



CONSIDERING TITLE PRIOR TO A DISASTER

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ABOUT THE LAND LOSS PREVENTION PROJECT

- The Land Loss Prevention Project was founded in 1982 and incorporated in 1983 as a nonprofit law firm offering legal assistance free of charge to financially distressed and limited-resource farmers and landowners across North Carolina.
- **Areas of Law:**
 - Real Property
 - Agricultural
 - Environmental
 - Consumer Protection and Foreclosure Defense
 - Wills and Estate Planning
 - Civil Rights
 - Bankruptcy (Chapters 12 and 13)
 - Access to Government Services
 - Small Business Planning Geared to Farmers

WHAT DOES IT MEAN TO HOLD TITLE TO REAL PROPERTY?

- Holding title to land means having rights of use and ownership.
- Title is best documented by a deed recorded with the Register of Deeds in the county where the land lies.
- Title can be held by one owner or by multiple owners.
- Holding title to property may be important for livelihood, wealth creation, maintenance of family and community ties, and **ability to access programs, including disaster relief programs.**



WHAT IS HEIR PROPERTY?

- When an individual passes away without leaving a will that clarifies his or her wishes as to the distribution of property, Chapter 29 of the North Carolina General Statutes mandates how property (real and personal) is passed on. Passage of property in this manner is called **intestate succession**.
- **Heir property** (or heirs property, or heirs' property) is a phrase commonly used when intestate succession occurs over multiple generations in relation to real property.

COMMON PROBLEMS FACING HEIR PROPERTY OWNERS

- It is difficult to keep track of all the heirs, who may be geographically scattered, and their undivided ownership shares.
- Heirs may have varying levels of attachment to the land or willingness to help with taxes or maintenance.
- Heirs may have different ideas for how to use (or not use) the land.
- It is difficult to borrow against an undivided share; or lease it out for farming, residential use, timber sales, or mineral rights; or obtain a fair purchase price, so the economic value of ownership often cannot be realized.
- It may be difficult for heirs to qualify for some local, state, or federal programs for landowners, including disaster relief programs, if they cannot show clear title.

IDENTIFYING HEIR PROPERTY OWNERS

- Create a detailed family tree, including all family members and spouses, and dates of death, marriage, and divorce.
- Try to obtain current contact information for all family members.
- Go to the Register of Deeds Office in the county the land is located to search for recorded deeds and maps.
- Go to the county Clerk of Court to review estate files of deceased landowners and search for any judgments regarding the land.



WORK WITH AN ATTORNEY TO:

- Ensure a family tree is complete, and conduct a title search to determine the heirs and their respective ownership interests;
- Obtain advice about options for consolidating title and stabilizing land ownership; and
- Decide on a new ownership structure, agreement, or other solution.

LEGAL STRATEGIES TO CONSOLIDATE TITLE AND MAINTAIN LAND OWNERSHIP

Trusts

- Heir property owners may decide to deed their interest in the land to the trust and choose a person to be the trustee.
 - The property owners can be the beneficiaries of the trust and the trust would hold title to the land.
 - The trustee would manage and control the land in accordance with the trust agreement.
- Benefits:
 - The trust can continue to hold title to the land even as the heirs or beneficiaries change over time;
 - Makes one person, the trustee, responsible for making decisions, paying taxes and maintaining the land;
 - Limits risk of tax foreclosure or partition action; and
 - Ownership will no longer be divided among many heirs.

LEGAL STRATEGIES TO CONSOLIDATE TITLE AND MAINTAIN LAND OWNERSHIP

Business Entity Formation

- Heir property owners may choose to form a business entity such as a Limited Liability Company (LLC) through filings with the North Carolina Secretary of State.
- Heir property owners can transfer their interests in the property to the LLC via deed.
- Benefits:
 - Centralize the ownership and decision-making for the property;
 - The entity can outlive a single owner;
 - As owners change, the business entity remains in control of the land; and
 - The corporation bylaws or an LLC written operating agreement establish the rules for managing the business or property, including:
 - Distribution of profits
 - Use of the property
 - How the members can transfer their interests, including buyout options or rights of first refusal

OTHER LEGAL TOOLS TO PROTECT HEIR PROPERTY

Tenants-in-Common Agreement

- Heir property owners may decide to set out the rights and responsibilities of all the property owners in a written tenants-in-common agreement.
- Benefits:

While it does not by itself change or consolidate title to the property, a tenants-in-common agreement can address common issues including:

 - Who will manage the property;
 - How the property will and will not be used;
 - How the property taxes will be paid; and
 - What happens if an owner wishes to sell his or her interest in the property.



QUALIFYING FOR DISASTER RELIEF THROUGH FEMA (FEDERAL EMERGENCY MANAGEMENT AGENCY)

FEMA's Individuals and Households Program

- Provides financial help or direct services to help with damage to homes and property.
- To be eligible for assistance, the residence must be “owner-occupied” under 44 C.F.R. § 206-111, meaning occupied by:
 - The legal owner;
 - A person who does not hold formal title to the residence and pays no rent, but is responsible for the payment of taxes or maintenance of the residence; or
 - A person who has lifetime occupancy rights with title vested in another.
- To prove that an applicant qualifies, FEMA looks to public records, such as deeds and property tax bills, as well as documents provided by the applicant, such as bills, showing they lived at the residence prior to the disaster.

DISASTER RELIEF PROGRAMS THROUGH OTHER AGENCIES

SBA Disaster Home Loans

- SBA (Small Business Administration) provides low-interest loan to repair or replace disaster-damaged property.
- The home must be a “primary residence,” with the occupant or owner as the applicant. SBA will rely on documents such as deeds and property tax records.

USDA Disaster Assistance

- USDA offers disaster assistance in the form of loans and other funding to farmers through FSA (Farm Service Agency) and its other agencies, which may require the farmer to be an owner-operator or tenant-operator.
- The 2018 Farm Bill included provisions for farm operators on heir property to be able to obtain a farm number to better access FSA’s programs. Operators can show eligibility through a tenants-in-common agreement, tax returns, self-certification, or other documentation.

THANK YOU!

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