CLEARING A PATH

HOW HEIRSHIP AFFIDAVITS HELP FAMILIES DOCUMENT INHERITED PROPERTY

NCLC National Consumer Law Center
Fighting Together for Economic Justice

INITIATIVE on LAND, HOUSING & PROPERTY RIGHTS
BOSTON COLLEGE LAW

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National Consumer Law Center
Fighting Together for Economic Justice

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The Initiative on Land, Housing & Property Rights (ILHPR) at Boston College Law School was established in 2022 to address systemic inequality rooted in laws, policies, and practices that shape and influence property ownership, rental housing, and other forms of property tenure, including but not limited to laws and policies governing various forms of property ownership, land use and zoning, and property taxation. ILHPR addresses systemic barriers to wealth creation and preservation, as well as the challenges disadvantaged communities face in maintaining their heritage, history, and culture, particularly those related to property rights and housing. ILHPR focuses on four primary pillars of activities: Legal Reform and Policy Work, Research and Dissemination, Law Student and Other Graduate Student Training, and Continuing Legal Education and Community Legal Education Programming.

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INTRODUCTION

Malyndia Brown, a 58-year-old woman with a disability, has spent years trying to preserve the Southwest Atlanta home her family has owned since the 1970s.[1] She moved back into the small brick house about fifteen years ago to care for her aging parents. After they both passed away, Ms. Brown learned that dealing with legal ownership of the home would require a significant amount of work. Because her parents collectively had 13 children, and some of those children had since passed, she first had to locate grandchildren and other heirs before she could begin settling her parents' estates.

Ms. Brown has been working on probating her parents' estates for six years. She is fortunate to have a legal services attorney representing her at no cost. But while that probate litigation proceeds, she has been unable to get the property tax relief that is available to most owner-occupants, the homestead exemption. Fulton County refuses to allow heirs who have not yet completed the probate court process to obtain the exemption. For Ms. Brown, that means a tax bill of $3,000 that would otherwise be $300. Unable to obtain the homestead exemption, Ms. Brown could not afford the property taxes. She ultimately received notice that her tax lien would be sold—the first step toward losing the family home her parents had spent decades building.

Ms. Brown's home is an example of "heirs property"—property that passes from one generation to the next without a completed probate proceeding or other clear documentation of ownership.[2] Over time, ownership interests may become divided among multiple heirs, making it increasingly difficult to identify who owns the property and in what shares.[3] We refer to this as "fractured" ownership. The heirs who inherited the home lack clear documentation of ownership, so we describe their ownership as "unclear" or "clouded."[4] This combination of fragmented ownership interests and incomplete ownership records can create significant legal and practical challenges.

"Heirs property" is property that passes from one generation to the next without a completed probate proceeding or other clear documentation of ownership.

Unclear and fractured ownership can create significant barriers for families seeking to use and protect their property. Without documentation establishing ownership, families may struggle to obtain property tax relief, disaster recovery assistance, home repair funding, and even utility service can be difficult to obtain without a deed to the home. Fractured or unclear ownership can also complicate efforts to sell, refinance, improve, or transfer property, limiting families' opportunities for wealth preservation and long-term housing stability.

One tool for addressing these documentation challenges is the heirship affidavit. Rather than creating ownership rights, heirship affidavits document family relationships and existing ownership interests when probate has not yet been completed. Depending on the jurisdiction and the purpose for which they are used, heirship affidavits may help families obtain property tax relief, home repair assistance, disaster recovery benefits, utility service, and other ownership-related benefits. In some states and circumstances, they may also contribute to establishing marketable title.

Despite their enormous potential benefit in serving a population that lacks access to affordable legal services, heirship affidavits remain an underused and underappreciated tool. In this report, we analyze data from surveys, interviews, and focus groups to establish a deeper understanding of the benefits of heirship affidavits, factors that facilitate their use, and barriers to their adoption.

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This report is crafted with three different audiences in mind. For homeowner advocates (attorneys and housing counselors): we hope that a greater awareness of heirship affidavits will increase their use of this tool to assist clients. For local government officials and the nonprofits providing home repairs or other assistance to homeowners: we aim to show that heirship affidavits can be used now in all states as a form of flexible proof of ownership. For policymakers and title attorneys: we hope to promote a shift towards uniform standards rather than case-by-case approval of heirship affidavits in all 50 states and an exploration of whether any law changes are needed towards that end. We include recommendations for each of these audiences aimed at encouraging and expanding the use of heirship affidavits around the country.

I. WHY HEIRS PROPERTY & HEIRSHIP AFFIDAVITS MATTER

Researchers have estimated that land worth between $32 billion and $41 billion is held as heirs property in the United States.[5] Some suggest the amount is much higher, with over $42 billion in heirs property in the Southeast alone.[6]

Inherited homes represent a major existing supply of affordable housing, especially among older adults. The majority of heirs are over age 50 when they inherit property, and a quarter are over age 61 at the moment of inheritance.[7] Heirs who lack the financial resources to complete a probate filing immediately are likely to be older adults living on a reduced, fixed income. To preserve stable housing for this population and allow them to remain in communities where they have strong social ties, preserving ownership of their inherited homes is crucial.

Addressing the challenge of heirs property also has significant racial justice implications. Heirs property exists throughout the United States, but is particularly prevalent among families that have faced barriers to estate planning, legal services, and intergenerational wealth transfer. This is especially true for Black landowners in the South, where heirs property has contributed to substantial land loss over time.[8] A lack of access to the legal system, and exploitation facilitated by that system, has discouraged generations of Black families from utilizing probate or estate planning services. As a result, Black homeowners are more likely than their white counterparts to own a home without clear legal title or to co-own the home with other relatives who inherited without a will. One survey indicates that 77% of Black households do not have a will.[9]

Heirs property occurs across a range of contexts. It is prevalent among both rural and urban families and low- and moderate-income households that may lack the resources necessary to navigate formal probate or title-clearing processes.[10] In all of these contexts, lack of clear proof of ownership increases the risk of loss from a range of threats. Inability to apply for property tax relief makes tax bills skyrocket, leading to property tax foreclosures.[11] Lack of access to home repairs and disaster relief jeopardizes the structural security of the home and creates the risk of code liens and demolition.[12] Heirs attempting to keep up with a mortgage on the home may be unable to communicate with the mortgage company regarding payments due or foreclosure prevention options.[13] These risks make heirs more susceptible to equity theft scams.[14] The use and acceptance of heirship affidavits as proof of ownership can reduce all of these risks of loss and keep heirs property owners in control of their homes and land.

Why don't families simply complete estate planning or probate?

Practical barriers make these legal processes difficult or inaccessible for many families.

Barriers to Estate Planning: Estate planning is one of the most effective ways to help ensure that property transfers according to an owner's wishes and to reduce uncertainty for future generations. A valid will, trust, or other estate planning tools can simplify the transfer of ownership and may reduce the need for more complex legal proceedings after death.

Many families, however, face barriers to creating or updating estate plans. Limited access to affordable legal services, lack of awareness, competing financial priorities, distrust of the legal system, and uncertainty about available planning options may all contribute to the absence of a will or other estate planning documents. When property owners die without a will or other estate plan, the probate process can establish legal ownership. However, probate itself may present significant barriers.

Barriers to Probate: When estate planning has not occurred, probate typically becomes the primary legal process for transferring ownership after a person's death. When completed, probate can help establish a clear chain of title, identify heirs, and facilitate the transfer or sale of property. However, for many families, probate is not a practical or immediate option. Cost, complexity, limited access to legal assistance, incomplete family or property records, and the passage of time may all make probate difficult to pursue—particularly when multiple generations have passed without formal estate administration.

Although heirship affidavits cannot replace probate in every jurisdiction, they can play an important role in documenting existing ownership interests and helping families navigate ownership challenges associated with inherited property. Depending on the jurisdiction and the purpose for which they are used, heirship affidavits may support access to property-related benefits, provide practical evidence of ownership, and, in some circumstances, facilitate future title-clearing efforts. Rather than serving as a complete substitute for probate, heirship affidavits are best understood as one tool within a broader ownership-documentation toolkit that can help families bridge the gap between informal ownership and clearer ownership documentation.

II. WHAT IS AN HEIRSHIP AFFIDAVIT AND HOW IS IT USED?

Generally, an heirship affidavit is a sworn written statement used to identify the heirs of a person who has died and to document ownership interests in real property.[15] For purposes of this report, the term heirship affidavit includes not only instruments formally titled "affidavits of heirship," but also functionally equivalent instruments used in some jurisdictions, such as affidavits of descent, lists of heirs, heirship deeds, affidavits affecting title, and documents that serve comparable functions. Within this category, however, we are excluding documents filed during a formal probate proceeding. We focus instead on freestanding documents used outside of the probate process.

Our findings indicate that heirship affidavits are used in a variety of ways depending on the jurisdiction and context. In some states, they may help support marketable title and facilitate the sale or transfer of property. In others, they are used to establish ownership for other purposes, such as obtaining homestead exemptions, property tax classifications, disaster recovery assistance, home repair funding, or other property-related benefits. As a result, heirship affidavits often function as a practical tool for documenting ownership and helping families navigate ownership challenges associated with heirs property, such as limited access to legal services, missing records, or multiple generations of intestacy.

Terminology

TITLE is the legal term for proof of ownership of real property.[16]

TITLE INSURANCE is an insurance policy that protects purchasers and lenders against certain losses arising from defects in title, such as competing ownership claims, recording errors, undisclosed heirs, fraud, or unpaid liens.[17] Before issuing a policy, a title insurance underwriter will review the property's ownership history and attempt to resolve potential title defects.[18] Because title insurers focus on minimizing ownership risk, the extent to which they recognize heirship affidavits can significantly influence whether those documents are accepted in real estate transactions.[19]

MARKETABLE OR INSURABLE TITLE means ownership of a property that is sufficiently clear that a title insurance company will provide a title insurance policy. This means that a title insurance underwriter has made a determination that the person intending to convey an interest in real property can do so without significant legal uncertainty. In other words, there are no known ownership disputes or title defects that would likely discourage a reasonable buyer from completing the transaction.[20]

An heir may have a valid **OWNERSHIP INTEREST** in property while not having marketable title. The level of proof or documentation required for marketable title is influenced by the laws in each state, but is ultimately a decision of each individual title insurance company.

Even in circumstances where an heirship affidavit is not sufficient to establish marketable title immediately, there can be significant benefits to using this kind of document as proof of ownership for other purposes. We refer to these uses, such as obtaining the owner-occupant discount on property taxes, as "functional" ownership recognition. In some instances, an heirship affidavit that starts out as functional ownership proof can eventually help to establish marketable title, when time passes without objection or challenge. Yet the level of awareness of this potential tool varies tremendously among homeowner advocates, real estate attorneys, and government officials across the country.

FIGURE 1: Uses of Functional Ownership Recognition vs. Marketable or Insurable Title

FUNCTIONAL OWNERSHIP RECOGNITION	MARKETABLE OR INSURABLE TITLE
Can this person demonstrate an ownership interest? An heirship affidavit may help establish ownership for:	***Can ownership be transferred with legal certainty?*** Additional documentation may still be needed for:
Property tax relief	Property sale
Homestead exemption	Mortgage financing
Home repair assistance	Refinancing
Disaster recovery programs	Title insurance
Utility service	Certain title transfers
Other administration programs	Other market transactions

III. ABOUT THE RESEARCH

To better understand how heirship affidavits are used in practice, this project employed a mixed-method research approach that combined nationwide surveys with focus groups and individual stakeholder interviews. Two surveys—one for legal services providers and another for title industry professionals—were distributed through professional networks. The surveys were conducted in the spring of 2026, and received 88 responses, including 61 legal services providers and 27 title industry professionals, from 31 different states and jurisdictions. The surveys were designed to identify recurring patterns, areas of agreement and disagreement, and emerging themes. This included questions about whether respondents had encountered heirship affidavits, for what purposes they had seen them used, and any limitations or issues with their use. The survey responses to these questions were then analyzed alongside qualitative findings from focus groups and stakeholder interviews.

The legal services survey was distributed through two nationwide listservs of attorneys working on heirs property and home preservation matters, with the goal of reaching practitioners most likely to have direct experience with the use of heirship affidavits. The title industry survey was distributed by the American Land Title Association to members of its State Advocacy Network and Heirs' Property Working Group.

The project also included one-on-one interviews and two facilitated focus groups with practitioners from across the country. The first focus group included six title industry professionals, including title attorneys, underwriters, and examiners, and explored underwriting practices, risk assessment, and institutional constraints. The second brought together seven legal services attorneys working on heirs property and foreclosure-related issues to discuss client needs, access to legal processes, and practical uses of heirship affidavits in resource-constrained contexts. In addition, the project included 14 individual stakeholder interviews with private practitioners, legal aid attorneys, law school clinicians, and title professionals to examine jurisdiction-specific practices, institutional acceptance, and practical challenges. Together, these methods provide a detailed picture of how heirship affidavits are used, understood, and evaluated across diverse legal and institutional settings.

FIGURE 2: Research Methods at a Glance

SURVEYS	FOCUS GROUPS	INTERVIEWS
88 respondents	**2** facilitated groups	**14** stakeholder interviews
61 legal services attorneys	**7** legal services attorneys	**7** private practitioners or title industry professionals
27 title industry professionals	**6** title professionals	**7** legal aid practitioners or law school clinicians

IV. FINDINGS

Our research supports several key findings related to the use and acceptance of heirship affidavits. First, among respondents, approximately one-quarter of attorneys remain unaware of heirship affidavits as a tool and uncertain whether and how they may be used. Second, a number of legal services attorneys are using heirship affidavits for a variety of purposes to help their low-income clients. Third, heirship affidavits are a helpful tool and worthy of greater research because there are still significant barriers to completing probate for many low-income homeowners and landowners. Finally, the legal basis for use and acceptance of heirship affidavits can vary—from clear statutory authorization, to industry standards, to informal customs. In states without a clear statutory basis, other aspects of probate and real estate law may facilitate their use.

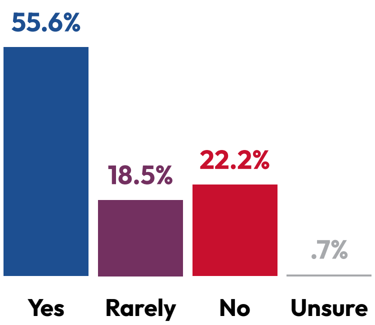
A. Title attorneys and other players lack general awareness of heirship affidavits.

One of the clearest findings from this project was that uncertainty about heirship affidavits often stemmed from limited awareness among practitioners and institutions. Throughout the research, participants frequently expressed uncertainty about whether heirship affidavits could be used in their jurisdictions or for particular purposes. Several focus group and interview participants entered the discussion believing heirship affidavits could not be used in their state, but found out during or soon after the conversation that, in fact, heirship affidavits or their functional equivalent were already usable through statutes, title standards, or customary practice.

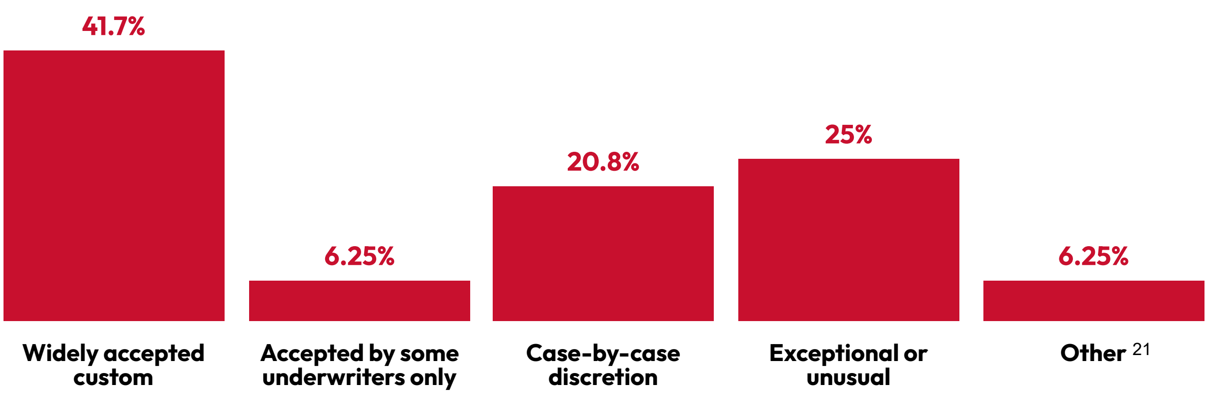
Survey results from title professionals reflected this variability. While 55.6% of respondents reported that heirship affidavits are used in real property practice in their jurisdictions, nearly 41% indicated that they are either rarely used, not used, or were unsure whether they were used at all. Among those reporting that heirship affidavits are used, fewer than half described their use as a widely accepted custom, while others indicated that acceptance depended on particular underwriters or was determined on a case-by-case basis. These findings suggest that lack of awareness may itself be acting as a barrier to the use of heirship affidavits. In some jurisdictions, the primary barrier to the use of heirship affidavits may be uncertainty rather than any legal impediment.

FIGURES 3 & 4: Title Industry Survey

Are affidavits of heirship used in real property practice in this jurisdiction?



If yes, would you characterize the use of these instruments as:



B. Many legal services attorneys are using heirship affidavits for a range of purposes.

Although the awareness or understanding of heirship affidavits is far from widespread among most real estate or title attorneys, a significant majority of the legal services attorneys who responded to the survey confirmed having used heirship affidavits to help their clients. Nearly 87% of legal services respondents had used heirship affidavits as proof of ownership. Roughly half of respondents had used heirship affidavits to help their clients access property tax relief or home repair programs. This prevalence is likely much higher than in the general population of legal services attorneys, as these are practitioners participating regularly in heirs property listservs and trainings. However, the affirmation by many attorneys in many states shows how useful heirship affidavits can be when awareness spreads.

How Legal Services Attorneys are Using Heirship Affidavits:

Avoid or reduce probate costs → 86.7% of legal services respondents reported using heirship affidavits to avoid, delay, or minimize probate proceedings.

Need for proof of ownership → 86.7% of legal services respondents reported using heirship affidavits as proof of ownership.

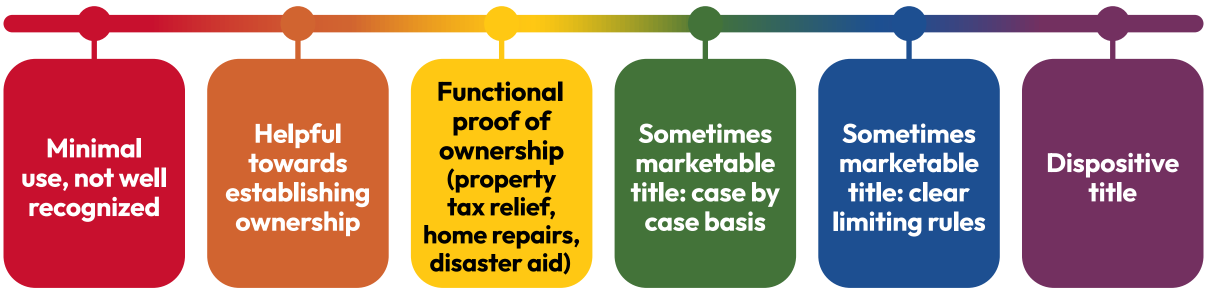
Access property tax benefits → 51.1% of legal services respondents reported using heirship affidavits for property tax relief or related tax-administration functions.

Access disaster assistance or home repair programs → 48.9% of legal services respondents reported using heirship affidavits to help clients access disaster recovery, home repair, or related assistance programs.

Access homestead benefits → 44.4% of legal services respondents reported using heirship affidavits to establish eligibility for homestead exemptions or similar occupancy-based property benefits.

Use and acceptance of heirship affidavits exists along a spectrum. Heirship affidavits are used in a range of ways, including documenting ownership sufficient to convey marketable title for a sale or mortgage transaction, facilitating access to property-related benefits such as disaster recovery funds, and serving as interim or bridging mechanisms where formal probate processes are inaccessible or impractical.

FIGURE 5: Spectrum of Heirship Affidavit Uses



C. Heirship affidavits fill a critical need and are worthy of further study.

As the public and policymakers have gained awareness about the risks and challenges of land held as heirs property, the need for simple, affordable tools to document ownership of real property has become more apparent. As discussed above, low-income homeowners and land owners face significant barriers to both estate planning and carrying out probate of an estate. The risks posed by ownership without clear documentation are felt disproportionately by older adults and in communities of color.

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Legal services respondents confirmed that families living on inherited property frequently need practical alternatives for documenting ownership when probate has not been completed. Ninety-five percent of the legal services respondents said they have frequently encountered individuals living in inherited property who have not completed probate. Over 90% of legal services respondents said that such people would benefit from a reliable, lower-cost method of documenting ownership than formal probate or other title-clearing processes, particularly when those processes are not immediately feasible.

FIGURE 6: Legal Services Respondents Encountering Individuals in Inherited Property Who Have Not Completed Probate

Have you encountered individuals living in inherited property who have not completed probate?

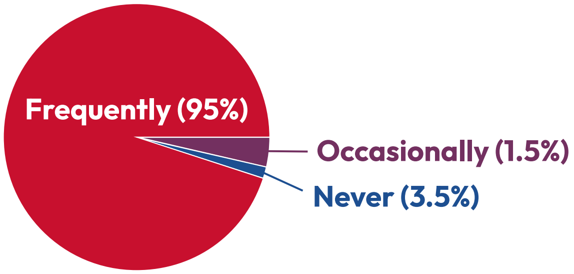
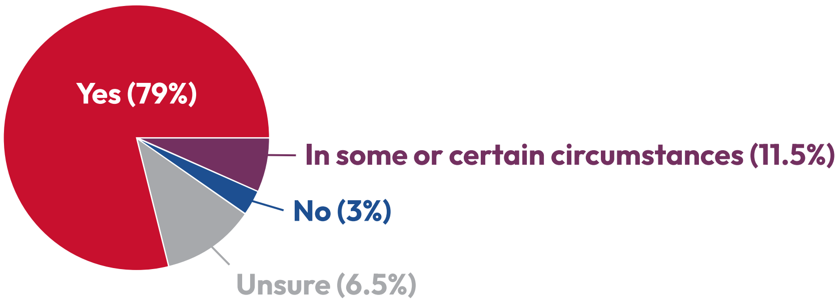


FIGURE 7: Whether Individuals in Inherited Homes Would Benefit from a Low-Cost Alternative

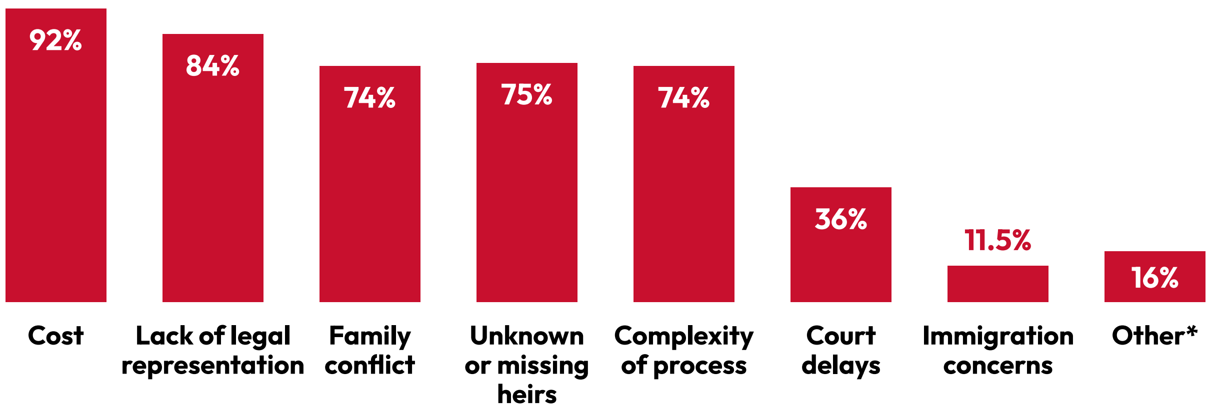
In your experience, would such individuals benefit from a reliable, lower-cost method of documenting heirship?



The legal services attorney respondents cited a range of factors contributing to owners of inherited homes being unable to complete the probate court process. These included cost (cited by 92% of respondents), lack of legal representation (84%), family conflict (74%), unknown or missing heirs (75%), complexity of the process (74%), and court delays (36%). Roughly 11% of respondents responded that immigration concerns could be a barrier to completing a probate court process.

FIGURE 8: Barriers to Completing Probate

What barriers prevent completion of probate in your jurisdiction? (Select all that apply)



**including lack of knowledge, heirs not seeing a need, lack of probate court access, and creditor complications*

Conflict within families and heirs that cannot be located will still pose challenges for the ability to manage a home or property in the long-term. However, an heirship affidavit can be recorded in the property records, spelling out the family tree and documenting all owners of the property, without first reaching every heir or settling family disputes. Completing a probate court process, in contrast, requires finding and serving all of the heirs with legal paperwork. Therefore, heirship affidavits can side-step a number of the barriers to probate, at least for the purposes of documenting present ownership.

D. Varied legal bases for use of heirship affidavits in states.

There are a variety of approaches to the use and recognition of heirship affidavits. In some jurisdictions, legislatures have expressly authorized heirship affidavits by statute and established requirements governing their execution, recording, and evidentiary effect.[22] In others, our research revealed, heirship affidavits are used and accepted despite the absence of statutory authorization, either through published title standards, customary practice, or case-by-case acceptance by title insurers. Even when heirship affidavits do not result in insurable title, they can still be accepted by government agencies as a form of flexible proof of ownership. Heirship affidavit use varies greatly across the United States.

Generally, states fall into four broad categories of heirship affidavit usage:

1. **States with express statutory authorization**
   - These states have enacted laws governing the use, recording, or evidentiary effect of heirship affidavits. Some statutes provide for recognition in only a limited set of circumstances.

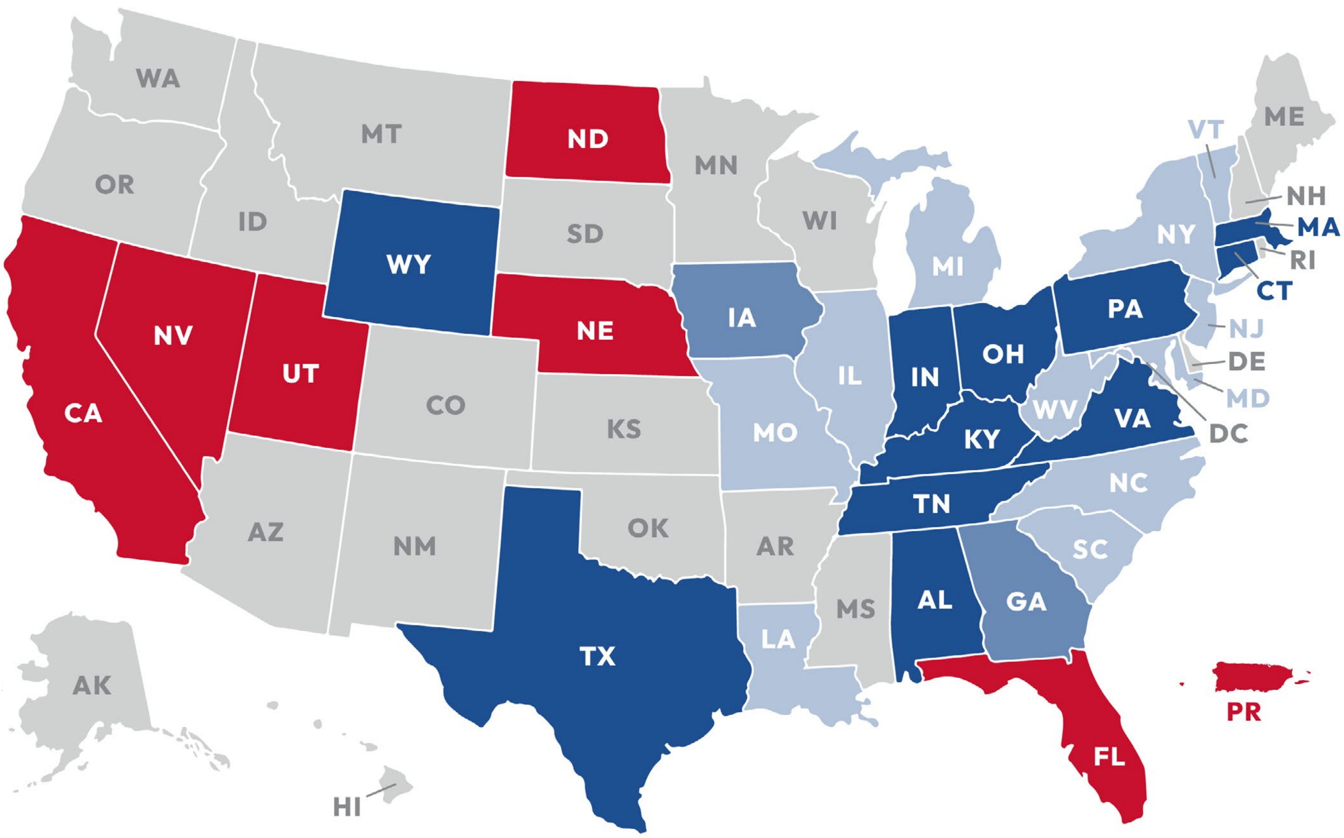
2. **States where title standards support use**
   - In these jurisdictions, published title standards provide a framework for clearly authorized heirship affidavit use despite the absence of a specific statute. Where they exist, public title standards are usually published by the real estate section of the bar. Our research identified published title standards in Georgia,[23] Iowa,[24] and Massachusetts.[25]

3. **States where heirship affidavits are used on a case-by-case basis**
   - Stakeholders reported that heirship affidavits are used in practice, but acceptance often depends on institutional discretion or transaction-specific circumstances that are not reflected in any public or clear set of standards.

4. **States with very limited to no reported use**
   - Stakeholders in these states reported limited or no heirship affidavit use, sometimes due to a perception or belief that legal barriers make heirship affidavits unusable in this jurisdiction. Our research could not conclusively determine whether in fact the laws in these jurisdictions are meaningfully different from the jurisdictions where heirship affidavits are used.

The map below illustrates these broad patterns based on survey responses, stakeholder interviews, and reviewed authorities. It is intended to show examples of reported approaches to heirship affidavit use rather than provide a comprehensive 50-state legal classification.

FIGURE 9: Map of Research Results for Each State



- **No responses** (19 states + the District of Columbia)
- **Express statutory authorization** (11 states)
- **State title standards support use** (2 states)
- **Accepted on a case-by-case basis** (11 states)
- **Very limited or no reported use** (6 states + Puerto Rico)

1. Statutory authorization of heirship affidavits

At the time of publication, the authors identified 11 states with statutory authorization for heirship affidavit use and acceptance under at least some circumstances: Alabama, Connecticut, Indiana, Kentucky, Massachusetts, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and Wyoming. Although these statutes vary in their specific requirements and legal effects, they generally establish a framework governing the preparation, recording, and evidentiary use of heirship affidavits. Many specify who may execute an affidavit, the information it must contain, and the circumstances under which it may serve as evidence of ownership. Several state statutes provide standardized forms, require recording in the deed records, or describe the affidavit's evidentiary weight in later legal proceedings.

FIGURE 10: Heirship Affidavit State Statutes

STATE	STATUTE	STATUTORY EFFECT
Alabama	Ala. Code §§ 35-4-69 – 35-4-71 (2026).	▪ Affidavits relating to real property may be made "by any person whether connected with the chain of title or not." ▪ When recorded, the record serves as notice of the facts recited. ▪ The affidavits shall be filed by the probate judge for recording and indexing. ▪ Recorded affidavits (or certified copies) are admissible as evidence and are sufficient to prima facie establish the facts stated when the affiant is deceased, unavailable, or unable to testify.
Connecticut	Conn. Gen. Stat. § 47-12a (2024).	▪ 2005 amendment clarified that the town clerk must record the affidavit in the land records. ▪ If the affiant is unavailable to testify, a recorded affidavit (or certified copy) is admissible as prima facie evidence of the facts stated in it. ▪ Specifies both permitted subjects and required contents of the affidavit.
Indiana	Ind. Code § 29-1-7-23 (West 2026).	▪ Specifies the required contents of an affidavit that serves as prima facie evidence of the transfer of real property following a decedent's death. ▪ After seven months have elapsed since the decedent's death, and if no estate has been opened or court order prevents reliance on the affidavit, it may be used as evidence that the property is not subject to sale by a personal representative to satisfy estate debts or administration costs.
Kentucky	Ky. Rev. Stat. Ann. § 382.120 (West 2025).	▪ Requires an heirship affidavit before recording a deed conveying inherited real property. ▪ Affidavit is recorded with the deed and indexed in the deed records under the decedent as grantor and the heirs as grantees. ▪ Specifies the required contents of the affidavit, including the decedent, heirs, and their respective ownership interests.
Massachusetts	Mass. Gen Laws ch. 183 §§ 5a-b (West 2026).	▪ A sworn statement relating to title to land may be recorded in the registry of deeds and shall be admissible evidence in support of title in any court in the commonwealth.

STATE	STATUTE	STATUTORY EFFECT
Ohio	Ohio Rev. Code Ann. § 5301.252 (West 2026).	■ Affidavits may be recorded by the county recorder and are recorded and indexed in the deed records. ■ Once recorded, the affidavit (or a certified copy) serves as evidence of the facts stated insofar as they affect title to real estate. ■ Specifies both permitted subjects and required contents of the affidavit. ■ Knowingly making a false statement in an affidavit constitutes the offense of falsification.
Pennsylvania	21 Pa. Cons. Stat. §§ 451 - 453 (1981).	■ Affidavits made by any person with knowledge may be recorded by the Recorder of Deeds and are indexed in the grantor and grantee indexes. ■ Once recorded, the affidavit (or a certified copy) is admissible as evidence of the facts stated, provided a Pennsylvania attorney certifies that it was relied upon in passing title. ■ Specifies both permitted subjects and required contents of the affidavit.
Tennessee	Tenn. Code Ann. § 30-2-712 (West 2024).	■ Affidavits are recorded by the register of deeds in either a separate heirship record or the deed records. ■ A recorded affidavit serves as prima facie evidence of the facts stated in proceedings involving inheritance rights. ■ Provides procedures for challenging a recorded affidavit and imposes criminal penalties for knowingly making false statements.
Texas	Tex. Est. Code Ann. § 203.001 (West 2025); Tex. Est. Code Ann. § 203.002 (West 2025).	■ A recorded affidavit concerning a decedent's heirs may serve as prima facie evidence in heirship proceedings and suits involving title to property if it has been recorded for at least five years. ■ Provides that omitted heirs and creditors retain their rights notwithstanding the affidavit. ■ Includes a model affidavit form for documenting the identity of a decedent's heirs.
Virginia	Va. Code Ann. § 64.2-509 (West 2026); Va. Code Ann. § 64.2-510 (West 2026).	■ Provides for the recording and indexing of both a List of Heirs and an Affidavit Relating to Real Estate of an Intestate Decedent. ■ A List of Heirs, which “shall” be recorded by the clerk, serves as prima facie evidence of the facts it contains. ■ Recording cost is to be paid from the estate. ■ The recorded affidavit may be used to update local land and tax records following an intestate decedent's death.

STATE	STATUTE	STATUTORY EFFECT
Wyoming	Wyo. Stat. Ann. § 34-11-101 (West 2026).	▪ Affidavits may be recorded by the county clerk and are indexed in the same manner as deeds. ▪ A recorded affidavit (or certified copy) serves as prima facie evidence of the facts stated insofar as they affect title to real estate. ▪ Specifies both permitted subjects and required contents of the affidavit.

Importantly, statutory authorization does not necessarily mean that an heirship affidavit independently creates marketable title or replaces probate. Rather, some statutes give heirship affidavits a less definitive function. Pennsylvania courts have emphasized the statutory limitation that heirship affidavits may only be used to clear title when an attorney has certified that they "relied upon such affidavit upon passing on the title to such real estate."[26] Legal services attorneys in Pennsylvania reported that they are very hesitant to make such certifications and have had only limited and cautious reliance on heirship affidavits.

As our research demonstrates, however, statutory authorization represents only one approach to heirship affidavit use. In many other jurisdictions, heirship affidavits and functionally equivalent instruments are used through title standards, customary practice, or institution-specific acceptance despite the absence of an express statute. Those factors are discussed in the next section.

2. *Factors impacting use of heirship affidavits in the absence of an heirship affidavit statute*

Survey and focus group participants explained that in some states, uniform title standards support using heirship affidavits under certain facts; and in other states the use of heirship affidavits is handled on a case-by-case basis by the title insurer in each transaction. Participants suggested that various aspects of probate law might influence whether heirship affidavits are recognized and relied upon in a particular jurisdiction. For example, a probate statute stating that real estate vests in the heirs upon death by operation of law appears to be helpful. Participants indicated that heirship affidavits were also more likely to be accepted in states where there is a relatively short time period for creditors to raise claims against a decedent's estate. However, our research did not provide conclusive clarity regarding any of these factors.

The presence of a public title standard setting out when heirship affidavits may be used makes it much more likely that the low-income homeowners and land owners who need them will be able to make use of heirship affidavits. A subject for further research is the question of why some states have public title standards and others do not. In most states that have public title standards, they are promulgated by the real estate section of the state bar.[27] However, many states do not publish any title standards or guidelines - at all, or related to heirship affidavit use and acceptance. In the absence of public title standards, title companies may adopt an internal, proprietary set of standards for when heirship affidavits will be accepted. Or in many cases, title companies allow for heirship affidavit acceptance in issuing a title policy based on case-by-case, ad hoc reasoning.

Other than not having a statute or title standard on point, stakeholders reported one major factor that may limit or prevent heirship affidavit use. Among practitioners in Florida and California, participants in focus groups and interviews stated that heirship affidavits cannot be used because property does not vest in the heirs unless and until a probate court process is completed. However, the vesting statutes in these states appear to have language that is materially similar to other states where heirship affidavits are used (see examples in Appendix B). Thus, it is unclear whether any legal impediment exists to heirship affidavit use in California or Florida or whether the lack of heirship affidavit use is a matter of custom only. Survey responses and stakeholder conversations suggest that unfamiliarity with heirship affidavits may itself operate as a barrier, even where there is no legal impediment to their use.

State Spotlights

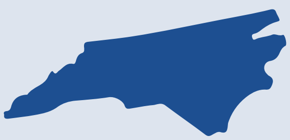
TEXAS: Clear statutory authorization.

- Texas expressly authorizes affidavits of heirship by statute and provides a framework governing their execution, recording, and evidentiary effect.[28]
- Texas represents one of the clearest examples of express statutory authorization for heirship affidavits. State law establishes a framework governing the execution, recording, and evidentiary use of heirship affidavits, providing practitioners with a recognized mechanism for documenting ownership interests derived through inheritance. Although title insurers and practitioners may still evaluate individual transactions based on their specific facts, Texas demonstrates how statutory authorization can provide greater certainty regarding the use and legal effect of heirship affidavits.

GEORGIA: Title standards support use.

- No express heirship affidavit statute identified; State Bar Title Standards are widely relied upon to facilitate real estate transactions using heirship affidavits if the death was more than three years ago.[29]
- Georgia provides an example of a jurisdiction where title standards play an important role in supporting heirship affidavit use. Stakeholders reported that title professionals may rely on heirship affidavits and related heirship documentation, despite the absence of a specific authorizing statute, if the decedent died at least three years ago.
- Despite this clear standard for achieving marketable title through an heirship affidavit, local governments and nonprofit providers often refuse to accept heirship affidavits as proof of ownership.

NORTH CAROLINA: Case-by-case use acceptance.



- No express heirship affidavit statute identified; no state title standards found; probate statutes provide for direct vesting in heirs and a two-year limit on creditor claims against estate property.
- North Carolina illustrates how heirship affidavits may function effectively without a statute expressly authorizing their use, but with a statute clearly cutting off the rights of creditors of the decedent after two years.[30] Stakeholders reported that North Carolina's property-law framework, under which title generally vests directly in heirs upon death and creditors' rights are limited after two years, creates conditions that support the use of heirship affidavits in fairly clear cut circumstances.
- Many title companies will insure title based on heirship affidavits if the death was at least two years ago; however, this is evaluated case by case.

SOUTH CAROLINA: Case-by-case use and acceptance.

- No express heirship affidavit statute identified; no title standard related to heirship affidavit use found; probate statutes provide for direct vesting in heirs and a one-year limit on creditor claims.
- South Carolina provides an example of a state where heirs property issues are both prevalent and widely recognized, yet heirship affidavits

appear to be very rarely used. Stakeholders reported occasional practical use of heirship affidavits to document family relationships and address ownership challenges. Stakeholders reported that heirship affidavit use is relatively rare in South Carolina, without any clear legal reason. South Carolina statute specifies that property transfers effective upon death, and there is a one year statute of limitations for creditors' claims against the estate of a decedent.[31]

CALIFORNIA: Very limited or no reported use.

- No express heirship affidavit statute identified and no title standard related to heirship affidavits found.
- Stakeholders expressed a belief that because ownership passes to heirs at law subject to formal estate administration,[32] heirship affidavits generally cannot serve as substitutes for probate in the same manner as they may in other jurisdictions. However, this language in California's probate code appears similar to that in other states where heirship affidavits are used and accepted. Heirship affidavits currently seem to play a more limited evidentiary role in California and are less likely to be relied upon for title-clearing purposes.

V. RECOMMENDATIONS

Based on our research findings, heirship affidavits present an opportunity for significant benefits in protecting heirs property owners from the risk of loss, reaching far beyond their current use and acceptance.

At the far end of the spectrum, heirship affidavits may eventually remove the need for probate court litigation, when clear standards exist for marketable title based on an heirship affidavit and the facts of a particular case satisfy those standards. This form of use would save immense resources that are now being expended on attorney time and legal fees for probate cases. In some states, title standards currently allow for marketable title immediately upon recording of an heirship affidavit if a death occurred more than two or three years prior. In other states, recording of an heirship affidavit now may lead to marketable title eventually after the passage of time without any challenge or objection. Clear, uniform standards for the acceptance of heirship affidavits by title insurers would greatly help to increase their use.

In the middle of the spectrum, heirs are much more likely to be able to protect and preserve their homes and land if heirship affidavits are accepted as flexible proof of ownership for owner-occupant property tax relief, home repair grants, and disaster recovery assistance. Local, state, and federal governments can and should accept heirship affidavits as a form of proof of ownership for all of these programs. Nonprofits that operate home repair programs using government funding streams also can rely on heirship affidavits as proof of homeownership.

Inherited homes and land will be at a much lower risk of loss if alternative proof of ownership can provide heirs with the benefits of homeownership. These recommendations detail ways that each major player can work to advance these goals.

HOUSING ADVOCATES, FACILITATORS OF HEIRS PROPERTY NETWORKS, AND FUNDERS: Expand awareness of heirship affidavits through education of advocates. The research suggests that heirship affidavits remain underutilized in part because many attorneys and other housing advocates are unfamiliar with them or assume they are unavailable in their jurisdiction. Additional research, state-specific outreach campaigns, and opportunities for practitioners to share experiences may improve understanding of when and how heirship affidavits can appropriately be used to document ownership interests of heirs.

LOCAL GOVERNMENTS AND NONPROFIT SERVICE PROVIDERS: Clarify and expand recognition of heirship affidavits for property tax relief and home repair programs. Government agencies administering property-related programs should review and clarify their ownership-documentation requirements to identify circumstances in which heirship affidavits may appropriately be accepted as evidence of ownership. Where consistent with applicable law and program objectives, agencies should consider expressly recognizing these instruments in program rules, guidance, and application materials. Clearer and more consistent policies may reduce unnecessary barriers to accessing property tax relief, homestead exemptions, home repair and disaster recovery assistance, and other land-related and homeownership benefits while maintaining program integrity.

TITLE INDUSTRY PROFESSIONALS: Prioritize a review of heirship affidavit acceptance in each state and move towards clear rules rather than case-by-case reliance. Conversations between title insurers and legal services attorneys may help identify best practices, improve consistency, and expand appropriate uses of heirship affidavits. Whenever possible, title industry players should create standardized industry rules around the use of heirship affidavits rather than case-by-case consideration. There may be no need to change any state laws. Moreover, title industry professionals can help local government and nonprofit players understand why heirship affidavits can be used as acceptable proof of ownership for home repairs and tax relief even when they do not immediately give rise to insurable title.

VI. CONCLUSION

Heirship affidavits have the potential to alleviate the most significant risks of loss faced by heirs property owners. When the key players are aware of them, they can clear a path to getting home repairs, disaster relief, and property tax discounts without requiring a completed probate court lawsuit with all of its delay and expense. In some jurisdictions and under appropriate circumstances, heirship affidavits may also help establish marketable or insurable title, further expanding their value as an ownership-documentation tool.

Even when statutes or title standards provide for a clear rule for use of heirship affidavits, local governments and providers of home repair grants must adjust their policies to make heirship affidavits an acceptable form of proof of ownership. Malyndia Brown's story exemplifies this need–even though Georgia has a clear title standard permitting heirship affidavits three years after a landowner's death, the county where she lives refused to accept flexible proof of ownership to make her tax bill affordable.

In light of the significant shortage of free or affordable legal help to represent the number of existing heirs property owners in probate cases, heirship affidavits are an essential tool in the work of preserving and protecting the owners of inherited homes and land. Every actor described in this report has a role to play in encouraging broader adoption of this vital tool.

APPENDIX A: CHART OF SURVEY, FOCUS GROUP, AND INTERVIEW PARTICIPATION

This chart reflects whether we had survey or focus group participation from each state or jurisdiction, and what conclusion arose from that data if so. In the "Survey Respondents" column, LS indicates legal services participants and TI indicates title industry participants.

STATE / JURISDICTION	CLASSIFICATION	STATUTE	SURVEY RESPONDENTS	FOCUS GROUP OR INTERVIEW PARTICIPANTS
Alabama	Express statutory authorization	✔	LS (2)	1
Alaska	No responses	-	-	-
Arizona	No responses	-	-	-
Arkansas	No responses	-	-	-
California	Very limited or no reported use	-	TI (1) LS (1)	2
Colorado	No responses	-	-	-
Connecticut	Express statutory authorization	✔	TI (1)	-
Delaware	No responses	-	-	-
District of Columbia	No responses	-	-	-
Florida	Very limited or no reported use	-	TI (3) LS (2)	3
Georgia	State title standards support use	-	TI (1) LS (3)	1
Hawaii	No responses	-	-	-
Idaho	No responses	-	-	-

STATE / JURISDICTION	CLASSIFICATION	STATUTE	SURVEY RESPONDENTS	FOCUS GROUP OR INTERVIEW PARTICIPANTS
Illinois	Accepted on a case-by-case basis	-	LS (3)	-
Indiana	Express statutory authorization	-	TI (1) LS (1)	-
Iowa	State title standards support use	-	TI (1)	-
Kansas	No responses	-	-	-
Kentucky	Express statutory authorization	✔	-	-
Louisiana	Accepted on a case-by-case basis	-	LS (9)	-
Maine	No responses	-	-	-
Maryland	Accepted on a case-by-case basis	-	LS (2)	-
Massachusetts	Express statutory authorization	-	TI (2) LS (2)	2
Michigan	Accepted on a case-by-case basis	-	LS (3)	2
Minnesota	No responses	-	-	-
Mississippi	No responses	-	-	-
Missouri	Accepted on a case-by-case basis	-	LS (5)	1
Montana	No responses	-	-	-
Nebraska	Very limited or no reported use	-	TI (1)	-

STATE / JURISDICTION	CLASSIFICATION	STATUTE	SURVEY RESPONDENTS	FOCUS GROUP OR INTERVIEW PARTICIPANTS
Nevada	Very limited or no reported use	-	TI (1)	-
New Hampshire	No responses	-	-	-
New Jersey	Accepted on a case-by-case basis	-	TI (1)	-
New Mexico	No responses	-	-	-
New York	Accepted on a case-by-case basis	-	TI (1) LS (6)	1
North Carolina	Accepted on a case-by-case basis	-	TI (1) LS (5)	1
North Dakota	Very limited or no reported use	-	TI (1)	-
Ohio	Express statutory authorization	✔	LS (2)	2
Oklahoma	No responses	-	-	-
Oregon	No responses	-	-	-
Pennsylvania	Express statutory authorization	✔	LS (4)	1
Puerto Rico	Very limited or no reported use	-	LS (1)	-
Rhode Island	No responses	-	-	-
South Carolina	Accepted on a case-by-case basis	-	TI (1) LS (2)	-
South Dakota	No responses	-	-	-

STATE / JURISDICTION	CLASSIFICATION	STATUTE	SURVEY RESPONDENTS	FOCUS GROUP OR INTERVIEW PARTICIPANTS
Tennessee	Express statutory authorization	✔	TI (1) LS (1)	-
Texas	Express statutory authorization	✔	TI (4) LS (4)	4
US Virgin Islands	Very limited or no reported use	-	TI (1)	-
Utah	Very limited or no reported use	-	TI (1)	-
Vermont	Accepted on a case-by-case basis	-	TI (1) LS (2)	-
Virginia	Express statutory authorization	✔	LS (1)	-
Washington	No responses	-	-	-
West Virginia	Accepted on a case-by-case basis	-	TI (1)	1
Wisconsin	No responses	-	-	-
Wyoming	Express statutory authorization	✔	TI (1)	-

APPENDIX B: SAMPLES OF STATE INTESTATE REAL PROPERTY DISTRIBUTION

Examples of statutory language in illustrative states and of the Uniform Probate Code.

California

- **Cal. Prob. Code § 7000 (West 2026).**
  "Subject to Section 7001, title to a decedent's property passes on the decedent's death to the person to whom it is devised in the decedent's last will or, in the absence of such a devise, to the decedent's heirs as prescribed in the laws governing intestate succession."
- **Cal. Prob. Code § 7001 (West 2026).**
  "The decedent's property is subject to administration under this code, except as otherwise provided by law, and is subject to the rights of beneficiaries, creditors, and other persons as provided by law."

North Carolina

- **N.C. Gen. Stat. § 28A-15-1 (West 2026).**
  (a) "All of the real and personal property, both legal and equitable, of a decedent shall be assets available for the discharge of debts and other claims against the decedent's estate in the absence of a statute expressly excluding any such property. Provided that before real property is selected the personal representative must determine that such selection is in the best interest of the administration of the estate."
  (c) "If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, except that no such proceeding shall be required for a sale made pursuant to authority given by will. A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-13-3(c), the personal representative may petition for sale, lease, or mortgage of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

- **N.C. Gen. Stat. § 28A-15-2 (West 2026).**
  (b) "The title to real property of a decedent is vested in the decedent's heirs as of the time of the decedent's death; . . ."
- **N.C. Gen. Stat. § 28A-17-12. Sale, lease or mortgage of real property by heirs or devisees.**
  (b) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within two years after the death of the decedent, all sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent shall be valid as to creditors and personal representatives of the decedent. (1973, c. 1329, s. 3; 1979, 2nd Sess., c. 1246, s. 1.)

Florida

- **Fla. Stat. § 732.101 (West 2026).**
  (1) Any part of the estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in the following sections of this code.
  (2) The decedent's death is the event that vests the heirs' right to the decedent's intestate property.
- **Fla. Stat. § 732.607 (West 2026).**
  (1) "Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the protected homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. . . ."
- **Homestead property is exempt (per Florida Constitution and § 732.401)**

Texas

- **Tex. Est. Code Ann. § 101.001 (West 2026).**
  (a)(3) "all of the person's estate that is not devised by [a] will vest immediately in the person's heirs at law."
- **Tex. Est. Code Ann. § 351.051 (West 2026).**
  (a) "A personal representative of an estate may . . ."
    (2) "take claims or property for the use and benefit of the estate in payment of a debt due or owed to the estate;"

Michigan

- **Mich. Comp. Laws § 700.2101 (West 2026).**
  (1) "Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this act, except as modified by the decedent's will."
- **Mich. Comp. Laws § 700.3709 (West 2026).**
  "Except as otherwise provided by a decedent's will or by this section, a personal representative has a right to, and if necessary for purposes of administration, shall take possession or control of, the decedent's property, except that real property or tangible personal property may be left with or surrendered to the person presumptively entitled to that property unless or until, in the personal representative's judgment, possession of the property will be necessary for purposes of administration."

Uniform Probate Code (UPC)

- **§ 3-101**
  "Upon the death of a person, the person's real and personal property devolves . . . to the person's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration."
- **§ 3-709**
  "Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration."
- **§ 3-715**
  "Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in Section 3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:"

    (23) "sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;"

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