



Generational Wealth Building Webcast

UNDERSTANDING CLEAR TITLE AND ESTATE PLANNING

Skipper G. StipeMaas, Executive Director

Joann E. Johnston, Legal Programs Director

GEORGIA HEIRS PROPERTY LAW CENTER

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

DISCLAIMER

The materials contained in this Building Generational Wealth Webinar and this presentation do not constitute direct legal advice and are for informational purposes only. Non-lawyers should always consult a licensed attorney in all legal matters. Neither the materials in this presentation nor the accompanying video create an attorney-client relationship between the Generational Poverty Law Project, Georgia Heirs Property Law Center and you and/or your client. The Generational Poverty Law Project, Georgia Heirs Property Law Center, its employees, directors, officers and agents will not be liable or responsible to you or your client for any claim, loss, injury, liability, or damages related to your use of the materials in this presentation or the accompanying video.

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

BUILDING GENERATIONAL WEALTH WEBCASTS

- ▶ Part of **Generational Poverty Law Project**, a partnership between Atlanta Legal Aid Society, Georgia Heirs Property Law Center, and Pro Bono Partnership of Atlanta.
- ▶ **Project Goals:**
 - ▶ Utilize joint resources to create **pathways out of generational poverty** for low-income families in metro-Atlanta.
 - ▶ Provide **free and vital legal services** to help multigenerational families in Atlanta:
 - ▶ Retain ownership of their homes;
 - ▶ Ensure they are living in safe and habitable environments;
 - ▶ Avoid predatory practices; and
 - ▶ Leverage their homes to create generational wealth, reduce neighborhood blights and transform underserved communities.
 - ▶ Conduct **outreach and education to metro-Atlanta families** living in poverty and the **nonprofits serving them** by providing tools to help families remain housing stable and transform underserved communities.
 - ▶ Generational Poverty Law Project is funded by **The Junior League of Atlanta**



Women Transforming Communities

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

INTRODUCTIONS

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

WHY DOES UNDERSTANDING TITLE MATTER?

- ▶ Most nonprofits and government **programs targeted at homeowners** require:
 - ▶ The applicant(s) to be **owner-occupiers** with valid deed;
 - ▶ No other co-owner(s) on title to the property; and
 - ▶ **No recorded liens** against the property or the applicant(s).
- ▶ Many low-income families served by housing nonprofits are living in properties that have been informally passed from generation to generation or have never been probated after the record owners' death.
 - ▶ **Meeting program requirements can be difficult, if not impossible.**
- ▶ Nonprofits need to understand title issues to:
 - ▶ **Tailor program eligibility requirements** to the communities they serve;
 - ▶ Set **reasonable expectations** for clients about the complexity and time required to resolve title problems;
 - ▶ Advise clients on the **necessity of thoughtful estate planning**; and
 - ▶ Understand why they should require clients have estate plans **prevents future blight.**

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

WHAT IS HEIRS PROPERTY?

- ▶ Home or land that has been passed from **generation to generation** in such a way that multiple people own the same piece of property.
 - ▶ Record title is typically in the name of the deceased relative.
 - ▶ In reality, ownership is shared among living descendants, resulting in **"fractured"** or **"tangled"** title.
- ▶ **Heirs property is created when:**
 - ▶ The owner dies **without a will** and the property passes to heirs at law; or
 - ▶ The owner dies **with a will** leaving property to multiple beneficiaries.
- ▶ Heirs property is the untold story of **blight and generational poverty** in Georgia.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

HOW WIDESPREAD IS HEIRS PROPERTY?

- ▶ USDA Forest Service and UGA Carl Vinson Institute recently studied heirs property in **10 non-metro** Atlanta counties.



- ▶ Study identified **38,120 acres** as probable heirs property;
 - ▶ Heirs property totaled **11% to 25% of total acreage** within individual counties; and
 - ▶ Heirs property in those 10 counties had a total tax assessed value of **\$2.15 billion**.
- ▶ Heirs property is created **every day**, yet can take a family years to resolve.

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.



GEORGIA HEIRS PROPERTY
LAW CENTER

GEORGIA HEIRS PROPERTY LAW CENTER

The Georgia Heirs Property Law Center's mission is to increase generational wealth, social justice and community stability by securing and preserving property rights.

- ▶ 6 attorneys, 1 social worker, 2 community advocates, a network of pro bono volunteers, and grassroots organizational partners.
 - ▶ State-wide work with targeted outreach in **Atlanta and Southwest Georgia**.
 - ▶ Offices in Atlanta, Athens, Fitzgerald and Macon.
- ▶ Currently serving low- and moderate-income families with properties in **29 Georgia counties** with a combined tax assessed value of over **\$6.5 million**.

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.



GEORGIA HEIRS PROPERTY
LAW CENTER

GEORGIA HEIRS PROPERTY LAW CENTER

- ▶ **Three categories** of services:
 - ▶ Free and discounted **title clearing services** for heirs property owners.
 - ▶ Free **estate planning** for homeowners through Heirs Property Prevention Clinics.
 - ▶ **Asset education** to help individuals and families increase generational wealth.
- ▶ Also work with **nonprofits and municipalities to combat blight** through title audits, title clearing and early intervention services.

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

ROADMAP FOR TODAY

- ▶ Title to Property
- ▶ Heirs Property
- ▶ Resolution of Heirs Property Issues
- ▶ Preventing Title Problems Through Estate Planning
- ▶ Wrap Up and Questions



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

TITLE TO REAL PROPERTY

© 2018 Generational Poverty Law Project/Georgia Heir's Property Law Center, Inc.

WHAT DOES "TITLE" MEAN?

- ▶ **Title** is the means or right by which someone owns or possesses property.
 - ▶ Title is passed through a deed or other instrument conveying title.
- ▶ **Marketable Title** is title that is free from reasonable doubt, evidences actual ownership and ensures the property can be sold to a reasonable purchaser or mortgaged to a person of reasonable prudence.
 - ▶ Marketable title is not the same as perfect title.
 - ▶ Marketable title is insurable title.
 - ▶ Without marketable title, you typically cannot sell the property, use the property as security for a loan, or participate in many government programs
- ▶ **Clear title** is marketable title coupled with the exclusive right to possess the property.
 - ▶ Unrestricted legal ownership of a property without any completing claims or encumbrances.

© 2018 Generational Poverty Law Project/Georgia Heir's Property Law Center, Inc.

COMMON WAYS TO OWN PROPERTY

- ▶ **Fee Simple Ownership:** complete and absolute title to the entire property, with unconditional power to dispose of it during life, and which descends to heirs or beneficiaries upon death.
 - ▶ **Sole ownership**
 - ▶ **Tenancy in Common**
 - ▶ 2 or more people own undivided interests in the entire property
 - ▶ If co-tenant dies, his or her undivided interest becomes part of his or her estate and generally must be probated.
 - ▶ Heirs property owners are tenants in common.
 - ▶ **Joint Tenancy with Right of Survivorship**
 - ▶ 2 or more people own undivided interests in the entire property.
 - ▶ Formally recognized in Georgia in 1977
 - ▶ To create, specific language must be included in the deed for the property.
 - ▶ Interest of any co-tenant automatically transfers upon his or her death to the other co-tenant(s).
 - ▶ No probate needed.
 - ▶ For marketable title, surviving co-tenant should record affidavit attesting to co-tenant's death and confirming that joint tenancy was never severed along with death certificate in land records.



COMMON WAYS TO OWN PROPERTY

- ▶ **Life Estate:** right to occupy and use the property or benefits of property during one's lifetime.
 - ▶ Two "owners":
 - ▶ **Life tenant** who owns and possesses property during lifetime.
 - ▶ **Remainderman** who owns property but cannot take possession of property until life tenant dies.
 - ▶ Title **automatically transfers** to remainderman upon life estate holder's death.
 - ▶ No probate needed.
 - ▶ For marketable title, remainderman should record affidavit attesting to life tenant's death with death certificate in land records.
 - ▶ Properties subject to life estate can be **sold and/or mortgaged:**
 - ▶ To sell or mortgage full property interest, both life tenant and remainderman must agree
 - ▶ However, life tenant can sell or mortgage life estate without agreement of remainderman.
 - ▶ Remainderman still has ownership interest and right to possession upon life estate holder's death.
 - ▶ Death of life tenant automatically terminates grantee or mortgage holder's right, title and interest in the property.



DEEDS TO REAL PROPERTY

- ▶ A **deed** is a written instrument that conveys property from owner(s) to grantee(s).
 - ▶ Valid deeds are legal proof of ownership.
- ▶ To **effectively pass ownership**, a deed must:
 - ▶ Be in writing;
 - ▶ Purport to convey title to land;
 - ▶ Identify a person or entity with the power to convey the property (the “grantor”);
 - ▶ Identify a person or entity who is receiving the property (the “grantee”);
 - ▶ Includes “words of conveyance” demonstrating an intention to convey a present title in the property to the grantee;
 - ▶ Adequately describes the property;
 - ▶ Be signed by the grantor in the presence of two witnesses; and
 - ▶ Be delivered to the grantee.



© 2018 Generational Poverty Law Project/Georgia Heir's Property Law Center, Inc.

TYPES OF DEEDS TO PROPERTY

- ▶ **Quitclaim Deed:** transfers ownership interest/title to grantee without any warranties or guaranties.
- ▶ **General Warranty Deed:** transfers ownership/title to the grantee with warranties that:
 - ▶ The grantor is the lawful owner;
 - ▶ The grantor has the right to convey his or her interest;
 - ▶ The property is free from all encumbrances or liens; and
 - ▶ The grantor will defend title against all claims by any third party.
- ▶ **Limited Warranty Deed:** transfers ownership/title to the grantee that warrants only the the grantor will defend title against claims by anyone who received an interest from the grantor while the grantor owned the property.
- ▶ **Life Estate Deed:** transfers a life estate to the life tenant with the remainder conveyed in fee simple to the remainderman upon the life tenant's death.
- ▶ **Note:** A **security deed** or **deed to secure debt** is a financing instrument for real estate loans and does not convey full title – there should be a separate quitclaim or warranty deed evidencing the borrower's ownership/title to the property.

© 2018 Generational Poverty Law Project/Georgia Heir's Property Law Center, Inc.

WHAT PREVENTS MARKETABLE TITLE?

- ▶ Defective or fraudulent deeds
- ▶ Existing mortgage loans secured by property
- ▶ Liens against the property
 - ▶ Unpaid property taxes or utilities
 - ▶ Unpaid debt for labor or materials used to improve property
- ▶ Liens against the owner(s)
 - ▶ Unpaid federal and state taxes
 - ▶ Unpaid judgments against owner(s)
- ▶ Lack of Access
- ▶ Encroachments on neighboring properties
- ▶ Heirs property status

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

HEIRS PROPERTY

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

HEIRS PROPERTY REFRESHER

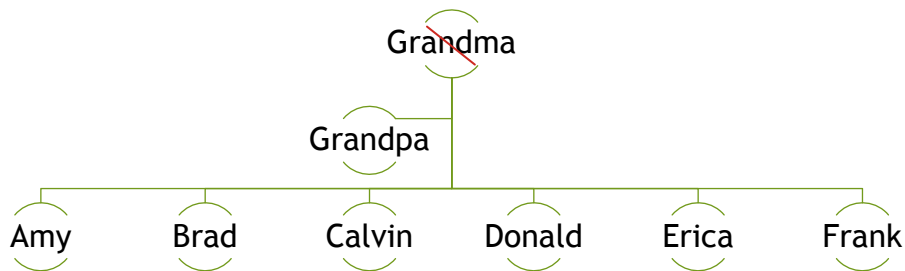
- ▶ Home or land that has been passed from **generation to generation** in such a way that multiple people own the same piece of property.
- ▶ Heirs property is created when:
 - ▶ The owner dies **without a will** and the property passes to heirs at law; or
 - ▶ The owner dies **with a will** leaving property to multiple beneficiaries.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

HEIRS PROPERTY EXAMPLE #1

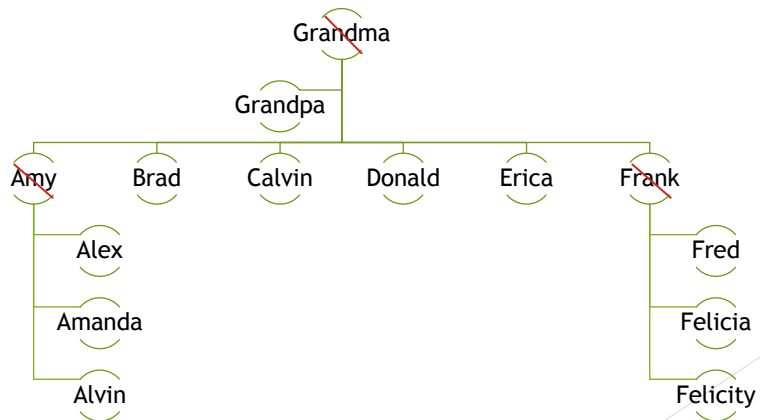
Grandma owns a home and dies without a will.
She is survived by her husband and 6 children.
The property is co-owned by the **7 heirs**.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

HEIRS PROPERTY EXAMPLE #2

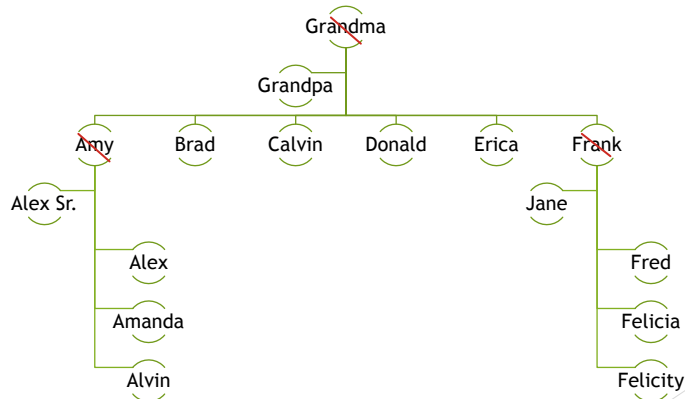
Grandma is survived by her husband and 4 of their children.
 The 2 other children and their spouses died before grandma and did not have wills.
 But each of grandma's deceased children were survived by 3 children.
 The property is co-owned by **11 heirs**.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

HEIRS PROPERTY EXAMPLE #3

Grandma is survived by her husband and their 6 children.
 2 children died after Grandma and did not have wills.
 Each deceased child was survived by 3 children and 1 spouse.
 The property is now co-owned by **13 people**.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

WHAT DOES IT MEAN TO OWN HEIRS PROPERTY?

Owners of heirs property are **tenants in common**:

- ▶ **Each** heir has equal rights to full use and possession.
- ▶ **Each** heir is legally responsible for taxes and other property-related expenses.
- ▶ **Each** heir may transfer interest in property to another heir or outsider.
- ▶ **Each** heir may seek a partition of the property.
- ▶ **Each** heir must agree to any major decisions about the property.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

PROBLEMS FACING HEIRS PROPERTY OWNERS

- ▶ Face increased risk of **forced sale and eviction**.
- ▶ **Cannot sell or mortgage** property without agreement of all heirs.
- ▶ Cannot qualify for **rehab programs** or **secure financing** for needed repairs.
- ▶ May not be able to participate in **government programs** offered by USDA, HUD, FEMA, and other federal and state agencies.
- ▶ May not qualify for **loss mitigation programs** when facing foreclosure.
- ▶ May not be able to qualify for **homestead exemptions** to reduce property tax burden.
- ▶ Can lose a connection to **family history and community**.
- ▶ Can also lose the sense of **independence** associated with ownership.
- ▶ May **ruin or permanently damage** family relationships.

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

HEIRS PROPERTY ROBS NEXT GENERATION OF PRIMARY MEANS OF GENERATING WEALTH

When heirs have clear title...

- ▶ They can open a **line of credit** or a **mortgage**.
- ▶ They can use the property as **collateral for a loan** to start a business or to send their kids to college.
- ▶ They can generate income by **leasing the property**.
- ▶ They can generate income by **farming or selling natural resources** on the property.
- ▶ They can pass the property on to their **children**.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

WHAT ARE THE IMPLICATIONS FOR FAMILIES?

- ▶ Disagreements among heirs about whether to **sell property** or **keep it in the family**.
- ▶ One or more heirs may want to use the property to the **exclusion of others**.
- ▶ Burden of **paying property taxes** or other expenses may fall on one heir.
 - ▶ Payment of taxes does not give one heir more rights than any other heir.
 - ▶ Miscommunication or disagreement could lead to loss of through tax sale.
- ▶ One heir could use the property as **leverage** to force another heir to do something **contrary to his or her interests**.
- ▶ With heirs property, otherwise rational family members can begin to **act destructively based on sentimentality, laziness or spite**.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

WHAT ARE THE IMPLICATIONS FOR COMMUNITIES?

- ▶ Many **blighted properties** are abandoned heirs property.
- ▶ Status makes it difficult for cities to identify owners and **enforce code and safety ordinances**.
- ▶ Heirs property is a contributing factor to the **decrease in owner occupied homes and family owned farms**.
- ▶ Heirs property hinders efforts to increase **housing** and family stability.
- ▶ Communities can **lose funding for revitalization efforts** if heirs property is pervasive.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

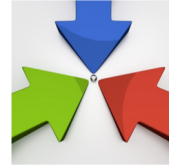
RESOLUTION OF HEIRS PROPERTY ISSUES

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

TITLE HELD BY SINGLE PERSON OR ENTITY

► Title Held by Single Heir

- Requires that all heirs convey their ownership interests to one person
- If result will be multiple owners, must be careful to avoid creating heirs property.
 - Owners could be “joint tenants with right of survivorship” or hold life estates.



► Title Held by Limited Liability Company



- Requires that all heirs transfer their interest to LLC, which owns property.
- Heirs become owners of LLC with shares equivalent to prior ownership of property.
- Operating agreement creates rules of road for how decisions are made, rights and responsibilities of members, buyout provisions, circumstances in which property can be sold and what happens to an heir's interest when he or she dies.

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

TITLE HELD BY SINGLE PERSON OR ENTITY

► Title Held by Trustee of Family Trust

- All heirs agree to donate their interests in the property to a family trust.
 - Heirs become beneficiaries of trust.
 - Legal title is held by the trustee(s), which manage the property for the benefit of the beneficiaries/heirs.
- Trust agreement controls how the trustee(s) will manage the trust, how any income will be distributed, and what happens to an heir's interest as beneficiary of the trust when he or she dies.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

PROPERTY GOVERNED BY AGREEMENT OF HEIRS

If heirs want property to remain in their individual names, they can sign a **tenancy in common agreement** or **limited power of attorney** governing the property.

► Tenancy in Common Agreement

- Identify who can live on the property or manage the land;
- Govern who is responsible for taxes, insurance and maintenance;
- State that property cannot be sold or encumbered without unanimous agreement;
- Prohibit transfer of interest to an outsider without prior written consent and right of first refusal; and
- Prohibit co-tenants from filing partition actions seeking to sell or divide up property.

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

PROPERTY GOVERNED BY AGREEMENT OF HEIRS

► Limited Power of Attorney

- Heirs can appoint an individual to serve as attorney-in-fact to handle specific financial transactions on their behalf.
- Can terminate at specific time, upon completion of contemplated act, or upon revocation by one or more heirs.
- Limited powers of attorney can:
 - Give attorney-in-fact the power to buy, sell or lease the property;
 - Give attorney-in-fact the right to enter into and/or sign contracts or take out loans on behalf of the co-tenants; and
 - Allow the co-tenants to participate in government programs through attorney-in-fact.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

PREVENTING TITLE ISSUES THROUGH ESTATE PLANNING

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

WHO NEEDS AN ESTATE PLAN?

Everyone, even if they don't currently own real property or just have a fractional interest in real property.

► **Estate planning is vital for participants in housing programs.**

- If clients' homes later become heirs property, heirs may fail to maintain the property or abandon it altogether.
- Abandoned properties can be an eyesore at best and a target for criminal activity at worst.
- Municipalities lose revenue that could otherwise fund community programs and improvements when heirs fail to pay property taxes.



© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

HOW CAN ESTATE PLANNING PREVENT HEIRS PROPERTY ?

- ▶ Own property as **joint tenants with rights of survivorship**.
- ▶ Place property into **limited liability company** or **trust**.
- ▶ Prepare a **last will and testament** directing how property should be distributed upon death.



- ▶ Leave property to **single beneficiary**.
- ▶ Instruct executor to **sell property and divide proceeds** between beneficiaries.
- ▶ Give family members **option to purchase** property.
- ▶ Instruct executor to **divide property** among beneficiaries.

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

WRAP UP AND QUESTIONS

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.

RESOURCES

► Websites:

- www.gaheirsproperty.org
 - Includes information about how to become Center client
 - Download copy of Family Tree Resources and Information Packet
- **COMING SOON:** Generational Poverty Law Project landing page on www.georgialegalaid.org

► Publications:

- *Preventing Heirs Property Through Estate Planning*
- *Heirs Property in Georgia Attorney Training Manual*
- *Rooted and Grounded: A Georgia Legal Handbook for Small Farmers and Their Land*
- *Identifying Potential Heirs Properties in the Southeastern United States* (USDA Forest Service and UGA Carl Vinson Institute)

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.



Next Generational Wealth Building Webcast

HOME OWNERSHIP, HOME SCAMS AND FORECLOSURE PREVENTION

June 21, 2018

10:00 am to 11:00 am

Sarah Ilene Stein, Staff Attorney, Senior Citizens Law Project

Darrius Woods, Equal Justice Works Fellow

ATLANTA LEGAL AID SOCIETY

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.



GEORGIA HEIRS PROPERTY
LAW CENTER

GEORGIA HEIRS PROPERTY LAW CENTER

Skipper G. StipeMaas
Executive Director
sstipemaas@gaheirsproperty.org

Joann E. Johnston
Legal Programs Director
jjohnston@gaheirsproperty.org

706.424.7557
www.gaheirsproperty.org

© 2018 Generational Poverty Law Project/Georgia Heirs Property Law Center, Inc.