Heirs’ Property in Eastern Kentucky: Services & Mythbusting

Created by: Kevin Slovinsky, LiKEN Knowledge
Non-profit, assists heirs’ property owners and provides popular education.

QR Code: Capture this with your phone’s camera, follow the link!
Non-profit legal service provider out of Whitesburg, Letcher Co. They do not charge. Focuses on black lung/miners’ health and environmental justice.

QR Code: Capture this with your phone’s camera, follow the link!
Non-profit legal service provider that services EKY. They do not charge. Assists with flood recovery, taxes, expungement, public benefits, housing, family law, & more
Private practicing attorney out of Lexington. Assists with mineral leases, estate planning/probate, civil rights, injury, employment. History of fighting against corporate abuses of land and people in Eastern Kentucky. Attorney Joe Childers is here today writing wills!
Local extension office for University of Kentucky and Kentucky State University. They provide technical assistance to improve agriculture, sustainability, housing, and livelihoods. Also offer/host educational seminars and events (like this one!)
Part 1: Introducing Heirs’ Property
Heirs’ Property – Creation:

Heirs' property is land that is owned by multiple people who have inherited it from a deceased relative. When a property owner dies without a will (intestate) or with a will that deeds their property to all of their children without dividing the property, their heirs — children and spouse — become co-tenants with one another.
Heirs’ Property – Co-tenancy:

Co-tenants/Heirs each inherit percent ownership of the entire property. The property is not physically divided among the heirs, unless all of the heirs agree to divide the land among themselves. Everyone who inherits an ownership interest in the property has the right to access the property. All heirs have equal right to the property.
Heirs’ Property – Proof of Ownership:

The name on the deed to heirs’ property would likely be someone who is deceased. When property becomes heirs’ property, the owning family’s proof of ownership — their title — becomes “clouded” because their names are not on the deed. The only proof of ownership is a family tree or affidavit of descent.
Heirs’ Property – Intestate Inheritance

As heirs in the property pass away, they pass their ownership interest in the property to their heirs, potentially increasing the total number of heirs who own the property. Unless an heir writes a will that says how their ownership interest in their heirs’ property will be passed down, it will be passed down as follows:
Order of Inheritance:

- **Spouse** – Inherits 50% ownership interest of deceased spouse’s property. This 50% passes down to their children when they die.

- **Children** – Split the remaining 50% among themselves; if there is no living spouse, they inherit 100% of their parents’ ownership interest and split ownership equally among themselves.
Order of Inheritance:

- If there are no children or spouse upon the death of an heir, the ownership interest is passed down to:

  **Parents** – Inherit 100% of deceased child's interest.

  If both parents are deceased, **Siblings** will evenly split 100% of deceased siblings’ interest.

  If no living siblings, **Uncles/Aunts** will evenly split 100% of deceased niece/nephew’s interest.
Figure 2. – Determining Shares of Interest Over Generations

Part 2: Myth Busting
There are lots of myths about heirs’ property, let’s set the record straight...
The Person Who Pays Property Tax Does Not Own More of the Heirs’ Property

- Paying taxes does not increase an heirs’ (or company’s) ability to claim ownership over the property. A tax bill does not indicate ownership!
  - If money is made from the property — because it was sold or a commodity was produced on the land — the taxpayer can request reimbursement for the taxes they paid from that pool of money. Heirs can share the cost of paying taxes.
#2: Owning A Larger Interest Does Not Mean You Have More Right To The Property

- It does not matter if one heir owns a 50% interest in the property and another heir only owns 5%, they both have equal rights to access and use the property, as long as they do not destroy the property or exclude other co-tenants/heirs. You can increase your interest by purchasing other heirs’ interests but it will remain heirs’ property until someone own 100% of the property.
The Property Valuation Assessor’s (PVA) Tax Maps Do Not Accurately Show Boundary Lines

- When determining where a property is, the PVA’s tax map is a good place to start but it does not accurately show the boundary lines as recorded on the deed. A surveyor is required to determine the boundary lines of a property.
#4: Going Delinquent DOES Put Your Property At Risk Of Being Taken

- While the county likely will not foreclose on a delinquent property, they may sell the lien to a private company that will significantly increase the debt and then foreclose on the property. After foreclosure, the property will be auctioned at the courthouse by the Master Commissioner. Coordinating with other heirs to pay the property taxes is crucial to keeping the land in the family!
● There are very aggressive debt-purchasing companies that are targeting heirs’ property in Eastern Kentucky!!! They can turn a $100 tax debt into $300 or more and will force the property to be auctioned off if that is not paid!!! If you receive a letter that says they have purchased your “certificate of tax delinquency,” verify it’s legitimacy with the county clerk. If it’s legitimate, pay it before they file to foreclose on the property.
#5: As An Heir, You Cannot Sell The Property — All Heirs Have To Sell Together

- If you own an interest in heirs’ property, you can only sell your percent ownership interest in the property. You cannot sell the whole property since you co-own the property. If you want to sell your interest, we highly recommend that you sell that interest to another heir/family member.
#6: A Lease On The Property Does Not Mean Ownership Of The Property

- If a company has a pre-existing lease on your heirs’ property, they do not own it, even if they act like they own it. If you would like to break that lease, consult an attorney. You may have options available to you.

  - Attorney: Childers & Baxter PLLC, (859) 253-9824
Heirs’ property frequently goes under-utilized because it lacks a clear title (and cannot be leveraged for loans). This lowers the taxable value of the property. On a larger scale, this means that the tax base of the value is lower than it could be, leaving less money for schools, roads, and public services.
#8: Heirs’ Property CAN Be Utilized, With Caution

- Heirs’ property owners cannot modify the property in a way that would destroy (ex. timbering) or exclude other heirs from using the property without getting all heirs to agree. If money is made from the property, it must be distributed among the heirs or reinvested in the property. **BUT, you can collect resources from the property for your own personal use (harvested herbs/food, downed trees, etc.). Just don’t sell them as commodities.**
#9: Living On Heirs’ Property Does Not Legally Put Your Right To The Property Over Other Heirs

- All co-tenants/heirs have the equal right to live on their heirs’ property. Living on the property does not give the resident full ownership of the property. They can, however, use their proof of residency to acquire a Farm Serial Number through the Farm Service Agency (FSA) and get grants to improve the property (with conditions).
#10: HP Can Receive An FSA Farm Number!!!

- With a Farm Service Agency Farm Serial Number (FSN), your property may be eligible for many grant/cost-sharing programs offered by the USDA, Natural Resource Conservation Service, County Agricultural Investment Program, Fish & Wildlife, and more! These programs are designed to improve the productivity, sustainability, and value of your property.
The following are accepted by FSA to establish your farm as an operator:

○ A tenancy-in-common agreement, approved by a majority of the owners, that gives the individual the right to manage and control a portion or all of the land.

○ Tax returns for the previous 5 years showing the individual has an undivided farming interest.
#10: HP Can Receive An FSA Farm Number (cont)

- The following are accepted by FSA to establish your farm as an operator (continued):
  - Self-certification that the individual has control of the land for purposes of operating a farm or ranch.
  - Any other documentation acceptable by the FSA county office, that establishes that the individual has general control of the farming operation.
#11: With A Farm Number, Heirs’ Property Can Apply For Grant/Cost-Sharing Programs

Once heirs’ property owners acquire a farm number, inform them about the cost-sharing programs and conservation easements available to them:

- **NRCS**
  - Environmental Quality Incentives Program
  - Conservation Stewardship Program
  - Organic Certification Cost Share Program (OCCSP)
- **Kentucky Agricultural Development Fund**
  - County Agricultural Investment Program
- **Farm Service Agency**
  - Noninsured Crop Disaster Assistance Program (NAP)
  - Tree Assistance Program (TAP)
Typically, heirs’ property is created when landowners die without a will (intestate). But, if a will contains language like “I leave all of my real property to my children,” each of the children will inherit the land as heirs’ property and become co-tenants with one another.

It is not good enough to have a will; to prevent heirs’ property you must have a well-written will!
#13: Heirs’ Property Is Eligible for 
FEMA Disaster Relief

Since 2021, FEMA Accepts These Docs for Proof of Ownership:

- A public official’s letter
- Receipts for major repairs or maintenance dated within five years prior to the disaster.
  - dated within one year prior to the disaster or within the 18-month period of assistance
- Self-certification of ownership (as a last resort)
Working with an attorney, all co-tenants/heirs to a property can come together and form an LLC or Trust, deed their ownership interests in the property to the LLC/Trust in exchange for an ownership interest in the LLC/Trust.

After all interests have been deeded over to the LLC, the LLC can be the single owner of the property, clearing the clouded title.
#15: There Are People Who Can Provide You With Crucial Information for Free

- If you are confused about how heirs’ property works, email LiKEN Knowledge at kslovinsky@likenknowledge.org
- If LiKEN cannot help you, we may be able to direct you to someone who can help you resolve issues related to your heirs’ property
- You can also speak to a LiKEN staffer at the LiKEN table, just look for the banner!
Part 3: In-Development Program For Heirs’ Property Owners in Eastern Kentucky
Appalachian Heirs’ Property Coalition

LiKEN Knowledge, non-profit, is organizing a coalition of legal service providers and agro-foresters to make the title clearing process affordable, increase families’ access to land, and provide families with more options on how they can use their land.
Appalachian Heirs’ Property Coalition

The objective of the Appalachian Heirs’ Property Coalition is to overcome the barriers to improved livelihoods and community development.

The barriers created by heirship status can be overcome by formalizing the family’s ownership of the property through an LLC.
Appalachian Heirs’ Property Coalition

Planned services are:

- Educational Workshops
- Will Clinics
- Agroforestry management plan drafting
- Title Clearing
- Farm Number Acquisition Assistance
- Connect heirs’ property owners to cost-sharing programs
Benefits of “Clearing Title”

When a family forms an LLC and owns their property as an LLC, it becomes much easier for them to:

- steward the land,
- receive grants/loans/technical assistance for implementing agroforestry practices,
- pay property taxes,
- distribute profits & products that come from the land
- **KEEP THE LAND IN THE FAMILY!!!**
If You Are Interested In LiKEN’s Program...

Talk with Kevin Slovinsky, McKensi Gilliam, or Joe Childers and put your name on the waitlist for the Appalachian Heirs’ Property Coalition at the LiKEN table! Or, scan the QR code on the right and fill out the Google Form.

Alternatively, you can also email Kevin Slovinsky at:

kslovinsky@likenknowledge.org