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Do you have an Estate Plan or Does the State have a Plan for You? A Chain to Community Prosperity Protecting the Family Homestead



BACKGROUND INFORMATION

THE HOMESTEAD CHAMELEON



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Florida's homestead laws are often referred to as a "legal chameleon" because the laws change interpretation depending on how they are being applied under three distinct legal concepts:

BACKGROUND INFORMATION

1. Asset Protection: Exemption from Creditors Claims (Art. X Fla. Const.);
2. Family Protection: Restrictions on Alienation (Art. X Fla. Const.); and
3. Tax Protection: Tax Exemptions and Benefits (Art. VII, Fla. Const.)

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1. The Florida Constitutional protection from forced sale by creditors.
2. The Constitutional restriction on transfer of the homestead property when there is a spouse or minor children.
3. The homestead exemption from taxes (plus senior and military exemptions).

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Celebrities and the wealthy take the most advantage of these protections.

“Specifically because the issue most often is a single black woman homeowner (either because she was never married or her husband predeceased her).” B. Ezell

True or False?

Here are some common myths
about heirs' property ownership:

True or False?

TRUE OR FALSE: Heirs' property is the best way to own and maintain family land.

True or False?

FALSE! Owning land as heirs in common (formally known as tenants in common) is unstable and puts the property at a high risk of being lost by the family. Any person who inherits or purchases an interest in the property has the right to force a sale of the entire property in court.

True or False?

TRUE OR FALSE: Physically living on the land gives an heir greater rights to the use and ownership of the land than those held by absent heirs.

True or False?

FALSE! Heirs who don't live on the land or don't help to maintain the property have the same rights as heirs who live on the land and keep it up.

True or False?

TRUE OR FALSE: Payment of property taxes and other assessments entitles that person to more complete ownership.

True or False?

FALSE! Payment of taxes does not increase an heir's percentage of ownership. Heirs who do not contribute to tax payments do not lose any rights to ownership.

BACKGROUND INFORMATION

Historically, the majority of property owned by African-Americans at death has not been transferred by will. This is due to many factors, including the lack of access to attorneys.

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Unfortunately, many owners of what is referred to as “Heirs’ Property” think that they cannot lose the property so there is no need for a will.

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Heirs' property refers to land that has been passed down informally from generation-to-generation. In most cases, it involves landowners who died without a will.

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Heirs' property is land owned “in common” by all of the heirs, regardless of whether they live on the land, pay the taxes, or have ever set foot on the land.

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When a landowner dies without a will, the state decides who inherits the land. Over time, when land is passed down through several generations without a will, distant relatives who do not know each other could be co-owners of the same property.

APPLESEED PROJECT

Unlocking Heir Property

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BACKGROUND INFORMATION

Under laws of intestacy, the spouse of a deceased person takes a $\frac{1}{2}$ interest in the estate in most cases.

The spouse's heirs from a former marriage may even inherit if there is no will, depending on how title is held.

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732.102 Spouse's share of intestate estate.—The intestate share of the surviving spouse is:

- (1) If there is no surviving descendant of the decedent, the entire intestate estate.

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(2) If the decedent is survived by one or more descendants, all of whom are also descendants of the surviving spouse, and the surviving spouse has no other descendant, the entire intestate estate.

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(3) If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, one-half of the intestate estate.

BACKGROUND INFORMATION

(4) If there are one or more surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants who are not descendants of the decedent, one-half of the intestate estate.

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732.103 Share of other heirs.—The part of the intestate estate not passing to the surviving spouse under s. [732.102](#), or the entire intestate estate if there is no surviving spouse, descends as follows:

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- (1) To the descendants of the decedent.
- (2) If there is no descendant, to the decedent's father and mother equally, or to the survivor of them.

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(3) then to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.

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(4) If none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:

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(5) If there is no kindred of either part, the whole of the property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

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(6) If none of the foregoing, and if any of the descendants of the decedent's great-grandparents were Holocaust victims as defined in s. [626.9543\(3\)\(a\)](#), including such victims in countries cooperating with the discriminatory policies of Nazi Germany, then to the descendants of the great-grandparents.

BACKGROUND INFORMATION

- ❖ Heirs' property is the leading cause of involuntary land loss.
- ❖ According to the Census Bureau, 80 percent of land owned by African Americans has been lost since 1910 due to heirs' property.

COMMON ISSUES WITH HEIRS' PROPERTY

Here are some of the common problems with heirs' property:

- ❖ Decisions regarding use of the property must be agreed upon by everyone entitled to it.

COMMON ISSUES WITH HEIRS' PROPERTY

- ❖ Some owners may want to sell the property, while others want to live in it.
- ❖ Some will pay their share of taxes and maintenance, while others will not.

COMMON ISSUES WITH HEIRS' PROPERTY

- ❖ It is hard to get loans based on property ownership because there is no clear title.
- ❖ Lack of clear title also means that the property is less marketable for sale or lease.

COMMON ISSUES WITH HEIRS' PROPERTY

- ❖ One owner can force a court-ordered sale of the entire property so that all of the descendants can “cash-out.”
- ❖ Some owners are unable to receive a home loan to complete badly needed home repairs.

BUILDING A STRONG CHAIN OF HOME OWNERSHIP

Solutions:

- ❖ Try to work out family disagreements before they become legal battles.
- ❖ Make a will and encourage other heirs to make a will to prevent more people from becoming heir owners.

BUILDING A STRONG CHAIN OF HOME OWNERSHIP

Solutions:

- ❖ Make a family tree to identify every heir.
- ❖ Maintain a list of all of the heirs with their current addresses.

QUESTIONS AND ANSWERS

Thank you!

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