



Heirs Property Ownership

Heirs' property is land shared by family members after someone dies without a valid will, estate plan, or without going through probate. This often happens when property is passed down informally within families, such as through verbal promises.

While heirs' property can support family ties and shared use of land, it often has a clouded title, meaning ownership is unclear. This can lead to problems like forced sales, loss of land to nonfamily members, and limited access to loans or government programs. Knowing the risks and the steps to protect and clear title can help families keep and use their land.

Laws of Descent and Distribution

When a person dies without a valid will or estate plan, state law determines who inherits their property. These rules are called laws of descent and distribution, and they vary by state.

In general, most states distribute property in a set order. Surviving spouses and children are typically first in line to inherit. If there is no surviving spouse or children, property may pass to parents, siblings, or more distant relatives, depending on the degree of kinship recognized under state law. For example, in Mississippi, if you die without a will:

Mississippi State Succession

What Happens If Someone Dies Without a Will (One name on the deed)

Family Situation	How the Estate is Distributed
Spouse and one or more children¹	Estate is divided equally between the spouse and each child
Spouse, no children	Spouse inherits the entire estate
Children, no spouse	Children inherit everything, divided equally
Parents only	Parents inherit everything, divided equally
Parents and siblings	Parents and siblings share equally
Siblings only	Siblings inherit everything. Descendants of deceased siblings inherit by representation
No immediate family	Estate passes to more distant relatives under Mississippi law

¹ If the deed has both spouses' names, but it doesn't state "with rights of survivorship" when one spouse dies, the surviving spouse retains half. The other half is split equally between the surviving spouse and all the children.

Important Points for the Public

- Mississippi law does not give the spouse priority over children.
- Mississippi does not distinguish between children of the marriage and children from other relationships for inheritance shares.
- A surviving spouse receives no guaranteed minimum amount.
- Parents do not inherit if a spouse or children survive.
- Intestate outcomes often surprise families, especially in second marriages.

Statutory Authority

Mississippi Code of 1972, Annotated, § 91-1-1 et seq; § 91-1-7.

Mississippi guarantees a spousal share, meaning a surviving spouse will automatically inherit a portion of the estate, even if other heirs exist. Adopted children are generally treated the same as biological children. State laws also commonly protect the inheritance rights of children born outside of marriage, children conceived before the decedent's death, and heirs who are not U.S. citizens, although additional legal requirements may apply.

Laws of descent and distribution can be complex. Landowners and potential heirs are strongly encouraged to consult a qualified probate or estate attorney familiar with the laws of Mississippi.

Partition Actions - Uniform Partition of Heirs Property Act (UPHPA)

Heirs' property is often owned by multiple family members as tenants in common, meaning each owner has an undivided interest in the property. When co-owners cannot agree on how the property should be used, maintained, or sold, any co-owner may ask a court to intervene through a partition action.

A partition action is a legal process that allows a court to divide or dispose of jointly owned property. Courts generally order one of two outcomes:

- **Partition in Kind:** The property is physically divided among the owners, if feasible.
- **Partition by Sale:** If the property cannot be fairly divided, the court may order the property sold and divide the proceeds among the owners.

Partition actions can be expensive and time-consuming, often involving legal fees, appraisals, and court costs. In some cases, family land may be sold even if some owners want to keep it. Mississippi provides added protections for heirs' property under the Uniform Partition of Heirs' Property Act, requiring courts to consider whether the property can be divided and allowing co-owners the opportunity to buy out the interest of an owner seeking partition.

Because partition actions can result in the loss of family land, landowners should consider alternatives such as estate planning, written agreements among co-owners, buyouts, or mediation.

Partition laws vary by state. Landowners are encouraged to consult a qualified attorney who is familiar with heirs' property and real estate law in Mississippi.

Tax Sales

Heirs' property often involves multiple owners, and tax notices may not reach everyone with an interest in the land. This creates confusion about who is responsible for paying annual property taxes, so bills can go unpaid and the property becomes particularly vulnerable to tax sales. Tax collectors publish a delinquency list in the newspaper and then schedule a tax sale; owners can generally pay up until the day before the sale to prevent it. Unpaid taxes accrue interest and fees, and after an auction there is a right of redemption period when owners can pay delinquent taxes, subsequent taxes, fees, and interest. If the owners have not done so by the time the redemption period is complete, a tax sale purchaser may obtain a tax deed. In Mississippi, the redemption period is two years from the date of the sale.

Steps to Protect Your Land

- **Pay property taxes on time.** Pay property taxes on or by February 1st each year and verify that taxes are current.
- **Correct mailing address.** Make sure the tax collector has a correct mailing address for at least one responsible owner.
- **Walk the land regularly.** Visiting the property helps owners notice trespassing, dumping, timber cutting, boundary issues, or other problems early.
- **Communicate with family members to identify who will be paying the property taxes on the property.** Regular communication can help prevent misunderstandings and reduce conflict among co-owners.
- **Share Tax Payment Information with Family.** Tell at least one trusted family member about the property taxes (how much is owed, when they are due, and how they are paid) so if something happens to you, someone else can step in and keep the taxes current.

Clarifying Title to Heirs Property

Clarifying title helps protect the land and makes it easier to use, transfer, or keep the property in the family.

Steps often include:

- Identify the last sole record owner listed in the land records.
- Create a family tree showing how current owners are related to that person.
- Locate the property's tax information, including the tax parcel ID number or property tax card, through the local tax assessor/collector.
- Obtain the reference deed for the property from the probate or land records office.
- Have a title search or title opinion completed to review ownership history and identify any missing documents or legal issues.

- Consult an attorney experienced in probate or real estate law to determine what steps are needed to correct the title.

Clarifying title may require probate proceedings, affidavits of heirship, or recorded deeds. Because each situation is different, legal assistance is strongly **recommended**.

Resources

Fact sheets, created by the Vermont Law and Graduate School, Center for Agriculture and Food Systems, help people protect land that is owned as heirs' property. Each fact sheet explains state laws that affect heirs' property owners and lists steps owners can take to fix property problems before they talk to a lawyer. [View the Fact Sheets](#)

Family Tree: Construct a family tree. Figure out whose name is on the deed and fill in each succeeding generation, including dates of death. Legal documents, such as birth and death certificates and marriage licenses, can help construct a family tree. Family bibles, letters, diaries, funeral programs, obituaries, genealogy websites, and family reunions are also good sources of information.

Key Terms

Affidavits of heirship. A written, sworn statement used to identify the heirs of a person who died without a will. It is often used to help establish ownership of property when no probate case has been opened, but it does not replace a court order or guarantee clear title.

Intestate / Intestacy: When a person dies without a valid will, they are said to have died "intestate." In these cases, Mississippi law determines who inherits the person's property, usually through a probate proceeding.

Probate. A court-administered process in which the court confirms the validity of a will and allows other people the option to challenge the will.

Title. A person's legal ownership interest in property, including the right to use, sell, or transfer it.

Title search. A review of public records in the Chancery Clerk's office to trace the ownership history of a property and identify any issues (such as liens, unpaid taxes, or competing claims) that could affect ownership.

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