



## Season 1 Episode 2 — Understanding the Uniform Partition of Heirs Property Act: Part 1

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Jamie Mardis

Your live with “On the Heir”, where the airwaves are buzzing with stories of land, legacy and lineage. I'm your host, Jamie, and today we're diving into the legal landscape of family land in Alabama. Because managing inherited that land here comes with its own set of rules. Whether you've inherited farmland or forest land. We'll break down Alabama's laws, your property rights, and strategies to protect and preserve your family land.

Jamie Mardis

So, get ready to groove with us as we explore the complexities of land ownership in Alabama. To recap from last week, Heirs Property is like a family jam session where everyone's playing their own tune, but no one knows who's in charge. This can lead to some messy legal situations, especially in Alabama, where state laws on inheritance can make things even more complicated.

Jamie Mardis

But we're here to break it down and show you how to get everyone playing that same song. In Alabama, If there's no will, inheritance follows the state's intestate succession laws. It's like a radio station without a



program schedule. Everyone's tuning in at different times, and the signal can get messy fast. This means the state will decide how your property is divided among your family instead of you.

Jamie Mardis

So how do you harmonize all of this? One of the best strategies is to formalize ownership through legal tools like family agreements or land trust. Yes, that means you have to talk to your family. These agreements are like setting the rules of the jam session. Everyone knows their role and you avoid conflict. In Alabama, these legal tools help clarify responsibilities and give you a structured approach to managing the land, whether it's farming, forestry, or just keeping the family's legacy intact.

Jamie Mardis

It's all about understanding your property rights. In Alabama, Heirs property owners have rights like other landowners, but without a clear deed, it's tricky to navigate. That's where lawyers who specialize in heirs property law come in. They can help you get everything in sync, whether it's avoiding partition actions or figuring out who gets to make decisions about the land.

Jamie Mardis

Don't worry, I got your back. With plenty of resources available in Alabama for heirs property owners, the Alabama Cooperative Extension System offers workshops on estate planning and property management. Kind of like music lessons for your land and the Alabama Heirs Property Alliance, or AHPA, is there to help you navigate legal, financial, and management challenges so you can keep the groove going for generations.

Jamie Mardis

I'm thrilled to be joined by Katie Keown, an agricultural law expert, to help us unpack the important legislation. Katy, welcome to the show.

Katie Keown

Hi Jamie, thanks for having me. I'm Katie Keown. I am an agricultural lawyer by training. I don't practice right now, but I am teaching Ag Law at Auburn University, and I help out the extension with research and writing and some presentations surrounding the Heirs property program, and I'm happy to be here. Thanks.

Jamie Mardis

Awesome. Well, let's start with the basics. What is the Uniform Partition of Heirs Property Act and why was it created.

Katie Keown

The Uniform Partition of Heirs Property Act, or its acronym UHPA, which is a lot easier to say. Is a law that addresses how to handle partition sales of property that is owned by heirs. And we'll talk a little bit about why that's a problem. But it's been adopted in 25 states so far, including Alabama. And it's been introduced in two more.



Katie Keown

And it preserves the rights of owners, of heirs property by putting in place some due process protections and requirements that come into play in the case of partition actions, or when someone tries to sell off property that is owned by multiple people in common. To kind of understand what it does and why it was passed. Let's go through the definition of what heirs property is.

Katie Keown

Heirs property is the legal terminology for a land that's owned by multiple people at one time, who are all generally related. One family, that's been passed, the property has been passed down through generations, inherited either through intestacy, where the original owner did not have a will in place or the owner had a will that wasn't properly probated, or a will that left everything and all the property to all of their heirs equally.

Katie Keown

Those are the three main ways of creating heirs property. And the problem comes in because when property is owned in this manner, it's called tenancy in common. And all of those heirs that own it together all own an equal share of the whole property. They don't own like if you have 100 acres, it's not like if you have a quarter interest, you don't own 25 acres, you own a quarter interest in the whole 100-acre property.

Katie Keown

Given that all of the heirs have the same rights and responsibilities but also profits made off the land have to be shared between the heirs and owners, based on ownership and also any decisions that are made as to what to do with the property, you know, put a mortgage on it, use it for growing crops or timber.

Katie Keown

Big decisions like that have-to-have consent of all of the heirs. And when you have a big family or a family that doesn't generally get along very well, you can run into issues with that consent issue. This leads to problems when predatory investors and developers find this type of land or land that's owned as heirs property, and they find a way to buy a portion by a share, and when they own a share, they can partition to have the property sold so that they can buy out the whole property, or they can sell their share and pocket the money, that kind of thing.

Katie Keown

There's also a problem with heirs property, and that some heirs may not even know that they own property, and they would be interested if they did know, and without notice. If a sale like that were to happen, they would have no way to know that they even had an interest and they had rights in the property.

Katie Keown



So the UPHPA protects those rights, and it makes sure that the heirs that own the property get fair value for their land if it comes to sale, and it provides avenues for them to do it fairly and aboveboard so that they can enjoy the benefit of their property without having it taken from underneath them through partition sale.

Jamie Mardis

Gotcha, so what specific problems does this address for heir property owners?

Katie Keown

Well, this act specifically addresses when there is a potential sale of the property. Some issues that arise with heirs property is the difficulty with getting funding, in the form of mortgages, or using the property as other collateral to borrow against, and also applying for financial assistance programs, such as under the USDA, getting FEMA disaster relief. Used to be a problem as well.

Katie Keown

The main problem that the UPHPA addresses is to protect those rights of the heirs. Specifically, when there is a partition action filed. Now, there are two different types of partition actions that can be filed in the state of Alabama. The first is called a partition-in-kind. A partition-in-kind involves a distribution of property sales so that each owner has their own interest.

Katie Keown

So, this means actually cutting up the property physically to represent each partition share. And everybody gets their own piece of the property. The other type of sale is partition by sale. And this involves a sale of the entire property. And then the proceeds of that are divided amongst the heirs, owners. According to their interest.

Katie Keown

And the problem with that is that if someone who is either outside the family comes in and is able to get one of these shares, whether it's by partition-in-kind or partition by sale, they can buyout the rest of the family. What the UPHPA does is, in that situation or in a situation where another family member wants to sell the property, say they are removed from the situation, they don't have the sentimental ties to the land.

Katie Keown

And they would rather have the cash. So, they file a partition for sale. The UPHPA requires certain things to happen before that sale can just take place. This includes enhanced notice requirements. So once a partition for sale is filed, all of the heirs, all of the property owners must receive notice. And this includes requirements like there must be a sign conspicuously on the property, that can be seen from the road.

Katie Keown

They have to serve all of the heir owners, with service, individually. It also and there are time restraints with that. The initial notice requirement is within 30 days of filing that, sale request. Another way that it protects



from this property being sold or, the family being stripped of their ownership is that it requires independent appraisal.

Katie Keown

So, before the act, a lot of times these properties were sold on the courthouse steps for whatever the bidder would pay. And sometimes that was, well, well below the actual fair market value. This type of sale really undercut the value of property that was owned by heirs property, which is another problem that the FBA helps families who own heirs property out with is it actually sets the value of the property at fair market so that they can't be undercut.

Katie Keown

It also requires a right of first refusal, to be granted to the family, the heirs that own the property. So that situation where the land can just be bought out from under them, just because they don't have the money or that they don't have the notice, that can't happen under the UHPA because right of first refusal, it means that the family has the first chance to buy it, or buyout whoever has, filed for the sale action.

Katie Keown

And there is a preference for partition-in-kind under the UHPA where the law is going to prefer that that partition-in-kind happens where the land is divided up and each of the owners get their share of the land, whereas partition by sale would just be the whole piece of property was divided and or sold off, and then the heirs only get the money amount.

Katie Keown

In addition, it will require the UHPA will require the property to be sold on open market instead of, you know, behind the scenes, just as a quick courthouse steps kind of sale where, you know, only people who know about the sale can come in and buy it, if it's posted on the open market that way more buyers can see it that would be able to or want to buy it for closer to the fair market value, instead of undercutting the price as it would have without the act.

Jamie Mardis

As you mentioned, Alabama is one of the states that has adopted the Uniform Partition Act. Can you walk us through how this act is applied in our state?

Katie Keown

Yes. In Alabama, that is it's a federal, uniform act. So that means that Congress has developed this act that all states can adopt. And that's what Alabama did. They pretty much adopted it just as it was. So, in Alabama, we just talked about some of the requirements that happen, or that have to happen.

Katie Keown



But basically, in Alabama, each of the partitioned the partitioner who is partitioning for the sale. It's their burden to make sure that all of these things happen. All of that responsibility falls on the person who is requesting the sale. It starts with that initial sale pleading that you have to file in court. And once this pleading is filed in court in the county where the land is located, then that notice will be required, to all of the heirs property owners, if there are unclockable or unknown heirs, a guardian ad litem will be, appointed, to protect their interest under the UHPA.

Katie Keown

And that further protects those interests of heirs who either may not know that they own it or are so far removed that they're not involved with it anymore. The partitioner has those 30 days to send that notice to the heirs. After that, and this has a 30-day deadline to, any co-tenant, any of the heirs that own the property can partition the court and say, no, no, no, I want to buyout this property.

Katie Keown

I want to keep it in the family. And they have that first right of refusal. So, within 30 days of receiving that notice, if they want to buy it, they can also partition the court to say, okay, there's a partition out there to for sale. But no, I want to exercise my right of first refusal as an heir owner.

Katie Keown

So once that happens, if so, if one of the heirs doesn't step up to exercise their right of first refusal, then a fair market value appraisal is done. And this appraisal will determine the value of the property based on an actual walkthrough and comparison to comps in the area and things like that to determine what it should actually be sold for to benefit the owners when that valuation is done

Katie Keown

that's another thing that the UHPA requires to be sent out to all of the heirs, and they have to be notified of that as well. Also, throughout the UHPA process, there are hearings, where, you know, the representatives or, you know, all the heirs can also come, they require hearings so that all of the interest can be heard in court and that there's a record, to protect everyone's rights.

Jamie Mardis

This has been such a great conversation, Katie. We've covered a lot of ground, but for the sake of time, we'll have to hit pause for today. Don't worry, though, listeners, part two of our chat will be coming your way in the next episode. We're just getting started so stay tuned.

Jamie Mardis

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Jamie Mardis

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