



# Clearing the Heir . . . Problems with Heir Property

By Brad Lang, Work Unit Manager,  
Alabama Forestry Commission

Owning land is a dream for so many. Whether purchasing land outright or acquiring heir property, there are some particulars you need to be aware of that could stave off problems later in life. In today's market, owning large amounts of property usually consists of two or more owners or multiple heirs in waiting.

I have found that in life, owning anything of significant investment requires a lot of forethought. For instance, if you own land or structural real estate, you need to think about where and what happens to it when you are gone. Who will you leave it to? How are you going to leave it? What if it's jointly owned? Who are the heirs to the heirs? These are all questions that need to be handled now.

First, let's define the meaning of heir and heir property. An heir is a person or persons who inherit land, without purchasing it, from deceased landowners. Heir property is defined as real property owned by two or more people that was inherited, rather than purchased, or passed down from generation to generation. Usually, heir property is acquired when the landowner dies and did not develop a will, or the property was not filed correctly with the state. Once you become an heir to property, each share is undivided and has no defined boundary.

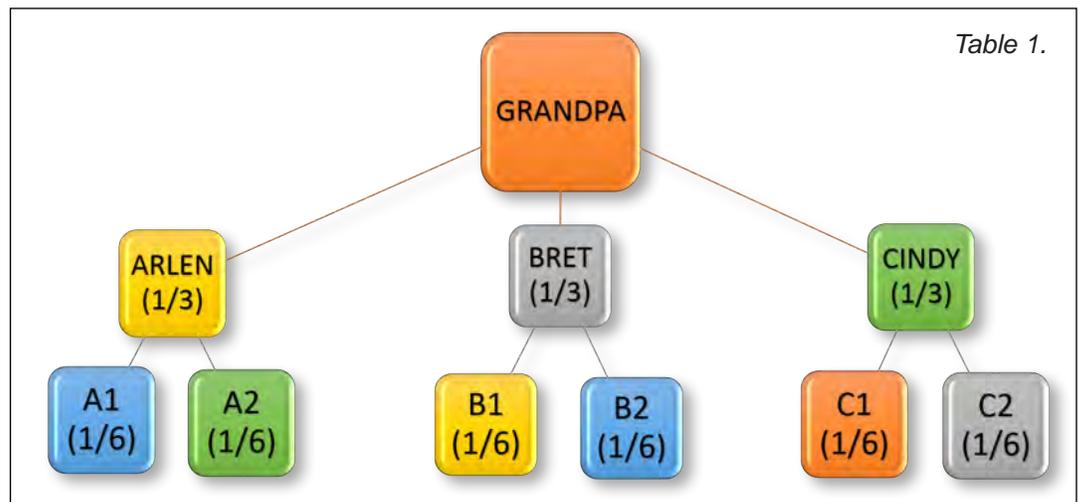
Let's look at one example. Grandpa passed away and owned 300 acres. After his passing, he either didn't have a will, or did have a will but decided to simply leave his land

to his three children, undivided. Either way, the children will end up with the 300 acres as a whole. This would mean that each child has equal ownership of the 300 acres, or you could say they own a third of the 300 acres. This 'third' ownership means each heir owns a third of everything on the property. There is no defined 100 acres owned by each heir. They each own a third of each tree, each leaf, and each area of ground across the entire 300 acres. To further complicate the matter, let's say each child also has two children each. Do you see where I'm going with this?

Now, in a perfect world, siblings or family members agree on everything and there would never be an issue with this type of ownership. However, it's not a perfect world and this is a rare event. But even if the heirs do get along, there are still issues with heir property that need to be discussed.

Here is what I call an Heir Family Tree. I'm going to use this year's hurricane names as examples.

*(Continued on page 14)*



## Clearing the Heir

(Continued from page 13)

For this example, I kept it to an even number of grandchildren. But you can probably imagine the confusion once the heirs have different numbers of children. In this simple example, property ownership went from a single person to six different owners over a period of time and will continue the trend until something is changed.

So, in this imperfect world, what are some of the facts concerning heir property? All heir property owners:

- Are responsible for taking care of the land.
- Must protect the land.
- Must do repairs and maintenance.
- Share profit gains and expenses.
- Must pay property taxes. If one heir pays taxes, that person must be reimbursed by all other heirs. All taxes must be paid between September and 1st week of January.
- Are percentage interest owners. (Example: \$100 profit = \$10 on 1/10 interest share)
- Do not own defined number of acres.
- May not be aware they own a percentage. (It can be difficult to track owners who are 'absentee'.)
- Have common interest conflicts.

Next, let's look at this same scenario from a forest management standpoint and how it can create issues. The first concern to pop up is that there is no one 'real' ownership, no clear title. Just as all original heir parties own a third, all decisions are based on a third as well. The more heirs, the smaller the share gets per heir. All heir owners must agree on land use and management decisions.

In my experience, one of the biggest issues in this situation is everyone reaching agreement on forest management objectives. Regardless of the number of heirs, it is rare for everyone to have the same opinion and agree to the same objectives. Having dealt with such issues, I have come to understand that not everyone likes to cut timber. Landowners can have very different opinions on management objectives, and some people just simply do not agree with decisions made by other family members. Have you ever had a family member that thought you were always out to get them, no matter how honest you were being? Not having outright, defined ownerships makes solving these issues difficult and it can get quite ugly between family members.

Another major issue we often see is heir owners seeking cost-share assistance. When applying for cost share, it's not easy to get government assistance because again, there isn't clear ownership of the property. For example, if a property is passed down to five children, then all five must be present to sign the required documentation to apply for cost share. Plus, all heirs must agree upon which management cost share to apply. If it is decided to elect one party to handle the administrative sign-up, then that party will be responsible for paying the up-front costs, receiving full reimbursement, receiving the IRS 1099, and paying the taxes on the money reimbursed. Then it will be on that one party to seek all necessary reimbursement from the other heirs. This can get real tricky and cause an 'administrative' slow down on progress, versus having a clearly defined ownership.

So, you think, what can you do if you are one of these heir property owners? Some ways to maintain an heir setting is to 1) confirm all heir owners, 2) ensure clear title, not having disputes, 3) create an heir family tree, and 4) clear up unwanted ownership from heirs that do not have any interest.

Here are some ways you can better structure the property ownership:

**1. Land Trust.** Basically, a trust is developed when deeded owners donate their heir interest to the trust. At this point, one person serves as a trustee and all others are beneficiaries of the trust. The trust holds the title to the property; the property is now no longer divided because it belongs to the trust. A trust is often used to create privacy for the landowners. Records will only show ownership in the trust name, not the landowners. A disadvantage to trusts is that the beneficiaries hold all liability to the property.

**2. Limited Liability Company (LLC).** An LLC is an ownership of partnership structure that has members rather than actual partners or shareholders. It must have a set of terms agreed upon about how the LLC conducts business. This is where you set all the rules for



future direction. A major advantage is liability protection to the owners and is listed as its own entity. One disadvantage is that it cannot live forever like a trust, but rather dies with the members. New members must be set to receive an LLC as needed. Jointly, a land trust and an LLC can co-exist to provide privacy and protection to its members.

- 3. Tenancy-In-Common Agreements.** These agreements will set ownership rights of all owners as well as set specific parts of the property owners can use. They also set right of first refusal. These agreements can help settle muddy water upon initial ownership.

This information is very basic and not case-by-case specific. I hope it gives you something to think about when it comes time to decide how your property can be better organized, and how it will be left once you are gone. A couple issues I didn't discuss but are important to mention . . . what if one of the heirs doesn't agree on the methods of cutting timber, or what if one of the heirs would rather sell their portion and take real money? In either of these situations, it is imperative to seek professional advice. Always consult with a registered forester before selling or cutting timber. Having a forest management plan completed on the property would aid in discussions between heirs. Finally, talk with a real estate lawyer or a certified public accountant who have had experience in similar situations to help you decide how to develop and implement a plan.

The important thing to remember is to avoid ownership disputes now and for future generations. Obtain a management plan for your property. Sometimes by listening to all parties' interests and tailoring a plan to fit the property, an unbiased party can help settle disputes and encourage the heir owners to get defined ownership control. This way, the management of the land and timber is sustained for today as well as for future property owners. An essential goal for any group of landowners is to first . . . clear the heir!



## What You Need To Know About Heir Property

### What is "Heir Property?"

- Heir property refers to land that has been passed down informally from generation-to-generation. In most cases, it involves landowners who died without a will.
- Heirs' property is land owned "in common" by all of the heirs, regardless of whether they live on the land, pay the taxes, or have ever set foot on the land.

### Things you should know

- When a landowner dies without a will, the state decides who inherits the land. Overtime, when land is passed down through several generations without a will, distant relatives who do not know each other could be co-owners of the same property.
- Heir property is the leading cause of Black involuntary land loss. According to the Census Bureau, 80 percent of land owned by Blacks has been lost since 1910 due to heir property.

### Common Problems

- Decisions regarding use of the land, such as harvesting timber or leasing for agricultural purposes, must be agreed upon by everyone entitled to the land. Some owners may want to sell the land, while others want to live on it or farm it.
- Some will pay their share of taxes and maintenance, while others will not.
- It is hard to get loans, grants, and Government assistance based on property ownership because there is no clear title.
- Lack of clear title also means that the property is less marketable for sale or lease.
- One owner could force a court-ordered sale of the entire property so that all of the descendants can "cash out."
- Some owners are unable to receive a home loan to complete badly needed home repairs.

### What you should do

- Try to work out family disagreements before they become legal battles. Get a will and encourage other heirs to make a will to prevent more people from becoming heir owners.
- Make a family tree to identify every heir. Maintain a list of all of the heirs with their current addresses. Create a plan to take care of the property. You may need to have meetings once or twice a year.

Center for Minority Land and Community Security • Tuskegee University  
100 Campbell Hall • Tuskegee, AL 36088 • Phone: (334) 727-8333  
Contact Person: Jess Gilbert

