



## Sustaining Ecological and Economic Diversity Among Limited Resource Landholders by Expanding Opportunities for Management of Productive Woodlands



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North Carolina Agricultural & Technical University

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## Understanding Heir Property

Land Loss Prevention Project  
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## The Land Loss Prevention Project

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- LLPP
- PO Box 179, Durham NC 27702
- 1-800-672-5839
- [www.landloss.org](http://www.landloss.org)



## Ownership

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- Who Owns the Land?
  - Sole ownership
  - Joint ownership
    - Tenancy by the entirety (husband and wife)
    - Cotenancy
    - Heir property



## Types of Ownership

- What Kind of Ownership?
  - “Fee Simple”
  - Life Estate
- Subject to any easements, liens or judgments?



## Where do you find it?

- Go to the Register of Deeds Office in the county the land is located in to track the history of land ownership
  - Transfers of ownership
    - *Deeds*
    - *Deeds of Trust*
    - *Easements*
- County Clerk of Court
  - Judgments
  - Probate Records



## How is heir property created?

- Heir Property
  - When an individual passes away without leaving a will that clarifies their wishes as to the distribution of property
- State law determines how property (real and personal) passes



## Heir Property

- Intestate Succession
  - Chapter 29, North Carolina General Statutes
    - Provides guidance as to how property (both real and personal) shall be distributed if person passes away without a will
      - Depends on who is “surviving”/living when the individual dies

- Remaining heirs share ownership of a single parcel of land
  - Ownership becomes fractionated and difficult to manage
    - Possibility of forced partition by outside interest holders

## Example



## Why does this matter?

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- All conveyances of heir property must be done with the permission of *all* the co-owners
  - Deeds
  - Deed of Trust/Mortgages
  - Easement (Conservation or otherwise)



## Common Issues

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- Management of Land
  - Scattered family members/co-owners
    - Varying levels of attachment to the land
    - Agreement on appropriate uses (development, conservation, farming, residential)
    - Varied financial status (sale of interests)



## Common Issues, cont.

- Co-tenants also share in benefits and obligations associated with the land
  - Rental profits
  - Sales of timber
  - Property taxes



## What can be done?

- Write a will
- Create and maintain a family tree
- Communicate with other heir owners about management of land
  - Visit the land!
  - Be watchful of notices and mailings regarding the land
- Have the land surveyed



## Division

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- Divide the land
  - By Deed or Partition



## Division

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### By Deed

- All co-owners must agree
- Convey ownership to certain tracts or portions of the land
  - Must have had a survey (to describe the land conveyed)





## Division

- Partition
  - Occurs when co-owners cannot agree on management or division of land (filed as a Special Proceeding with the Clerk of Court)
  - Requires appointment of commissioners to oversee the process, and usually a survey
  - North Carolina Courts prefer a physical division of the land
    - partition “in kind”, rather than a partition by sale



## Policy Solutions?

- HB 1309
- Refusal Rights—Forced Public Partition Sales
  - Proposed legislation allowed cotenants a “right of first refusal”, or an opportunity to purchase the interest of the person seeking to partition the land



## Potential policy changes

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- HB 1309
  - Value of interest is appraised
  - Non-petitioning covenants have opportunity to purchase the interest before forced public auction occurs
  - Currently slated to be in study committee
- Others?