

HEIRS' PROPERTY:

Understanding the Legal Issues in *Tennessee*



By Francine Miller
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Introduction

The purpose of this factsheet is to prevent the loss of land owned as heirs' property in Tennessee. It examines state laws that are relevant to heirs' property owners in Tennessee, 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 12.

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.

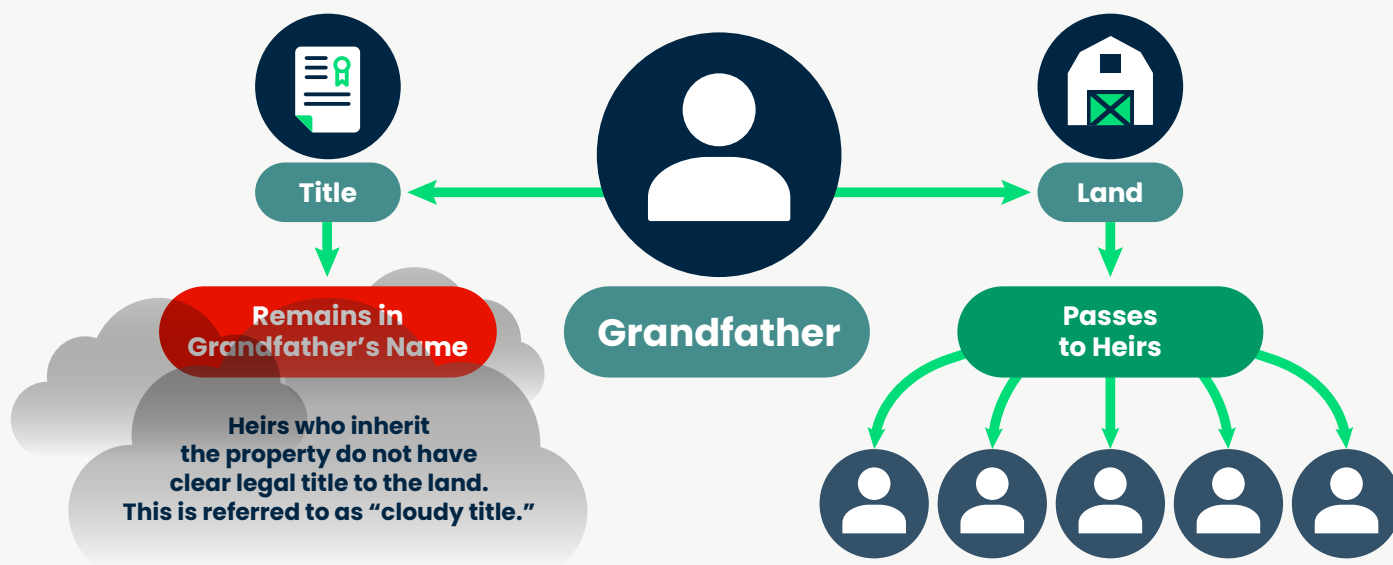
For the heirs, owning property as tenants in common without a clear title can lead to many challenges. Because it is difficult for heirs to prove ownership, they may be unable to access loans and mortgages, apply for USDA grants or loans, and build wealth from the land by engaging in commercial activity, 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. **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 at any time held any interest in the land, so 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.¹ 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.² Who inherits a person's land by intestate succession varies depending on which family members survive the decedent.

There are generally a number of types of living heirs entitled to inherit from a decedent, including: the spouse of the decedent; biological and adopted children, and their descendants; parents of the decedent; siblings of the decedent, and if they have died, their descendants (the decedent's nieces and nephews); and grandparents and cousins.

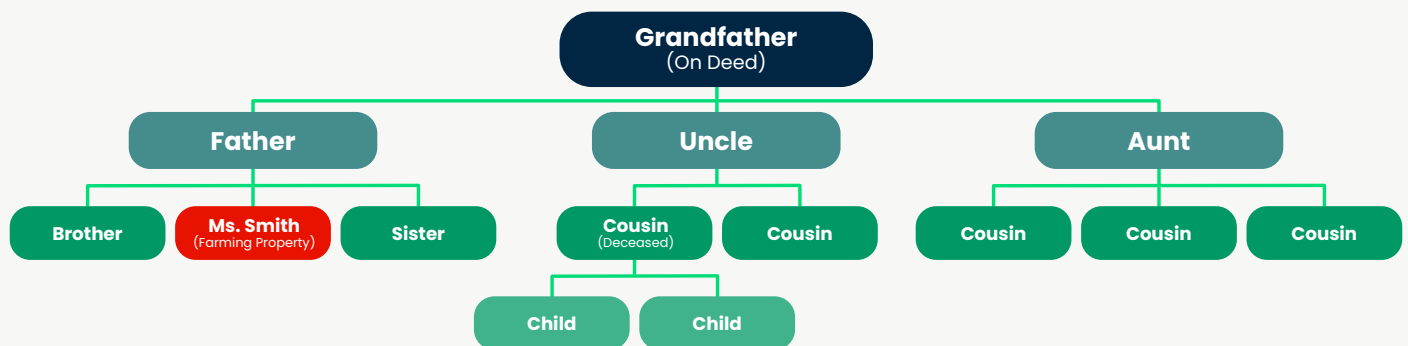


Finding the Family (Genealogy) and Land Records

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 show heirs. Local libraries can also be a great resource for genealogical records and research help.

Individuals can also go to the Property Appraiser's Office of the Register of Deeds in the county where the land is located to trace land ownership, and to the applicable office of the county clerk of court to review any judgment or probate records regarding the land.³

An example of a simple family tree for Ms. Smith



Intestate Succession in Tennessee⁴

The following chart describes some of the many possibilities under Tennessee intestate succession laws. If there are multiple generations involved, it is likely going to be important to work with an attorney to successfully identify all the current owners.

If a person dies with:	Here's who inherits:
children but no spouse	the children inherit everything.
a spouse but no children or parents	the spouse inherits everything.
a spouse and descendants	the spouse and descendants equally share the intestate property, but the spouse's share may not be less than one-third. ⁵
parents but no spouse or descendants	the parents inherit everything.
siblings but no spouse, descendants, or parents	the siblings inherit everything.
children born outside of marriage	Children are presumed to belong to the mother that birthed them, absent evidence of adoption, so they would inherit if their mother is the decedent. Children inherit from a deceased man if paternity is legally established before or after his death by clear and convincing proof, or if the mother and decedent participated in a marriage ceremony, even if declared void. ⁶

Understanding Partition Law

Heirs who inherit land intestate (without a will) own it as tenants in common.⁷ 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 a property: partition in kind and 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.

Historically, when a court ordered partition by sale, the property was sold to the public, usually by forced sale at an auction. 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.⁸ 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, including that if the property is sold in a partition action, it is sold for fair market value and not at auction. 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, and as of this writing, has been adopted in 21 states, Washington, DC, and the US Virgin Islands.

Tennessee enacted a version of the UPHPA, which became effective on July 1, 2022. However, it did not include all the provisions of the UPHPA as drafted by the Uniform Law Commission.⁹

Specifically, Tennessee's version of the law does not include provisions that incorporate a preference for partition in kind, which could preserve family land. Tennessee's law states that the court *may*, upon motion and hearing, order partition in kind when requested by a co-tenant, if there is not "great prejudice to the co-tenants as a group." Consequently, the law in Tennessee favors partition by sale.¹⁰

The newly enacted law does require that when a co-owner brings an action in court for partition by sale, the court must first provide an opportunity for the other co-owners to buy out any co-tenant who wants to sell their share. The value of the property for these purposes is either the tax value as appraised by the county, or, if a party objects to that valuation, the court must have the property appraised and interests sold to the co-owners at fair market value.¹¹

If the court has determined that partition by sale is appropriate, but the co-owners cannot buy the partitioning co-owner's interest, the law grants the court discretion to order an open market sale, a sale by sealed bids, or sale by auction. The court has the discretion to determine the method of sale "that is most economically advantageous and in the best interest of the co-tenants as a group."¹² Unfortunately, this type of discretion regarding the method of sale can lead to significant financial and legacy loss for heirs' property

owners. In many instances, it has led to sales of heirs' property by auction or by sealed bids for much less than the fair market value. Families have been left with pennies on the dollar for the value of their interest while also losing the legacy of land their ancestors left them.

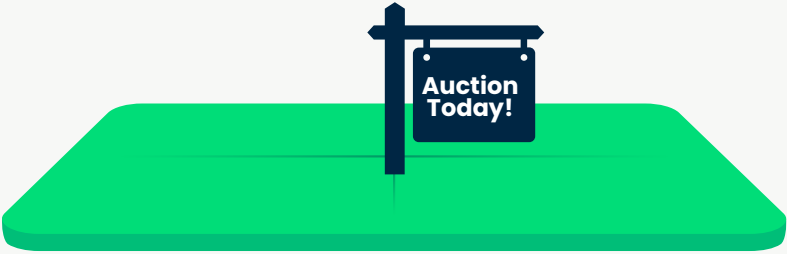
In sum, the Tennessee legislature changed the Uniform Partition of Heirs' Property Act in two important ways. First, it does not require the court to favor partition in kind to ensure family land stays in the hands of heirs' property families. Second, if partition by sale is ordered, it allows the court discretion to determine the method of sale (open-market sale, sealed bids, or auction), rather than requiring an open-market sale at fair market value.

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.

If just a single heir sells...



this can trigger a "partition by sale,"



and can result in the property being sold at auction.



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 Tennessee

When a landowner does not pay their property taxes, the unpaid total turns into a lien on the property.¹³ Landowners in Tennessee pay property taxes for the time period leading up to the tax due date. Generally, taxes are due and payable on the first Monday in October. Interest begins to accumulate on overdue taxes on March 1 of the following year. Once the taxes become delinquent, the county may seek to

sell the property to satisfy the lien. To begin this process, the local tax authority must give at least 20 days' notice to the landowner, following the Tennessee Rules of Civil Procedure. The tax authority will generally also advertise the sale of the property in the local newspaper.¹⁴

At the tax sale, the clerk must provide an opening bid equal to unpaid taxes, interest, penalties, costs, and fees unless the authorities determine that the environmental or financial liabilities associated with the property are too great.¹⁵ Once sold, the clerk provides notice of the sale within five days, including, at a minimum, the identification of the property, name of the original owner, name of the successful bidder, and the price paid at auction, together with the instrument number of the last conveyance of record.

Tennessee law permits the original owner to avoid a tax sale by paying the delinquent taxes, penalty, interests, and costs at any time before the sale.

Tennessee landowners can "redeem," or get back their land, after the sale takes place. Generally, a landowner can redeem their property by paying all outstanding taxes, interest, penalties, and all costs and fees, along with interest equal to 12 percent per year. The landowner must also file a motion in court to redeem the property before the redemption deadline. The length of the redemption period depends on how long the taxes were delinquent before the tax sale occurred. If the taxes were delinquent for five years or less, the redemption period is one year. If the taxes were delinquent for more than five years, but less than eight years, the redemption period is 180 days. Finally, for taxes delinquent for eight years or more, the redemption period is only 90 days.¹⁶



Potential Tax Savings for Agricultural Land

Heirs' property owners of agricultural land should consider the potential for financial savings by receiving an agricultural tax exemption for property taxes due.¹⁷ For tax purposes, if a parcel of land is classified as agricultural, forest, or open-use space, it is possible that the tax assessment is based on its use for those purpose, rather than at the value of the land if it was being used for residential or commercial development. This is known as taxation based on current use.¹⁸

The law in Tennessee sets out a rather complicated formula addressing how to compute such an assessment. It is important to note that if the use of the land changes making it no longer eligible for the reduced land use assessment, the landowner may have to pay back the difference for the preceding three or five years depending on the reason.¹⁹

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 at any entrances to the property, boundaries of the property should be well-marked (preferably with purple paint), and if a family member cannot check the land periodically, they should hire a property manager to do so.²⁰

A person can gain full ownership of land they do not own in Tennessee by occupying the land and meeting the following requirements.

The "possession" of the land must be:

1. actual and exclusive (they must possess the land for themselves), to the exclusion of others; however, the adverse possessor does not have to physically occupy the land at all times);
2. open, visible, and notorious (possession must be obvious and cannot be hidden);
3. hostile and adverse (they are living or working on the land without permission); and
4. continuous and peaceable for the full required period (generally 20 years).²¹

Establishing "possession" is fact-specific, but generally means that the person has been cultivating the land, has fenced all the land, or has improved the land in some way such as building structures, planting timber, or other activities that add to its value.

Adverse possession under "color of title" means the person must be relying on a recorded written document that they believe shows they are the actual owner of the property. In Tennessee, if a person tries to claim adverse possession under color of title, the person must only prove they possessed the land for 7 years, rather than for the 20 years that is otherwise generally required.²²

Adverse Possession Claims by Co-owners

In Tennessee, 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 Tennessee, 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 hostile to possession by the true owner.²³ In the case of heirs' property, this would include all the co-owners.

To prove ouster in Tennessee, 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: (1) they are excluding the other co-owners from the property; and (2) their co-tenants have been notified of their claim of sole ownership.²⁴ This notification can occur through actual notice, which means the co-tenant informed their co-tenants of their claim, or it can be through a “positive and unequivocal act that must by its nature put the other cotenants upon notice that they are excluded from the possession.”²⁵ In other states, selling the property to a third party can meet the criteria for proving other co-owners have been notified. Because this action is visible and recorded with the local office of land records, it can show the co-owner is acting as if they are the *sole* owner. This may be sufficient to demonstrate the other co-owners were notified of the claim.

Condemnation and Eminent Domain

Condemnation occurs when the local, state, or federal government or similarly empowered municipal or other entity forces a landowner to sell their land to the government. State and federal governments, local city and county governments, and private businesses can take private land under “eminent domain” laws if they can show that doing so is necessary for a public use or purpose.



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.

Unfortunately, Tennessee does not participate in the USDA program. According to USDA, families can find mediators to help resolve family conflict through:

**National Association for
Community Mediation**

Website: nafcm.org

JAMS

Website: jamsadr.com

**American Arbitration
Association**

Website: adr.org



**For a list of national organizations
helping heirs' property owners, visit
farmlandaccess.org/heirs-property/
[#organizationsprovidingassistance](https://twitter.com/farmlandaccess).**



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

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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.

Adverse possession

A legal doctrine that describes when someone occupies property for a period of time and then claims legal rights to it.

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.

Condemnation/eminent domain

The right of a government or its agent to take private property for a public purpose, with compensation to the property owner (such as a public utility taking land so they can build power lines).

Co-tenants

Those who own heirs' property with others. In a partition action under the Uniform Partition of Heirs Property Act, 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; decedent is also often referred to as "the deceased."

Deed

A legal document, usually recorded in the office of a town or county that keeps land records, often used to show the legal owner(s) 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 real property (land and buildings) and personal property (clothing, furniture, cars, and so on) of a person who has died. In probate settings, the "estate" includes the total assets (things one owns) and liabilities (debts) of a person who has died.

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 addressing who inherits property from someone who dies without a will (or when a will is found to be invalid), or any property that was not included in the decedent's will.

Joint tenants

Two or more owners of equal shares of property who have a right of survivorship, meaning that if one joint tenant dies their share goes to the other joint tenant(s) in equal shares.

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.

Tax lien

A state or local government's right to keep real estate for payment of some debt or obligation.

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.) Sometimes a will or an affidavit may be used to document ownership rights.

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

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About CAFS



farmlandaccess.org

Vermont Law and Graduate School's Center for Agriculture and Food Systems (CAFS) 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 It is important to file a deceased person's will along with a petition to probate the will with the local court where the person resided and where the property is located as soon as possible after the person has died.
- 2 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).
- 3 Individual counties in Tennessee have some property data online. See, e.g., *Real Property Search*, METROPOLITAN NASHVILLE & DAVIDSON CNTY. ASSESSOR OF PROP., <https://www.padctn.org/real-property-search/> (last visited Jan. 22, 2023) (showing the website of the property assessor of Nashville), as does the Tennessee Secretary of State's office: <https://sos.tn.gov/tsla/faqs/how-do-i-find-deeds> (last visited Jan. 27, 2023).
- 4 Chart created based on one by Valerie Keene. Valerie Keene, *Intestate Succession in Tennessee*, NOLO, <https://www.nolo.com/legal-encyclopedia/intestate-succession-tennessee.html> (last visited Jan. 22, 2023).
- 5 *But see* TENN. CODE ANN. § 31-4-101 (2021) (showing Tennessee's statute on the Right to an Elective Share).
- 6 See TENN. CODE ANN. § 31-2-105 (2021).
- 7 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.
- 8 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.
- 9 TENN. CODE ANN. § 29-27-303 et seq. (2022).
- 10 TENN. CODE ANN. § 29-27-308 (2022).
- 11 TENN. CODE ANN. § 29-27-306-07 (2022).
- 12 TENN. CODE ANN. § 27-29-310 (2022).
- 13 TENN. CODE ANN. § 67-5-2501 (2016); TENN. CODE ANN. § 2101 (1993).
- 14 See TENN. CODE ANN. § 67-5-2502 (1998).
- 15 See TENN. CODE ANN. § 67-5-2501a(2) (2021).
- 16 TENN. CODE ANN. § 67-5-2701 et seq. (2021).
- 17 See generally TENN. CODE ANN. § 67-5-1008 (2020); TENN. CODE ANN. § 67-5-1001 et seq. (2019).
- 18 TENN. CODE ANN. § 67-5-1008 (2020).
- 19 TENN. CODE ANN. § 67-5-1008 (2020).
- 20 See TENN. CODE ANN. § 39-14-405 (2019).
- 21 *Cumulus Broad. Inc. v. Shim*, 226 S.W.3d 366, 376 (Tenn. 2007) (citing RALPH E. BOYER, SURVEY OF THE LAW OF PROPERTY 233, 236 (3rd ed. 1981)).
- 22 TENN. CODE ANN. § 28-2-101 et seq. (2021).
- 23 *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).
- 24 *Envision Properties LLC v. Johnson*, 2005 WL 2860195, 16 (Tenn. Ct. App. 2005) (citing *Nesmith v. Alsup*, 1999 WL 557620, 10-11 (Tenn. Ct. App. 1999)).
- 25 *Envision Properties* 2005 WL at 16-17 (citing *Drewery v. Nelms*, 132 Tenn. 254, 262 (Tenn. 1915)).