

FREQUENTLY ASKED QUESTIONS

Heirs Property

What is heirs property

Heirs property refers to land owned by multiple people, each who inherited their share. Owners of heirs property are considered tenants in common.

How do you become an heir?

You become an heir either by being named a beneficiary in a will or if there is no will, when property passes to you via succession. For example when a landowner dies without a spouse, their children inherit equal rights to the land.

What are the rights and responsibilities of an heir?

Each heir inherits a proportional share of the whole property, has equal rights to full use and possession of the real property, is legally responsible for taxes and other real property-related expenses, may transfer interest in the real property to another heir or outsider, may seek a partition of the real property, and must agree to any major decisions about the real property.

What are the problems and challenges with heirs property?

Heirs of heirs property lack clear title to the land. Those living on heirs property are at increased risk of forced sale and eviction. Heirs face difficulty qualifying for agriculture loans and government programs including loans and disaster relief.

How can heirs use property as an asset?

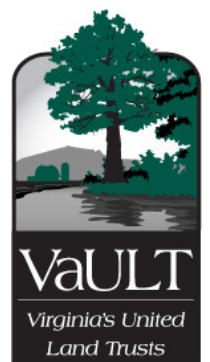
Property is often a family's greatest asset. It may be someone's home or legacy. It's a source of income. It can be borrowed against or used to leverage conservation programs. Income may come from agriculture or forestry practices and even from conservation programs.

Who does heirs property affect?

Heirs Property disproportionately affects middle and low income families without access to affordable legal services. African Americans are more than twice as likely as White Americans to not have a will; therefore, heirs property continues to be the leading cause of Black involuntary land loss.

How many family farms are at risk due to heirs property issues in Virginia?

There is no current estimate for Virginia. However, researchers at Auburn and Tuskegee Universities estimate that there are between 150,000 to 175,000 acres of heirs property owned by people of any race or ethnicity in Southside and that this property conservatively is valued at \$650 million.



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What is the Uniform Partition of Heirs Property Act (UPHPA)?

UPHPA “seeks to address partition action abuses that have led many Americans to lose their tenancy-in-common property involuntarily in various legal proceedings. The UPHPA preserves the right of a co-tenant to sell his/her interest in inherited real estate, while ensuring that the other co-tenants will have the necessary due process, including notice, appraisal, and right of first refusal, to prevent a forced sale. If the other co-tenants do not exercise their right to purchase property from the seller, the court must order a partition in kind if feasible, and if not, a commercially reasonable sale for fair market value.” (Alexander and Agelasto, Ensuring Rightful Property Ownership Through UPHPA, 2019).

Who are the key players and what are the resources that are needed to navigate through this process?

Family history plays an important role in understanding who the heirs are. Families will benefit from completing genealogy research back to the owner on the deed before engaging legal representation. A family tree will help prove who all the heirs are. Lawyers complete the necessary title search. Families also need to know the boundary lines of the property, determine the value of the land, and pay the taxes. Heirs may work with lawyers, mediators, estate planners, appraisers, realtors, surveyors, land trusts and conservation groups, county or city planning offices and assessors.

What resources are available to help landowners find family co-owners or their descendants?

Families can work with a genealogist to determine who the heirs are.

RESOURCES

- Ensuring Rightful Property Ownership, Keeping Land in the Family (<https://tinyurl.com/y5egg4je>)
- Heirs Property Retention Coalition, What is Heirs Property? (<http://hprc.southerncoalition.org/?q=node/5>)
- Ring, Betina, 2020 Keeping land intact, in farm and forestland, and in the family
- (https://richmond.com/opinion/columnists/bettina-ring-column-keeping-land-intact-in-farm-and-forestland-and-in-the-family/article_5d7b2348-98c7-515b-9957-8cff37abell1.html)
- Wealth Retention and Asset Program (WRAP) is a comprehensive intergenerational program designed specifically to reduce the rate of African American and other historically underserved population’s land loss by educating landowners about: heirs property and estate planning, intergenerational financial management, conservation easements, and 21st century options for land use. (<http://www.bflt.org/wrap-program.html>)
- Why Florida Passed a Uniform Partition of Heirs Property Act (<https://defenders.org/sites/default/files/2020-06/FHP%20White%20Paper%20Final%20June2020.pdf>)

