

**NEW IOWA PARTITION LAW
IOWA CODE CHAPTER 651
(EFFECTIVE ON JULY 1, 2018)**

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I. BACKGROUND OF PARTITION LAW

- A. Partition law has developed over several centuries to address the issue of joint and co-ownership of properties.
- B. Starting in the 16th century, English courts began permitting tenants in common to physically divide property among owners through partition in kind.
- C. Colonies afforded these same rights to co-owners.
- D. In the mid-nineteenth century, many states began to authorize courts to order partition by sale, allowing just one co-tenant to force the sale of an entire property. Until passage of a new partition law in 2018, Iowa was one of those states.
- E. Attached is a copy of a June 18, 2018 article “Arcane U.S. Land Law Gets Slow Makeover When Land or a Home is Passed on Without a Clear Will,” written by Washington Post editor Carey L. Biron. Mr. Biron states that forced partition sale of family-owned land is “the worst problem no one has heard of. . . . The issue has disproportionately affected poor and minority Americans, making an inherited property impossible to sell or – by contrast – imposing an unwanted sale on a rightful heir, sometimes to the benefit of a developer. . . . The issue has

particularly hurt African Americans, whose landholdings dropped 80 percent in the 20th Century, according to research published by the U.S. Forest Service.”

- F. Attached is a copy of a January 2019 Progressive Farmer magazine article entitled “Option for Heirs – New Iowa Law is Designed to Make it Easier for Families to Keep the Farm Together,” by Elizabeth Williams. In her article, Ms. Williams states:

No family wants to end up in court arguing about how inherited farmland will be divided. It’s even more discouraging when one owner wants to keep the land, but the court orders all the owners to sell.

Iowa passed a law in 2018 that allows a way to equalize the property without a sale. The result: Person(s) wanting to sell can get cash out, while owner(s) preferring to keep the family farm are not forced to sell.

II. *NEWHALL v. ROLL*

- A. In *Newhall v. Roll*, 888 N.W.2d 636 (Iowa 2016), the Iowa Supreme Court addressed the partition of an Iowa family farm. One of the family heirs desired a partition in kind, and another family heir desired a partition by sale. The Court ordered partition by sale. The Court declared that partition by sale is favored by Iowa law, and that partition in kind is not appropriate where separate parcels depreciate the aggregate value.
- B. The *Newhall* decision adopted an economic-based analysis of partitions, showing that the whole of a property is often worth more than individual pieces. The economic-based standard used in *Newhall* assigns little or no value or significance to intangible characteristics, such as family history or emotional attachment to a farm that has been owned and operated by a particular family for generations.

- C. Throughout Iowa's history, family farms have been the social and economic backbone of Iowa's rural communities. Family farms may have unusual sentimental, cultural or historic value to members of the family. A partition by sale may have the effect of forcing family members off land that has special value to them.
- D. Today, persons over 65 years of age own more than half of Iowa farmland, which will result in many ownership changes in the near future. In the coming years, large amounts of land will pass to multiple siblings, increasing the frequency of partition actions.

III. 2018 ENACTMENT OF SF2175

- A. Effective on July 1, 2018, the Iowa Legislature enacted SF2175, a comprehensive revision of Iowa partition law that included a preference for partition in kind with regard to specific types of "heirs property."
- B. By its enactment of SF 2175, the Legislature recognized that family farms often present special circumstances where non-economic factors favoring partition in kind should be given fair consideration by the court.
- C. The new law requires that the trial court must apply a multi-factored test that requires overall evaluation of non-economic factors, and not just economic factors, in making the determination to order a partition in kind or a partition by sale.
- D. Prior to the bill enactment, Iowa Code chapter 651 was the only Iowa partition statute. However, chapter 651 previously contained very few provisions, and most of the substantive procedures for partitions were contained within Division

XII of the Iowa Rules of Civil Procedure, containing Rules 1.1201 through 1.1228 inclusive.

- E. The new bill places all the partition procedures in chapter 651. The sections in chapter 651 are entirely reorganized and renumbered.
- F. Effective on July 1, 2018, Division XII of the Rules was repealed in its entirety.

IV. ORGANIZATION OF AMENDED CHAPTER 651

- A. The new bill divides chapter 651 procedures into three divisions.
 - 1. Division I (section 651.1) provides definitions.
 - 2. Division II (sections 651.2 through 651.26) provides general provisions applicable to all partitions.
 - 3. Division III (sections 651.27 through 651.32) provides special provisions that apply only in situations where real estate defined as “heirs property,” is partitioned.

V. PETITION (SECTION 651.4)

- A. New section 651.4 provides: “A petition for partition of property shall describe the property and the plaintiff’s interest in the property. The petition shall name all indispensable parties pursuant to section 651.5 and state the nature and extent of each interest or lien as far as each interest or lien is known by the plaintiff.”
- B. New section 651.7 provides: “A party may perfect or quiet title to property in a partition action or request adjudication of a right of a party as to any matter originating from or connected to the property, including a lien between any parties.” It would be prudent to include in the petition a prayer for a quiet title decree or for adjudication of any rights in the property.

- C. New section 651.7 prohibits joinder of other claims and counterclaims in partition actions.
- D. Particularly if parties disagree over whether property should be partitioned by sale or in kind, the attorney for the plaintiff who files the petition may be of strategic importance. The plaintiff's attorney will be in control of the partition proceedings and may be in a position to have more impact on the proceedings than attorneys for other parties.

VI. ANSWER (SECTION 651.6)

- A. New section 651.6 provides: "A defendant's answer to a partition petition shall state the amount and nature of the defendant's interest. A defendant may deny the interest of a plaintiff and by supplemental pleading, if necessary, may deny the interest of any other defendant."
- B. It may be prudent to include in the answer a prayer for a quiet title decree or for adjudication of any rights in the property.

VII. REQUEST FOR PARTITION IN KIND (SECTION 651.2)

- A. New section 651.2 provides that property "shall be partitioned by sale and the proceeds from the sale divided by the owners of the property unless one or more of the property owners files a request for partition in kind and the court determines partition in kind is equitable and practicable."
- B. A request for partition in kind may be made in the petition, an answer, or in a later filed instrument. A party filing a request for partition in kind should file the request before or during the hearing before the court on the matter of the initial decree required by new section 651.12. This is because there will be different

matters to address in the initial decree, if there is the possibility of partition in kind.

VIII. INITIAL DECREE (SECTION 651.12)

C. New section 651.12 provides that the court shall file an initial decree addressing the following matters:

1. The shares and interests of the owners in the property must be established.
2. One referee is required to be appointed, unless all the owners of the property agree upon a larger number.
 - a. This amendment changes prior law.
 - b. Prior Rule 1.1210 provided that, for a partition in kind, the court must appoint three referees, unless the parties agree upon a smaller number; and that, for a partition by sale, the court must appoint one or more referees.
 - c. The appointment of more than one referee often is needlessly redundant and expensive. The new statute is more flexible and leaves the decision to the parties in each particular case.
3. An appraisal is required to be ordered.
 - a. The amendment changes prior law.
 - b. In the case of a partition in kind, prior Rule 1.1210 did not require the court to order an appraisal.
 - b. In case of a partition by sale, prior Rule 1.1210 provided that the appraisal must be conducted by three “disinterested freeholders.”

- c. The bill requires the court to order an appraisal in all partitions, whether in kind or by sale.
 - d. The court is given the discretion to direct the manner of appraisal, so that the appraisal could be conducted by three appointed “disinterested persons with knowledge of property valuation,” or by “a different method for conducting the appraisal or estimating the valuation of the property,” pursuant to agreement of all the owners of the property.
- 4. The decree is required to direct the referee to file a report setting forth the referee’s recommendations for completing the partition. Prior Rule 1.1210 did not set forth this specific requirement.
 - 5. “All other contested issues relating to the partition petition, including liens, may be determined by the initial decree or by a supplemental decree or decrees.”

**IX. PARTITION IN KIND PROCEDURES
(SECTION 651.16)**

- A. New section 651.16 sets forth the procedures specifically applicable to partitions in kind.
- B. The provisions of the prior Rules governing partitions in kind were presented in an uncoordinated manner. Placing the related procedures in one section promotes efficiency and reduces confusion.
- C. Subsection 4 of section 651.16 requires the referee to file a report with the court detailing the referee’s proposed division of the property. If real property is part of the partition, a plat must be filed with the report.

- D. Subsection 4 specifically authorizes the referee to “recommend owelty payments as part of the referee’s recommendation for the partition in kind.”
1. The term “owelty” is defined in new subsection 6 of section 651.1 to mean “an equitable remedy in a partition action used to equalize the value of the property a party receives through the payment of a sum of money from a recipient of a higher value property to the recipient of a lower value property.”
 2. In *Newhall v. Roll*, the Supreme Court declined to rule on the issue of whether owelty is available as a remedy under current law and left the issue for future resolution.
 3. To avoid the uncertainty after *Newhall*, the new statute specifically authorizes owelty as an acceptable remedy that may be imposed by a court under appropriate circumstances.
- E. Subsection 5 of section 651.16 provides for a court hearing on the report of the referee, after which the court shall enter an order approving, modifying or disapproving the report. If the court orders a partition in kind, it must order that the partition shall not be completed until all owelty payments have been made. On approving a partition in kind after all owelty payments have been made, the court is required to file a decree describing the partitioned property in its entirety, describing each parcel allocated to each property owner, and entering judgment against each property owner for the owner’s apportioned costs. Such costs are a lien on the owner’s allocated parcel.
- F. Subsection 6 of section 651.16 requires the clerk of court to file a certified copy of the decree with the county recorder and provide a copy to the county auditor.

The auditor is required to record a transfer in the deed records and index each parcel as a conveyance with the name of the owner as the grantee and the names of all other parties to the partition as grantors.

- G. New section 651.17 provides: “A referee shall file a report with the court if the referee is not able to make a partition in kind.” Upon receipt of the report, the court must order sale of any personal property without further notice, and set a hearing for the purpose of ordering a sale or other disposition of any real estate.

X. PARTITION BY SALE PROCEDURES (SECTIONS 651.18 AND .23)

- A. New section 651.18 sets forth the procedures specifically applicable to partitions by sale.
- B. The provisions of the prior Rules governing partitions by sale are presented in an uncoordinated manner. Placing the related procedures in one section promotes efficiency and reduces confusion.
- C. Subsection 3 of section 651.18 requires the referee to file a report with the court containing a copy of the appraisal and recommending public or private sale procedures, including but not limited to a public auction or a private listing.
- D. Subsection 4 requires the court to set a hearing on the referee’s report.
- E. Subsection 5 requires the court to approve, modify or disapprove the referee’s report. If the court approves partition by sale, the court is required to order appropriate sale procedures.
- F. Subsection 6 provides requirements for publication and advertisement of proposed sale by the referee.
- G. Subsection 7 requires the referee to report a proposed sale to the court, and the court is required to set a time of hearing after notice to all interested parties.

- H. Subsection 8 requires the court, after the hearing, to approve or disapprove the sale.
- I. New section 651.23 provides: “Upon court approval of a sale of property to be partitioned by sale, the referee shall file a referee’s deed that shall be recorded in the county where the real estate is located.”

XI. LIENS (SECTIONS 651.12, .14 AND .20)

- A. New section 651.20 provides: “Personal property shall be partitioned by sale free of all liens. Real property shall be partitioned by sale free of all liens except liens held against the entire property.”
- B. New section 651.14 provides that the court shall adjudicate matters relating to liens, stating: “Adjudication of liens shall precede a partition in kind. A partition by sale and the distribution of proceeds from such sale to any party not affected by a lien may proceed prior to adjudication of liens on the property.”
- C. New section 651.12 provides that contested issues relating to liens “may be determined by the initial decree or by a supplemental decree or decrees.”

XII. COSTS (SECTIONS 651.16, .22, .23 AND .24)

- A. New section 651.22 provides: “All costs related to a partition action shall be advanced by the plaintiff with such costs paid by all parties to the action proportionately to each party’s respective interest. A cost created by a contest arising from the partition action shall be taxed against the losing contestant unless otherwise ordered by the court.”
- B. New section 651.23 provides that the plaintiff’s attorney fees are included within the taxed costs, and further provides: “If the plaintiff is the losing

contestant in a contest arising from any partition, any of the plaintiff's attorney fees relating to such contest shall not be taxed as costs."

- C. New section 651.24 provides: "Appraisers, referees, and attorneys appointed by a referee with court approval shall receive reasonable compensation as approved by the court and such compensation shall be part of the costs."
- D. New section 651.16 provides that the costs of making and recording a certified copy of the decree for a partition in kind are to be taxed as costs.

XIII. REFEREE'S FINAL REPORT (SECTION 651.25)

- A. New section 651.25 provides: "Unless waived in writing by all interested parties, the court shall fix a time and place for a hearing on the referee's final report. The referee shall give notice of the hearing to all interested parties."

XIV. HEIRS PROPERTY (SECTIONS 651.27 THROUGH 651.31)

- A. New Division III, sections 651.27 through 651.31, provide for special procedures relating to partition of "heirs property," as defined in section 651.1, subsection 6.
- B. The provisions of Division III are required to control in the event of any conflict with any provisions of Division II, sections 651.1 through 651.26.
- C. Subsection 6 of section 651.1 defines "heirs property" to mean "real property held in tenancy in common that satisfies all of the following requirements as of the date of the filing of a partition action:
 - a. There is not a recorded agreement that binds all of the cotenants that governs the partition of the property.
 - b. One or more of the cotenants acquired title from a living or deceased relative.

- c. Any of the following applies:
- (1) Twenty percent or more of the interests are held by cotenants who are relatives.
 - (2) Twenty percent or more of the interests are held by an individual who acquired title from a living or deceased relative.
 - (3) Twenty percent or more of the cotenants are relatives.”
- D. Pursuant to section 651.27, the special heirs property procedures are applicable only “if a cotenant requests a partition in kind in an action to partition heirs property.” If all cotenants agree to partition by sale, none of the provisions of Division III are applicable to the partition.
- E. Section 651.28 requires the court to file an initial decree appointing a referee and ordering an appraisal. Upon receipt of the appraisal, the court is required to hold a hearing and make a determination of the fair market value of the property.
- F. Section 651.29 provides that, in cases where a cotenant requests partition sale, the cotenants that did not seek a sale have the right to buy out the petitioning cotenant at a price that represents the value of the petitioning cotenant’s fractional ownership interest.
- G. After the conclusion of the buyout under section 651.29, section 651.30 requires the court to make a determination whether to order partition in kind or partition by sale.
- H. The court is required to order a partition in kind, unless the court determines that partition in kind would result in “great prejudice to the cotenants as a group.”

- I. In making this determination, the court is required to first give consideration to all of the numerous factors listed in subsection 1 of section 651.31, the exact text of which is as follows:
 - a. Whether the heirs property can be practicably divided among the cotenants.
 - b. Whether a partition in kind will apportion the heirs property in such a way that the aggregate fair market value of the parcels resulting from the division will be materially less than the value of the heirs property if the heirs property is sold as a whole, taking into account the condition under which a court-ordered sale likely will occur.
 - c. Evidence of the collective duration of ownership or possession of the heirs property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other.
 - d. A cotenant's sentimental attachment to the heirs property, including any attachment arising due to the heirs property having ancestral or other unique or special value to the cotenant.
 - e. The lawful use being made of the heirs property by a cotenant and the degree to which the cotenant will be harmed if the cotenant cannot continue the same use of the heirs property.
 - f. The degree to which a cotenant has contributed the cotenant's pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the heirs property, or has contributed to the physical improvement, maintenance, or upkeep of the heirs property.

- g. Tax consequences.
 - h. Any other factors the court deems relevant.
- J. Subsection 2 of section 651.31 provides: “The court shall weigh the totality of all relevant factors and circumstances and not consider any one factor in subsection 1 to be dispositive.”



Options for Heirs

New Iowa law is designed to make it easier for families to keep the farm together.

BY ELIZABETH WILLIAMS

No family wants to end up in court arguing about how inherited farmland will be divided. It's even more discouraging when one owner wants to keep the land, but the court orders all the owners to sell.

Iowa passed a law in 2018 that allows a way to equalize the property without a sale. The result: Person(s) wanting to sell can get cash out, while owner(s) preferring to keep the family farm are not forced to sell. Only 10 other states have a similar law: Alabama, Arkansas, Connecticut, Georgia, Hawaii, Montana, Nevada, New Mexico, South Carolina and Texas.

PROPERTY DIVIDE.

In most states, disputes between owners who inherit land and cannot agree on how to split the property often end up with the court ordering a "partition by sale." Then, the proceeds from the sale are proportionally divided among all the owners.

Alternatively, a more congenial way to divide property is "partition in kind," where the parcels

are physically divided to carve out a separate piece for each owner. Then, each owner can do what he or she wants to do with the individual pieces of land. However, it is difficult sometimes to divide the land into equal portions, or the parties are opposed to the land being divided in this way.

This issue was highlighted in a 2016 Iowa Supreme Court case involving a sister and brother who owned farmland (row crop, pasture and timber) as tenants in common in two counties. The property was not easily divided into equitable parcels. So, the court said, all the property must be sold and the proceeds divided between the owners, although one of the owners preferred not to sell the property, which included the "homeplace."

The net effect of the old law, explains attorney Jim Nervig, with Brick Gentry law firm, in Des Moines, is, "if some family members wanted to keep the land, and others wanted to sell, those who wanted to sell had veto power over everyone else." As soon as one person wanted to sell, even if that person owned less than 5%, and all the other owners wanted to hold onto the land, that owner could go to court to "partition" the land. If the owners could not agree on what to pay those who wanted to cash out their ownership, the entire property often ended up in a sale.

BUYOUT OPTION. Under the new law, Nervig, who spearheaded Iowa's law, gives this example of a family with a doctor's son who wants to get his value out of land he co-owns with his farming brother, and they can't agree on how to divide the property. A court-appointed "referee" would get an appraisal to establish the value. The farming son has the legal right to buy out his brother at the appraised value without having to put the property up for sale.

It just seems logical, Nervig admits. However, that's not how the Iowa law was written before the 2018 revision. And, that's not the law in many states, where the court remedy generally leans to "partition by sale" in inherited land disputes. Nervig says, "Once we called it the 'Save the Family Farm' bill, there was little opposition to the bill."

Kristine Tidgren, director of the Center for Agricultural Law and Taxation, at Iowa State University, agrees the law will change how disputes are settled. "This extensive rewrite of Iowa partition law will certainly change the way family property is divided in Iowa.

"It should also result in more settlements and fewer court proceedings regarding [inherited] property once parties understand that a partition by sale is unlikely. This change appears welcome for those wanting to keep the farm in the family," Tidgren adds, and it avoids the disputed farm from being sold on the courthouse steps.

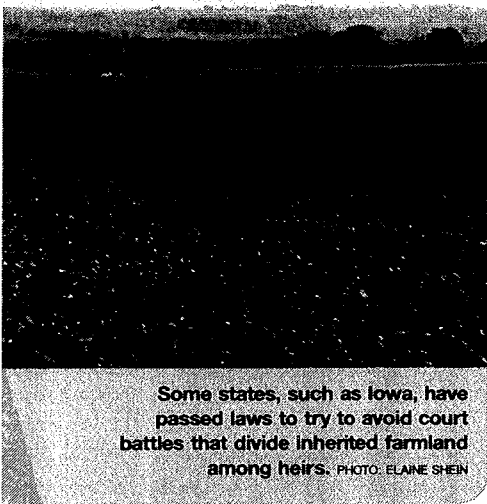
Does your state law need to be changed?

Property law is governed by state law, and each state is different. But, on some issues, such as bankruptcy or insurance, or, in this case, partition of property, legal experts from around the U.S. have written "uniform" laws to serve as a template to be adopted by each state legislature. A "uniform" template provides consistency and a comprehensive response to issues every state faces.

Proper estate planning is the best way to reduce the likelihood or need for partitioning a farm. However, the new law gives all owners who are looking to keep the farm together when not all heirs agree a way to avoid a total sale. ●

For More Information

Uniform Law Commission: www.uniformlaws.org



Some states, such as Iowa, have passed laws to try to avoid court battles that divide inherited farmland among heirs. PHOTO: ELAINE SHEN

Arcane U.S. land law gets slow makeover to help poor

by [Carey L. Biron](#) | [@clbtea](#)

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Rural property in Dale County, Alabama, August 2017. Thomson Reuters Foundation/Handout/Katie Pollock

"Heir's property" becomes an issue when land or a home is passed on without a clear will

By Carey L.Biron

WASHINGTON - Dubbed the worst problem no one has heard of, an obscure land rights law is winning attention as lawmakers overhaul arcane U.S. inheritance rules that are exploited by predators.

At the root of the problem is so-called heirs' property - a type of enforced communal ownership - which can arise when land or a home is passed on without a clear will.

The issue has disproportionately affected poor and minority Americans, making an inherited property impossible to sell or - by contrast - imposing an unwanted sale on a rightful heir, sometimes to the benefit of a developer.

"I like to say it's the worst problem no one's heard of," John Pollock, one of the first researchers to look into the issue nationally, told the Thomson Reuters Foundation. The campaign for change was "still getting started", driven by recent legislative victories, he added.

Until recently, laws across the country had been stacked against holders of heirs' property.

In the absence of a clear will, all heirs - however distantly connected to an original titleholder - were seen as enjoying equal ownership of a property. Furthermore, courts tended to favor selling a contested property as a whole, believing it would retain the most value.

This meant anyone with a distant claim could force a sale — often resulting in stressful, quagmired legal cases and a huge loss of wealth. Even outside of such predatory practices, the property's value would remain locked up.

“This land has lots of different values — historical, ancestral — and it’s a significant source of untapped wealth,” said Pollock, who runs the Heirs' Property Retention Coalition, a group that coordinates organisations dealing with the problem.

“For a lot of communities, there is value here that they can’t access because of these problems.”

RIGHTING A WRONG

The issue has particularly hurt African Americans, whose landholdings dropped 80 percent in the 20th century, according to research published by the U.S. Forest Service.

According to another study, also backed by the Forest Service, heirs' property is considered “one of the primary contributors” to that massive drop.

Governments at multiple levels are only now recognising the enormity of the problem — and are finally starting to act.

Two years ago, the Federal Reserve Bank of Atlanta held its first event on the issue, noting that heirs' property is especially widespread in the U.S. southeast.

“The negative impact of heirs' property on household wealth and community vitality is significant,” Ann Carpenter, a senior advisor with the Atlanta Fed, said in a statement.

There has also been progress on the legal front, with a network of campaigners pushing states to enact legislation that addresses the worst aspects of the convoluted inheritance laws.

In April, Iowa became the 11th state to pass such legislation, and similar laws are pending in three other states and in Washington, where it is expected to pass this year. In Iowa, the motivation was to protect family farmland.

“The family farm is still the backbone of Iowa's social life,” said James E. Nervig, the bill's main drafter. “Those over 65 own more than half of that farmland today, so you'll soon have a major passage of land to new owners.”

Under Iowa law, heirs to a farm could not split a property if some wanted to sell and others were against; nor could those who wanted to keep the property offer to buy out the others.

The new law — modelled on a “uniform” bill that backers say is relevant across the country — offers judges overseeing such cases more flexibility to allow both those options.

“It really swept through the legislature without any opposition,” Nervig said of the bill.

UNIFORM LAW

The uniform law, used to draft legislation in each of the 11 states that have addressed the issue, has three key goals:

- When someone tries to force a sale, they must first offer their interest for sale to the remaining owners
- Courts must take into account the full value — personal, historical — of a piece of property, not just its market value
- And any sale needs a visible process, rather than a quiet auction at which only a developer in the know might show up.

The law does not ease all aspects of owning heirs’ property, but it does seem to be having an effect, close observers say.

In 2011, Georgia became the second state to pass the act.

“Prior to that, it was very easy for folks to buy one family’s interest and force the sale of a property,” said Skipper G. StipeMaas, executive director of the Georgia Heirs Property Law Center. “The uniform act slowed down what was historically

used as a mechanism by business owners and wealthier individuals to acquire land.”

StipeMaas’s own family land was heirs’ property, taking four decades and two lawsuits to clear — an excruciating process.

“Not only does this erode a family’s ability to build wealth,” she said. “What’s also being eroded is that family’s cohesiveness.”

VULNERABILITY

Statistics on the full extent of heirs’ property are not available but it appears to be widespread.

Last year, scholars from the University of Georgia estimated that 10-15 percent of land in the southeast is heirs’ property, typically in farming areas or “declining or distressed” cities.

In a handful of counties around Atlanta, they estimated, \$2 billion worth of land is tied up as heirs’ property.

That’s where 83-year-old Mildred Shields used to live, about a mile from downtown Atlanta in a house her father bought when she was a child. After her father died, the house was juggled between Shields and other family members, even though Shields continued to pay the taxes, said her daughter Phyllis Shields.

In recent years the house sat vacant — until Mildred began getting legal citations regarding code violations at the home.

It was only when she looked to sell that Shields realised it was heirs' property and could not be sold until she proved no one else could claim ownership — an arduous process completed with the help of the Georgia Heirs Property Law Center.

Phyllis Shields said the situation was so complicated, it left her mother vulnerable.

“If someone had walked up to my mom and said, ‘I’m an attorney, and I’ll give you a dollar [for the property] and straighten all of this out,’ she would have signed,” she said.

After a year and a half of work, the title was finally clear. Mildred Shields sold the house in May.