



HEIRS' PROPERTY:

WHAT IT IS AND WHAT TO DO ABOUT IT

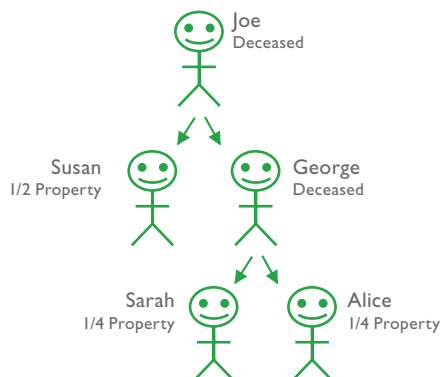
Ownership of property can be like a vegetable garden – if you do not tend to it regularly and carefully, you may end up with nothing. This is especially true with heirs' property. This pamphlet talks about how you can lose control over your property if you do not manage your ownership with care.

WHAT IS AN HEIR?

Heirs are all the living relatives who are legally entitled to inherit the property of someone who has died without a will. (A will is a legal document stating who will receive the property of someone who has died.) It is important to know who the heirs are because, if a person dies without a will, all his property will be divided among all of his heirs.

- **Who can be an heir?** The following relatives of a person who has died count as heirs: all natural born children (including those born out of wedlock), all legally adopted children, grandchildren, and the person's spouse at the time of death. If the person does not have any living children or a living spouse, then the person's living parents or siblings would be the heirs.
- **Who cannot be an heir?** The following relatives of a person who has died are not heirs: stepchildren, children raised by the deceased but not formally adopted, and a divorced spouse.
- **What are heirs' shares in property?** The children of someone who dies without a will own the property of their parent equally. Likewise, grandchildren divide their parents' shares equally.

For example, Joe had two children when he died, George and Susan. Now George has also died and left two children, Alice and Sarah. The property will be divided among the three living heirs. Susan receives a half share, while Sarah and Alice each get a one-fourth of a share (each get half of George's one-half share).



WHAT IS HEIRS' PROPERTY?

Heirs' property is land, often a family's home place, that has been passed down automatically from one generation to the next without a will. When a property owner does not write a will, the law says the property is automatically divided among the owner's heirs after the owner's death. It does not matter which heirs live on the property or pay the taxes or even know that they own a portion of the property. All of the heirs have their own shares of ownership.

WHY IS HEIRS' PROPERTY A PROBLEM?

Heirs' property is a problem because sometimes it becomes impossible for the person who is living on property to enjoy the benefits of land ownership. This is because every single family member with legal rights to the ownership of a piece of property has to sign off before anything can be done with that property. This includes selling it, taking out loans for fixing it, negotiating with a mortgage holder or city about to foreclose, obtaining some kinds of insurance, or getting assistance after disasters like Hurricane Katrina. Even worse, no matter who actually lives on a piece of land, no matter who actually takes care of the land, and no matter who actually pays the taxes, every heir has a right to (also called an "interest in") the property:

For example, Peter lives on a piece of land in Mississippi that Peter's grandfather bought in 1920. Since then, the only people who have lived on the land have been Peter's grandparents, Peter's parents, and Peter and his wife. Peter has lived on this land for his entire life. He has worked hard over the years to keep up the family home, and he has always paid the taxes on time.

Then one day, a man named John, who Peter never had met or heard of before, comes to Mississippi and tells Peter that he is another grandson of Peter's grandfather. John says he wants his share of the land, and that he wants to sell his portion to a big company in the neighborhood. If John's lawyer files the right papers in court and proves that John is a grandson, the judge will either split up the land into pieces and give John his share or

sell off all the land and split up the money among John, Peter, and all the other heirs. This is allowed because any heir with part ownership (also called a “share”) of the land can go to a judge at any time and have the land either (i) split into pieces, or (ii) sold and the money then gets split among all the heirs.

WHAT ELSE DO I NEED TO KNOW ABOUT HEIRS' PROPERTY?

Families can also lose their property if all the heirs cannot agree on how to take care of it together (pay taxes, upkeep, etc.). As new generations are born, this becomes increasingly difficult because more people have rights to the property and a say in what happens to it. Other possible problems for heirs include:

- No one, including an heir living at the property, wants to spend money on upkeep or anything else for fear of losing the property or ever getting paid back.
- Not all heirs help in paying property taxes, insurance and upkeep, but all want the profits when the land is sold.
- It can be hard to find all the heirs that own a share of the property, since many may have moved far away.
- Families fight over all of the above.

I THINK MY FAMILY OWNS HEIRS' PROPERTY. WHAT SHOULD I DO?

Here are some steps you can take to prevent heirs' property from becoming a problem:

1. **Make a family tree so you can figure out who every heir is:** You can start by making a family tree showing the ownership of family property. (See the attached example at the end of this pamphlet.) This will tell you everybody who may have a say in what happens to the property. A family tree is just an organized list of everyone in a family, starting with the person who bought the property or inherited it under a will. From

there name all the spouses, children, grandchildren and so on, of all family who have followed that original ancestor. Include birth dates, dates of death for those no longer living, and mailing addresses for each. List the descendants of the original owner, including all spouses, children, and children and grandchildren of children, all the way to the present. All of these relations are heirs of the deceased, original owner. You can then know who has rights to the property and who has a say in its future.

2. **Make a Plan to Care for the Land.** Make sure you know who in the family cares for the land, and make sure everyone pays their share of taxes and upkeep. Decide who will pay bills, and watch the mail for legal notices (such as overdue bills, taxes or problems with a mortgage on the property). Try to get everyone in the family who has a share in the property to agree how all these things will happen. Then write the agreement down on paper.
3. **Fix the Record of Ownership.** After you make the family tree and talk to family members, go see a lawyer. Ask the lawyer for help fixing the “title” to the land. “Title” refers to the legal evidence of who has rights to a particular property. A lawyer can help you do the detective work to determine all the legal owners of a property. A lawyer can also help you bring the title to the property up to date by completing required legal processes necessary to confirm who has rights to the property. Some of the procedures a lawyer might help you with include:
 - “probating a will” (implementing the wishes of the deceased through a court proceeding),
 - bringing a lawsuit to ask a judge to establish who has legal rights to the property, and
 - preparing other documents that fix the title to the property.

Once you have discovered all of the legal owners and confirmed their ownership, you will be in a position to start managing the property with the other owners.

The Mississippi Center for Justice may be able to provide you with a lawyer who will provide free legal services.



WHAT SHOULD A PROPERTY OWNER DO TO AVOID CREATING HEIRS' PROPERTY AND ITS RELATED PROBLEMS IN THE FUTURE?

Prepare a proper will with the help of an experienced lawyer. Think about which family members you want to leave your property to. Even if you decide to leave your property to more than one person, by preparing a will you save them much effort and possible loss of the property. Find out if your children actually want the property. It may be better to leave your land to one person and give something else to another person. Talk with a lawyer about all the issues and concerns you have about how your property will be managed. A lawyer can tell you whether there are ways to protect the land and save later owners from the risks of heirs' property.

THIS IS NOT LEGAL ADVICE

The information contained in this brochure is for general informational purposes and is not legal advice. Legal advice can only be given by an attorney and is dependent on the specific circumstances and individual needs of a client. You should contact an attorney if you need representation or legal advice on any matter referred to in this brochure.

The Mississippi Center for Justice would like to thank DLA Piper law firm for its pro bono assistance in preparing this pamphlet. The Mississippi Center for Justice is solely responsible for the contents.

FAMILY TREE

Deed of Deceased: Date: Provide copy of deed if available		
Name of Deceased: Date of Birth: Place of Death: Provide copy of death certificate if available	Spouse of Deceased: Name: Date of Birth: Place of Death: Address: Provide copy of death certificate if available	
Child 1 Name: Date of Birth: Place of Death: Address: Provide copy of death certificate if available	Child 2 Name: Date of Birth: Place of Death: Address: Provide copy of death certificate if available	Child 3 Name: Date of Birth: Place of Death: Address: Provide copy of death certificate if available
Spouse of Child Name: Date of Birth: Place of Death: Address: Provide copy of death certificate if available	Spouse of Child Name: Date of Birth: Place of Death: Address: Provide copy of death certificate if available	Spouse of Child Name: Date of Birth: Place of Death: Address: Provide copy of death certificate if available
Grandchild of Child Name: Date of Birth: Place of Death: Address: Provide copy of death certificate if available	Grandchild of Child Name: Date of Birth: Place of Death: Address: Provide copy of death certificate if available	Grandchild of Child Name: Date of Birth: Place of Death: Address: Provide copy of death certificate if available

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