

# FAQ

# &

# HEIRS PROPERTY IN ALABAMA

## FACTSHEET

### WHO OWNS HEIRS PROPERTY, WHERE IT'S LOCATED & ITS IMPACT ON ALABAMA

My family owns land collectively. Is that uncommon?

No. Many families have, or have heard of, heirs property.

I have never heard of heirs property. Can I have it?

Yes. Heirs property is a legal term. Sometimes it is called Heir property, Heirs' property, Family Land, Grandpa's Land, or Tangled Title.

Heirs property only happens in the South, right?

No. Heirs property exists across the country, and can include houses, farms, forests, & commercial properties.

Heirs property only has negative consequences for the property owner, right?

No. Heirs property has a wide impact. It prevents banks from making loans and insurance companies from issuing policies. It causes blight which affects neighborhoods. It reduces housing values and the area's tax base.

Don't people who have heirs property know about it?

No - not always. Property can still be heirs property even if a person lives on heirs property, receives a tax bill, and believes the family home is theirs. Relatives living in a different state, unaware of the property, can still be co-owners.



JUSTICE FAIRNESS HOPE

**Legal Services  
Alabama**

## SELLING HEIRS PROPERTY IN WHOLE OR PART

Why should I clear title to heirs property?



Heirs property has encumbered title. This restricts what heirs can do with the land. Unencumbered title is necessary to protect property. Someone who owns interest in the property can have individual heirs' interest in the property sold by forcing a sale.

Can I sell timber, minerals, or produce from heirs property, as an heir?



No. A single heir cannot sell timber or other resources from the property without written, legal agreement with other heirs or a court order. To do so is theft.

## PROPERTY TAX FAQ'S

a. Don't I have a greater ownership interest than others because I pay the property taxes?



No. Paying *current* or *back* taxes does not increase your legal ownership of any real property, including heirs property.

b. Since I pay the property taxes, don't I own the property outright?

c. Since my family members don't pay the property taxes, doesn't that mean the property belongs to me, and I can do whatever I want with it?

d. If someone pays all the back taxes, will they own the property?



If I buy heirs property at a tax sale will that clear the title? ◀▶

When property is bought at a tax sale, the buyer obtains the title in whatever condition the title was in at the time of the sale. If it was heirs property at the time of the sale, the buyer has bought a clouded title.

If the tax bill is in my name, don't I own the property? ◀▶

No. A tax bill does not indicate ownership of property.

Do I have to pay back taxes on the property if the deed holder passed away? ◀▶

Property tax liens are debts of the deceased deed holder and must be paid by someone if the heirs want to keep the property from being sold at a tax sale.

### LIVING (OR NOT LIVING) ON THE PROPERTY

I live in the house and that means I legally own it, right? ◀▶

No. Living in a house does not mean your legal ownership in the property increases.

Can an heir change the locks or restrict other heirs' access to heirs property? ◀▶

No. One heir cannot keep another heir from enjoyment of the property. All heirs have equal, legal right to use and possess the property.

If I live on heirs property and take care of it, can I can take out a loan against the property to put on a new roof or continue to farm the land? ◀▶

An heir can't use their partial interest in heirs property as collateral for a bank loan. Banks won't lend money to one heir who has a partial interest in a property, so loans with heirs property as collateral can only be obtained through the agreement of all heirs who co-own the property.



If I live in the property can I qualify for home repair programs without the agreement of the other heirs?

Most home repair programs require clear title to the property, or require that all heirs are in written agreement to be considered eligible.

Doesn't whomever lives on, and takes care of, heirs property automatically inherit heirs property upon the owner's death?

Living in and caring for property (house or land) does not mean you inherit it all upon the current resident or owner's death. All real property, if there is not a last will and testament, is passed down to all descendants of the person on the last recorded deed.

If I own the largest interest in heirs property, don't I get the most say in what happens to the property?

No. All heirs, no matter what percentage of their interest, are legal co-tenants with equal rights and say in the management and responsibility of the heirs property.

Can heirs living on heirs property sold at a tax sale for unpaid taxes reclaim the property?

In some situations, heirs can redeem land the county revenue commission sold at a tax sale for delinquent taxes.

## AGREEMENTS

Isn't it true that an heir cannot sell interest in heirs property without the consent of other heirs?

No. An heir can sell their interest in heirs property.

Do all heirs have to agree for heirs property to be sold?

Under certain circumstances, such as a forced sale through a partition action or a tax sale, the property can be sold without all heirs agreeing.

## ESTATE PLANNING FAQ'S

If I leave a last will and testament, does that prevent heirs property?

**No. When you leave property to multiple beneficiaries in your will you have created heirs property. For example: leaving your house to all of your children in your will as co-tenants makes them the owners of heirs property.**

## PROBATE FAQ'S

If I die without a last will and testament and do not have a Joint Tenancy with Survivorship Deed, will my spouse inherit everything, even if I have living or deceased children?

**If you pass away without a last will and testament and did not own your home with your spouse as joint tenants with right of survivorship, your children and your spouse inherit the property and co-own it together as tenants-in-common (aka heirs property). If one of your children has pre-deceased you, their children will inherit the deceased child's portion.**

If a last will and testament says I am to inherit property, then as long as I keep the last will and testament safe, do I legally own the property? Do I still need to go through the probate court process?

**Title to real property can only pass to the beneficiaries of a last will & testament whose names do not appear on the deed (including spouses and children) if the will goes through the probate court process. The named executor or anyone else in possession of an original last will & testament is required to submit it for probate or, if they don't want to start the probate court process, file it with the county.**



## WHO IS AN HEIR?

Do I need to list my spouse on the deed for my spouse to inherit the property?

No. A spouse does not have to be on the deed to inherit a share of the property. A surviving spouse can inherit through a last will & testament or if there is none, under Alabama intestacy laws. If there is no will and the deceased person also had children, the spouse and the children can inherit.

Are families on their own to solve heirs property issues alone?

No. Heirs can consult with a range of professions: attorneys, certified public accountants, non-profits government employees, heir locator companies, bankers, elected officials, and genealogists.

# Bridging the Civil Justice Gap



JUSTICE FAIRNESS HOPE

**Legal Services  
Alabama**

LSA is one of the preeminent legal aid organizations in the country in bridging the civil justice gap through its recognized commitment to racial, social, and economic justice and support of a talented, diverse, and innovative staff.

## How does LSA help low-income Alabama?



**TIMELY LEGAL  
COUNSEL & ADVICE**



**QUALITY LEGAL  
REPRESENTATION**



**COMMUNITY  
EDUCATION**

**Heirs Property is the hidden story behind blight and generational poverty in Alabama.**

*Heirs property refers to a home or land that passes from generation to generation without a legally designated owner resulting in ownership divided among all living descendants in a family. This unstable form of ownership limits a family's ability to build generational wealth and hampers the efforts of nonprofits and cities to revitalize neighborhoods.*

## CONTACT US

LSA Call Center:  
866-456-4995 **ENGLISH**  
888-835-3505 **ESPAÑOL**

[WWW.LEGALSERVICESALABAMA.ORG](http://WWW.LEGALSERVICESALABAMA.ORG)