

HEIRS' PROPERTY:

Understanding the Legal Issues in *Kentucky*



By Francine Miller
March 2024

Introduction

The purpose of this factsheet is to prevent the loss of land owned as heirs' property in Kentucky. It examines state laws that are relevant to heirs' property owners in Kentucky, and outlines steps they can take to resolve property issues before seeing an attorney.

It also explains relevant legal issues, including:

- 1. how to identify the legal heirs of the original ancestor who owned the land,**
- 2. state partition law,**
- 3. state law that permits the sale of land due to unpaid property taxes, and**
- 4. state law addressing adverse possession and condemnation**
(these terms are defined in the glossary, below).

This resource may be useful to professionals assisting heirs' property owners, such as lawyers, nonprofit and community development advocates, and cooperative extension agents.



For a glossary of legal terms used in this factsheet, refer to page 11.

What is Heirs' Property?

Heirs' property (sometimes known as family land) is property that has been transferred to multiple family members by inheritance, usually without a will. Typically, it is created when land is transferred from someone who dies without a will to that person's spouse, children, or other heirs who have a legal right to the property. However, even if the person who died had a will, they may still create heirs' property if they leave land to multiple heirs without specifying which heirs get which section of the land.

When heirs' property is created, the heirs own all the property together (in legal terms, they own the property as "tenants in common"). In other words, they each own an interest in the undivided land rather than each heir owning an individual lot or piece of the land. In addition, unless the heirs go to the appropriate administrative agency or court in their jurisdiction and have the title or deed to the land changed to reflect their ownership, the land will remain in the name of the person who died.

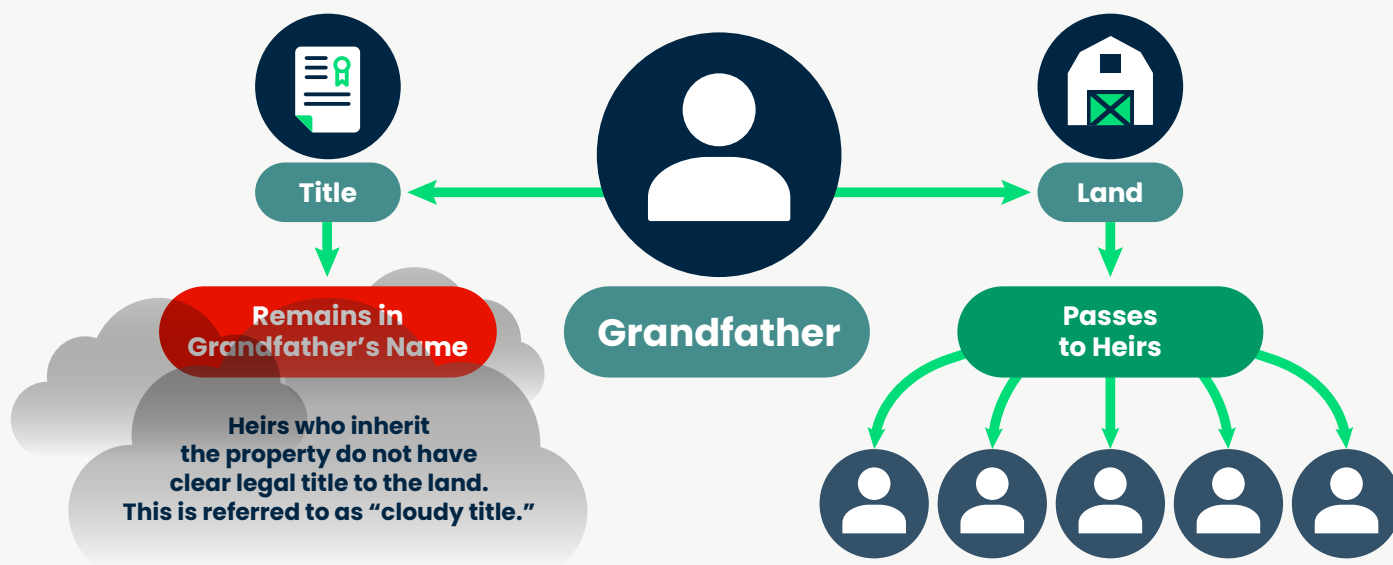
For the heirs, owning property as tenants in common without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, apply for USDA grants or loans, and build wealth from the land by engaging in commercial activity, such as selling timber or other resources—all of which require proof of ownership. It also leaves the property vulnerable to being acquired by real estate developers and unscrupulous actors.



Learn More Using the Farmland Access Legal Toolkit

For a more comprehensive overview of heirs' property issues, visit farmlandaccess.org/heirs-property.

Find additional advice for heirs' property owners, including how to proactively avoid and address legal challenges, at farmlandaccess.org/suggestions-for-heirs-property-owners.



Identifying Heirs

To resolve heirs' property issues, an important first step is tracing the ownership of the land from the original titled owner to the current owners. Many practitioners encourage heirs' property owners to build a family tree identifying all the heirs, deceased and living. Specifically, heirs' property owners will want to collect:

1. the heirs' birth and death dates;
2. information about the county of death;
3. proof of whether they died with a will and
4. any current contact information for living heirs.

The goal is to gather information about anyone who may have held an interest in the land at any point in time. Consequently, it is important to identify all the heirs, all of whom might be entitled to an interest in the land.

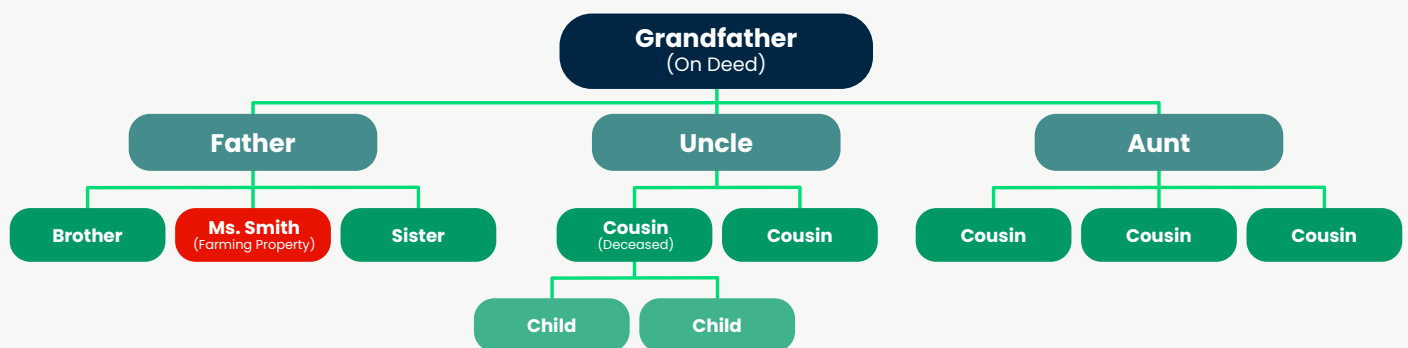
When a person dies with a valid will, they die "testate" and their will determines who inherits their property. When a person dies without a will, they die "intestate" and state law governing intestate succession determines who inherits that person's real estate and other assets.¹ Who inherits a person's land by intestate succession varies depending on which family members survive the decedent.

In Kentucky, the following types of heirs are entitled to inherit from a decedent who dies intestate, in the following order:

- Biological and adopted children, or their descendants
- Parents of the decedent
- Siblings of the decedent, or their descendants (the decedent's nieces and nephews)
- The spouse of the decedent

Kentucky is one of a few states that has maintained the principle of "dower and curtesy" in its law that governs what real and personal property a surviving spouse is entitled to upon their spouse's death.² The surviving spouse of a decedent who dies intestate is entitled to a fee simple interest of one-half of any real property that is owned by the decedent in fee simple at the time of their death, in addition to one-third of any real property formerly owned by the decedent during the marriage but not at the time of death, unless that interest has been released or extinguished.

An example of a simple family tree for Ms. Smith





Finding the Family (Genealogy) and Land Records

Resources to help identify and locate heirs and build the family tree include genealogists and family history sites such as [ancestry.com](https://www.ancestry.com), [myheritage.com](https://www.myheritage.com), and [familysearch.org](https://www.familysearch.org). Family bibles can be a good source of information and can sometimes be used to determine heirs. Local libraries can also be a great resource for genealogical records and research help (see contact information below). Individuals can also visit the following online resources:

African American Genealogy Group of Kentucky

Website: aaggky.org/about-us.html

Kentucky Genealogy Web

Website: kygenweb.net

University of Kentucky Library

Website: libguides.uky.edu/c.php?g=222967&p=1476548

Individuals can also go to the county court clerk's office in the county where the land is located to trace land ownership, and to the clerk of the district or circuit court to review any judgment or probate records regarding the land.

Intestate Succession in Kentucky³

The following chart describes some of the many possibilities under Kentucky's intestate succession laws and highlights the importance of working with an attorney to determine who the current owners are. Kentucky treats inheritance of real estate different from the inheritance of personal property; the following chart covers real estate.

If a person dies with:	Here's who inherits:
children but no spouse	the living children and the descendants of children who have died inherit all the decedent's real property
a spouse but no children, parents, or siblings	the spouse inherits all the decedent's real property
a spouse and living children, or a spouse and descendants of children who died	the spouse inherits half of the decedent's real property, and living children and the descendants of children who have died inherit the other half
a spouse and parents, but no living children or descendants of children who died	the spouse inherits half of the decedent's real property living parents inherit half of the decedent's real property
a spouse and siblings, but no living children or descendants of children who died, and no living parents	the spouse inherits half of the decedent's real property living siblings and descendants of children who died inherit half of the decedent's real property
parents but no living spouse, no living children, and no descendants of children who died	the parents inherit all of the decedent's real property
siblings but no living spouse, no living children, no living descendants of children who died, and no living parents	the living siblings and descendants of siblings who died inherit the decedent's real property
children born outside of marriage	children are considered heirs of their natural mother and heirs of their natural father if the parents were married before or after the birth or if paternity has been established.

Understanding Partition Law

Heirs who inherit land intestate (without a will) own it as tenants in common.⁴ Tenants in common each own an *undivided* interest in the whole parcel of land, which means that none of the heirs can claim any specific piece of land. As tenants in common, each heir has equal rights to use and occupy the land.

Heirs' property owners are especially vulnerable to losing their land because they are subject to partition actions to physically divide or sell the land.

As co-owners of the property, any of the tenants in common can bring an action in court asking for partition of the property.

There are two ways a court can partition or divide the property: partition in kind or partition by sale. If a court orders partition in kind, the land must be physically divided equitably and proportionate to the fractional interest and value of each co-owner's share. If the court orders partition by sale, it triggers a process that requires the property to be sold, and each co-owner receives a portion of the net proceeds based on their percentage of ownership interest.

Historically, when a court ordered partition by sale, the property was sold to the public. This typically happened by a mandatory sale at an auction. Often, property owners lost their family legacies and generally received a small percentage of what the land was worth—far below the property's fair market value.⁵ This has resulted in a tremendous amount of land loss among African Americans in the United States. Since 2010, there have been efforts to pass legislation at the state level to ensure that heirs' property owners have certain due process rights, or fair treatment under the law in accordance with established rules and requirements. This includes protections to ensure that property sold in a partition action is appraised by a professional and sold for fair market value. That legislation, drafted by the Uniform Law Commission, is called the **Uniform Partition of Heirs Property Act** (UPHPA). It provides a more equitable system for partition actions of heirs' property.

The UPHPA was introduced in Kentucky (SB110) in 2021 but was not enacted into law. The UPHPA would have restructured the way partition sales occur by enacting certain procedural safeguards. First, the remaining co-tenants would have been able to buy out the co-tenant that brought the partition action in favor of dividing the property instead of selling it. Second, if the property was sold rather than divided, the court would have had to have the property appraised for fair market value and sold in an open market sale instead of at auction, as is customarily the case.

Currently in Kentucky, a joint owner of land may bring a lawsuit against their co-tenants to divide or sell the land in the circuit court of the county where the land is located. Kentucky law provides that the land is considered indivisible unless any of the parties to the lawsuit argue that the property should be divided. If the court finds there is enough evidence to prove that physical division of the land is possible without harming the value of the whole parcel, the court is required to divide and allocate the property to the co-tenants.⁶

If a sale of the land is ordered, the court will refer the sale to the master commissioner to conduct a public sale. There is no requirement, however, that the master commissioner be disinterested or that the sale be for fair market value.⁷

Court actions for partition should be avoided if possible. If a physical partition of the land is desired by all co-owners, they should attempt to divide the property voluntarily by agreement with the help of a surveyor and real estate attorney. If an heir receives a notice of a partition action, they should immediately consult an attorney to protect the heirs' rights in the land. Historically, partition sales have been devastating to African American landowners, resulting in forced sales of millions of acres of property and the loss of a tremendous amount of land, wealth, and family legacy.

Avoiding Tax Sales

It is very important for heirs' property owners to make sure property taxes are paid in full because tax sales can lead to loss of land. Property becomes subject to a tax sale when a landowner fails to pay annual property taxes on time. The overdue amount generally becomes a tax lien, which may cause the local government authority to begin a process to sell the land.

Heirs' property owners should not wait to clear title to the property (see definition in the glossary) before paying the property taxes.

Note that in many families, one or more of the heirs pays the total amount of the annual property taxes due, including the portions owed by other co-owners. Ideally, the other co-owners reimburse the family members who cover their share. If they do not, the co-owner who paid the taxes can get reimbursed through voluntary repayment, distribution of income received from the property, or sale proceeds if the land is sold. Importantly, payment of taxes does not increase a co-owner's ownership interest. Rather, it creates a claim for reimbursement from any co-owner who is not paying the taxes. Anyone who pays taxes on the property should keep tax bills and receipts so that they can request or claim reimbursement.

How Tax Sales Work in Kentucky

When a landowner does not pay their property taxes, the unpaid total turns into a lien on the property.⁸ In Kentucky, the county or city may file a lawsuit in circuit court to enforce the lien. More commonly, if delinquent property taxes remain unpaid, the tax bill may be sold to speculators, who hold the tax bill while interest and penalties accumulate. Alternatively, the county or city can hold the tax bill while interest and penalties accumulate. The purchaser of the tax bill or the taxing jurisdiction may then file a lawsuit to collect from the landowner any taxes, penalties, and interest due, and may even seek to have the property sold at public auction to satisfy the obligation. The landowner or anyone who has an interest in the land can regain title by paying the taxes due plus interest and penalties from the date they became overdue any time before the property has been sold by the county, city, or purchaser of the tax bill.

Landowners whose property has been sold to satisfy delinquent property taxes have certain rights to "redeem" the property in order to get it back. However, this can be expensive. Landowners should consult an attorney before the property is sold at auction to satisfy the tax delinquency.



Potential Tax Savings for Agricultural Land

Heirs' property owners of at least 10 acres of agricultural land or 5 acres of horticultural land should also consider the potential for financial savings by ensuring that the land is assessed for property taxation at its agricultural value rather than its fair market value.⁹ Agricultural value is the value of the land based on its use as agricultural land and its ability to generate income. Savings over time can be significant for heirs' property owners because an assessment based on agricultural value is usually less than an assessment based on fair market value.¹⁰

Avoiding Adverse Possession and Condemnation

Heirs' property owners must also manage and monitor their land to ensure the property is not taken through adverse possession or eminent domain (that is, condemned by the local, state, or federal government).

Adverse Possession

Adverse possession allows a trespasser to become the owner of land they do not own if they meet certain criteria and bring an action in court asking a judge to declare them the owner. Failure to monitor and manage heirs' property can invite neighbors and others to develop a strong case for seeking ownership of land in this way. To avoid this, "No Trespassing" signs should be posted, and if a family member cannot check the land periodically, a manager should be hired.

A person can gain full ownership of land they do not own by occupying the land and meeting the following requirements. Kentucky courts have established that for an occupier to obtain title the occupation of the land must be:

1. **actual;**
2. **hostile (they are living or working on the land without permission);**
3. **exclusive (they must possess the land for themselves);**
4. **open and notorious (they must be open about the fact that they are occupying the land); and**
5. **continuous for 15 years (unless the person is relying on a document to show they are the true owner, in which case the occupation must be for at least 7 years, under "color of title").¹¹**

In Kentucky, the person claiming adverse possession must assert that they had knowledge the land belonged to someone else, but they still occupied it for 15 continuous years. In addition, the claim must have some boundary—for example, they put up a fence to show the boundaries of the land they are occupying, or

they have planted crops on the land or used it for livestock production. Finally, people who use other people's land for hiking, camping, swimming, hunting, and other recreational activities cannot claim adverse possession simply based on those activities.

One way for an heirs' property owner to defeat a possible claim of adverse possession is to give the person on the land permission to use it. This means the person cannot claim their occupancy of the land is "hostile" as is required. This permission should be in writing.

Adverse Possession Claims by Co-owners

In Kentucky, a person who owns property as a tenant in common (including an heirs' property owner) can bring a claim of right by adverse possession against their co-tenants. To be successful, the person claiming right to the land through adverse possession must show that they "ousted" the other co-tenants from the property to gain full and exclusive possession of the premises. Ouster generally means excluding or removing someone from accessing or using property.

Like in most jurisdictions, in Kentucky, all co-owners have the right to occupy property they own. This creates a legal presumption that the possession of property by one co-owner is the same as the possession of property by all the co-owners. This presumption can make it difficult to prove right by adverse possession against a co-owner, because a person claiming adverse possession must demonstrate that their possession of the property is hostile¹² to possession by the true owner.

In the case of heirs' property, this would include all the co-owners.

To prove ouster in Kentucky, the co-owner must show they meet all the elements to make a claim of adverse possession (set forth above). In addition, they must show that they are occupying the land in a way that is inconsistent with co-ownership by others. Building a permanent structure on the property could satisfy this requirement, as could selling a portion of the property.¹³ These types of activities could put the co-owners on notice that one of their co-owners is acting as if they are the *sole* owner of the property and would support that co-owner's claim that they ousted the other co-owners.

Condemnation and Eminent Domain

Condemnation occurs when the local, state, or federal government, or an agency of the government, forces a landowner to sell their land to the government. In Kentucky, the Eminent Domain Act of Kentucky governs these types of actions. It requires state and federal governments, local city and county governments, and private businesses who want to take private land under "eminent domain" laws to bring a court action pursuant to the statute. They must show that doing so is necessary for a public use or purpose.¹⁴



Agricultural Mediation Services

Family disputes are unfortunately common with heirs' property. There are often multiple generations of heirs who must come to an agreement, which can be difficult. The United States Department of Agriculture's Farm Service Agency (FSA) runs an Agricultural Mediation Program which can be used by heirs' property owners to mediate family disputes. The FSA provides funding to relevant state agencies to support mediation between individuals involved in many kinds of disputes related to agricultural issues. These include USDA decisions on loans, conservation programs, wetland determinations, and rural water loan programs; lease issues between landlords and tenants; family farm transition issues; farmer-neighbor disputes; and family disputes regarding heirs' property.

Currently, it does not appear that a free mediation service is available in Kentucky through FSA for heirs' property owners. However, if the family cannot reach agreement, mediation services can help, so it is advisable to reach out to trusted agricultural service providers and find a mediator.

Additional Resources

Organizations in Kentucky Supporting Heirs Property Owners

LIKEN (Livelihoods Knowledge Exchange Network)

109 Rosemont Garden

Lexington, KY 40503

Phone: (859) 523-5056

Fax: (859) 523-5056

Email: office@likenknowledge.org

Website: likenknowledge.org

APPALACHIAN CITIZENS' LAW CENTER, INC.

317 Main Street

Whitesburg, KY 41858

Phone: (606) 633-3929

Fax: (606) 633-3925

Website: aclc.org



Visit farmlandaccess.org for more resources related to accessing, transferring, and conserving farmland.



For a list of national organizations helping heirs' property owners, visit farmlandaccess.org/heirs-property/#organizationsprovidingassistance.

DISCLAIMER: This document provides general legal information for educational purposes only. It is not meant to substitute, and should not be relied upon, for legal advice. Each operation and situation is unique, state laws vary, and the information contained here is specific to the time of publication. Accordingly, for legal advice, please consult an attorney licensed in your state.

Glossary

The following definitions are from multiple sources and are not specific to any particular state statute. Of course, any statutory definitions (terms defined in the laws of a particular state) would overrule these definitions in any legal proceeding.

Affidavit of descent

An affidavit, signed by an individual who can swear to its contents, listing the heirs of a decedent who has died intestate, and which is filed with the county court clerk.

Ancestor

A person from whom someone is descended; a direct blood relative.

Clearing title

The legal process of proving and obtaining a deed for the current owners of heirs' property.

Co-tenants

Those who own heirs' property with others. In a partition action, the co-tenants are all the co-owners of heirs' property, regardless of the size of the fractional interest owned. See the definition of tenants in common, below.

Decedent

A person who has died. A decedent is also often referred to as "the deceased."

Deed

A legal document, usually recorded in the county court clerk's land records, often used to show the legal owner of a piece of property.

Descendant

A person related to someone who has died, either directly (parent, child, grandchild) or indirectly (aunts and uncles, cousins). This includes anyone legally adopted.

Estate

The property of a person who has died (the decedent).

Fee simple estate

The ownership of entire interests in real property, which usually refers to ownership of both mineral rights (underground, like oil) and surface rights (above ground, like houses or other buildings and land), but it can also refer to ownership of the entire interest in either mineral or surface rights.

Heirs

People who are entitled under state "intestate" law to inherit property from someone who has died.

Intestate

A person dies "intestate" when they die without a valid will.

Intestate real estate

Land and other property (such as houses or buildings) owned by the decedent when they died and not addressed in a will, and which does not pass to anyone based on language in the deed itself (such as a joint survivorship clause).

Intestate succession

State laws governing who inherits property from someone who dies without a will, or any property that was not dealt with in a will.

Joint tenants

Two or more owners of equal shares of property that contains the right of survivorship, meaning if one joint tenant dies, his or her share goes to the other joint tenants in equal shares (instead of being passed to the heirs of the person who died).

Ouster

A co-owner of heirs' property is "ousted" when one co-owner excludes another co-owner from property they own together as tenants in common.

Probate

The legal process of proving the validity of a will in court and handling the estate of a decedent whether there is a will or not.

Real property

Land and any permanent structures on the land, including homes and other buildings.

Record title

The determination of who owns land based solely on the legal records filed with the county court clerk.

Severed estate

This occurs when there are different owners of the mineral rights (underground) and surface rights (above ground) in a piece of property.

Tax sale

A legal process used by a county or town to take the property of a landowner who has not paid their property taxes in full and sell it to recover the unpaid taxes.

Tenants in common

People who each own an individual, undivided interest in property (also known as "co-tenants"), but not necessarily equal interests. See the definition of co-tenants, above.

Testate

A person dies "testate" when they have a valid will.

Title

Refers to ownership rights in land. As a legal concept, title exists even without any documents, but a deed is the most common way to determine who has title in land. (See definition of deed, above.)

Undivided interest

An interest in property that is held in common with others in a single property. These interests can be unequal; that is, the value of each interest can vary.

Acknowledgments

This resource was developed as a collaboration between Vermont Law and Graduate School's **Center for Agriculture and Food Systems**, the **Federation of Southern Cooperatives**, and the **Policy Research Center for Socially Disadvantaged Farmers and Ranchers at Alcorn State University**, with funding from the US Department of Agriculture's National Agricultural Library. This project was led by Francine Miller, Senior Staff Attorney and Adjunct Professor, Center for Agriculture and Food Systems at Vermont Law and Graduate School. Special thanks to Heather Francis, Constantin Mathioudakis, and Suhasini Ghosh for their extensive work researching and developing this resource as student clinicians and research assistants; to Andrew Marchev, legal fellow at Vermont Law and Graduate School; and to Brooke Meadowcraft, student at Wake Forest University School of Law. We thank Joe Childers, Esq., for reviewing this report.

About CAFS



farmlandaccess.org

The Farmland Access Legal Toolkit is a project of Vermont Law and Graduate School's Center for Agriculture and Food Systems (CAFS), which uses law and policy to build a more sustainable and just food system. With local, regional, national, and international partners, CAFS addresses food system challenges related to food justice, food security, farmland access, animal welfare, worker protections, the environment, and public health, among others. CAFS works closely with its partners to provide legal services that respond to their needs and develops resources that empower the communities they serve. Through CAFS' Food and Agriculture Clinic and Research Assistant program, students work directly on projects alongside partners nationwide, engaging in innovative work that spans the food system.

Please visit www.vermontlaw.edu/cafs to learn more.

Endnotes

- 1 Estate planning and will making are critical to avoid the challenges for heirs' property owners outlined above. For more information on the importance of wills and estate planning see the Farmland Access Legal Toolkit. *Heir's Property*, CNTR. AGRIC. & FOOD SYSS., <https://farmlandaccess.org/heirs-property/#challenges> (last visited Oct. 25, 2022); *Wills*, CNTR. AGRIC. & FOOD SYSS., <https://farmlandaccess.org/wills/> (last visited Oct. 25, 2022).
- 2 KY. REV. STAT. ANN. § 692.020 (2022).
- 3 The statutes governing intestate succession are KRS 391.010 et seq. There are exceptions to these general rules for property that was given to the decedent by one or more parent, see KY. REV. STAT. ANN. § 391.020 (West 1968).
- 4 Heirs who inherit property through a valid will may also own the land as tenants in common if it is left to them without designation of the specific land each heir receives.
- 5 Thomas W. Mitchell, *Historic Partition Law Reform: A Game Changer for Heirs' Property Owners*, TEXAS A&M UNIV. SCH. L. 74 (June 12, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3403088.
- 6 KY. REV. STAT. ANN. § 389A.030(2) (W1982).
- 7 KY. REV. STAT. ANN. § 389A.030(4) (West 1982).
- 8 KY. REV. STAT. ANN. § 91.560 (West 2002); KY. REV. STAT. ANN. § 91.484–91.527 (West 1980) (showing relevant statutes regarding procedures for sales of property for delinquent tax bills held by large cities).
- 9 KY. REV. STAT. ANN. § 132.010, 132.450 (West 2022).
- 10 *The Assessment Process for Real Property*, KY. DEPT. REV., <https://revenue.ky.gov/Property/Pages/TheAssessmentProcessforRealProperty.aspx> (last visited Nov. 16, 2022).
- 11 *Moore v. Stills*, 307 S.W.3d 71, 76 (Ky. 2010 as corrected through Apr. 7, 2010); See Kerrick Bachert, PSC, *Kentucky's Adverse Possession Law*, KERRICK BACHERT: ATT'YS AT L. (Sept. 11, 2019), <https://www.kerrickbachertlaw.com/blog/2019/09/kentuckys-adverse-possession-law/#:~:text=Kentucky%20law%20allows%20people%20who,ownership%20claim%20to%20the%20property> (providing court cases that show what is needed for an adverse possession claim).
- 12 *Hostile Possession*, BLACK'S LAW DICTIONARY (11th ed. 2019) (generally "hostile" in the context of adverse possession is a legal term that means to infringe or encroach on the rights of the owner).
- 13 *Hannah v. Littrell*, 304 Ky. 304, 306 (Ky. 1947) (citing *May v. Chesapeake & Ohio Ry. Co.*, 184 Ky. 493, 507–508 (Ky. 1919)).
- 14 KY. REV. STAT. ANN. § 416.010 et seq. (West 1976).