



# Unlocking Heirs' Property: What Can You Do?

Dr. Henry English  
Director - UAPB  
Small Farm Program

Amy Pritchard  
Assistant Professor  
- Clinical Education,  
William H. Bowen School  
of Law, University of  
Arkansas at Little Rock

## What is Heirs' Property?

When a property owner dies in Arkansas, much of their property (real and personal), known as their **estate**<sup>1</sup>, must go through a legal process called probate. However, even with real estate, there are some options such as beneficiary deeds, joint tenancy with right of survivorship and other options to avoid probate.

The **probate process**<sup>2</sup> can be a simple and straight forward process, or it can be complex depending on the size and value of the estate. If there is no legal action taken after a property owner dies, then the owner's heirs will all own the property equally and together as tenants in common. This type of landownership is referred to as "heirs' property."

## Who are the Heirs to a Property?

Generally, courts will make a final, legal determination of who the heirs are based on state law. The heirs to property depends on who is alive when the property owner dies. Heirs may include:

- Children
- Grandchildren (children of the property owner's child, if the child has died)

- Surviving spouses
- Surviving parents, grandparents, aunts or uncles if no other heirs exist.

If one of the original heirs to a property dies, their interest in the property does not disappear. If they leave a will, the court will transfer their property interests according to the will. If they die without a will, their interest in the property transfers to the heirs at the time of death according to the laws of the state. A will takes the place of state laws when determining to whom property is distributed.

## Which Part of the Property does each Heir Own?

All heirs of a particular piece of property owns the entire property collectively as tenants in common. No one individual owns a specific part or percentage of the property or land. Each heir has a shared interest in the entire property.

Similarly, all heirs have the same rights to use and own the land. Ownership rights do not change if one heir lives on the land, maintains the land or pays the property taxes.

<sup>1</sup> All that a person owns including real property (land and houses) and personal property (cars, boats, jewelry, etc.).

<sup>2</sup> The formal administration of an estate owned by a deceased individual.

## Is There Anything Wrong with Heirs' Property?

Owning property as heirs in common can be risky. If the family does not have a clear plan, one heir may misuse or exploit the property. If taxes are not paid, the family may lose the property to land speculators at a tax sale. Many government programs may not be available to assist owners of heirs' property.

## What are the Steps to Resolving the Issues of Heirs' Property?

Usually, a family must take legal action to unlock the full potential of heirs' property. The type(s) of legal action taken will depend upon:

- The type, size and value of the property;
- The number of heirs, and;
- The family's goals for the property.

In every case, the first step is to identify all the family members who have a legal interest in the property. To do this, you should develop a complete family tree. Start with the original land owner(s), and provide a list of all their children. If any of these children have died, provide a list of their children. Continue down the line of each heir until you reach all of the current living members in the family.

For each individual, include:

- Date of birth
- Date and place of death
- If deceased, name of surviving spouse (spouse alive at time of individual's death) and date of marriage
- If deceased, name of all children
- If alive, address and contact information.

Once your family tree is complete, you can begin to determine who the legal heirs are. Next, a title search

should be conducted by the family members, a title company, or an attorney. A title search will look for issues that legally affect your ownership of the land. These things include liens and court judgments that may be attached to the land. These types of issues are called encumbrances, and if discovered during the title search, may have a negative impact upon your ownership.

After completing these steps, a licensed attorney in your state can determine how much interest each heir has in the property. This will allow the family to create a well-informed plan for continued ownership, taxation and control of the property.

## What are some Resources to Help with Creating a Family Tree?

The best resource for creating a family tree is often your own family members who have direct knowledge of past and present family members. You should also check with your local library to see if they offer free genealogy resources.

There are also several online resources at your disposal. Examples include the following:

- Family Search: <https://www.familysearch.org/>.
- [Ancestry.com](https://www.ancestry.com): paid website, but offers free trials.

## Are There Ways to Avoid Dealing with Attorneys and Going to Court?

It is always best to speak with an attorney before transferring property interests. Advice from an attorney can help the family avoid potential legal complications. Even when options exist to avoid the court process, those options may not result in clear title. The attorney you choose to work with can also help the family create and put in place the best plan possible according to your specific situation.

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**DR. HENRY ENGLISH** is the director of Small Farm Program located at the University of Arkansas at Pine Bluff. **AMY PRITCHARD** is an assistant professor of Clinical Education with the William H. Bowen School of Law at the University of Arkansas at Little Rock.

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