



Heir Property

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We are going to change course, for a few moments, from a discussion of producing and marketing agricultural crops and/or produce, to one of the ownership of the land on which such crops and/or produce are created, or more specifically, **the lack of ownership of such land**. This discussion must, of necessity, include a discussion of the concept of **HEIR PROPERTY**.

To further understand this concept, we must also understand, that all U.S. States, require that all land, within its boundaries, be owned or titled in the name of one, or more individuals, or some entity. There is no untitled property. This concept sometimes conflicts with the concept of **Heir Property**, which, by definition, involves the ownership or titling of the personal and real property formerly owned by a deceased person who has died without a valid will or whose estate has not been offered for probate, and the property is untitled.

Definitions

- ▶ **Anyone who dies is said to have deceased and is referred to as the decedent;**
- ▶ **To die without a will is to die “intestate”;**
- ▶ **The estate of a decedent, dying intestate, passes to his or her Heirs;**

Notwithstanding the wishes, or desires, of the deceased property owner, in an intestate death, the

Heirs are determined by state law, and are generally required to be:

- 1. A family member related to the decedent by “blood” “marriage” or “adoption”.**
- 2. Most states, but not all, require that the would-be Heir survive the death of the decedent.**
- 3. Not only do some states require that an Heir survive the death of the decedent, he or she must do so by a given number of days or will not be considered an Heir.**

Definitions, continued

Each **Heir** owns a fractional interest in the entire **Estate**.

Each **Heir** has the right to use and possess “all” the property, limited only by the rights of the other **Heirs** to use and possess “all” the property.

Title to the property of the **Estate** is not clear but is rather encumbered by “all” **Heirs** and nothing can be done with the property unless agreed to by “all” **Heirs**.

Property cannot be sold, leased or mortgaged without agreement of all **Heirs**.

Property cannot be fully used or possessed by a single **Heir** without agreement or acquiescence of all **Heirs**.

Most importantly, it is sometimes difficult to get a “Farm Number”, which is required for most Government Programs and/or Loans

Examples

- ▶ **Assume for each example that “A” has died Intestate;**
- ▶ A & B are not married and have 2 children, one of the children dies;
- ▶ A & B are married but have no children, B has children from a prior relationship;
- ▶ A & B are married have 2 children and adopt another child;
- ▶ A & B are not married, B has children from a prior relationship, whom A adopts;
- ▶ A & B are married and have children C & D. D is deceased but had 2 children of his own; and
- ▶ A & B are married and have children C & D. D is deceased but had 2 children E & F. E is deceased but had 5 children

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Who are heirs and why?

Operation of Law

At the death of a decedent, who dies intestate, title to his or her estate passes automatically to the **Heirs** (in the fractional amount to which he or she is entitled). That interest is defined by state law by what are generally known as “Laws of Descent and Distribution” or “Intestate Succession”. In some states, if a decedent leaves no surviving children or parent(s), spouse takes the entire estate otherwise, the spouse, surviving children and/or parent(s), share the estate.

The Estate passes first to the Personal Representative who is responsible for handling the following duties, then on to the respective Heirs:

- ▶ Paying all taxes and other legitimate and qualified expenses (medical, judgments, etc.); and
- ▶ Distributing the remainder of the decedent’s estate to his or her qualified Heirs.
- ▶ If no Heirs come forward or none qualify, **title to the property passes to the State by a process know as “Escheats”**.

Disadvantages of Heir Property

- ▶ Each Heir's ownership or title interest to the estate is defined by state law;
- ▶ Title to the property of the estate is not clear but rather encumbered by "all" Heirs and nothing can be done with the property unless agreed to by "all" Heirs;
- ▶ Each Heir has the right to use and possess "all" the property, limited only by the rights of the other Heirs to use and possess "all" the property;
- ▶ Property cannot be sold, leased, or mortgaged without the agreement of all Heirs;
- ▶ Individual Heir may not be eligible for federal, and/or state grants, loans, or other funding programs; and
- ▶ Improvements made by individual Heir are owned by all Heirs.

Disadvantages of Heir Property, continued

- ▶ Any **Heir**, or other person with an interest in the property, can force a sale or division of the Estate property;
- ▶ Under a procedure known as adverse possession, most states allow complete strangers to enter upon the property, of others, in a manner described as being open, hostile and continuous (period differs among states), and after that period, make an ownership claim against the property. This usually happens without the true owner's knowledge and can apply to the actual ownership or use of some or a part of the property. (CAN APPLY TO NON HEIR PROPERTY).
- ▶ Estate can be sold by state or feds for payment of taxes;
- ▶ Sale of property can be forced by creditor(s) of any **Heir**; and
- ▶ At the death of an **Heir**, without a will, the number of **Heirs** may increase and the ownership interest of each **Heir** may decrease;

Possible Solutions to Heir Property Situation

- 1. Filing a Probate Action.** Court proceeding used to identify and determine who is entitled to own and share the deceased's estate when the person dies without a will.
- 2. Partition or Division Sale.** The forced sale of property, by Heir(s), or others, with each owner receiving a distribution of the sales proceeds that corresponds to his or her specific interest in the property.
- 3. Partition in Kind.** The forced division of property, held by Heirs, or others, with each owner receiving an actual tract of land that corresponds to his or her specific ownership interest in the property.
- 4. Under a new provision, known as the "Uniform Partition Of Heirs Protection Act",** which has been adopted by at least twenty states, and the U.S. Virgin Islands, it is now more advantageous to use the partition vehicle as a means of resolving Heir Property issues. Once the Court determines that the property is Heir property, specific steps are taken to ensure that the property is adequately appraised and that the interest of Heirs are protected.
- 5. Create Legal Entity - (Corporation or LLC) or other Operating Agreement** to control and/or manage the property. Existing Heirs convey their interest in the estate to the legal entity, which owns and controls the land. The Heirs own the legal entity and indirectly own the land.

Steps to Protect Your Land

- ▶ Ensure taxes get paid when due;
- ▶ Prepare a Will;
- ▶ Do title search to insure there are no unpaid taxes, liens or other claims against the property; and
- ▶ Construct a “Family Tree” and keep information on all family members who may potentially become Heirs.

