



**GEORGIA HEIRS PROPERTY**  
**LAW CENTER**

# **TANGLED TITLE AND YOUR TOWN**

**How Heirs Property Affects Housing & Blight in Georgia**

**[www.gaheirsproperty.org](http://www.gaheirsproperty.org)**  
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# DISCLAIMER

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# TANGLED TITLE AND HOUSING

**Understanding heirs property (aka tangled title) is critical to preventing blight and sustaining revitalization.**

- The Georgia Heirs Property Law Center, Inc. is a nonprofit law firm that empowers families impacted by heirs property by providing direct legal services required to fully realize and increase the economic benefits of real property ownership.



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# WHAT IS HEIRS PROPERTY?

- Home or land that has been passed from **generation to generation** in such a way that multiple people own the same piece of property.
  - The recorded deed for the property is typically in the name of the deceased relative.
  - This results in **“fractured” or “tangled” title** shared among multiple family members.
- Heirs property is created when:
  - The owner dies **with a will** leaving property to **multiple beneficiaries**; or
  - The owner dies **without a will** so the property passes to heirs at law via **intestate succession**.

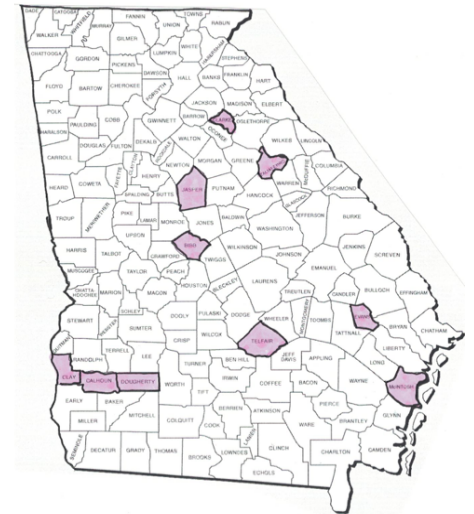




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# HOW WIDESPREAD IS HEIRS PROPERTY?

- USDA Forest Service and UGA Carl Vinson Institute recently studied heirs property in **10 non-metro** Atlanta counties.
  - Study identified **38,120 acres** as probable heirs property.
  - Heirs property totaled **11% to 25% of total acreage** within individual counties.
  - Heirs property in those 10 counties had a total tax assessed value of **\$2.15 billion**.
- If heirs property in 10 counties represents over two billion in locked equity, the total tax appraised value of probable heirs property undermining Georgia's economy is over **\$34 billion**.





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# GEORGIA HEIRS PROPERTY LAW CENTER

*The Georgia Heirs Property Law Center's mission is to increase generational wealth, social justice and community stability by securing and preserving property rights.*

- 5 attorneys, 2 community advocates, 1 social worker, a network of pro bono volunteers, and grassroots organizational partners.



- State-wide work with geographic focus and outreach in **Atlanta and Southwest Georgia**.

- Offices in **Atlanta, Athens, and Fitzgerald**.





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# WHAT DOES THE CENTER DO?



## Legal support for families, individuals, nonprofits and municipalities through:

- Title audits;
- Title clearing; and
- Remediation of fractured title.



## Land loss prevention services to help slow down land loss and secure property assets through:

- Legal and mediation counsel; and
- Development of estate plans and assistance with financial planning.



## Asset education through:

- Education of community members and stakeholders about heirs property and potential impact on owners and their communities; and
- Education of landowners about ways to increase the value of their property and generate wealth now and for future generations.



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# WHO ARE THE CENTER'S CLIENTS?

- The Center represents clients on a **pro bono and discounted sliding fee scale** basis depending on household size and income.
- In the past 12 months alone, the Center been contacted by **202 applicants** seeking title clearing assistance and has been able to provide services or limited consultations to **152** of those who applied.
- The Center's **average client**:
  - Is **65 years old**;
  - Has an annual household income of **\$31,508**; and
  - Has heirs property with tax assessed value of **\$84,618**.
- The Center also works with **nonprofits and municipalities to combat blight** through title audits, title clearing and early intervention services.







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# CENTER ACCOMPLISHMENTS SINCE 2015

- The Center has provided legal services and **closed 218 matters** (62 title clearing matters, 78 title search/audits, and 79 estate planning matters).
- The Center currently has **139 open** title clearing and estate planning matters in **42 counties** with a total tax assessed values of **\$11.2 million**.
  - 62 in the metro Atlanta area, and
  - 77 open matters in Central and Southern Georgia.
- The Center, in collaboration with private attorneys and prop bono title companies has reviewed titles for **198 tracts of land** collectively valued at **\$13.86 million**.
- The Center has completed **242** community outreach programs, trainings and stakeholder meetings in **41** counties providing information and educational materials to over **7,871** individuals





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# TITLE TO REAL PROPERTY AND HEIRS PROPERTY



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# WHAT DOES “TITLE” MEAN?

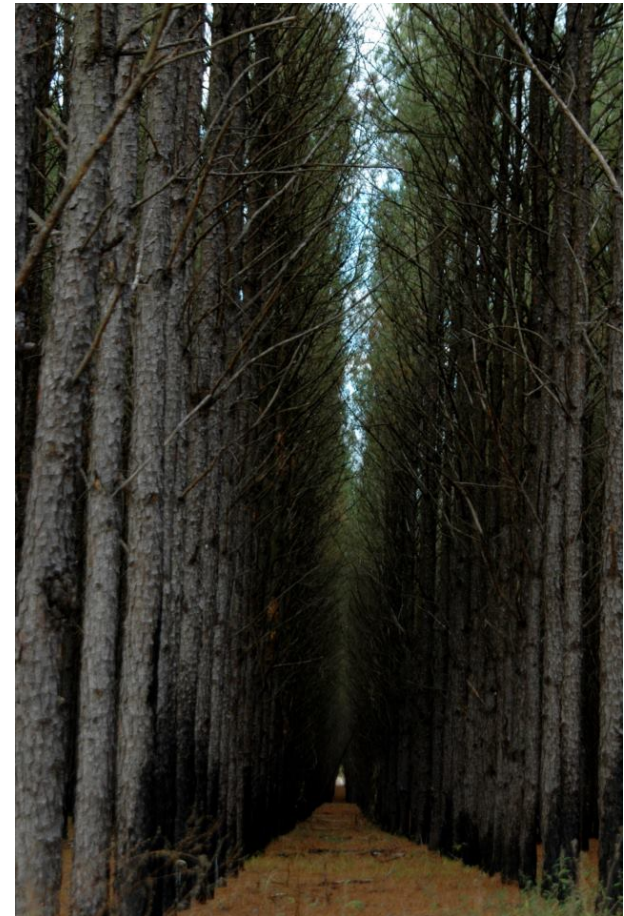
- **Title** is the means or right by which someone owns or possesses property.
  - Title is passed through a deed or other instrument conveying title.
- **Marketable Title** is title that is free from reasonable doubt, evidences actual ownership and ensures the property can be sold to a reasonable purchaser or mortgaged to a person of reasonable prudence.
  - Marketable title is not the same as perfect title.
  - Marketable title is insurable title.
  - Without marketable title, you typically cannot sell the property, use the property as security for a loan, or participate in many government programs.



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# WHAT PREVENTS MARKETABLE TITLE?

- Defective or fraudulent deeds
- Existing mortgage loans secured by property
- Liens against the property
  - Unpaid property taxes or utilities
  - Unpaid debt for labor or materials used to improve property
- Liens against the owner(s)
  - Unpaid federal and state taxes
  - Unpaid judgments against owner(s)
- Lack of Access
- Encroachments on neighboring properties
- **Heirs property status**





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# HEIRS PROPERTY REFRESHER

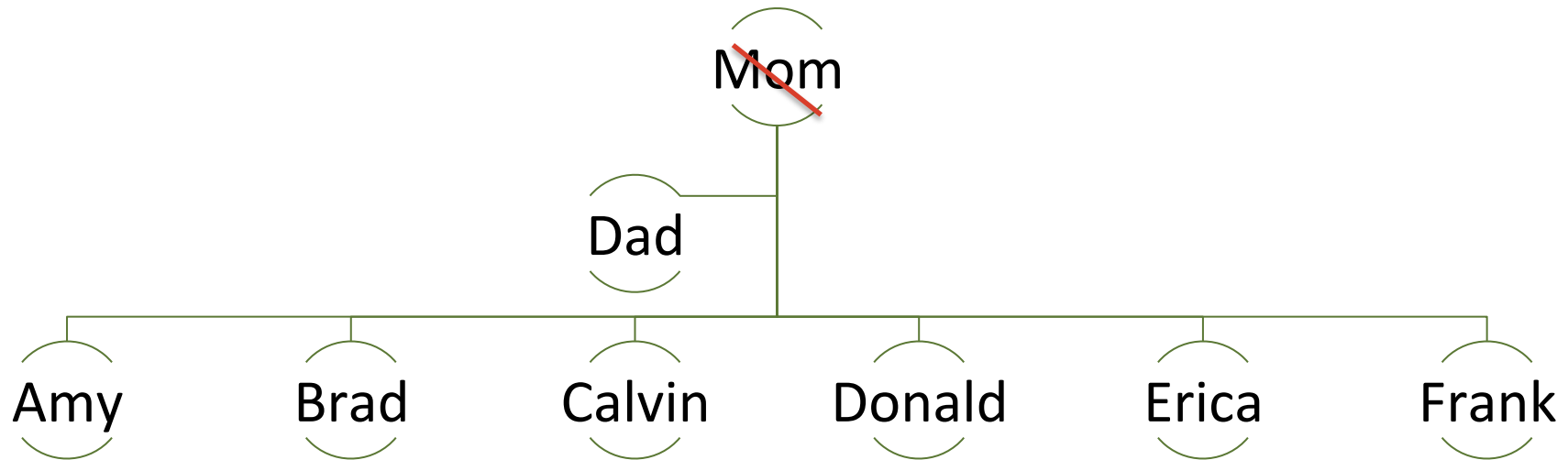
- Home or land that has been passed from **generation to generation** in such a way that multiple people own the same piece of property.
- Heirs property is created when:
  - The owner dies **without a will** and the property passes to heirs at law; or
  - The owner dies **with a will** leaving property to multiple beneficiaries.
- **WHY IS HEIRS PROPERTY A PROBLEM?**



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# HEIRS PROPERTY EXAMPLE #1

Mom owns a land and dies without a will.  
She is survived by her husband and 6 children.  
The property is co-owned by the **7 heirs**.

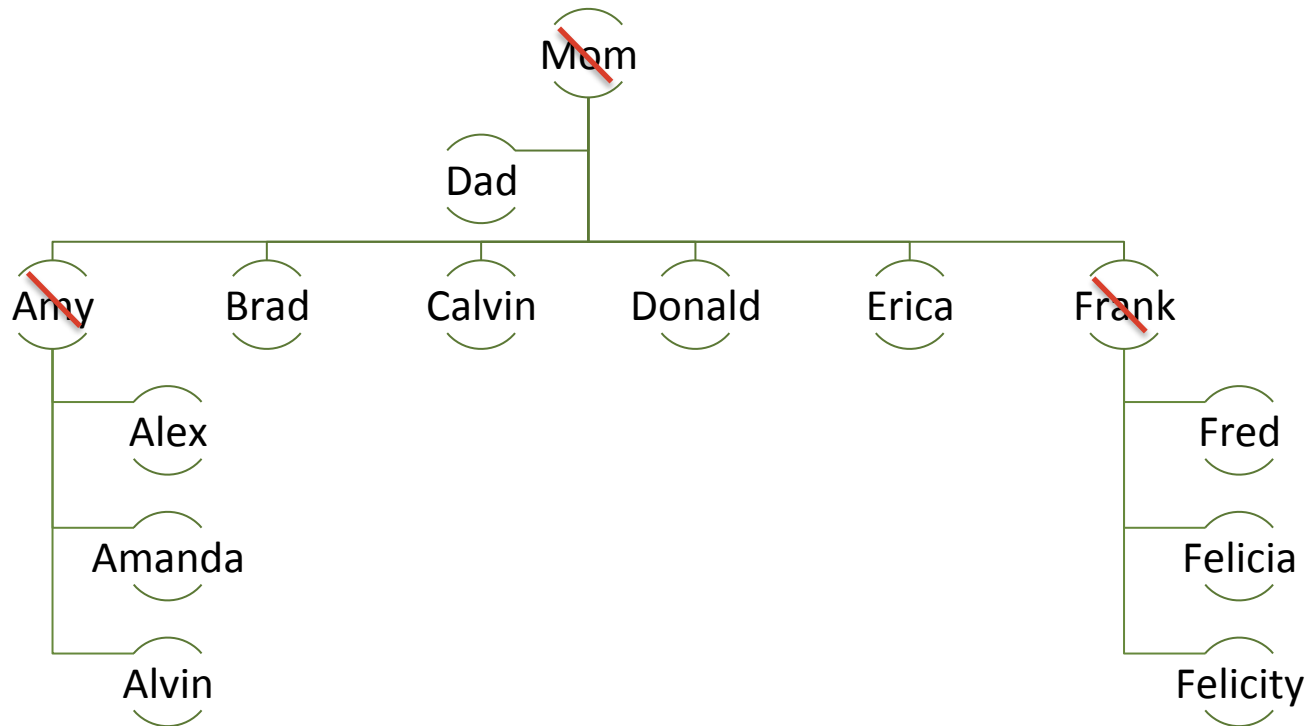




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## HEIRS PROPERTY EXAMPLE #2

Mom is survived by her husband and 4 of their children.  
The 2 other children and their spouses died before Mom and did not have wills.  
But each of mom's deceased children were survived by 3 children.  
The property is co-owned by **11 heirs**.



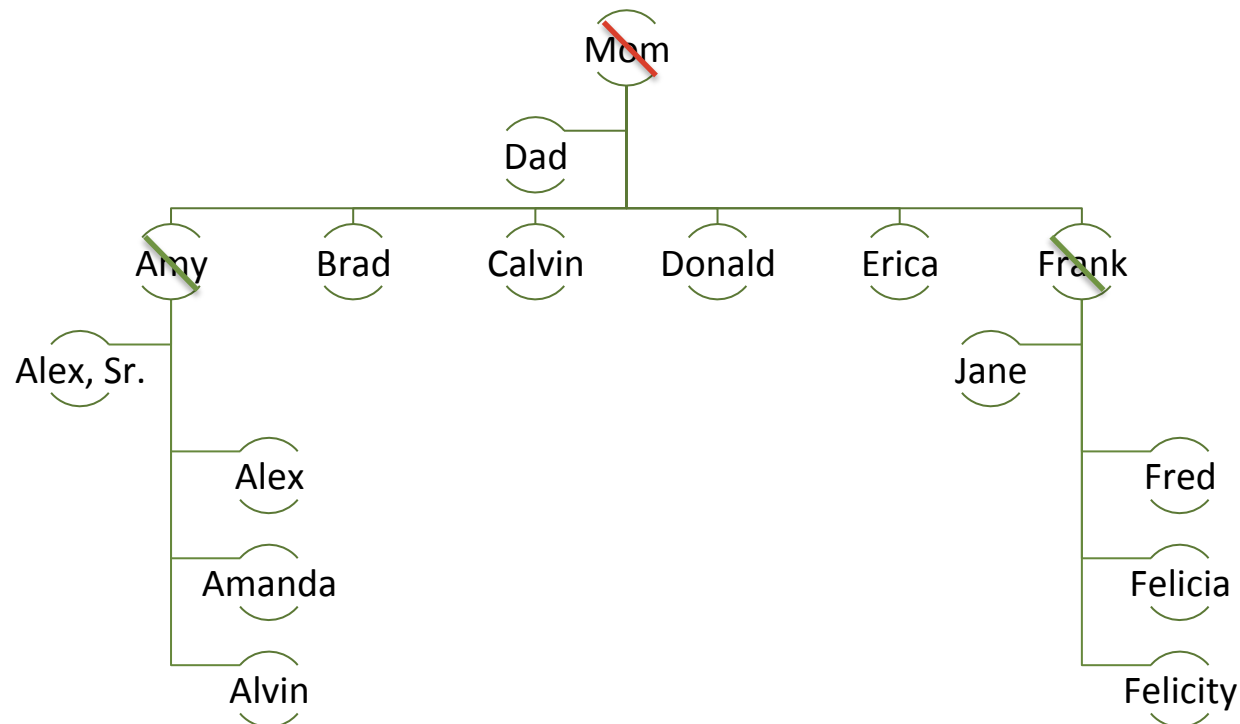




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## HEIRS PROPERTY EXAMPLE #3

Mom is survived by her husband and their 6 children.  
2 children died after Mom and did not have wills.  
Each deceased child was survived by 3 children and 1 spouse.  
The property is now co-owned by **13 heirs**.





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# WHAT DOES IT MEAN TO OWN HEIRS PROPERTY?

Owners of heirs property are **tenants in common**:

- **Each** heir has equal rights to full use and possession of the property.
- **Each** heir is legally responsible for taxes and other property-related expenses.
- **Each** heir may transfer interest in property to another heir or outsider.
- **Each** heir may seek a partition of the property (in kind or by sale).
- **Each** heir must agree to any major decisions about the property.





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# PROBLEMS FACING HEIRS PROPERTY OWNERS

- Face increased risk of **forced sale and eviction**.
- **Cannot sell or mortgage** property without agreement of all heirs.
- Cannot qualify for **rehab programs** or **secure financing** for needed repairs.
- May not be able to participate in **government programs** offered by USDA, HUD, FEMA, and other federal and state agencies.
- May not qualify for **loss mitigation programs** when facing foreclosure.
- May not be able to qualify for **homestead exemptions** to reduce property tax burden.
- Can lose a connection to **family history and community**.
- Can also lose the sense of **independence** associated with ownership.
- May **ruin or permanently damage** family relationships.



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# HEIRS PROPERTY INCREASES FAMILY DISPUTES AND DISCORD

- Disagreements among heirs about whether to **sell property** or **keep it in the family**.
- One or more heirs may want to use the property to the **exclusion of others**.
- Burden of **paying property taxes** or other expenses may fall on one heir.
  - Payment of taxes does not give one heir more rights than any other heir.
  - Miscommunication or disagreement could lead to loss of property through tax sale.
- One heir could use the property as **leverage** to force another heir to do something **contrary to his or her interests**.
- With heirs property, otherwise rational family members can begin to **act destructively based on sentimentality, laziness or spite**.





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# CLOUDED TITLE ROBS HEIRS OF PRIMARY MEANS OF GENERATING WEALTH

When heirs have clear title...

- They can sell the property for a **profit**.
- They can open a **line of credit** or apply for a **mortgage**.
- They can use the property as **collateral for a loan** to start a business or to send their kids to college.
- They can generate income by **leasing the property**.
- They can generate income by **farming or selling natural resources** on the property.
- They can pass the property on to their **children**.





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# RESOLUTION OF HEIRS PROPERTY ISSUES



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# TITLE HELD BY SINGLE PERSON

- Requires that all heirs convey their interests in the property to **one or two heirs**.
  - If result will be multiple owners, be careful to avoid creating heirs property.
  - Owners could be “joint tenants with right of survivorship” or hold life estates.
- Heir(s) must be **prepared to purchase** other heirs’ interests if they will not convey for free.
- In exchange for deed of gift, heir(s) can **release past unpaid obligations** for taxes, maintenance and other property-related expenses.





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# TITLE HELD BY SINGLE ENTITY

- Title Held by Limited Liability Company

- Requires that all heirs transfer their interest to LLC, which owns property.
- Heirs become owners of LLC with shares equivalent to prior ownership of property.
- Operating agreement creates rules of road for how decisions are made, rights and responsibilities of members, buyout provisions, circumstances in which property can be sold and what happens to an heir's interest when he or she dies.



- Title Held by Trustee of Family Trust



- All heirs agree to donate their interests in the property to a family trust.
  - Heirs become beneficiaries of trust.
  - Legal title is held by the trustee(s), which manage the property for the benefit of the beneficiaries/heirs.
- Trust agreement controls how the trustee(s) will manage the trust, how any income will be distributed, and what happens to an heir's interest as beneficiary of the trust when he or she dies.





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# PROPERTY REMAINS WITH HEIRS SUBJECT TO TENANCY IN COMMON AGREEMENT

- If heirs want property to remain in their individual names, they can sign a **tenancy in common agreement** governing the property.
- Tenancy in common agreements can:
  - Identify who can live on the **property** or manage the land;
  - Govern who is **responsible for taxes**, insurance and maintenance;
  - States that property cannot be sold or encumbered without unanimous agreement;
  - Can include provision **prohibiting transfer of interest to an outsider** without prior written consent and right of first refusal; and
  - Can **prohibit co-tenants from filing partition actions** seeking to sell or divide up property.





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# PROPERTY REMAINS WITH HEIRS SUBJECT TO LIMITED POWER OF ATTORNEY

- Tenants in common can also appoint heir(s) to serve as **attorney-in-fact** to handle **specific financial transactions** on their behalf.
- **Limited powers of attorney** can:
  - Give attorney-in-fact the power to buy, sell or lease the property;
  - Give attorney-in-fact the right to enter into and/or sign contracts on behalf of the co-tenants;
  - Give the attorney-in-fact the power to borrow or take out loans for the co-tenants; and
  - Allow the co-tenants to participate in government programs through attorney-in-fact.





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# PREVENTING HEIRS PROPERTY THROUGH ESTATE PLANNING



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# WHAT IS ESTATE PLANNING?

- An estate is all of the property and other possessions belonging to a deceased individual.
- Estate planning is the process of anticipating and planning what will happen to you and your property when you die or become incapacitated.
  - How will you hold title to property when you are alive?
  - Who will inherit your property after you die?
  - Who will make health care decisions for you if you are unable to make them for yourself?
  - Who will manage your property if you become incapacitated?





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# WHO NEEDS ESTATE PLANNING ADVICE ABOUT HEIRS PROPERTY?

- Everyone, even if they don't currently own real property or just have a fractional interest in real property.
- Estate planning is especially vital for people who want to ensure that the value of an asset gets passed appropriately to their heirs.





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# HOW CAN ESTATE PLANNING PREVENT HEIRS PROPERTY ?

- Own property as **joint tenants with rights of survivorship**.
- Prepare a **Last Will and Testament** directing how property should be distributed upon your death.
  - Leave property to **single** beneficiary.
  - Instruct executor to **sell property** and divide proceeds between beneficiaries.
  - Give family members **option to purchase** property.
  - Instruct executor to **divide property** among beneficiaries.
- Place property into **limited liability company** or **trust**.





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# QUESTIONS?

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