AFFIDAVITS OF HEIRS' PROPERTY STATE SURVEY: RESEARCH SUMMARY REPORT

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INTRODUCTION

The audience for this report is assumed, for the most part, to be versed in a foundational understanding of heirs property and the reasons warranting a fifty-state survey of the topic. Even for the well-versed, however, the definition of heirs property proves problematic.[1] A basic definition describes the term as "a subset of tenancy in common property where the owners received concurrent interests in land through inheritance."[2] The owners may number in the hundreds, or even more, and are usually related.[3] The Uniform Partition of Heirs Property Act (UPHPA) defines heirs property (for the purposes of that Act) as:

> real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action: (A) there is no agreement in a record binding all the cotenants which governs the partition of the property; (B) one or more of the cotenants acquired title from a relative, whether living or deceased; and (C) Any of the following applies: (i) 20 percent or more of the interests are held by cotenants who are 10 relatives; (ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or (iii) 20 percent or more of the cotenants are relatives.

The owners of heirs property are vulnerable to property and economic loss. Unable to access any of the benefits that are associated with property ownership, like borrowing against the value of the property, the owners lack the ability to accumulate wealth. In addition, owners of heirs property prove particularly susceptible to below-market-value partition or tax sales and

[1] *See* Jesse J. Richardson, Jr. and Amber S. Miller, *Solutions for Heirs Property Owners*, 28 DRAKE J. AG LAW 139, 142 (2023).
[2] *See id.* (citing B. James Deaton, *A Review and Assessment of the Heirs Property Issue in the United States*, 46 J. ECON. ISSUES 615, 615-616 (2012)).
[3] *See id*.

foreclosure. Furthermore, oftentimes family property passes to the heirs for multiple generations resulting in fractionated, or diluted, ownership interests, which demand ever-more resources and expertise to clear title and face an ever-increasing vulnerability to loss of ownership and lack of access to the wealth represented by the property.

As the years and generations pass, the number of owners increases, and the cost and difficulty of clearing title increases exponentially. Each state provides for a quiet title action to clear title to property. In a quiet title action, a person claiming ownership to the property asks a court to declare the status of ownership and any adverse claims.[4] However, quiet title actions prove to be cumbersome, lengthy and costly, particularly with respect to heirs property.

The consequences of heirs property raise such widespread concerns that the federal government, both in in the Federal Emergency Management Administration (FEMA) disaster relief eligibility and in the 2018 Farm Bill, attempts to provide alternative means of proving ownership to heirs property owners. While these alternative means of proving ownership may qualify heirs property for certain federal benefits, the cloud on title remains outside of those limited contexts.

As of 2021, FEMA began permitting owners of heirs' properties "to self-certify ownership" and qualify for disaster relief assistance.[5] The 2018 Farm Bill, to provide immediate access to Farm Bill programs, mandates that the Secretary accept "alternative forms of documentation" to prove property ownership for purposes of obtaining a farm number.[6] The

[4] *See* 65 Am. Jr. 2d Quieting Title § 1, Definition and nature of quiet title action.
[5] *See* FEMA, *FEMA Makes Changes to Individual Assistance Policies to Advance Equity for Disaster Survivors* (Sep. 2, 2021), https://www.fema.gov/press-release/20210902/fema-makes-changes-individual-assistance-policies-advance-equity-disaster.
[6] *See id.*

various forms of documentation include self-certification.[7] The 2018 Farm Bill also initiated a program to provide funding for banks to loan money to heirs property owners to help clear title.[8]

A common belief seems to exist that affidavits of heirs or affidavits of heirship provide a relatively simple and inexpensive form of clearing title to heirs property. These affidavits, "often recorded in the real property records to document the new owners of property…are most commonly accepted to prove the ownership status of land where the decedent died intestate."[9] Although filing affidavits of heirs for all decedents in a chain of title (and doing the requisite title examination and research to know the decedents for which to file for, and the decedents' heirs) may prove cumbersome, lengthy and costly, this form of clearing title likely saves time and money compared to quiet title actions. However, state laws vary with respect to how and when these affidavits may be used.[10] In addition, title companies and state title standards differ on whether the affidavits are sufficient to produce insurable title.

This report starts with an explanation of the project's scope and some foundational background information. The next section includes the individual state approaches. The third section contains researcher observations, key takeaways, and recommendations for continuation of the work.

I. Project Scope & Background

Initially assigned in July of 2023, this Heirs Property State Survey is designed to provide a snapshot of the current approaches to clearing title to heirs property, and options available to

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[7] *See* Agriculture Improvement Act of 2018, Pub. L. No. 115-334, Title XII, § 12615, 132 Stat. 5014, 7 U.S.C. § 2266b (2018).
[8] *See* Agriculture Improvement Act of 2018, Pub. L. No. 115-334, Title XII, § 12615, 132 Stat. 5014, 7 U.S.C. § 2266b (2018).
[9] *See* Nketiah Berko and Sarah Bolling Mancini, Nat'l Consumer Law Ctr., Keeping it in the Family: Legal Strategies to Address the Challenge of Heirs Property and Prevent Home Loss 12 (2024), https://www.nclc.org/wp-content/uploads/2024/01/Report-Heirs-Property-Keeping-it-in-the-Family.pdf (last accessed July 18, 2024).
[10] *See id*. at 13.

owners in all fifty states and the U.S. territories (herein collectively referred to as "states" or "jurisdictions"). The researchers began the project with the notion that affidavits of heirship, as commonly believed, would be readily available throughout the United States and provide the least complex and costly way to clear title to heirs property.

Each state regulates real estate and title and, as the researchers discovered early in this undertaking, each state's code is organized and phrased uniquely. Therefore, the researchers necessarily adapted the research parameters and adopted the research methods as new information was revealed throughout the process. After discovering that states rarely provided for affidavits of heirship to clear title in heirs property situations, the project scope was defined by the supervising attorney to focus on options available to owners of heirs properties aiming to clear title to the property and retain property ownership that are less resource-intensive than probate (as opposed to options that facilitate an overall property sale).

In all, state laws provide four main categories of options to owners of heirs properties: partition, judicial proceedings, informal probate, and direct affidavits of heirship. Every state offers a form of partition action, and most states also offer an option for an heir to petition the court for proceedings. Many fewer states, however, offer informal probate or direct affidavit of heirship avenues. Since direct affidavits of heirship processes are comparatively streamlined, this approach appears the most heir friendly. Nevertheless, after thoroughly searching each state's statutes, it appears that only seven jurisdictions offer a statutory direct affidavit option to clear title to heirs property.

A. Methodology & Evolution of the Research

Initially, the research focused on "heirs property" and "affidavits of heirship" search terms. However, as research progressed, additional components that interact with or affect heirs

property complexities became apparent. The research, information gathering, and information organization evolved into an iterative process, such that, by the end of the research period, the researchers were broadly searching state statute and code databases for numerous key terms. Research terms expanded to include (but are not limited to): the "Uniform Partition of Heirs Property Act" (hereinafter "UPHPA"), "State Bar Title Standards," "Marketable Title Acts," "Informal Probate," "title insurance," "quiet title," "petition of heirship," "probate alternative," and "alternative to estate administration." Consequently, the research base necessarily expanded from real property codes and transfers to probate codes, intestate statutes or provisions, title codes (where available), and state bar association resources and standards. The following terms indicate additional variables that affect heirs property resolution, which were revealed to the researchers during the process.[11]

1. *Marketable Record Title Acts (MRTAs)*

Some states have adopted Marketable Title Acts that require a party interested in clearing title to a property to only search the records for a statutorily defined time period. Thirteen states currently have MRTAs; the statutory time periods vary from 20-year to 50-year windows with the average being thirty years. These acts could either benefit or disadvantage an owner of heirs property, depending which side of the claim they are on. Heirs in possession could obtain legitimate marketable title; heirs not in possession have the opportunity to formally record their

[11] The initial state sample research consisted of thirteen states as defined by the supervising attorney: Florida, Georgia, Kentucky, Louisiana, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. This set of states was selected based on their location in Appalachia and the Black Belt, the two regions in the United States most impacted by heirs property. Upon completion of the first report in August 2023, the researchers decided to continue by researching an additional thirteen states, choosing to move through the next block alphabetically, from A to Z. As such, the second round of states included: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia (hereinafter "D.C."), Delaware, Hawaii, Idaho, Illinois, and Indiana. The third round of research included the rest of the states: Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, Wyoming, the U.S. Virgin Islands, and Puerto Rico.

claim to the property but only if they are aware of the proceedings. A non-heir in possession of the land could also use a MRTA to obtain title. Information on Marketable Record Title Acts are included in this report, although this tool is not a focus of the research.

2. *Uniform Partition of Heirs Property Act*

Almost half of U.S. states have adopted the Uniform Partition of Heirs Property Act (UPHPA), "an act of limited scope" that addresses the issue of heirs property owners being "dispossessed of their real property…as a result of court-ordered partition sales of tenancy-in-common property."[12] A statutory process is prescribed for the appraisal and sale process in an effort to fairly compensate the heir-owners if the property is sold. Under the UPHPA a rightful heir may purchase the property from the other heirs and acquire marketable title unless the heir files the partition suit; alternatively, a set of heirs (not including the petitioning heir), could pool resources and buy out uninterested owners' shares of the property. Oftentimes, however, the heirs lack the necessary resources to understand their options or to purchase the property and the property is, ultimately, transferred to new owners through sale. The UPHPA attempts to garner a fair market sale of the property as determined by an independent appraisal, as opposed to the sale price being determined by auction bidders at a traditional partition sale.[13]

3. *State Bar Title Standards*

Bar Associations of some states have also adopted State Bar Title Standards, which layout processes for Real Estate Attorneys to clear clouds to title of real property. However, more research is needed to determine the scope and impact of the State Bar Title Standards.

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[12] *See* Unif. Partiton Heirs Prop. Act, Prefatory Note, 1. *See also,* https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d (for a current list of states that have adopted the UPHPA or where it's been introduced).

[13] *See, e.g.*, Jesse J. Richardson, Jr., *The Uniform Partition of Heirs Property Act: Treating Symptoms and Not the Cause?*, 45 Real Est. L.J. 507 (2017) (While this report takes no position on whether the UPHPA should be adopted by a particular state, it has been said that the UPHPA provides both advantages and disadvantages to owners of heirs property).

Nevertheless, as State Bar Title Standards are not statutes and aim to facilitate property sales to new owners from the heirs, they have been noted but not analyzed for this document.

4. *Informal Probate*

Informal probate is codified in the Uniform Probate Code (UPC). States that have adopted the UPC in full also have informal probate procedures. To date, seventeen states have adopted the UPC in full. The researchers failed to locate the existence of any states that have only adopted the UPC in part and also adopted informal probate statutes. Under informal probate, any heir may petition the court to appoint an administrator. The petition must include a list of heirs. The administrator may be the petitioner or another heir. Marketable title results from an informal probate proceeding. The court's holding in an informal probate proceeding is final and only susceptible to a contrary order from a formal testacy proceeding.

Under informal probate, any heir may apply for an informal appointment or probate: within three years of the decedent's death; or anytime if the prior proceedings were dismissed because of doubt of the decedent's death; or, if no court proceeding occurred within the three-year period. The application for informal probate must include a list of others that have interest in the estate/property. Informal probate results in clear title.[14]

B. The Report

This report contains multiple components. First, this document represents a culmination of the initial fifty-state heirs 'property research and includes a breakdown and discussion of the findings, broadly grouping the states by category. The researchers chose to organize and present the individual states using the following categories, listed in order from least heir-friendly to most heir-friendly: (1) states that offer only partition action, whether that be via the UPHPA or a

[14] *See, e.g.,* Alaska Stat. Ann. § 13.16.080 (West 2023).

traditional partition action; (2) states that offer judicial proceedings, which may include a requisite affidavit of heirship in some states; (3) states that offer a statutory informal probate procedure; and (4) states that offer a statutory "affidavit only" option. Many states offer more than one option or other/additional options in combination (such as affidavit and UPHPA partition, for example). Considering the complexities, best efforts were made to group accordingly based on the most heir-friendly option available in the jurisdiction. Note, however, that the particular laws for each state within a particular category may vary significantly. The statutes should be examined carefully to determine the unique provisions in each state.

Furthermore, in addition to this report, an associated spreadsheet provides a quick reference guide to the state approaches. The spreadsheet is organized alphabetically and includes additional categories and specific details regarding each states' statutes than this report. Third, all statutes and other relevant materials have been uploaded to a project Dropbox, as administered by the supervising attorney. Of note is that this is an ongoing project – this report represents a milestone in the project to facilitate clarity in direction moving forward. Also of note is that the state statutes constantly evolve. In good faith, the researchers believe the assertions herein to be up to date through March 2024.

In-depth research has revealed numerous components that interact to create an even more complex environment that owners of heirs properties are forced to navigate while attempting to clear title to their properties. The overlapping framework results in inconsistent statutes of limitations, notice requirements, and statutory requirements. This document represents ten months of research into the state statutory approaches available to owners of heirs properties who are aiming to obtain clear title in each U.S. state and territory.

II. STATE SURVEY

Although each states' approach is individual, the methods appear to lend themselves to four overarching, but necessarily broad, categories. A brief description of the category is provided, which includes a description for the process that owners of heirs property in that state would necessarily undertake to acquire marketable title. Below, each of the states is categorized and if the state offers alternative options or stipulates additional requirements, those are also provided. Of note is that all jurisdictions offer some form of partition so, aside from the partition-only category, partition has been omitted from state descriptions in other categories.

A. States that Offer Only Partition Action: Seventeen States

No formal statutory procedures for alternatives to probate to resolve heirs property title issues exist in the following states; only partition action is available. The states are divided into categories by the form of partition offered. The two forms are traditional partition action and partition action under the Uniform Partition of Heirs Property Act (UPHPA). Even though all states offer partition, in the states listed here, partition action is the only statutory option available to owners of heirs property. Partition action results in clear title to the party who prevails in the sale.

1. *Traditional Partition: Ten States*

Delaware	Only traditional partition action is available.
Indiana	Indiana also has adopted Marketable Record Title Acts (MRTAs) (explained above), with a statutory period of 50-years.
New Hampshire	New Hampshire's partition statutes are organized uniquely: by disputed partition, undisputed partition, and unequal division and sale. Any person owning a property interest may petition for disputed partition, undisputed partition, or unequal division and sale. In unequal division and sale, if partition cannot be achieved without great prejudice or inconvenience, part or all of the property will be assigned to one of them and that party will be responsible for compensating the others for their loss of share.

New Jersey	Only partition action is available.
North Carolina	North Carolina has also adopted MRTAs with a statutory period of 30-years.
Oklahoma	Heir-owners in Oklahoma may petition the court for traditional partition action or, if at least 30 years have passed, may clear title under the state's MRTAs.
Oregon	Only UPHPA partition action is available.
Puerto Rico	Only traditional partition action is available.
Rhode Island	Only traditional partition action is available.
West Virginia	Only traditional partition action is available.

2. *UPHPA Partition: Seven States*

District of Columbia	In addition to the UPHPA, in DC, the mayor may issue grants to assist heirs property owners in paying for legal services necessary to obtain marketable title.[15]
Illinois	Only UPHPA partition action is available.
Iowa	Only UPHPA partition action is available.
Missouri	Only UPHPA partition action is available.
Nevada	Only UPHPA partition action is available.
Vermont	Only UPHPA partition action is available.
Virgin Islands	Only UPHPA partition action is available.

B. States that Offer Judicial Proceedings (Probate & Administration): Twelve States

States in this category statutorily permit heirs property owners to petition the court for a judicially mandated and overseen estate administration process. Being a formal proceeding, this process may be time-consuming and costly. Some of these states formally require an affidavit of

[15] *See, e.g.,* D.C. Department of Housing and Community Development, *Request for Applications (RFA): Heirs Property Assistance Program Request for Applications*, https://dhcd.dc.gov/publication/request-applications-rfa-heirs-property-assistance-program-request-applications (last visited Oct. 28, 2023) (for official program information, qualification requirements, and application); *see also* D.C. CODE § 4-1051.

heirship as part of the process. Furthermore, all of the states in this category offer some form of partition action in addition to the judicial proceedings as described (see accompanying spreadsheet for details). Judicial proceedings result in clear title. Note that some may argue that a judicial proceeding offers advantages over an affidavit only process because the judicial stamp of approval provides more certainty.

1. Affidavit of Heirship Required: Six States

California	Any heir may petition the superior court. The petition must include a list of heirs. The court hears the case and bases its holding on the particular facts from each case. If the court determines that the petitioner is the rightful owner, the court's order serves the same purpose as a traditional property conveyance.
Louisiana	Heirs of an intestate decedent may gain possession of property when no creditors have demanded administration. An affidavit of heirs must accompany the court petition. Additionally, Louisiana will also grant a possession action without formal administration if all heirs accept.
Maryland	Heirs may petition the court for estate administration. The petition must include a list of heirs.
Mississippi	Any heir at law or anyone interested in the property may petition the chancery court; the petition shall include the names of the heirs at law. The heirs on that list shall be summoned for proceedings. Two years after the judgment, the deed is recorded by the county clerk and a certified copy may be filed, recorded and indexed in other counties where the decedent owned land.
New York	Heirs are eligible to petition the court to administer the estate; the petition includes an affidavit.
Pennsylvania	Any party in interest of inalienable property may petition the court. An affidavit relating to heirship may be included. The affidavit may be recorded ("even though not acknowledged") by the Office of the Recorder of Deeds or Commissioner, assuming it is signed by a judge.

2. *No Affidavit Required: Six States*

Alabama	In Alabama, an heir may petition the court either to partition the property or to be appointed as administrator for the unsettled estate. An affidavit is filed, but only after the petitioner has been appointed administrator.
Arkansas	In Arkansas, an heir may petition the court to appoint an administrator. However, that action is only available within five years of the decedent's death.

Florida	Florida offers judicial proceedings, and MRTAs, which limit claims to 30-years.
Georgia	Any individual claiming to be an heir or distributee may apply to the probate or superior court. The petitioner may state whether the petitioner additional distributees whose names are unknown to the petitioner may exist.
Kansas	In Kansas, if a person has been dead for more than six months, no will has been filed, and no petition for administration has been filed, any party claiming a rightful interest in the estate may petition the court for resolution.
Wisconsin	If all heirs agree, the heirs may petition the court for informal estate administration.

C. States that Offer Informal Probate: Seventeen States

Informal probate offers a simplified estate administration process that is overseen by the Registrar and, consequently, requires less demand on the judicial system because any heir can apply to be an administrator and the courts are not heavily involved. Informal probate takes less time than formal judicial proceedings and results in clear title.

Alaska	Alaska has adopted the UPC in its entirety. As such, the state offers informal probate to heirs who petition the court.
Arizona	The informal probate process as detailed in the UPC is available in Arizona. Alternatively, in the absence of administration, an heir may acquire title by furnishing proof of the decedent's ownership, proof of the decedent's death, and proof of the heir's relationship to the decedent.
Colorado	In Colorado, either judicial proceedings with an affidavit component, or informal probate are options available to heirs property owners. Additionally, under the MRTAs in Colorado, once an affidavit of heirship has been on file uncontested in the clerk's office for twenty years, it shall be accepted as prima facie evidence regarding title to the property and any party entitled to hold lands may convey them. Furthermore, Colorado has adopted the UPC in its entirety. As such, the state offers informal probate to heirs who petition the court.
Hawaii	Hawaii has adopted the UPC in its entirety. As such, the state offers informal probate to heirs who petition the court.
Idaho	Idaho has adopted the UPC in its entirety. As such, the state offers informal probate to heirs who petition the court.
Maine	In Maine, informal probate under the UPC as well as judicial proceedings with an affidavit are available to heirs.
Massachusetts	In Massachusetts, an heir-owner may engage the informal probate process per the UPC.

Michigan	In Michigan, an heir-owner may engage the informal probate process or attempt to clear title via marketable title acts. Michigan has only adopted portions of the UPC, including the informal probate sections. In Michigan, the MRTAs state that any person with the legal capacity to own land in the state and has an unbroken chain of title of record to any interest in land for 20 years for mineral interests and 40 years for other interests is considered to have a marketable record title to that interest.
Minnesota	The regulatory scheme is similar to Michigan. In Minnesota, an heir-owner may engage the informal probate process or attempt to clear title via marketable title acts. Minnesota has adopted the UPC in full. Accordingly, the informal probate process is available. In Minnesota, the MRTA statutory time period is 40 years.
Montana	In Montana, an heir-owner may engage the informal probate process per the UPC.
Nebraska	In Nebraska, an heir-owner may engage the informal probate process or attempt to clear title via marketable title acts. Minnesota has adopted the UPC in full. Accordingly, the informal probate process is available as codified. In Nebraska, the MRTA statutory time period is 22 years.
New Mexico	In New Mexico, an heir-owner may engage the informal probate process per the UPC.
North Dakota	Owners of heirs property in North Dakota may engage the informal probate process as per the UPC. Additionally, in North Dakota, if 20 or more years have passed, evidence of possession may be shown through the filing of an affidavit with the recorder, in alignment with the MRTAs in the state, which also prescribe a 20-year time period. The affidavit shall be recorded and indexed against the real estate.
South Carolina	South Carolina has adopted the UPC in its entirety. As such, the state offers informal probate to heirs who petition the court.
South Dakota	In South Dakota, an heir-owner may: petition the court for traditional partition action, engage the informal probate process, or attempt to clear title via marketable title acts. South Dakota has adopted the UPC in full; accordingly, the informal probate process is available as codified. In the state, the MRTA statutory time period is 22 years.
Utah	Informal probate under the UPC is available in Utah.
Washington	Members of the Tribal Nation in Washington may engage an "*informal estate administration*" process similar to informal probate under the UPC.

D. States that Offer a Direct Affidavit of Heirship Option: Seven States

This alternative proves the most heir friendly, bypassing the judicial system by allowing an heir to submit an affidavit of heirship directly to the clerk and recorder.[16] This process involves less time, money, and legal resources than other ways of clearing title. The affidavit of heirship option not only results in clear, recorded title, but also in transferal to the tax assessor for property tax purposes. All states in this classification offer options in addition to the direct affidavit approach.

Connecticut	Connecticut offers affidavit filing, MRTAs, or judicially overseen administration. An affidavit relating to facts affecting title to real property may be recorded in the land records of the town. The affidavit is indexed by the clerk in the name of that record owner and is admissible as prima facie evidence. An heir may also obtain marketable title under Connecticut's MRTAs by demonstrating to the court that they have had a vested interest in a property for forty years or more.
Kentucky	Before a deed to real property acquired by intestacy conveying the property to a new owner, an affidavit of heirs shall be filed with the county clerk. The affidavit of heirs is recorded in the record of deeds and indexed in the general index of deeds in the name of the ancestor and names of each of the heirs, in "the same manner as if such names occurred in a deed of conveyance from the ancestor to the heirs at law." Additionally, any person claiming interest in the property may file a motion in the District Court to include a list of heirs to the best of their knowledge. Claims to real property are limited to a fifteen-year window, beyond which no claims to real property will be entertained.
Ohio	In Ohio, an affidavit may be recorded in the county where the property is located. Alternatively, interested parties to real property, including "[a]n heir of real property that has passed by intestate succession" may bring action with the Probate Court. The court determination effectively creates marketable title. Both avenues result in the action being recorded as deeds are recorded. Furthermore, in Ohio, the MRTA is called "Unbroken chain of recorded title." The statutory period is 40-years.

[16] Within this category, Connecticut, Ohio, Tennessee, Texas, and Wyoming statutes provide for a similar process. Recorded affidavits of heirs provide prima facie evidence of the facts in subsequent court proceedings. Kentucky requires an affidavit of heirs as a prerequisite for recordation of a deed pertaining to property acquired by intestacy. The Virginia statutes provide the most streamlined and complete method of clearing title via an affidavit of heirs.

Tennessee	A person may file an affidavit of heirship with the register of deeds. In addition, in Tennessee, any heir may apply for a letter of administration, which results in formal administration proceedings of the estate.
Texas	In Texas, an affidavit of heirship may be filed as a "determination of heirship."
Virginia	If no qualification/appointment of representative is made within 30 days of the decedent's death, any heir of a decedent who died intestate may provide a list of heirs under oath to the clerk of the circuit court. After an affidavit of heirs has been executed, the clerk of the court shall record and index the affidavit as wills are recorded in the name of the decedent and the heirs. In the case of intestate succession, after the clerk of the court records the affidavit, the clerk shall transmit the information to the commissioner of revenue. Upon receipt, the commissioner may transfer the land for tax assessment purposes.
Wyoming	In Wyoming, to obtain marketable title, an heir may file an affidavit of heirship, which shall be indexed in the same manner as deeds. Heir-owners in Wyoming may also petition the court for traditional partition action.

E. Summary

The data demonstrate lack of uniformity in the various approaches by the states. Of the 53 states and territories surveyed, seventeen offer only partition action to owners of heirs properties attempting to clear title, whether that be traditional or UPHPA partition action. of the seventeen partition states have adopted the UPHPA, while ten offer only traditional partition action as a probate alternative. Petition to a court for estate administration is the best alternative for heir-owners in twelve states, six of which require an affidavit of heirship with the petition. In seventeen of the states, informal probate as set forth in the Uniform Probate Code is the most heir-friendly route to resolving title issues. Only seven jurisdictions statutorily offer a direct-to-clerk affidavit option as a probate alternative.

III. Recommendations for Continuing the Work

The researchers struggled to limit the research to defined parameters given the many variables and interaction components with respect to estates and real estate title. Ample

opportunity remains to continue this work. Specific recommendations include searches into new terms, including 'tangled title,' 'abstract of title,' and/or 'quiet title action.' Further research could also be done to assess how or if real estate attorneys (via state bar title standards), mortgage companies, or title insurance companies are or could play a part in facilitating marketable title to heirs properties. Additionally, outreach to local attorneys or organizations that are providing direct services surrounding heirs property could be insightful. Of note is that many states provide easier methods to obtaining clear title or claiming ownership to property falling within the definition of "small estates." Small estate provisions may offer solutions to heirs property in some circumstances. "Small estates" are defined differently by state (i.e., some states limit small estates to values of $10,000, others to $75,000, some up to $200,000).[17] Furthermore, this report only covered state statutes, so areas that remain to be explored include local and municipal policies, codes, and regulations to determine whether local solutions exist.

CONCLUSION

Research into resolving heirs property title issues revealed that the issue is more complex than initially conceptualized. Nevertheless, the options for states' statutory probate alternatives were effectively classified into four groups and the best approach for heirs was split with the overwhelming majority of states offering only a form of partition as the best alternative to heirs property owners. Much opportunity to deepen and continue work in this realm remains.

[17] *See* JUSTIA, SMALL ESTATES LAWS AND PROCEDURES: 50-STATE SURVEY (September 2022), https://www.justia.com/probate/probate-administration/small-estates/small-estates-laws-and-procedures-50-state-survey/ (last visited (Small estate outliers: CT $40k; DE $30k; AL $25k; Large outliers: $200k WY; OK; Many states require more than an affidavit).