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The information in this manual is provided as a matter of public service and is for informational use only. The information does not constitute legal advice and should not be used as such. Users of this manual are strongly urged to confer with legal counsel in matters involving heir property.
History teaches us that land ownership represents an important source of wealth and stability for Georgians. Georgia played a historical and significant role within the agricultural industry, both before and after the Civil War. As a result, large acres of land were historically held among a relatively small group of owners, including farmers. With the passing of each generation, these large tracts of land succeeded to new generations, either by will, or by descent, through operation of law. A tradition of verbal bequests was commonplace among farmers and other rural landowners in the south, and it remains even today a common practice among a diverse group of landowners, even those not directly involved in the agricultural sector. Verbal bequests of land are generally not legally recognized in Georgia, and thus, often result in the ownership of “heir property,” which is land held in common by the descendants of someone who has died without a valid will, or whose estate was not offered for probate.

When a landowner dies without a valid will, the person is said to have died “intestate,” and the property owned by the deceased at death is known as intestate property. All of the intestate property is collectively known as the deceased’s “estate.” Until a personal representative is appointed to administer the deceased’s estate, title to heir property automatically passes to the qualified heirs who then own the estate as tenants in common, meaning that each heir owns a fractional interest in all of the property. As a tenant in common, each qualified heir has the right to use and possess all of the property, and this right is limited only by the right of the next heir to use and possess the entire property as well.

All Georgians who own fractional interests in heir property should know the rights and obligations that accompany such ownership, as well as the steps one must take to protect one’s rights and meet one’s obligations to guarantee enjoyment of all the benefits of property ownership.

When the number of heirs becomes so large that the family members
living on the land can not identify all of the owners, then the people living on the land discover a hard truth: the title they thought was clearly theirs is not actually clear after all. Their ability to use the property as they see fit can be impaired as a consequence. It is rare that all heirs agree on how to use, possess, or sell the property. Owners of heir property often do not realize the full benefits of land ownership.

The disadvantages of owning heir property include the inability to (i) finance land (a bank would require all owners to agree to mortgage the property and repay a loan), (ii) lease land to others (a prospective tenant would rather be responsible to only one landlord), and (iii) fully use and possess the property (all heirs have the simultaneous right to possess the property, but in reality, only one tenant can occupy any one portion of the land at once). Aside from the disadvantages of not being able to finance, lease or use the land as a sole owner would, heirs are also at risk of losing their property because of forced partition sales or tax sales, which may lead to the sale of the property to non-family members. ☞
Whenever a Georgia landowner dies intestate, title to the deceased’s intestate property automatically passes (or “descends”) to his or her heirs by operation of law. An “heir” is a person that (i) is related to the deceased by blood or marriage, and (ii) is then living at the time of the deceased’s death. The title that automatically vests in the heirs is subject to be divested (or taken away) from the heirs and vested within the personal representative, when such representative is appointed by the probate court to handle the deceased’s estate; however, the personal representative is responsible for distributing the property to the qualified heirs.

The Official Code of Georgia Annotated (the “Code”) governs how intestate property is to be distributed among the landowner’s heirs at law.

The following rules of descent apply to Georgia landowners who have died intestate: When a person dies without any living children or grandchildren, and is survived only by a spouse, the spouse is the sole heir and acquires the entire estate. If the deceased is survived by a spouse and is also survived by two or fewer children, the spouse and the children share the estate in equal shares. If there is a surviving spouse and more than two children, and the landowner died on or after January 1, 1998, the spouse takes 1/3 of the estate and the children share the rest in equal shares; however, if the landowner died before January 1, 1998, the spouse takes at least 1/4 of the estate, and the children share the rest in equal shares. If the deceased is not survived by a spouse, children, or any grandchildren, the family members who are closest to the deceased based on their degree of kinship are entitled to inherit the estate. Family members who may be heirs include parents, brothers and sisters, nieces and nephews, grandparents, aunts and uncles, first cousins, and other distant cousins.¹

¹ It is important to note that the Code was revised in 1998, and the rules governing the distribution of intestate property may differ according to whether the landowner died before or after January 1, 1998.
Georgia law specifies that half-blood relatives (who share only one biological parent with their siblings) are entitled to inherit the same portion of the estate as if they were siblings of whole-blood (siblings who share the same mother and same father).

Georgia law also permits grandchildren of a deceased grandparent to take a child’s share by representation, where the child (the grandchild’s parent) predeceases their parent (the deceased grandparent).

The law treats adopted children the same as biological children, meaning the adopted child may inherit through the adoptive parents and their relatives, and the adoptive family members can inherit through the adopted child. Georgia law also protects the inheritance rights of children born out of wedlock and establishes their right to freely inherit from their mother or their mother’s kin. Children born out of wedlock can also inherit from their father or their father’s kin, but only if the father’s paternity has been established (by court order, by the father signing the birth certificate, by the father acknowledging his paternity in a sworn affidavit, or by other clear and convincing evidence that the child is the child of the father).

Inheritance rights are given to children born after the deceased parent’s death. Protection is also afforded to those who are not residents of Georgia.

If no heir survives the deceased, or if the heir fails to appear and claim an interest in the intestate property, the property automatically “escheats,” or passes, to the State of Georgia.
Example of Descent of Intestate Estate

* In this example, the Landowner’s property passes to Grandchild’s surviving Spouse only if the Child predeceases the Grandchild. If the Grandchild dies before the Child, Child’s heirs would only be the surviving Grandchild & Great-Grandchild.
Georgia law specifies that if a decedent is married at the time of death and is survived by a spouse or minor children (or both), the surviving spouse and minor children (if any) are entitled to receive property for their support and maintenance for the first year following the decedent's death. This entitlement is known as "year's support."

When real property is awarded to a surviving spouse and minor children as year's support, they own title to the real property as tenants in common, in equal shares. The property is given free and clear of most expenses, including the expenses of burial and last illness and any liens or taxes accruing prior to the decedent's death, such as assessments, money judgments, alimony, and traditional mortgages.

Property awarded as year's support will remain encumbered by any existing security deeds or purchase money mortgages executed by the deceased, his or her spouse, and any prior owners. In Georgia, security deeds are more commonly given to secure the repayment of a home or farm loan in Georgia, as opposed to mortgages. So, in most cases, the award of year's support will not extinguish a lender's foreclosure right or the right to have a loan repaid on a home that is encumbered by a security deed and awarded to the deceased's spouse or children as year's support.

In order to obtain year's support, the spouse and children must file an application for year's support with the probate court in the county where the deceased last resided. This application must be filed within 24 months of the date of the decedent's death.

The surviving spouse's right to year's support terminates upon his or her death or remarriage. Surviving minor children's rights to year's support terminate upon their death, marriage, or the attainment of age 18; thus, an application needs to be filed in a timely manner.

The property awarded as year's support will generally be exempt
from real property taxes during the year in which decedent’s death occurs, or the year in which the application for year’s support is filed. Going forward, however, the surviving spouse and children will remain responsible for paying all future real property taxes after the one year exemption period.

David is a widower raising two children, Michael (12) and Ann (17), both of whom were born to David’s late wife, Gloria. Prior to Gloria’s death last year, David and Gloria took out a home loan from Hometown Bank to buy a new house, and the couple gave Hometown Bank a security deed. Additionally, during her lifetime, Gloria obtained title to her father’s farm, free and clear. David and his children must file an application for year’s support within 24 months after Gloria’s death in order to be eligible. If David waits and files the application after Ann turns 18, she becomes ineligible to receive the property as year’s support. If David files the application after he remarries, he will become ineligible for an award. If the probate court awards the home to David and his children as year’s support, they will take title to the family home as tenants in common; however, the family will remain responsible for repaying the loan to Hometown Bank. If the probate court awards the family farm to David and his two children, they will take the farm free and clear as no loan encumbers the farm property. In either event, David and his family will enjoy a one year exemption from paying real property taxes on the property awarded as year’s support but are responsible for paying all future property taxes.
DISADVANTAGES OF HEIR PROPERTY

Partition Sales and Forced Division of Property. Any co-owner can force a sale or division of the property to get his or her share.

Property Tax Sales. If property taxes are not paid, the taxing authority can take the property and sell it, causing the heirs to lose ownership of their land.

Borrowing. It is very difficult for heirs to convince a bank or other lender to use the property as collateral for borrowing money from a bank to build a home on or make other improvements to the property. Successful use of the property as collateral generally requires that all heirs agree to be personally responsible for repaying the loan.

Government Funding. The property may not be eligible for federal or state funding programs for housing, repairs or agriculture. These programs generally require a clear title.

Crops/Timber. Many timber and agricultural companies will not purchase timber or crops from people without a clear title.

Improvements. Any improvements made to the property (such as building a home, planting crops or trees, or agricultural improvements) are owned by all of the heirs entitled to the property, and disputes easily arise about the use of the improvements and how to split profits among heirs.

Leasing. Leasing the property for agricultural or other purposes that require a clear title will be difficult and could result in a lower lease value. Tenants are often reluctant to lease property from land owned by numerous owners because confusion may arise as to which heir is responsible for collecting rent and distributing it to co-owners. Tenants also want to be certain the lessor has proper authority to lease the land.
Size of Interests. For each generation that dies without a will, the number of heirs owning the property may increase, while the size of each heir’s interest in the property will decrease.

Property Management. As the number of heirs increases, it becomes more and more difficult to agree on how the property should be handled. It also becomes more difficult to keep track of the heirs and where they all live.

Property Sale. The property cannot be sold without a clear title, and any sale proceeds will have to be split among all of the heirs entitled to the property. If a buyer is willing to accept a clouded title, the sale price is likely to be well below the price that could be obtained with a clear title.

James lives on a 60-acre vegetable farm that has been in his family for several generations. He pays the taxes and manages the farm. To improve the output of the farm, he recently decided to install a new irrigation system. James contacted his local bank to obtain a loan to pay for the irrigation system. But when a title search of the property was conducted, it was discovered that James owned the property with 17 other heirs, many of whom he didn’t even know. Without clear title, or the consent and signatures of all the heirs, the bank would not make a loan to James, and he could not afford to install a new irrigation system.
With each passing generation of family members, the number of heirs increases and it becomes more difficult to determine exactly how many heirs own the property, who they are, and where they live. Additionally, because heirs may sell their heirship interests to developers or real estate speculators, owners of heir property may include companies or individuals who are not related to the deceased relative. Because of the diverse interests of the owners, it is rare that the family members and any third-party co-owners will agree on how the property should be used, or how it should be divided among all the owners.

When co-owners disagree as to the use and ownership of heir property, one owner can exercise his or her right to partition (or divide) the property. Ownership of heir property is held as a tenancy-in-common. Georgia law provides all owners of property held as a tenancy-in-common with the right to file a lawsuit requesting that the whole tract be divided. The right of partition is granted to all owners of heir property, regardless of how large (or small) their ownership interests are, and regardless of whether the owner is an heir related to the deceased family member or is a third party that purchased an heir’s interest. All heir property owners risk losing their property by partition.

In Georgia, property may be partitioned in one of two ways. First, the property can be physically divided into separate tracts and distributed among the co-owners, so that each co-tenant is given his or her own separate lot of land (partition in kind). Second, an owner is entitled to have the property partitioned by sale, if he or she proves to a court that the property cannot be fairly divided among all the heirs (partition by sale). The entire property is then sold, either to an existing owner at a private sale among the co-owners, or to an unrelated party at a public sale to the highest bidder, and proceeds are distributed to heirs. Most partition actions result in a public auction sale of the property.
In Georgia, property may be partitioned by sale among existing owners in a private sale. The property is appraised, and the owners who do not wish to sell have the option to buy out the interests of the owners who want to sell their interests at the appraised value. If the owners who are unwilling to sell their interests cannot afford to buy out the owners who do wish to sell, the property is then sold to the highest bidder at a public sale at the county courthouse. When a public sale results, family members are often unable to out-bid developers or real estate investors at public sales, and the family loses the land.

After the property is sold, the sale proceeds are used to first pay for court costs, any appraisal or surveying fees, and attorneys’ fees. The remaining sale proceeds are then distributed to the owners according to their ownership interests.

If a family member is absent from the partition in kind proceedings, he or she has 12 months to challenge the judgment of partition. Minors have 12 months from the date of reaching majority, and incapacitated persons have 12 months from the restoration of capacity to challenge the partition judgment.
Example of Distribution of Proceeds from Partition Sale

Land value: $66,000
Court fees and Expenses: $1,000
Special Master’s Fees: $2,000
Attorneys’ fees: $10,000 (approximately $5,000 for quiet title action, $5,000 for partition action)
Total: $53,000 to be distributed among heirs

Note: The example above is an approximation for illustrative purposes only and presumes the action is not contested among heirs.
Managing heir property is difficult because of confusion about who owns what. Because heir property is held by multiple co-owners each of whom is entitled to own and possess the land, it is often difficult to keep track of who actually pays the annual property taxes on the land.

Georgia law requires that a landowner pay state and county (and where applicable, city) real property taxes on the land. If there is more than one owner, all owners are responsible for making sure that the real property taxes are paid on time to the proper taxing authorities.

In Georgia, all state, county, and city property taxes (where applicable) are to be paid to the county tax commissioner (who may also be known as the tax collector).

Real property taxes must be paid on or before the due date set forth in the tax bill submitted to the landowner by the tax commissioner. The due date for payment of taxes varies across Georgia counties, with some counties requiring payment as early as July 1, and others requiring payment be made by December 20. Because the due dates for the payment of taxes vary by county, the date on which the nonpayment of taxes results in a delinquency also varies. Additionally, some counties permit landowners to pay their tax bills in two equal installments, by two separate deadlines, rather than in one installment. If you are an owner of property (whether it is heir property or not), it is important to call the tax commissioner's office for every county in which you own property, in order to determine the exact due date for your tax bills, and to learn if you can pay your taxes in installments. It is also very important to keep detailed records of all payments.

Once taxes become delinquent, additional penalties and interest are charged against the landowner for failure to pay taxes on time. Interest accrues on unpaid taxes at 1% per month until the bill is paid. In addition, county tax commissioners
may charge a separate penalty. This penalty varies from county to county and can range from 5% to 12% per year.

If taxes are not paid, the land may be sold at a public tax sale to the highest bidder who is willing to pay the past due taxes. Co-owners of the land may have trouble contacting one another and organizing to save the property from sale.

Tax sales can come in two forms. The tax commissioner may choose to have the sheriff "seize" the property and sell it at a sheriff's sale for the amount of taxes due. Alternatively, the tax collector can file a lawsuit to foreclose the taxes owed on the property, and the property will be sold at a foreclosure sale to the highest bidder for the amount of taxes due. In either form of sale, the notice of the tax sale is advertised for four consecutive weeks in the local newspaper for the county in which the property is located. Tax sales (whether through a judicial tax foreclosure sale or a sheriff's sale) are held on the first Tuesday of every month by public auction at the courthouse in the county in which the property is located. Once the property is sold to the highest bidder, there is usually a grace period during which the property can be recovered by the original owner. This right is known as the "right of redemption". The right of redemption for properties sold at a sheriff's sale is protected for 12 months. Thereafter, the purchaser can issue a notice to the original owners barring the right of redemption. The right of redemption for properties sold pursuant to a tax foreclosure sale is protected for only 60 days from the date of the sale. The redemption price is generally the sum of delinquent taxes plus accrued interest and subsequent taxes paid by the new owner.

When the property is sold at a tax sale, the purchaser acquires a tax deed to the property. Tax deeds issued after July 1, 1996 will ripen, or evolve, into prescriptive title after four years following recording of the tax deed. Though original
owners may challenge to set aside the deed at this point, the challenge is very costly and timely, and requires that the original owners pay the delinquent tax amount, taxes owed since the sale, late fees, and interest accrued on delinquent taxes.

Mary has lived in the same house in Peach County, GA, for 13 years, located on her late grandfather’s property which has remained in her family for several generations. Mary’s brother, John, lives in Chicago and has paid taxes on the property for 11 years, but he, like Mary, does not have a deed to the property. While John is away on an extended trip he forgets to pay the taxes, and they become delinquent. The tax commissioner issues a delinquent notice to John and to Mary, and they fail to pay the taxes. The sheriff issues an execution against her grandfather, who died intestate, because the property remains in his name. The sheriff advertises the sale of the property for taxes in the local newspaper, but Mary overlooks the publication. John and Mary cannot agree on who should pay the taxes before the sale, so the public sale occurs, and the property is sold to the highest bidder. The purchaser at the tax sale acquires a tax deed to the property and records it. After a number of years, the purchaser sues to evict Mary from the property. Mary is forced to move away from her home, and John incurs the loss of having paid taxes on property for many years to which he does not have clear title.
FREQUENTLY ASKED QUESTIONS

BECAUSE THE TITLE IS “CLOUDED,” DOES OWNING LAND IN HEIR PROPERTY FORM PROTECT IT FROM BEING SOLD OR LOST OUTSIDE THE FAMILY?
No. No matter how many people are entitled to joint ownership of the land, even one heir or co-owner can demand that the land be divided or sold. Creditors could also force a sale to collect what they are owed.

WHY CAN’T I GET A LOAN?
Banks and other private lenders require collateral to protect them in case loans are not repaid. Typically a property owner gives the lendee a security deed. Because each co-owner has an undivided interest in heir property and is not the sole owner of the entire property, all the co-owners must join in signing and guaranteeing the security deed or else a bank will not provide a loan.

WHY CAN’T I GET GOVERNMENT ASSISTANCE FOR LOANS OR FOR REPAIRS ON MY HOUSE?
Much like banks and private lenders, government assistance organizations require that you have clear title to your home and land to protect them in case you do not repay your loan. Any improvements made to heir property become the property of all the co-owners or heirs. Any other co-owner can force a partition sale of the land, including the home that is built on it, by a partition sale. Government organizations do not want to take the risk of losing their investment due to a partition sale.

THERE ARE 10 ACRES AND 10 HEIRS. DO WE EACH OWN ONE ACRE?
No. Based on the laws of intestate succession, each heir holds a fractional interest in the whole of the estate. If the land is sold, each heir receives payment based on his or her percentage of the net sale proceeds, but if the land remains undivided, all owners have equal access to the entire property. Because land varies geographically throughout a parcel, one cannot assume that each acre is equal in value.

THERE IS TIMBER ON MY FAMILY’S HEIR PROPERTY THAT I WOULD LIKE TO SELL. WHY WON’T TIMBER COMPANIES BUY IT?
Most companies require that you have clear title to the land before they harvest timber. Otherwise, if they purchase timber from heir
property, but pay only one co-owner, they are liable for failing to make sure all other co-owners are paid.

I LIVE ON THE LAND AND PAY THE TAXES. WHY DON’T I OWN THE LAND OUTRIGHT?
The tax commissioner’s office is only concerned with receiving tax payments, regardless of who makes them. Because all co-owners are jointly responsible for making sure the taxes are paid, the tax assessor’s office assumes that whoever pays the taxes does so on behalf of the other co-owners. Heirs who do not help pay the taxes do not give up any property rights as co-owners. The heir who pays the taxes does not acquire any additional property rights but may be entitled to reimbursement from the non-paying heirs.

WE HAVE HAD A SURVEY DONE OF OUR FAMILY LAND. IS THIS CONSIDERED PROOF OF OWNERSHIP?
No. A survey only confirms the physical dimensions and boundaries of the land. A survey does not grant ownership of the land to anyone – only a will or deed can do that. However, if you decide to clear the title to the land, or if you have a problem with someone claiming adverse possession, it is a good idea to have the land surveyed.

WHAT CAN I DO TO PROTECT MYSELF?
If your ownership of property is questioned, contact a lawyer to protect your rights. If you are not sure about the title to your property, have a title company perform a search of the local records to determine exactly who owns the property. If you are an owner of heir property, keep a detailed family tree so family members are known and can be located. Additionally, keep track of all monies spent on taxes and upkeep of the land. If you own property and have a clear title, make sure to have a will setting out who should receive your property interest after your death.
**Taxes.** Visit your county tax commissioner’s office and make sure property taxes are paid and up to date. If you are in default, be sure to pay the taxes and any fees and interest you may owe. Also, make sure the tax commissioner’s office has the name and current address of the person who will be responsible for the taxes.

**Last Will and Testament.** Having a valid will prevents the formation or further division of heir property. Even if your interest in the property is jointly shared with other owners, it is important to leave your interest in that property in a will to whomever you would like to receive it. This prevents further division of interests and helps to ensure that your beneficiaries will receive your share of the heir property. Finally, a will allows better control and management of your property interests and prevents your interests in the property from passing as heir property.

**Title Search.** A title company can perform a search of the record title to your property to determine who owns the property, whether property taxes are current, and whether any liens have been filed against the property.

**Expenses.** Keep track of all expenses related to the property. This includes property taxes paid and any improvements to structures or to the land that would increase the property’s value. If one co-owner pays more than his or her share of the expenses of the heir property, that co-owner may be entitled to reimbursement from the other co-owners, or if a partition sale is forced, that co-owner may be entitled to a larger share of the proceeds.

**Family Tree.** Construct a family tree. Determine whose name is on the recorded deed to the property and fill in each succeeding generation, including dates of deaths. Legal documents, such as birth and death certificates and marriage licenses, can be used to help construct a family tree. Maintain contact information for all family members that would be considered heirs.

**Legal Assistance.** If ownership of your land is being challenged, hire a lawyer. While many legal disputes can be settled out of court, few can be settled without a lawyer. A lawyer can make sure your rights as a landowner are protected and can help you decide which option is best for your family. Organizations may be available in your community that provide free or low-cost legal assistance for qualified low-income residents.
Clearing an heir property title usually requires a lawyer to help draft documents, determine heirs and the size of their respective fractional interests, and coordinate communication with family members. Once clear title has been obtained, several ownership options are available for families to consider. Each option presented below has advantages and disadvantages. All usually require filing a lawsuit requesting that the court determine the heirs (an action to establish heirship) or requesting that the court resolve conflicting claims to land (an action to quiet title). Before deciding which option is best for your family, it is a good idea to contact as many heirs as possible, get everyone’s input, and consult an attorney.

**OPTIONS FOR OWNERSHIP WITH CLEAR TITLE**

**PARTITION IN KIND**

This is a legal process through which land is physically divided up among common owners based on fractional ownership interests. Each owner receives either a deed from the personal administrator of the estate or a court order awarding title to his or her portion of the land. Any one of the common owners may apply for partition, without the consent of any other heirs.

**ADVANTAGES.** Because each person has a clear deed to his or her portion of the land, each can develop it in any way. Each person can borrow against his portion of the property, harvest timber, rent the property for income, and may be eligible for housing programs and funding that require a clear title.

**DISADVANTAGES.** The disadvantage is that a person loses the right to possess and use the larger tract of property he or she once owned as a tenant in common. Additionally, the person may end up with a land interest that is less than the value of the larger tract he or she once owned as a tenant in common. The sense of community ownership may be lost, and the person may have to move if the portion they acquire is not the portion of land upon which they live.
FAMILY LAND TRUST

Through a family land trust, co-owners form a trust that holds title to the property. A trustee, who may or may not be a family member, is designated to make decisions regarding the property on behalf of and for the benefit of the beneficiaries (the remaining family members). Because the trust holds the title to the land and it is not divided among heirs, the title remains clear. Although the beneficiaries may change as families expand or heirs die, the land remains the property of the trust, and there is no confusion about who pays the taxes and is responsible for maintenance. The responsibilities of the trustee are stipulated in the trust agreement. The trust agreement also specifies how any income generated by the land is to be disbursed among beneficiaries.

ADVANTAGES. Because the title is clear and the trust holds ownership of the land, it is less likely to be sold. The property may be preserved longer than it would be if it were divided up.

DISADVANTAGES. There may be restrictions on how the land is to be managed or developed. It is important that the donors take care in selecting a trustee and in deciding what the trust allows.
LIMITED LIABILITY COMPANY

Existing family members can form a limited liability company (LLC). The heirs convey the property to the LLC, which owns the land. The family owns the LLC so that it indirectly owns the property through the LLC. The LLC is created by filing articles of organization with the Secretary of State. Family members should create an Operating Agreement, specifying how many votes each member is entitled to, how profits are to be distributed, and how the members choose to sell their interests. The LLC can then develop the property any way the members choose.

ADVANTAGES. The LLC can be a pass through entity for tax purposes, meaning that whatever income the LLC makes, it is passed through the LLC and attributed to the family members individually.

DISADVANTAGES. Because the LLC is a pass through entity, the family members must report income, profits, and losses of their ownership interests of the company on their personal tax returns. Also, many additional steps must be taken to effectively manage a LLC. For example, the LLC must contact the Georgia Department of Revenue’s Taxpayer Services Division section to obtain the necessary tax identification numbers to operate in Georgia.
Once a form of landownership is implemented, a landowner must
decide how he or she wishes to transfer ownership in the land. A
landowner choosing to transfer real property during their lifetime
may do so by contract, by signing a **deed** to the property. A
landowner desiring to transfer real property at death can do so
by signing a **will**. If the owner chooses to own the land through
a company, the company interests can be sold to another person
pursuant to a contract during the owner’s lifetime, or the company
interests can be distributed pursuant to a validly executed will.
**GLOSSARY**

**Action to Establish Heirs:** Court proceeding involving property issues, used to identify and determine the heirs at law of a deceased individual for the purpose of determining who is entitled to own and share the deceased's estate when the person dies without a will.

**Clouded Title:** This Booklet sometimes uses the term “clouded title” in an informal way to refer to property that, from the perspective of one of the heir property owners, has so many owners due to the passage of ownership without benefit of a will that the title is no longer “clearly” in the hands of the heir property owner in question, but is, in effect, “clouded.” The legal definition, however, of the term “clouded title” is an encumbered land title or one with an outstanding claim (for example, land with a lien against it or for which an ownership interest is not documented).

**Co-Owner:** Someone who shares ownership of something with one or more persons.

**Deed:** A document evidencing ownership of real property. A deed is a special contract whereby a landowner conveys title to land to another person during the grantor's lifetime.

**Escheat:** The passing of title to property to the State, whenever no heirs can be found.

**Estate:** The collection of personal and/or real property left by a deceased person.

**Heir:** One who is entitled to inherit the estate of someone who has died with or without a valid will. An heir is related to the deceased by blood or by marriage, and must be living at the time of the deceased's death.
Heir Property: Land that is held by the descendants of a landowner who died without a will or whose estate was not probated.

Mortgage: A conveyance of title to real property from a debtor to a creditor that serves as collateral for the repayment of a debt, and which conveyance will automatically become void upon the repayment of the debt or the performance of a duty according to the parties’ agreement. Mortgages usually permit the creditor to petition a court to order a foreclosure sale in order to sell the property to repay the unpaid debt. Mortgages are rarely used in Georgia, and creditors prefer that debtors grant them a security deed instead.

Intestate: To die without a valid will.

Intestate Succession: Occurs when property that belonged to someone who has died without a valid will automatically passes to that person’s heirs at law.

Intestate Property (or Intestate Estate): The collection of property owned by a person who died intestate.

Operating Agreement: An agreement among members of a limited liability company (LLC) governing the LLC’s business, management, and financial rights and duties.

Partition in Kind: The forced division of property held by tenants in common; each owner receives an actual tract of land that corresponds to his or her own specific heirship interest in the property.

Partition by Sale: The forced sale of property held by tenants in common; each owner receives a portion of the sale proceeds that corresponds to his or her own specific heirship interest in the property.
**Probate Court**: A court with the power to declare wills valid or invalid, to oversee the administration of intestate estates; to appoint guardians and conservators for minors or incapacitated adults and conservators for missing person; and other duties and responsibilities as set forth in Georgia law.

**Prescriptive Title (also known as Adverse Possession)**: Process by which someone acquires property from another person without receiving a deed for it, usually by using and occupying it exclusively, openly, and continuously, in a manner that is adverse to the true owner(s) for a certain period of time (for example, building a fence around the land).

**Personal Representative**: Includes executors of estates for people who died with a will and administrators of estates for people who died without a will (intestate), or with a will without a named or valid executor. An administrator who is appointed by a court is charged with collecting and inventorying the personal and real property assets of a person who dies without a will, and to settle the debts of the estate. The personal representative is also responsible for dividing and distributing the estate among the deceased's heirs at law.

**Purchase-Money Mortgage**: A mortgage given by a buyer to the seller of land when the property is transferred in order to secure the unpaid balance of the purchase price.

**Quiet title action**: Court proceeding which is used to resolve any conflicting claims or challenges to title to real property.

**Security Deed**: An absolute conveyance of title to real property from a debtor to a creditor that serves as collateral for the repayment of a debt or the performance of a duty. This conveyance can only be undone by the reconveyance of title from the creditor to the debtor, upon the repayment of the debt or the performance of a duty according to the parties'
agreement. Security deeds also typically grant the creditor the right to foreclose the property pursuant to a power of sale so that the property can be sold by the creditor to the highest bidder in order to repay the debt. The sale can take place without a court overseeing the sale.

**Tax Sale:** A sale of property to make up for unpaid taxes on the property, conducted either by a sheriff pursuant to an execution, or pursuant to a court-ordered tax foreclosure sale.

**Tax Deed:** Deed issued by a sheriff or taxing authority which transfers title to someone who has purchased land at a tax sale. The title transferred by a tax deed is often clouded and is subject to being challenged by the original owner.

**Title:** Legal evidence of a right to own and possess property. Deeds evidence title to real property; bills of sale evidence title to personal (movable) property.

**Tenancy-in-Common:** A form of ownership of land in which there are multiple owners, and all are entitled to possess and use all of the land, subject to the rights of other co-owners. Heir property is commonly owned by tenants in common.

**Will:** A will is a special instrument that permits a person to direct the distribution of his or her property (including land, also known as “real property,” and/or other belongings, also known as “personal property”) among designated persons upon the owner’s death. The transfers spelled out in the will only become effective upon the death of the person who made the will.

**Year’s Support:** An award of property (whether real or personal) to the surviving spouse and/or minor children of the deceased, designed to provide support for the surviving family members in the year following the deceased’s death.
Heir Property in Georgia was produced under the auspices of the Young Professionals Council (YPC) of the Georgia Appleseed Center for Law and Justice, in conjunction with the University of Georgia School of Law Cousins Public Interest Fellowship on Heir Property.

We would like to thank the following individuals and organizations for their participation and support of this project.

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- Georgia Appleseed Center for Law and Justice
- Alabama Appleseed
- Janice F. Dyer, Auburn University, Department of Agricultural Economics and Rural Sociology (Framework & Photography)

Financial Supporters
- Cousins Public Interest Fellowship
- Lawyers Foundation of Georgia

Pro Bono Volunteers
DLA Piper LLP (US)
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