

## What Is Heirs' Property?

When a person dies, their home, land or other real estate is treated differently than their personal effects and financial assets. If new ownership of a deceased person's property isn't determined through a will or court proceeding, and the deceased person didn't use alternative estate planning that doesn't require a probate proceeding, that property becomes heirs' property. Heirs' property is real estate that official government records indicate is owned by someone who is deceased, and maybe has been for multiple generations.

Estate planning such as a trust or transfer on death deed may help heirs avoid a probate process.



Many heirs' property estates are much more complex than this example.



Ted, Sally's Spouse and Todd may all have an interest in grandma's property.

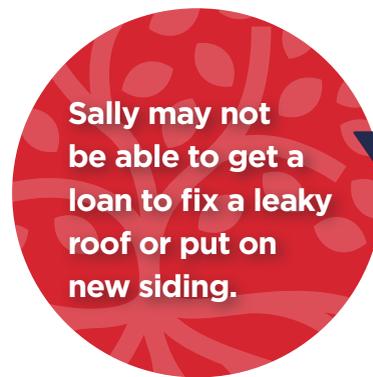


Based on state law, a deceased property owner can have many heirs. Each heir has rights and responsibilities related to their fractional interest in the property. This is called Tenancy in Common and can make major decisions involving the property very difficult or impractical.

## What Are the Challenges to Heirs' Property?

Because official government records show a deceased person still owns the property, heirs may not be able to:

- **Finance or transfer the property:** An heir may be using the property as a residence or for a business, but because they do not have clear ownership, they cannot get a loan or transfer the property.
- **Access grants or emergency aid:** Owners of heirs' property may not be eligible for grants or emergency assistance from government entities like FEMA or non-profit organizations.
- **Make major property decisions:** Many multi-generational heirs' properties are in further limbo because there are potential unknown or unreachable heirs. The costs associated with establishing clear ownership can be prohibitive and the more time that passes, the more complicated and costly the problem becomes.



Sally may not be able to get a loan to fix a leaky roof or put on new siding.



Ted and Todd are unknown or unreachable heirs.

## What Harms Are Heirs Experiencing?

The harms associated with heirs' property are wide-ranging and often exacerbated with the passage of time as it becomes harder to determine ownership. Some of the more common harms include, but are not limited to:

- **Forced sale of property:** While state laws vary, one heir may be able to force the sale of the property, which other heirs may currently be using for housing, agricultural or other commercial purposes. The heir(s) forcing the sale may be incentivized by unscrupulous third parties wanting to purchase and/or develop the property. In some instances, heirs with a small ownership interest are forcing a sale on heirs with a larger ownership interest.
- **Damaged property:** Heirs' often can't access critical assistance in an emergency because they are unable to prove property ownership. Lack of required documents makes it hard for heirs to even reach the entities who could help.
- **Lack of financing:** Lenders won't loan money for property rehabilitation or improvement projects if there is unclear ownership that would result in an inability to take possession of the property for failure of loan repayment.
- **Inability to transfer:** Heirs cannot transfer property because buyers would not be guaranteed full ownership if an unreachable heir later made a claim against the property.
- **Economic hardship:** Heirs may be unable to realize the economic benefits of property ownership because they lack the ability to get a



If one of Sally's brothers sells his interest in the property to an unscrupulous developer, a forced sale could occur under some state laws, leaving Sally homeless.

- loan and/or transfer the property in ways that allow them to build wealth.
- **Economic loss:** When heirs cannot maintain, develop, or fully utilize their property, it loses value. Heirs' property may also be at a higher risk for fraudulent activities.
- **Overpayment of taxes:** Under some state laws, heirs are ineligible to take advantage of homestead credits, even though they may be living on the property and paying all the property taxes individually.
- **Risk of tax sale:** Disproportionately, heirs' property is lost due to a tax sale. Without the ability to maximize property potential, heirs living on or using the property may struggle to pay assessed taxes.
- **Displacement and homelessness:** An heir living on the property may be forced out of the home, even if they have been taking responsibility for all property obligations and upkeep.

## What Are the Economic Harms?

The vast amount of heirs' property in limbo across the country negatively impacts the overall economy in following ways:

- **Underutilized property:** Due to a lack of financing options, the full potential of the property isn't realized.
- **Dwindling property values:** An inability to develop or redevelop real estate leads to declining property values.

## What Can Be Done?

Reducing the amount of heirs' property is critical to help avoid the harms outlined above. Ways to mitigate heirs' property include:

- **Educational awareness:** Many people do not understand the consequences of the lack of a will or estate planning, and heirs may not know how to establish clear title.
- **Estate planning:** Development and promotion of

- **Vacant or abandoned property:** As time goes by, the inability to use or maintain the property can lead to vacant or abandoned land.
- **Less real estate on the market:** When heirs are unable to transfer or sell their property, it takes that real estate off the market for the foreseeable future.

educational resources on estate planning can prevent the creation of more heirs' property.

- **Establishing legal ownership:** There are several ways that heirs can establish recorded property ownership and obtain the ability to finance or transfer their real estate.
  - Upon identification and agreement of all the heirs, recorded ownership may be established in some states through appropriate recorded affidavits, or by court proceedings in other states.
  - If there are unreachable or unascertained heirs, the other heirs can go to court to obtain a non-appealable, final judgment on property ownership. Depending on where the property is located, this can be done by quiet title, determination of heirship, partition statute, or other state law developed to resolve heirship situations.

**Governmental and private financial assistance and access to affordable legal counsel with necessary expertise is needed to determine heirship for families.**

## Legislative Steps

Addressing the issue of heirs' property will take time. Meanwhile, legislative steps can be taken to help heirs, including:

- **Tax laws:** State tax laws can be revised to make it easier for heirs to take advantage of homestead tax credits. This will also reduce heirs' property tax sales.
- **Aid availability:** In recent years, federal agencies like the USDA and FEMA have taken steps to ensure heirs have access to federal programs. These changes should be maintained and expanded as appropriate.
- **Passage of Uniform Partition of Heirs Property Act (UPHPA):** Passage of this uniform law helps ensure heirs receive fair market value when a forced sale occurs. It also creates a uniform process to establish ownership rights in a more cost-effective manner.
- **Estate planning options:** Expansion of state laws that

### Basic process to determination of property ownership to finance or transfer property:

1. Identify all heirs using an established statutory or court process
2. A determination of ownership may be made by the court
3. Property ownership is updated in government records

allow for estate planning that doesn't require a formal probate process, such as transfer on death deeds or beneficiary deed.

- **Educational Initiatives:** Programs to provide homeowners or heirs with financial and/or real estate literacy materials.