



# HEIRS' Property

Mississippi Center for Legal Services (MCLSC) is committed to assisting in the prevention of the loss of land identified as heirs' property.

## *What is Heirs' Property?*

Heirs' property refers to land or real property that has been transferred informally from generation to generation to multiple family members. In most cases, the landowner died without a will. When heirs' property is created, the land is owned in common by all of the heirs, regardless of whether they live on the land, pay taxes, or have had any contact with the land. The heirs own the property together with an undivided interest. Each heir does not have their own or an individual lot or piece of the property.



# Some Common Problems With Heirs Property

- ✓ Clouded or Unclear Title- Ownership is not formally recorded, which complicates sales, mortgages, finances, insurance, or home improvement loans.
- ✓ The property becomes more divided or has more factions with each generation.
- ✓ All co-owners must agree on decisions about the property, which is less likely when many people are involved.
- ✓ A single heir can file a court petition to force the sale of the property, even if others do not want to sell.
- ✓ Third parties (non-family or family) may buy an interest in the property and force a sale.
- ✓ Unclear title prevents access to loans, grants, disaster relief, and other benefits that require a clear title.
- ✓ Disagreements among the heirs can lead to neglect or disrepair of the property because you cannot agree on who pays the taxes or pays for repairs.



# What Can MCLSC Do To Help?

MCLSC can help resolve heirship problems by drafting legal documents and possibly other actions to help avoid issues and to quiet or clear title. Some documents that can be drafted are as follows:

## A Will

A Will is a legal document that outlines how a person's assets, property, and possessions should be distributed after their death. It can also include instructions for guardianship of minor children and other final wishes. Here are the key points:

### Purpose

To ensure your estate is handled according to your wishes.

### Contents

Typically includes beneficiaries (who gets what), an executor (person responsible for carrying out the Will), and sometimes funeral instructions.

### Legal Requirements

Must meet the laws of the jurisdiction where it is created—usually requires the testator's signature and witnesses. (Mississippi requires that you be at least 18 years of age and competent).

### Revocable

You can change or update your "Will" anytime if you are still competent.

## Essential Information needed:

- A list of property (personal and land) and other assets.
- Who is to receive what property and their relationship to you.
- Who will act as executor/executrix.
- Address and legal description of real property (land).

# A Deed

A deed is a legal document that represents the transfer of ownership or rights to property from one party to another. It is most commonly used in real estate transactions. Here are the key points:

## Purpose

A deed serves as evidence that the property has been legally transferred.

## Parties Involved

Typically includes a grantor (the person transferring the property) and a grantee (the person receiving it).

## Requirements

**For a deed to be valid, it usually must:**

- Be in writing.
- Clearly identify the parties and the property.
- Include words of conveyance (e.g., “grant,” “transfer”).
- Be signed by the grantor.
- Often be delivered and accepted by the grantee.
- Be filed in the records of the Chancery Clerk where the property is located.



# *A Quitclaim Deed*

A quitclaim deed is a legal document used to transfer ownership or interest in real property from one person (the grantor) to another (the grantee) without any guarantees or warranties about the title. Here is what that means in practice:

## *No Title Guarantee*

The grantor does not promise that they actually own the property or that the title is clear. They only transfer whatever interest they may have.

## *Common Uses*

- Transferring property between family members (e.g., adding/removing a spouse after marriage or divorce).
- Moving property into a trust or business entity.
- Clearing up title issues (e.g., removing a potential claim).

## *Risk*

Because there are no warranties, the grantee assumes the risk that there could be liens, claims, or other defects in the title.



# A Quitclaim Deed reserving a Life Estate

A quitclaim deed reserving a life estate is a legal document often used in estate planning. Here is what it means:

## Reserving a Life Estate

When the grantor reserves a life estate, they keep the right to live in and use the property for the rest of their life, even though the deed transfers the remainder interest to someone else.

- **The grantor becomes the Life Tenant.**
- **The person receiving the future interest is called the Remainderman.**

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## How It Works

- The property is split into two interests:
  1. Life Estate: The grantor retains possession and control during their lifetime.
  2. Remainder Interest: The grantee owns the property subject to the life estate and gains full ownership automatically upon the life tenant's death.
- This arrangement avoids probate because the transfer happens by operation of law when the life tenant dies.
- The life tenant cannot sell or mortgage the entire property without the consent of the remainderman.

# *A Quitclaim Deed reserving a Life Estate*

## *Why Use It?*

- ◆ **Estate Planning:** It ensures the property passes to heirs without probate.
- ◆ **Medicaid Planning:** Can help protect the home from being counted as an asset after a certain period.
- ◆ **Tax Benefits:** Heirs may receive a stepped-up basis for capital gains purposes.

## *Essential Information Needed:*

- ✔ Full name, address, marital status, and phone number of the grantor (person giving away their interest in the property), and the same information for the grantee (person receiving the property).
- ✔ Legal description of property from existing deed or tax records (Ideally, a copy of the current deed).
- ✔ How ownership is currently listed and any liens against the property.
- ✔ Common address for the property.
- ✔ The value given for the purchase of the property.

# *A Transfer on Death (TOD)*

A Transfer on Death (TOD) deed is a legal document that allows a property owner to name one or more beneficiaries who will automatically inherit the property upon the owner's death—without going through probate. Here are the key points:

## *How It Works*

- **The property owner (called the grantor) keeps full control of the property during their lifetime. They can sell, mortgage, or change beneficiaries at any time.**
- **The transfer only takes effect after the owner's death.**
- **Beneficiaries have no rights to the property while the owner is alive.**
- **The deed must be signed, notarized, and recorded in the county where the property is located before the owner dies for it to be valid.**
- **Avoids probate, which can save time and money.**
- **Simple and less expensive than creating a trust.**
- **Flexible—can be revoked or changed at any time before the person's death or incompetence.**

## *Requirements in Mississippi*

- **Must include a full legal description of the property.**
- **Must be signed and notarized by the owner.**
- **Must be recorded with the county chancery clerk's office.**
- **Becomes effective on the death of the grantor.**

# A Transfer on Death (TOD)

## Essential Information Needed:

### GRANTOR INFORMATION

- ✓ Full legal name(s) of the current property owner(s) as shown on the existing deed.
- ✓ If there are co-owners, clarify whether they are joint tenants or tenants in common.

### BENEFICIARY INFORMATION

- ✓ Full legal name(s) of the person(s) or entity you want to inherit the property.
- ✓ Avoid vague terms like “my children;” list each beneficiary individually.

### PROPERTY DESCRIPTION

- ✓ The legal description of the property (not just the street address).
- ✓ This is usually found on the current deed or in the county land records.

### RECORDING

- ✓ The TOD deed must be recorded with the county land records office, where the property is located before the grantor’s death.

### REVOCATION OR CHANGES

- ✓ TOD deeds are revocable. To change beneficiaries or cancel the deed, you must execute and record a new TOD deed or a revocation document.



# Affidavit of Heirship

Affidavit of Heirship is a sworn legal document used to identify and confirm the rightful heirs of a person who has died without a will (intestate). Its main purpose is to simplify the transfer of ownership of the deceased person's property, especially real estate—to their heirs without going through a full probate process.

## When it is used

- When someone dies without a will.
- Typically for real property (land, house) and when the estate is relatively simple (few debts, no disputes among heirs).

## Witnesses

- Must be signed by two disinterested witnesses (people who knew the deceased but will not inherit).
- Must be notarized.

## What it includes

- Decedent's full name, date, and place of death.
- Family history (spouse, children, parents, siblings).
- Legal description of the property.
- Statement about debts.

## Filing

- Recorded with the county clerk where the property is located.
- Once filed, it creates a public record of heirship and helps establish a clear title.

**It is often a cost-effective alternative to probate, saving time and money when the estate qualifies under state laws. However, it does not carry the same legal weight as a court order, and it can be contested by other potential heirs.**

# Affidavit of Heirship

## Essential Information Needed:

### INFORMATION ABOUT THE PERSON WHO DIED

- ✓ Full legal name.
- ✓ Date and place of death (death certificate if available).
- ✓ Last known address.
- ✓ Marital history (including names of current and former spouses, dates of marriage/divorce).
- ✓ Statement confirming the decedent died without a will (intestate).

### INFORMATION ABOUT HEIRS

- ✓ Names, addresses, and relationships of all legal heirs (spouse, children, parents, siblings).
- ✓ Details of any deceased heirs (including date of death and their heirs).
- ✓ Confirmation of whether there are any adopted children or other dependents.

### PROPERTY DETAILS

- ✓ Description of the property to be transferred (especially real estate).
- ✓ Legal description of real property (as found on the deed).
- ✓ List of other assets and debts, if applicable.

### AFFIANT AND WITNESS INFORMATION

- ✓ Affiant (person completing the affidavit): name, contact information, and signature.
- ✓ Two disinterested witnesses (not heirs and with no financial interest in the estate) who knew the decedent and can attest to family history.
- ✓ Witnesses must sign in the presence of a notary public.

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