



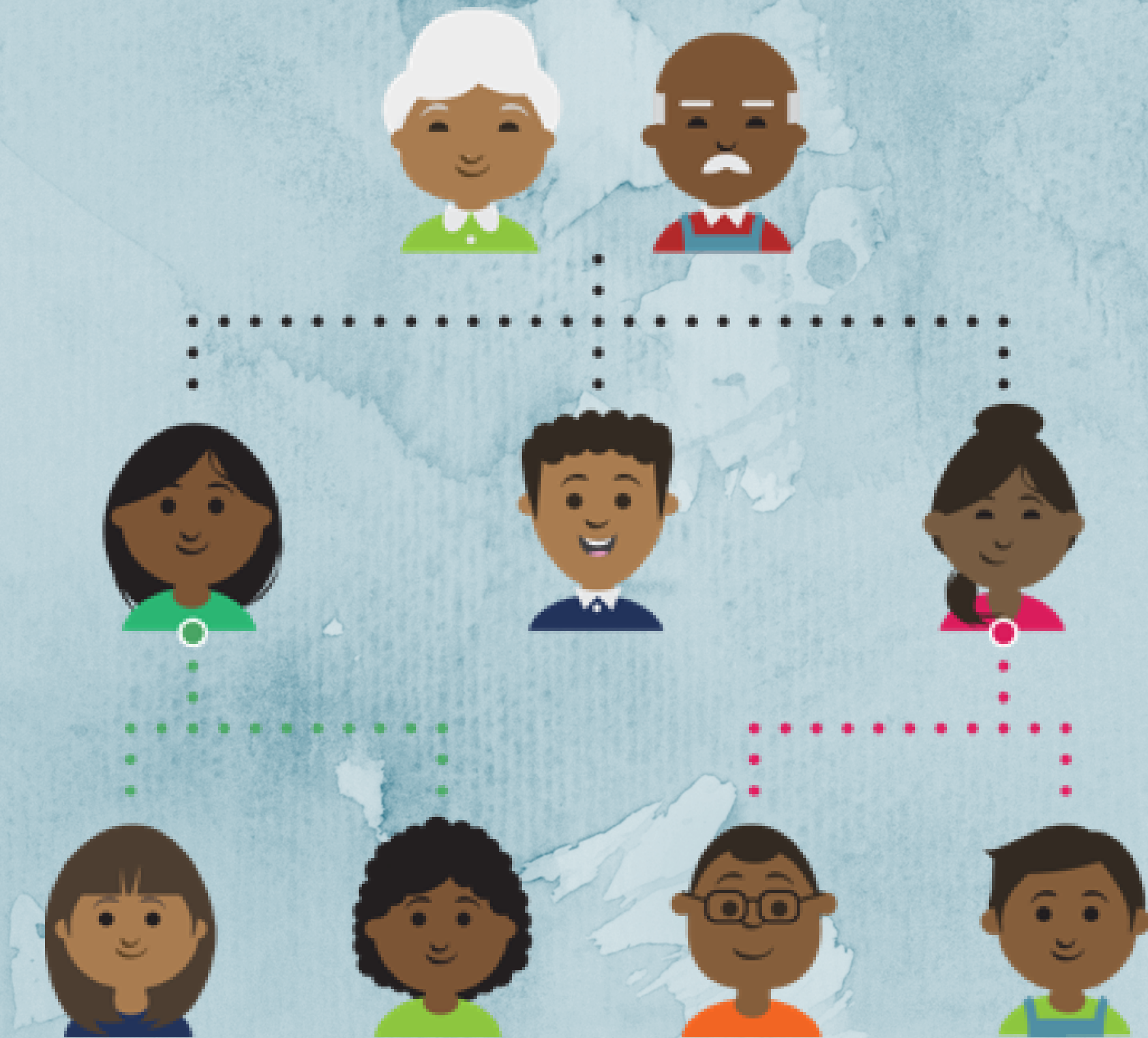
**HEIRS' PROPERTY:
Practical Tips & Pointers
for Resolving Title**



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HEIRS' PROPERTY

**"Heirs' Property is the
worst problem
you have never heard of."**

**David Dietrich
Co-Chair of the ABA Property Preservation Task Force**

What is Heirs' Property?

Heirs' property is a legal term that refers to family land inherited without a will or legal documentation of ownership.

Last Will and Testament

ARTICLE I: Funeral expenses & payment of debt

executors to pay my enforceable unsecured debts and funeral expenses, the expenses of my estate, and the expenses of administering my estate.

debts must be paid before other assets are distributed. This clause gives your executor the authority to pay the funeral home, court costs, and hospital expenses.

ARTICLE II: Money & Personal Property

all my personal property and all policies and proceeds of insurance covering such property, if no share not survive me, I give that property to those of my children who survive me to be divided among them by my executors in their absolute discretion after the payment of all my debts and expenses.



Heirs' property is property that is co-owned by the heirs of a deceased person.

The heirs do not own a specific portion of the land; they own a fractional interest in the land based on their relationship to the original landowner.

Descendants succeed to the property of their ascendants.

They take in equal portions and by heads if they are in the same degree.

They take by roots if all or some of them succeed by representation.

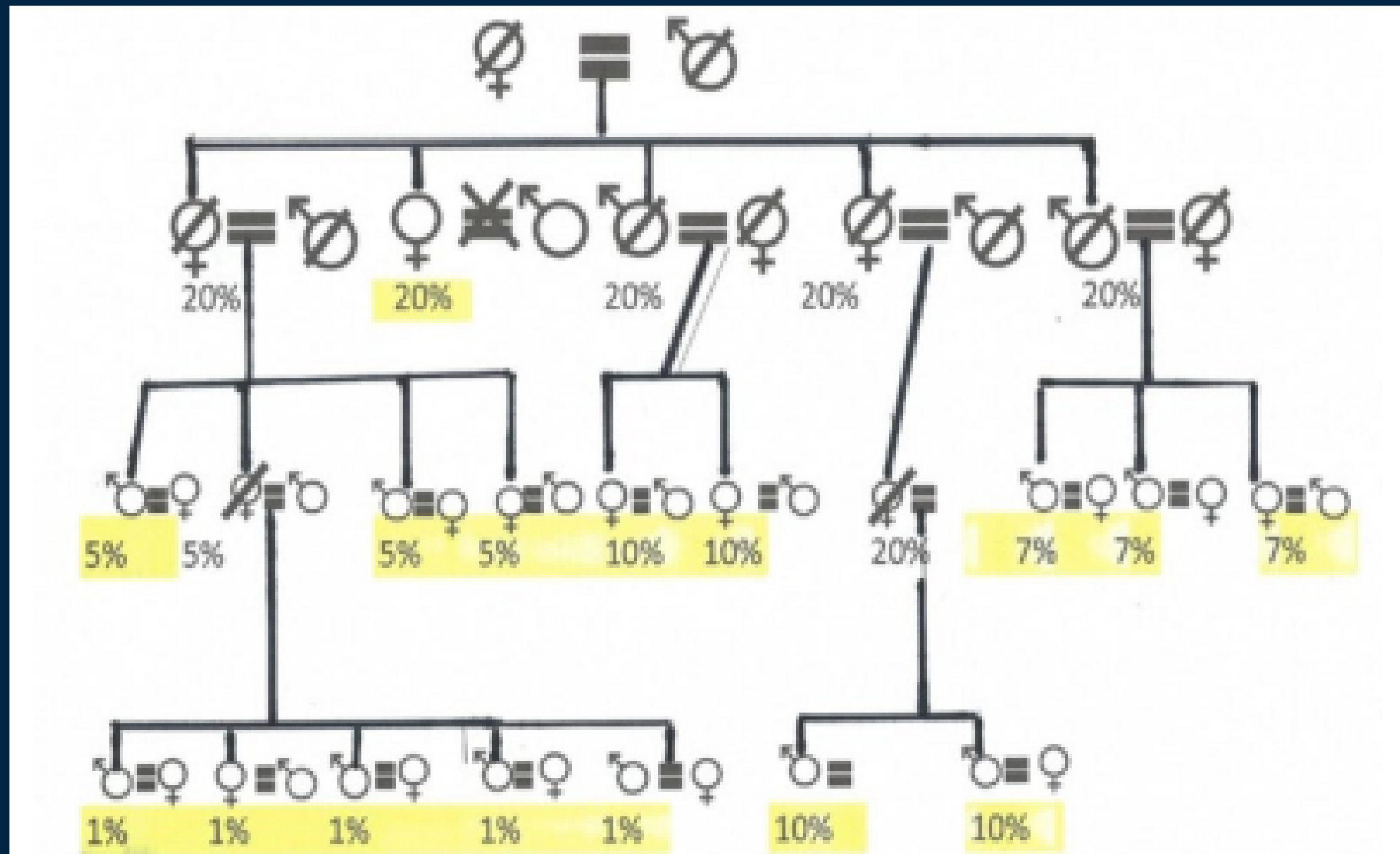
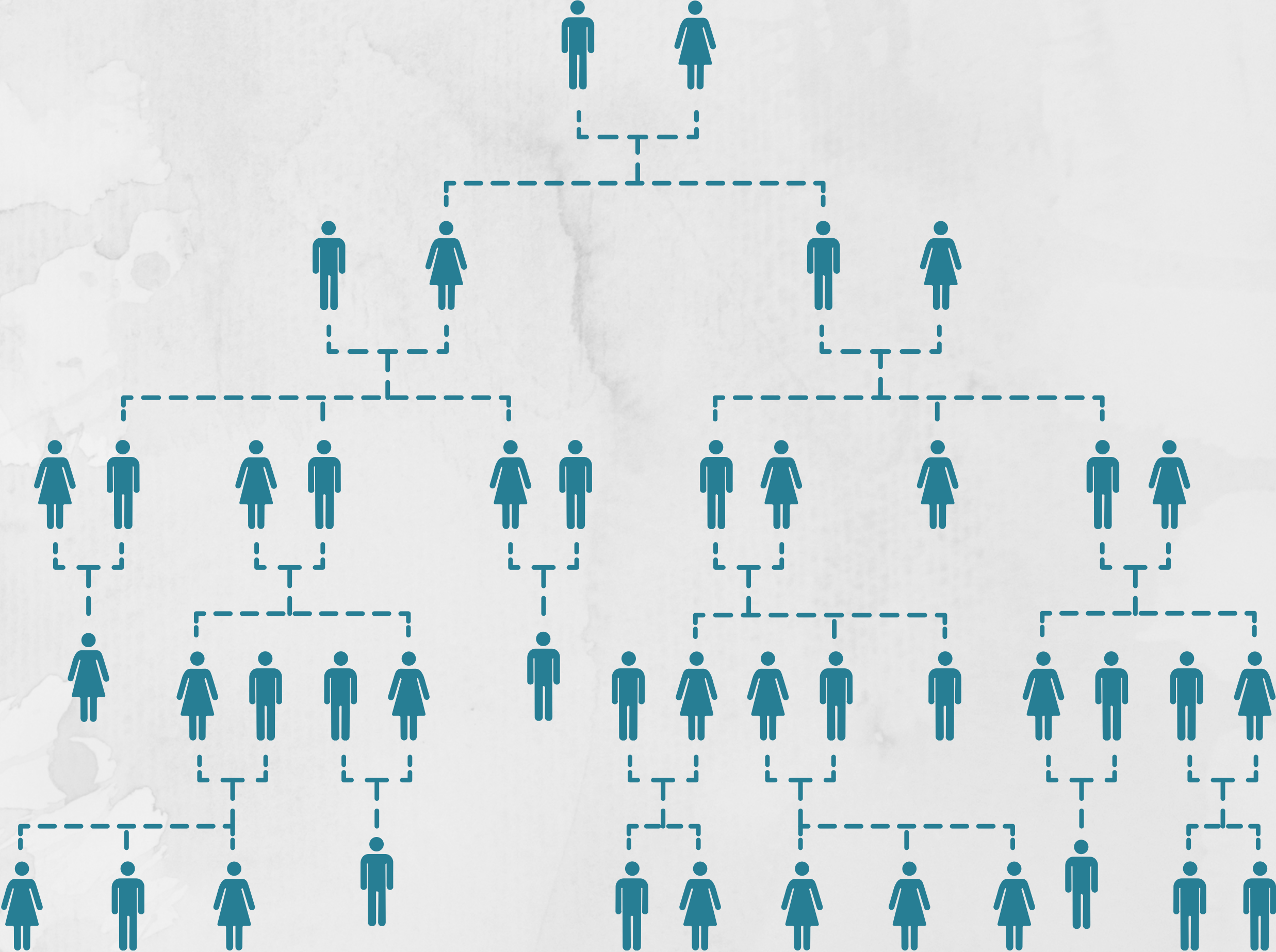


Figure 2. – Determining Shares of Interest Over Generations

Each generation adds more heirs to the land inheritance.

As time and people pass, the situation grows more complicated.



Impact of Heirs' Property on Co-Owners

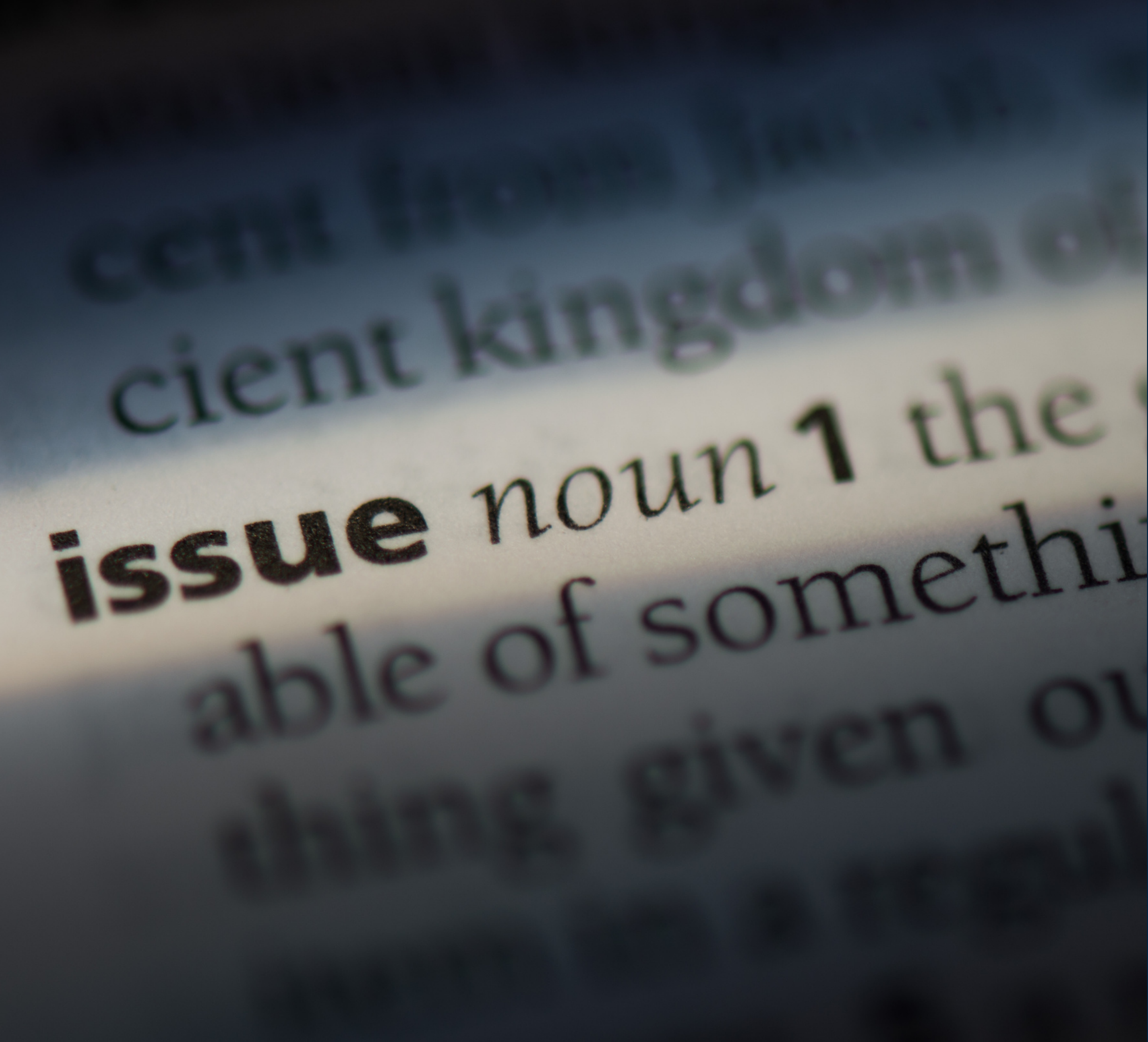
Heirs property restricts how land can be managed.

- Loans & Mortgages
- Lease
- USDA programs
- Conservation easements
- Farm planting & harvesting
- Timber harvesting

Impact of Heirs' Property on Communities

- Land cannot be developed to full potential
- Lost opportunities for improvement
- Loss of tax revenue





HEIRS'
PROPERTY
ISSUES:

Land Loss

The **heirs' property** phenomenon is evident across the **rural to urban** continuum, but the preponderance of writing and attention to this topic focuses on land tenure problems encountered by **southern, rural African Americans**.

Heirs' properties are expected to be pervasive in communities with

- higher-than-average poverty rates and
- lower educational attainment.

Who usually owns heir property?

- Seniors (65+)
- Rural
- Racial minorities
- Low-income
- Poorly educated

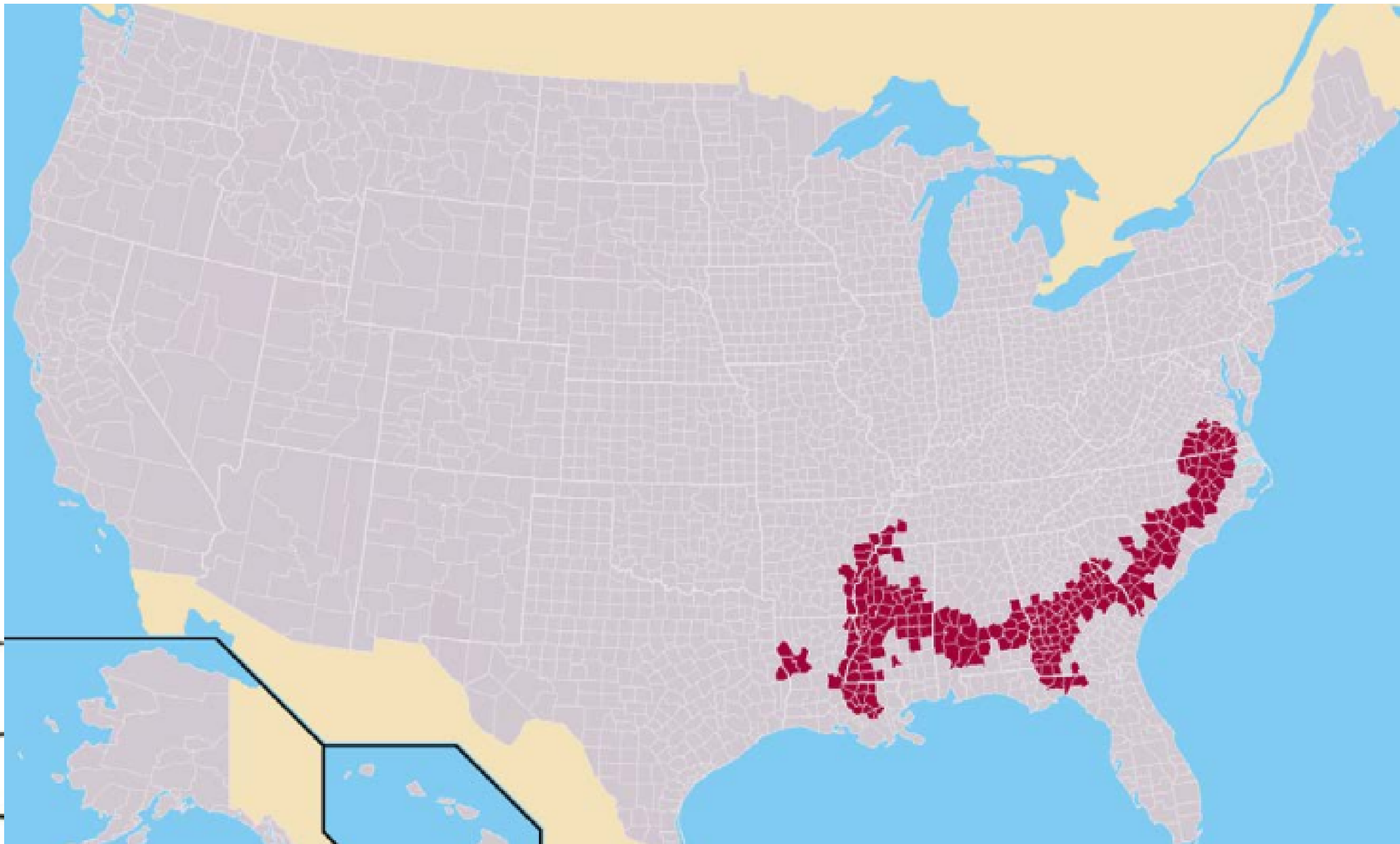
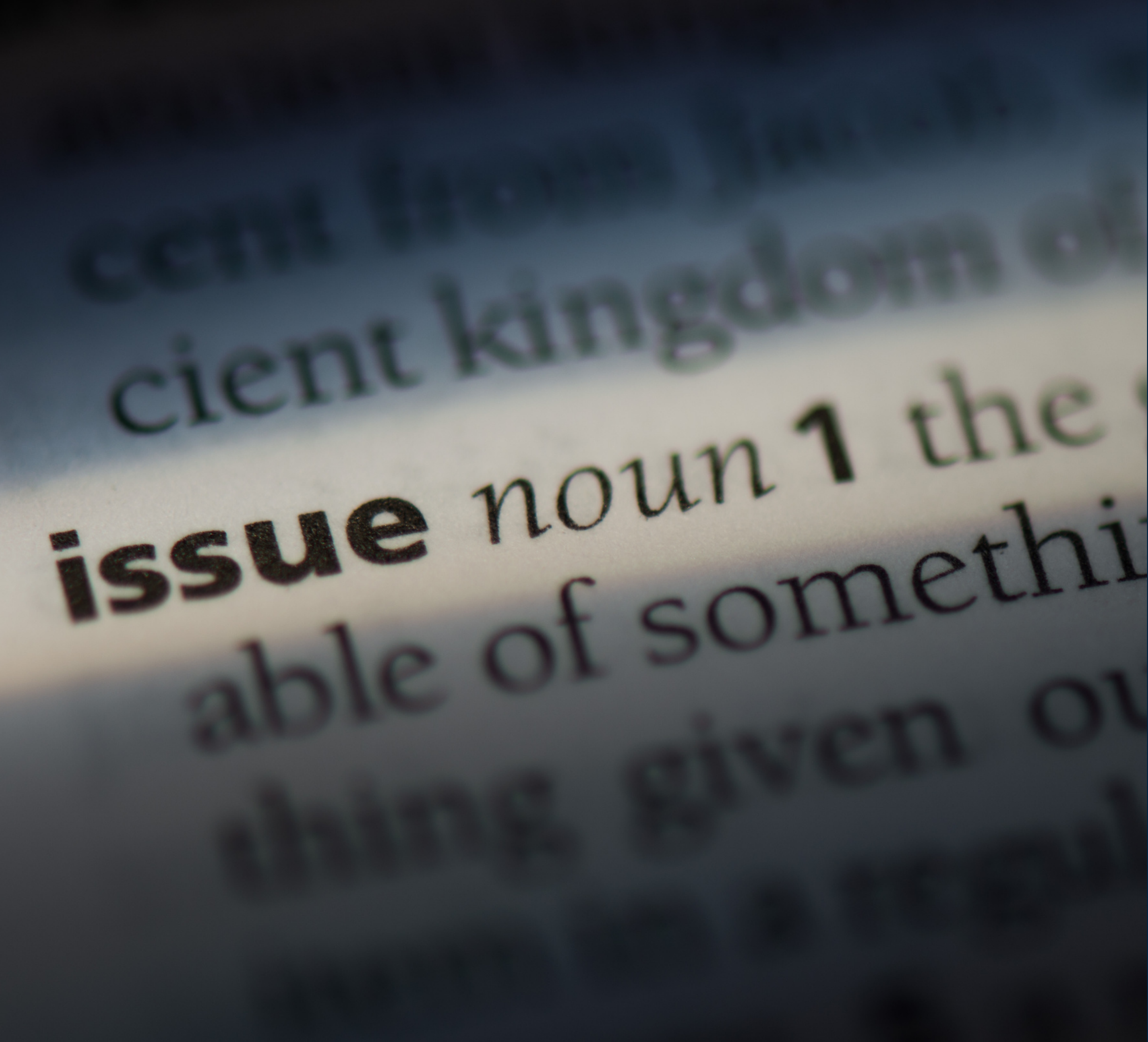


Figure 1—Black belt counties (red) in the U.S. South. (source: J intela, English Wikipedia Creative Commons CC BY-SA 3.0 license.)

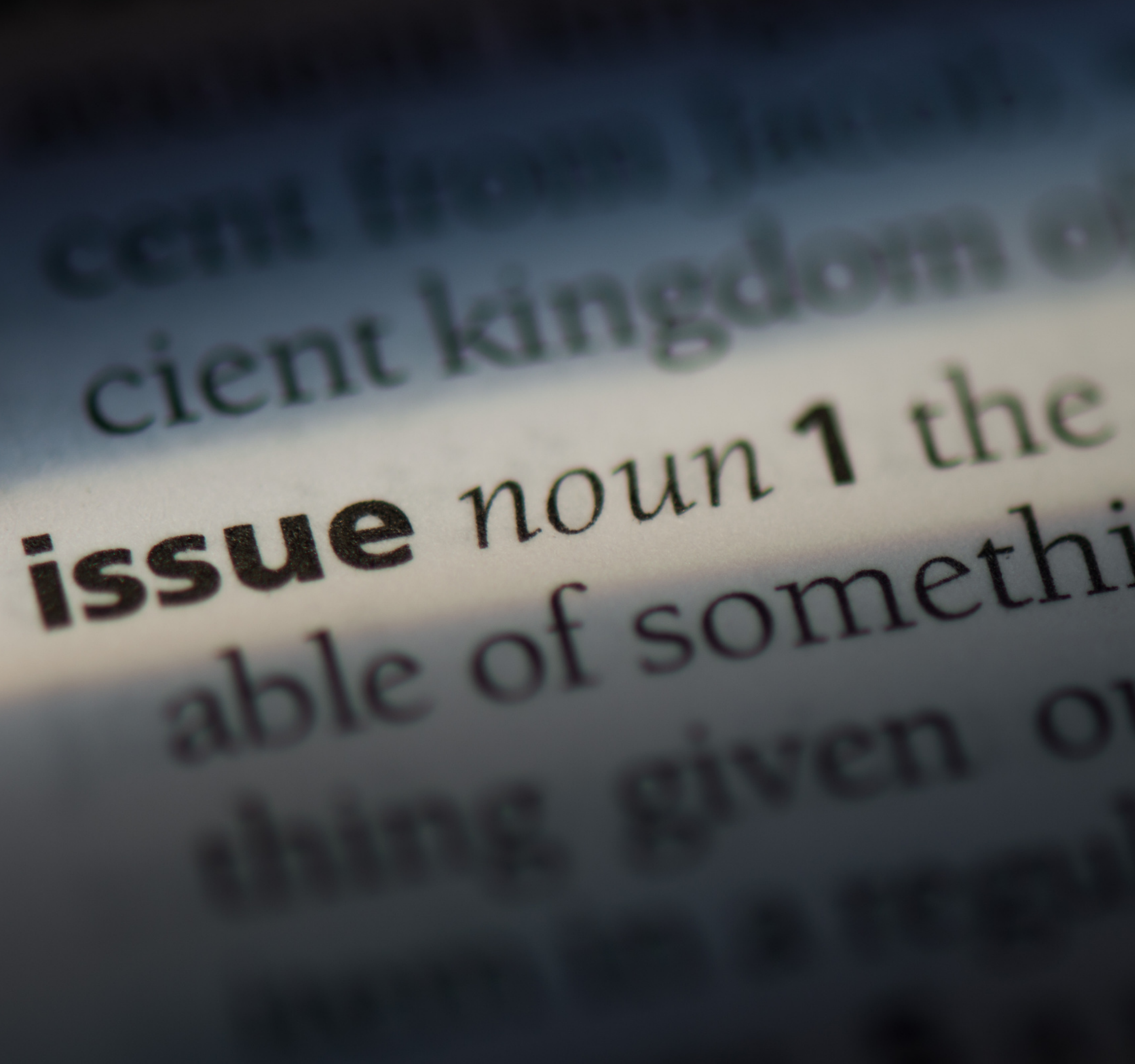


HEIRS'
PROPERTY
ISSUES:

Legal Industry

- Mistrust of the legal system
- Attorney fees
- Lack of knowledge about estate planning





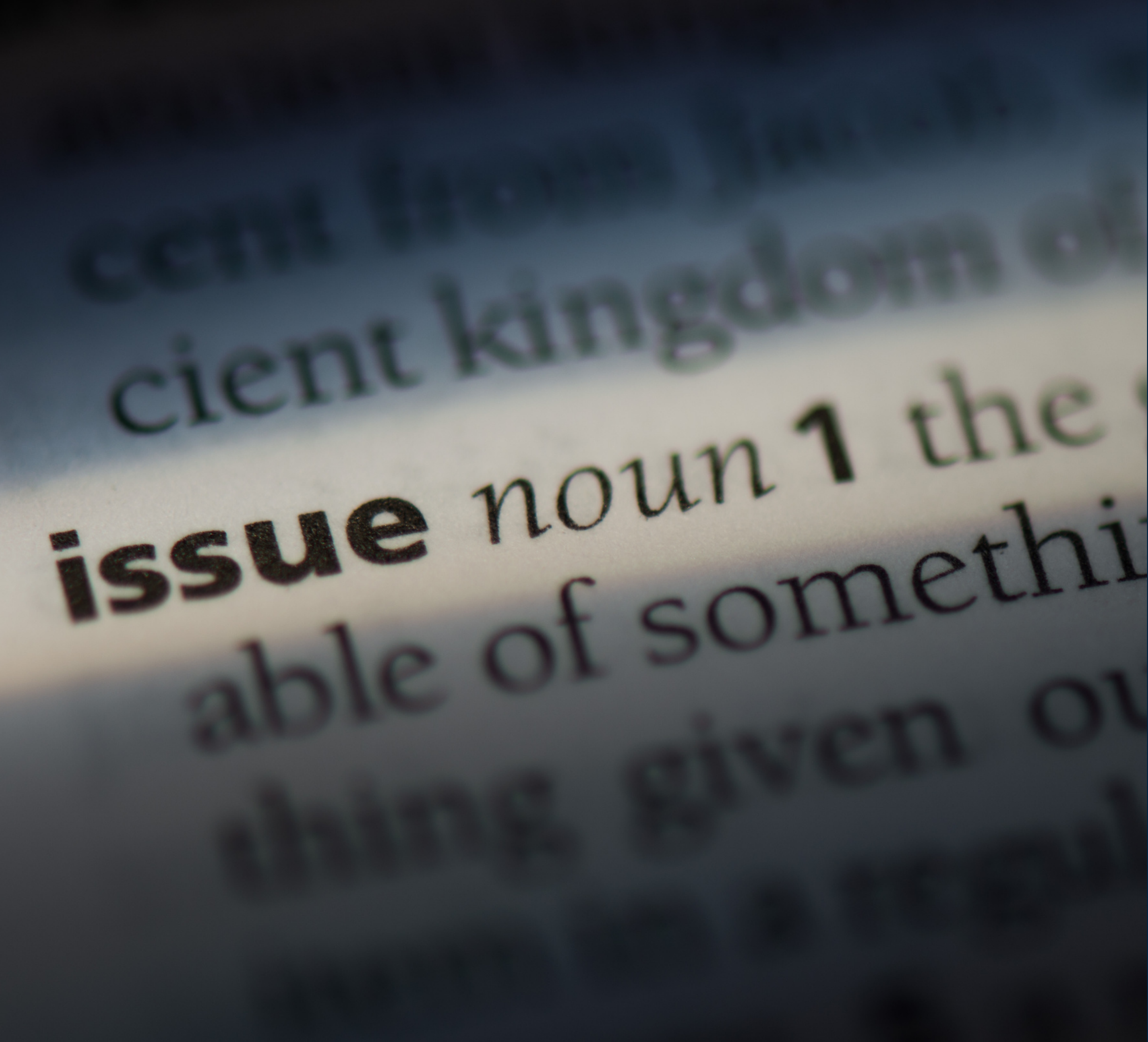
HEIRS'
PROPERTY
ISSUES:

Cultural
Concepts

"For (the family), the commitment to heir land remained in force, enforced not by law- where the practice and concept was vulnerable- but by shared understanding... The land should stay undivided, open to and for 'all the heirs.'

A Mind to Stay, Sydney Nathans (2017)





HEIRS'
PROPERTY
ISSUES:

"Cloudy Title"

No clear title / Lack of title

Heirs who inherit real estate as heirs' property **do not have clear legal title** to the land because the **deed to the land remains in the deceased ancestor's name.**

Since ownership of heirs' property is transferred through inheritance and often there has been **no recorded change in the name of the owner**, it is difficult to prove ownership by the heirs. This is referred to as "**cloudy title.**"

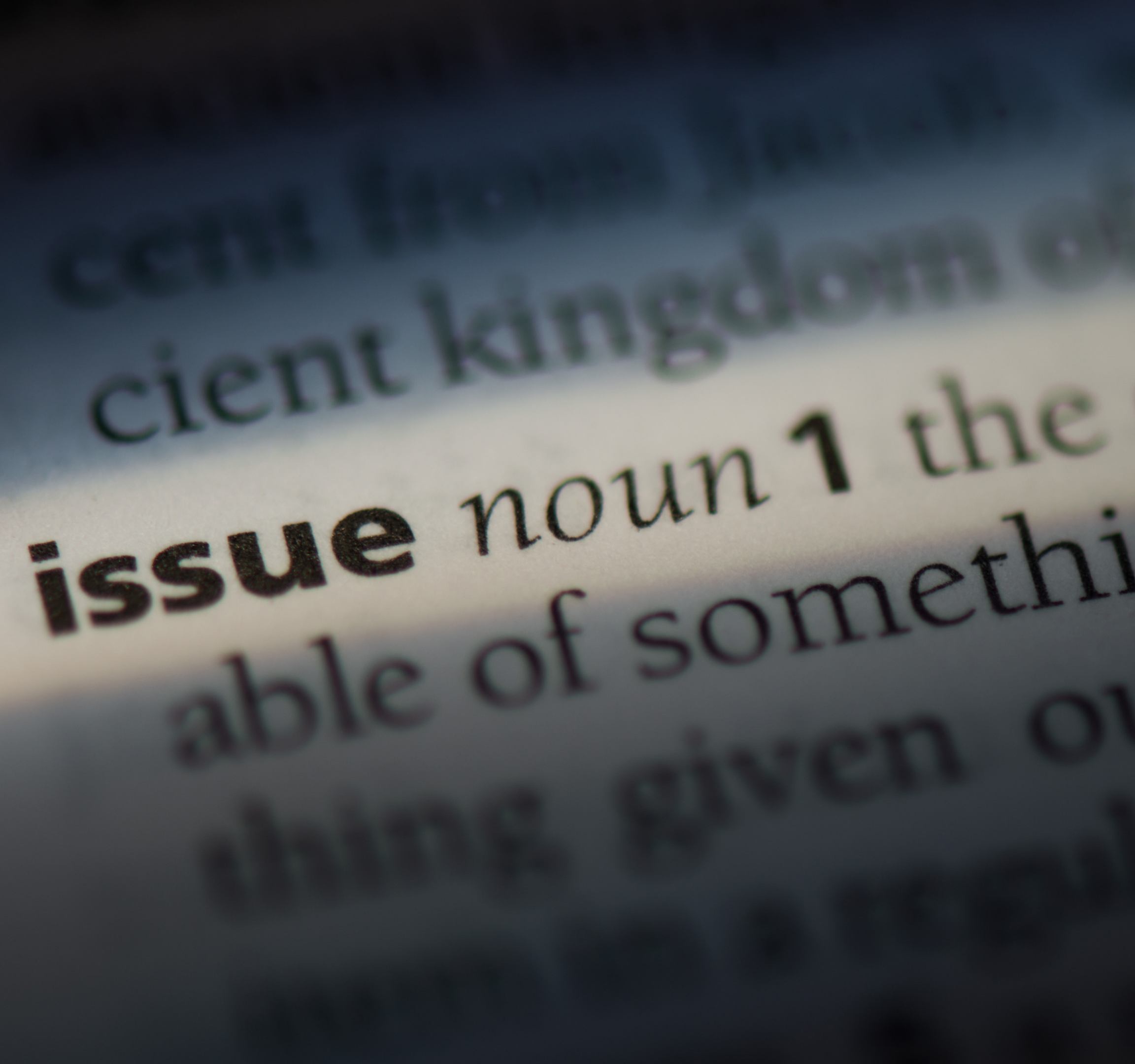




No proof of ownership

Historically, co-owners of heirs property faced difficulties obtaining federal benefits for the land without proof of ownership.

- USDA farm numbers
- Disaster Relief Programs
- 2018 Farm Bill = alternatives



HEIRS'
PROPERTY
ISSUES:

Co-Ownership

INTESTATE PROPERTY DIVISION

In this example, 100 acres are now owned by 7 heirs with shares of 1/4 to 1/64 of the property.



Co-Ownership = Fractional Ownership

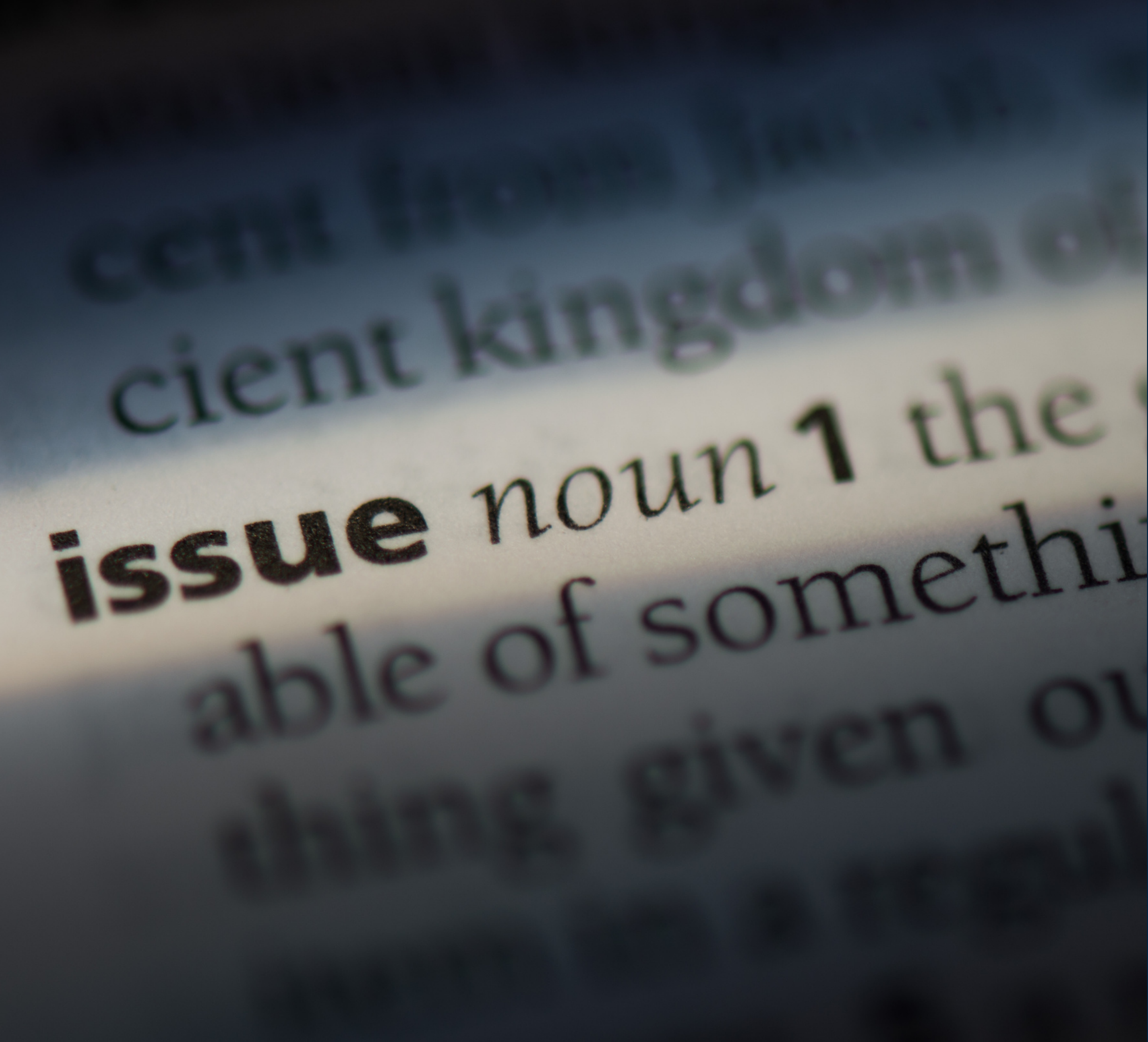
- Heirs may not like each other.
- Heirs may not all live on or near the land.
- Distance can cause disinterest.





Agreement





HEIRS'
PROPERTY
ISSUES:

Partition Sales

Heirs' property is vulnerable to forced partitions.

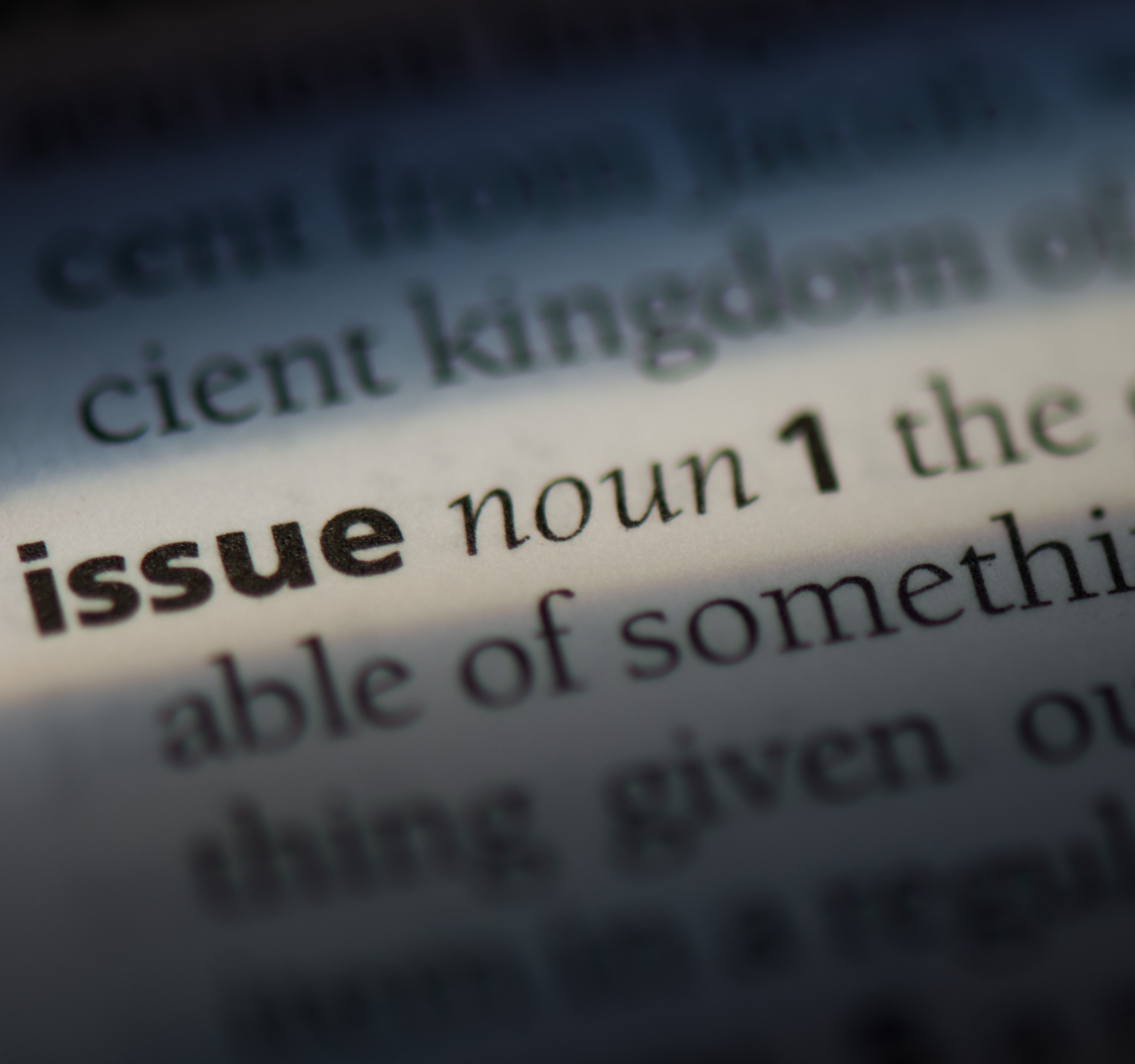
Real estate speculators often acquire a small fractional interest of heirs' property with the intent to file a partition action and force a sale of the land.

Partition Sales

Heirs who inherit land intestate are co-owners of the property. Each heir owns an undivided share in the land, not any specific piece of land. Any co-owner can bring an action in court to partition the property.

- Partition in Kind
- Partition by Licitation or by private sale
 - Extrajudicial
 - Judicial





HEIRS'
PROPERTY
ISSUES:

Tax Sales

Tax Sales

Many families lose their land due to tax sales (property taxes and/or tax liens).

- Only one or a few co-owner pay the taxes.
- Land speculators





HEIRS' PROPERTY SOLUTIONS

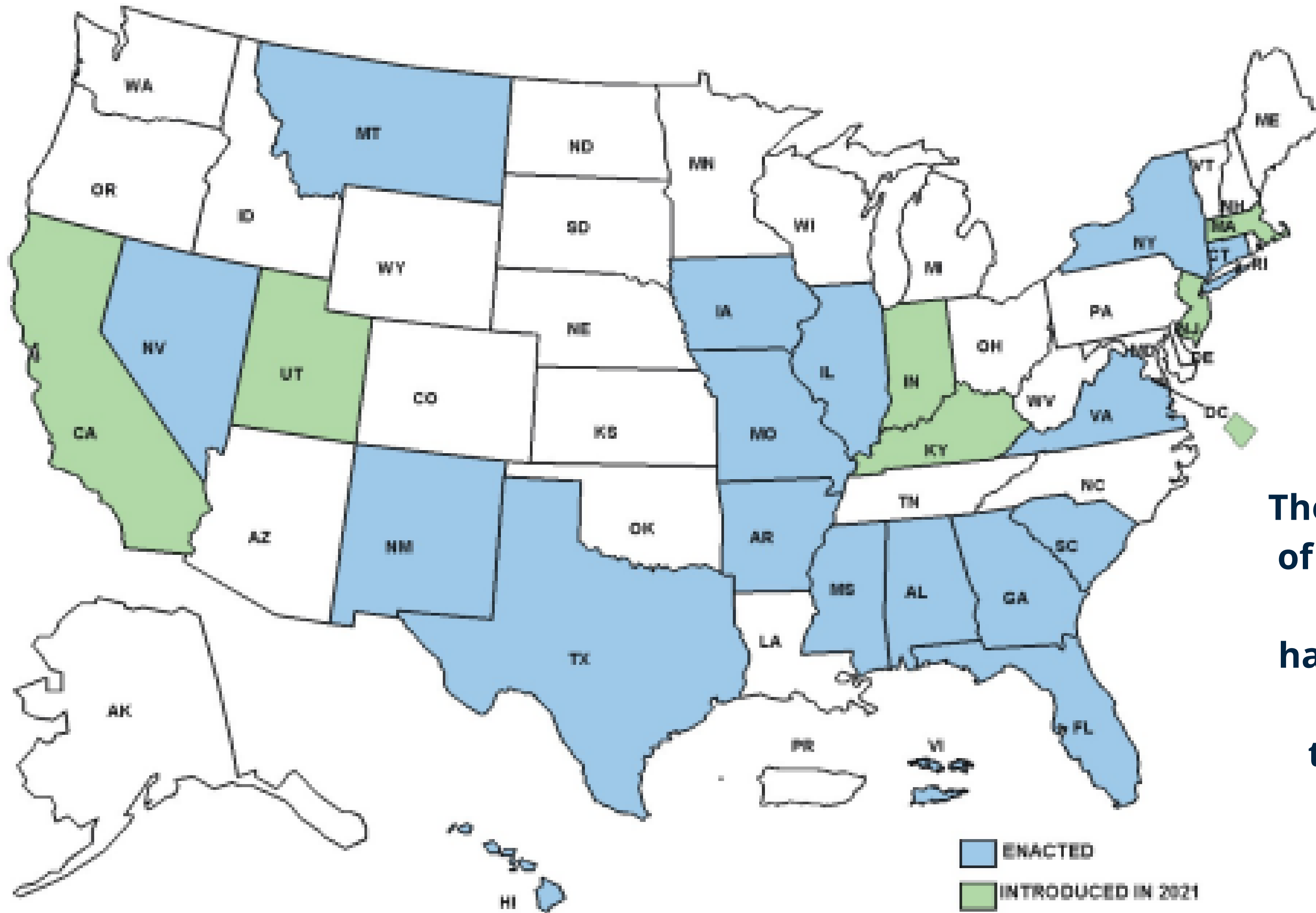
Uniform Partition of Heirs Property Act

The Uniform Partition of Heirs Property Act (UPHPA), completed by the Uniform Law Commission in **2010**, contains legal **protections for heirs' property owners** designed to **address** the devastating effect of **partition sales**.

The UPHPA restructures the way partition sales occur in states that adopt the act, and generally includes **three major reforms to partition law**.



UNIFORM PARTITION OF HEIRS PROPERTY ACT



The Uniform Partition of Heirs Property Act (UPHPA) has been adopted in 20 states and the United States Virgin Islands.

How does the UPHPA help?

Preference
for
Partition in
Kind

Open-Market
Sales

Right of
First Refusal

Generally, the UHPA includes 3 major reforms to partition law:

- If a co-owner brings a partition action in court, the court must provide an opportunity to the other co-owners to buy out the co-owner who brought the action.
(Right of First Refusal)
- If there is no buyout, then the law provides a preference for the court to order a partition in kind and divide the property, rather than a partition by licitation (sale).
- If a partition in kind is not ordered, the UHPA requires the court to sell the property at a market sale, not at an auction sale, and specifies a process for the property to be appraised and sold for its fair market value.

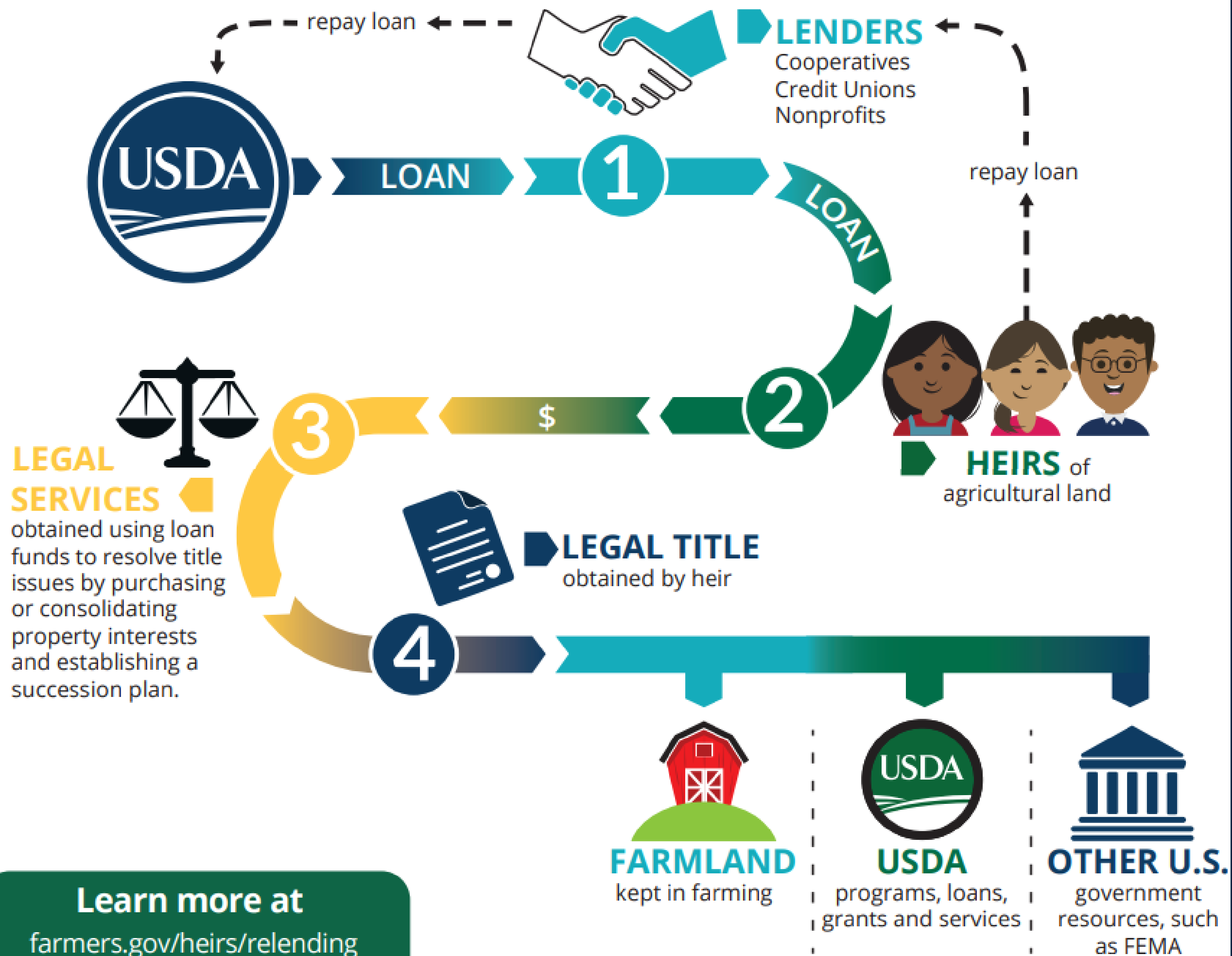


**USDA
Heirs' Property
Relending Program**

The Heirs' Property Relending Program (HPRP) was **authorized in the 2018 Farm Bill**. The program provides an avenue for heirs to receive legal title to their family property.



How it Works



Learn more at
farmers.gov/heirs/re lending

Who are the approved lenders?

○ **Akiptan, Inc.**

- Service Area: Nationwide, targeting Indian Country
- Contact: Skya Ducheneaux, 605-964-8081

○ **Cherokee Nation Economic Development Trust Authority (CNEDTA)**

- Service Area: Cherokee Nation
- Contact: Stephen Highers, 918-207-3955
- Contact: Brian Wagman, 918-453-5531




Who are the approved lenders?

○ Shared Capital Cooperative & Federation of Southern Cooperatives

- Service Area: **Louisiana**, Mississippi, Alabama, Georgia, Florida, and South Carolina
- Contact: Shared Capital Cooperative
 - Email: heirsloans@sharedcapital.coop
- Contact: Federation of Southern Cooperatives
 - Email: loanfund@federation.coop or info@federation.coop



the body or mind with
soundness and vigor, th
or the state of being pro
preservation from injury
pre-ven-tion /pri'venʃ
preventing; effectual hin
stay away from dangerou
the identification, assess
prioritization of risks



Estate Planning

Estate planning is the process by which an individual designs a strategy and executes a will, trust agreement, or other documents to provide for the administration of his or her assets upon his or her incapacity or death.

American Bar Association

Last Will and Testament

ARTICLE I: Funeral expenses & payment of debt

I hereby direct my executor to pay my enforceable unsecured debts and funeral expenses, the expenses of administering my estate.

These expenses shall be paid before other assets are distributed. This clause gives you authority to pay for funeral home, court costs, and hospital expenses.

ARTICLE II: Money & Personal Property

I hereby direct my executor to pay all my personal property and all policies and proceeds of insurance cover...

Power of Attorney

AGENT 1 (your name) name the following P

F SUCCESSOR AGENT(S) (OPTIONAL)
Successor agent: Name of Successor A
Incapable or unwilling to act fr
Successor Agent:

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Address:
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Living Will

Declaration

This declaration is m

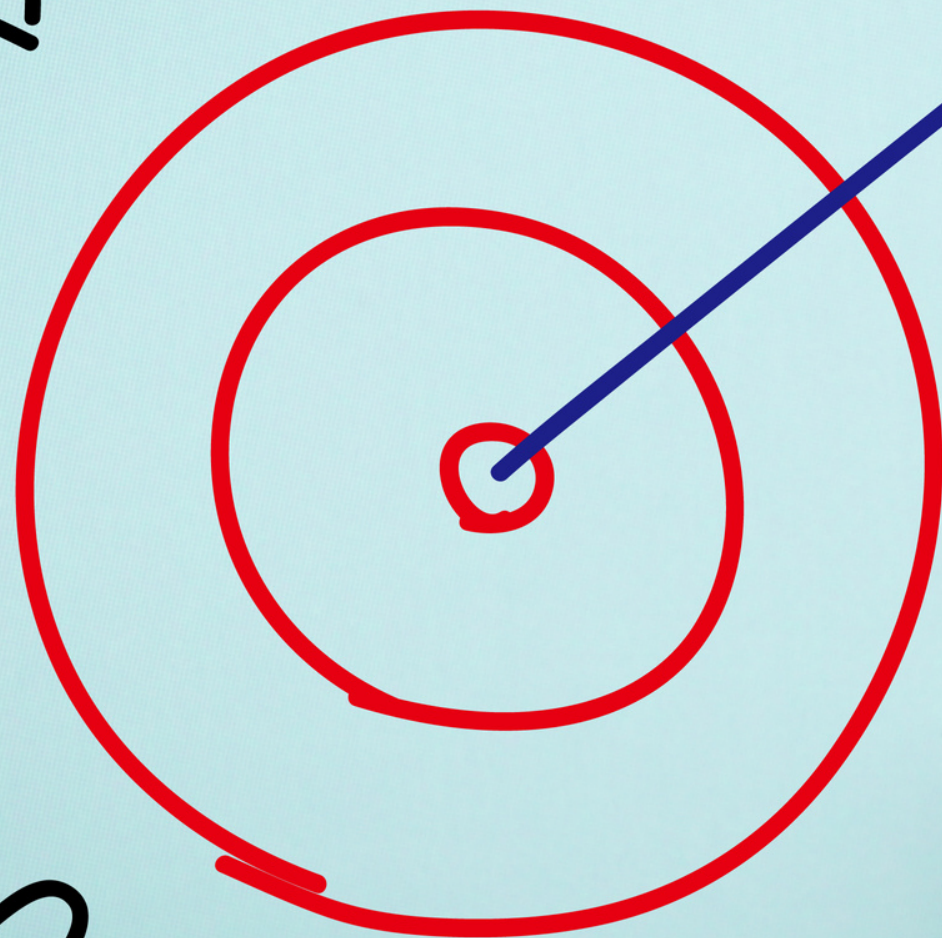
HealthCare Power of Attorney

Advance Directive

The basic elements of an estate plan include:

- Last Will & Testament
- Power of Attorney
- Advance Health Care Directive
 - aka Medical Directive or Living Will
- Trust

STRATEGY




PLANS

GOALS

**Other ways
to prevent
heirs property**

- Place land in a business entity
- Transfer title by deed



We Need Your Help

Legal Services Needed

PREVENTION

Education and services to help prevent the growth of heirs' property, including:

- Estate Planning Education
- Estate Planning (Wills, Trusts)
- Successions

Legal Services Needed

RESOLUTION

Services to help resolve heirs' property title issues including:

- Preparation of all legal documents
- Title searches
- Surveys
- Court filings
 - Determination of Heirs
 - Quiet Title Action
 - Quit Claim Deeds
- Litigation



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Thank you