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Intestate Succession and Agriculture

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Land ownership is an integral piece of American agriculture. Possessing a clear title to property has been a necessity for acquiring loans, enrollment in government programs, and other fundamental business transactions. In inheritance situations, title to property has passed from family members to their descendants through various methods such as wills, trusts, and intestate succession. Depending on the jurisdiction, transfers of land through intestate succession may look substantially different from state to state. A phrase often used to describe land that has been inherited by multiple people through the process of intestate succession is “heir property.” Heir property is land that is owned by multiple people, typically as tenants in common. Tenants in common are owners of a piece of property with an undivided interest in the entire property. This can lead to confusion on issues such as who makes decisions and how owners may sell or otherwise end their ownership of the property. So why does this situation arise? And how can it be resolved?

A lack of estate planning is the largest contributor to heir property. A landowner's failure to provide for an after-death transfer of land through a will or trust results in a transfer of the property through intestate succession. Intestate succession is the probate process where the estate of the decedent is probated and distributed in accordance with state intestacy law in order for title to pass from one generation to the next. Real property, or more commonly known as real estate, is almost always probated in the state where the land is located and the intestacy laws within that state will govern the transfer in the absence of an estate plan. Heir property can also arise when a decedent chooses to leave a piece of property to a group of people, like children or grandchildren, as tenants in common through a traditional estate plan. The result of both scenarios is a piece of land that is owned in undivided fractions by different individuals. Individual situations will be unique because no two families or pieces of real estate are exactly alike.

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These fractions lead to an absence of any one individual having decision making authority, which often limits everyone's ability to use the property in a productive manner. Ownership issues that might arise from this divided interest include farming, accessing credit, renting the property, payment of property taxes, selling resources off the land, and many more. Further, specific to agriculture, it traditionally prevented the property from being enrolled in federal programs. Finally, the fractional ownership can discourage improvements to the property since it could be subject to a partition action at any time.

The primary method of resolution for these conflicts has been a partition sale. Partition actions can be broken down into two different approaches. One option is a partition in kind, which is a request to the court to physically divide the land in proportion to the ownership interests. The other method is a partition by sale, which is initiated to sell the land and proportionally divide the proceeds among the owners. Any property owner can initiate a partition action no matter the size of their ownership interest. Ultimately, the petition to the court can lead to unfavorable results and, because partition by sale is the most prevalent method, can lead to the loss of the family property.

In an attempt to move away from the partition by sale method, 11 states have chosen another alternative. Instead of having landowners buy back their land at a public auction, these states have adopted the Uniform Partition of Heirs Property Act. This act allows the tenants in common to buy out an owner who wants to sell. The purchase is made at an independently appraised value, and co-tenants have the right of first refusal to buy the property before it is auctioned to the general public. This acts to protect a family's interest in a particular piece of land as long as the heirs have the necessary financial resources to buy out remaining co-tenants.

While fractionated ownership has traditionally prevented heir property from being enrolled in federal programs, this has recently been changed. The 2018 Farm Bill included language allowing heir property owners to obtain a farm number and thus access to lending and government programs under certain circumstances. USDA is in the process of implementing this language.

Below, we have included resources to provide general knowledge about intestacy, information about state intestacy laws, and material on the Uniform Partition of Heirs Property Act.

Resources:

- ✓ [Estate Planning and Taxation Reading Room](#) (National Agricultural Law Center)
- ✓ [Compilation of State Intestate Succession Laws](#) (NOLO)
- ✓ [Compilation of State Intestate Succession Laws](#) (FindLaw)
- ✓ [Partition of Heirs Property Act State Tracker](#) (Uniform Law Commission)

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