



South Carolina Planning Education Advisory Committee (SCPEAC)

February 8, 2024

NOTICE OF DECISION

Title of Program: Center for Heirs' Property Preservation: From Land Divided to Land Sustained

Organization: Dorchester County

The following action has been taken by the SCPEAC on this application:

APPLICATION RECEIVED Date: October 13, 2023

APPLICATION REVIEWED Date: _____

ACCEPTED WITHOUT OBJECTION Date: October 23, 2023

- a) X ACCREDITED for: 90 min. CE credits: 1.5
- b) _____ DENIED ACCREDITATION
- c) _____ RETURNED for more information

If accredited:

a) Authorized Course No.: 2023-07

b) Date of accreditation: October 23, 2023

Certification Signature, MASC Administrative Representative: *L.P. Floyd*

Certification Signature, SCPEAC Representative: *Stephanie Monroe Tilerson*

**For further information, contact Urica Floyd at 803-354-4754
or the committee at SCPEAC@masc.sc.**

Municipal Association of SC • 1411 Gervais Street • Columbia, SC • 29201

Phone: 803-933-1228

Email: SCPEAC@masc.sc

Website: <https://www.scstatehouse.gov/SCPEAC/>

APPLICATION FOR ACCREDITATION OF A CONTINUING EDUCATION PROGRAM

NOTE: This certification form, together with the required information referenced therein, shall be submitted to the Committee. If no objections are raised by a member of the SCPEAC within 10 business days of receipt, the continuing education program shall be considered accepted. If an objection is raised, a teleconference meeting shall be scheduled with appropriate public notice, as soon as reasonably possible, to review the application.

Applications are due no later than 30 days prior to the first scheduled presentation of a program or class. The Committee will consider extenuating circumstances where the 30 day deadline cannot be met.

1. Name and address of organization providing or sponsoring the orientation program:

- a. Organization Name: _____
- b. Address: _____
- c. City: _____ State: _____ Zip Code: _____
- d. Telephone: _____ Email: _____

2. Contact Information:

- a. Name of Contact Person: _____
- b. Title: _____
- c. Telephone: _____ Email: _____

3. Information on program:

- a. Title of Program: _____
- b. Date(s) & Location(s): _____
- c. Brief description of the program and its content: _____

4. Method of presentation: _____

5. Description of materials to be distributed: _____

6. When are materials distributed (before or at the time of the program): _____

7. Instruction time: Indicate the total number of minutes of instruction time: _____

NOTE: Breaks, meals, and introduction should not be counted. A reasonable period of Q & A should be included and counted.

8. Method of Advertisement (describe how you plan to notify local officials of program): _____

9. Required attachments:

- a. Brochure, if available
- b. Course Presenter(s) and credentials (include brief resumes and qualifications)
- c. Copies of all handouts and course materials
- d. Evaluation Form and method of evaluation (each program must be evaluated)

10. Certification. By submitting this application, the applicant agrees to:

- a. Allow in-person observation, without charge, of the Program by the SCPEAC Committee members. Any food, travel, or lodging costs will be the responsibility of the Committee member(s).
- b. The applicant acknowledges that its approval for this Program may be withdrawn for violations of the regulations or failure to comply with the agreements and representations contained herein and as may be required by the SCPEAC.

11. Application and program materials shall be submitted:

- a. Electronically to each of the Committee members emails as listed on the website (<https://www.scstatehouse.gov/SCPEAC/members.htm>).

A. Bio for Joshua Walden, Esq.

Chief Operating Officer for Center for Heirs' Property Preservation

Joshua F. Walden, Esq.
Chief Operating Officer
Email: jwalden@heirsproperty.org

Joshua F. Walden was born in Mt. Airey, North Carolina but has lived in South Carolina since 1979. He grew up in Chapin, South Carolina and received his Bachelor's of Art Degree in Psychology from The University of South Carolina in 1996 and earned his Juris Doctorate from The University of South Carolina School of Law and was admitted to practice law in 2000.

Mr. Walden is a member of the South Carolina Bar and Charleston County Bar Association and is a member of the Probate and Real Property Specialty Bars. He has practiced primarily in the fields of real property and estate planning/probate law and has served as a Guardian Ad Litem in the family court for SC Department of Social Services and SC Department of Juvenile Justice and is a South Carolina Board Certified Civil Court Mediator.

Mr. Walden joined the Center for Heirs' Property Preservation in September of 2009 as the Supervising Attorney. He served as the Director of Legal Services with the Center until January of 2019 at which time he became the Center's Chief Operating Officer overseeing programs in the Legal, Forestry and Outreach Departments. He has presented at Continuing Legal Education seminars as an expert on heirs' property and heir mediation in South Carolina for the SC Bar, Charleston Probate Court, the SC Probate Judges Conference, local county bars, as well as regionally in partnership with the American Bar Association, the New York Bar, the Mississippi Center for Justice, NC Legal Aid, the National Probate Judges Conference, and numerous other governmental and NGO agencies. Mr. Walden is also a published co-author in the American Bar Association's recently published book, Heirs' Property and the Uniform Partition of Heirs Property Act: Challenges, Solutions, and Historic Reform.

B. Powerpoint Presentation

Center for Heirs' Property Preservation

From Land Divided to Land Sustained



Legal Services



Take-Aways

- What is Heirs' Property (HP)?
- How owning Heirs' Property affects you?
- What steps you can take to preserve ownership of your property?
- Family Agreement
- Last Will and Testament/Estate Plan
- Probating an Estate
- Forced Sales
- Property taxes/tax sales



What Is Heirs' Property?

- The owner(s) of record (decedent(s)) have died more than 10 years ago.
- The decedent's estate was not probated.
- No appropriate legal action has been taken since decedent's death.



What Does HP mean?

- The decedent's heirs are now Tenants-in-Common.
- All the heirs share an undetermined, undivided ownership interest in the property.
- Each has a right to full use and enjoyment of the whole of the property.
- Family Agreement*****



How Does Owning Heirs' Property Affect You?

- No clear title to the property
- Liability rather than an asset
- Difficult to enforce rights against others
- Cannot get a mortgage / Unfair sale prices
- Possibility of forced sale
- Predatory development
- Threat of tax sales
- Community or Culture can be lost



What Steps You Can Take?

- Make and keep an appointment with us at the Center for Heirs' Property Preservation
- Get your Will drafted/estate planning
- Probate your deceased loved one's estate
- Family Agreement***
 - ❖ Certified Mediators on staff



Will/Estate Plan

➤ Will Requirements

- ❖ At least 18 years of age
- ❖ Sound mind
- ❖ In writing
- ❖ Signed by Testator
- ❖ Witnessed by 2 Disinterested Witnesses
- ❖ Notarized

➤ Other Advanced Directives

- ❖ Powers of Attorney
- ❖ Living Will



Last Will & Testament

- You decide who gets your property
- You decide who will be Personal Representative of your estate
- You can leave your property/interest to anyone you want!
- Can reference Forest Management Plan, Conservation Plan and Business Plan
- **Must Be Probated!**
...Or, Here we go again!



What is Probate?

- **Probate is a Legal Process!!!**
 - ❖ The law changed in 1987 regarding how much heirs inherit.
- **Transfers title to property out of decedent's name and places title into living peoples' names.**
 - ❖ Testate = Will
 - ❖ Intestate = No Will = South Carolina Intestacy Laws
- **Establishes and preserves the Chain of Title for the property.**
- **Must be done within first 10 years of decedent's death.**



Who Are The Heirs?

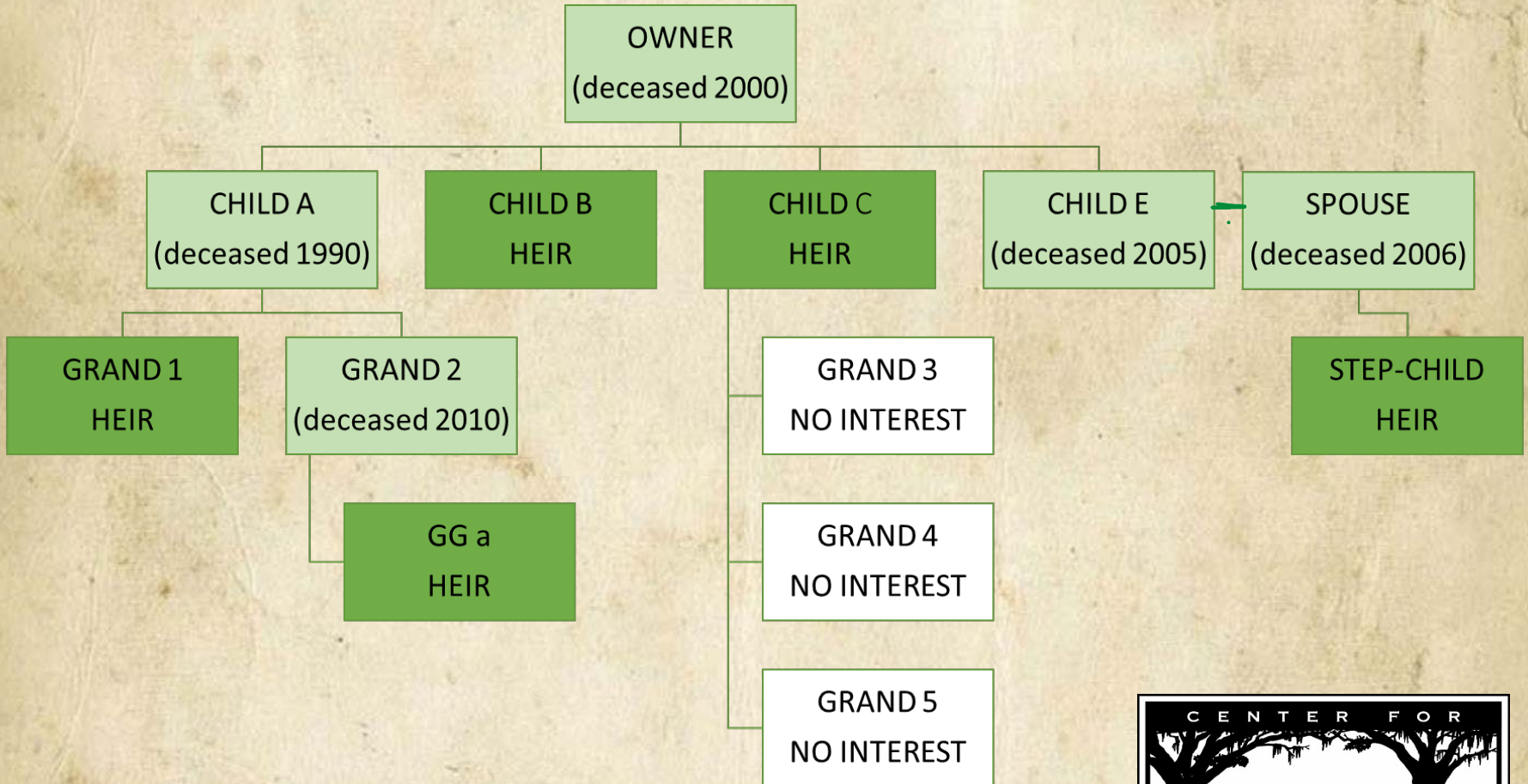
- **The Family Tree!!!**
 - ❖ Heirs?
 - ❖ Descendants?
- **Start with the person(s) named on the deed**
- **Exact Date of Death**
- **Death Certificates / Obituaries / Family Records**
- **Spouse / Children / Legally Adopted / Outside Children / Parents / Siblings**



Man_Half-tube/Getty Images



Who are the Heirs?



Property Transfers

- Chain of Title
- Quitclaim vs. General Warranty Deed
 - ❖ Signing deeds may cut off your ownership interest in the property
- A Plat is Not a Deed
- The Tax Bill is Not the Deed
- Having property surveyed does not transfer title



Clearing the Title

- The Paper Trail
 - ❖ Maintaining and Re-establishing the Chain of Title
- Transfers While Alive
- Last Will & Testament
- Probate [In SC w/in 10 yrs of death]
- Court Actions [In SC, more than 10 yrs after death]
 - ❖ Petition to Determine Heirs
 - ❖ Quiet Title



Partitions of the Property

- Must Clear Title First
 - ❖ Probate
 - ❖ Petition to Determine Heirs
 - ❖ Quiet Title

- Partition-in-Kind (Physical Share)

- Partition-by-Sale (Financial Share)
 - ❖ Possible Forced Sale

- Partition-by-Allotment (Financial Share)
 - ❖ Buyout



S.C. Uniform Partition of Heirs Property Act

- Clementa C. Pinckney Act
 - ❖ Only applies if property is being partitioned

- Five Things the Law DOES NOT Do:
 - ❖ Does not change inheritance rights
 - ❖ Does not change need for Last Will and Testament, Estate Planning or Probate
 - ❖ Does not change need for full agreement among all the heirs
 - ❖ Does not “Fix” heirs’ property issues
 - ❖ Does not prevent forced sales



Tax Sales

- **DO NOT STOP PAYING THE TAXES!!!!**
- AKA Sheriff's Sale
- Delinquency
- Public Auction
- One Year to Redeem
 - ❖ A couple of counties not allowing heirs to pay delinquency or redeem.
- Treasurer's Deed Equals Quitclaim Deed
- Does NOT Clear the Title



Questions?



Contact Us



(843) 745-7055



info@heirsproperty.org
www.heirsproperty.org



Seminar Packets
will be emailed to
you.



Please provide feedback
on how we did!



C. Session Handout

Center for Heirs' Property Preservation

- **What is Heirs' Property?**

- *The Public Record (Deeds and Probate.)* There are generally two ways property is transferred from one person to the next. A person transfers their ownership interest in a piece of land to another by deed OR they die owning the property and the administration of their estate (probate) passes the property to heirs (intestate) or devisees (by will.)
- *The Chain of Title.* The resulting public record created by the deeds recorded in the Register of Deeds Office and the estates filed, and of record, in the Probate Court.
- *Marketability of Title.* This term reflects the fact that the records involving the ownership of land should be traceable (for example) from an owner in 1900 to the modern day (current) owner by tracking the chain of title in the public records for the county where the property is located. These records are usually found in the County Register of Deeds Office, the County Probate Court and sometimes the County Clerk of Court's Office. When the chain of title is intact and the ownership traceable (on record) then the title is marketable which basically means a Bank would be willing to accept the property as a source of collateral on a mortgage for a purchaser or home equity line or refinance by the owner. In other words, the record clearly shows who the owner is and who has the right to sell or use the property. The marketability aspect also reaches to the marketability of timber on a particular tract of land as the public record also speaks to the ownership timber on a particular tract of land.
- Heirs Property Owners do not have clear and marketable title as the chain of title does not disclose or reflect the current owners of the property.

- **What Do I Own?**

- *Tenancy-in-Common Form of Ownership.* Heirs' property is property that is owned by the heirs of a deceased person. The law calls this type

of ownership a Tenancy-in-Common because all of the heirs own an interest in the property along with the other heirs.

- *Rights to Use and Enjoyment.* All heirs own a fractional interest so everyone gets to use or enjoy the whole of the property regardless of the size of the fraction. They can live there, go there for family reunions, fish and hunt there or do anything with the land that any other heir can do. The example being; if you have 10 heirs and 10 acres everyone owns a 1/10th fractional interest in the whole 10 acres rather than each heir owning an acre. Generally, all heirs are responsible for paying their share of the taxes and upkeep even though that may not happen in real life!
- *Limitations of This Form of Ownership.* The limitations speak to the property being a liability versus an asset. Without a clear title to the land, you will have trouble selling your land for what it's worth, getting mortgages, title insurance, public utilities, grants, qualifying for the best tax assessments through the county, and/or qualifying for assistance through local or state home rehabilitation programs or FEMA assistance when natural disasters (floods) are involved. The ability to sell the timber on a parcel of heirs' property is also affected by this form of ownership. Most reputable timber buyers will not touch heirs' property due to liability concerns, so heirs are often left dealing with someone who is offering only a fraction of what the timber is actually worth.
- *Some Myths Associated with Heirs Property Ownership.*

I Pay the Taxes! - The payment of taxes does not increase an heir's fractional ownership interest nor does non-payment reduce an heir's fractional ownership interest.

I Have a Survey! - A survey (cutting a piece off) does not separate the legal ownership although it separates for tax purposes. *See 10 heirs and 10 acres example.*

I have a Tax Deed! - Letting the heirs' property go to tax sale and then buying (as an heir) at a tax sale does not clear the title.

I am the Oldest and Wisest and Mamma Loved Me More! – Anything Mamma or Daddy (Grandma or Grandpa) told you they wanted to have happened to the land, as far as dividing or utilizing the property, is in no way legally binding. The family can decide to collectively respect those wishes but they do not have to do so. The best way for Mamma or Daddy, Grandma or Grandpa, to be sure their wishes are followed is to have a Will. You should have a Will for the same reason. No particular heir has decision-making authority based on being the oldest male, or the oldest child, or the last living child, or the most educated, the richest, being a local heir who lives on the land, paying taxes, or even being the best looking. Again, folks may give deference to certain heirs based on such factors, but they are not required to do so.

- **Who is an Heir?**

- *Intestate Inheritance.* Intestate means someone has died without a Will or the Will was not filed within a ten-year period (from the date of death.) Under the SC Probate Code heirs have a ten (10) year period to probate the estate of a loved-one. This time frame is set in stone and applies whether the deceased died with or without a Will. If ten years pass with no probate, then the estate (the property owned by the dead person) can no longer be administered through a regular probate process. In this instance, even if the deceased had a Will; said Will is no longer valid. When someone dies without a Will and/or ten years have passed with no probate being filed, SC law has written a Will for all of us and any property owned by the deceased passes in accord with the provisions (rules) under that law. After 10 years it will take a Court Order to determine the heirs and to fill-in the gap in the Chain of Title we discussed earlier.

Note: If the person *had a will*, and Will is filed/probated within the 10 year period from the date of death, they have ordered who gets their property = Testate (they decide who inherits.)

Note: The Probate Code is the South Carolina Law that controls the probate process. It is called Title 62 of the South Carolina Code of Laws and you can look it up on the internet at www.scstatehouse.net or at the library.

- *Adopted versus Raised.* Only a child who has been formally adopted through the Court is considered an heir. It does not matter how long a

child lived with a family or whether the family treated and considered the child as “one of their own”.

- *Divorced versus Separated.* Separated is NOT divorced. There is no Common Law Divorce, you need to go to court and get a real divorce even if that spouse moved away and you haven’t seen them in years. This means that if you get married to somebody else, with a license and formal church ceremony, that second marriage may not be valid, and you are still married to the “first” spouse. If you are concerned about this, speak with an attorney as soon as possible.
- *Outside Child.* Generally, children born outside of marriage are heirs of the decedent owner regardless of the marital status of the decedent or the other children the decedent may have with his/her spouse.
- *The Family Tree:* It is very important for you to know who the actual heirs are.

When you are constructing a family tree, you should start with the ancestor who is on the deed to the property. List any spouse(s) or children that they may have had, and you need to include both living and deceased children. For any member of your family that has died, you must include their spouse and any children they may have. Keep doing this until you have all the generations written down. Remember that children are either biological or legally adopted. You can do a chart if it’s helpful.

Once you have your family tree, you should pass it around to other family members because they may remember things that you do not.

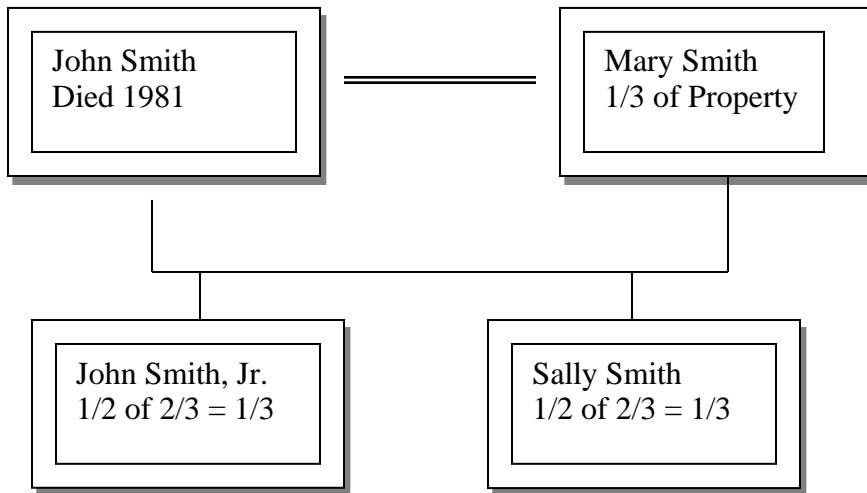
Family records such as bibles, obituaries and funeral pamphlets are good resources even though they might not be completely accurate.

You will need the full name and address of all living heirs.

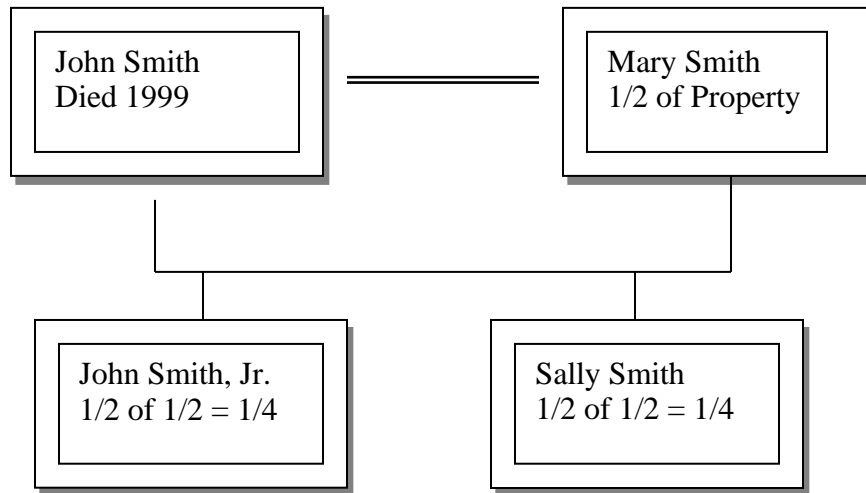
Here is a sample of what that might look like:

FAMILY TREE

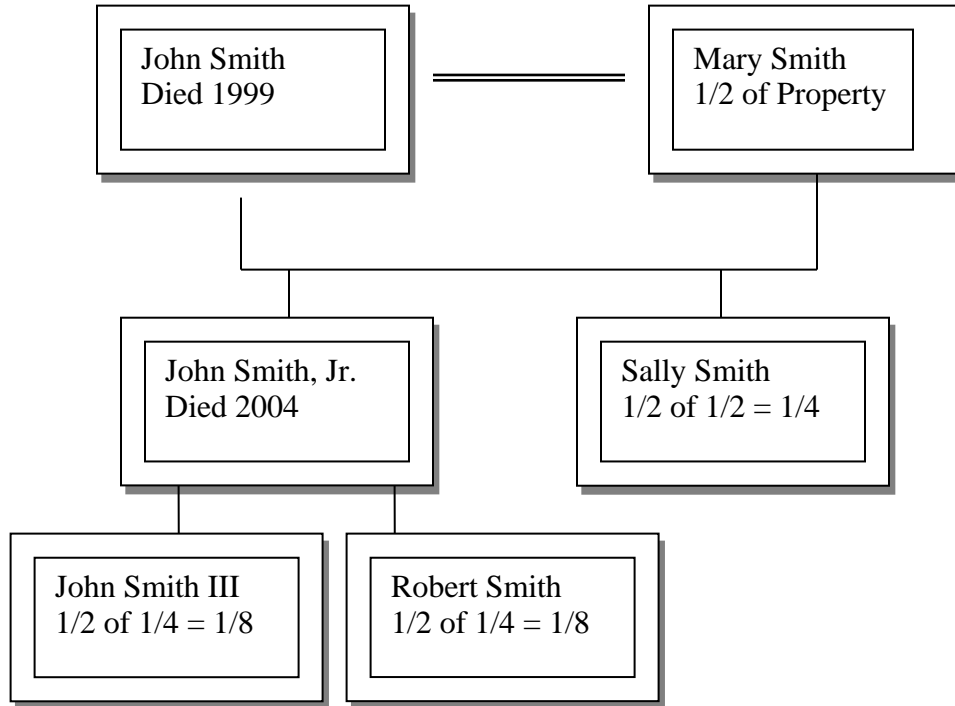
If someone died in the State of South Carolina before 1986 without a Will and they had a Spouse (Husband or Wife) who survived them, that Spouse gets 1/3 of the property. Their children share the rest equally.



If someone died after 1986, $\frac{1}{2}$ of their property goes to your surviving spouse and their children share the rest equally.



If one of the children died, but had children of their own, then those children equally share what their parent would have taken. It looks like this:



There are many more situations that may apply to your situation but these were just some simple examples. Remember in our example that if John Smith, Jr. had a wife that survived him, she would have 1/2 of his property.

- **I Have Heirs' Property, So Now What?**

- ***The Dangers of Heirs' Property.*** This type of ownership makes the land vulnerable. Below is a list of issues heirs face and why curing the problem as soon as possible should be a priority. As difficult as it is today; it will never be easier than it is today.

Lack of Full 100% Agreement - If you remember anything from this seminar remember that ALL heirs must be in 100% agreement if your first priority is to protect the land.

Lack of Organization - Very often land is lost due to a lack of organization as to who pays the taxes and having a back-up plan to pay the taxes and to confirm on a yearly basis the taxes are being paid.

The Number of Heir Owners Keeps Growing - Again, as difficult as it is today; it will never be easier than it is today. As heirs pass away their fractional interests flow down their family tree to their heirs (which usually include husbands and wives) and the continuous chain of inheritance can lead to folks inheriting who have no relation to the family. Remember, Wills can curb this problem but will not eliminate the issue all together.

Partition Sales - If one of the heirs can't agree on the division or wants their money, the judge may order the property to be sold and the heirs receive the monetary value of their share. If an heir has sold their interest to some third party, that nonfamily member may also bring an action to force a sale. The sale can happen even if a majority of the heirs who live on the land want to keep the property. Currently, non-petitioning heirs have the right to buy out the interest of those who want to force a sale. However, such a right offers little protection if the heirs do not have the money to buy out those interests. If heirs can't agree and the heirs seeking to protect the land can't buy out those who want to sell, the property is usually sold at auction. **Again, it is very important to agree before going to court.**

Predatory Development – Circumstances where an heir sells their interest to a developer usually lead to the developer forcing a sale of the property. Often these developers misrepresent what they are buying and will assert they want to buy your “piece” of the land or your “portion” and we all now know they do not own a piece of land but rather own an undivided fractional interest in the land. If you sell your interest to a developer, you are setting the land up to be sold at auction and the other heirs are almost always forced off the land.

Tax Sales – Organization (as referred to earlier) is the best way to prevent this problem and to remember that letting the property go to tax sale does not cure title problems.

Secondary Effects of Development - As commercial and residential development comes to the more rural areas of the state, heirs' property that may have once been safe in its anonymity becomes more and more desirable to those wanting to build. Additionally, as development spreads in a given area, the taxes generally rise and put more pressure on heirs' property owners who may not be able to qualify for a reduced tax assessment due to the chain of title problems.

I Didn't Know What I was Signing (Quitclaim Deeds) - This is a deed that transfers any interest you may have in the property to another person. It does not guarantee that you have any interest, or that you will defend them in court. It simply says, "whatever interest I have in this property is yours." A Quitclaim Deed is final once you sign. Unless the person to whom you transferred your ownership signs another deed back to you, you have no interest left in the property no matter what they may have told you. These deeds are also called *quick-deeds* by some. **KNOW WHAT YOU ARE SIGNING!**

- ***Title Search.*** Once the property is identified and a family tree is completed, you will want a title search performed so an attorney can calculate the interests owned and identify any non-heirship title issues such as access or judgements of record (if any).

- ***Determination of Heirs.*** If the person on the deed is someone you knew personally, like your mother or father, and more than 10 years have passed since that person died, you will have to file a Petition to Determine Heirs suit in the Probate Court. The action will involve you, other family members, and at least one non-family member, testifying in Court as to the deceased person's heirs and providing evidence as to their ownership in a particular piece of land. A Determination of Heirs action only concerns itself with the heirs of the deceased at the time of their death. If someone who inherited from that decedent (was alive at the time of their passing) has since died, their interest would need to be determined by the probate of their individual interest in their individual estate or a Petition to Determine Heirs for their interest if they have been deceased for longer than 10 years.

- ***Quiet Title Action.*** This is a lawsuit that is required in many heirs' property cases. These types of cases usually involve multiple generations of deceased heirs, issues involving the boundaries of the land, a history of some heirs having transferred their interest to other heirs or third parties and may involve issues of access. These cases are generally more complicated and usually take longer to resolve than a Determination of Heirs action.

If we think back to the 10 heirs and 10 acres example, every heir to the property has a 1/10th in all 10 acres but they haven't divided-it-up yet

to see what piece everyone will get. In the context of the heirs seeking to Quiet Title to the land, they may decide they want to physically divide the land based on mutual agreement which would be called a partition-in-kind. The two kinds of Partition requests usually made to the Court are addressed below.

- ***Partition-in-Kind.*** This is when you go to court and ask the judge to divide the property based upon a recorded survey and agreement among all heirs. This only works if there is enough land for all heirs to get their physical share and the family agrees to the division. If all are in agreement, the Court will issue an Order and Deeds to the heirs for the piece of the land all have agreed each will take. Once this is accomplished, each heir (or group of heirs) now owns a separate piece of the land apart from all other heirs. **You should have agreement on the division before you get to court. If there is disagreement (arguing in court over how it will be divided) the property could be sold by the court.**
- ***Opting Out and Consolidation of Interests.*** If an heir does not want their interest in the land, they can sign away their ownership (quitclaim deed) to another heir of their choosing, or to a group of heirs, or to all other heirs as a collective group, or even to a non-family member. Often this happens when we have 50 heirs an only 1 acre.
- ***Trust & LLCs.*** Heirs may decide to create an entity to own the property rather than dividing the land. Trusts and LLCs are two of the more common forms.

Trusts - A fiduciary relationship in which one or more persons, trustee(s), hold legal title to property for the benefit of others (beneficiaries) who have an equitable interest therein.

The heir owners (if all are in agreement to do so) may decide to create a family land trust. The heirs donate their interests in the land in order to form the trust. The heirs can name one person, or a group, or an entity to serve as a trustee(s) The trustee(s) can be a family member or some third party and he/she/they makes decisions for the land on behalf of the other family members who are beneficiaries under the trust. The Trust holds title to the land, not the individual heirs. There is a Trust Agreement that controls how the trust is managed (similar to the Operating Agreement in an LLC) and how. There are many different

types of trust and the attorney who drafts the trust agreement will need to explain the more detailed nuances of the types available and the heir owners as a whole will decide on the form and terms of the Trust Agreement.

LLCs - The heir owners (if all are in agreement to do so) may decide to create a Limited Liability Company (or LLC.) The heir owners would then transfer their individual ownership interests to the LLC. Once this is done, no individual heir will own any interest in the land as it will then be owned by the LLC (which you can basically think of as a company created and owned by the heirs.)

The LLC is either managed by all the heir owners (which can be difficult if you have many heirs) or the heirs may elect or hire Managers to run the LLC. The LLC is run in accord with an Operating Agreement that spells out the name of the LLC, what type of LLC is being created, and the rules that will guide how the business is run for such things as distribution of income generated by the LLC, the rights and responsibilities of the Members, voting rights/protocol, buyout provisions (if a member wants to leave) and can require the membership be sold to another existing member before it's sold to an outside party, Member contribution requirements, asset management, etc., etc.

General Thoughts on Partition-in-Kind Agreements vs. Trusts vs LLCs When considering these three options, you are basically weighing individual freedom/autonomy against the security of group ownership in a legally recognized form. Autonomy brings the right to do what you want with your portion but will carry the risk in division of the whole. If everyone owns their own piece and can do what they want, then it's not certain that the land will remain in the family forever as ownership is not centralized. The alternative is the security of land being owned by an LLC or Trust (thus centralized) and therefore being sure the land remains whole and always and forever in the family and in one piece but without individual ownership and control. As always, all heirs would need to be in 100% agreement to make this work.

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Please contact the Center for Heirs' Property Preservation if you are interested in discussing such a relationship.

D. Evaluation Form

(to be handed out to participants for completion and submittal at end of session)



EVALUATION FORM
DORCHESTER COUNTY BOARD OF ZONING APPEALS TRAINING
CENTER FOR HEIRS PROPERTY PRESERVATION: From Land Divided to
Land Sustained – November 15, 2023

Work Session Evaluation

A. Course (Circle the number to indicate your level of agreement/disagreement with each of the aspects of course design)

	Strongly Disagree			Strongly Agree	
1. I learned new information from the program	1	2	3	4	5
2. The information presented was relevant for me	1	2	3	4	5

3. What did you like most about the presentation?

4. What specific things did you like least about the presentation?

5. If the course was repeated, what should be left out or changed?

6. Other learning needs: (List any other topics you would be interested in for the future)