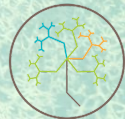


# Strategies for Preventing, Resolving, and Using Heirs' Property

**Property Law,  
Estate Planning,  
& Family Land**

Joe Childers, Childers & Baxter, PLLC.  
Kevin Slovinsky, LiKEN Knowledge



QR Code: Capture this with your phone's camera, follow the link!



Non-profit, assists heirs' property owners and provides popular education

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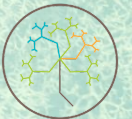
## CHILDERS & BAXTER PLLC

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.

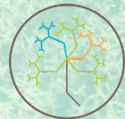
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# Disclaimer

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**This is an educational presentation and not legal advice. Property law is complicated, dynamic, and absent of easy answers. If you encounter an issue related to any of the content covered in this presentation, speak with an attorney licensed to practice in your state before acting.**



# Part 1: Estate Planning

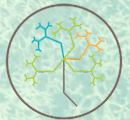


# Estate Planning: What It Is and Isn't

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**Organizing and documenting** a plan for what should happen to a person's assets after they die. The complexity of an estate plan depends on how many assets and heirs are involved.

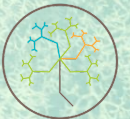
- A Last Will & Testament is generally a good start to estate planning. It can be simple. It can even be handwritten, provided the entire document is in the handwriting of the testator.
- Details and language is important. It is a good idea to have an attorney draft your Will, even for a simple estates.
- Having the estate plan in writing is crucial. Simply telling people what you want to happen with your assets after you die is not an effective estate planning strategy.



# What Happens After Death? Probate

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Probate is the process of settling and administering estates of deceased persons. If the testator leaves a Will to be probated, then the Probate Court (the District Court in your county) will appoint an Executor.

If no Will, then an administrator is appointed. Yes, you can probate an estate without a Will.



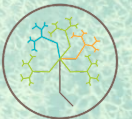
# Who should have a Will?

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Everyone. People may own property without knowing it and their Will should dictate who inherits that property.

If you do not have a Will, consider contacting an attorney that you trust (that practices in your state) and asking if they provide estate planning services or can give you a referral.

LiKEN Knowledge runs a travelling Free Will-Writing Clinic series in eastern KY in spring, summer, and fall. Check our website to see if we are coming to a location near you.

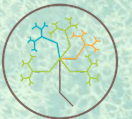




# What happens to my real property if I die without a Will?

— — —

- This is called intestate succession, triggers KRS 391.010
- Ownership of the property passes to the deceased owner's heirs as **“fractional ownership interests”** in the property, each owner becomes a **“co-tenant”** and the property becomes **“heirs' property”**
- Co-tenants collectively (share) own the property
- The actual property is *not* cut up into separate parcels
- This does apply if you have joint tenancy with right-of-survivorship and the joint tenant is alive.
  - However, it may apply once that joint tenant dies.



# KY Intestate Succession:

**50% interest to living spouse**

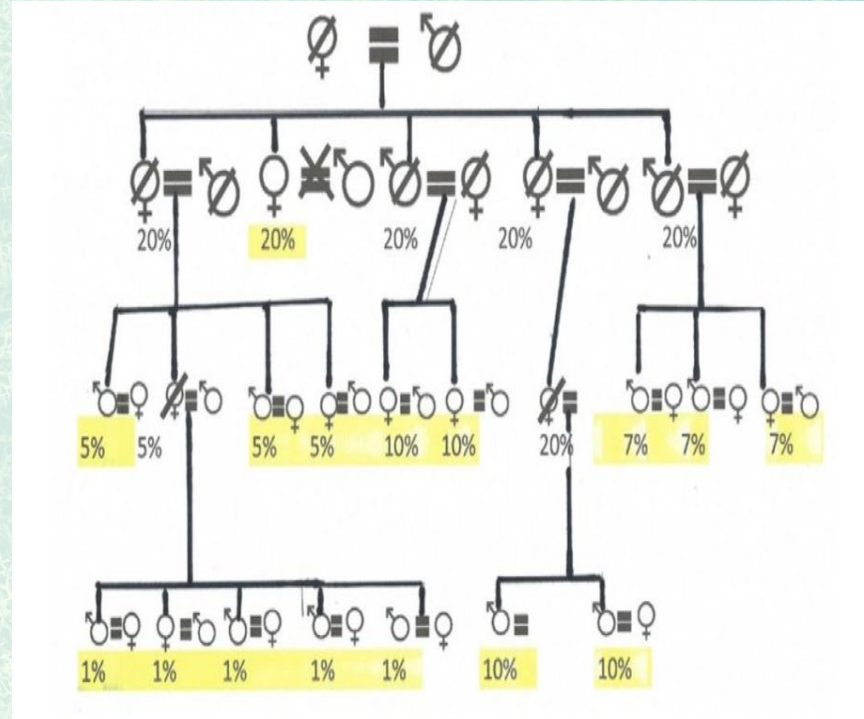
**50% interest divided among children and predeceased children's heirs**

No spouse - 100% divided among children

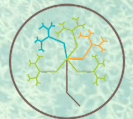
No children - 50% to spouse, 50% to parents, if living, if not, then to siblings, etc. See KRS 391.010

No children or spouse - 100% to parents

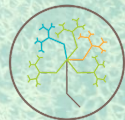
No parents, children, or spouse - 100% to siblings and predeceased siblings' heirs



Rural Coalition, "A Quick Guide to Addressing Heirs' Property in Your Community,"  
[https://srdc.msstate.edu/sites/default/files/2023-06/A-Guide-to-Addressing-Heirs-Property\\_Final.pdf](https://srdc.msstate.edu/sites/default/files/2023-06/A-Guide-to-Addressing-Heirs-Property_Final.pdf)



# Part 2: Heirs' Property



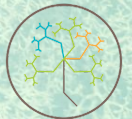
# Heirs' Property

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Heirs' property is land that is owned by multiple people who have inherited it from a deceased relative. It is created when:

- A property owner dies without a will (intestate)
- A property owner dies with a will that does not account for a property or gives ownership of the property to more than one person without dividing it into separate parcels

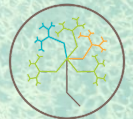
Typically, the owner name on the deed is that of a deceased person.



# Rights of a Co-Tenant: What They Can Do

Co-tenants can access and use the property similarly to how a sole proprietor may use land. That means they may be able to use the land for:

- Hunting, fishing, foraging
- Housing
- Gardening/Farming
- Hiking/Walking
- Livestock grazing



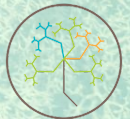
# Rights of a Co-Tenant: What They Cannot Do

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Co-tenants cannot exclude other co-tenants from similarly using or accessing the property, nor can they “waste” the property or anything affixed to the property (buildings & trees).

**Exclusion:** co-tenants cannot lock another co-tenant out or use the land in a way that would exclude the co-tenant from using the property in similar ways

**Waste:** no clear definition, but destroying a building or cutting down timber for sale have historically been considered waste in court



## **Example 1:**

Larry owns a  $\frac{1}{8}$  fractional ownership interest in a 100 acre heirs' property with 6 siblings and 2 nephews. He wants to cut down a stand of trees on the property and sell the timber.

**Can he do this without asking for permission for his 8 other co-tenants?**

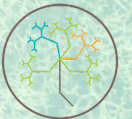


# No

Chopping down a tree and selling it for timber has historically been considered “wasting.” Larry would have to get permission from all of the co-tenants or be held liable for damages.

If he did sell the timber, co-tenant could demand he divide the proceeds from the timber sale according to fractional ownership interests.

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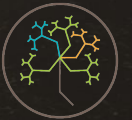




## **Example 2:**

Since Larry cannot cut down the trees without approval, he now wants to tap the stand of trees for sap to make syrup. He intends on selling the syrup at the farmers market.

**Can he tap the trees without approval from the other co-tenants?**

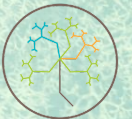


# Yes

Since he is leaving the trees standing, Larry could tap the entire stand of trees for syrup-making. He cannot exclude co-tenants from also tapping.

However, if Larry sold the syrup, he may be liable for distributing the revenue among the co-tenants according to their fractional ownership interests. He could drink all the syrup he wants though, so long as he is not earning a profit from the syrup production.

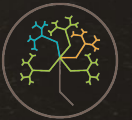
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### **Example 3:**

While eating pancakes with his homemade syrup, Larry thought a patch of pasture on the property would be good grazing grounds for a small herd of sheep.

**Could Larry graze his sheep on his heirs' property and then sell them for butchering?**



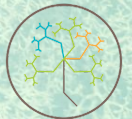


# Yes

As long as Larry is not excluding other co-tenants from utilizing the pasture, he should be able to graze his sheep there.

Since the sheep are his property, he can sell them at market and not distribute the funds among the co-tenants.

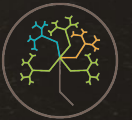
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## **Example 4:**

While Larry is thinking up ways to make money, his nature-loving sister Sally wants to use the property for mushroom hunting and root digging. However, the forest canopy is too dense. She wants to do a timber stand improvement (TSI) on a part of the forested land.

**Can Sally do a timber stand improvement without getting approval from all co-tenants?**



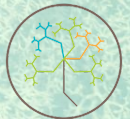
# Maybe, It depends

This gets complicated but, if Sally is able to illustrate that:

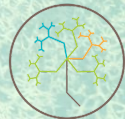
- Her intent is to improve the value of the property
- A TSI would demonstrably improve the value of the property
- A TSI would not exclude other co-tenants from utilizing the property as they wish

She may have a strong argument against “wasting.” Of course, if she sold the felled trees for firewood, she would have to distribute the funds.

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# Part 3: Resolving Heirs' Property

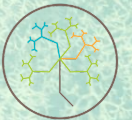


# What does “resolution” look like?

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Ownership of heirs’ property is fractionated among more than one entity and there is no structure for decision making, this creates problems

**Resolution** = consolidating ownership in one entity (person, LLC, or trust)



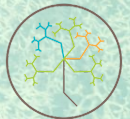


# Why Resolve Heirs' Property: Vulnerability

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*“Well there’s no problems with the property now so why make a fuss about it?”*

- Heirs' property is vulnerable to dispossession
  - Co-tenants can sell their interest to companies, who may use their interest to acquire the entire property
  - Inaccurate property records ⇒ tax bill sent to wrong address ⇒ property tax delinquent ⇒ debt bought by company ⇒ lien placed ⇒ foreclosed
- If the rules for using the property is unclear, people don't use it all to avoid family drama ⇒ abandonment

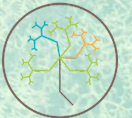


# Why Resolve Heirs' Property: Time

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*“Well there’s no problems with the property now so why make a fuss about it?”*

- It will only become harder to resolve as time goes by and heirs die
  - As heirs die, interests typically fractionate between more heirs
  - Easiest to resolve heirs' property as soon as it is made, not when it becomes a problem
  - Becomes harder to resolve when people move away from the area, more people who have no relation with the property



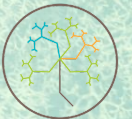
# Resolution: Heir Consolidation

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If there is one heir that is passionate about utilizing the property, they may be able to buy out the interests of all of the other heirs

## Challenges:

- Identifying all heirs and their ownership interests
- Contacting heirs
- Heirs overvalue their ownership interest, making it costly
- Heirs who are similarly interested in the property may be unwilling to sell their interest



# Resolution: Limited Liability Company

— — —

Heirs property owners can exchange their fractional ownership interest in the property for an equivalent share in a family-run limited liability company (LLC)

If all heirs do this, the LLC becomes the sole owner of the property, and the heirs control the property through their membership in the LLC, resolving title issues

LLC is governed according to operating agreement

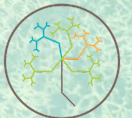
Asset Protection

Protection Against Dispossession

Versatility

Legal Name and Credibility

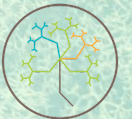
Ease of Profit/Expense Sharing



# Caution When Using LLC

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- ▶ Cost/Annual Fees
- ▶ Tax implications
- ▶ Annual report filing
- ▶ State Level formation



# Resolution: Trust

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## Types

- Revocable
- Irrevocable



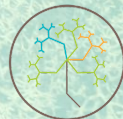
## Kinds

- Simple
- Complex
- Grantor

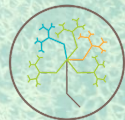


## Uses

- Estate Planning, Medicaid Planning, Veterans Planning, Charitable Giving
- Income Tax and Estate Tax Planning



# Part 4: Resources for Heirs' Property Owners

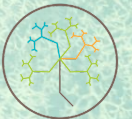


# Non-Operating Resources

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USDA points heirs' property owners to two programs, **neither of which are currently operating in Kentucky**

- Heirs' Property Relending Program – loans to heirs for title resolution
  - No eligible lender in state
- Certified Mediation Program – administered by FSA, government sponsored mediation to resolve title problems and facilitate transfer of ownership
  - Not available in KY because “no demand”



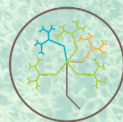


# FSA Farm Number - Heirs' Property

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2018 Farm Bill allows for heirs' property owners to register for a Farm Number through the Farm Service Agency, but the requirement documents are different. Kentucky does not have the Uniform Partition of Heirs' Property Act:

- tenancy-in-common agreement, approved by a majority of the owners
- Tax returns for the previous 5 years
- Self-certification that the individual has control of the land



# FSA Farm Number - Heirs' Property



United States Department of Agriculture

## Farm Service Agency

### Guidance for Heirs' Property Operators to Participate in Farm Service Agency (FSA) Programs

FACT SHEET  
December 2022

#### Heirs' Property Overview

Heirs' property is family owned land that is jointly owned by descendants of a deceased person whose estate did not clear probate. The descendants, or heirs, have the right to use the property, but they do not have a clear or marketable title to the property since the estate issues remain unresolved.

The 2018 Farm Bill authorizes alternative documentation for heirs' property operators to establish a farm number. A **farm number** is required to be eligible for many different USDA programs, including lending, disaster relief programs, and participation in county committees.

Operators on heirs' property who cannot provide owner verification, or a lease agreement, may provide alternative documents to substantiate they are in general control of the farming operation.



#### How Do I Establish My Farm as an Operator?

How to establish your farm as an operator may vary based on whether you farm in a state that has enacted the Uniform Partition of Heirs Property Act (UPHPA).

In states that have and in those states **that have not adopted the UHPA**, 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.
- 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, including, but not limited to, any of the following:
  - affidavit from an owner stating that the individual has control of the land
  - limited power of attorney giving the individual control of the land
  - canceled checks and or receipts for rent payments and/or operating expenses.

# Appalachian Heirs' Property Center

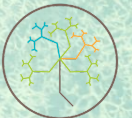
— — —  
A free legal and forest management technical assistance program for heirs' property owners in Appalachian Kentucky and West Virginia.

Run by non-profit Livelihoods Knowledge Exchange Network (LiKEN Knowledge)



**Appalachian Heirs'  
Property Center**  
A Project of LiKEN Knowledge

109 Rosemont Garden  
Lexington, KY 40503  
[likenknowledge.org](http://likenknowledge.org)  
Phone: (619)964-0840

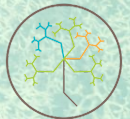


# Appalachian Heirs Property Center: Services

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## Legal Technical Assistance:

- Consultation & Family Education Sessions
- Estate Planning/Will Writing
- Family Tree Creation & Family Research
- Title Search
- Title Consolidation Service
- Deed Drafting
- Heir Notification
- LLC and Trust Creation

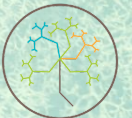


# Appalachian Heirs Property Center: Services

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## Forestry & Agroforestry Technical Assistance

- Consultation
- Forest Management Plan
- Farm Number Acquisition Assistance
- Cost-share Program Application Assistance

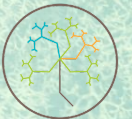


# Benefits of Resolving Heirs' Property

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When a family gets organized and manages the property collectively through an LLC or Trust, it is easier to:

- Make decisions about stewarding 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, Sandra Hunt, or Joe Childers and put your name on the waitlist for the Appalachian Heirs' Property Center at the LiKEN table!

Alternatively, you can also visit our **website** and fill out the **intake form** for AHPC.

Or, just email Kevin Slovinsky at:

[kslovinsky@likenknowledge.org](mailto:kslovinsky@likenknowledge.org)

## Need Assistance? Submit this form!

If you own heirs' property in Eastern Kentucky and are interested in our services or would like to speak with us about your experiences with the property, submit the form below or email Kevin Slovinsky at [kslovinsky@likenknowledge.org](mailto:kslovinsky@likenknowledge.org), or call (619) 964-0840.

### Appalachian Heirs' Property Intake Form

This form is for informing LiKEN Knowledge, a Kentucky-based non-profit, that you are interested in becoming a participant in their free legal services program for heirs' property owners in Eastern Kentucky (The Appalachian Heirs' Property Coalition). Even if you are not sure if you are eligible for the program, please fill out and submit this form if you are interested in the program and a LiKEN staff member will reach out to you soon via phone or email. This is not a legal document. This form is simply a request that a LiKEN staff member reach out to you to discuss heirs' property and our assistance program.

If you would like to hear directly from heirs' property owners in Eastern Kentucky, watch our original video here:  
<https://www.youtube.com/watch?v=z-5EHYb9GMo>

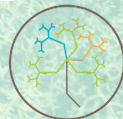
[kslovinsky@likenknowledge.org](mailto:kslovinsky@likenknowledge.org) [Switch account](#)

Not shared

\* Indicates required question

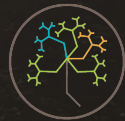
First Name \*

Your answer





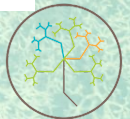
# Questions?



CHILDERS & BAXTER PLLC



**Appalachian Heirs'**  
**Property Center**  
A Project of LiKEN Knowledge





## **Livelihoods Knowledge Exchange Network (LiKEN)**

*A link-tank for sustainable livelihoods, connecting communities, organizations, and scholars.  
LiKEN's main office is located on the traditional territories of the Shawnee, Cherokee, and  
Chickasaw Nations*



**LiKENKNOWLEDGE.ORG**

**MAILING ADDRESS:** 109 Rosemont Garden, Lexington KY 40503-1930

**LiKEN House:** 1815 Nicholasville Rd, Lexington KY 40503-1930

**TEL/FAX:** 859 523 5056

**EMAIL:** [office@likenknowledge.org](mailto:office@likenknowledge.org)

