202
(256) 237-6741
(800) 239-6741
Counties served: Calhoun, Chambers, Cherokee, Clay, Cleburne, Coosa, Etowah, Randolph, Talladega, Tallapoosa

Lee-Russell Council of Governments
2207 Gateway Drive
Opelika, AL 36801-6834
(334) 749-5264
(800) 239-4444
Counties served: Lee, Russell
Middle Alabama Area Agency on Aging
15863 Alabama Highway 25
Calera, AL 35040
(205) 670-5770
(866) 570-2998
Counties served: Blount, Chilton, Shelby, St. Clair, Walker

Office of Senior Citizens Services
2601 Highland Avenue
Birmingham, AL 35205
(205) 325-1416
County served: Jefferson

North Central Alabama Regional Council of Governments
P.O. Box C
216 Jackson Street
Decatur, AL 35602
(256) 355-4515
Counties served: Cullman, Lawrence, Morgan

Northwest Alabama Council of Local Governments
P.O. Box 2603
103 Student Drive
Muscle Shoals, AL 35662
(256) 389-0500
(800) 838-5845
Counties served: Colbert, Franklin, Lauderdale, Marion, Winston

South Alabama Regional Planning Commission
P.O. Box 1665
110 Beauregard Street
Mobile, AL 36633
(251) 433-6541
Counties served: Baldwin, Escambia, Mobile

South Central Alabama Development Commission
5900 Carmichael Place
Montgomery, AL 36117
(334) 244-6903
Counties served: Bullock, Butler, Crenshaw, Lowndes, Macon, Pike
Southern Alabama Regional Council on Aging
P.O. Drawer 1886
230 N. Oates Street
Dothan, AL 36302
(334) 793-6843
(800) 239-3507
Counties served: Barbour, Coffee, Covington, Dale, Geneva, Henry, Houston

Top of Alabama Regional Council of Governments
5075 Research Drive NW
Huntsville, AL 35805
(256) 830-0818
Counties served: DeKalb, Jackson, Limestone, Madison, Marshall

West Alabama Regional Commission
4200 Highway 69 North Suite 1
Northport, AL 35476
(205) 333-2990
(800) 432-5030
Counties served: Bibb, Fayette, Greene, Hale, Lamar, Pickens, Tuscaloosa

Federation of Southern Cooperatives/Land Assistance Fund

Administrative Office
2769 Church Street
East Point, GA 30344
(404) 765-0991

Membership Office
302 Main Street
Tuskegee, AL 36083
(334) 724-0090

Rural Training and Research Center
P.O. Box 95
Epes, AL 35460
(205) 652-9676

Legal Services Alabama

Anniston Office
1911 Noble Street
Anniston, AL 36201
(256) 237-3615
(800) 884-0595

Birmingham Office
1820 Seventh Avenue, North
Birmingham, AL 35203
(205) 328-3540
Dothan Office
1415 Honeysuckle Road
Suite 2
Dothan, AL 36305
(334) 793-7932
(800) 701-0926

Florence Office
102 South Court Street
Suite 404
Florence, AL 35630
(256) 767-2020
(800) 467-3150

Huntsville Office
2000-C Vernon Avenue SW
Huntsville, AL 35805
(256) 536-9645
(888) 741-7129

Mobile Office
107 St. Francis Street
Suite 2104
Mobile, AL 36602
(251) 433-6560
(800) 403-4872

Montgomery Office
207 Montgomery Street
Suite 1200
Montgomery, AL 36104
(334) 832-4570
(800) 844-5342

Opelika Office
3320 Skyway Drive
Suite 711
Opelika, AL 36801
(334) 826-6828
(800) 331-5826

Selma Office
801 Alabama Avenue
Suite 250
Selma, AL 36701
(334) 872-1355
(800) 644-6028

Tuscaloosa Office
2315 9th Street
Suite 3A
Tuscaloosa, AL 35401
(205) 758-7503
(888) 440-3256
The Alabama Cooperative Extension System does not guarantee any of the services provided by the organizations mentioned herein.

**DISCLAIMER**

This booklet is to provide heir property owners with basic information on landowner rights and responsibilities. It is not a replacement for legal advice or assistance.

The research for this booklet made possible by USDA-CSREES NRI Grant No. 2005-00711.

This booklet is funded by the Alabama Agricultural Initiative on Natural and Human Resources Program of the Alabama Cooperative Extension System.