



## Season 1 Episode 3 — Understanding the Uniform Partition of Heirs Property Act: Part 2

**May 29, 2025**

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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 back into our conversation with Katie Keown discussing the uniform partition of Heirs Property Act. If you're just tuning in, you're in for more of that great conversation with Katie. We're picking up right where we left off, so let's dive back in, keep the momentum going.

Jamie Mardis

You spoke a little bit about a guardian ad litem, for our listeners, can you just briefly give us a definition of what that is? Is that just someone that comes in as, like a guardian for an heir that maybe is not 18 yet? Or how does that work?

Katie Keown

Yes. That can be one of the jobs of a guardian ad litem. Basically, a guardian ad litem is someone who protects and represents the interests of someone who can't represent themselves. Okay

Jamie Mardis

Awesome, what typically happens when there was a disagreement among heirs about how to manage or divide the property.

Katie Keown

Generally, before this act. It was a courthouse steps kind of sale. Like we talked about, a developer could come in and buy a small interest in the property, and just because he had some interest, he could file a partition. That's a point that I need to highlight, is that anybody with an interest in ownership in the property can file a partition for a sale.

Katie Keown

So, before the UPHPA, there were none of these protections. So this happened a lot where people would prey on, you know, heirs that had moved across the country or they're far removed from the property so that they don't have those sentimental ties or they also look for heirs that may be financially vulnerable and that might, you know, rather have the cash, instead of the interest in the property.

Katie Keown

And they would literally go and look in the obituaries and things like that to see if they could find who these owners were and, and to see if they could buy these properties for real cheap. And that became a problem. And it led to a lot of land loss, a lot of real legacy land loss.

Jamie Mardis

Katy, I'm so glad you touched on land developers and a little bit on land loss. One major concern for many heirs property owners is the possibility of forced sales. How does this act help protect families from losing their land in this way?

Katie Keown

Well, in addition to the protections that we just talked about and the additional due process requirements, that protect their rights as potential buyers and heirs of owners, it levels the playing field. I'll put it that way. Of, between the heirs who actually own the property and this property that's been in their families for generations and generations.

Katie Keown

It protects them against parties who have potentially stronger buying power, stronger political influence. Things of that nature. It helps bolster the rights of the families who owned this type of land and makes them a more equal party to anyone who might want to buy the land for other purposes. Because a lot of the purpose of the UPHPA was to keep land in families, and the law really favors transition and sale of land.

Katie Keown

And this scaled that back a little bit because before the UHPHA was enacted, a lot of the highest and best used valuations of land were to sell it to a developer and, you know, put high rises or put a condominium development or subdivision on it. And that would be the economic and financial highest and best use. But to these families that own this property, their highest and best use is whatever the family wants to do with it.

Katie Keown

You know whether it's a recreational land that the family gets to come together and spend family time together. Or if it's used for farming or timber to, you know, make profit for the family and that's their livelihood. So, it gives that weight as opposed to just the economic value. One of the big changes was when there is a forced sale.

Katie Keown

And let me clarify. The UHPHA applies to sale of land. If that happens, the UHPHA is like the last-ditch effort. You don't want to go to court. You'd rather get with a family to negotiate and compromise on a better situation for everybody before you have to pull the cord into things. So, with that clarified, when it comes to that forced sale, whether it's brought upon the family by an outside potential buyer or by one of the heirs on the inside, this is like the last-ditch effort.

Katie Keown

If you are an heir that has sentimental ties to the property, you are. You have an interest in it, either in a business from a business perspective, use the land, as a farm or recreation. It gives you a way to keep the land in the family and potentially remove it from this heirs property situation. Whereas before, the UHPHA was passed, it was a lot easier to just have your land pulled out from underneath you by a developer or someone who just wanted to sell the land for the cash.

Katie Keown

And I think that was the main, the main reasoning behind this act.

Jamie Mardis

Are there any specific steps that heirs property owners need to take to ensure they're protected under the Uniform Partition Act?

Katie Keown

Like I said, the UHPHA is kind of your last-ditch effort. You're going to you're going to get there when it's dire, when the situation is pretty dire. There are many things you can do before it gets to that point. The best piece of advice is to have an estate plan. And that estate plan needs to be well drafted.

Katie Keown

Because as we talked about, a poorly drafted will can still create heirs property. Just because you have a will doesn't mean you're not creating heirs property. So, what you don't want to do is leave property that you do

have, to all of your heirs and equal shares. That's exactly what we're talking about. That is heirs property that's tenancy in common.

Katie Keown

You want to do something like, you know, if you know that one of your sons or daughters is really interested in the property and they would care for it, and they would continue on this legacy that you have created with this property. Leave it to them. Things that can also be done. Utilize tools like deeds, with joint tenancy, with right of survivorship.

Katie Keown

Say a husband and wife own it. If the wife predeceased the husband, her ownership interest will automatically transfer to the husband. So, it consolidate that ownership that is otherwise going to be fractionated and diminished, among multiple people, if you just let it go down through heirs property. The reason you want to have a good estate plan is because if you let property transfer under intestacy law, which in Alabama, if you die without a will, intestate, the law gets to decide where your property goes.

Katie Keown

Most of the time that is not practical. And that's not what the owners intention is. So, it's a lot better to write down in your will exactly what you want to happen to the land and make sure that it's not going to end up fractionated and vulnerable to outside parties coming in and buying up shares, or from an heir that may not have the same attachment or interest in the property as other heirs.

Katie Keown

Another thing that folks can do to protect against heirs property is to go ahead and make a family tree. Know who potential heirs are. Know who you are a potential heir of. Go back and do some family history. Figure out who your relatives are. Figure out you know, did great great grandmother owned land and did she have a will?

Katie Keown

Did she not have a will? Because when you go, if you end up in a situation where you have heirs property, the first time you talk to an attorney about it doesn't need to be when you find out about a UHPA filing. Because the first thing they're going to ask for is a family tree.

Katie Keown

And how do you know you're an heir? Can you show me? You know how this property came to you? So. Yeah. Get to know your family.

Katie Keown

And the other one of the most important things you can do is which kind of goes along with the know who your family is. Know who owns the property. Make sure the taxes are paid. Tax sales are another type of forced sale. The UHPA is applied to those a little differently. The tax office has a little more, traction when it comes to

those, but a lot of land is lost to tax sales just because heirs didn't know who was paying the taxes, or they didn't know who was supposed to be paying the taxes, or they didn't realize that no one was paying the taxes.

Katie Keown

And it went to tax sale. So that's another good way to protect it from ending up in these forced sale situations is to either, you know, go on your county tax assessor's website and see who they have listed as the person who should be paying the taxes. And if you see that the taxes are delinquent, either contact that person and say, hey, like we need to get this done, or there's steps you can take to become the person who is responsible for that.

Katie Keown

If you are a responsible person and wants to take on that. Who wants to take on that role. So, taxes are very important.

Jamie Mardis

Now let's just say, hypothetically speaking, my grandmother left this land to all of us, but I'm the more responsible when or so I think. So, I pick up the taxes. Do I own more stake in this land than any other heir?

Katie Keown

Unfortunately, no. Taxes? That's a common misconception that if you pay the taxes on a property that that conveys ownership. This is unfortunately just not true under the law. The ownership structure is what it is. And whoever pays the taxes just determines whether the taxes get paid or not. I will say that if you do pay taxes and you are involved in a UHPA; a court must take into account additional factors, to determine whether the property gets sold to either the third party or the partitioner.

Katie Keown

And one of those includes, you know, is someone taking care of the property or are you using it? Who is who is paying the taxes? Are they active? Do they have an active role in taking care of the property? Keeping it up. Making sure the taxes are paid. In addition to that, the court has to take account.

Katie Keown

Take into account things like sentimental attachment. Does grandma live there? Does the family meet there for family reunions? Reunions every year? Is this property historically significant? And before the UHPA, all they would look at was financial, economic value and highest and best use. So yes, if you're the responsible party, that will give you a leg up in the case where it's gotten to the point of a forced sale and you're having to deal with the UHPA process.

Katie Keown

Unfortunately, it won't convey ownership.

Jamie Mardis

So, for families who are just beginning to address heirs property issues, how important is it to seek professional advice early, be it legal or to seek additional resources, is before going to see a lawyer, you know, how can they get started?

Katie Keown

It is very important. I think that anyone who is a property owner, whether it's heirs property or not, and really, even if you're not a real property like landowner to at the very least go to an attorney and get a will done, get an estate plan put together. And that's even more important for people who have found out that they are heirs property owners, or that they're going to be dealing with heirs property.

Katie Keown

Because a lot of it is very technical. Like the UHPA, we touched on very surface level things. When you actually get into the litigation side, it's it goes very deep. It's a very dense piece of litigation, legislation. And it's important that you talk to people who know the technicalities. So, talk to an attorney, talk to a financial planner.

Katie Keown

If that's part of your plan, and it's good to seek advice early because the earlier in the process that you seek help and that you kind of figure out where you are and what you can do, the easier it's going to be to deal with. You know, like I said, you don't want to be the first time you talk to an attorney.

Katie Keown

Be the day that you received notice of a UHPA sale. You want to be proactive about that? And one thing that I do want to say here is an heir is someone who is an actual owner. So, the previous owner has already passed away. That's the only time when you are an heir. When you have inherited from the person before you who's gone before you.

Katie Keown

So, it's very important to talk to professionals who know the technicalities so that you can focus on what's important, what you want to do with the land, your intentions, you know, and figure out your family's situation. And I think the easiest way to get started would be to call somebody like the Alabama Heirs Property Alliance. I'm part of the alliance.

Katie Keown

Jamie's part of the alliance.

Jamie Mardis

I'm part of the Alliance.

Katie Keown

So, we have lots of resources to point you in the right direction. We're kind of like a we are a starting point for people who are just starting to figure this heirs property thing out. And we can help you determine; do you need to seek an attorney? Do you need to do your own research first? You know, we can help you with your family tree.

Katie Keown

We can help you with your, you know, figuring out who owns the property, figuring out if you are an heir yet. That question. So, I would definitely encourage seeking help that way.

Jamie Mardis

And now we've talked about all of these wonderful things that this act is doing your has done to protect family property. But what are some limitations of the act? And are there areas where the heirs where heirs property owners should be cautious?

Katie Keown

Yes. The UHPA has been a wonderful addition to the heirs property, legal structure, but it does have its limitations. Probably the biggest one is that it doesn't stop a forced sale. It doesn't stop land loss. You have to be in a situation where someone has already found your property. Someone has already filed the partition to sell it.

Katie Keown

So, it can't do the things that a properly drafted estate plan would stop. It can only help protect you through that process. So, on the other side of that, it can only protect so far. There is that right of first refusal for the heirs. But unfortunately, if they don't have the money to buy out the sale, or if they don't, you know, if nobody steps up to exercise that right of refusal, then the sale is going to go through.

Katie Keown

Even though there are all these protections, you're not going to get, you know, if selling the land, if it comes to that, even with the fair market value appraisal and the open market sales, you may not get as high of a price for it as if you just listed it with the realtor. Which, if we're in this situation that usually wasn't the intention anyway.

Katie Keown

Another limitation and I, I can say this about Alabama, I don't know if it works this way in other states, but,

Katie Keown

We've had this for ten years now, this UHPA in Alabama. But a lot of people still don't know about it. And up until recently, there had been no formal training, of lawyers or judges. Usually, the state bar takes that on. And this law just somehow didn't get publicized very much. Since then, we've had some CLEs and, some outreach and things like that.

Katie Keown

But that's something that people need to be very careful of is if you get an attorney and you're in these UPHPA litigation, make sure that they are applying the new statute, the UPHPA, and not the old, Alabama Partition Act. And not to say that there's any ill will or that they're not doing a good job, it's just that they may not know about it.

Katie Keown

They may have never handled one of these cases before. And it does happen where you even get in a courtroom and a judge doesn't know about it. And it's as an attorney, it's my belief that it's the attorney's job to inform the court of what the law is and how your case applies to it. And if no one's ever brought a case like this and in that specific judge's courtroom, then there may be no reason for them to know about it.

Katie Keown

So that's another thing to be careful of, is just to make sure when you're when you're searching for an attorney to represent you in these situations, make sure they have experience with this, or they know it's out there and they know resources to go learn about it. Another limitation, and this is what happened in the famous case of Miss Karen Woodson in Lee County.

Katie Keown

That was kind of the bellwether case for, for bringing this all to the forefront, actions which were brought before the UPHPA was passed will still operate under the old law. So, an action for sale has to be brought after 2015, for the UPHPA to apply because it doesn't have a look back clause. It only applies to those actions filed after 2015 when it was enforceable.

Katie Keown

So that unfortunately cuts out a number of cases and that will be operated under the old law. But that's something to watch out for as well. And as we go forth in time, that should become less of a problem as because new cases will operate under the new law.

Jamie Mardis

Now for our listeners who may want to learn more about this act or need any additional resources, what are some resources or organizations you would recommend?

Katie Keown

I first, would recommend the Heirs Property Alliance, in Alabama. This is a group that includes Alabama A&M, Auburn University, and Tuskegee University, as well as extension even on their website, on our website that we have lots of resources that you can click through and read just to get information and kind of get started, important in the right direction.

Jamie Mardis



And for our listeners who may want to learn more about this act, we encourage you to connect with the AHPA by visiting our web page listed in our description. Katie, this has been incredibly informative. Thank you so much for joining us today and shedding light on this vital topic.

Katie Keown

Well, thank you all for having me. It's been fun to be here.

Jamie Mardis

“On the Heir” is a product of Auburn University and the Alabama Cooperative Extension System. Support for this program is provided by the Beginning Farmers and Ranchers Development Program, project award no. 2023-49400-40876 from the U.S. Department of Agriculture’s National Institute of Food and Agriculture. Any opinions, findings, conclusions, or recommendations expressed in this podcast are those of the participants and should not be construed to represent any official USDA or U.S. Government determination or policy. More information about activities and publications related to heirs property in Alabama can be found by visiting our website at [www.aces.edu/go/heirsproperty](http://www.aces.edu/go/heirsproperty). “On the Heir” podcast is not engaged in rendering legal, accounting or other professional counsel. If legal advice or other expert assistance is required, please seek the advice of services of competent professionals.

Jamie Mardis

And to our listeners, I hope this discussion has given you a better understanding of how the Uniform Partition of Heirs Property Act could protect your family legacy. Be sure to subscribe and tune in next time as we continue our journey through the world of Heirs property. Until then, keep your legacy strong.