AFFIDAVITS OF HEIRS' PROPERTY STATE SURVEY: RESEARCH SUMMARY REPORT

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INTRODUCTION

The audience of 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

[1] Jesse J. Richardson, Jr. and Amber S. Miller, *Solutions for Heirs Property Owners*, 28 DRAKE J. AG LAW 139, 142 (2023).
[2] *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] *Id*.

property prove particularly susceptible to below-market-value partition or tax sales and foreclosure. Furthermore, oftentimes, family property is handed down this way for multiple generations resulting in fractionated, or diluted, ownership interests, which demand ever-more resources and expertise to clear title to 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 of 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 issue is so widespread that the federal government, both the 2018 Farm Bill and in the Federal Emergency Management Administration (FEMA) disaster relief eligibility, attempts to provide alternative means of proving ownership to heirs property owners. The 2018 Farm Bill initiated a program to provide funding for banks to loan money to heirs property owners to help clear title.[5] In addition, to provide immediate access to Farm Bill programs, the bill mandates that the Secretary accept "alternative forms of documentation" to prove property ownership for purposes of obtaining a farm number.[6] The various forms of documentation include self-certification.[7] As of 2021, FEMA began permitting owners of heirs' properties "to self-certify

[4] 65 Am. Jr. 2d Quieting Title § 1, Definition and nature of quiet title action.
[5] *See* Agriculture Improvement Act of 2018, Pub. L. No. 115-334, Title XII, § 12615, 132 Stat. 5014, 7 U.S.C. § 2266b (2018).
[6] *Id.*
[7] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, Title XII, § 12615, 132 Stat. 5014, 7 U.S.C. § 2266b (2018).

ownership" and qualify for disaster relief assistance.[8] Though a benefit to heirs, these forms of qualifying for federal programs fail to assist in clearing title.

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. 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.

Beginning with this commonly held belief of the availability of affidavits of heirs to clear title to heirs property, 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 owners in all fifty states and the U.S. territories (herein collectively referred to as "states" or "jurisdictions"). Each state is empowered to regulate land as they see fit and, as the researchers discovered early in this undertaking, each state's code is organized and phrased uniquely. Therefore, it became necessary to adapt the research parameters and adopt the research methods as new information was revealed throughout the process. The project scope, however, was

[8] *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.

defined by the supervising attorney to focus on options available to owners of heirs' properties who are 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, four main categories of options are available 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 streamlined, this approach appears the most heir friendly. Nevertheless, after thoroughly searching each state's statutes, it appears that only ten jurisdictions offer a direct affidavit option to clear title to heirs' property.

A. Methodology & Evolution of the Research

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.[9] 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

[9] This set of states was selected based on their location in Appalachia.

Dakota, Texas, Utah, Vermont, Washington, Wisconsin, Wyoming, the U.S. Virgin Islands, and Puerto Rico.

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. Research terms expanded to include: 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 associations. The research, information gathering, and information organization evolved into an iterative process, such that, by the end of the research period, the researcher was broadly searching state statute and code databases for key terms, including (but not limited whatsoever to) the following. The following terms indicate additional variables that affect heirs' property resolution, which were revealed to the researcher during the process.

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. Ten 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 claim to the property but only if they are aware of the proceedings.

2. *Uniform Partition of Heirs' Property Act*

Almost half of U.S. states have adopted the Uniform Partition of Heirs Property Act (UPHPA), under which a property deemed to be heirs' property is sold for fair market value at a partition sale.[10] A statutory process is prescribed for the appraisal and sale process in an effort to fairly compensate the heir-owners. Under the UPHPA a rightful heir does have the option to purchase the property from the other heirs and acquire marketable title that way; alternatively, a set of heirs 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 anyway – the benefit in UPHPA cases being that the heir-owners are compensated the fair market value 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.

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 whether the State Bar Title Standards result in recordation and other impacts of them on tax records. 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.

3. *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, eighteen states have

[10] https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d (for current list of states that have adopted the UPHPA or where it's been introduced).

adopted the UPC in full. It is unknown if any states that have only adopted the UPC in part also adopted informal probate statutes; to this point, none have been located. 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.

B. The Report

There are multiple components to this report. 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 researcher 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 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.

Furthermore, in addition to this report, there is an associated color-coded spreadsheet provided as a quick reference guide to the state approaches. The spreadsheet is organized alphabetically and includes more categories and specific details regarding each states' statutes than this report. Third, all statutes and other relevant materials have been uploaded to the 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 in this realm are constantly evolving. In good faith, the researcher believes 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 categories, as listed above. A brief description of the category is also 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.

A. States that Offer Only Partition Action: Sixteen 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

reformed partition action under the Uniform Partition of Heirs' Property Act (UPHPA). Of note is that most jurisdictions offer some form of partition. However, 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: Nine States*

Delaware	Only traditional partition action is available.
Indiana	Indiana has adopted Marketable Record Title Acts (explained above), the statutory period is 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	The partition statutes in New Jersey mandate that a partition sale occurs only if it "appears" that partition in kind will result in great prejudice.
North Carolina	North Carolina has also adopted Marketable Record Title Acts and the statutory period is 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.

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.[11]
Illinois	Only UPHPA partition action is available.

[11] *See, e.g.,* https://dhcd.dc.gov/publication/request-applications-rfa-heirs-property-assistance-program-request-applications; *see also* D.C. CODE § 4-1051.

Iowa	In Iowa, an heir may petition the court for partition. The partition is conducted according to the UPHPA, although the Iowa statutes do not use that specific name. There is also a statutory cotenant buyout procedure; however, it disadvantages an owner wanting to clear title by permitting any cotenant aside from the petitioner to buyout the other cotenants. If no cotenant does that, the court will attempt to partition the property in kind, resorting to public partition sale only as a last resort.
Missouri	Only UPHPA partition action is available.
Nevada	Only UPHPA partition action is available.
Vermont	In Vermont, an heir may petition the court for partition. The partition is conducted according to the UPHPA, although the state's statutes do not use that specific name. If the parties agree to asset allocation, no formal partition proceeding is necessary.
Virgin Islands	Only UPHPA partition action is available.

B. States that Offer Judicial Proceedings (Probate & Administration): Eleven 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 can take a lot of time and can be costly. Some of these states formally require an affidavit of heirship as part of the process and others do not; they have been divided accordingly. Furthermore, most 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.

1. Affidavit of Heirship Required: Six States

California	Any heir may petition the superior court. The petition is to include a list of heirs. The court will hear the case and base 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. Additionally, partition action is available under the UPHPA.
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	UPHPA partition action is available, though it is not titled "Uniform Partition of Heirs Property Act" in the state. Additionally, 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. Additionally, partition action is available under the UPHPA.
New York	Any person with interest in real property may bring partition action under the UPHPA. Furthermore, 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: Five 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. Additionally, partition action is available under the UPHPA.
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. Traditional partition action is also available in the state.
Georgia	Any individual claiming to be an heir or distributee may apply to the probate or superior court. It is permissible, though not required, to state whether the petitioner thinks there may be additional distributees whose names are unknown to the petitioner. Additionally, partition action is available under the UPHPA.
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	In Wisconsin, an heir may petition the court for traditional partition. If the parties agree to asset allocation, no formal partition proceeding is necessary. Alternatively, if all heirs agree, they may petition the court for informal estate administration.

C. States that Offer Informal Probate: Seventeen States

Explained above, informal probate offers an informal estate administration process that is also overseen by the court but requires less demand on the judicial system because any heir can apply to be an administrator. Fifteen states offer informal probate, as is reflected in the accompanying spreadsheet, but only fourteen are listed in this category in this report because Colorado also offers a direct affidavit option, so the state is listed under that category instead. Informal probate 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. Traditional partition action is also available.
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 partition, 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. Traditional partition action is also an option for heirs' property owners. 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. Traditional partition action is also available.
Idaho	Idaho has adopted the UPC in its entirety. As such, the state offers informal probate to heirs who petition the court. Traditional partition action is also available. Of note, however, is that Idaho has adopted a comparatively more detailed regulatory scheme for partition than other states examined to date.
Maine	In Maine, informal probate under the UPC, traditional partition action, as well as judicial proceedings with an affidavit are available to heirs.
Massachusetts	In Massachusetts, an heir-owner may either petition the court for traditional partition action or engage the informal probate process per the UPC.

Michigan	In Michigan, 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. Michigan has only adopted portions of the UPC, which includes the informal probate statutes. In Michigan, the Marketable Record Title Act states 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's (above). In Minnesota, 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. Minnesota has adopted the UPC in full; accordingly, the informal probate process is available. In Minnesota, the Marketable Record Title Act statutory time period is 40 years.
Montana	In Montana, an heir-owner may either petition the court for partition action according to the UPHPA or engage the informal probate process per the UPC.
Nebraska	In Nebraska, 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. Minnesota has adopted the UPC in full; accordingly, the informal probate process is available as codified. In Nebraska, the Marketable Record Title Act statutory time period is 22 years.
New Mexico	In New Mexico, an heir-owner may either petition the court for partition action according to the UPHPA or engage the informal probate process per the UPC.
North Dakota	Owners of heirs' property in North Dakota may petition the court for traditional partition action or 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. Traditional partition action is also available.
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 Marketable Record Title Act statutory time period is 22 years.
Utah	Both UPHPA partition action and informal probate under the UPC are available.

Washington	In Washington, an heir-owner may petition the court for partition action according to the UPHPA or for judicial proceedings, the application for which is to contain an affidavit of heirship. Members of the Tribal Nation may engage an "*informal estate administration*" process, which is not the same one as under the UPC but appears to be parallel and have the same effect.

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

This alternative is the most heir friendly as it bypasses the judicial system altogether by allowing an heir to submit an affidavit of heirship directly to the clerk and recorder. This means that less financial, temporal, and legal resources are necessary. 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 heirs' property owners four options: partition action, affidavit filing, chain of title proceedings, or probate. Connecticut has adopted the UPHPA so partition action is subject to those statute's parameters. 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. A third option to heirs in Connecticut is to demonstrate to the court that they have had a vested interest in a property for forty years or more, that party can obtain marketable title under MRTAs. Finally, an heir may request to become administrator for an intestate estate.
Florida	In addition to a direct affidavit recording option, Florida also offers judicial proceedings, partition action under the UPHPA, and Marketable Title Acts, which limit claims to 30-years.
Kentucky	Before any deed to real property is recorded 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.
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 Marketable Title Act is called "Unbroken chain of recorded title." The statutory period is 40-years.
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." Alternatively, heirs may petition the court for partition according to the UPHPA.
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. (Va. Code Ann. § 64.2-510(A)). 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. Alternatively, heirs may petition the court for partition according to the UPHPA.
West Virginia	After 60 days, any person having interest in the real estate may file an affidavit of heirs, which is to be recorded by the clerk of the county commission. The clerk shall publish notice, once a week for two successive weeks, in a generally-circulated newspaper within the county of the filing. Objections to the property interests must be filed with the county commission within 60 days after the date of first publication or 30 days of service of the notice, whichever is later. Untimely objections are forever barred.
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 demonstrates lack of uniformity in the various approaches. Of the 53 states and territories surveyed, in twenty, only partition action is available to owners of heirs' properties attempting to clear title, whether that be traditional or reformed (UPHPA) partition action. Twelve of the twenty partition states have adopted the UPHPA, while eight offer only traditional partition action as a probate alternative. Petition to a court for estate administration is the best

alternative for heir-owners in nine states; four of which require an affidavit of heirship with the petition and five do not. In fourteen of the states, informal probate as set forth in the Uniform Probate Code is the most heir-friendly route to resolving title issues. Only ten jurisdictions statutorily offer a direct-to-clerk affidavit option as a probate alternative.

III. Recommendations for Continuing the Work

As mentioned, it was challenging to keep the research within the defined parameters since there are so many variables and interacting components and more were continually revealed during research. There remains, therefore, ample opportunity 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. Also of note is that 'small estates' are defined differently by state (i.e., some states limit small estates to $10k, others to $75k, some up to $200k). [12] There are seemingly less barriers to obtaining clear title or claiming ownership to property contained in these so-called 'small estates.' It may be worth exploring these further. 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 there are more localized powers also at play.

Next steps and the final deliverable for this project are yet to be defined. Although a table with links was mentioned, it remains that presenting this set of information may be more

[12] *See* https://www.justia.com/probate/probate-administration/small-estates/small-estates-laws-and-procedures-50-state-survey/ (Small outliers: CT $40k; DE $30k; AL $25k; Large outliers: $200k WY; OK; Many states req more than an affidavit).

complex than a table would facilitate. Other options include a more robust table (spreadsheet-style) or a jurisdictional map with links.

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. There is much opportunity to deepen and continue the work.