Sustaining Ecological and Economic Diversity Among Limited Resource Landholders by Expanding Opportunities for Management of Productive Woodlands

A joint project of North Carolina State University and North Carolina Agricultural & Technical University

Funded by the USDA Sustainable Agriculture Research and Education Program (SARE), Grant Number LS01-126

Understanding Heir Property

Land Loss Prevention Project
Annette Hiatt, Staff Attorney
Ownership

• Who Owns the Land?
  – Sole ownership
  – Joint ownership
    • Tenancy by the entirety (husband and wife)
    • Cotenancy
    • Heir property
Types of Ownership

• What Kind of Ownership?
  – “Fee Simple”
  – Life Estate

• Subject to any easements, liens or judgments?

Where do you find it?

• Go to the Register of Deeds Office in the county the land is located in to track the history of land ownership
  – Transfers of ownership
    • Deeds
    • Deeds of Trust
    • Easements

• County Clerk of Court
  – Judgments
  – Probate Records
How is heir property created?

• Heir Property
  – When an individual passes away without leaving a will that clarifies their wishes as to the distribution of property

• State law determines how property (real and personal) passes

Heir Property

• Intestate Succession
  – Chapter 29, North Carolina General Statutes
    • Provides guidance as to how property (both real and personal) shall be distributed if person passes away without a will
      – Depends on who is "surviving"/living when the individual dies
• Remaining heirs share ownership of a single parcel of land
  – Ownership becomes fractionated and difficult to manage
    • Possibility of forced partition by outside interest holders
Why does this matter?

- All conveyances of heir property must be done with the permission of all the co-owners
  - Deeds
  - Deed of Trust/Mortgages
  - Easement (Conservation or otherwise)

Common Issues

- Management of Land
  - Scattered family members/co-owners
    - Varying levels of attachment to the land
    - Agreement on appropriate uses (development, conservation, farming, residential)
    - Varied financial status (sale of interests)
Common Issues, cont.

• Co-tenants also share in benefits and obligations associated with the land
  – Rental profits
  – Sales of timber
  – Property taxes

What can be done?

• Write a will
• Create and maintain a family tree
• Communicate with other heir owners about management of land
  – Visit the land!
  – Be watchful of notices and mailings regarding the land
• Have the land surveyed
Division

• Divide the land
  – By Deed or Partition

By Deed

• All co-owners must agree
• Convey ownership to certain tracts or portions of the land
  – Must have had a survey (to describe the land conveyed)
• **Partition**
  – Occurs when co-owners cannot agree on management or division of land (filed as a Special Proceeding with the Clerk of Court)
  – Requires appointment of commissioners to oversee the process, and usually a survey
  – North Carolina Courts prefer a physical division of the land
    • partition “in kind”, rather than a partition by sale

---

**Policy Solutions?**

• **HB 1309**

• **Refusal Rights—Forced Public Partition Sales**
  – Proposed legislation allowed cotenants a “right of first refusal”, or an opportunity to purchase the interest of the person seeking to partition the land
Potential policy changes

• HB 1309
  – Value of interest is appraised
  – Non-petitioning cotenants have opportunity to purchase the interest before forced public auction occurs

• Currently slated to be in study committee

• Others?