HEIRS' PROPERTY RIGHTS: IDENTIFICATION & IMPLICATIONS

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Several barriers can hinder land transfer, such as a lack of understanding regarding wills, legal counsel costs, and deep-seated mistrust of a legal system historically linked to land loss.[1]

There is limited information available on how succession planning currently stands in the United States, but a recent survey report found that 55% of Americans have no estate plan.[2] The report relates this situation to various factors, ranging from how individuals perceive the importance of estate planning to demographics like income and education level.

Not having an estate plan can lead to various consequences for assets. Among these consequences is heirs' property.

WHAT IS HEIRS' PROPERTY?

The USDA defines Heirs' property as family-owned land jointly owned by the descendants of a deceased person whose estate did not clear probate. The descendants, or heirs, have the right to use the property, but they do not have a clear or marketable title to it, as the estate issues remain unresolved.[3]

In other words, it is a property (land or home) that is passed down without a will, a deed, or legal documentation from generation to generation. Each successive generation generally results in more heirs being added to the land inheritance, making the absence of the deed or will more complicated.[4] Descendants commonly have the property, but none of them has a clear title to it.

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WHAT HAPPENS TO THE PROPERTY WHEN IT IS INFORMALLY PASSED DOWN?

When a property is passed down without clear documentation, state laws determine who will inherit the property. This situation could involve more than one generation, resulting in numerous heirs.

For example, in New Mexico, if an individual passes away without leaving a clear documentation of how he wishes to pass down his property, the State will make this decision following these different schemes:

Table 1. **New Mexico State Laws in Case of No Will**

If you die with:	Here's what happens:
Children, but no spouse	Children inherit everything.
Spouse, but no children or parents	Spouse inherits everything.
A spouse and children who belong to you, and that spouse	Spouse inherits the first $50,000 of your intestate property, plus ½ of the balance of your intestate property. Children inherit remaining intestate property.
A spouse and children who are not that spouse's children	Spouse inherits ½ of the intestate property. Children inherit ½ of the intestate property.
A spouse and parents	Spouse inherits the first $100,000 of your intestate property, plus ½ of the balance of your intestate property. Parents inherit the remaining intestate property.
Parents, but no children or spouse	Parents inherit everything.
Siblings but no children, spouse, or parents	Siblings inherit everything.

When a property is passed down informally from one generation to another, the number of heirs generally increases, making the schemes in Table 1 more complex. This is because each heir possesses a fractional interest in the land, which is equivalent to a percentage interest of the property's actual acreage. For example, with a family composed of two parents and two children owning 100 acres, initially, each child holds a 50% share. As the land is passed down through generations, each heir's share is divided among their respective children. If we suppose that each heir has two children, over only four generations, the number of heirs would increase from 2 to 28, with each having an interest of about 0.016% of the land. Even if the heirs lose their connection to the land or move away from it, they remain heirs and retain interests.

WHAT IS THE IMPACT OF HEIRS' PROPERTY?

Heirs' property presents a challenge for towns and counties because it can be difficult to assess and quantify both the financial and ecological tolls on the locality's resources. When one dies without a will, state law determines how a person's estate will be divided among surviving family members. Lacking instructions for the distribution of the deceased's property, the state uses statutory formulas to distribute property on behalf of the deceased.

When landowners execute a valid will, they choose who will inherit their property at their death. In most instances, this greatly reduces the number of people who inherit, which makes it easier to manage and make decisions about the land.

Impact on the landowner

Heirs' property may restrict what the land can be used for, including generating income or improving it. e.g., getting a loan to build a permanent structure, such as a house. Heir property restricts land management. Heirs must agree on any decision regarding the land, including the division of profits. For example:

- Timber harvesting and reforestation
- Farm planting and harvesting
- Mineral rights
- Mortgages and other loans
- USDA programs
- Conservation easements.

Impact on the community

Therefore, if heirs' property affects how land is managed and cannot be developed to its full potential, the community loses potential tax revenue from increased development and improvements, which impacts roads and bridges, fire and safety, sanitation, and education.

1. Fractional ownership: challenges of time, distance, and knowledge[5]

The size of each heir's fractional ownership interest depends on several factors, such as:

- How many generations removed is an heir from the original deceased landowner?
- How many heirs can rightfully take their inheritance at a specific point in time?

2. Time: Across generations, things get complicated

For example, in three generations of heirs there would be more people in each generation having a smaller fractional interest. Each generation gets a percentage of their parent's share. In this example, each of the five children had 20%. But as they pass away, their percentage is divided among their respective children. So here, the differences are:

- Generation 1 : The original owner
  - The original owner is single and has 5 children. When he passed away, he left the estate to his children. Each surviving heir will receive 20% of the estate (1/5).
- Generation 2: The five children
  - Each of the five children passes away. Each child has 3 children (fifteen grandchildren in total). The 20% share from each parent is divided equally among the three children. In sum, each grandchild will receive approximately a 6.67% share of the total estate (1/15).
- Generation 3: The Fifteen Grandchildren
  - Each of the 15 grandchildren passes away. Each one of them has two children (30 great grandchildren). The 6.67% share from each grandchild will be divided equally between two great grandchildren. Each one of the great grandchildren will receive 3.33% share of the total estate.

In all, there are 30 heirs, sharing the same original property.

Note that the spouse of a deceased heir may inherit that person's share, and the situation gets more tangled when family sizes are different and deaths happen out of order across generations.

To illustrate that, let's name each of the five children: Aisha, Maria, Bob, Charlie, and Lulu, and include some events:

- Event 1: Aisha passes away first.
  - Aisha has 4 children. Her 20% share is split equally among them. Each one of her four children will receive 5% of her 20% share.
- Event 2: Maria passes away next.
  - Maria has only one child. Her entire share (20%) goes to this single heir.
- Event 3: A Grandchild passes away prematurely.
  - One of Aisha's children (who holds a 5% share) passes away before the rest of Generation 1. This grandchild has two children. These two great grandchildren will get 2.5% each (sharing equally the 5% share).
- Event 4: Charlie passes away.
  - Charlie has 2 children. His 20% share is split equally, so each one will receive 10%.
- Event 5: Lulu passes away with no children.
  - Lulu passes away unmarried and childless. By law, her 20% share will be divided equally among her surviving siblings and the heirs of her deceased siblings.
  - Bob (the only living sibling) gets ¼ of her share: +5%.
  - Aisha's heirs split ¼ of her share: +5% (divided among her children/grandchildren)
  - Maria's heir gets ¼ of her share: +5%.
  - Charlie's heirs split ¼ of her share: +5% (divided between his 2 children).

3. Distance consequences

As time passes, some of the heirs may move to different places and lose strong connections to the land; however, they are still heirs. The lack of connections may leave the land vulnerable, as remote heirs may be more willing to sell their shares to outsiders.

With numerous co-owners, the following can occur, which can impede proper management of the land:

- Heirs do not live on or near the land.
- Heirs do not live near each other.
- Heirs do not know one another.
- Heirs do not know how to locate one another.
- Heirs do not have a connection to the land.

4. Land loss

Because heirs' property consists of land without a secured title, the land can often be the target of many legal takeover strategies. Some of the ways heirs' property can be lost are partition sales, tax sales, or heirs who have no interest in the land at all.

Tax sales

If you don't pay your property taxes, the county auctions your tax bill and interest in a "bid down" process starting at 12%. If you don't reclaim your tax lien within three years, which includes repaying the tax bill plus interest, then the land will go to the bidder.

There are always investors who look for these tax sales as a way of either getting land for just the tax value, or to invest their capital at a high interest rate. That means that all heirs/landowners, particularly absentee landowners, need to keep track of who is paying the property taxes on their heirs' property.

Partition sales

A partition action may be brought against the co-tenants of heirs' property, either family members or non-family members. While a co-tenant cannot "sell" the land, they can sell their interest in the land. In this case, an outside party can gain access to the land as if they were a part of the original family unit, with all the rights and obligations.

A partition sale is a court-ordered sale of land. A partition action may be brought by any co-tenant, regardless of their percentage interest.

With a partition sale, at public auction, the highest bidder becomes the owner. The proceeds from the sale are then distributed among all the co-tenants of the property according to the size of their fractional interest. The result is that the land is lost to the family.

SUMMARY

In summary, heirs' property becomes more complicated over time as the family grows. The impact of the issue is not limited to the property's tangled title but also extends to land/property use stability and improvements, as well as contributes to community blight.

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RESOURCES

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